



# Policy Briefing Paper

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## Regulating Canadian Mining, Oil and Gas Companies Operating Internationally

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**C**anada has a unique opportunity to become a world leader in Corporate Social Responsibility (CSR) in the mining, oil and gas sector.

In March 2007, the Harper government was handed a blueprint for a new approach to promoting Corporate Social Responsibility in the extractive industries, which was developed as part of a year-long multi-stakeholder process of National Roundtables chaired by the Department of Foreign Affairs and International Trade. The Final Report of the Roundtable Advisory Group – a panel of representatives of industry, labour, NGOs, academia and socially responsible investors – includes 27 recommendations for the federal government that, if implemented, would increase transparency and corporate accountability.

KAIROS: Canadian Ecumenical Justice Initiatives, and our civil society partners in Canada, call on the Government of Canada to:

- 1. Promptly adopt the consensus-based recommendations in the Final Report of the National Roundtables.**
- 2. Immediately implement the Canadian CSR Framework that is set out in the report.**

Our Southern partners, who include communities directly affected by Canadian mining projects, are urging their own national governments to improve regulations in the mineral and petroleum sectors. However, they believe strongly that Canada, as the “home country” of these companies, also has a vital role to play.

**Canada is uniquely positioned to take a leadership role in regulating mining activities internationally. Almost 60 percent of the world's exploration and mining companies are listed in Canada. These companies account for over 40 percent of global exploration budgets and have interests in almost 3,200 mineral**

**properties located in more than 100 countries.**

The centerpiece of the Final Report of the National Roundtables is the Canadian CSR Framework. The Framework is important because it:

- **Establishes CSR standards and reporting obligations for Canadian companies;**
- **References international human rights standards and provides for the creation of human rights guidelines for the application of the CSR standards;**
- **Creates an ombudsman office to receive complaints regarding the operations of Canadian companies in the developing world and to assess corporate compliance with the standards; and**
- **Includes a provision for withholding government services from companies in cases of serious non-compliance.**

The recommendations from the National Roundtables build on a groundbreaking report on mining and CSR adopted by the Standing Committee on Foreign Affairs and International Trade (SCFAIT) in June 2005. The SCFAIT report highlighted the need for major policy and law reform to ensure that Canadian companies comply with international human rights and environmental standards.

Too often, community rights and environmental concerns have been undermined by Canadian mining, oil and gas companies. At present, these companies are not held legally accountable in Canada when they are complicit in human rights abuses or environmental destruction overseas. Voluntary measures have failed to curb the worst abuses and the resulting conflicts.

## FREE PRIOR & INFORMED CONSENT

### What is FPIC?

Free Prior and Informed Consent (FPIC) mandates that indigenous communities possess a formal role in the consultations, and ultimate decision-making power in development projects like resource extraction initiated on their land. It has been recognized by United Nations human rights organizations like the Committee on Economic, Social and Cultural Rights, the International Labour Organization, and international instruments like the Convention on Biological Diversity and the Declaration on the Rights of Indigenous Peoples.

FPIC is an essential mechanism by which Indigenous peoples and local communities may protect their inherent right to control access to their land and natural resources, and to share in the benefits when these are utilized by and for the benefit of others, mainly governments and international companies.

As resource extraction continues to expand globally, Indigenous peoples are particularly vulnerable to human rights violations, desecration of their sacred lands, and the environmental devastation that often accompany the practices of multinational extractive companies, including those domiciled in Canada.

### Elements of FPIC

**Free:** Indigenous peoples must freely give their consent to development projects affecting their lands and resources without coercion, manipulation or interference by any government or corporation. Consent must not be obtained by force or deception.

**Prior:** The consent of the community affected must be requested and freely given prior to the initiation of any project on their lands.

**Informed:** Consent must be based on informed consultation and participation by Indigenous peoples with full disclosure of the development activity. All information must be provided in a form that is both understandable and accessible to the community. If misleading or false information is provided, any consent already given could be made invalid and therefore withdrawn.

**Consent:** The community affected by a proposed project must have the right to say "no" at any time prior to, or during the negotiation process. It is the responsibility of each affected community to decide who will express or withhold consent on their behalf.

1. **Once established, the CSR Framework must be incorporated into binding legislation so that compliance is mandatory, as recommended in the SCFAIT report.**
2. **The CSR Framework must reflect internationally-guaranteed human rights standards and the corresponding obligations of states and non-state actors to respect the human rights of individuals and communities.**

As currently proposed, the CSR Framework does not go far enough in ensuring the protection and promotion of the rights of indigenous peoples. Canada has consistently demonstrated a clear lack of commitment to indigenous peoples' rights, including the right to Free, Prior and Informed Consent (see box).

In November 2006, the Harper government voted against the adoption of the UN Declaration on the Rights of Indigenous Peoples, which affirms the right of Free, Prior and Informed Consent (FPIC) as well as rights to self-determination, land, resources and development. The Declaration on the Rights of Indigenous Peoples serves as an important standard for judging the current government's commitment to Indigenous peoples' rights, which at this point in time is very poor.

3. **The CSR Framework must integrate the rights of indigenous peoples, including the internationally-recognized principle of Free, Prior and Informed Consent (FPIC).**
4. **The Government of Canada must reverse its position at the UN General Assembly on the Declaration on the Rights of Indigenous Peoples at the earliest time possible.**

**KAIROS and our partners in the global South are seeking long-term, sustainable solutions that will end the injustices associated with Canadian extractive operations abroad. In adopting and implementing the aforementioned recommendations, the Government of Canada would be taking an important first step in this direction.**

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