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Brief prepared for the House of Commons Standing Committee on Foreign Affairs and International Development's Study on the Role of the Private Sector in Achieving Canada's International Development Interests

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CIDA's Partnership with Mining Companies Fails to Acknowledge and Address the Role of Mining in the Creation of Development Deficits

INTRODUCTION

MiningWatch Canada works to change public policy and mining practices to ensure the health of individuals, communities and ecosystems in Canada and overseas. We believe the issue being investigated by this committee is important as it involves the use of public funds and considers the role of the private sector, including mining companies, in achieving Canada's international development interests. We believe that the newly adopted practice by CIDA of subsidizing Corporate Social Responsibly projects of mining companies at their mine sites overseas does not constitute a responsible use of public funds and does not address the development deficits created by mining at the national and local levels in developing countries.

The committee has, to date, heard from two witnesses from the mining sector[1] who have argued that mining companies, in partnership with development NGOs, can deliver on Canada's development interests at their mine sites and beyond.

CIDA has been given a new mandate[2] to support Corporate Social Responsibility (CSR) projects of mining companies with Canadian tax dollars through Official Development Assistance. This needs to be

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[1] Ross Gallinger, Executive Director, Prospectors and Developers Association of Canada (formerly of IAMGold) (November 17, 2011) and Doug Horswill, Sr. Vice President, Sustainability and External Affairs, Teck Resources Ltd. (December 6, 2011).

[2] This mandate stems from the Government of Canada's (2009) report *Building the Canadian Advantage: A Corporate Social Responsibility (CSR) Strategy for the Canadian International Extractive Sector*, www.international.gc.ca/trade-agreements-accords-commerciaux/ds/ csr-strategy-rse-stategie.aspx

examined in the context of an expanding research that details the ways in which large-scale mining[3] *itself creates* very serious and long-lasting development deficits, both at national and at local levels in many developing countries.

Increasing local level conflict at mine sites around the world, and the growing severity of these conflicts, is most often related to struggles by poor people to protect the natural resources and the agricultural practices that sustain them from destruction by mining, often at great cost to themselves.

It is in part this vehement local opposition to mining, and the reputational damage of high-profile conflict, that mining companies seek to address through partnerships with development NGOs and through CSR projects. These CSR projects, however, will not and cannot address the long-term harm and development deficits caused by mining impacts such as the depletion and contamination of surface and ground water upon which local food security and livelihoods depend, or the loss of national level revenues through tax evasion schemes, or the creation of resource dependent economies as described in the "resource curse" literature.

In this brief we provide further detail regarding the national and local level development deficits caused by mining. We maintain that:

- ***CIDA-funded CSR projects at mine sites are a poorly articulated attempt by the Government of Canada to help mining companies appear to offset the development deficits they are creating at local and national levels;***[4]
- ***CSR projects at mine sites do not address the serious and long-term development deficits caused by mining at local and national levels in developing countries;***
- ***Canadian taxpayers should not be subsidizing the mine-site CSR projects of Canadian multinational mining companies that have ample resources to pay for these CSR projects themselves – as they have done until recently – nor should Official Development Assistance be diverted for this purpose.***

We conclude with some recommendations.

[3] This paper focuses particularly on the negative development impacts of large-scale mining, as large-scale mining companies have been the focus of CIDA partnerships to date.

[4] University of Ottawa professor Stephen Brown has termed CIDA's funding of mining company CSR projects a blatant effort to "whitewash the negative effects of their resource extraction" (*What is going on at CIDA*, Elizabeth Payne, January 19, 2012, Ottawa Citizen).

NATIONAL LEVEL DEVELOPMENT DEFICITS RELATED TO MINING

National level development deficits related to resource extraction occur in many developing countries as a result of, among others:

- provisions in confidential contracts, development and stability agreements that secure investor protection from potential costs associated with evolving environmental, social, or fiscal regimes that support a country's development objectives (Oshionabo 2009);
- provisions in investment treaties (such as "full protection and security") that allow investors to sue host states (IISD 2011; Malik 2011) for example for declining to issue an operating permit regardless of cause;[5]
- provisions in mining laws that secure lengthy tax holidays for mining projects while assuring low tax and royalty levels (Akabzaa, 2009; Belem, 2009; Campbell, 2009a, 2009b, 2009c; Sarrasin, 2009);
- capital flight and tax avoidance through accounting mechanisms such as transfer pricing[6] and the use of tax havens such as the Cayman Islands (Baker 2005; Emmons, 2010);
- factors described in the 'resource curse' literature, such as: overvaluation of the real exchange rate (RER) leading to price inflation and higher costs for local producers, loss of competitiveness and loss of development of other economic sectors (so-called Dutch Disease); volatility in mineral values; over consumption based on a non-renewable resource; and unequal distribution of benefits associated with mineral wealth (Coumans 2011; Haglund:2011)[7];
- corruption;
- long-term environmental liability from an increasing number of inadequately rehabilitated and abandoned mines;
- lost-opportunity costs to fund development as a result of the high costs involved in developing and funding national institutions to monitor and regulate the activities of the mining industry (Thorp et al forthcoming).

Each of the above factors is associated with a growing body of scholarly literature. Here, we call particular attention to a recent publication by Dan Haglund (December 2011) of Oxford Policy Management that summarizes the *consequences* for most mineral-dependent countries of development-deficit creating factors associated with mining.

Haglund notes that the number of low-and middle-income countries that depend on minerals for more than 25% of their tangible exports increased from 46 to 61 countries between 1996-2010 and that this increase has grown sharply since 2004. His research finds that rather than enjoying economic prosperity, these **mineral-dependent countries "are more likely to have lower economic development then**

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[5] A pertinent current example is that of Vancouver-based mining company Pacific Rim vs El Salvador. In 2008 Pacific Rim launched a case against El Salvador under the Central American Free Trade Agreement (CAFTA) when it was denied permits for a controversial gold and silver mine. Pacific Rim is demanding compensation from the government of El Salvador that could rise to hundreds of millions of dollars. In order to launch this case, Pacific Rim moved its Cayman Islands subsidiary to Nevada to attract jurisdiction under CAFTA. The case will be decided by a tribunal at the International Centre for Settlement of Investment Disputes (ICSID), associated with the World Bank. For other examples of these types of cases see: http://www.iiapp.org/treaties/

[6] 'Transfer pricing happens when affiliated companies – say, a parent and a subsidiary, or two subsidiaries – can set their own artificial (non-market) transaction price' and through this mechanism avoid paying taxes on profit. Commonly the revenues from this form of capital flight end up in tax havens. See also Christian Aid (2009).

[7] Note Haglund works for Oxford Policy Management which has been the lead contractor for the International Council on Mining and Metals' (ICMM) Resource Endowment Initiative for the past seven years. This initiative has attempted to challenge the resource curse literature, even as it has sought ways to address the very real impacts of the resource curse. Haglund's report (2011) demonstrates that the resource curse is still very much in effect.

other countries, including countries dependent on oil and other fuel minerals." Haglund found a strong correlation between dependence on mining and low GDP per capita.

Haglund further notes that:

> many least developed countries are also highly aid-dependent, and some of those with mineral resources are now receiving significant foreign exchange flows both from minerals and from aid, exacerbating the risk of RER appreciation. (2011:21)

Among the 20 most vulnerable countries are: Bolivia, Burkina Faso, the Democratic Republic of Congo, Ghana, Guinea, Guyana, Laos, Mali, Mauritania, Mongolia, Papua New Guinea, Peru, Sierra Leone, Tanzania and Zambia. Many of these countries have a strong presence by Canadian mining companies and are countries on which CIDA is focussing.

The mine-site CSR projects that CIDA is now funding in partnership with mining companies do not address the macro-economic factors that deepen poverty as developing countries become more dependent on mining.

LOCAL LEVEL DEVELOPMENT DEFICITS RELATED TO MINING

At the local level, serious and potentially very long-lasting development deficits are created through both environmental and social impacts commonly associated with large-scale mining. The following sections highlight just some of these environmental and social impacts.

Environmental

Large scale mining's biggest environmental problem is the massive volume of waste it produces per mine through extraction and processing of ore, especially in open pit (as opposed to underground) mining. The sheer volume of this waste presents serious environmental risks as does its frequently toxic nature. Acidic drainage and toxic metal leaching from mountains of mine waste (waste rock and mill tailings) are a particular threat to surface and ground water – and as a consequence, to human health and food security – and can remain a threat for hundreds, even thousands of years. In order to seal this waste off from the surrounding environment, large and expensive containment structures must be built. These take up significant land and must be carefully maintained to avoid catastrophic failure, as well as everyday leaks and seeps into the surrounding environment. This maintenance imposes costs not just while the mine is operating but for many mines "in perpetuity" after closure. As a doctor in engineering and mining consultant has pointed out, "Many, if not most, large mines will be closed with an on-going need for interaction to ensure environmental protection and safety" (Robertson 2011).

As developing country governments do not, and will not for the foreseeable future, have the resources to deal with perpetual care and maintenance of waste impoundments, the risks and costs associated with mine waste are now, and will be into the future, borne by local communities and environments in developing countries.

In November 2011, Green Cross Switzerland and the U.S.-based Blacksmith Institute issued its list of the top ten worst toxic pollution problems world-wide. **Mining and ore processing was the number one worst toxic pollution problem, putting an estimated 7.02 million people at risk of poor health or loss of life.** Looking just at lead, the report notes that "lead contamination from mining poses a serious health risk to 1.2 million people, particularly in Africa" (2011: 44).

Social

Local level social impacts[8] typically occur as a result of:

- Increased poverty as a result of a degraded environment on which, in many cases, community subsistence depends (World Bank (2003: 20); MMSD (2002: 202);
- An overall increased cost of living due to higher wages earned by a small segment of the population;
- Increased internal economic inequality between those with jobs at the mine and those without, between those who receive royalty payments and other benefits and resource rents and those who do not;
- Increased gender inequality as a result of unequal access to jobs in the mine, loss of male support for household work, and degraded environments that cause women to expend more energy procuring safe water and food for the family;[9]
- Economic dependency as local economic activity is reorganized to meet the needs of the mine, leaving the community vulnerable to a typical "boom and bust" economy when the mine closes down (Akabzaa 2000; Kuyek and Coumans 2003);
- Militarization as a result of the need to protect the mine's assets from local opposition, from scavenging by poor communities, or from existing local conflicts that may be exacerbated by "revolutionary taxes" from the mines;
- Displacement, forcible eviction, or forced relocation leading to impoverishment and loss of cultural and social cohesion;
- Problems related to accelerated in-migration of outsiders, e.g., conflicts due to different socio-cultural values between newcomers and native residents, overuse of local resources, and imported diseases;
- Problems related to increased accessibility of previously remote or "traditional" communities – exposure to new health risks (e.g., influenza, TB, HIV/AIDS) and unhealthy dietary changes (e.g., through consumption of imported processed foods);
- Increases in alcohol and drug use, prostitution, gambling, and internal law and order problems as a result of an influx of mainly men who are not integrated into the local community nor subject to its social constraint mechanisms, or the unusually rapid accumulation of wealth by local men;
- Human rights abuses – e.g., as a result of militarization, increased sexual violence, and forced relocation;
- Loss of land, loss of sustainable livelihoods, and loss of livelihood from small-scale mining as a result of displacement of communities by mining;
- Loss of identity, cultural cohesion and loss of sacred places – e.g., as a result of displacement from traditional lands and territories and the destruction of sacred sites;
- Loss of development choices and options, loss of power over community decision making, loss of control over the future of the community and its assets, with further economic and social dislocation at mine closure; and
- Breaches of core labour standards by, for example, denying workers the right to unionize and to collective bargaining, breaches in health and safety standards, and so on.

It is now widely understood that developing country governments do not have the institutional nor financial capacity to adequately regulate, monitor, mitigate, or manage the social and environmental impacts associated with the large-scale mining (Ruggie 2008). In Peru, CIDA entered into a bilateral agreement with the Peruvian Ministry of Energy and Mines (MEM) in 1998 known as the Peru-Canada

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[8] The social issues discussed are further discussed in the *Framework for Responsible Mining* (2005).

[9] See particularly the proceedings and final statement, declaration, and resolutions of the Third International Women and Mining conference held in Visakhapatnam, India, October 2004 (www.mmpindia.org/womenmining.htm).

Mineral Resources Reform Project (PERCAN). Reports from this initiative have acknowledged that: **"During the last decade of growth, in spite of the considerable effort put forward . . . policies and institutions have not been developed sufficiently in order to deal with environmental impacts and social conflicts arising from mining activity"** (PERCAN and MEM, 2009, p. 2 in Campbell et al 2011, p. 100).

The mine-site CSR projects that CIDA is now funding in partnership with mining companies do not address the long-term local-level environmental and social risks associated with impacts of large-scale mining.

CONFLICT AND TAX-PAYER FUNDED CORPORATE SOCIAL RESPONSIBILITY

"We were born here. We grew up here. Our children and our homes were formed here... our ancestors were also here. We want these men to go. We don't want mining. We want agriculture." (Hennesey, 2003) [Woman from Tambogrande, Peru, where local opposition and a 2002 referendum ultimately caused the Peruvian government to cancel Canadian mining company Manhattan Minerals' proposed gold mine.]

This brief does not allow an exhaustive discussion of each of the environmental and social impacts outlined above, all of which have been associated with large-scale Canadian mining projects in developing countries. However, it is important to note that local level opposition to large-scale mining is increasingly taking place *before* a mine is actually operating and that the reasons for this opposition are increasingly articulated in collective community statements.

In these collective statements, the impacts communities themselves articulate most frequently when they oppose a mine being built on their land are: the loss of clean water and access to land for food security and existing forms of livelihood (primarily agricultural); loss of identify associated with traditional lands and territories; and lost opportunity for development futures that they see as incompatible with large scale mining.

Examples of such collective statements of community opposition to large-scale mining can be found accompanying growing numbers of *consultas* (or referenda) in Latin America and declarations of mining moratoria and bans in the Philippines. Since 1996 there have been at least 10 provincial and 32 municipal moratoria on large-scale mining in the Philippines and in 2010, a resolution was tabled in the House of Representatives calling for a moratorium on large-scale mining in the Philippines, noting that local government units who have declared moratoria "are not convinced of the claimed development benefits of mining, and that their local development plans have not identified mining as a development option" (House Resolution No. 528, in Coumans (2011).

In some countries, governments are responding to public concerns by putting stronger restrictions on the most devastating mining practices, whether open pit mining or mining in highly sensitive ecosystems. A number of countries and regional jurisdictions have also started passing relevant laws. Costa Rica banned new open-pit gold mining projects in 2010,[10] Argentina prohibited mining in glacier and peri-glacier areas in 2010,[11] six provinces in Argentina prohibit open pit mining and the use of certain toxic substances in metal mining,[12] and the National Roundtable on Metal Mining in El Salvador is seeking to

10 http://www.minesandcommunities.org/article.php?a=10519&l=1
11 http://www.minesandcommunities.org/article.php?a=10413&l=1
12 http://www.minesandcommunities.org/article.php?a=11219&l=1

have repeated presidential declarations to not approve new metal mining projects put into law.[13] The current mining code and jurisprudence in Colombia also prohibits mining in important wetland ecosystems called páramo.[14]

As Canada's mining industry has come to face increasing opposition from communities in developing countries, the industry has urged greater support from the Canadian government and from CIDA.

On September 29, 2011 CIDA announced "pilot projects" implemented in partnership with development NGOs and mining companies. These are:

- **Ghana**: Project co-implemented by World University Service of Canada (WUSC) and co-financed by Rio Tinto Alcan. Total budget: $928,000 over 3 years; CIDA: 500,000—WUSC/Rio Tinto Alcan: $428,000. *Note that the Rio Tinto Alcan mine associated with this project in Ghana was sold to a Chinese company after this project was initiated.*
- **Burkina Faso**: Project implemented by Plan Canada and co-financed by IAMGOLD. Total budget: $7.6 million over 5.5 years; CIDA: $5.7 million — Plan Canada: $0.9 million — IAMGOLD: $1 million.
- **Peru**: Project implemented by World Vision Canada and co-financed by Barrick Gold. Total budget: $1.0 million over 3.5 years; CIDA: $500,000 — World Vision/Barrick Gold: $500,000.

It is noteworthy that each of these partnerships involves major, well-financed, mining companies and that the taxpayer funded portion of these mine-site projects is substantial (half the total expense or more) amounting to a subsidy of these Corporate Social Responsibility projects.

This raises a number of questions. What role does community consent for a mine, or lack thereof, play in CIDA's decision-making about which projects to fund? How well placed is CIDA to assess community support for a mine project, or even for a particular CSR project? There appears to be reason to question CIDA's assertion that the CSR projects it funds always have strong community engagement. In a study of mining and local development in Peru, Lemieux (2010) discusses the initial stages of the CIDA-funded CSR project at Barrick Gold's Lagunas Norte mine in Peru. Lemieux writes:

> This project seems to fulfil the basic social needs the company is looking to address, as well as the Canadian embassy's interest to work in CSR, rather than the needs of the local population. The project was implemented in a very top-to-down way, based on the mine's desire to re-grow the forests, and CIDA's need to work in CSR and promote the good initiatives of Canadian mines. Consultation with local actors is non-existent and the project is led exclusively by external actors. (Lemieux, 2010, p. 25)

As the mining industry has urged CIDA to fund CSR projects at mine sites, and is praising CIDA for doing so[15], and as these projects do not address the long term local and national development deficits created by mining, there is reason to believe that CIDA's funding of CSR projects at mine sites is a

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13 http://www.minesandcommunities.org/article.php?a=9326&l=1; http://www.thenation.com/article/162009/water-gold-el-salvador

14 http://www.minesandcommunities.org/article.php?a=10847&l=1; http://www.censat.org/articulos/10030-noticia/10184-mineria-en-los-paramos-el-agua-vale-mas-que-el-oro

15 Pierre Gratton, Executive Director of the Mining Association of Canada, wrote an article for the Ottawa Citizen titled *CIDA changes long overdue*. January 25, 2012. http://www.ottawacitizen.com/business/CIDA+changes+long+overdue/6046873/story.html

poorly articulated attempt by the Government of Canada to help mining companies appear to offset the development deficits they are creating at local and national levels.

CONCLUSIONS AND RECOMMENDATIONS

The mine site CSR projects that CIDA is now funding in partnership with mining companies do not address the macro-economic factors that deepen poverty as developing countries become more dependent on mining.

The mine site CSR projects that CIDA is now funding in partnership with mining companies do not address the long-term local-level environmental and social risks associated with impacts of large-scale mining.

As the mining industry has lobbied CIDA to fund CSR projects at mine sites, and is praising CIDA for now doing so[16], and as these projects do not address the long term local and national development deficits created by mining, there is reason to believe that CIDA's funding of CSR projects at mine sites is a poorly articulated attempt by the Government of Canada to help mining companies appear to offset the development deficits they are creating at local and national levels.

Canadian taxpayers should not be subsidizing the mine-site CSR projects of Canadian multinational mining companies that have ample resources to pay for these CSR projects themselves – as they have done until recently – nor should Official Development Assistance be diverted for this purpose.

RECOMMENDATIONS FOR ADDRESSING DEVELOPMENT DEFICITS RELATED TO MINING

CIDA needs to demonstrate an awareness of the macro-economic mining-related factors that lead to development deficits in many developing countries and address these by funding the development of institutional capacity at the national level so that developing countries can implement strong environmental and social regulations and better monitor and enforce compliance with regulations to minimize environmental and social harm.

CIDA should fund national level capacity to assure mines have appropriate closure plans in place and adequate bonds set aside to meet the potentially decades-long requirements to maintain waste dams and structures and treat contaminated water.

CIDA should fund national level capacity to better assure more equitable returns from mining through taxes and royalties on the depletion of mineral wealth.

CIDA should fund the enhancement of national level capacity to draft treaties and international agreements that do not leave a country vulnerable to law suits by corporations, as well as increase capacity to ensure that contracts do not provide for mechanisms such as transfer pricing that lead to capital flight.

The Government of Canada should develop regulations that will hold Canadian mining companies to account in Canada for poor environmental and social performance overseas.

[16] Pierre Gratton, Executive Director of the Mining Association of Canada, wrote an article for the Ottawa Citizen titled *CIDA changes long overdue*. January 25, 2012.
http://www.ottawacitizen.com/business/CIDA+changes+long+overdue/6046873/story.html

The Government of Canada should provide access to effective remedy in Canada for those who have been harmed by Canadian mining companies operating overseas where access to effective remedy is often not available.

The Government of Canada needs to implement binding accountability mechanisms in Canada that will increase transparency and combat corruption related to mining, similar to provisions in the "Dodd-Frank" regulations passed in the United States.

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