

Material Matters: Using Regulation to Improve the Canadian Mining Industry's Human Rights Record

**by
Holly Eksal**

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Approval

Name: Holly Eksal

Degree: Master of Public Policy

Title: **Material Matters: Using Regulation to Improve the Canadian Mining Industry's Human Rights Record**

Examining Committee: **Chair: Dominique Gross**
Professor, School of Public Policy, SFU

Maureen Maloney
Senior Supervisor
Professor

Nancy Olewiler
Internal Examiner
Professor

Date Defended/Approved: March 4th, 2020

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Abstract

Canada has the most incorporated mining entities in the world. The Canadian mining industry has an international reputation as a mining power, but also one for human rights violations. The literature indicates that insufficient domestic accountability mechanisms, such as non-financial reporting, are one of the reasons why human rights violations persist in this industry. This study addresses the regulatory gap within Canadian securities regulations and identifies policy options aimed at improving the lack of accountability within the Canadian mining industry. Three policy options are evaluated, including: incorporating the term “salient human rights impacts” into the existing regulations; adjusting the definition of materiality to include human rights violations; and direct reporting to the federal government. Based off this analysis, a two-pronged approach including mandatory reporting on salient human rights impacts, alongside federal submissions and audits, is recommended as a possible solution to human rights violations occurring within the Canadian mining industry.

Keywords: human rights; mining; corporate social responsibility (CSR); non-financial reporting; environmental, social and corporate governance (ESG); securities law

Dedication

Dedicated to human rights defenders, who put themselves in harms way to advocate for those that may not be a position to do so for themselves. This study would not have been possible if not for their sacrifice, bravery, passion, and devotion.

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List of Acronyms

ACE	Access, Certainty, Efficiency (Malaysia Stock Exchange)
AIF	Annual Information Form
ASEAN	Association of Southeast Asian Nations
BCSC	British Columbia Securities Commission
BRIRR	Burma Responsible Investment Reporting Requirements
CMAs	Canadian Mining Assets
CORE	Canadian Ombudsperson for Responsible Enterprise
CSA	Canadian Securities Administrators
CSR	Corporate Social Responsibility
EC	European Commission
ECCJ	European Coalition for Corporate Justice
EDC	Export Development Canada
EES	Economic, environmental and social
ESG	Environmental, social and governance
ESTMA	Extractive Sector Transparency Measures Act
EU	European Union
GRI	Global Reporting Initiative
HRDD	Human rights due diligence
IHRB	Institute for Human Rights and Business
MD&A	Management Discussion and Analysis
MNE	Multinational Enterprise
MYX	Bursa Malaysia Stock Exchange
NFR	Non-financial reporting
NFRD	European Union Non-Financial Reporting Directive
NGO	Non-governmental organization
NI	National Instrument
NRCan	Natural Resources Canada
OSC	Ontario Securities Commission
RI	Responsible Investment
RIAS	Regulatory Impact Assessment Statement
SC	Securities Commission
SEDAR	The System for Electronic Document Analysis and Retrieval

SME	Small and medium-sized enterprise
TNSP	Truman National Security Project
TSX	Toronto Stock Exchange
TSXV	TSX-Venture Exchange
UNGP	United Nations Guiding Principles on Business and Human Rights
US	United States

Executive Summary

Policy Problem and Research Objectives

Canada has the most incorporated mining entities in the world, with 59% of the global share (TSX, 2019). Canadian mining corporations also have a reputation for international human rights violations. One of the reasons why so many mining entities are incorporated in Canada is sometimes attributed to its domestic non-financial reporting requirements (Haslam *et al.*, 2018). A study found that over a fifteen-year period, publicly listed mining multinational enterprises (MNEs) in Canada only reported 24.2% of the deaths and 12.3% of the injuries that occurred as a result of human rights violations (Imai *et al.*, 2017).

The policy problem identified by this study is that Canada's regulations for non-financial reporting are vague and do not have adequate corporate social responsibility (CSR) disclosure requirements for mining MNEs. This creates an insufficient regulatory environment in which ongoing transparency and accountability surrounding human rights is difficult or impossible to uphold for publicly traded mining MNEs.

The objective of this study is to examine policy options aimed at closing the regulatory gap that exists within the current regulatory framework. While it is difficult to establish a casual link between reporting and corporate conduct abroad, this study assumes (based on the research findings) that reporting can be a positive influence on corporate behaviour, accountability and transparency, and reduce human rights violations.

Methodology

My research includes three methodologies: a comprehensive literature review, a jurisdictional scan, and expert interviews. The literature review examines the relationship between Canadian securities regulations and disclosure in the mining sector, the effectiveness of non-financial reporting as a tool to improve human rights outcomes, the concept of materiality, and responsible investing and its relationship to non-financial reporting. The jurisdictional scan looks at the European Union (including Denmark); Malaysia; and the United States. Five expert interviews were also completed as a part of

this study. Experts included academics, responsible investment and CSR professionals, as well as the Executive Director of a non-governmental organization.

Policy Options

This study analyzes three policy options:

- *Option 1: Require all mining MNEs to report “salient” human right impacts and violations, using the definition derived from the United Nations Guiding Principles Business and Human Rights (UNGP) Reporting Framework;*
- *Option 2: Require all mining MNEs to report on “material sustainable matters,” utilizing a modified definition similar to the one employed by the Bursa Malaysia non-financial reporting regulations; and*
- *Option 3: Adjust the Extractive Sector Transparency Measures Act to include annual submissions of human rights due diligence reports, which would detail salient human rights impacts, risks, mitigation and remedy tools, as well as any relevant violations that have occurred on mining assets abroad, to be verified through a 5% random annual audit of the reports.*

The options were evaluated using the following criteria: effectiveness; compliance; enforcement; and stakeholder acceptance.

Recommendation

Based on the findings of this study, I recommend a two-pronged approach. In the short-term, implement Option 1. This option removes concept of materiality from human rights reporting. Instead, it requires targeted reporting on the most severe, negative human rights risks, irrespective of their financial impacts to business. In the medium-term, implement Option 3, in order to encourage accurate reporting, align expectations across government agencies, and implement more significant deterrence mechanisms.

Chapter 1.

Introduction

1.1. Policy Problem

Canadian mining multi-national enterprises (MNEs) have a reputation for human rights violations associated with their international projects. For the purposes of this study, human rights violations are defined as any action that violates international human rights standards set out by international law and relevant United Nations treaties, declarations and policies. There have been a variety of reasons cited for this phenomenon, including the difficulty of enforcing Canadian law abroad.

But the relationship between human rights violations and Canadian mining MNEs is not only linked to legal obligations but also to domestic policy. Some have argued that mining companies choose to incorporate in Canada due to vague regulations surrounding non-financial reporting (NFR) requirements (Haslam *et al.*, 2018). Non-financial reporting, combined with high consumer demand for responsible investment, can act as a check on corporate behaviour by requiring MNEs to disclose international human rights violations.

Over a fifteen-year period, publicly listed mining MNEs in Canada only reported 24.2% of the deaths and 12.3% of the injuries that occurred as a result of human rights violations on their mining sites in the Latin American region (Imai *et al.*, 2017). The reason cited was Canadian securities regulations only require disclosure of material information, which refers "...to any information which could affect a reasonable investor's decision to buy, sell or hold securities of the issuer" (TSX & Charter Professional Accountants of Canada, 2014, p. 19). This leads to vague, inaccurate, or broad reporting of human rights abuses (or no disclosure at all). Other jurisdictions have passed regulations with detailed language on human rights disclosure in the form of mandatory environmental, social and governance (ESG) reporting. However, compared to the global regulatory environment for NFR, Canada's reporting requirements are inadequate.

With this in mind, the policy problem is that Canada's securities regulations for non-financial reporting are vague and do not have adequate corporate social responsibility (CSR) disclosure requirements for mining MNEs. Specifically, the Management Discussion and Analysis (MD&A), Annual Information Form (AIF) and the Standards of Disclosure for Mineral Projects do not clearly indicate that Canadian mining MNEs must publicly report all of their human rights impacts, unless this information is deemed material to a reasonable investor or if the company in question already has existing human rights policies. This creates an insufficient regulatory environment in which ongoing human rights transparency and accountability is difficult to uphold for publicly traded mining MNEs.

1.2. Objective of my Capstone

Studies have been completed on Canadian securities regulations and NFR requirements for mining MNEs incorporated in Canada. However, there exists a need to comparatively analyze potential policy options that focus on enhancing ESG reporting regulations with the goal of improving human rights practices in the Canadian mining industry. This study seeks to fill this gap and develop a policy recommendation to improve corporate accountability among mining MNEs incorporated in Canada, as well as embed CSR practices in federal securities regulations.

1.3. Overview

Chapter 3 provides background on the Canadian mining industry alongside an overview of existing reporting requirements. Chapter 4 contains the literature review, Chapter 5 details the jurisdictional scan, and Chapter 6 discusses the interview findings. Chapters 7 – 10 analyze the policy options and provides the recommendation, and Chapter 11 delivers the conclusion.

Chapter 2.

Research Question and Methodology

This study was motivated by the following research question: how can NFR regulations be changed to improve the human rights record of Canadian mining companies operating abroad? My approach to this question is as follows: a mixed-methods, qualitative study that involves an extensive literature review, interviews with experts, as well as a jurisdictional scan.

2.1. Expert Interviews

5 semi-structured interviews were undertaken with experts in the field, including academics, CSR specialists in the mining industry, and individuals employed in the field of responsible investment or at non-governmental organizations (NGOs). The goal of these interviews was to gain an understanding of the impacts that my proposed options could have and acquire further information on the existing reporting system.

2.2. Jurisdictional Scan

I selected three jurisdictions as a part of this methodology: the European Union (EU) (including a brief note on Denmark), Malaysia and the United States (US). These jurisdictions were chosen following the literature review, which indicated they had strong NFR regulations. Furthermore, the chosen jurisdictions present different means of regulating and legislating NFR requirements. For instance, Malaysian reporting requirements are administered through the Malaysian Securities Commission, the US had reports submitted directly to the federal government, and the Denmark reporting requirements are legislated. Collectively, these jurisdictions were utilized as a means of assessing and comparing Canadian reporting requirements, as well as models for alternatives that could improve NFR regulations in Canada.

2.3. Limitations

Although this study was undertaken with diligence, there were several limitations that restricted its scope and conclusions. These limitations have to do with general qualitative limitations, ethical considerations, as well as scoping and time constraints.

Scope

Much of the data employed in this report is limited to Canadian mining MNEs operating in the Latin American region, even though they operate in other regions throughout the world. This is because the majority of Canadian mining assets are located in Latin America, and there is existing data on the disclosure rate in this region. Additional research into other regions, such as Asia and Africa, has the potential to solidify the findings of this study.

It is also important to note that some of the issues addressed in this report are not limited to the mining sector, and that the findings can also apply to other Canadian industries that operate internationally. However, given limited time and scoping constraints, only the mining sector was examined in this study.

Jurisdictional Scan

The Global Reporting Initiative (GRI) standards were considered as a framework to analyze. The GRI is an independent international organization that has a number of ESG NFR best practices MNEs can utilize as a framework for reporting (GRI, n.d.). However, given the consensus among experts that the GRI is not an effective reporting framework, it was not included in this study. I also restricted this methodology to legislated regulations existing in jurisdictions outside of Canada to gain a better understanding how NFR regulations can be structured within a domestic regulatory framework.

In addition, the US jurisdictional scan is based on previously existing reporting requirements that were unique to foreign investment in Burma. The Burma Responsible Investment Reporting Requirements were eliminated in 2017 under the Trump Administration. With this, the official US Government documents outlining the regulations were, to my knowledge, removed online. To gain a better understanding of the previous

reporting requirements, I supplemented this information with civil society group reports and other US government sources. It should be noted that some of this information cannot be fully confirmed without the original government documents. As such, I consider this a limitation of my research. Nonetheless, the prior regulations presented a strong model that was specific to human rights impacts surrounding foreign investment.

Interviews

Due to ethical considerations, I was unable to interview individuals who were victims of human rights violations. Therefore, my interviews were restricted to academic and professional experts. Interviews with victims of human rights abuses have the potential to add more depth to this research. In addition, I was only able to interview a limited number of individuals due to time constraints. As such, the sample size was restricted to 5 interviewees.

Other Limitations

There is limited research on NFR in Canada, which restricted my evaluation at times. Further research into this topic is recommended.

Chapter 3.

Background

3.1. The Canadian Mining Industry

The mining industry has deep roots in Canada, having played a significant role its history (Global Affairs Canada, 2019 a). The discovery of iron, copper and gold by early settlers in Canada attracted industry and immigrants from around the globe, influencing the development of the country profoundly (Global Affairs Canada, 2019 a).

Today, Canada has the most publicly listed mining companies in the world (Imai *et al.*, 2017). As of August 2019, the Toronto Stock Exchange (TSX) lists 213 mining companies and the TSX-Venture Exchange (TSXV) lists 939, accounting for 59% of global mining financings (TSX, 2019). Close to 56 billion in mining shares were traded in 2017 on the TSX, worth a total of \$206 billion (TSX, 2019). In 2019, the quoted market value of publicly listed Canadian mining companies on both the TSX and TSXV was \$371.8 billion (TSX, 2019).

The mining industry in Canada is lucrative. It contributed \$97 billion to Canada's GDP in 2017 and accounted for 19% of the value of Canadian goods exports in 2017 (The Mining Association of Canada, 2018). Mining companies also reported payments totalling more than \$9.3 billion to Canadian governments, and account for approximately 634,000 jobs across the country (2018).

Internationally, the Canadian mining industry has been called a "mining power" (Due Process of Law Foundation, 2014). Canadian mining assets (CMAs) were present in 101 foreign countries in 2017 (Natural Resources Canada [NRCan], 2019)). The value of CMAs abroad was 168.7 billion US in 2017, or 64.9% of all total mining assets (NRCan, 2019). Many of these projects are in the Latin American and Caribbean region, which account for 55% of international CMAs and are valued at \$93.1 billion USD (NRCan, 2019).

3.2. Canadian Mining MNEs and Human Rights Violations

Canadian mining MNEs operate globally, but most CMAs are based in Latin America. While the NFR requirements in Canada apply to all mining ventures, this study will focus on the human rights issues associated with projects in the Latin American region due to its marked prominence of CMAs.

Studies have assessed human rights violations committed by Canadian mining MNEs and their subsidiaries in the Latin American region. For example, *The Canada Brand* (2017) found from 2005-2015, there were a total of 44 deaths, 4 disappeared victims, 403 cases of injuries, 15 cases of sexual violence, 196 warrants and legal complaints, and 537 arrests, detentions and charges (Imai *et al.*, p. 11-12). The data was drawn from incidents of violence reported in existing databases or from previous studies that could be corroborated by at least two independent sources, which included (but were not limited to), local media sources and NGO reporting (Imai *et al.*, p.6).

It is important to note that the number of incidents that occurred could be larger than the data indicates due to externalities such as incomplete reporting or undue pressure on victims not to report incidents. Despite this, the disclosure rate during this period demonstrated that there is a disparity between what is reported by local media sources, academics and NGOs, and "...what Canadian mining MNEs disclosed about the same events" (Imai *et al.*, 2017, p.24). Table 1 below details the disclosure rate. Note that "reported incidents" refer to those reported by external sources and "disclosed incidents" refer to those disclosed by Canadian mining MNEs on the System for Electric Document Analysis and Retrieval (SEDAR):

Table 1: Disclosure Rate of Human Rights Violations in Latin America

Category of Violence	Reported Incidents	Disclosed Incidents	Disclosure Rate (%)
Deaths	33	8	24.2
Disappeared	2	1	50
Injuries	57	7	12.3
Sexual Violence	2	0	0
Warrants & Legal Complaints	7	0	0
Arrests, Detentions & Charges	37	3	8.1

Source: *The Canada Brand*, Imai *et al.*, 2017, p. 24

3.3. Securities Law and Regulations in Canada

Securities law in Canada is designed to protect shareholders from “...unfair, improper or fraudulent practices,” and to “...foster fair and efficient capital markets and [market] confidence...” (Rafi *et al.*, 2017, p.3). The principles of securities law include both anti-fraud measures and transparency (2017, p.4). Canadian securities regulators (known as Securities Commissions ((SCs)) operate under the shareholder-only model, meaning they aim to protect shareholders as opposed to stakeholders. Stakeholders are defined as “...a party that has an interest in a company and can either affect or be affected by the business” (Chen, 2019, pp.1). Shareholders can be stakeholders, but stakeholders are not always shareholders.

Currently, each province has its own securities regulator, legislation and commission. The largest provincial SC is the Ontario Securities Commission (OSC), with 1,300 registered firms (Investment Industry of Canada, 2018). The OSC is also the “...principal regulator to more than 80% of all Canadian investment funds” (2018). Other significant regulators include the British Columbia Securities Commission (BCSC), the Alberta Securities Commission and the Autorité des marchés financiers in Québec.

There is currently no regulatory body at the federal level. However, there exists an umbrella organization entitled the Canadian Securities Administrators (CSA) whose objective is to “...improve, coordinate and harmonize regulation of the Canadian capital markets” (CSA, 2009, pp.1). Companies that are incorporated in Canada, but not headquartered there, are regulated through the SC in the province in which they are incorporated.

National Instruments (NIs) are a statement of rules related to securities markets issued by the CSA. NIs are adopted and implemented as law in each Canadian jurisdiction. In addition to NIs, the CSA also implements National Policies, which are not law but provide guidance regarding securities law requirements (VanDuzer, 2018).

The AIF and the MD&A fall under National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102), and the Standards of Disclosure for Mineral Projects falls under National Instrument 43-101 (NI 43-101). Given that all three disclosure and reporting regulations are NIs, they apply unilaterally to all provincial SCs and therefore all companies incorporated in Canada.

3.4. Non-financial Disclosure and Reporting Requirements in Canada

This section will outline the current human rights reporting and disclosure regulations. In Canada, the most significant reporting requirements relevant to human rights disclosure in the mining industry are the MD&As, the AIF and the Standards of Disclosure for Mineral Projects. The AIF is a document that must be filled out by a reporting issuer annually with the applicable Securities Regulatory Authorities, and discloses comprehensive business, financial, and non-financial information (Thomson Reuters Practical Law, n.d.). The MD&A is a similar document that is filled out annually by reporting issuers and contains “forward-looking information,” such as plans, proposals, and estimates (Storage Vault Canada Inc., 2014, p.1). The main reporting mechanism is entitled SEDAR, a public, online platform that contains company reports, such as the MD&A, the AIF, and other disclosure documents.

These disclosure requirements are mandatory and are enforced through the *Ontario Securities Act*, or the other relevant provincial jurisdictions. It is worth noting that these requirements became mandatory in 2005 (Sarra & Kung, 2006). Furthermore, Canadian NFR regulations uses the “comply or explain” approach. This means that firms may be compliant with regulations by either “...voluntarily adopting the recommend best practices ... or by explaining the alternative practices implemented to achieve the same governance principle (i.e. explain)” (Salterio *et al.*, 2013, p. 23). As previously mentioned, NFR is a tool designed to protect investors, but can also be utilized as a corporate accountability mechanism.

3.4.1. Material Information and the Reasonable Investor

Under securities regulations in Canada, reporting issuers that are listed on the TSX must disclose all material information, “...including information about environmental and social issues” (TSX & Charter Professional Accountants of Canada, 2014, p. 11). As previously stated, material information is defined as “...any information which could affect a reasonable investor’s decision whether to buy, sell or hold securities of the issuer, particularly if that information was omitted or misstated” (p.19). A reasonable investor is defined as “...a notional investor, broadly representing investors and guided by reason,” and is considered a retail investor rather than professional investor (p. 19).

The reasonable investor "...needs all ... relevant information in order to make as informed a decision about whether or not to make a long-term investment in the issuer" (p. 19). Some companies will assign a dollar value to what they consider material, of which the value can be quite high.

Due to this requirement, TSX primers note that "disclosure in an issuer's financial reporting, including the MD&A and AIF, ... needs to be more than just the facts that would significantly move the stock price today" (TSX & Charter Professional Accountants of Canada, 2014, p. 19).

3.4.2. Human Rights Violations and Disclosure Requirements: AIF, MD&A and Other Reporting Tools

Precise language concerning the disclosure of human rights violations is limited in the current Canadian reporting regulations. This section will discuss the shortcomings of the existing regulations in more detail. It is important to note that ESG factors are interlinked with the concept of CSR, and the terms can be used interchangeably. ESG, however, is often used to refer to the reporting and investment side of things, whereas CSR applies more broadly.

NI 51-102

NI 51-102 discusses the specifics for the MD&A and the AIF, and form 51-102F1 serves as the guidance and instruction document. The table below details all relevant language and instruction with regards to human rights disclosure:

Table 2: NI 51-102: Current Reporting Regulations

Form	Section	Language
NI 51-102	s. 5.1 (4)	"If your company has implemented social or environmental policies that are fundamental to your operations, such as policies regarding your company's relationship with the environment or with the communities in which it does business, or human rights policies, describe them and the steps your company has taken to implement them (OSC, 2011, p.117)"

Form	Section	Language
NI 51-102	s. 5.2 (Risk Factors)	“Disclose risk factors relating to your company and its business, such as ... the general risks inherent in the business carried on by your company, ... economic or political conditions and ... any other matter that would be for financial years beginning on or after most likely to influence an investor’s decision to purchase securities of your company (OSC, 2011, p.117-118)”
NI 51-102	s. 5.4 (10) (c)	“Companies with mineral projects must disclose the extent to which the estimate of mineral resources and mineral reserves may be materially affected by ... legal, title, taxation, socio-economic, marketing, political and other relevant issues (OSC, 2011, p.122).”
NI 51-102F1 (Guidance and Instruction for NI 51-102)	s. 1(4)(d)	“[F]or issuers that have significant projects that have not yet generated revenue, describe each project, including your company’s plan for the project and the status of the project relative to that plan, and expenditures made and how these relate to anticipated timing and costs to take the project to the next stage of the project plan (BCSC, 2015, p.6)”
NI 51-102F1 (Guidance and Instruction for NI 51-102)	s. 1(4)(d) Instruction (ii)	“Discussion under paragraph 1.4(d) should include any factors that have affected the value of the project(s) such as change in commodity prices, land use or political or environmental issues (BCSC, 2015, p.7)”

NI 43-101

NI 43-101, or the *Standards of Disclosure for Mineral Projects*, only mentions social and community impacts in relation to Form 43-101F1. Item 20 on Form 43-101F1 provides instructions for including social and community impacts and charges companies to “...discuss reasonably available information on environmental, permitting, and social or community factors related to the project” (BCSC, 2011, p.9). It is not explicitly stated that NI 43-101 applies to operations outside of Canada. However, it is indicated that NI 43-101 applies to international companies that are listed on Canadian stock exchanges, indicating that these regulations apply to operations abroad (BCSC, 2011).

Item 20 (d) further states that the following must be included: "...a discussion of any potential social or community related requirements and plans for the project and the status of any negotiations or agreements with local communities" (BCSC, 2011, p.9).

Conclusion

The above sections provide the extent to which human rights-related issues in the mining sector must be reported under Canadian securities regulations. There are several issues with the regulations, including a lack of clear, consistent human rights NFR requirements, in addition to the question of materiality. These issues will be discussed further in the literature review.

3.5. Non-compliance Penalties

Enforcement is regulated through the provincial SCs. Generally, SCs impose monetary sanctions on individuals or companies that do not comply (OSC, 2019). For example, the OSC can impose fines up to \$1 million for each failure to comply (OSC, 2019). Temporary or permanent bans can be imposed on individuals, which can include trading bans and bans against acting as a director or officer of a public company (OSC, 2019). The commissions can also bring the cases to the provincial courts, although this is not widely practiced (Dhir, 2009 b, p. 459). In 2019, the OSC lists four cases where charges and/or penalties were imposed on businesses and individuals, most relating to fraud and none of which were related to ESG issues (OSC, 2020).

3.6. International Human Rights Principles and Practices

The United Nations Guiding Principles on Business and Human Rights (UNGP) requires MNEs ensure that the responsibility to protect human rights is a fundamental part of their business operations. It is important to note that the UNGP are not considered laws, nor are they enforceable. They are a set of recommended best practices that states have the option to adhere to.

Within the UNGP, there are three pillars. Pillar 1 is entitled "the State Duty to Protect Human Rights," and outlines the State's responsibility to ensure human rights obligations are maintained throughout international operations (United Nations Office of

the High Commissioner for Human Rights, 2011, p. 3). Pillar 1 indicates that “States ... breach their international human rights law obligations [when] ... they fail to take appropriate steps to prevent, investigate, punish and redress private actors’ abuse” (p. 3). While the UNGP recognizes that states are “...generally not required under international human rights law to regulate the extraterritorial activities of businesses domiciled in their territory and/or jurisdiction,” they clearly indicate that “...[t]here are strong policy reasons for home states to set out [the] expectation that businesses respect human rights abroad” (p.3-4).

The UNGP also note that in meeting their duty to protect, states should “[e]nforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically ... assess the adequacy of such laws and address any gaps” (United Nations Office of the High Commissioner for Human Rights, 2011, p. 4). Corporate securities laws are mentioned, and it is stated that “[l]aws and policies in this area should provide sufficient guidance to enable enterprises to respect human rights...” (p.5).

The UNGP is supplemented by the UNGP Reporting Framework, which has two supporting guidance mechanisms: “...implementation guidance for companies that are reporting, and assurance guidance for internal auditors and external assurance providers” (Shift, 2012, pp.1). The UNGP Reporting Framework “...translates the expectations of the [UNGP] into a set of accessible questions...” that are designed to “...guide companies in their reporting and international management of human rights issues” (The Shift Project, 2019, p.6).

Rather than focus on what human rights impacts are considered material to shareholders, the UNGP Reporting Framework requires the disclosure of all “salient” human rights issues irrespective of financial impacts. “Salient human rights issues” is a term coined by the UNGP Reporting Framework. It is defined as “...those human rights that are at risk of the most severe negative impacts through a company’s activities or business relationships” (UNGP Reporting, 2015, pp.1). With this, only the “most severe” human rights impacts are reported, which are gauged by the impacts the businesses will have on others throughout its operations (UNGP Reporting, 2015). This contrasts with materiality, which emphasizes impacts to businesses rather than the individuals affected

by corporate operations. Annex D provides more details on how the UNGP Reporting Framework defines salient human rights issues.

Chapter 4.

Literature Review

4.1. Reporting Regulations and Corporate Disclosure

The large number of mining MNEs incorporated in Canada has been attributed to its relaxed NFR requirements (Haslam *et al.*, 2018). While this may have some effect on which MNEs choose to incorporate in Canada, there are many other externalities that influence this number, including Canada's natural advantage and numerous mineral deposits. Regardless, academics have openly criticized Canada's ESG reporting requirements, stating they are "...minimal at best" (Sarraf, 2007, p.896). Here, it is important to distinguish between private companies, who do not have to disclose anything, and publicly listed companies that are incorporated in Canada, who must report in accordance with existing regulations (Imai *et al.*, 2017).

Canada's current regulations do not guarantee consistency nor accuracy in non-financial reports. Imai *et al.* (2017) state that while companies disclose human rights in their AIFs, larger companies "...tend to use blanket statements on SEDAR..." to indicate human rights risks to investors, which provide inadequate details on human rights violations (p.25).

Other research supports this. In a 2006 survey, Ernst & Young examined the leading 40 international extractive firms, which included Canadian mining MNEs. It was found that only 39% were "...mindful of the necessity of having communications policy with significant equity-holders" (Dhir, 2009 b, p. 440). Further to this, a Shift Project (2019) study indicated that 44% of Canada's top 18 mining firms failed to identify "...which human rights issues are important or relevant to their businesses" (p.10). Dhir (2009 b) also notes that there are weaknesses in the existing NFR framework and links this to insufficient ESG disclosure among Canadian mining companies.

4.2. The Effectiveness of Non-Financial Reporting

4.2.1. General Overview

Canada is limited in its ability to deter human rights violations abroad, and there are diverging opinions regarding NFR and its effectiveness at reducing human rights violations. NFR has been evaluated throughout the literature as a mechanism to deter human rights violations and regulate MNE behaviour abroad. This section will outline the key arguments in the literature surrounding the efficacy of NFR in addressing human rights violations.

The Institute for Human Rights and Business (IHRB) (2017) notes that reporting requirements in the mining industry are a step towards a solution but will not resolve the issue entirely. The IHRB highlight how disclosure can allow citizens and their governments to make informed decisions about the costs and benefits of natural resource extraction (p.7). The IHRB further states that in conflict-affected areas, home states of MNEs must ensure that MNEs do not commit human rights abuses abroad and that reporting can be an effective tool in monitoring their actions (p.7). Overall, the IHRB indicates that reporting requirements are a means by which global governance gaps can be filled (p.7).

The European Coalition for Corporate Justice (ECCJ) is critical of reporting as an accountability mechanism. In their review of the EU Non-Financial Reporting Directive, the ECCJ (2019) states that "...[o]n its own, corporate reporting will never be enough to adequately compel responsible and sustainable businesses conduct" (p. 3). They note that mandatory NFR has "...little to no effect on business decision-making to reduce adverse impacts on society" (p.3). The ECCJ recommends a legislative duty to undertake human rights due diligence as opposed to the NFR avenue. However, the combination of both legislation and reporting can be employed as an accountability check on corporate behaviour abroad. While the legal landscape for this issue is changing (with recent court decisions allowing for companies to be sued for modern slavery), enforcing Canadian human rights standards abroad remains challenging (Tencer, 2020). Not all laws are extraterritorial, and in court the burden falls on the victims, who may be poor or disadvantaged, to take the companies to court and successfully hold them accountable.

In contrast, the Shift Project (2019) indicates that meaningful reporting can catalyze conversations “...amongst managers and employees of a company to improve practices,” and contribute to “...meaningful engagement with stakeholders” (p.6). For the Shift Project, when reporting is done correctly, it can serve as a tool to put human rights issues at the forefront in companies, as well as ensure affected stakeholders are adequately consulted and considered.

Dhir (2009 a) argues that increased transparency in NFR will lead to socially conscious shareholders that are “...equipped with information that can be used to engage corporate management in dialogue and influence corporate operations” (p. 47). However, Dhir (2009 a) cautions against “shaming” mechanisms (p.62). For Dhir (2009 a), the effectiveness of NFR lies in empowering shareholders with knowledge that will allow them to influence corporate decision making, rather than simply publicly shaming MNEs through reporting.

The GRI & CSR Europe (2017) also highlight the importance of NFR. In a recent report, they indicate that “...disclosure of non-financial information is vital for managing change towards a sustainable global economy by combining long-term profitability with social justice...” (p. 6). The report specifies that NFR can increase stakeholder trust, decrease ESG impacts, and increase business integrity (p.6). In contrast, the Copenhagen Business School (2013) found that while NFR increased ESG information in annual reports, the quality was lacking, in that only 1/3 of ESG reports included specific indicators regarding results, and that there was limited coverage of sector-specific CSR issues.

A study on reporting regulations in the Association of Southeast Asian Nations (ASEAN) countries also indicates that robust policies and NFR requirements can influence company processes, specifically those pertaining to human rights (Klukas *et al.*, 2019). They highlight a “...strong correlation between the level of human rights disclosure in a country and the [ESG] disclosure rules, requirements and guidance mechanisms of the stock exchange in that country” (p. 7). The report further states that “[s]tock exchange regulations may be a potent catalyst for mainstreaming the responsibility to respect human rights...” (p. 7).

4.2.2. Mandatory, Voluntary and “Comply or Explain”

Within the realm of NFR, there are several regulatory approaches that can be employed, including (but not limited to): mandatory, voluntary, and “comply or explain.” Mandatory reporting requires companies to report information dictated by regulations. Voluntary reporting requirements allow companies to report if they so decide. As previously stated, the “comply or explain” approach indicates that MNEs must comply with the existing regulations or explain in their public reports why they have not. From an ESG reporting perspective, if regulations require MNEs to report on existing CSR policies, but the companies do not have any CSR policies in place, they only need to disclose that they do not have these policies in order to be compliant. Reporting regulations can be mandatory *and* employ the “comply or explain” principle, which is the case in Canada.

The literature indicates that mandatory NFR may have a positive influence on the degree of disclosure, but there are conflicting results on whether it has an influence on their quality (Hoffmann *et al.*, 2018). One study notes that ESG reporting leads to improvements in environmental practices among entities (Hoffmann *et al.*, 2018). In addition, a study analyzed 100 Indian firms on the Bombay Stock Exchange after stand-alone CSR reports became mandatory and concluded that this regulatory requirement improved their CSR performance (Boodoo, 2016). In contrast, Lock & Seele (2016) compared CSR reports from 237 firms in Europe and found that there was no significant difference between those where disclosure was mandated compared to those where it was voluntary.

Further to this, the literature indicates varying results regarding the comparison of mandatory and voluntary reporting. Habek & Wolniak (2016) analyzed CSR disclosure among 507 European firms, and found that mandatory disclosure requirements lead to higher quality scores for reports. It is important to note that in Habek & Wolniak’s study, only social reporting was examined, and environmental reporting was not included (2016). In this study, Habek & Wolniak (2016) measured quality with the information provided in the reports against 11 criteria in the category of “relevance of information,” and six criteria in the category of “credibility.” A five-point scale was employed, with zero being scored as “...contained no mention of information concerning individual criteria,”

and four as “...best practices and a creative approach;” however, further details on what constituted “best practices” was not provided (Habek & Wolniak, 2016).

A KMPG (2016) study on reporting mechanisms highlights how the “comply or explain” approach can be effective in ESG reporting, largely due to peer pressure. In this study, it is stated that the “comply or explain” approach encourages “...regulatory bodies and local government [to] follow the regulatory approach of [the] central government...” and that with this, “[e]ventually, private companies follow suit by complying with ... voluntary initiatives” (p.13). However, other studies have indicated that when the “comply or explain” principle is employed, “...often the explanations as to why individual topics are omitted are hardly meaningful or are even entirely missing” (Hoffmann *et al.*, 2018).

While the literature indicates varying results, mandatory reporting appears to have the most significant effect on ESG reporting quality, as well as the ability to sometimes influence corporate behavior. However, because the results vary and there are many casual factors involved, it cannot be concluded that mandatory reporting alone will improve ESG outcomes. Despite this, mandatory ESG reporting should not be ruled as a tool for addressing poor corporate behaviour, particularly given that the demand for ethical and responsible investment is increasing among consumers (see section 4.4).

4.3. The Concept of Materiality

The literature notes that the concept of materiality is a problematic aspect of Canadian securities regulations and a casual factor of vague reporting. This section will explore these arguments in more detail, highlighting how materiality in reporting can further perpetuate the issue of non-disclosure.

Guidelines written by the TSX & the Chartered Professional Accountants (2014) indicate that materiality is “...the filter used to decide what an issuer must report on in its mandatory filings” (p. 12). They do not take a definitive stance on whether materiality is related to social disclosure, stating it “could” relate to social issues depending on the situation and the reasonable investor test ¹ (p.12). Ultimately, it is left up to the company

¹ The reasonable investor test is drawn from US securities law and is used for gauging what information to include in a non-financial report. The reasonable investor test indicates that “...a fact may be considered material if there is a substantial likelihood that a reasonable investor would consider it important in deciding whether to invest and at what price...” (Rose & Hennig, 2019, p. 8).

to use their judgment on what ESG information they disclose. In line with this, Dhir (2009 b) recommends that both levels of government design a program to clarify what ESG information should be deemed “material” (p.460).

Sarfaty (2013) states that human rights risks are inherently material due to the long-term costs of inadequate reporting (p. 118). Specifically, Sarfaty highlights the “...growing recognition that human rights risks could affect the value of companies,” something which investors need to consider (p. 118). Sarfaty also notes that the demand for responsible investment is increasing, making human rights violations material information for investors and shareholders (p.118).

Woodside (2009) indicates that materiality is a “subjective concept,” and that there is definitional “ambiguity” surrounding the term (p.6). This is because it is both defined by the “market impact” and “reasonable investor” principles (p.6). Woodside highlights three weaknesses with this approach, one being that by “...by basing disclosure on materiality, disclosure is neither uniform between categories, nor between companies” (p.7). Woodside also addresses the inter-sectoral variation in reporting standards, with mining companies having to report more than oil and gas, as well as the complexity of the language used in reporting standards, which is aimed at shareholders rather than stakeholders (p.7).

Woodside (2009) also states that there is a contradiction between Canadian reporting standards being “mandatory” and “material.” Woodside emphasizes that because Canadian disclosure laws are “...based on materiality ... [they] cannot be considered mandatory” (p.12). This because materiality allows the company to judge what they include in their disclosure, giving them the option to exclude information they feel will not affect their share price. Woodside also states that “...smaller companies are required to disclose more information than larger companies...” due to materiality, producing inequitable outcomes across businesses (p.30).

Mazars LLP & Shift (2015) indicate that materiality can lead to the assumption that company operations pose no risk to human rights, largely due to limited knowledge on human rights and how business activities can impact individual rights and freedoms (pp.15-16). Mazars LLP & Shift also note that materiality provides skewed and under-informed feedback given that it does not require adequate stakeholder engagement

processes (2015). With this, companies are unable to identify where the most salient human rights issues may lie, preventing them from taking due diligence steps to prevent or remedy these risks (2015). As a result, human rights risks may not be identified as priorities for management (2015).

Imai *et al.* note in *The Canada Brand* (2017) that it is "...unlikely that any individual mining conflict would impact the cost of shares of large companies that have several operations in different global regions" (p. 26). Imai *et al.* highlight that larger companies with more mines, are "...likely to generate greater risk of conflict..." and are ultimately held to a "...lower standard of disclosure than smaller companies" (p.26). In their final statement, Imai *et al.* note how materiality can "...allow for the most prolific mining companies to remain silent on violence related to their projects" (p.26).

4.4. Responsible Investment and Reporting

Socially responsible investing, or "responsible investment" (RI) refers to "...the incorporation of ESG factors into the selection and management of investments" (Responsible Investment Association, 2019 b, pp.1). The literature indicates that the demand for RI has increased significantly in recent years. The Responsible Investment Association (2019 a, p.6) notes that between the years of 2012 to 2017, the amount of impact investment assets in Canada has grown from \$3.77 billion to \$14.75 billion. Similarly, Sarfaty (2013) emphasizes that socially responsible investors are no longer a "fringe group," and notes that there are more than 800 global investment institutions that are signatories to the United Nation's Principles for Responsible Investment (p.118-119).

Socially responsible investors depend on a variety of mechanisms to ensure they are making responsible investment decisions. One of those mechanisms is NFR. Having strong reporting mechanisms that require transparency on issues such as human rights is one of the foundations of responsible investing, as responsible investment funds will screen out companies based on CSR practices identified in their ESG reports. As consumer demand for RI grows, it is in MNEs' interest to improve their human rights record and provide transparent, clear disclosure of human rights-related concerns.

Chapter 5.

Non-Financial Reporting Requirements in Other Jurisdictions

This section explores the various NFR requirements in jurisdictions outside of Canada, including the EU, Denmark, Malaysia and the US. Most of these jurisdictions have employed specific legislation at the federal level mandating transparent human rights reporting. Malaysia is the similar to Canada in that the Bursa Stock Exchange, which is regulated by the Malaysia Securities Commission, imposes the NFR requirements.

5.1. The European Union

5.1.1. Overview

The EU Directive on Non-Financial Reporting and Diversity passed in 2014, also known as the EU Non-Financial Reporting Directive (NFRD). The NFRD is cited throughout the literature as a key piece of legislation in the NFR policy realm. It recognizes the UNGP as the authoritative policy framework in addressing issues related to CSR (European Commission, 2015, p. 2, 33).

The NFRD was enforced fully in 2018. The NFRD applies to large public interest companies with more than 500 employees. The term “public interest companies” refers to companies that have transferable securities admitted to trading on the EU regulated market, or credit institution and/or insurance undertakings (BDO Global, 2020). These regulations apply to “...approximately 6,000 companies and groups across the EU,” and includes “...listed companies, banks, insurance companies, and other companies designated by national authorities as public-interest entities” (European Commission [EC], 2019)). In addition, the NFRD requires companies to include non-financial statements in their annual reports.

While the EU regulations do not directly apply to companies, they are mandatory for Member States to implement and uphold. This makes them mandatory for companies incorporated in EU Member States. These regulations give companies the flexibility to

disclose based on European, international, or national guidelines in their non-financial statements (EU, 2014). The main enforcement mechanism is compulsory checks by the Member State's auditor. It is important to note that the auditor is only required to check the existence of the report, not the contents (Szabó & Sørensen, 2015).²

The NFRD employs the “comply and explain” principle. If companies do not have policies in place, under the NFRD, they must indicate that they do not have them in their annual reports and provide a “...clear and reasoned explanation for not doing so” (GRI & CSR Europe, 2017). While materiality is not referred to in the NFRD, it is “...underpins the [NFRD] and ... is reinforced in the EC Guidelines” (GRI & CSR Europe, 2017, p.8). The NFRD is mandated under EU law, and therefore countries are accountable to the EC. The punishment for failing to comply with reporting standards varies differs among Member States. Fines (varying in size from 50 EUR on persons to substantive amounts on companies) and imprisonment are some of the examples of how penalties vary across Member States (GRI & CSR Europe, 2017).

5.1.2. Human Rights Reporting Requirements

The details of the NFRD reporting requirements can be found in Annex B. The key points include: companies must disclose information on their existing policies and instruments; provide information on how they plan to prevent human rights violations; include information on the risk of human rights violations in their operations; as well as information on due diligence mechanisms (EU, 2014).

5.1.3. Example: Denmark Non-Financial Reporting Requirements

Prior to the enactment of the EU NFRD, Denmark had mandated ESG reporting requirements through the *Danish Financial Statements Act* in 2008 (Danish Business Authority, n.d.). The *Danish Financial Statements Act* applied to approximately 1,100 Danish undertakings (Danish Business Authority, n.d.). The EU requirements strengthened the existing regulations.

² It is also important to note that the Board of Directors have a fiduciary responsibility to ensure compliance with all reporting and regulatory issues.

Given that the Danish ESG reporting requirements are modelled after the NFRD, the human rights reporting components are similar but not identical. The Danish requirements differ from the NFRD in how they define the size of a company, and include more detailed enforcement mechanisms (GRI, 2018). In addition, all non-financial reports are subject to regulatory review and a consistency check, with 10-20% of the listed companies being randomly selected each year for auditing (GRI & CSR Europe, 2017; Danish Business Authority, n.d.). The enforcement approach is based on materiality, similar to Canada (GRI & CSR Europe, 2017). The punishment for failing to comply with the *Danish Financial Statements Act* is fines, the size of which are determined by court in accordance of art. 161, 162, and 163 of the *Danish Financial Statements Act* (GRI & CSR Europe, 2017, p.19).

5.1.4. Strengths and Weaknesses

The EU NFRD embodies the UNGP, making human rights reporting a core component. The European Coalition for Corporate Justice (ECCJ) notes the NFRD's reporting requirements are clearly aligned with human rights due diligence (HRDD) processes (2019, p.5). The EU NFRD binds all Member States to the same principles, which makes human rights reporting a core aspect of State membership. However, the NFRD could be strengthened by requiring Member States' auditing bodies do content checks rather than just completion checks. Content checks would include cross-checking company websites to ensure reported policies are consistent, that HRDD mechanisms are effectively utilized, that all material human rights risks are covered, and that any relevant information pertaining to human rights impacts is accurate.

There is criticism of the NFRD on several points. A lack of guidance and clarity in the reporting requirements is one. The ECCJ (2019) also states that many companies are "...struggling with their HRDD disclosure," and cites studies indicating that, in 2019, 19% of companies had "...no description of the risks their operations pose to human rights," in addition to 48% having a vague description (p. 5). Using case studies, the ECCJ demonstrates that while companies indicate that they have human rights policies in place, they do not always contribute a meaningful description of the company's HRDD, such as "...a description of the major risks to human rights, the policies pursued, and ... outcomes..." (p. 16). While the NFRD present a strong regulatory model, there are still areas that require improvement.

5.2. Malaysia

5.2.1. Overview

The main stock exchange in Malaysia is entitled the Bursa Malaysia Stock Exchange (MYX). Within the MYX, there are two categories of listings: Main Market listed issuers and ACE Market Listed Corporations. ACE, which stands for “Access, Certainty, Efficiency,” is seen as the “...ideal market for start-ups and new companies which are run by entrepreneurs who are looking to push for more capital by [publicly] listing their companies” (Fortune.my, 2015).

Chapter 9 of the Bursa Malaysia Listing Requirements states that companies must produce a Sustainability Report in order to be listed on the MYX. The Sustainability Report is described as a “comparable and meaningful statement” designed to ensure stakeholders have a clear understanding of the ESG risks deemed material to company stakeholders (Bursa Malaysia, 2018). Failure to produce the Sustainability Report can result in enforcement action, including fines, public reprimands, and de-listing (Bursa Malaysia, 2019). In 2018 and 2019, there were a total of 42 fines imposed valued at approximately \$4.3 million CAD, making the average fine approximately \$100,000 CAD (Bursa Malaysia, 2020). These measures are overseen and enforced by the Bursa Malaysia exchange (Bursa Malaysia, 2019).

Materiality is the basis of sustainability reporting on the MYX. However, the MYX definition of material information is different from the one utilized by the TSX. It is entitled “material sustainability matters,” and refers to risks and opportunities arising from the economic, environmental and social (EES) impacts of an organisation’s operations and activities (Bursa Malaysia, 2018). EES impacts are further clarified as impacts that could relate to “...sustainability themes such as ... human rights...” (2018, p.47). The reporting guidelines indicate that companies are required to comply with the sustainability disclosure obligations (2018, p.33).

The Sustainability Report must also be “comparable and meaningful” (Bursa Malaysia, 2018, p.38). The Sustainability Reporting Guidelines indicate that for reports to be considered comparable and meaningful, they must contain adequate information that

enables stakeholders to have a clear understanding of the material EES risks and opportunities (2018, p.40). Specifically, the reports should include:

- Actions taken and not just policies;
- Performance data in relation to material sustainable matters;
- Clear, jargon-free reports;
- Consistent reporting methods;
- Performance of the organization over time as well as across the sector (so it is comparable); and
- Quantified impacts on key sustainability initiatives (i.e. tracking cost savings resulting from energy reduction policies) (Bursa Malaysia, 2018, p.40).

5.2.2. Human Rights Reporting Requirements

The Sustainability Statement is the key reporting mechanism on the MYX. Human rights risks and impacts are an integrated part of the Sustainability Statement and incorporated in the EES objectives. It is therefore implied that the term “sustainability” applies broadly to several objectives, of which human rights are one.

Main Market listed issuers are required to provide more details in their Sustainability Reports compared to ACE Market corporations. The exact requirements are detailed in Annex A. Below is a high-level, paraphrased summary of the relevant human rights-related reporting requirements:

Main Market Listed Issuers: Reporting Requirements Key Points

- Companies must produce a narrative “Sustainability Statement;”
- Information included must be balanced, comparable and meaningful (reference is given to the Sustainability Reporting Guide);
- The Sustainability Statement should include all material sustainable matters, including policies to manage the matter, measures or actions taken to deal with the sustainability matters, and indicators demonstrating their performance in managing the sustainability matters; and
- A clear definition of what sustainable matters are considered material (Bursa Malaysia, 2018, p. 36-38)

Ace Market Listed Corporations: Reporting Requirements Key Points

- Require a Sustainable Statement; and
- Requires that all information included in the Sustainability Statement be balanced, comparable and meaningful (Bursa Malaysia, 2018, p. 38).

5.2.3. Strengths and Weaknesses

The MYX regulations set out clear definitions surrounding important terms such as materiality. Directly linking materiality to sustainability objectives clearly indicates that EES impacts must be included in the Sustainability Report. Furthermore, material EES impacts are linked to internal and external stakeholders, rather than shareholders alone (Bursa Malaysia, 2018). While the MYX may rely on materiality, the regulations specify that human rights and other social impacts affecting stakeholders are material in so much that they could impact share prices. Furthermore, sustainability reporting practices, as outlined in the section above, are mandatory. Another strength of the Malaysian reporting requirements is that they require companies to report on actions taken, not just policies. As such, the risk of misunderstanding the regulations being cited as a reason for excluding human rights violations in annual reports is minimized.

Despite these strengths, there have been criticisms of the quality of the reports produced by companies, and allegations that companies merely see the requirements as a compliance exercise or a public-relations stunt (The Malaysian Reserve, 2017). Some have indicated that selective reporting is an issue among some Malaysian companies, in addition to the quality and accuracy of the data (The Malaysian Reserve, 2017). Furthermore, companies have expressed challenges with the requirement to include stakeholder input, and short timeframes for compiling relevant data, particularly since some do not have departments dedicated to managing sustainability reporting (The Malaysian Reserve, 2017).

It is also important to mention that the human rights situation in Malaysia is poor. Fundamental freedoms such as the freedom of expression, assembly and association are systemically infringed upon (Human Rights Watch, 2020). In addition, while Malaysian newspapers report a 97% compliance rate among N100 companies (Peng, 2018), studies have indicated otherwise. One study conducted on five ASEAN countries (including Malaysia) examined the human rights disclosure, compliance and due

diligence rates of the top 5 market capitalized companies in each nation. Within this sample, Malaysia came second overall in terms of monitoring and reporting, at 19% compared to 36% in Thailand (Klukas *et al.*, 2019).

However, this is not to say that the reporting requirements would not function well in an environment where human rights standards are higher. If properly enforced, the MYX regulations could provide a solid foundation for reporting guidelines in other jurisdictions.

5.3. United States

The New York Stock Exchange does not have ESG reporting requirements as a listing rule, nor does the NASDAQ exchange. However, the *Dodd-Frank Wall Street Reform and Consumer Protection Act* does contain a specific requirement (Section 1502) that mining MNEs disclose on conflict minerals that originate in the Democratic Republic of the Congo or an adjoining country, including the source and chain of custody of the minerals (US Securities and Exchange Commission, 2013). In addition, an independent private sector audit of the report is required (2013).

While Section 1502 does present a possible alternative to the current reporting system in Canada, it will not be used as the basis of the jurisdictional scan for this region. Rather, a previously existing reporting system will be used, entitled the *Burma Responsible Investment Reporting Requirements* (BRIRR).

5.3.1. Overview

Following the removal of the US sanctions on Burma, the US Department of State introduced the BRIRR in 2013. These reporting requirements were applied to any US company seeking to invest in and/or establish new operations in Burma. Specifically, the regulations applied to companies that sought new investment opportunities worth more than \$500,000 USD in Burma, or those that sought to invest in the country's energy monopoly (Miller & Chevalier, 2012). These principles were developed around the UNGP and their respective reporting framework and were not based on material impacts to businesses (Martin & Bravo, 2015, p.221). Under this regime, MNEs were accountable to the US federal government.

5.3.2. Human Rights Reporting Requirements

Under the BRIRR, companies operating in Burma had to report the following details specific to human rights:

- “All human rights, worker rights, anti-corruption, and environmental policies and procedures;
- Policies and procedures for hearing grievances from employees and local communities, including whether grievance processes provide access to remedies and how employees/communities are made aware of these processes; and
- Global CSR policies, including those related to human rights, worker rights, anti-corruption, sustainability and/or the environment” (Miller & Chevalier, 2012).

The disclosure format included two versions of the final report, one for the U.S. Government, and one that would be released to the public. The public report included everything except for details on military communications, point of contact information, and risk mitigation with specific regard to human rights, worker rights, and/or environmental issues (Miller & Chevalier, 2012). The regulations indicated that if there was additional information that could not be made public, the company had to provide specific details on why this was. Acceptable reasons included trade secrets or privileged commercial or financial information (US Federal Register, 2016).

Reports were submitted to the U.S Department of State and posted on the U.S. Embassy in Myanmar’s website, and were mandatory for any company that met the requirements listed above. Failure to comply meant that companies risked enforcement action or civil and criminal penalties (Miller & Chevalier, 2012). Further details on the reporting requirements are provided in Annex C.

5.3.3. Strengths and Weaknesses

The BRIRR were criticized by civil society for not having significant punitive action for non-compliance (Truman National Security Project [TNSP], 2018). In addition, the BRIRR were criticized because like Canada, they did not require the creation of CSR policies, but only reporting on existing policies in place (OECD, 2014). In some cases,

companies that reported under these requirements were denounced for a lack of details in their reports (TNSP, 2018).

This was not the case for all companies. Coca Cola was widely praised by civil society for creating a detailed, descriptive report that outlined their HRDD (TNSP, 2018). Coca Cola was supportive of the BRIRR and wrote a public letter in their support before the BRIRR were repealed in 2017 (TNSP, 2018). This report can be found in Annex E.

The BRIRR represented a framework that, with some amendments, could model as a strong human rights-driven regulatory reporting body. Had the BRIRR existed for longer, the US Department of State could have examined the reports for non-compliance and enforced stricter measures to incentivize transparency. Overall, the BRIRR represents a solid attempt at creating a mandatory, state-led reporting initiative specific to human rights policies and practices.

Chapter 6.

Interviews

Interviews were conducted with 5 experts in order to gain a fuller understanding of the policy issue, including:

- Shin Imai, Professor Emeritus, Osgoode Hall Law School and Counsel to the Justice and Corporate Accountability Project
- Jamie Bonham, Director of Corporate Engagement, NEI Investments
- Adjunct Professor, Corporate Social Responsibility (Interviewee 1)
- Social Performance Expert, Mining Industry (Interviewee 2)
- Executive Director, NGO (Interviewee 3)

6.1. Narrative results

Experts were asked what they felt works and does not work with the current regulations. They were largely in agreement that there is a notable lack of clear, consistent language and guidance. Interviewee 1 indicated that while there is an absence of clear language, there is, at minimum, a legal requirement to report. Imai stated that when it comes to holding companies accountable, “nothing works” in the existing regulatory framework. Imai also noted how the current regulatory framework makes enforcement action difficult, and that the lack of substantive and clear language means the entire process lacks transparency and is ineffective.

Another weak point of the existing regulations that was highlighted included the absence of accountability mechanisms. Audits and verification checks were consistently emphasised as a necessity. Interviewee 2 indicated that without accountability mechanisms, ESG reports are reduced to public relations stunts that may not contain accurate information. The majority agreed that for reporting to be effective, accountability checks are essential.

The UNGP and the Canadian Ombudsperson for Responsible Enterprise (CORE) were discussed by many of the interviewees as effective mechanisms for

increasing corporate accountability in the mining sector. The CORE was highlighted due to its link to Export Development Canada (EDC). Both mechanisms were praised for their ability to effectively address human rights violations and abuses abroad.

The term “salient human rights issues” was frequently discussed by interviewees. As previously stated, salient human rights impacts are defined as “...the most acute social, environmental and economic impacts a company can have on people” (Mazars LLP & Shift, 2015, pp.24). Rather than focus on impacts to share prices and/or business, saliency focuses on the impacts business operations can have to individuals (Mazars LLP & Shift, 2015). In contrast to the term materiality, saliency was more highly regarded and deemed more effective by experts.

The UNGP Reporting Framework was highlighted as the most effective and respected framework for defining human rights violations, company responsibilities, and reporting. Interviewee 2 stated that defining a human rights violation can be broad and difficult. However, Interviewee 2 saw the UNGP Reporting Framework as an esteemed, feasible alternative. This sentiment was echoed by other experts.

Whether or not reporting can be effective in reducing human rights violations was also discussed. Some experts felt that reporting alone was not enough to reduce human rights violations. However, Imai emphasized how the increasing demand for RI could indirectly influence corporate behaviour if stronger reporting mechanisms were implemented. Bonham also indicated that reporting is an effective tool at reducing human rights violations because it encourages companies to improve their HRDD. Bonham noted that having more information in non-financial reports could allow investors to make informed decisions, and that currently there is an absence of reliable data to base such decisions on.

Policy options were also discussed, including redefining materiality, stand-alone ESG reports, and federal government intervention. Expert feedback on the options is provided throughout the analysis of my options in Chapter 9.

6.2. Implications

Generally, the experts confirmed my research regarding the current regulations, in that the concept of materiality is inconsistent, ineffective and has disproportionate

effects on smaller companies compared to larger ones. They also indicated that the absence of clear language surrounding human rights violations perpetuated a lack of corporate accountability in the mining sector. Three primary points were highlighted by the experts: (1) that there is a need for substantive language regarding human rights violations in NFR regulations, (2) verification mechanisms for ESG reporting content are necessary, and (3) that the regulations themselves need to be legally backed in order to be taken seriously by the industry. Overall, the interviewees provided clarification on which reporting mechanisms are most effective and can lead to the best outcomes in terms of accurate, comparable and meaningful NFR and HRDD reporting.

Chapter 7.

Policy Options

This chapter provides a detailed discussion of policy options aimed at addressing the regulatory gap identified by this study. Other policy options that were considered but not evaluated are included in Annex G.

7.1. Option 1: Require all mining MNEs report “salient” human rights impacts and violations

This option proposes that Canadian SCs create a new reporting regulation that unilaterally adopts the UNGP Reporting Framework term “salient human rights impacts” and require mining MNEs disclose them in their AIF. Like the Diversity Disclosure regulations (NI 58-101), this option would require MNEs to report on all salient human rights impacts and violations. The concept of materiality would still exist within NFR, but anything related to salient human rights impacts, risks, and violations would no longer fall within its scope.

A new NI could be written for this option. The “comply or explain” approach would not be adopted, and companies would be required to include all relevant information in their AIF. The option would be enforced through the SCs using the same penalty system already in place, but also by market mechanisms such as RI. It is important to note that this option may not address other issues within the current reporting system, such as the administrative complexity of having provinces individually regulate through SCs.

Human rights impact and violations would be gauged by the definition of saliency provided by the UNGP Reporting Framework and would align with the UNGP. Under this framework, “salient” human rights impacts are defined as “...the most acute social, environmental and economic impacts a company can have on people” (Mazars LLP & Shift, 2015, pp.24). Salient human rights impacts can include (but are not limited to) freedom of expression, freedom of association, the right to non-discrimination, the right to life, and the right to water and sanitation (Mazars LLP & Shift, 2015). Figure 1 below provides a visual depiction of where salient human rights impacts fall in terms of their degree of risk to business.

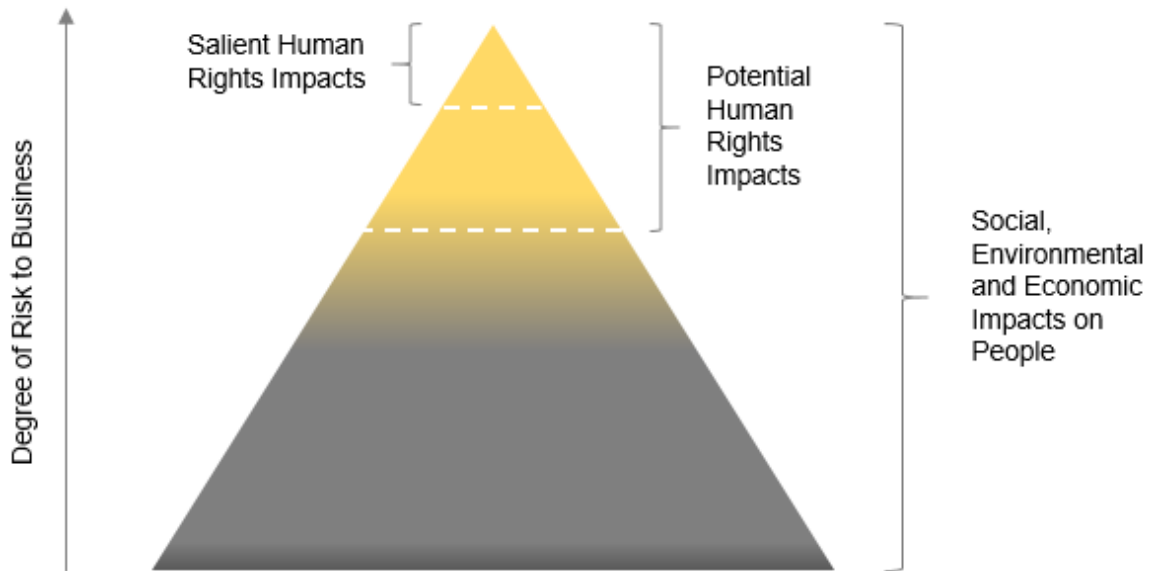


Figure 1: Salient Human Rights Impacts ³

“Most acute” refers to the upper most section of the pyramid. Acute human rights impacts are those that will negatively affect the fundamental freedoms listed above. The full framework and implementation guidelines on how to define saliency is listed in Annex D. Guidelines like those supplementing the Bursa Malaysia reporting framework could be written, so that a clear definition of human rights impacts is available to companies.

In addition to human rights impacts, violations would also need to be disclosed. While this could increase the risk that corporations could face legal action, this requirement could act as a further deterrence mechanism, particularly given recent developments allowing for victims to sue Canadian mining corporations in Canada.

7.2. Option 2: Require all mining MNEs report “material sustainable matters”

This option proposes changing the existing definition of material information so that human rights violations are inherently material. The current definition of “materiality”

³ Note that this figure was recreated based on the image found at: <https://www.ungpreporting.org/resources/salient-human-rights-issues/>. It was not taken directly from the website.

refers to any information which could affect a reasonable investor's decision whether to buy, sell or hold securities of the issuer, particularly if that information was omitted or misstated (TSX & Charter Professional Accountants of Canada, 2014, p.19). Canada could adopt a similar definition as the Bursa Malaysia regulations in order to improve corporate reporting on human rights violations. The basis of disclosure would still be centred on materiality, thus maintaining the shareholder-only, "comply or explain" model. The information would be included in the AIF and the MD&A.

Rather than requiring an entirely new report be produced, the legal definition of "material information" would be modelled after the Bursa Malaysia regulations and be redefined as "material sustainability matters." This term would refer to the risks and opportunities arising from the EES impacts of an organisation's operations and activities (Bursa Malaysia, 2018, p.23). EES impacts are clarified to include "...sustainability themes such as ... human rights" (Bursa Malaysia, 2018, p.23). Therefore, human rights issues would be considered material information.

The exact language employed in the Bursa Malaysia regulations states that sustainability matters are considered material if they: "*(a) reflect the listed issuer's significant economic, environmental and social impacts; or (b) substantively influence the assessments and decisions of stakeholders*" (Bursa Malaysia, 2018, p. 38). If Canada were to adopt similar language, the suggested format would require both (a) and (b), rather than (a) or (b) as listed above, to ensure stakeholders are included. Significant impacts could be clarified in guidance documents to include matters that affect stakeholders' fundamental freedoms, including (but not limited to): economic, social and cultural rights set out in the *International Covenant on Economic, Social and Cultural Rights*, in addition to the *International Covenant on Civil and Political Rights* (United Nations, n.d.). Ensuring that companies have defined these terms correctly would fall on the SCs, given that this would be a necessary part of compliance.

Further to this, this option would clarify the vagueness surrounding the current definition of material information and its relationship to human rights. Human rights impacts would be clearly defined in either the reporting guidelines or the regulations themselves, utilizing the United Nations definition provided earlier in the study.

7.3. Option 3: Adjust ESTMA to include human rights due diligence reports

This option proposes adjusting the *Extractive Sector Transparency Measures Act* (ESTMA) so that HRDD reports are part of the existing annual submissions to NRCan. Currently, ESTMA requires reports detail payments on a project-by-project basis. This includes any “CSR payments,” categorized as “philanthropic or voluntary” contributions made to payees in lieu of other payment categories (NRCan, 2016). ESTMA applies to all “entities,” which are defined as “...a corporation or a trust, partnership or other unincorporated organization that is engaged in the commercial development of oil, gas or minerals in Canada or elsewhere” (p.7). ESTMA also applies to companies publicly listed in Canada, or doing business in Canada that has two of the following criteria:

- “at least \$20 million in assets;
- at least \$40 million in revenue; or
- at least 250 employees (Olynyk *et al.*, 2015).”

This option proposes modifying existing the ESTMA legislation so that reports would also include salient human rights risks and impacts (as defined by the UNGP Reporting Framework), as well as HRDD mechanisms including plans to mitigate and/or remedy any potential issues. Under the new legislation, companies would be required to submit one report which covers payments and human rights impacts and violations. The “comply or explain” model would not be adopted, and companies would need to ensure they have provided the required information. This would create a single point-of-contact for transparency-related reporting in the mining industry.

In addition to reporting, the ESTMA would also be modified to introduce a mandatory 5% annual audit of all reports. Currently, the Minister has the authority to request an audit, but this option suggests requiring that 5% of reports are randomly selected each year and audited regardless of Ministerial input (NRCan, 2016). This auditing function could be carried out by a private sector accounting firm, due to a potential conflict interest with NRCan. This option assumes the auditing cost will be born by the companies.

As of now, ESTMA includes penalties of up to \$250,000 for failure to comply (Olynyk *et al.*, 2015). This option suggests having the penalties match those of the CORE, in that companies have the potential to lose access to diplomatic services and EDC support (Global Affairs Canada, 2019 b). The contents of these reports could also serve as secondary or supporting evidence for complaints given to the CORE, or as an accountability mechanism when claims are being investigated.

Chapter 8.

Policy Criteria

This analysis considers four criteria: effectiveness, compliance, enforcement, and stakeholder acceptance. For some of these criteria, there is limited evidence to assess the direct impacts of the proposed policies, so I make educated predictions (based on the literature review, interviews and jurisdictional scan) to assess how effective each option will be at addressing the policy problem.

While the purpose of securities law is to protect investors, this study examines options aimed at reducing human rights violations abroad. Reporting may be an indirect method, but there is research to suggest that mandatory reporting requirements can improve CSR outcomes. Even so, it should be noted that it is difficult to draw a direct causal link between the reduction of human rights violations abroad and mandatory ESG reporting requirements.

8.1. Evaluation Criteria

The table below outlines the criteria, their measures, and how they will be evaluated and scored. The scores will be based on a high-medium-low scale.

Table 3: Evaluation Criteria and Measures

Societal Objectives		
Criteria	Evaluation	Measure
Effectiveness: Increase in disclosure of human rights impacts occurring abroad	Does the option address transparency and accountability issues by requiring regulatees to meaningfully report on all human rights impacts?	Significant increase in HR disclosure requirements
		Some increase in HR disclosure requirements
		No increase in increase in HR disclosure requirements
Government Management Objectives		
Criteria	Evaluation	Measure
Compliance: Burden on Industry	Does the option increase the regulatory burden on the mining industry? (i.e. significant changes in volume of reporting; increase in cost)	Low increase in burden (qualitative measure)
		Medium increase in burden (qualitative measure)
		High increase in burden (qualitative measure)
Enforcement: Cost to Government	What is the cost of enforcing the option to the federal government?	Low cost to government (qualitative assessment)
		Medium cost to government (qualitative assessment)
		High cost to government (qualitative assessment)
	What is the cost of enforcing the option to the provincial government?	Low cost to government (qualitative assessment)
		Medium cost to government (qualitative assessment)
		High cost to government (qualitative assessment)
Stakeholder Acceptance: Support from relevant stakeholders	Do the securities commissions support this option?	Support
		Neutral
		Oppose

8.1.1. Effectiveness

Effectiveness is the key criterion for this study. It is defined by how effective the proposed policy option will be at creating transparency and accountability in the mining sector through the accurate disclosure of human rights violations in non-financial reports.

This criterion looks at whether the reporting will be meaningful, comparable, and above all else, accurate. If the policy is not expected to increase this type of human rights disclosure, it is scored at “low.” If it is expected to somewhat increase disclosure, it is scored at “medium.” Finally, if the option is expected to significantly increase disclosure, it is scored as “high.” The medium and high scores are double weighted given that reducing human rights violations is the key objective of this study, and the theory employed is that more reporting and transparency will improve company behaviour.

The assessment of how likely the option is to increase human rights reporting will be measured using data gained from the methodologies employed in this study. Some examples of the qualities that could lead to a significant increase in human rights disclosure include:

- If option requires meaningful and comparable reporting on data and impacts;
- If option leads to consistent reporting on a year-to-year basis, so that trends and improvements in human rights outcomes can be identified by stakeholders and shareholders;
- Whether the option requires reporting that relates to outcomes and impacts on stakeholders (in addition to shareholders); and
- The quality and accuracy of the reporting.

8.1.2. Compliance

Compliance is defined as the regulatory burden the option imposes on the mining industry. The regulatory burden can include increases in the cost and volume of reporting required for companies. In addition, this could also include the costs to companies to complete audits on their reports, if required.

The measurement will be high-medium-low. “High” means that there will be a low cost/burden on the industry to comply, “medium” means that there will be moderate cost/burden to the industry, and a “low” score means that there will be a high cost/burden to the industry. The burden may vary depending on the size of the company, the complexity of the audit, and other factors that will be accounted for in the evaluation.

8.1.3. Enforcement

This criterion is defined as the cost to government to enforce the proposed option. Costs could include training officers to ensure company compliance and the cost of implementation of the policy option. Given that NFR requirements are regulated at the provincial level, costs to both the federal and provincial governments will be considered. It will be a qualitative assessment, measured on a high-medium-low scale. A “high” score means that there will be a low cost, a “medium” score means there will be a moderate cost, and a “low” score means that there will be a high cost.

8.1.4. Stakeholder Acceptance

Finally, stakeholder acceptance for the proposed options will be assessed. It will be measured on a scale that examines whether stakeholders support the option (scored as high), are neutral about it (scored as medium), or oppose it (scored as low). The stakeholders assessed will include the provincial SCs. The provincial government and the mining industry are excluded from this assessment to prevent double-counting due to a correlation between cost and stakeholder acceptance for these bodies. This criterion will be evaluated based on the information gathered in the various methodologies employed in this study, such as the interviews.

Chapter 9.

Evaluation of Policy Options

This section will evaluate the three options against the criteria and score them according to data derived from the literature review, the jurisdictional scan, and the expert interviews.

9.1. Option 1: Require all mining MNEs report “salient” human rights impacts and violations

Effectiveness

This option could help improve corporate accountability by making human rights impacts and violations a legal reporting requirement. This option removes the concept of materiality (and all its associated issues) from human rights reporting entirely. Therefore, it is likely that this option would increase the level of meaningful human rights reporting, in that it would be focused on impacts on stakeholders and affected populations, rather than shareholders and business alone. In addition, RI market incentives could play a role in ensuring companies provide detailed reports. However, without compulsory verification checks, this option leaves room for companies to exclude human rights violations and other impacts, even if adequate stakeholder consultation is completed. Given these considerations, this option receives a “medium” score for effectiveness.

Compliance

The compliance cost to industry may vary depending on the company. If industry stakeholders already have reporting mechanisms in place, ensuring that additional information is included in reports will be a low marginal cost. Mazars LLP & Shift (2015) note that in using the saliency approach, companies can change reporting practices from “being a resource drain” to “...being an investment in putting in place processes that enable the company to manage key risks to people and to the business.” In addition, a regulatory impact assessment statement (RIAS) done on NI 58-101 indicated that the compliance cost to industry was valued at approximately \$140,000 per year (with the base year being \$500,000), including the costs of labour (Corporations Canada, 2019).

However, this could vary depending on the size of the firm, given that larger firms have more operations and may need to engage in additional stakeholder consultation and compile greater information. Despite this, the RIAS noted that these costs would decline as corporate reporting departments became more established over time (Corporations Canada, 2019).

During the interviews, Interviewee 2 indicated support for the UNGP Reporting framework and the term “saliency,” stating it was more targeted and realistic compared to other definitions of human rights impacts. As such, this option could decrease the reporting burden on companies through the targeted identification of risks. However, companies that do not have established reporting departments or lack significant resources may still feel that the cost of compliance is high. Therefore, this option scores as “medium.”

Enforcement

The enforcement cost to the federal government for this option is likely to be low, given that it will be administered at the provincial level and regulated through the SCs. Furthermore, it would be relatively easy for provincial governments to implement, indicated by the experts interviewed. The NI 58-101 RIAS indicated that the cost to the federal government would be approximately \$6,500 per year (Corporations Canada, 2019). The enforcement cost to provincial governments would be similar. Therefore, it scores “high” for both levels of government.

Stakeholder Acceptance

SC score “high” in terms of acceptance, given that this option does not retract any of their existing authority over this realm.

Table 4: Option 1 Analysis Summary

Advantages	Disadvantages
<ul style="list-style-type: none"> - Increase in meaningful disclosure due to focus on impacts to individuals rather than impacts to business - Industry support due to smaller compliance burden and reasonable expectations compared to other reporting frameworks - Low enforcement costs to the federal and provincial governments given that it is easy to implement - Medium-to-low compliance cost to industry 	<ul style="list-style-type: none"> - No verification checks, which could hamper effectiveness and cause the issue of inaccurate reporting to persist - Relies on the existing enforcement system, which is demonstrated to be ineffective - May have a regressive effect on small and medium-sized enterprises (SMEs), in that the costs of compliance will be felt more due to smaller profit margins compared to larger companies - Extensive stakeholder engagement may be required for larger companies due to the high volume of projects

Table 5: Option 1 Evaluation

Societal Objectives		
Criteria	Evaluation	Score
Effectiveness: Increase in disclosure of human rights impacts occurring abroad	Increase in disclosure	Medium
Government Management Objectives		
Criteria	Evaluation	Score
Compliance: Burden on Industry	Cost to industry	Medium
Enforcement: Cost to Government	Cost of enforcement: federal	High
	Cost of enforcement: provincial	High
Stakeholder Acceptance: Support from relevant stakeholders	SC support	High

9.2. Option 2: Require all mining MNEs report “material sustainable matters”

Effectiveness

This option could help improve corporate accountability by making human rights violations and their impacts on stakeholders inherently material. RI market incentives, coupled with legal obligations, could make this option effective. In addition, experts

indicated that changing this definition would make human rights violations inherently material and therefore impose a legal requirement on companies to report. They stated that this has the potential to change corporate culture around ESG reporting, as well as provide legal teams with the authority to require that human rights violations be disclosed.

This option could have a regressive effect on SMEs, requiring them to report more compared to larger companies (Imai *et al.*, 2017). However, SMEs were cited multiple times by experts as having worse reputations than larger, more established companies, making this an effective option in targeting poor behaviour in this particular group.

This option leaves the regulatees to use their judgment to decide what information is considered “material.” This could lead to conflict of interest concerns, especially when the regulatees are motivated to keep reputation-damaging incidents quiet. Materiality also focuses the lens on impacts to business rather than individuals. In addition, having reporting be based on the concept of materiality can lead to vague outcomes, even if human rights violations and stakeholder impacts are specifically mentioned. Furthermore, without verification checks or audits, there is no way to guarantee that this option will lead to accurate reporting. Finally, this option employs the “comply or explain” approach, which the literature has noted is not as effective at increasing human rights disclosure in non-financial reports.

Given all the considerations above, this option receives a “low” score for effectiveness.

Compliance

The compliance costs to industry would be similar to those outlined in Option 1. If industry stakeholders already have reporting mechanisms in place, ensuring that additional information is included in reports may be a low marginal cost. However, SMEs and/or companies that do not have established reporting departments may feel that the cost of compliance is high. In addition, basing disclosure on material information, even if that information is specific to human rights violations, can have a regressive effect in that SMEs will be required to disclose more than larger companies, potentially creating equity concerns.

However, this option could present advantages for MNEs that provide adequate and meaningful reports. Like Option 1, increases in transparent reporting could provide the industry with economic benefits, particularly with the increased consumer demand for RI (Corporations Canada, 2019). Basing reporting on material matters, rather than on saliency, also leaves shareholder and business impacts at the forefront, appealing more to industry stakeholders. Therefore, this option is scores as “medium.”

Enforcement

The enforcement cost to the federal government of this option is likely to be low and a similar amount to Option 1, given that it will be administered at the provincial level and regulated through the SCs. Clarification of what is considered “material” in the existing regulations could be relatively straightforward at the federal and provincial level, as it only requires a change of the existing regulations as opposed to creating entirely new reporting bodies. Therefore, the score is “high” for both stakeholders.

Stakeholder Acceptance

SC stakeholders score “high” for acceptance. This is because this option maintains the existing reporting framework and does retract their authority over this realm.

Table 6: Option 2 Analysis Summary

Advantages	Disadvantages
<ul style="list-style-type: none"> - Low enforcement cost to provincial and federal governments given that it is easy to implement - Industry support due to maintaining shareholder-only model - Low compliance cost to industry 	<ul style="list-style-type: none"> - May have a regressive effect on SMEs - May not increase meaningful disclosure because: <ul style="list-style-type: none"> A) Materiality can lead to inconsistent reporting outcomes; B) This option maintains the shareholder only model, which prioritizes risk to business over risks to individuals; C) There are no verification checks; and D) This option relies on the existing enforcement system

Table 7: Option 2 Evaluation

Societal Objectives		
Criteria	Evaluation	Score
Effectiveness: Increase in disclosure of human rights impacts occurring abroad	Increase in disclosure	Low
Government Management Objectives		
Criteria	Evaluation	Score
Compliance: Burden on Industry	Cost to industry	Medium
Enforcement: Cost to Government	Cost of enforcement: federal	High
	Cost of enforcement: provincial	High
Stakeholder Acceptance: Support from relevant stakeholders	SC support	High

9.3. Option 3: Adjust ESTMA to include human rights due diligence reports

Effectiveness

This option could assist in ensuring transparency and accountability standards are upheld, given that reports will be submitted directly to the federal government and audited annually. Experts from all fields stressed that verification methods could increase the likeliness that companies report accurately and meaningfully. This, coupled with the CORE penalties, could create strong incentives for companies to report effectively. As such, this option scores “high” for effectiveness, because it could create a more transparent, accountable regulatory environment.

Compliance

As of now, the ESTMA requires mining MNEs to submit public reports detailing any payments they have made to fight corruption, including any CSR-related payments, on a project-by-project basis (NRCan, 2016). Combining the two reporting requirements and streamlining them through a single entity has the potential to alleviate some of the burden this option could impose on the industry. However, this option would still require that companies provide detailed, accurate reports directly to the federal government, as well as pay for audits if they are required.

In addition, like the other options, company size plays a factor in how much compliance will cost. Experts stated that extractive sector stakeholders were already producing high-quality reports. SMEs may incur greater costs, as some experts indicated they tend to report less than larger companies due to fewer resources. However, several experts noted that SMEs had the worst reputation for human rights violations, therefore increased reporting may be an effective remedy for this issue. Nonetheless, because there could be mixed impacts depending on the company size, Option 2 scores as “medium” for compliance cost to industry.

Enforcement

This option may present a moderate enforcement cost to the federal government. First, it will require changing the existing legislation. Second, it may require hiring more workers. Therefore, this option is scored as “medium” for federal governments.

For the provincial governments, this option will not cost them anything to implement. However, there could be some pushback if they are required to delegate enforcement authority to the federal government. If delegating authority became an issue, the *Impact Assessment Act* could serve as a model to mitigate this through the creation of cooperation agreements between provinces and territories delegating responsibilities (Mockler *et al.*, 2019). Given that this model has worked previously, this option scores as “high” to provincial enforcement.

Stakeholder Acceptance

The SCs may have low support for this option. They may feel it treads on their authority; a sentiment echoed in the expert interviews. Therefore, this option scores as “low” for SC stakeholders.

Table 8: Option 3 Analysis Summary

Advantages	Disadvantages
<ul style="list-style-type: none"> - Mandatory audits with CORE penalties have the potential to lead to accurate and meaningful reporting - Uses the saliency approach rather than materiality, prioritizing risks to individuals over business - Some industry support - Low enforcement cost to provinces 	<ul style="list-style-type: none"> - Medium compliance cost to the industry due to audits - May be difficult to get province and territory buy-in and may require the need of a co-management framework - May have low SC support - Industry may have negative views on federal involvement due to stigma

Table 9: Option 3 Evaluation

Societal Objectives		
Criteria	Evaluation	Score
Effectiveness: Increase in disclosure of human rights impacts occurring abroad	Increase in disclosure	High
Government Management Objectives		
Criteria	Evaluation	Score
Compliance: Burden on Industry	Cost to industry	Medium
Enforcement: Cost to Government	Cost of enforcement: federal	Medium
	Cost of enforcement: provincial	High
Stakeholder Acceptance: Support from relevant stakeholders	SC support	Low

Chapter 10.

Policy Analysis and Recommendation

10.1. Policy Analysis

All three options score relatively evenly. Table 7 below displays a side-by-side comparison:

Table 10: Summary of Policy Analysis

Objective	Option 1: Salient Human Rights Impacts	Option 2: Material Sustainable Matters	Option 3: Adjusting ESTMA and linking to CORE
Effectiveness (x2)	Medium	Low	High
Compliance	Medium	Medium	Medium
Enforcement 1	High	High	Medium
Enforcement 2	High	High	High
Stakeholder Acceptance	High	High	Low

Option 1 presents the better policy alternative based on the evaluations. Experts noted that making human rights reporting a legal requirement could directly target company behaviour. Saliency was also well-received by industry stakeholders, and the UNGP Reporting Framework was cited numerous times as the most effective and efficient reporting mechanism. While Option 2 also imposes a legal requirement to report (and has the same ability to influence company culture as Option 1), it is still based on the concept of materiality which emphasises impacts on businesses rather than individuals. However, without a verification component, both Option 1 and Option 2 may not lead to accurate reporting outcomes.

Option 1 scored higher in terms of effectiveness because it removes the concept of materiality from reporting entirely, whereas Option 2 does not. Option 1 is also stronger because it tackles some of the core issues of the current regulatory framework: a lack of industry transparency, accountability, and overall uneven prioritization of ESG issues across companies. Saliency would require companies to identify risks and

remedies on a yearly basis, and presents a clear, reasonable definition of human rights impacts and violations for MNEs to adhere to. Bonham noted that saliency, in contrast to materiality, forces MNEs to be aware of "...human rights impacts that happen within [their] businesses," not because there is "...a financial fiduciary risk," but rather because there is a clear expectation to report on human rights impacts, regardless of their financial implications.

Material sustainable matters, however well-defined, still allows companies to use their judgment to decide what to disclose and remains an inherently vague definition. As Bonham indicated, "...if your business is exploiting child labour and profiting tremendously from it, and there's no risk of getting caught, then is it a material issue?" Imai also stated in the interviews that the shareholder-only model, which protects investors and shareholders, not stakeholders, is also highly problematic. Option 2 perpetuates this despite its specific mention of stakeholders. Option 1 disposes of materiality as the basis of human rights reporting and refocuses the lens to impacts on individuals, rather than shareholders. Given these considerations, Option 1 scores higher than Option 2, and is thus more recommended as a potential solution.

Option 3 performs well, largely because it scores the highest in terms of effectiveness. This is due to the presumption that random audits, coupled with CORE penalties, could send a strong signal to mining MNEs that human rights violations are taken seriously in Canada. It is difficult to gauge how the mining industry will react to such an option. Given that the ESTMA was well-received in the past, it has the potential to be accepted by the industry. However, it could be viewed as an inefficient government imposition compared to Option 1 (which is also more highly regarded by the industry). Overall, the options all have strengths and weaknesses, in that they may account for some part of the policy gap but fail to address others.

10.2. Policy Recommendation

My recommendation is to employ a two-pronged approach. This is because there are several issues within the realm of NFR that one option alone cannot remedy. Thus, the following strategy is recommended:

In the short-term (2-3 years), apply Option 1. This option would be straightforward to implement and may garner the most stakeholder support. It would not require the delegation of authority from the SCs or the provinces. Moreover, it would push ESG issues (such as human rights impacts and violations) into the realm of legal requirements, which are not easily sidelined by companies. As one expert indicated, legal requirements have the potential to change the way corporations view human rights impacts, in that they become significant issues that cannot be disregarded. This, combined with the increased demand for RI, could be an effective option at improving accountability and transparency in the short-term, but may also influence companies on a fundamental level to change their behaviour.

Without verification or readily enforceable penalties, Option 1 may not have the same influence as government intervention. Furthermore, it leaves enforcement in the realm of the SCs, which could be motivated by profit more than ESG impacts. Once more, without an auditing component, there is no way to verify the content of the reports. This places the burden on impacted stakeholders to identify false or misleading information. Therefore, I recommend that in addition to the first option, Option 3 be implemented in the medium-term (3-5 years) in order to make up for these shortcomings.

Given that Option 3 includes an auditing component, it is more likely to lead to accurate reporting in the mining industry. Furthermore, the federal government is not motivated by profit to the same extent that the SCs may be. Interviewee 2 noted that while the federal government can be perceived as less administratively efficient, from a social good perspective, it may be a better body to monitor corporate activities.

In addition, if Option 1 is implemented first (obligating MNEs to draft detailed reports) there may be less industry resistance to Option 3 when it is implemented later. This is because there may be less of a compliance burden if MNEs are required to establish reporting practices earlier on. When coupled with enforcement actions tied to the CORE, this option has the most potential to change company behaviour and reduce human rights impacts abroad.

The combination of both options addresses two issues: corporate culture surrounding the prioritization of ESG reporting, as well as ensuring the information in

reports is accurate and meaningful. Moreover, they provide clear language on human rights reporting and address the policy problem outlined earlier in this study. Therefore, they are both recommended as solutions to remedy the issue.

Chapter 11.

Conclusion

ESG reporting is a complex, multi-faceted topic that involves numerous stakeholders across governments and industries. Some of this study's findings indicate that NFR is not the best way to remedy human rights violations. However, as ESG issues become more salient in society, and as consumer demand for RI grows, reporting could become a practical check on mining MNEs operating abroad. In addition, MNEs may find it advantageous to commit to transparent reporting, which could indirectly influence and improve their behaviour, building a better brand for Canadian mining companies and attracting more business from international partners.

The options recommended in this study provide potential policy alternatives to the gap in the current NFR regulations. While federal government involvement is generally frowned upon by the industry, linking the ESTMA regulations with the CORE could provide a powerful check on corporate behaviour abroad. Furthermore, incorporating the definition of salient human rights impacts and adopting a risk-management approach to reporting could be a viable alternative to the existing structure of materiality and shareholder supremacy.

When addressing Canada's efforts to promote CSR, John Ruggie indicated that human rights within the mining industry can "...literally be life or death issues" (Ruggie, 2006). When it comes to remedying these problems, some view NFR as a publicity stunt rather than a solution. To some degree, they are not wrong – in its current state, NFR can be viewed as just that. However, through employing substantive regulation and accountability mechanisms, the federal government can transform reporting into a means by which stakeholder engagement is fulfilled and company culture surrounding ESG impacts is changed. While NFR is not a panacea, it is solid middle ground that the industry can utilize both as a competitive advantage and guidance framework to achieve better behaviour abroad.

11.1. Future Considerations

Further research on this topic is recommended. A larger interview sample and obtaining more data by piloting Option 1 in a provincial jurisdiction are some potential ways to continue this research. Gathering data on the number of undisclosed human rights violations through interviews with the victims of human rights in the Latin American region could also provide more understanding of the severity of the problem.

Studies that closely examine the impacts NFR can have on corporate behaviour abroad (ideally within the mining industry) could provide further insight into the effectiveness of NFR as a regulatory tool. Alternatively, studies that examine the relationship between the demand for RI and more stringent reporting regulations could provide insight the efficacy of NFR.

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Annex A.

Bursa Malaysia Reporting Requirements

Table A.1: Main Market LR Sustainability Reporting Requirements, from p. 36 - 38 of the Bursa Malaysia Sustainability Reporting Guide

Main Market Listed Issuers: Reporting Requirements
<p><u>Paragraph 29, Part A of Appendix 9C, Main Market LR</u></p> <p>A narrative statement of the listed issuer’s management of material economic, environmental and social risks and opportunities (“Sustainability Statement”), in the manner as prescribed by the Exchange.</p>
<p><u>Paragraph 6.1, Practice Note 9, Main Market LR</u></p> <p>All listed issuers should ensure that the Sustainability Statement contains information that is balanced, comparable and meaningful by referring to the Sustainability Reporting Guide issued by the Exchange. In identifying the material economic, environmental and social (EES) risks and opportunities, the listed issuer should consider the themes set out in the Sustainability Reporting Guide.</p>
<p><u>Paragraph 6.2, Practice Note 9, Main Market LR</u></p> <p>In making the Sustainability Statement, a listed issuer must include disclosures on the following:</p> <p>(a) the governance structure in place to manage the economic, environmental and social (EES) risks and opportunities (“sustainability matters”);</p> <p>(b) the scope of the Sustainability Statement and basis for the scope;</p> <p>(c) material sustainability matters and –</p> <p style="padding-left: 20px;">(i) how they are identified;</p> <p style="padding-left: 20px;">(ii) why they are important to the listed issuer; and</p> <p style="padding-left: 20px;">(iii) how they are managed including details on</p> <p style="padding-left: 40px;">(aa) policies to manage these sustainability matters;</p> <p style="padding-left: 40px;">(bb) measures or actions taken to deal with these sustainability matters; and</p> <p style="padding-left: 40px;">(cc) indicators relevant to these sustainability matters which demonstrate how the listed issuer has performed in managing these sustainability matters</p>
<p><u>Paragraph 6.3, Practice Note 9, Main Market LR</u></p> <p>For purposes of paragraph 6.2(c) above, sustainability matters are considered material if they –</p> <p>(a) reflect the listed issuer’s significant economic, environmental and social impacts; or</p> <p>(b) substantively influence the assessments and decisions of stakeholders.</p>

Source: Bursa Malaysia. (2018). Sustainably Reporting Guide (2nd Edition). [https://bursa-malaysia.s3.amazonaws.com/reports/Bursa%20Malaysia%20Sustainability%20Reporting%20Guide%20\(2nd-Edition\).pdf](https://bursa-malaysia.s3.amazonaws.com/reports/Bursa%20Malaysia%20Sustainability%20Reporting%20Guide%20(2nd-Edition).pdf)

Table A.2: ACE Market Sustainability Reporting Requirements, from p. 38 of the Bursa Malaysia Sustainability Reporting Guide

ACE Market Listed Corporations: Reporting Requirements
<p><u>Paragraph 30, Appendix 9C, ACE Market LR</u></p> <p>A narrative statement of the listed corporation’s management of material economic, environmental and social risks and opportunities (“Sustainability Statement”).</p>
<p><u>Paragraph 6.1, Guidance Note 11, ACE Market LR</u></p> <p>All listed corporations should ensure that the Sustainability Statement contains information that is balanced, comparable and meaningful by referring to the Sustainability Reporting Guide issued by the Exchange. In identifying the material economic, environmental and social risks and opportunities, the listed corporation should consider the themes set out in the Sustainability Reporting Guide.</p>

Source: Bursa Malaysia. (2018). Sustainably Reporting Guide (2nd Edition). [https://bursa-malaysia.s3.amazonaws.com/reports/Bursa%20Malaysia%20Sustainability%20Reporting%20Guide%20\(2nd-Edition\).pdf](https://bursa-malaysia.s3.amazonaws.com/reports/Bursa%20Malaysia%20Sustainability%20Reporting%20Guide%20(2nd-Edition).pdf)⁴

⁴ Note that both tables were copied verbatim from the sources provided at the bottom of the tables

Annex B.

EU Human Rights Reporting Requirements

This section provides a high-level overview of the NFRD HR reporting requirements. It is not an exhaustive list.

Under the NFRD, the following NFR requirements specific to human rights are listed:

- Information on the company's respect for human rights;
- Information on how companies prevent human rights abuses and/or what instruments they have in place to fight corruption and bribery;
- The NFRD also states that the UN Global Compact, the UNGP, and other international frameworks may be used as guidance to ensure their human rights reporting obligations are met (EU NFRD, 2014).

The NFRD also indicates in that companies must include the following in their reports:

- (a) a brief description of the undertaking's business model;*
- (b) a description of the policies pursued by the undertaking in relation to those matters, including due diligence processes implemented;*
- (c) the outcome of those policies;*
- (d) the principal risks related to those matters linked to the undertaking's operations including, where relevant and proportionate, its business relationships, products or services which are likely to cause adverse impacts in those areas, and how the undertaking manages those risks (EU NFRD, 2014)*

Source: European Union. (2014). European Union Non-Financial Reporting Requirements. Retrieved March 30, 2020, from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0095>

Annex C.

Reporting Requirements on Responsible Investment in Burma

The draft reporting requirements are available on the [Miller and Chevalier website](#).

Given that the final version of the reporting guidelines was unable to be located, the draft is utilized as the comparison. As such, it may not represent the final version of the regulations. However, the draft can still serve as a benchmark by which Canada can model regulations after.

Source:

Miller and Chevalier. (2012). *Reporting Requirements on Responsible Investment in Burma*. Retrieved March 30, 2020, from: https://www.millerchevalier.com/sites/default/files/resources/Burma_Responsible_Investment_Regs.pdf

Annex D.

Salient Human Rights Impacts Identification Framework

A company's salient human rights issues are those human rights that are at risk of the most severe negative impact through its activities or business relationships. Identifying the company's salient human rights issues is also the first step of human rights due diligence under the UN Guiding Principles. For due diligence, this assessment and prioritization of human rights risks is about sequencing: knowing where to focus the company's efforts and resources first if it cannot address all impacts at once. It is not about ignoring less salient issues. For human rights reporting, the company's salient human rights issues define a cut-off point: the company's reporting will then focus on how the company understands and manages these issues.

Salient human rights issues may consist of individual human rights (such as freedom of expression, freedom of association, the right to non-discrimination or the right to water and sanitation), or they may be more general categories that relate to a business activity, a group of potentially affected individuals, or operating contexts that have implications for more than one human right (such as security and human rights, indigenous people's rights, land-related human rights).

A company's salient human rights issues are those human rights that stand out because they are at risk of the *most severe negative impact* through the company's activities or business relationships. This concept of salience uses the lens of **risk to people**, not the business, as the starting point, while recognizing that where risks to people's human rights are greatest, there is strong convergence with risk to the business.

The emphasis of salience lies on those impacts that are:

- **Most severe:** based on how grave and how widespread the impact would be and how hard it would be to put right the resulting harm.

- **Potential:** meaning those impacts that have some likelihood of occurring in the future, recognizing that these are often, though not limited to, those impacts that have occurred in the past;
- **Negative:** placing the focus on the avoidance of harm to human rights rather than unrelated initiatives to support or promote human rights;
- **Impacts on human rights:** placing the focus on risk to people, rather than on risk to the business.

Salience therefore focuses the company's resources on finding **information that is necessary for its own ability to manage risks to human rights**, and related risks to the business. In this way, it helps companies report on the human rights information that shareholders, investors, governments, customers, consumers, media, civil society organizations and directly affected people want to see.

An understanding of a company's salient human rights issues is built on a process by which the company:

- identifies the full range of human rights that could potentially be negatively impacted by its activities or through its business relationships:
 - involving all relevant functions and units across the business;
 - informed by the perspectives of those who may be negatively impacted;
- prioritizes potential negative impacts for attention:
 - primarily based on their potential severity, as defined in the UN Guiding Principles, namely:
 - how grave the impact would be;
 - how widespread the impact would be;
 - how hard it would be to put right the resulting harm;
 - secondarily based on their likelihood, retaining due attention to high-severity, low-likelihood impacts;
- engages with internal and external stakeholders to explain its conclusions and check whether any considerations have been missed.

If the number of salient issues initially identified is too large for the company to report on concisely, it may use the defining elements of ‘severity’ set out above to reduce the number further, for example, by focusing on those impacts that are most widespread.

Any process to identify salient human rights issues should take into account the perspectives of those stakeholders who may be negatively impacted or with their legitimate representatives. In addition, expert stakeholders – shareholders, NGOs and others – are a key audience with which the company should check its conclusions to see whether any considerations have been missed or potentially salient issues overlooked. Where companies already build in engagement with stakeholders as part of their process to identify material issues, they can use those same conversations to explain their findings about salient human rights issues and how they were identified and to test their conclusions.

Further key considerations when identifying a company’s salient human rights issues are set out in the [implementation guidance to section B1](#) of the UNGP Reporting Framework.⁵

Sources:

Mazars LLP & Shift. (2015). Salient Human Rights Issues. Retrieved March 30, 2020, from: <https://www.ungpreporting.org/resources/salient-human-rights-issues/>

Mazars LLP & Shift. (2015). “B1: Statement of Salient Issues.” Retrieved March 30, 2020, from: <https://www.ungpreporting.org/reporting-framework/defining-a-focus-of-reporting/statement-of-salient-issues/>

⁵ Note that these are taken verbatim from the sources provided at the end of the Annex.

Annex E.

Example of BRIRR Report: Coca-Cola

The original report is available at:

<https://photos.state.gov/libraries/burma/895/pdf/TCCCStateDepartmentResponsibleInvestment%20in%20MyanmarReport121213.pdf>

Source:

The Coca-Cola Company. (2013). Responsible investment in Myanmar: the Coca-Cola Company. Retrieved March 30, 2020, from:

<https://photos.state.gov/libraries/burma/895/pdf/TCCCStateDepartmentResponsibleInvestment%20in%20MyanmarReport121213.pdf>

Annex F.

Other Policy Options

1. Mandate standalone ESG Reports

This option suggests expanding the existing regulations to include more specific language around ESG reporting. Rather than have this information be included in the AIF or the MD&A, the ESG report would exist as a standalone regulatory requirement to be completed on an annual basis for extractive companies managing international projects.

This option was considered at length. However, standalone ESG reports were poorly regarded by experts, largely because they were viewed as burdensome, ineffective, inaccurate, and thus unable to address the root cause of the issues without some form of verification. The literature also indicated the ESG reports viewed by some companies as no more than public relations stunts. Furthermore, reporting on salient HR issues is similar to standalone ESG reports, and presents a viable alternative to an extensive and detailed standalone substitute. Therefore, this option was not evaluated and was replaced with option 7.1.

2. Mandate annual submission of ESG reports to a federal regulatory agency

This option proposes creating a separate regulatory body outside of the SCs to monitor international CMAs in developing countries. Like the BRIRR, the body would act as a single point for ESG report submissions. The body will also have an auditing function, through which 5-10% of reports are randomly selected for content audits annually. This option could be similar to the *Impact Assessment Act* and suggests creating an agency under the authority of NRCan. With this, a single contact point would be created for all ESG-related regulatory processes.

After discussing this option with experts, it did not seem feasible due to stakeholder considerations, cost, and the additional regulatory burden it would impose on the industry. As such, it was not evaluated.

3. Improve government-led ESG and reporting guidance programs

Another option considered was improving government guidance documentation on ESG reporting and securities regulations. Like other jurisdictions, the federal government could introduce training for extractive companies on ESG reporting, transparency, and the impacts failing to disclose could have on shareholders.

This option was not considered further because it does not address the root cause of the policy problem: the regulations themselves.

4. Change existing regulations to have more explicit language surrounding HR reporting

Having explicit language regarding reporting on HR violations in the regulations could increase transparency and accountability among extractive companies. However, this would not address the issue of materiality. Given that this option does not address the fundamental issues associated with the policy problem identified, it was not evaluated in this study.

5. Deterrence mechanisms

Strengthening existing SC deterrence mechanisms was considered as policy alternative. However, as the literature suggests, penalties are rarely employed. This option also fails to address other issues in the existing regulations, such as vagueness and lack of concrete requirements on HR reporting. As such, this option was not evaluated.

6. Market-based Incentives

Market-based incentives were also considered a potential option to remedy the lack of transparency and accountability among extractive MNEs operating abroad. However, like the other suggested options, market-based incentives do not address some of the gaps identified in the existing regulations, such as the concept of materiality and absence of substantive language specific to HR violations. Furthermore, there are several existing market mechanisms (i.e. the Dowe Jones Sustainability Index) that

already encourage sound ESG reporting, yet the problem persists. As such, this option was not evaluated.

Annex G.

Criteria for Interviews

The following criteria was utilized when selecting interviewees. The criteria were not all mutually inclusive, as some individuals may not have the legal expertise but have extensive knowledge on CSR and human rights issues in the mining industry:

- Experience working in the human rights/CSR field;
- Expertise/significant knowledge of securities law and regulations in Canada;
- Knowledge of the Canadian mining sector;
- Knowledge surrounding the human rights violations that occur in the mining sector abroad, specifically in the Latin American region;
- Knowledge of Canadian public policy and law;
- Knowledge of non-financial reporting as a regulatory tool.

Annex H.

Interview Questions

1. If you consent to having this information included in the study, what is your experience working in the CSR/Human Rights sector?
2. What currently works with the existing non-financial reporting requirements?
 - a) What does this show in terms of company activities? What do they do/don't do?
3. What are the current gaps in non-financial reporting requirements?
 - a) To what degree is are they problematic? In what ways?
 - b) Should the gap be addressed, and if so, what impacts would that have on companies?
4. In what ways, if at all, do you think the lack of non-financial reporting is related to human rights violations?
5. Would changing the definition of what is considered "material information" to include "material sustainable matters" (i.e. human rights violations and impacts on stakeholders) make a difference in ensuring human rights violations are reported?
 - a) How effective do you think this change would be at reducing human rights violations abroad?
 - b) What is the likeliness that companies would comply?
 - c) Do you think this option would be acceptable to stakeholders (i.e. securities commissions; provincial governments; stock exchanges; mining companies)? Why or why not?

6. Would requiring companies to submit separate, annual CSR reports as a part of their listing requirement on the TSX improve human rights reporting in the mining sector?
 - a) How effective do you think this change would be at reducing human rights violations abroad?
 - b) What is the likeliness that companies would comply?
 - c) Do you think this option would be acceptable to stakeholders? Why or why not?
7. What are your thoughts on requiring mining corporations operating abroad to submit CSR reports directly to a federal-level regulator?
 - a) How effective do you think this change would be at reducing human rights violations?
 - b) What is the likeliness that companies would comply?
 - c) Do you think this option would be acceptable to stakeholders? Why or why not?
8. Overall, do you think that increasing reporting regulations would help reduce human rights violations occurring in the Latin American region and other areas abroad? Why?
9. Are there any policy options in relation to reporting that you think would be effective in addressing the issue of corporate accountability and transparency surrounding human rights violations in the mining sector?
 - a. In your opinion, why would these options be effective?

Annex I.

Consent Form for Interviews



SIMON FRASER
UNIVERSITY

My name is Holly Eksal, and I am a graduate student in the School of Public Policy at Simon Fraser University. I am researching Canadian securities regulations and non-financial reporting requirements specifically within the mining industry. The objective of my research is to develop policy alternatives and a recommendation for how securities regulations surrounding non-financial reporting can be modified in order to improve the human rights record of Canadian mining multinational enterprises (MNEs) abroad. The title of my study is *Using federal regulation to improve the human rights record of the Canadian mining industry: Assessing policy options*.

I am interested in learning about the types of considerations that are important when analyzing and evaluating Canadian securities regulations and non-financial disclosure of human rights abuses by mining MNEs incorporated in Canada. To this end, I would like to interview you either by telephone or in person at a time that is convenient for you.

Participation and Withdrawal

Your participation in this study is voluntary. You are free to withdraw your participation at any point without repercussion. If you would like to retract a statement or withdraw your participation, you can email me directly at heksal@sfu.ca and I will destroy all data associated with you.

After the initial interview, you may be contacted with follow-up questions within 6 months. There will be no additional contact for the purposes of the study after this time.

Study Procedures

With your consent, I would like to record this interview for the sole purpose of transcription, the audio file will not be made publicly available. Interview recordings will

be encrypted on my laptop computer for the duration of the study, after which they will be destroyed. I will retain interview transcripts for up to three years past the publication of the study, after which they will be destroyed. Only I will have access to the raw interview data.

Should you not wish to have your interview recorded, I will take notes instead. The notes will be encrypted on my laptop for the duration of the study, after which they will be destroyed. Only I will have access to the data.

Confidentiality

If you agree to participate, you have the choice of whether or not you would like your identity to be kept confidential. If you would like your identity to remain confidential, I will not identify you or use any information that would make it possible for anyone to identify you in any presentation or written reports about this study without your consent. If it is okay with you, I might want to use direct quotes from you, but these would only be cited as being from a person with your title. It should be noted that phone interviews and emails are not considered secure means of communication, therefore confidentiality cannot be guaranteed.

Employees at Mining Companies: There may be some risks to your job status or reputation if details such as your company name or your name are disclosed during the interview. As such, I will not name the name of your company or your name specifically in my report, unless you give me permission to do so.

Study Results

The results of this study will be reported in a publicly available graduate thesis. If you would like me to provide you with study results, please email me at heksal@sfu.ca.

Participant Consent

Do you consent to participate in an interview for the study titled: *Using federal regulation to improve the human rights record of the Canadian mining industry: Assessing policy options?*

Please check one

Yes _____ No _____

Do you consent to having your name, title, and organization used when referencing your comments and/or direct quotes while participating in an interview for the study titled: *Using Canadian federal regulation to improve the human rights record of mining companies: Assessing policy options?*

Please check one

Yes _____ No _____

If you answered yes to the above question, please indicate the personal information by which you'd like to be referred to:

Do you consent to having your interview recorded for the purposes of transcription for the study titled: *Using federal regulation to improve the human rights record of the Canadian mining industry: Assessing policy options?*

Please check one

Yes _____ No _____

Signature of

Participant _____

Date

Signed _____

Thank you very much for your time.

Holly Eksal

Masters Public Policy Candidate

[...]

Simon Fraser University - Harbour Centre 515 West Hastings St.

Vancouver BC, V6B 5K3