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TITLE 13. Conclusion

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Conclusion

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This volume has attempted to consolidate the diffuse literature on indigenous people and corporate social responsibility (CSR) in the extractive industries that has emerged over the past decade from various social science and humanities disciplines. A critical part of the context for the study is the demand for raw materials to propel the development booms in the BRIC (Brazil, Russia, India and China) economies, which is causing tremendous growth in the extractive sector. Exhaustion of deposits in more accessible regions focuses attention on remoter areas which often intersect with indigenous lands. Companies may also be more attracted to deposits that can most easily be granted approval for development, and, historically, remote indigenous lands had relatively lax regulatory enforcement. Given the constraints of the market and capricious pricing, companies are often in a rush to develop these deposits while the price of a commodity is high. The result of this 'rush', coupled with incipient post-colonial conflicts, has been a growing rise in tensions between indigenous communities, development ventures, governments and certain environmental organisations.

These are times of transition for the extractive industries as well as for indigenous populations worldwide. On the corporate side, there is increasing scrutiny of company activities by governments, civil society networks and financial institutions leading to a push towards CSR. While the manifestation of CSR practices has multiple interpretations (as discussed in the Introduction), a shift in corporate culture is clearly occurring. Whether or not this shift has yet brought palpable benefits to communities is widely contested. At the same time, indigenous movements are also gaining strength in terms of asserting their sovereignty at multiple levels by challenging established nation-states. The assertion of indigenous sovereignty is a particular conundrum for multinational corporations who see themselves as agents of globalisation. While cross-national barriers to commerce are eroded by global agreements and institutions such as the World Trade

Organisation, internal assertions of indigenous sovereignty are arising within nation-states.

We are thus witnessing a simultaneous push towards harmonised governance regimes at the international level, while also encountering a fracturing of state sovereignty through indigenous movements. Extractive corporations find themselves in the midst of these fault lines and are trying to establish their own norms of coping with these simultaneous shifts. Among the mechanisms employed for this purpose have been transnational global policy networks to voluntarily assess corporate performance and set benchmarks for improved conduct (Khagram and Ali 2008). This book has attempted to understand how CSR is configured within these transnational global policy networks, through relevant legislative requirements, negotiated agreements and other mechanisms that affect relationships between companies, communities and governments.

Polarised perspectives?

In 2002, the mining industry concluded an effort to consider its environmental and social responsibility through a transnational global policy network called the Mining, Minerals and Sustainable Development initiative, and launched its report at the United Nations World Summit on Sustainable Development. Issues pertaining to indigenous people were also to be discussed as part of this effort, and alliances were declared between industry and conservation organisations including the International Union for the Conservation of Nature. However, numerous indigenous groups rejected this effort and issued a joint statement which they referred to as 'United Outcry Against Mining Greenwash'. One of the more strident activists in this movement, Joji Carino from the Tebtebba Foundation and the Indigenous Peoples International Centre for Policy-Research and Education in the Philippines, declared that: 'Entering a partnership on Mining and Biodiversity with the World Conservation Union, while marginalizing indigenous peoples and local communities, who are most severely impacted, is a gross cynicism and non-accountability on the part of these global organizations' (quoted in Larsen 2003). These critics were not just 'outlier' activists, but included groups that gained international prominence through the United Nations Permanent Forum on Indigenous Peoples, which was also very active at the time and whose work resulted, for instance, in the adoption of the UN Declaration on the Rights of Indigenous Peoples in 2007, with the only dissenting votes coming from Australia, Canada, New Zealand and the USA.

In 2003, the World Bank published the results of an introspective review of its financing policies for extractive industries projects which had been led by an Indonesian academic and former environment minister Emil Salim. In his attempt to perhaps placate many of the concerns emanating from the Mining, Minerals and Sustainable Development initiative, Dr Salim openly engaged with numerous indigenous organisations and gave them a platform to voice their concerns in an almost cathartic way. One result of this effort was a 2003 workshop held by the Forest Peoples Programme and Tebtebba Foundation in April 2003 in which an 'Indigenous Peoples' Declaration on Extractive Industries' was issued, which declared that:

We, indigenous peoples, reject the myth of ‘sustainable mining’: we have not experienced mining as a contribution to ‘sustainable development’ by any reasonable definition. Our experience shows that exploration and exploitation of minerals, coal, oil, and gas bring us serious social and environmental problems, so widespread and injurious that we cannot describe such development as ‘sustainable’. Indeed, rather than contributing to poverty alleviation, we find that the extractive industries are creating poverty and social divisions in our communities, and showing disrespect for our culture and customary laws (quoted in Colchester *et al.* 2003).

While many indigenous groups have expressed these feelings of antipathy towards any extractive venture, there are many others who are inclined to develop their natural resources and often require technical help in order to do so. Organisations such as the Canadian Aboriginal Mining Association or the Council of Energy Resource Tribes, which consider resource development to be an assertion of their sovereignty, have also existed for several decades and are gaining strength. Differentiation through this perspective is viewed as a mark of independence, similar to casino development compacts among US tribes. Many indigenous groups resent external involvement by environmental groups or civil society as interference in their prerogatives. Fortunately, some environmental groups are beginning to realise the limits of their persuasion power and respecting alternative views towards development (Coumans, Chapter 3 this volume).

The discourse on corporate social responsibility among indigenous people has emerged out of this highly polarised environment, and the chapters in this book have tried to grapple with the diverse attitudes evident within indigenous communities and in the relationship between them and governments as well as corporations. Underlying these chapters has been a clear recognition for the role of regulatory mechanisms and other means of accountability. As Weitzner (2002) reminds us: ‘Corporate social responsibility should not be confused with or substituted for government social responsibility. Governments need to uphold and implement their national and international legal obligations to indigenous peoples, and strengthen legal, regulatory and judicial frameworks where these are weak.’

Recognising this distinction, chapter authors have nevertheless considered the impact of corporate regimes on governments and the potential for mutual co-optation. Our findings reveal the range of indigenous experiences around the world, but also show some coalescence of indigenous communities around key principles of action such as free, prior and informed consent as well as a desire for sustainable livelihoods. To synthesise the findings and goals of this book, let us consider some of the key initial questions that we started with and the lessons that can be gleaned from the research presented in these pages.

What is the nature and extent of CSR initiatives in the extractive industries and how should they be understood in the context of indigenous people?

CSR activities in the indigenous domain are often characterised by an acknowledgement of cultural deference and respect as well as some recognition of past injustices by settler societies. Rarely does this take the form of an apology, unless the same company has been involved in past actions. The extent to which such respect and recognition is man-

ifest in actual agreements is highly variable. Some companies, especially in Latin America, are continuing with consultation mechanisms rather than direct negotiations. Dialogue tables and consultation forums, while useful in fostering some degree of cultural connectivity, start with a premise of asymmetric negotiating power and are often perceived to be unjust by communities. Increasingly, impact–benefit agreements are becoming a way to contractually mark this respect in Australia and Canada. However, their implementation may also affect political relations between indigenous peoples, the state and civil society, and thus deserve more integrated analysis.

What motivates companies to pursue CSR policies that focus on indigenous people?

CSR in the extractive industries has largely been spurred as a result of direct action campaigns by indigenous people and their allies or through regulatory enforcement. In some cases the emergence of CSR norms has involved litigation such as with BHP Billiton's mining in Papua New Guinea and Chevron's oil development in Ecuador. Even if the outcome of the litigation is in favour of the company, the level of negative publicity generated by such litigation is enough to cause voluntary change in behaviour by many prominent companies. The impact of this effect is likely to be greater with publicly traded companies based in developed countries, and particularly those that might not have the resources to have protracted litigation appeals. More broadly, the rise of transnational policy networks and institutions such as the International Council on Metals and Mining suggests that an irrevocable cultural shift in corporate behaviour may be under way.

What is the relation between indigenous political action and CSR?

CSR activities have accentuated some of the political aspirations of indigenous communities in constructive ways by allowing for greater scrutiny of corporate–indigenous interaction. Indigenous people can use CSR forums as an opportunity to interact with the state but often governments can also use such forums to shield inaction on their own part. Interactions between non-indigenous company employees and indigenous populations has produced some constructive confrontation as well as some healing. However, much of this process, as analysed in Scandinavian and Australian cases, is ephemeral in part because of high turnover rates among company employees of the extractive sector. Thus the political capital that may be developed with particular relationships though CSR forums can be very easily lost unless there is greater consistency and more systemised ways of delineating obligations. Networks of devolved governance also need to be clearly articulated between the state, the indigenous community and the corporation to avoid conflict as a result of misperceived expectations.

Under what conditions, if any, can CSR help bring about a fundamental change in the distribution of benefits and costs from large-scale resource exploitation?

Under current market mechanisms, the efficacy of CSR largely depends on either creating incentive mechanisms or instituting punitive action for non-compliance of certain standards. If we are to move beyond the cynicism concerning CSR, particularly among indigenous populations, we must accept the reality of political opposition and come to grips with the nuances involved in dealing with indigenous populations, rather than trying to co-opt resistance. In other words, we need to move from conflict *management* to conflict *resolution* or from *consultation* to *negotiation*. This process may initially seem less efficient to companies since it will probably take longer to implement and may also require specific attention to power relations, such as the role of gender or tribal hierarchies. In addition, CSR activities from the private sector must be complemented with public sector involvement from various tiers of government. Civil society groups should play an epistemic role where possible by providing relevant technical information and acting as a means of redressing power imbalances between settler societies and indigenous communities. However, they must also be sensitive to the limitations of their role in this context and allow space for constructive engagement rather than positional entrenchment.

Further study

Any narrative concerning indigenous communities may be highly evanescent, given the rapidity of changes in the legal standing, economic trajectories and cultural exclusivity of these populations. At the same time, there are also key features of indigenous communities that are timeless and firmly engrained in the fabric of culture, such as a profound association with the land. Over time, indigenous people are likely to exert further influence on development ventures but will also be held to a higher standard in terms of their own self-reliance.

Several of the authors have made specific suggestions for further research to augment the work of this volume. Trebeck suggests that further research should consider how to best 'harness the business case' for indigenous interests. Haley and Magdanz highlight the need for 'new primary data on social networks and well-being for indigenous people of common cultural heritage representing the full spectrum of degrees of market integration . . . to tease out these hypothesised relationships'. O'Faircheallaigh concludes that contractual agreements will need to be evaluated over the long term to consider if they are indeed the most effective way for meeting Aboriginal aspirations for development. Gibson and Kemp exhort us to more fully explore the power relations between women, indigenous and non-indigenous, and the large-scale mining economy by monitoring these interactions over time. Echoing the need for such long-term studies, Barker also concludes that Aboriginal employment levels within the industry need to be carefully monitored and studied to consider nuances of attrition and attraction to such vocations. In addition to these needs for further enquiry emanating from specific

chapters, there are also some overarching themes that we have not been able to adequately address in this volume but could be addressed in future work.

This book has dealt with industrial-scale mining, given the primary topic of *corporate* social responsibility. However, there are also many indigenous small-scale miners all over the world whose lives and norms of conduct regarding extraction need to be better understood in the context of individual entrepreneurship on the one hand and corporate employment on the other. For example, the Kankanaey and Ibaloi of Benguet province in the Philippines have engaged in both small-scale pocket mining and panning for gold, and wage labour in commercial mines for several decades (UN 2002: 24). Such cross-cutting cases deserve further study to appreciate the evolution of indigenous world-views about extraction of non-renewable materials.

Some scholars have suggested that accountability must be considered as a reciprocal phenomenon and that notions of ‘culturally appropriate accountability’ detract from functional political development and improvement of relations between indigenous and settler societies (Rowse 2000). This post-colonial approach suggests that the playing field has now been ‘levelled’ to the extent that objective factors of impact such as environmental pollution and occupational health should be considered without cultural allowances. Such assertions deserve further study in terms of the performance of extractive ventures that may be managed by indigenous communities in the near future. There is, however, a danger that such an approach may dilute the authenticity of indigenous claims. Any research in this domain must be considered with some trepidation and within international norms as it may reify the elusive definition of an ‘indigenous’ person and affect the actual power that they may exercise in particular development efforts (Ooft 2006). Definitions in the international community can be empowering insofar that laws can subsequently be formulated with clarity and persuasion. However, they are also confining in their coverage of ethnicity and identity which are in constant flux among modern societies. The discourse on definitions thus tends to be inherently political in scope, and researchers must be mindful of how such approaches can be co-opted by power brokers and the resultant impact on indigenous aspirations.

Finally, this book aims to transcend an academic audience and reach policy-makers among governments, corporations, civil society and indigenous communities themselves. Evaluating the long-term impact of CSR policies by all these stakeholders must continue. Academics must endeavour to verify claims and refine metrics of performance in order to provide more clear prescriptive guidance. In a world of increasing scarcity of resources, there is likely to be more tension around any extractive industry projects as stakes for rewards are raised by the markets. It is essential that the cost of such a rush to riches does not neglect those who have already been most marginalised.

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