

Preventing Human Rights Abuses at Canadian Mining Projects Abroad

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Abstract

This project examines the issue of human rights violations by Canadian mining companies operating in weak governance zones around the world. While Canada has implemented policies to enhance Corporate Social Responsibility (CSR) and established a CSR office and the Canadian Ombudsperson of Responsible Enterprise (CORE) to improve accountability, these tools lack adequate mechanisms to prevent abuses at foreign mining projects. The project uses a comparative analysis approach to understand the nature of violations and the disconnect between company policies and their public track record. The analysis finds that companies with comprehensive policies in place usually need to be more robust in ensuring human rights are protected. The Canadian courts have filled the accountability gap by trying human rights cases against Canadian mining companies in jurisdictions where a fair trial is unlikely. This study recommends a policy bundle that includes a social audit mechanism and a foreign assistance program to build community capacity. Both are implemented in a staggered approach to increase Canadian capacity to uphold human rights at mining sites.

Keywords: corporate social responsibility; energy; mining; human rights; foreign policy.

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List of Acronyms

CSR	Corporate Social Responsibility
OECD	Organisation for Economic Cooperation and Development
UN	United Nations
CORE	Canadian Ombudsperson of Responsible Enterprise
CMAA	Canadian Mining Assets
EDC	Export Development Canada
ESG	Environment Social Governance
GRI	Global Reporting Initiative
GAC	Global Affairs Canada
DFTAD	Department of Foreign Affairs, Trade and Development (now GAC)
HRBA	Human rights-based approach
UDHR	Universal Declaration on Human Rights
DRC	Democratic Republic of Congo

Glossary

Weak Governance Zone	Describes investment environments where governments cannot or will not fulfill their roles in protecting rights, providing basic public services, and ensuring efficient public sector management
State Fragility	Refers to the combination of risk exposure and insufficient coping capacity of the state, systems, and/or communities to manage, absorb, or mitigate these risks. Fragility often leads to negative outcomes, including violence, poverty, inequality, displacement, and environmental and political degradation
Junior Mining Companies	Focused on exploration in search of new deposits of metals, and their primary source of income is the purchase of shares by investors.
Senior Mining Companies	Larger and more experienced than junior mining companies, producing and generating cash flow.
Labour Governance	The public and private standards regulations, responses and forms of power (including rules, norms and actions) that surround labour standards in the global economy, including its worst forms, which are frequently referred to as forced labour and modern slavery." (Genevieve LeBaron, 2020, p. 3)

Executive Summary

Canada is home to over 50% of the world's mining companies that operate in weak governance zones around the world, where there is a higher risk of human rights violations due to the lack of government capacity to protect them. To help mitigate risks, Canada has implemented a policy framework to enhance Corporate Social Responsibility (CSR). In addition, many Canadian mining companies take part in voluntary CSR initiatives; despite this, Canadian companies have been responsible for a third of CSR violations in the mining sector over the past ten years. To help with accountability, Canada has established a CSR office and the Canadian Ombudsperson of Responsible Enterprise (CORE), but they lack strong investigatory power and effective compliance mechanisms. Ultimately, neither accountability tool has effective mechanisms to prevent human rights abuses at Canadian-owned foreign mining projects. Other jurisdictions have not effectively addressed this issue, requiring new innovative solutions.

This project uses a comparative analysis approach to understand the nature of violations occurring and the disconnect between company policies and their public track record. The analysis found that while companies have comprehensive policies to protect human rights and partake in corporate social responsibility, more is needed to ensure that outcome. The Canadian courts tried human rights cases against Canadian mining companies where violations occurred in jurisdictions where a free and fair trial is unlikely. These court cases generally involve the excessive use of force and violence of security forces on residents or protestors near the mine. While this has partly closed the policy gap, the Canadian government needs to take preventive measures to address these issues before they occur.

Two policies designed to increase Canadian capacity to uphold human rights at Canadian mining sites were analyzed using a multi-criteria approach. The policy options identified include a social audit mechanism and a foreign assistance program to build community capacity surrounding mining sites. These policy solutions were examined against considerations including effectiveness, economic efficiency, protection and security, stakeholder acceptance, and administrative complexity. This study recommends a policy bundle including both policy options implemented in a staggered approach.

Chapter 1.

Introduction

Canada is home to over 50% of the world's mining companies, with over 730 assets abroad and accounts for about 4% of the Canadian GDP (NrCan, 2022). Despite the economic benefit this has brought Canada, the sector has been riddled with accusations by watchdogs and civil society organizations of human rights violations in the past (Working Group, 2014; Saunders, 2014; Chen, 2020; Marotte, 2013). Keeping multinational firms with foreign headquarters accountable for human rights violations has proven difficult for most states, especially when they relocate to nations with poor governance and little will or ability to enforce those rights (Saloranta, 2021; OECD, 2006).

Canada has implemented a policy framework for the extractive industry that aims to promote and enhance Corporate Social Responsibility (CSR) to ensure positive outcomes for communities where mining companies operate. Named the "Enhanced Corporate Social Responsibility Strategy to Strengthen Canada's Extractive Sector Abroad," the policy embodies a gentle approach to encourage corporations to take responsibility for how their presence and practices may affect human rights (DFATD and NrCan, 2014). Canada's adoption of this policy -- beginning in 2009 -- quickly aligned the country with other global initiatives such as the OECD Guidelines for Multinational Corporations (OECD Guidelines) and the United Nation's Guiding Principles on Business and Human Rights (UN Guiding Principles). As CSR has become a global norm, most mining corporations have taken up CSR within their policies and initiatives, often spending millions of dollars on CSR efforts (Andrews & Grant, 2020). Therefore, Canada's enhanced CSR policy aligned Canada with global norms and attempted to foster and promote sustainable development and responsible business by extractive corporations in host countries.

A report by the Prospectors and Developers Association of Canada was leaked in 2009, showing that in the previous ten years, Canadian companies were responsible for a third of 171 CSR violations in the mining sector (Engler, 2012). In 2007, the National Roundtables on Corporate Social Responsibility and the Canadian Extractive

Industry in Developing Countries produced a report that represented an industry-civil society consensus that called for comprehensive human rights norms and an independent Ombudsperson and review committee with the ability to investigate allegations of non-compliance (Advisory Group, 2007; Drohan, 2010).

However, the initial office of the CSR counsellor installed in 2009 needed to be stronger. The office evolved into the Canadian Ombudsperson of Responsible Enterprise (CORE), which still needs strong investigatory power and effective compliance mechanisms. This office will be explored in more detail in Chapter 3. Despite the continued progress of Canadian policy and compliance mechanisms to encourage ethical behaviours, several cases alleging human rights abuses by Canadian mining companies abroad have been brought to the Canadian court system (Chen, 2020; Marotte, 2013) after the figure of the Ombudsperson was created.

To the present day, grassroots organizations have repeatedly exposed the misconduct of these companies, including human rights violations such as forced labour, violence, torture, and rape by security forces. While the Canadian policy provides little room for punitive action, the government has failed to utilize the option of withdrawing 'economic diplomacy' support, such as letters of support, advocacy efforts, and the ability to participate in the trade mission, as well as financial support to these companies.

Since 2014, the Canadian court system has played a more significant role in addressing these issues by allowing cases of alleged human rights abuses to be heard in Canadian courts if the host country cannot or will not provide a fair trial (Findlay, 2019; McGee & York, 2022). Since then, four significant cases have been brought forward from weak governance zones in South America and Africa, alleging abuses including torture, slavery, violence, and gang rape. These cases will be explored in more detail in Chapter 4. Thus far, these cases are ongoing or settled out of court. Since the Supreme Court of Canada has ruled that the Canadian courts have jurisdictional authority when justice seems unlikely in the host country where the alleged events occurred, it is a reasonable assumption that more of these cases will come forward in the following years. The increased willingness of the Canadian courts to hear these cases has partly closed the policy gap by providing victims with a clear judicial channel to achieve justice. However, the court system can only intervene after a violation. Therefore, the Canadian government has a crucial responsibility and opportunity to take preventive measures to

address these issues before they occur. However, Canada's policies to encourage mining companies to uphold human rights are weak. Ultimately, **Neither Canada's enhanced CSR policy nor the CORE office are effective mechanisms to prevent human rights abuses from occurring at Canadian-owned foreign mining projects.**

This capstone project presents an evidence-based policy analysis to propose innovative solutions to address the human rights risks associated with mining in weak governance zones while challenging Canada's current CSR-focused strategies. The report is divided into six parts: (1) an overview of Canada's mining activities and the CSR policies governing its mining corporations; (2) a jurisdictional scan examining if and how other countries regulate mining or similar sectors with human rights concerns; (3) an analysis of court cases involving Canadian companies and human rights violations abroad; (4) a comparative analysis of the CSR policies of three major Canadian mining corporations and reports of human rights and CSR misconduct against them; (5) a multi-criteria analysis of two policy options, evaluating their strengths and weaknesses; and (6) a recommendation for promoting respect for human rights by Canadian companies operating abroad, along with implementation details and concluding remarks.

Chapter 2.

Canada and Mining Abroad

According to Natural Resources Canada, almost half of the world's publicly listed mining and mineral exploration companies are based in Canada, with 1,249 Canadian mining companies and assets valued at \$273.4 billion (as of 2022). Of these companies, 730 have assets located abroad, in 97 foreign countries, with a total value of \$188.2 billion, accounting for two-thirds of Canadian Mining Assets (CMAs). Latin America and the Caribbean make up 45.4% of CMAs abroad, valued at \$85.4 billion, followed by Africa with \$36.5 billion. Canada's involvements are primarily concentrated in ten countries, which make up 73.5% of the value abroad. It is worth noting that three countries, Zambia, Mali, and the Democratic Republic of the Congo (DRC), are considered fragile (OECD, 2020).

Mining companies can be categorized as junior or senior mining companies. A junior mining company is focused on exploration in search of new deposits of metals, and their primary source of income is the purchase of shares by investors (Investopedia, 2022). In 2020, Canada was home to 1,187 junior firms, accounting for 88.1% of most companies but only 5.4% of the total CMA value of CMAs (NRCan, 2022). On the other hand, senior mining companies are larger and more experienced, producing and generating cash flow (Investopedia, 2022). In 2020, senior mining companies accounted for only 11.9% of CMAs but \$258 billion, representing 94.6% of the total value (NRCan, 2022). Two-thirds of the total value of CMAs was concentrated in the top 10 senior companies, totalling \$180.6 billion (NRCan, 2022). Canada's top 10 mining companies have diversified assets, heavily influencing gold, copper, nickel, and zinc. A table of the attributes of these top 10 companies is included below (Johnston, 2022).

Table 1 Largest Mining Corporations in Canada by Revenue (Johnson, 2022).

Company	Revenue	Location	Product
1. Nutrien Ltd.	\$28.2 billion	Canada	Potash Nitrogen Phosphate
2. Barrick Gold Corp.	\$16.9 billion	North America South America Africa Papua New Guinea Saudi Arabia	Gold Copper
3. Teck Resources Ltd.	\$8.9 billion	Canada Peru Chile	Copper Steelmaking Coal Zinc Energy Other
4. First Quantum Minerals Ltd.	\$6.9 billion	Africa Latin America Australia	Copper Nickel Gold Zinc Cobalt
5. Kinross Gold Corp.	\$5.6 billion	United States Brazil Chile Ghana Mauritania Russia	Gold
6. Agnico Eagle Mines	\$4.2 billion	Canada Finland Mexico	Gold
7. Kirkland Lake Gold Ltd.	\$3.3 billion	Canada Australia	Gold
8. Lundin Mining Corp.	\$2.7 billion	Brazil Chile Portugal Sweden United States	Copper Zinc Gold Nickel
9. B2Gold Corp.	\$2.4 billion	Mali The Philippines Namibia Colombia Finland Uzbekistan	Low-cost gold
10. Centerra Gold Inc.	\$2.3 billion	North America Asia Other global markets	Gold

2.1. Human Rights

As previously discussed, Canada has a diverse range of mining assets in various countries, including those with weak governance. Before exploring the landscape of Canadian mining in such jurisdictions, it would be helpful to define human rights as it will aid in framing the issues surrounding mining and human rights that will be described and analyzed in the following sections.

The roots of universal human rights can be traced to the Hague Peace Conference of 1899. This globally recognized concept informs our understanding of human rights today, dating to the UN Declaration of Human Rights in 1948. In the aftermath of two world wars, the Allies used the idea of human rights to garner public and state support for their war against the Axis powers (Normand & Zaidi, 2008). The United Nations was founded in 1945 with representatives from 50 countries gathering to draft and sign the UN Charter to prevent another world war (United Nations a). On December 10, 1948, the UN General Assembly in Paris proclaimed the Universal Declaration of Human Rights (UDHR) (United Nations b). This proclamation was the first time human rights were set out to be universally protected. It has since come to be widely recognized, leading to the creation of seventy human rights treaties applied permanently today. While the UDHR outlines many human rights, the ones relevant to this project include the following:

- Article 3: The right to life, liberty, and security of the person
- Article 4: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all forms.
- Article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
- Article 6: The right to recognition everywhere as a person before the law

Canada has ratified seven principal United Nations human rights conventions and covenants and signed more than 32 multilateral human rights treaties (Government of Canada, 2019). The Government of Canada presents itself as a “strong voice for the

protection of human rights and the advancement of democratic values.” (Global Affairs Canada, 2020).

2.2. Mining in Weak Governance Zones

Human rights are often threatened in areas with weak governance. The term "weak governance zones" describes investment environments where governments cannot or will not fulfill their roles in protecting rights, providing essential public services, and ensuring efficient public sector management. Weak governance encompasses broader failures of political, economic, and civic institutions that result from these government failures (OECD, 2006). Sadly, as many as four billion people globally lack the benefit of the rule of law and its protection (Saloranta, 2021).

OECD's Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones adopts the abovementioned definition and draws on other research on state fragility to determine what constitutes a weak governance zone. Fragility combines risk exposure and insufficient coping capacity of the state, systems, or communities to manage, absorb, or mitigate these risks. Fragility often leads to adverse outcomes, including violence, poverty, inequality, displacement, and environmental and political degradation. Thus, weak governance often results in state fragility, making it difficult for corporations to conduct business in these areas. Although the OECD does not provide a list of weak governance zones, they have provided analysis in the State of Fragility Report, measuring fragility on a spectrum of intensity across economic, environmental, political, security, and social dimensions. Depending on the balance between risk and a nation's ability to cope, states are rated as 'extremely fragile' or 'in the rest of the world' (OECD, 2022).

Canada has mining operations in 54% of states identified as 'extremely fragile' or 'fragile' in 2020. A further breakdown shows that 13 Canadian companies are operating in 5 out of 13 'extremely fragile' states, and 102 are in 25 out of the 43 states categorized as 'fragile' (OECD, 2022; NRCAN, 2022). These numbers mean that mining operations are conducted in 38% of the world's most fragile countries, such as the DRC, where eight mining operations generated \$6.47 billion in 2019.

2.3. Government Involvement in the Mining Sector Abroad.

The Canadian government actively supports Canadian mining companies operating abroad, with most companies listed on the Toronto Stock Exchange receiving financing and investment from the Export Development Canada (EDC) (Ponting, 2021; Working Group, 2014). Further, Canada's 'economic diplomacy' approach provides partnership through "... the issuance of letters of support, advocacy efforts in foreign markets and participation in Government of Canada trade missions" (DFTAD and NrCan, 2014). The Canadian government's existing investment in the success of Canadian companies has likely discouraged it from responding seriously to complaints against them (Ponting, 2021). Civil society organizations have argued that the Canadian government is not doing enough to address complaints from communities where these companies are acting poorly. Companies often ignore their appeals for change (Philipupillai, 2022; JCAP, 2022; Working Group, 2014). The perception that the Canadian government does not want to step in does not align with how Canada wants to be perceived as a champion of human rights. The Canadian government can do more to protect human rights, especially around Canadian-owned mining projects.

Chapter 3.

Corporate Social Responsibility

3.1. Defining Corporate Social Responsibility

Since Canada's official policy promotes Corporate Social Responsibility (CSR), understanding CSR is critical to this project. CSR emerged in the 1950s as a framework to incorporate ethical, moral, and legal considerations into firms' operations (Andrews & Grant, 2019). In the 1980s, the link between CSR and business performance became apparent, becoming a norm in the global north. By the 2000s, CSR was integrated into non-profit governance initiatives such as the Global Compact and the Global Reporting Initiative (GRI), which managed to attract significant corporate acceptance (Andres & Grant, 2020; Pope, 2015). Canada's Enhanced Corporate Social Responsibility policy, which will be discussed shortly, aligns with many of these agreements and policies.

Hevina Dashwood defines CSR as companies' obligations beyond legal requirements because their economic activities affect social and ecological systems (2012). Although there is no definition for CSR, Dashwood suggests that it aligns with societal norms and values, even if it is not externally regulated. CSR expects firms to self-regulate, promote the public interest, and be aware of their responsibility to society and the natural environment. CSR may be understood through industry-specific standards, which are more specific than the broad norm of sustainable development (Dashwood, 2012). Another scholar, Knudsen, takes a different approach to CSR, documenting a shift from a local to an international orientation as globalization increased the involvement of the global north in the global south (2018). Governments have increasingly shaped CSR initiatives through regulation or soft law, with the level of voluntariness varying based on the context's legal country. While CSR can exist at the company level, governments have shaped these initiatives (Knudsen, 2018).

In the corporate ecosystem, CSR has been increasingly replaced with the concept of ESG, which stands for Environmental Social Governance. This term is broader and encapsulates CSR within it. Gillan, Koch, and Starks define it well:

“As it implies, ESG refers to how corporations and investors integrate environmental, social and governance concerns into their business models. CSR traditionally has referred to corporations' activities about being more socially responsible for being a better corporate citizen. One difference between the two terms is that ESG includes governance explicitly, and CSR indirectly includes governance issues related to environmental and social considerations. Thus, ESG tends to be a more expansive terminology than CSR.” (2021)

Throughout, this project will mainly use the concept of CSR because that is the framework which the current governing Canadian policy utilizes.

3.2. International Standards

Canadian standards originate from an increasingly globalized norm of CSR and responsible business that began to take shape in the 1980s. By outlining international expectations, these strategies help benchmark behaviour for companies and other stakeholders. The following standards are succinctly outlined in the DFTAD and NrCan (2014) report:

[OECD Guidelines for Multinational Enterprises](#). These guidelines provide broad recommendations for responsible conduct in business covering a range of activities and sectors (DFTAD and NrCan, 2014; OECD, 2011).

[United Nations Guiding Principles on Business and Human Rights](#). The GPs were co-sponsored by Canada, came into force in 2011 and operationalized the “Protect, Respect, and Remedy Framework” from 2008. These principles outline the responsibility regarding human rights of both government and companies:

1. “The States duty to protect against human rights abuses by third parties, including business.”
2. “The corporate responsibility to respect human rights through due diligence.”
3. “Ensuring greater access to effective remedies for victims” (DFTAD and NrCan, 2014; OHCHR, 2011).

[Voluntary Principles on Security and Human Rights](#). Canada joined the VPs in 2009. The VPs aim to help the extractive sector anticipate and mitigate risks related to security so that operations can be protected without excessive force or human rights abuses (DFTAD and NrCan, 2014).

[International Finance Corporation's Performance Standards on Social and Environmental Sustainability](#) These standards outline the expectations for how companies receiving IFC support conduct themselves during the funded project, focusing on stakeholder engagement and human rights. These standards are foundational for the **[Equator Principles](#)**, which Export Development Canada (EDC) signed in 2007 (DFTAD and NrCan, 2014; IFC, 2012).

[OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas](#) Updated in 2016, this guidance explains how mineral extractors can responsibly extract and trade minerals while avoiding fueling conflict. This guidance is voluntary but supported by the industry (DFTAD and NrCan, 2014; OECD, 2016).

[Global Reporting Initiative \(GRI\)](#) An internationally recognized reporting standard that includes principles, guidance, and indicators for various organizations and sectors (DFTAD and NrCan, 2014; GRI, 2022).

[OECD Guidelines for Multinational Enterprises](#). These guidelines provide broad recommendations for responsible conduct in business covering a range of activities and sectors (DFTAD and NrCan, 2014; OECD, 2011).

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[**Voluntary Principles on Security and Human Rights**](#). Canada joined the VPs in 2009. The purpose of the VPs is to help the extractive sector anticipate and mitigate risks related to security, so that operations can be protected without excessive force or human rights abuses (DFTAD and NrCan, 2014).

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[**Global Reporting Initiative \(GRI\)**](#) An internationally recognized reporting standard that includes principles, guidance, and indicators for a broad range of organizations and sectors (DFTAD and NrCan, 2014; GRI, 2022).

3.3. Canada’s Enhanced Corporate Social Responsibility Strategy

The Canadian government has established an enhanced CSR policy for Canadian extractive companies operating abroad. According to National Resources Canada (NrCan), CSR involves voluntary activities by companies that integrate social, environmental, and economic concerns into their operations, going beyond legal requirements (NrCan, 2021). The policy expects Canadian extractive companies to respect human rights and applicable laws, and to meet or exceed internationally recognized standards for responsible business conduct, including the UN Guiding Principles on Business and Human Rights, the UN Declaration on the Rights of

Indigenous Peoples, the OECD Guidelines for Multinational Enterprises, and Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (Global Affairs, 2022).

The original version of this strategy was adopted in 2009, with a subsequent enhancement in 2014. The current policy aims to strengthen the ability of Canadian extractive companies to integrate CSR into their operations and reflect Canadian values in their activities abroad (DFATD and NrCan, 2014). The Canadian government works closely with the extractive sector, recognizing its role in building the Canadian economy. However, managing environmental and social risks is complex and increasingly important, particularly in high-risk areas with weak governance. Therefore, the policy aims to enhance the ability of Canadian extractive companies to manage these risks in line with Canadian, international, and host country expectations, encouraging companies to go above and beyond in their CSR practices.

The government's efforts to improve the awareness and integration of CSR guidance can be grouped into three categories: (1) promoting and advancing CSR guidance; (2) fostering networks and partnerships; and (3) facilitating dialogue towards dispute resolution (DFTAD and NrCan, 2014). Canada is also committed to pursuing other initiatives that strengthen "the environment affecting responsible business practices." Under fostering networks and partnerships, the Canadian Trade Commissioner Service provides practical advice, on-the-ground intelligence, and local contacts to help raise CSR performance among extractive sector companies globally while supporting regionally specific community engagement for company exploration. Under facilitating dialogue toward dispute resolution, the government established the office of the Canadian Ombudsperson of Responsible Enterprise (CORE) to help address disputes related to CSR issues (Ponting, 2021). The history and role of CORE will be explored in greater detail in the next section. The Canadian government's policy aims to promote responsible business conduct and strengthen the environment for CSR practices.

3.4. Office of the CSR Counselor and the Canadian Ombudsperson of Responsible Enterprise

The CSR Strategy includes strengthening the now-dissolved Office of the CSR Counsellor. The office was established in 2009, but the first Counsellor resigned after four years (Saunders, 2014). In those four years, the office had no mandate to compel participation, investigate complaints, or act on its findings (Saunders, 2014). Of the six cases that the Counsellor oversaw, five were closed without any resolution. The mandate for the office was strengthened in the enhanced strategy of 2014 to include two mandates (DFTAD and NrCan, 2014; Global Affairs, 2018). The first was to offer guidance and advice for all stakeholders on implementing CSR performance guidelines, including guiding meaningful and effective dialogue between companies and communities. Its second mandate was to review the CSR practices of Canadian extractive sector companies operating outside Canada. This mandate offered a non-judicial review process to bring together companies and affected stakeholders early in a dispute to resolve issues. The Counsellor has been criticized for being too weak, leaving people in developing countries vulnerable, and damaging Canada's reputation abroad (Drohan, 2010; Boon, 2013).

In 2018, the Trudeau government promised an independent office that would have the power to investigate alleged abuses committed in several sectors, including garment, oil, gas, and mining overseas (Ponting, 2021). As a result, the CSR Counsellor was replaced by the CORE office in 2019. However, the Trudeau government needed to follow through on the powers it promised, which would have aligned it with the recommendations from the National Roundtable, including independence and full investigative powers (Ponting, 2021; Working Group, 2014).

The CORE office, currently held by former Canadian Association of Petroleum Producers lobbyist Sheri Meyerhoffer, is housed within Global Affairs Canada (GAC) and is mandated to promote, advise, review, and recommend (CORE, 2021). CORE has two functions: promoting responsible business practices by voluntarily working with Canadian corporations and providing a complaint mechanism. While complaints can be filed with CORE, and it is within their mandate to review them, CORE's mandate primarily focuses on dispute resolution and mediation processes (Ponting, 2021). CORE

cannot compel companies to provide the required evidence, and their findings and recommendations are non-binding (CORE, 2021; Ponting, 2021; Working Group, 2014).

The primary problem with the Enhanced CSR strategy is that it leaves governance and regulation within the hands of the companies themselves, who are prime motivation is increasing the profits for the shareholders rather than ensuring that they have taken social responsibility. Genevieve LeBaron argues in her book "Combatting Modern Slavery" speaks specifically about issues with forced labour and unfair work practices. However, her argument translates well to the issues of human rights abuses in and around mining projects (2020). She argues that the labour governance mechanisms enshrined within the Enhanced CSR policy fail to do what they say they will do and benefit those who profit and fail to prevent the exploitation of vulnerable populations. This reality is mainly because of the limitations that arise when governments hand over their role as regulators to private companies and private for-profit regulators (LeBaron et al., 2017). These limitations include a lack of a regulatory framework and enforcement mechanisms and a failure to address systemic issues within the broader sector and focus on individual companies rather than the larger social, political, and economic context (LeBaron, 2020). The result, according to LeBaron, is that CSR is ultimately deceptive by giving the impression of strong governance and support for small-scale reform, but at the end of the day does more to conceal the issues within global supply chains than it does to remedy them or bring them to light. In short, global labour standards efforts and initiatives "...are working to enhance corporate growth and profit but are failing workers and civil society actors seeking to raise labour standards in the global economy" (LeBaron, 2020, p. 16). The same thing can be said for the issues related to mining, labour standards are human rights issues that are affected by Canadian international mining practices, but it is not the only issue. The human rights of civilians surrounding the mines are often violated by security forces too, but the implications of CSR policy are frequently the same. Mining companies focusing on growth and profit often fail the communities around these mines (Khalid et al., 2018).

This chapter has provided the baseline of the existing policy framework governing the social responsibility of mining companies in Canada. There are many layers to this governance, and knowing this baseline is vital to help understand the gaps that have grown between this framework and the objective of better upholding human rights so any new policies can increase the framework's effectiveness.

Chapter 4.

Jurisdictional Scan

This chapter explores three countries which are the largest miners on a global scale, including Australia, the US, and China. This scan looks at the role mining plays for the country, its track record on human rights, and whether they are taking any policy measures to address the issue.

4.1. Australia

Australia is a significant player in the mining industry and can be compared to Canada. In 2018, Australia was the fourth largest extractor of mining products, accounting for 1,658 million metric tons (Buchholz, 2020). Additionally, in 2021, Australia was the third largest miner of gold, mining almost double Canada at 315.1 tons (World Gold Council, 2022). The mining industry contributes approximately 10% of Australia's GDP.

However, limited information is available regarding Australia's mining activities abroad. While Australian mining companies have been accused of human rights violations in Africa, there is little media or watchdog attention. In 2019, Julia Dehm, lecturer at La Trobe University, reported that Australian mining companies were operating in 35 African countries, with several documented human rights violations related to their projects. These abuses are similar to those reported by Canadian mining companies, including labour rights issues and violence, torture, and death by security forces operating for the mines. Despite this, no public policy exists in Australia to address these issues.

Like Canada, Australia has a National Contact Point that endorses the OECD Guidelines discussed in the previous section. However, the effectiveness of this office has been called into question, with an independent review finding it was severely lacking. In another attempt to promote corporate responsibility, an advisory group was tasked with implementing the UN Guiding Principles on Business and Human Rights. However, in 2019, the Australian government announced that it would not pursue the recommendations outlined in the report. Dehm reported that Canada had taken more

action to address these issues arising from mining companies' activities abroad by creating the CORE office.

4.2. United States

The United States is a significant player in global mining, accounting for 55 billion US dollars of mineral production value in 2021, ranking third behind Australia and China. Mining contributes around 1.6% to the American GDP (ICMM, 2022; BEA, 2022). However, unlike Canada and Australia, the United States has faced less scrutiny over its mining activities abroad.

In 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act was enacted to address Wall Street corruption after the 2008 financial crisis (Nolan, 2018; Global Witness, 2011; Seay, 2012). Section 1502 of this legislation focused on using "conflict" minerals such as tin, tungsten, tantalum, and gold sourced from the DRC and other related countries. The aim was to prevent US money from fueling the conflict in the region by requiring US-listed, publicly traded companies to conduct supply chain due diligence and report whether their products contain conflict minerals sourced from the area to the Security and Exchange Commission (SEC).

However, like many disclosure models, section 1502 does not mandate companies to act on their findings and does not provide clear guidance on conducting the due diligence required for reporting (Nolan, 2018; SEC, 2012). Initial analysis of the reports produced in compliance with section 1502 is symbolic rather than substantive. The legislation relies on public opinion to penalize companies for sourcing minerals from the region through reputational harm rather than mandating any legal penalty.

In the first year of section 1502 reporting requirements, Global Witness and Amnesty International analyzed 100 reports and found that 29% of reports did not meet the minimum requirements of the legislation (2015). Moreover, many companies responded by instructing their suppliers to pull out of the region rather than engaging in responsible mining, thereby hurting Congolese miners by destroying their access to work (Seay, 2012). Only 15% of the company reports analyzed showed that they attempted to contact the facilities that produce their minerals, while the rest limited their efforts to contacting their suppliers (Global Witness & Amnesty International, 2015). Without clear

guidance on due diligence measures or penalties, a disclosure model implemented in Canada would likely yield similarly weak and ineffective results in preventing human rights abuses.

4.3. China

China is the largest miner, exporter, and user of minerals globally, producing over 12.9 million ounces of gold in 2021 and accounting for 19% of China's GDP (Holden, Yao, and Li, 2022; National Bureau of Statistics of China, 2022). However, comparing China's mining practices to Western countries such as Canada, Australia, and the US is challenging due to China's non-democratic political structure and extensive government involvement in business affairs. Furthermore, China's conceptualization of human rights differs from that of the West, as it was only accepted in the 1990s and is derived from traditional Chinese culture, history, and Marxism. This results in gaps in a shared understanding of human rights, and human rights can be viewed as an imperial imposition from the West (Zhang, 2012).

China has taken a state-to-state approach to human rights on the global stage, which human rights organizations have heavily criticized. China has ratified several human rights treaties and served on the UN Human Rights Council, but it has been accused of using these positions to dismantle the human rights regime (Richardson, 2020). Despite these differences, China has implemented policies similar to Canada's mandatory CSR policy. In 2014, inspired by the Dodd-Frank Act in the US, China created its disclosure policy called the "Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains" to ensure responsible behaviour by their transnational corporations and align with their objectives of being seen as a responsible actor abroad and achieving long-term economic growth while closely monitoring and guiding corporate behaviour (Maurin & Yeophantong, 2013; Global Witness, 2017; CCCMC, 2014). This policy is intended to provide the following:

"...guidance and support to companies which are extracting and/or using mineral resources and their related products and are engaged at any point in the supply chain of minerals to identify, prevent and mitigate their risks of directly or indirectly contributing to conflict, serious human rights abuses and risks of serious misconduct." CCCMC, 2014.

This policy is directly inspired by and builds upon the OECD Guidelines and the UN Guiding Principles, which form the foundation for most social responsibility policies in the West, including Canada's enhanced CSR policy (CCCMC, 2014). Since the "going global" initiative in the 2000s, China has had to address the negative impact of Chinese companies and consider the needs of host countries while improving their global image (Maurin & Yeophantong, 2013). Chinese companies have faced criticism for lacking consultation with local communities, particularly in Africa and failing to adhere to global best practices.

Like Canada, China has faced criticism for its human rights record regarding mining in weak governance zones. A 2021 report found that between 2013 and 2020, there were 236 claims of human rights abuses related to mining and metals (35% of all claims against Chinese businesses) (Reuters, 2021). However, China's understanding of human rights and economic development abroad differs from that of the West, and its policies need to be stronger in ensuring responsible business practices overseas. As Canada's conceptualization of human rights aligns with the universal human rights system, we have an increased obligation to ensure their protection when doing business abroad, particularly in the mining industry.

Chapter 5.

Addressing Exploitation in Other Sectors

The jurisdictional scan above highlights that significant players in the mining industry must take more effective action to uphold human rights in international mining operations better. Given the lack of action and resources devoted to this issue in mining, it is helpful to look at what is happening in other sectors. Like mining, other industries, like the garment industry, have also been criticized for their lack of protection of human rights and face similar pervasive, complex challenges to ensuring ethical conduct down their supply chains (Nolan, 2018; LeBaron et al., 2017; LeBaron, 2020).

The 2013 Rana Plaza disaster in Bangladesh brought international attention to the textile industry's unfair and unsafe labour practices and spurred several countries into action regarding their supply chains (Blair, Anner, and Blasi, 2020; LeBaron, 2020). While these industries may seem different, the approaches governments and organizations have taken to address the issue are similar. Like the issue of international mining and pervasive human rights violations, the Rana Plaza disaster occurred at a factory subject to CSR policies and underwent ethical audits (LeBaron, 2020). Policies that address human rights in other supply chains could also be used for mining more specifically. Moreover, the CORE office overseeing responsible mining practices in Canada has a broader mandate, including the textile industry. Thus, a solution that addresses the issue more broadly or in a different industry is still practical.

5.1. Voluntary Initiatives

Countries have pursued two paths to protect human rights better: legal intervention and voluntary initiatives (Nolan, 2018). Voluntary initiatives rely on businesses self-regulating and ensuring compliance with international human rights standards, often motivated by public opinion. Countries rely on this voluntary model, as acting abroad can be challenging. However, if host countries lack the will or capacity to protect human rights, in that case, it leaves the responsibility in the hands of corporations and, increasingly, host countries to ensure that human rights are protected (Backer, 2016; Lebaron et al., 2017). A voluntary initiative allows responsibility to rest

with the corporation, while the home state encourages but does not mandate good behaviour. Voluntary initiatives can include institutional policy, guidelines, frameworks, codes of conduct, or multi-stakeholder initiatives (Nolan, 2018).

Canada's enhanced CSR policy falls within this category of voluntary initiatives. The Canadian government has drawn from existing CSR models and international guiding principles (DFTAD and NrCan, 2014). While the Canadian government expects companies to have these CSR practices in place, compliance with these policies is not mandatory (DFTAD and NrCan, 2014). Although the CORE office is not a compliance mechanism, it relies on dispute resolution and mediation (Ponting, 2021). Currently, Canada has no legislative initiative to address the issue of human rights abuses in any of these industries overseas. As mentioned earlier, two bills have been proposed to address some of these issues more broadly (S-211, C-263), but they have yet to become law.

5.1.1. The Audit Regime

One form of voluntary initiative that has become very popular within corporations is the ethical audit used to uphold internal labour and environmental standards. These 'compliance' audits became popular in the mid-1990s as supplier outsourcing increased in the garment industry. Audits have become popular among civil society organizations as an opportunity to upgrade and enhance factory conditions globally, and governments have given audit programmes legitimacy by adopting them in legislation (LeBaron et al., 2017; Khalid et al., 2018). This new trend of legislation is representative of a more significant shift in the privatization of regulation over the last 30 years. The use of private auditing firms has solidified the role of non-state business auditors in becoming the new regulator, which governments have widely accepted through legislation and international guidelines and enshrined into soft and increasingly harder laws (LeBaron, 2020). This reality has increased the legitimacy of the audit regime by moving it closer to legal intervention, despite doubts that they are effective.

LeBaron, Lister and Dauvergne argue that these audits have severe limitations, including that the audits frequently fail to resolve any of the issues that run rampant in global supply chains, such as labour and environmental problems (2017). However, this issue is challenging for policymakers to address, as systemic change when we think of

global supply chains requires a concerted effort from many international actors rather than just the actions of one government. The primary limitation of ethical audits is the lack of transparency and accountability that the audit creates (LeBaron et al., 2017). This limitation can be due to a lack of standardized audit procedures and inconsistent reporting practices. These reporting practices are inconsistent because the audit regime, much like CSR within Canada, is left in the hands of corporations to complete for themselves. The problem can be seen within the mining industry, as in Chapter 6, where mining companies do internal audits or hire an independent group. The issue with this is that because the audit was conducted internally, there is no power that the auditor has that the company did not grant them. This reality often results in reports that are not publicly available and skew in favour of the corporations who commissioned them. It does not give any external body that may hold them accountable any concrete evidence to do so, which is the point. Khalid et al. argue that mining companies often operate in bad faith because they seek to hold themselves to the assumed expectations of stakeholders rather than take accountability or disclose the honest reality, especially at specific mining sights (2018). Kemp et al. further argue that the audit regime within the mining sector is focused on collecting and disseminating information surrounding mining companies' procedural issues rather than substantive change (2012). To address the limitations of auditing, they should not be left in the hands of corporations to implement; instead, they should be considered within the larger context in which these corporations operate. Some root causes of systemic issues include inadequate legal frameworks, weak labour standards, and insufficient environmental regulations (Lebaron et al., 2017).

Like the complex nature of trying to protect human rights at mining projects abroad, developing countries no longer have the ability or desire to enforce labour and environmental standards. As a result, companies have stepped in to fill the "regulatory void" by hiring third-party companies and civil society organizations who play a disproportionate role in monitoring and validating factories through auditing (Lebaron et al., 2017). Within the mining sector, this is extremely visible. In writing this project, most reporting on human rights violations occurring in or near Canadian mining sights is exposed by civic society organizations; the Canadian government at this time does little to nothing to ensure that companies are protecting human rights beyond holding their corporate social responsibility policies to a certain globally recognized standard.

Lebaron et al. continue their argument by showing the fallacy of the narrative that these non-government actors are now carrying out the regulatory duties that the government once fulfilled. It is a myth because external auditors do not have the powers government inspectors would have, such as compelling owners to open locked doors or drawers. These shield employees from speaking out from retaliation or imposing injunctions or monetary penalties against these businesses. Another important note is that the results of these audits are almost always not made public, whereas government inspection almost always is; because of this, Lebaron et al. argue that audits often result in cover-ups rather than the exposure of violations (Lebaron et al., 2017). The audit regime disproportionately benefits multinational corporations with power over "...the pathway, timing, and implementing of audits". Lebaron et al., 2017, p. 968).

5.2. Legislative Initiatives

State-based legislative initiatives that generate transparency in supply chains have arisen as another tool to address human rights compliance (Nolan, 2018). These legislative initiatives often complement rather than replace the voluntary initiatives that preceded them (Nolan, 2018). Nolan categorizes these legislative initiatives into two models: the disclosure model and the due diligence model.

5.2.1. Disclosure Model

Nolan (2018) provides three examples of disclosure laws, including the Dodd-Frank Act Section 1502, the UK Modern Slavery Act (2015), and the California Transparency in Supply Chains Act (CTSA) (2010), to illustrate how legislative initiatives focused on generating transparency in supply chains are designed to complement voluntary initiatives. While the latter two laws specifically target modern slavery, their implementation outcomes can provide insights into the potential outcomes of similar policies or legislation applied to the mining sector.

Under the disclosure model, companies must report where their materials are sourced to a government body, making compliance with the legislation a reporting requirement (Nolan, 2018). The disclosure model focuses on transparency and hard laws enacted by states. However, they are designed to create change by incentivizing corporations to strengthen their standards in global supply chains through resources and

steps they choose, such as social auditing, codes of conduct, and ethical certification (Lebaron, 2020). However, the disclosure model does not mandate corporations to act on their findings. Instead, it relies on non-state actors to become regulators of these companies. The disclosure model operates on the premise that if irresponsible practices are publicly disclosed, companies will face negative consequences from the stock market, consumers, and investors for their irresponsible behaviour, thereby forcing them into compliance with human rights norms. This approach takes both a 'hard' and 'soft' approach, forcing transparency through reporting but leaving human rights compliance to forces outside of the state (Nolan, 2018). While this model allows organizations to self-regulate and align themselves with global human rights norms, its efficacy is questionable.

For example, the Dodd-Frank Act resulted in weak compliance reporting, with only 7.34% of companies reporting strong due diligence measures and 21% of companies meeting the minimum reporting requirements of the law (Safarty, 2015; Amnesty International & Global Witness, 2015). Similarly, while the CTSA has seen slight improvements in reporting compliance over the years, there are no central repositories for these reports, creating barriers to non-state actors conducting any comparative analysis that would enable them to act as compliance enablers, thus making the laws less effective in its intent.

In summary, while legislative initiatives focused on generating transparency in supply chains can complement voluntary initiatives, disclosure laws such as those discussed above have limitations and may not fully address the issue of human rights abuses in global supply chains.

5.2.2. Due Diligence Model

The due diligence model, as described by Nolan, is based on international guidelines such as the Guiding Principles. It builds on the concept of corporate due diligence by focusing on ongoing risk detection related to human rights issues affecting others rather than just the company. Some recent legislation, such as the French Corporate Duty of Vigilance Law and the Australian Illegal Logging Prohibition Act, has toughened due diligence requirements by mandating that corporations report on their risk analysis and past violations (Nolan, 2018).

Proposed bill S-211 in Canada would be considered a due diligence legislative initiative. The Fighting Against Forced Labour and Child Labour in Supply Chains Act would require corporations listed on the Canadian stock exchange to report annually on their supply chains, risk analysis, and violations related to forced or child labour. This bill is similar to the Australian Illegal Logging Prohibition Act in that it offers more specific reporting requirements and guidance on a specific transnational issue rather than a broad one (Nolan, 2018). Although it would apply to Canadian mining companies, it would only address some human rights compliance issues they face (Deschamps, 2022).

These due diligence models recognize that disclosure alone is insufficient for meaningful change (Nolan, 2018). The examples above provide more specific corporate guidance and requirements in their reports. However, they still heavily depend on corporate cooperation rather than legal compliance and accountability measures.

Looking at other sectors outside of mining that have issues with human rights has shown us that policy is being tried in other jurisdictions to address the policy problem. However, analysis of the effectiveness of this policy thus far shows that achieving compliance is complex, and the effectiveness of these models is hard to measure. As LeBaron argues, a new strategy is required due to insufficient substantive advancement through industry-led solutions (2020). Policymakers need to revise their conceptions of corporate accountability because businesses are purposefully maintaining governance gaps relating to CSR, labour standard, and human rights. Lessons learned from these other interventions show that regulatory policy needs to put regulation back in the hands of the government. The broader policy must empower those most often exploited and focus on substantive rather than procedural change (Lebaron et al., 2017; Lebaron, 2020; Kemp et al., 2012). New policy options may need to be considered in Canada rather than looking at other jurisdictions and sectors for successful policy. While the corporate audit regime is flawed, it has the potential to be an effective policy if done correctly. The critiques of audits by Lebaron et al. showcase how independent private auditing is flawed and ultimately benefits the corporation rather than the marginalized groups they are trying to serve. However, government policy that reclaims the role of the regulator with investigative power may be more effective at protecting human rights while remaining within the scope of what is achievable within national politics. The following chapters will analyze what certain human rights are at risk

and why to help point this project in the direction of new policy that may be more effective in upholding human rights.

Chapter 6.

Canadian Mining Companies brought to Canadian court.

Despite the numerous policies, guidelines, and principles to reduce human rights violations in the extractive sector, the Canadian mining industry has come under heavy criticism. Mining Watch Canada has been at the forefront of exposing human rights abuses by Canadian companies for years. It has continuously urged the Canadian government to do more to uphold human rights, particularly in the mining sector. While a complete analysis of reporting by Mining Watch Canada and other civil society groups is beyond this project's scope, their tireless efforts have been instrumental in bringing this issue to the public and exerting pressure on the Canadian government to take more action.

In recent years, the Canadian court system has increasingly played a pivotal role in holding companies accountable for human rights abuses by allowing cases to proceed against Canadian companies for their negligence in preventing such abuses from occurring at their foreign mining projects (Chen, 2020; Marotte, 2013). The most notable examples of mining company abuses have been the cases filed in the Canadian legal system. Over the past decade, the Canadian legal system has established several precedents that signal their willingness to hear cases brought against companies for human rights violations. This precedent has made the Canadian court system a more viable pathway to justice and remediation for victims and a warning to other Canadian mining companies that they could be found liable. Consequently, this suggests that policy options within this project should focus more on preventative measures than punishment, given that the court system already provides that service.

This section will outline four court cases brought forward in the last decade and a criminal court case commencing in Sweden relevant to this topic.

6.1. Choc v. Hudbay Minerals

In late 2010, a case was filed against Hudbay Minerals in Ontario courts for the alleged killing of Q'Equchi community leader Ich Chaman, who was beaten and shot

during a protest against the Fenix mine in Eastern Guatemala in 2009 (CBC News, 2010). Two other lawsuits were filed in 2011 concerning the mining project, including one alleging complicity in gang rapes committed by security forces and another for the shooting and paralyzing of German Chub Choc by the chief of security for the project (Amnesty International, 2017). Hudbay filed motions to dismiss the claims, arguing they did not have a 'duty of care' to their subsidiary companies (Saunders, 2014). However, the Ontario Supreme Court rejected this motion, allowing the cases to continue. Hudbay decided not to appeal the ruling, and the cases have been ongoing since (Posdazki, 2013). In 2021, the former head of security for the mining project pleaded guilty in a Guatemalan court for the death of Ich Chaman and the paralyzing of Choc. This ruling could have ramifications for the ongoing cases in Canada, but it remains to be seen (Binks-Collier, 2021).

These cases have set a precedent as the first to go forward in a Canadian court. Until now, the Canadian court system technically had jurisdiction but was hesitant to hear such cases.

6.2. Garcia v. Tahoe Resources Inc.

In 2015, a civil suit was brought forward in the BC Supreme Court by seven Guatemalan workers against Vancouver-based mining company Tahoe Resources for severe injuries sustained during a shooting by private security at the Escobal mine (Rasmussen, 2015; Woodin, 2017). The workers were unarmed, and court documents in the criminal case in Guatemala against security manager Albert Rotodo alleged that he ordered the security team to open fire on the protestors. Tahoe filed motions to dismiss the claim, arguing that the suit should be filed in Guatemala. The judge upheld this ruling, but the British Columbia Court of Appeal overturned it and allowed the lawsuit to proceed in BC, citing the workers' unlikely chances of a fair trial in Guatemala (Mining Watch Canada, 2016). This case continued to set a new precedent. It was the first time a court in BC had proceeded in such a manner and the first time an appellate court in Canada ruled to allow a lawsuit against a Canadian company for alleged human rights abuses abroad to proceed. In 2017, Tahoe applied to hear the case by the Canadian Supreme Court, but the appeal was denied.

In 2019, Tahoe Resources was bought by Pan American Silver, who settled the case and publicly apologized for the incident, acknowledging that the shooting infringed upon the protestors' rights. The settlement did not impede their legal rights to future protests related to the mine (Mining Weekly, 2019). Tahoe had previously been scrutinized when they were forced to defend their human rights practices to the Norwegian Council on Ethics for the Government Pension Fund. The Council was not satisfied with Tahoe's argument and recommended that the company be excluded from the government's pension fund holdings due to the risk of contributing to human rights violations (Rasmussen, 2015). In 2017, unrelated to this court case, the Guatemalan Supreme Court suspended Tahoe's license to operate the Escobal mine, ruling in favour of a civil society organization that accused the government of failing to properly consult indigenous communities about the project (Mining Weekly, 2019).

6.3. Nevsun Resources LTD. v. Araya

In 2014, a lawsuit was filed against Vancouver-based Nevsun Resources in British Columbia, alleging the company's complicity in using forced labour at a large copper mine in Eritrea. The company had used subcontractors owned by the military and ruling party of the host state, which the plaintiffs alleged had forced them to work under threat of torture (Gray, 2014). Although Nevsun denied the allegations and argued that they did not know about forced labour practices, the Supreme Court rejected the decision as there was doubt that the men would get a fair trial in Eritrea when Nevsun moved to dismiss the case (Bennet, 2016).

The Supreme Court of Canada heard the appeal case in 2020, which they had denied doing in the case of *Garcia v. Tahoe*. In a 5-4 decision, they allowed the case to proceed in Canada, stating that Nevsun could be held accountable for alleged human rights abuses committed overseas (The Guardian, 2020). This landmark decision increased the legal risk for Canadian mining companies for their actions abroad. Shortly after that, Nevsun settled with the Eritrean plaintiffs for an undisclosed amount after being acquired by Zijin Mining Group Company in 2018 (Carolino, 2020).

It is worth noting that Nevsun had previously faced human rights abuse allegations for their use of forced labour at the Eritrean mine through a report published by Human Rights Watch (Gray, 2014).

6.4. Barrick Gold Corp. – Torture Injury and Death at North Mara Mine

In 2022, a case was filed against Barrick Gold Corp. in Ontario for their alleged connection to human rights abuses at the North Mara mine in Tanzania. This case is the third suit filed against Barrick related to this issue, with two others filed in the UK (Friedman, 2022). The abuses occurring at North Mara will be discussed in greater length in Chapter 7. The plaintiffs, members of the Indigenous Kurya community near the mine, allege that between 2021-2022, police hired and provided for by Barrick killed five citizens, tortured five others, and shot five more (RAID, 2022; Friedman, 2022). The North Mara mine has been called one of the deadliest industrial mines in Africa due to the violence related to their security operations. Barrick claims they do not employ the police assigned to the mine and are not responsible for their conduct.

6.5. Lundin Energy – War Crimes in Sudan

The case against Lundin Energy may appear to be an outlier at first glance, as it is a criminal case being tried in Sweden rather than a civil case in Canada and involves an oil and gas multinational corporation rather than a mining one. However, it is essential to include this case as Canadian company Talisman Energy owned Lundin Energy around the time of the alleged war crimes. Lundin Mining still has headquarters in Canada. Furthermore, this case is significant due to the severity of the alleged crimes. It serves as an example of how C-suite executives could be held criminally accountable for the actions of their companies in foreign jurisdictions.

In 2018, the Swedish government allowed the indictment of the CEO and chairman of Lundin Energy for their alleged complicity in war crimes committed in Sudan between 1999 and 2003. The prosecutors claim that Lundin Energy funded the Sudanese army and several militias that attacked civilians from regions where the company planned to carry out oil exploration systematically or indiscriminately (AFP, 2018; PAX, 2021). In 2010, the aid organization Ecos reported that 12,000 people were killed or died from starvation, exhaustion, or disease due to the conflict between 1997 and 2003 in the area where Lundin Oil was operating. The trial of the men is set to begin in the Stockholm District Court in September 2023, and if convicted, they could face life sentences. The prosecutor intends to seek a corporate fine of three MSEK (3.85 million

CAD) and the forfeiture of all profits from the enterprise, amounting to approximately 1.4 billion SEK (1.8 billion CAD) (AFP, 2018; PAX, 2021).

Surveying these court cases shows that the primary human rights violations arriving in the court systems are ones of extreme and excessive violence by hired security forces. These violations show that policies that address corporations' level of responsibility, even for contracted labour, need to be strengthened. Further, increasing the community's capacity to seek redress, such as utilizing the court system, will also be beneficial.

Chapter 7.

Comparative Analysis – Corporate Polices vs. Watchdog Reports

For this analysis, I will examine the top three mining companies in Canada that have operations abroad. If available, I will review their human rights and corporate social responsibility policies. Then, I will analyze the reports and statements from media outlets and watchdog organizations about the actual human rights situation at mining projects owned by these corporations. This analysis aims to identify the gap between the corporate social responsibility model adopted by Canada since 2019 and the reality of how human rights are being respected at Canadian mining projects, especially those located in weak governance zones.

7.1. Barrick Gold

Barrick Gold is the second largest mining company headquartered in Canada and listed on the Toronto Stock Exchange. It is also the world's largest gold mining company, operating on all five continents. The company released a Human Rights Report in 2020 and a Sustainability Report in 2021, both of which fall under the umbrella of CSR. In the Sustainability Report, the company emphasizes that "Respect for human rights is a foundational value at Barrick and an integral part of our sustainability strategy" (2021). They have a standalone human rights policy that adheres to the UN Guiding Principles, Voluntary Principles on Security and Human Rights (VPs), and the OECD Guidelines, which they updated in 2017 and 2019 (Sustainability Report, 2021; Human Rights Report, 2020). The company has a zero-tolerance policy for human rights violations committed by any employee, affiliate, or a third party acting on their behalf or related to any aspect of a Barrick operation. They also have a zero-tolerance policy for forced labour and fully support their employees joining a union (2021; Human Rights Report, 2020). The company operationalizes its human rights policy on five pillars: monitoring and reporting, due diligence, disciplinary action and remedy, training, and suppliers. They implemented a new policy requiring all security staff to undergo human rights training (Sustainability Report, 2021). Other policies in place to protect human rights include a Code of Business and Ethics, an Anti-Bribery and Anti-Corruption Policy,

a Social Performance Policy, and a supplier code of ethics, all with board oversight (Human Rights Report, 2020). Barrick also self-evaluates its sustainability practices using a scorecard. In 2021, they rated themselves one (the highest score) for the human rights training security personnel received and for their rating on human rights by independent assessments of their high-risk sights. However, in 2020 and 2021, they were rated only 17 out of 26 on human rights management compared to their peers (Sustainability Report, 2021; Human Rights Report, 2020).

Barrick acknowledges "legacy issues" that the company faces, particularly since the merger with Randgold in 2019 (Sustainability Report, 2021; Human Rights Report, 2020). Since the merger, the company claims to have committed to a new human rights policy and working with consulting firm Avanzar as an independent human rights expert (Human Rights Report, 2020). They have also updated their operations and claim to conduct human rights assessments on a 2-3-year cycle for each operation (Human Rights Report, 2020). However, the UK-based human rights watchdog RAID has claimed that the reports are heavily influenced in favour of Barrick (RAID, 2022). While Barrick claims that most of these issues have been resolved, they still negatively impact their reputation. The Porgera joint venture in Papua New Guinea and the North Mara mine in Tanzania are two issues that continue to impact the company's reputation. Both sites have experienced excessive use of force by public and private security with insufficient remedy frameworks (Sustainability Report, 2021).

Barrick Gold's Porgera joint venture in Papua New Guinea is a mine that the company hopes will achieve tier-one status, with significant production, long-life assets, and low costs (York & McGee, 2022; Mining Watch Canada, 2020). However, the government of Papua New Guinea has refused to renew Barrick's 20-year license to operate within the country due to the company's legacy of human rights abuses and environmental degradation (Mining Watch Canada, 2020). Barrick claims to have addressed the legacy issues at Porgera and plans to use the mine's restart to "start afresh" (Sustainability Report, 2021). The company states that it has improved relations with the community, which has been successful (2021). However, when Barrick attempted to renew its license, it only had a signed agreement with two of the 24 landowner representatives and no signature from its partner Zijin Mining (Mining Watch, 2020).

Barrick's North Mara mine in Kenya has been a focal point for the company's negligence in preventing human rights abuses. Acquired by Barrick in 2006 and owned through several subsidiaries before being brought back in-house in 2019 (RAID, 2022), the company hopes this mine will produce 300,000 ounces of gold annually and achieve tier-one status (York & McGee, 2022). However, Barrick acknowledges in its Sustainability Report that there have been issues with excessive force and sexual abuse at the North Mara mine since the 1990s (2021). Mining Watch Canada has reported over 200 cases of excessive force between 2014 and 2020 (Mining Watch Canada, 2020). Currently, there are two legal cases against Barrick Gold for human rights abuses, including death, torture, and sexual abuse, one in the UK and the other in Canada (York & McGee, 2022; Mining Watch, 2020). Although the sustainability report addresses the UK legal case and argues that Barrick should not be held accountable for the actions of the national police force, the company is not challenging the jurisdiction of the British court system in "good faith" (Sustainability Report, 2021; York & McGee, 2022). Reporting by RAID, a UK-based human rights watchdog, found that at least four people had been killed and seven more seriously injured by police providing security for the mine since September 2019, contradicting Barrick's claims of transformation (RAID, 2022). About 100-150 members of the Tanzanian police were hired, fed, housed, and equipped through a formal Memorandum of Understanding with Barrick Gold to act as mine security (York & McGee, 2022; RAID, 2022).

7.2. Teck Resources

Teck Resources is a mining company based in Canada with operations in Peru and Chile, primarily mining copper, coal, and zinc, and is valued at approximately \$8.9 billion (Johnson, 2022). While the company does not explicitly reference corporate social responsibility on its website or in its materials, it does address human rights as an independent issue. Teck states that it has adopted the UN Guiding Principles to identify and remedy human rights impacts (Teck Resources, 2021) and has a Human Rights Policy (2022) that outlines its commitments. However, the policy is only a page long and needs more details on how the company operationalizes its policy across its mining projects. For instance, while Teck states that it performs due diligence to ensure human rights, including risk assessments at its operations and within its supply chains, it does not explain how it does so. The company has feedback mechanisms and provides

training on the policy to ensure it is followed with community engagement. Teck claims to seek independent verification of its human rights due diligence annually, but it does not disclose the results of those reports. However, the company does disclose its performance annually through its sustainability report (Human Rights Policy, 2022; Sustainability Report, 2021).

Teck also implements an Anti-Bribery and Corruption Compliance Policy and Expectations for Suppliers and Contractor policy to hold them to the same fundamental principles related to human rights (Sustainability Report, 2021). The company claims to be above average in the external Corporate Human Rights Benchmark (CHRB), which evaluated the extractive industry in 2019 and is scheduled to review the industry again in 2023 (World Benchmarking Alliance). However, while Teck scored 35%, which is above the industry average of 29%, it is still below the rating of Barrick Gold, which scored 56.9% on this benchmark, primarily due to its extensive and specific policies related to human rights (World Benchmarking Alliance, 2019).

Teck recognizes access to water as a fundamental human right in its Sustainability Report (2019). However, the company has faced criticism for pursuing and expanding water-intensive mines, such as Quebrada Blanca in Chile (Mining Watch Canada, 2020). While watchdogs have not reported any evidence against Teck for violating human rights at any of its projects, the company acknowledges that there is emerging national and regional legislation that requires companies to disclose how they identify, prevent, and mitigate impacts on human rights and how they address potential impacts on human rights (Sustainability Report, 2021). This stance suggests that Teck would consider such legislation from Canada to be in line with the new emerging landscape.

7.3. First Quantum Minerals

First Quantum Minerals (FQM) is a mining company headquartered in Canada, with operations in North America, South America, and Africa, mainly focused on copper, nickel, and gold (Johnson, 2022; SARW, 2020). FQM is estimated at 6.9 billion dollars and is Canada's fourth-largest mining company.

FQM claims to commit firmly to corporate social responsibility (CSR) and human rights. They have established an Environment, Health & Safety, and Corporate Social Responsibility Committee meeting quarterly to oversee the CSR strategy and programs. They also have a Human Rights Policy, which states that the UN's Guiding Principles and voluntary principles guide their policies and commitments. However, FQM does not provide precise operational details of their due diligence process for human rights. FQM states that they believe the protection of human rights belongs to the host government, and corporations are responsible for doing what they can. However, this perspective may not be sufficient in countries with little or no CSR regulation, such as Zambia (SARW, 2020).

Southern African Research Watch (SARW) has produced two reports on FQM's CSR practices around the Kansanshi mine in Northwest Zambia. The first report (2019) found that the CSR initiatives lacked commitment to sustainable development and had little stakeholder involvement. The second report (2020) confirmed the first report's results and found that FQM's governance structures lacked diversity and disability rights. The report also revealed that FQM's educational and housing initiatives did not consider the community's best interests and exacerbated income gaps and segregation.

Despite FQM's eagerness to show their CSR best practices, SARW found that the reality did not match their claims, leading to a strategic lawsuit against public participation (SLAPP) filed by FQM in response to SARW's reports (Mining Watch Canada, 2021). SARW also reported that affected stakeholders did not have adequate feedback mechanisms to communicate their concerns about FQM's CSR projects or the mine (SARW, 2020). Strikingly the report states:

"Most findings in the report contradict FQM's belief that it is doing a great job with its CSR, but one conclusion stands above others: We believe that if FQM does not use the findings of this study to improve its performance, it will simply mean it is a company that cannot improve and perform beyond its current level (which this report characterizes as poor) ... There appears to be glaring gaps between policy and implementation. The evidence reveals disparities between what the company claims to have done for the communities and what the communities feel about the projects. These disparities can be expressed in terms of quality, impact, and sustainability." SARW, 2020.

Despite FQM's full participation, they responded to this report by filing a SLAPP suit against SARW for their critical review (Mining Watch Canada, 2021; SARW, 2020). This incident highlights a common issue with CSR in weak governance states such as Zambia. Companies whose primary focus is on profits and shareholders are fully responsible for implementing CSR practices without proper governance. Canada's enhanced CSR policy further places this responsibility on corporations. While this approach may seem effective in theory and on paper, reports such as SARWs reveal a significant gap between high-level corporate policies and the realities on the ground.

This comparative analysis reveals that companies may have good policies, but their implementation may only sometimes be effective. Despite having CSR and human rights policies in place, three of the largest mining companies in Canada have faced reports of human rights violations, indicating a gap between policy and practice. Furthermore, any reporting on the company's involvement may be biased toward its policies, making it difficult to obtain an accurate picture of the gaps. This reality underscores the need for an external reporting structure to mitigate social risks better.

Chapter 8.

Policy Options

This chapter offers an overview of policy options that can contribute to protecting human rights in the mining sector abroad. This project argues that the present enhanced social responsibility policy and CORE office need to be updated in order to effectively engage and hold mining MNCs accountable for upholding human rights.

8.1. Policy Option 1: CORE Auditing Mechanism

It has become the global norm for companies to evaluate and self-report their CSR and human rights policies. The Canadian Enhanced CSR policy for the extractive industry solidifies this expectation. International organizations, such as the World Benchmarking Alliance, evaluate and report on these policies, rating companies' policy quality and thoroughness. Nevertheless, inconsistencies continue to exist, as shown by the accusations of violations of human rights made against Barrick Gold, despite the company receiving excellent marks for their policy frameworks.

Other jurisdictions have recognized human rights abuses in various industries, such as textiles and garment supply chains, and have implemented mandatory annual reporting mechanisms for companies. However, the results of these policies have been poor, with most companies failing to meet the minimum reporting requirements, and the desired public accountability effect has not been impactful. An auditing regime also already exists where for-profit evaluation companies perform independent audits for companies. These audits have several failures, primarily in how they perpetuate the current system with no actor motivated to make substantive change. These failures and discrepancies result in a market failure of information asymmetry that can be alleviated through government intervention.

A policy solution for ensuring transparency in corporations' human rights policies and their effectiveness is to provide the CORE office with authority and mandate to conduct social audits on Canadian mining companies. The CORE office's mandate would be enhanced, and its budget would be increased to allow it to serve as the primary auditing mechanism. A social audit is a formal external evaluation of a

company's procedures and efforts regarding CSR and societal impact. This mandate would enable an independent review of a company's human rights and CSR and, most importantly, evaluate their effectiveness. The CORE Audit is separate from independent for-profit auditing that companies do independently; it will ultimately be government-led. The CORE Audit will be more robust, providing the CORE office with investigatory powers, much like the CRA's powers in a financial audit, to ensure a complete transparent picture of policy and procedure and the effectiveness of that policy in protecting human rights is reached. The Audit will work in many ways, like a labour inspection within the confines of Canadian sovereignty and applied more broadly to the human rights of workers and surrounding communities. External audits by the CORE office would offer an unbiased outside perspective on the efficacy of these policies and identify areas for improvement, providing Canada with the legitimacy of being an impartial party in upholding human rights abroad. This policy would encourage companies to ensure the efficacy of their policies, which would positively impact the public image of Canadian mining companies. It also helps re-balance the corporation's responsibility to investors and shareholders with their responsibility to act ethically abroad.

The CORE Audits would be publicly available through an easy-to-use disclosure database, further encouraging accountability through public scrutiny. CORE Audits would include stakeholders, employees, and communities affected by mining projects and recipients of CSR initiatives, allowing for an unbiased feedback mechanism to identify best practices and address weaknesses before they become allegations of human rights abuses. Five of these audits would be completed randomly yearly to ensure companies cannot forecast when they may be audited; this will provide a line of defence against companies hiding unethical practices that may occur if they know the audit is coming. The randomization will encourage companies always to be prepared for the possibility of an audit without knowing when. An external social audit would provide valuable feedback for corporations to understand their strengths and weaknesses and seek further improvement. If a corporation performs poorly on an audit, it will have an opportunity to establish a program of improvement in the immediate year. However, suppose the company fails to improve and increase its accountability. In that case, it will provide the government with solid footing to use punitive measures, such as removing government funding through EDC and other means. There is no guarantee that

companies will change their behaviour; however, it does allow the Canadian government transparent access to penalties they have hesitated to use before. This stance would demonstrate the Canadian government's commitment to human rights abroad and encourage other corporations to take upholding human rights seriously before corporate action or lack thereof results in actual human rights abuses.

8.2. Policy Option 2: Community Empowerment International Assistance Program

Canadian mining companies are operating worldwide and increasingly in weak governance zones. In these regions, the host country cannot ensure that Canadian companies are protecting their citizens' human rights, especially in the communities surrounding the mining project. To help mitigate this issue, policy option 2 provides, an international assistance program that empowers local communities within these regions through financially supporting grass root movements focused on building community capacity.

The federal government has previously promoted this concept of empowering communities to protect human rights. It has been accepted as an effective avenue by GAC in promoting a Human Rights Based Approach for international assistance (GAC, 2017). HRBA focuses on equality, non-discrimination, participation, inclusion, transparency, and accountability. HBRA seeks to help countries meet their human rights obligations and empowers marginalized groups by assisting their knowledge of human rights and the avenues to claim them.

This policy option would involve creating an institutionalized assistance program that provides annual funding through an award system for community organizing focusing on community capacity building using the HRBA. Communities would qualify for this funding if they were within a 300 km radius of an active mining site owned, at least partially, by a Canadian company in a region with a low fragility score. GAC would develop a scorecard using a similar methodology to the OECD state fragility score model to assess which regions would benefit from this program most and guide the funding to those regions. The program would partner with non-governmental organizations as a bridge between the program and local grassroots movements to ensure accessibility.

Canada's primary focus is Feminist International Assistance (Global Affairs, 2021). This program would not replace the other; instead, they would run parallel. These two programs can collaborate on providing awards to grassroots organizations that fit both programs' criteria. This program must be completely separate from any 'economic diplomacy' that Global Affairs is undertaking to support Canadian mining companies in these regions to ensure these measures are viewed as a counterbalance ensuring that Canada's commitment to leaving a positive impact where they operate is demonstrated.

One risk associated with this policy is the possibility of Canadian aid and development resources replacing or absolving the CSR requirements of private mining corporations. Depending on the willingness of the countries to receive this assistance, the International Development funding could also be used to work with the host government to increase their capacity to protect their citizens' human rights.

This policy should result in increased accountability for Canadian mining corporations, as the increased Canadian government presence could be seen as more eyes on what companies are doing and its effects on the local population. Working with local governments to increase human rights capacity may also increase mining corporations' accountability to the host state. This policy could also make it easier for CORE to fulfill its investigation mandate. Canadian aid and development practices could also inform local populations of the accountability mechanisms available to them in Canada, such as CORE, and act as an independent feedback channel to help inform companies on how to improve their mandate to uphold human rights where they operate.

Chapter 9.

Criteria and Measures

The potential policies introduced in the previous chapter are analyzed through a multi-criteria assessment matrix to evaluate which options provide the best course of action in addressing the policy problem outlined in this project. This section outlines the relevant criteria used in the analysis method, corresponding with the key objectives of mitigating the issue. The evaluation matrix also includes consequential impacts and considerations of policy implementation. This matrix includes equity and fairness, economic efficiency, freedom and liberty, protection and security, administrative complexity, and stakeholder acceptance.

Table 2 Criteria and Measures for Policy Analysis

Societal and Government Objectives	Criterion	Measure	Measurement
Effectiveness	Enhanced capacity to uphold human rights at Canadian owned mining projects abroad.	Projected increase of government and public knowledge of corporate human right policy effectiveness	1. Low/No Increase
			2. Some Increase
			3. Substantial Increase
	Allegations of human rights abuses against Canadian mining companies	Increased government access to regulatory penalties against non-compliant organizations	1. Low/No Access
			2. Some access
			3. Increased access
Allegations of human rights abuses against Canadian mining companies	Projected decrease in number of complaints filed against mining companies through CORE, OECD National Contact Point, Canadian court cases, and civil society complaints.	1. No decrease	
		2. Some decrease	
		3. Substantial decrease	

Efficiency	Avoid flight of Canadian mining companies to other jurisdictions	Likelihood of mining companies moving headquarters to other jurisdictions (lower the better)	1. Low/No Likelihood
			2. Some Likelihood
			3. Significant likelihood
Protection and Security	Increase in host state capacity to protect their citizens and uphold human rights	Projected improvement of state fragility score by OECD measure	1. Low/No Improvement
			2. Some Improvement
			3. Substantial improvement
Administrative Complexity	Complexity of policy implementation within the federal government	The level of policy change and additions required by fed government and the number of actors involved.	1. Low Ease
			2. Mid Ease
			3. High Ease
Stakeholder Acceptance	Support from mining corporations	Measure of support from mining companies	1. Low support
			2. Some support
			3. Substantial support
	Support from civil society groups	Measure of support from civils society groups	1. Low support
			2. Some support
			3. Substantial support

9.1. Effectiveness

Effectiveness as an objective is intended to evaluate the success of the policy option in enhancing Canada's capacity to uphold human rights at Canadian-owned mining projects abroad. Informed by the literature, two main factors inform and contribute to what it would look like to effectively enhance our capacity to uphold human rights. These measures include the projected increase of government and public knowledge of corporate human rights effectiveness. Leaving it to corporations to self-evaluate the effectiveness of their policies has not been successful. If public awareness increases, this should help hold companies accountable to uphold human rights while allowing government and human rights groups to evaluate policy effectiveness and offer insight on how it could be strengthened. The second measure included is the access of governments to regulatory penalties. None of the policies proposed give the government

more authority to penalize companies as human rights accountability. However, under the Enhance Corporate Social Responsibility Policy, Canada already has stated:

“Canadian companies found not to be embodying CSR best practices and who refuse to participate in dispute resolution processes contained in the CSR Strategy, will no longer benefit from economic diplomacy... Furthermore, such a designation will be taken into account in the CSR-related evaluation and due diligence conducted by the government of Canada’s financing crown corporation, Export Development Canada (EDC), in its consideration of the availability of financing or other support.” (NRCan and DFTAD, 2014)

Canada still needs to act on their ability to remove support and funding. The policy options proposed will be evaluated on their ability to make it easier for the Canadian government to act and utilize the penalties they already have access to, in turn, promoting the effectiveness of mining corporations' human rights policy.

The second criterion used to evaluate the policy's effectiveness in enhancing Canada's capacity to uphold human rights is the number of allegations of human rights abuses against Canadian mining companies. These allegations generally come from three sources, Canadian court cases, complaints made to CORE and the OECD National Contact Point, and civil society complaints. A measure of policy effectiveness will be the projected decrease in allegations against Canadian mining companies in the next ten years.

Effectiveness will be given double the weight of other criteria and measures in the analysis to support its importance as the primary objective of the policy.

9.2. Economic Efficiency

Economic efficiency as an objective is intended to evaluate the effect of the policy option on the Canadian economy. 4% of Canada’s GDP can be attributed to mining; however, there are too many factors affecting the mining industry in Canada to use GDP as a measurement of the effect of the proposed policy on the Canadian economy. Canada, as it stands, is home to about half the world’s mining companies, many being junior companies which do not have as significant of an effect on Canadian production yet have great economic potential. The most direct measure of the economic

result of this policy is the projected likelihood of companies moving headquarters to other jurisdictions or ceasing to operate, negatively impacting the Canadian economy. The objective is to strike a balance between upholding human rights abroad without causing significant detriment to the well-being of Canadians and our economy.

9.3. Protection and Security

Protection and security are central considerations in gauging how a policy option addresses the physical harm that can occur when human rights are not upheld. Protection and security are primarily the responsibility of the host state; however, in weak governance zones, the state is not always able or willing to provide that protection. The criteria used here to evaluate the policy options is an increase in the host state's capacity to protect its citizens and uphold human rights. This criterion will be measured by the State Fragility Framework utilized by the OECD. The desired result is a higher score, specifically in human rights evaluated using this tool.

9.4. Administrative Complexity

Administrative complexity refers to how complex the implementation and maintenance of a new policy could be for the federal government. Upholding human rights abroad, especially those associated with foreign-owned corporations, is ideally the host state's responsibility. However, realistically, the responsibility to uphold human rights falls to the host country, the corporation, and the corporation's home country. As a result, there is no administratively straightforward solution to this problem. An effective solution is going to have more administrative complexity. With that in mind, the measure of the variance in the ease of administrative implementation is the level of the policy change and additions required by the federal government and the number of actors involved.

9.5. Stakeholder Acceptance

Several external, non-governmental actors in this arena take a vested interest in the government's policy in relation to the regulation of mining companies acting abroad. The two main stakeholder groups are mining companies and civil society watchdog groups. Civil society groups represent and advocate for the environment, labourers, and

communities near Canadian mining projects. These groups play a central role in uncovering human rights abuses abroad and are interested in seeing Canada do more on this issue. The other major stakeholder is the mining companies, which operate abroad. Their interest is related to their business and shareholders. Minimizing irritants and having their partnership and support of the policy would influence the success of the policy. In this analysis, support from both stakeholder groups will be measured by the perceived support for the proposed policy.

Chapter 10. Policy Analysis

This section provides a detailed analysis of the viable policy options outlined in Chapter 9. This analysis utilized a multi-criteria approach to determine the performance, outcomes, and anticipated risks of the two policy options based on the objectives and considerations.

10.1. Analysis 1: CORE Auditing Mechanism

Based on the analysis, the CORE Auditing Mechanism performs well, as seen in Table B.1 of the appendix. Strengths include effectiveness and support from civil society groups. Concerns with this option are that it does nothing to strengthen the host country's ability to provide protection and security for its citizens and will most likely be opposed by mining companies..

10.1.1. Effectiveness

In terms of effectiveness, this option received a total score of 16 out of 18, ranking high with increased knowledge and a decrease in complaints and moderately with increased access to regulatory penalties. First, this option dramatically increases government knowledge of the quality of human rights policy and CSR initiatives for audited companies. Compared to a disclosure or due diligence model discussed in Chapter 8, a government audit would ensure the quality and neutrality of the information gathered. A database will ensure ease of access to the public for their analysis and action. Second, this option moderately increases the government's access to penalties. While the option does not add new penalties at the government's disposal, increasing government knowledge of companies' actions through the social audit, this option increases the knowledge foundation of the government to allow them to confidently act on the penalties that are already at their disposal as outlined in the Enhanced Corporate Social Responsibility Policy. Finally, this policy should decrease complaints over the next ten years against Canadian mining companies through all avenues. This result is expected as the government audit would help ensure policies' efficacy, resulting in a decreased chance of human rights violations occurring. The option may also residually result in other mining companies not being under audit, increasing the efficacy of their

policies in preparation for a potential audit and as knowledge of what the government considers effective policy is made explicit through public reporting.

10.1.2. Economic Efficiency

Concerning economic efficiency, this policy option scored 2 out of 3, ranking moderate. The CORE Audit program will place a financial and bureaucratic burden on Canadian mining companies, making Canada a less desirable host country for companies. To save funds, companies may look elsewhere to countries without the auditing mechanism to operate without this burden. However, many countries, especially in the Global North, are enacting other legislation, such as supply chain due diligence laws, that require companies to have identified risks and prevent serious human rights violations, disclose these plans, and show that they have been effectively implemented. This fact decreases the likelihood of a Canadian company leaving, as these burdens exist in other jurisdictions.

This policy comes with a moderate risk of companies being sold off to other foreign-owned companies in jurisdictions such as China with fewer human rights protections. While this outcome is less likely to occur directly because of the audit mechanism, if companies are forced to spend more money or not take on socially risky investments, their business becomes less profitable. Canada's use of the audit mechanism may also result in greater use of penalties, such as removing access to Canadian public investment. These possibilities may make acquisition offers from other entities more economically beneficial for corporate shareholders.

10.1.3. Protection and Security

This policy option is not projected to affect state fragility in the weak governance zones in which Canadian mining companies operate. This option focuses exclusively on the actions of Canadian companies.

10.1.4. Administrative Complexity

This option scored 2 out of 3, ranking medium on administrative complexity. This option can strategically align with the existing mandate of the CORE office to promote,

advise, review, and recommend, as discussed in Chapter 2. Expanding CORE's capacity to complete five audits a year would require hiring more staff with the skill set to complete the social audits. This option would not require interdepartmental cooperation; however, this option would require significant consultation with stakeholders. The ease with which these audits are completed is projected to vary based on the level of cooperation from audited firms.

10.1.5. Stakeholder Acceptance

This analysis only looks at civil society groups and mining companies regarding stakeholder acceptance. For this option, these stakeholders are at odds. Mining companies are projected not to support Option 1 as it may be viewed as a burden on their companies. This option is mandatory for companies and is entirely external, increasing the chances of unfavourable reviews. Framing may help if the government focuses on how this is an opportunity for partnership, learning, and growth.

Civil society groups, on the other hand, are projected to be in support of this option. Civil society groups have been calling for CORE to have the regulatory strength it promised as it was being created. These groups will see this as a step in the right direction, providing CORE with some investigatory powers. This policy option also results in a tangible product that is easier to evaluate effectiveness, which these groups will see as a positive.

10.2. Analysis 2: Community Empowerment International Assistance Program

Based on the analysis, the Community Empowerment International Assistance Program performs moderately, as seen in Table B.2 of the appendix. Strengths include its effectiveness in decreasing the number of complaints against Canadian mining companies and the lack of risk to the Canadian economy. Concerns with this option include a weak ability to strengthen the protection and security the host country can provide its citizens and a high level of administrative complexity.

10.2.1. Effectiveness

In terms of effectiveness, this option received a total score of 14 out of 18, ranking high with a decrease in complaints and moderately with increased knowledge and increased access to regulatory penalties. First, this option provides an increase in the government's firsthand knowledge of what is happening at and around mining sites owned by Canadian companies through the presence of government aid workers in those communities. Second, this option moderately increases the government's access to penalties. Through the increased presence of the Canadian government through aid, they would have access to firsthand accounts that would empower the government to use penalties if Canadian companies are found lacking in upholding human rights at specific operation sites. However, the communication channel is less clear for this option than Option 1, resulting in a moderate rating. Finally, this policy should result in a decrease in complaints against Canadian mining companies overall. However, complaints may be increased in the first five years. This increase is expected because of increased access and knowledge of compliant channels by community members facilitated by the increased presence of Canadian government workers and partnerships. The increase in accessibility to compliant channels, presence of Canadian aid workers, and empowerment of communities should decrease company misbehaviour and, over time, decrease the number of violations occurring. Naturally, this would result in a decrease in reporting and complaints.

10.2.2. Economic Efficiency

Concerning economic efficiency, this policy option scored 2.5 out of 3, ranking moderately high. First, there is a low risk of corporations moving headquarters, as this policy should not result in a financial or bureaucratic burden on Canadian mining companies. This policy does not result in direct scrutiny of companies' policies and practices, and moving the company would not mean that the aid from the countries in which they were located would be moved. Therefore, communities would still benefit from Canadian aid and empowerment, making a jurisdictional move a less effective avoidance tool. Second, the pathway to government use of punitive measures is less clear for this option, as discussed above. Therefore, the likelihood of the government pulling funding from companies because of this option is lower. Using punitive measures increases the risk of a corporation being acquired by a foreign company in a jurisdiction

with less human rights protection. Therefore, the likelihood of a penalty occurring because of this option is lower, meaning the likelihood of a company being acquired because of lack of access to public funding is less likely.

10.2.3. Protection and Security

This policy option scored 1 out of 3, ranking low on its ability to increase state fragility scores. A secondary mandate of the program would be to work with local governments to increase state capacity to protect human rights within the home country. However, acknowledging the strength of the state and its ability to provide for its citizens is a complex issue. The willingness of the host state to work with Canada on increasing state capacity will also vary from context to context. Canada can (and does) work with governments to improve basic security and advance governance, and this program would be a continuation of that work.

10.2.4. Administrative Complexity

This option scored 1 out of 3, ranking low with a high level of administrative complexity. This option can strategically align with the existing international feminist assistance policy. It would, however, require a shift in priority from the international feminist assistance policy to the new program, which would result in resources and personnel needed to set up new regions close to Canadian foreign mining projects. The change in location will most likely also require Canada to set up new partnerships and relationships with local grassroots organizations, resulting in a significant level of consultation with stakeholders.

10.2.5. Stakeholder Acceptance

Policy Option 2 does not directly impose on mining companies; therefore, mining companies are projected to provide neutral to medium support for this new program. There is a small risk of mining companies perceiving the increased presence of government assistance around their mining projects to be perceived as unwanted oversight. Further, there is a medium risk to the Canadian government that mining companies could view this program as an opportunity to cut back on their CSR initiatives

because of the presence of Canadian aid. This possibility may increase their support but would be considered an undesirable outcome.

Civil society groups are also projected to have medium support for Option 2. Based on the critiques of the Canadian government's policies surrounding this issue, it is likely that they will continue to critique this program as the government is not doing enough. The program, while potentially having some benefits for upholding human rights around these mining projects, does not have direct implications for mining companies in the same way as Option 1. However, no direct critiques of the program itself are expected.

10.3. Summary of Analysis

Analyzing the two policy options using a multi-criteria approach determined that each option has its own strengths and weaknesses in effectively addressing the policy problem and affecting relevant considerations. As reflected in Table 10.1, based on the analysis, the CORE Auditing Mechanism ranks the highest with a score of 24, followed by the International Cooperation Mechanism with 22.5 points.

Table 3 Summary of Analysis

Objectives and Considerations	CORE Auditing Mechanism	International Cooperation Mechanism
Effectiveness <ul style="list-style-type: none"> Increased government and public knowledge of corporate human rights policy effectiveness Increased government access to regulatory penalties against non-compliant organizations Decreased number of complaints against mining companies 	6/6	4/6
	4/6	4/6
	6/6	6/6
Efficiency <ul style="list-style-type: none"> Likelihood of mining companies moving headquarters to other jurisdictions 	2/3	2.5/3
Protection and Security <ul style="list-style-type: none"> Improvement of state fragility score by OECD measure 	0/3	1/3
Administrative Complexity	2/3	1/3

<ul style="list-style-type: none"> Level of policy change and additions required by fed government and the number of actors involved 		
Stakeholder Acceptance	1/3	2/3
<ul style="list-style-type: none"> Support from mining companies Support from civil society groups 	3/3	2/3
Totals	24/33	22.5/33

Chapter 11.

Recommendations

Based on the above analysis, both policy options score moderately well, with the CORE auditing mechanism scoring slightly better than the foreign assistance program. As both policy options target different aspects of the policy problem and have little policy overlap, the recommended approach is implementing the CORE Audit Mechanism and the Financial Assistance program in a policy bundle with staggered implementation. The CORE Audit Mechanism will serve as a straightforward oversight instrument to help the Canadian government achieve its objectives. This program is projected to reduce the number of complaints of human rights violations that Canadian mining companies receive by actively making them better at upholding human rights and benefiting the communities surrounding their projects. Focusing on companies' social practices and structures is an immediate solution to the problem and sends a signal to companies that the Canadian government takes human rights abroad seriously. The Financial Assistance program will empower communities and grassroots organizations near Canadian mining sites. This program is projected to decrease the number of complaints of human rights violations as communities will be better able to advocate for themselves. An indirect solution to the problem, the program should not threaten Canadian mining companies while continuing to signal to Canadians, watchdogs, and the world that Canada takes community empowerment and human rights seriously.

Moreover, this recommendation provides an opportunity for best practices for other companies within the mining sector and related industries such as energy. By expanding the CORE office in this way, combined with the relatively new judicial precedent set in the last ten years, Canadian companies will be compelled to take the issue of human rights more seriously, increasing human rights being upheld.

11.1. Implementation

Implementing this recommendation would require the government to pass administrative legislation granting them the authority to perform social audits on private companies, effectively giving CORE the regulatory authority that many civil society

organizations have been requesting. Specific procedures and guidelines for conducting social audits must also be established. It may be helpful to use consultants experienced in social audits, in combination with expertise from the office of the Auditor General, to create an auditing methodology and other guidance and procedures. These procedures should also outline how companies will be selected for audit and how they will be reported.

The office will be expanded to include auditors based on the projected staffing requirements. A gradual implementation may be necessary depending on departmental capacity, working up to auditing five randomly selected mining corporations per year within the first three years of implementation. Slow implementation of the program could ensure that initial feedback on the mechanism could be applied to ensure that the mechanism achieves its objectives. The auditing mechanism will be reviewed every five years to ensure that it continues to be effective and relevant to the policy problem.

Once the auditing mechanism has passed year three of implementation and is operating at total capacity, the financial assistance program will begin implementation. Implementation will require the federal government to allocate the required budgetary resources for the program, estimated at least \$20 million per year. However, this may vary based on the government's budgetary capacity and the number of Canadian mining sites. During the previous three years, Global Affairs's foreign assistance branch has been strengthening existing partnerships and developing new partnerships where necessary with non-government organizations to ensure the program is implemented effectively. It serves the needs of the targeted communities. Global Affairs will be required to develop a policy and process for selecting partnerships and award recipients and the exact mechanisms for implementation. Policy development will require consultations with stakeholders to ensure that the program works effectively and fairly. The program will be re-evaluated every five years once implemented to ensure that it continues to be effective and relevant to the policy problem.

11.1.1. Limitations

Trying to solve issues caused by multinational corporations is challenging. When companies are acting abroad, it is sometimes difficult to discern who has jurisdiction to hold these companies accountable. This issue is incredibly challenging when these

companies work in countries where they are unwilling or unable to uphold human rights. Ultimately, an overhaul of the whole system is needed if workers and communities are to be completely protected from human rights violations. Nevertheless, as a solo actor, the Canadian government is limited to the policy tools at its disposal. Canada is also limited by the sovereignty held by other countries over their state. These limitations are why the policy recommendations are focused on what Canada can do without stepping on the toes of other countries. Many of these countries have a history of colonialism, and Canada should not seek to act in any way associated with it. This project acknowledges these limitations and their likely effect on the effectiveness of the suggested policies. However, although these limitations pose risks to the effectiveness of the policy, Canada should still try.

Chapter 12.

Conclusion

As highlighted earlier, Canada's significant role in the global mining industry has been accompanied by reports of human rights violations for over 20 years. This issue has led to the policy problem that Canada's enhanced corporate social responsibility policy and the CORE office need to provide adequate measures to prevent human rights violations from happening in Canadian-owned mining projects located overseas. While we know this is not an issue specific to Canada but to the mining and other extractive sectors globally, policies that have proven effective in addressing the issue have yet to be implemented. Popular policy models, such as the due diligence and disclosure model, have been adopted by several jurisdictions and have even been proposed in Canada. Nevertheless, the evaluation of these models has proven to be ineffective in addressing the issue.

A comparative analysis was required to understand why these abuses were occurring despite the current frameworks that are in place and ultimately develop an innovative policy solution. An analysis of legal cases tried in the Canadian court system and a comparative analysis of the official policies of Canada's three biggest mining companies operating abroad and reports by watchdog organizations against these companies provided a clear picture of some of the intricacies of the issue and showed a path to intervention that may be more effective.

A policy bundle of the CORE Auditing Mechanism and an International Financial Assistance program shows promise in effectiveness and support from civil society groups. By granting CORE the power to audit mining companies and focusing Canadian resources on community empowerment, Canada can demonstrate leadership and pioneer a new policy solution. If successful, this approach could serve as a model for other countries and result in more excellent protection of human rights globally. The scope of this project is limited and does not offer the only potential policy solutions to this complex issue.

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Appendix A.

Policy Analysis Summaries

Table A. 1 Policy Option 1 Analysis Matrix

Objective & Considerations	Analysis	Score
Effectiveness <ul style="list-style-type: none"> • Increased government and public knowledge of corporate human rights policy effectiveness • Increased government access to regulatory penalties against non-compliant organizations • Decreased number of complaints against mining companies 	<ul style="list-style-type: none"> • Considerable increase in government knowledge through the audit process • Audit process would result in a public report of the effectiveness of mining companies' human rights policy 	6/6
	<ul style="list-style-type: none"> • Option does not provide new regulatory penalties • Government will have better data as grounds for utilizing already existing penalties for non-compliant companies 	4/6
	<ul style="list-style-type: none"> • Policy should result in a decrease of complaints by ensuring effective policy of companies being audited. • Random nature of audit may have a residual effect on increasing effectiveness of human rights policy for companies not directly being audited 	6/6
Efficiency <ul style="list-style-type: none"> • Likelihood of mining companies moving headquarters to other jurisdictions 	<ul style="list-style-type: none"> • Low risk that companies will leave due to legislation being introduced in more Global North countries. • Moderate risk that companies will be sold off to other companies in other jurisdictions such as China. 	2/3
Protection and Security <ul style="list-style-type: none"> • Improvement of state fragility score by OECD measure 	<ul style="list-style-type: none"> • Policy would have no effect on state fragility score 	0/3
Administrative Complexity <ul style="list-style-type: none"> • Level of policy change and additions required by fed government and the number of actors involved 	<ul style="list-style-type: none"> • Easily links to the CORE mandate but a large undertaking for CORE; time-consuming, complex, and a new skill set. • High level of consultation with stakeholders including varying levels of cooperation from companies being audited 	2/3
Stakeholder Acceptance	<ul style="list-style-type: none"> • Low support expected by mining companies. 	1/3

<ul style="list-style-type: none"> • Support from mining companies • Support from civil society groups 	<ul style="list-style-type: none"> • Could be viewed as a burden on mining companies to have a mandatory external audit. 	
	<ul style="list-style-type: none"> • High support expected from civil society groups. • Answers there call to give the CORE office more regulatory teeth. • Tangible results showing government is taking the issue seriously 	3/3
Total		24/33

Table A. 2 Policy Option 2 Analysis Matrix

Objective & Considerations	Analysis	Score
Effectiveness <ul style="list-style-type: none"> • Increased government and public knowledge of corporate human rights policy effectiveness • Increased government access to regulatory penalties against non-compliant organizations • Decreased number of complaints against mining companies 	<ul style="list-style-type: none"> • Increase in government knowledge of what is happening at mining sites through “boots on the ground.” • no increase in public knowledge through reporting 	4/6
	<ul style="list-style-type: none"> • increased chances of government having firsthand knowledge of human rights violations or risky corporate behaviour somewhat increasing their ability to penalize companies for human rights non-compliance 	4/6
	<ul style="list-style-type: none"> • may result in an uptick of reports initially by increasing access to complaint mechanisms by communities. • should see a decrease over the next 10 years. 	6/6
Efficiency <ul style="list-style-type: none"> • Likelihood of mining companies moving headquarters to other jurisdictions 	<ul style="list-style-type: none"> • Low risk of companies moving headquarters as there is no direct scrutinization of corporate policy and behaviour. • low to moderate risk of companies being acquired if policy results in gov using punitive measures 	2.5/3
Protection and Security <ul style="list-style-type: none"> • Improvement of state fragility score by OECD measure 	<ul style="list-style-type: none"> • May have a small effect on increasing state fragility score 	1/3

<p>Administrative Complexity</p> <ul style="list-style-type: none"> • Level of policy change and additions required by fed government and the number of actors involved 	<ul style="list-style-type: none"> • Implementation of a new program is highly complex requiring the international moving of assets and personnel. • Can strategically link with international feminist assistance policy. • Requires a significant amount of consultation with stakeholders, especially grassroots organizations 	<p>1/3</p>
<p>Stakeholder Acceptance</p> <ul style="list-style-type: none"> • Support from mining companies • Support from civil society groups 	<ul style="list-style-type: none"> • No direct imposition on mining companies • Could be perceived as unwanted oversight but not guaranteed 	<p>2/3</p>
	<ul style="list-style-type: none"> • Medium support expected from civil society groups. • Likely to critique that the Canadian government needs to do more. • Will not likely have critiques of the program itself 	<p>2/3</p>
<p>Total</p>		<p>22.5/33</p>