Managing the "S" in ESG: The Case of Indigenous Peoples and Extractive Industries

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ESG, which stands for "environment, social, and governance," is commonly used to describe the three foundational pillars from which companies design their strategies for identifying, measuring, and mitigating non-technical risk. While there is overlap between the three pillars, there are also clear differences in what each means, and how each is being addressed within the sustainable financial management field.

This paper will focus on the social component of ESG. There is mounting consensus that a company's social license, defined as "acceptance or approval by local communities and stakeholders of companies and their operations,"[1] is paramount to its long-run viability and success. Yet "social" seems to be integrating into the business model more slowly than the other pillars. The limited attention to social, as compared to environmental, concerns is evidenced by a recent review of 52 oil, gas and mining companies' boards. Only four had oversight of social performance at the board or executive level, while roughly half had oversight of environmental performance. The environmental and social aspects of CSR are inextricably linked, but they are not one and the same. The social impacts of resource extraction and other forms of large-scale development can inflict as much damage as environmental impacts, and can give rise to the same or higher levels of stakeholder resistance. They include:

- heightened economic insecurity caused by population influxes;
- conflicts caused by demographic shifts and uneven benefits distribution;
- rapid spikes in drugs, crime, human trafficking and violence against women;
- the use of militarization and other repressive tactics to quell community opposition.

To obtain and maintain a social license, companies must prove communities are better off because of their presence in an area. Doing so requires not only mitigation of environmental impacts, but also mitigation of social impacts, effective and inclusive community engagement, integration of international human rights laws and norms, and support for sustainable community development.

In the pages that follow, we will discuss ways to address the social component of ESG using the case of Indigenous Peoples and extractives. We will start with an overview of why Indigenous Peoples are one of the most pressing social risks to extractives, drawing upon the findings of First Peoples Worldwide's Indigenous Rights Risk Report. The second section will explore two major barriers that now prevent companies from building and maintaining positive relationships with Indigenous Peoples and reducing social risk: lack of oversight and suboptimal data.

Although the focus is on Indigenous Peoples and extractives, the importance of a social license is universal, and many of the points raised apply to relationships between all communities and all industries. Bringing social up to speed with environment and governance is especially critical as economies transition to renewable energy sources such as hydropower, palm oil and wind. These industries may burn less carbon than oil and gas, but their effects on communities are just as significant, and many are running into the same litany of social conflicts as their fossil fuel predecessors.

Why Indigenous Peoples Matter

The UN estimates that there are more than 370 million Indigenous Peoples worldwide. There is no universal definition of Indigenous Peoples, and Indigenous Peoples have expressed the view that a definition is not necessary or desirable, stressing "the importance of self-determination as an essential component of any definition that might be elaborated by the UN system."[2] The UN has instead developed a modern understanding of the term based on the following:

- Self-identification as Indigenous Peoples at the individual level and accepted by the community as their member
- Historical continuity with pre-colonial and/or pre-settler societies
- Strong link to territories and surrounding natural resources
- Distinct social, economic or political systems
- Distinct language, culture and beliefs
- Form non-dominant groups of society
- Resolve to maintain and reproduce their ances-

1. http://www.miningfacts.org/Communities/What-is-the-social-licence-to-operate/.
2. http://en.wikipedia.org/wiki/Indigenous_peoples.

tral environments and systems as distinctive peoples and communities.[3]

Although resources worth billions of dollars are extracted from Indigenous territories every year, Indigenous Peoples are "among the world's most vulnerable, marginalized and disadvantaged groups."[4] Additionally, "the impact of such projects includes environmental damage to traditional lands in addition to loss of culture, traditional knowledge and livelihoods, often resulting in conflict and forced displacement, further marginalization, increased poverty and a decline in health."[5] This has prompted Indigenous Peoples to assert their right to self-determination, and pursue a variety of means to combat unwanted development of their lands and resources.

John Ruggie, who led the development of the UN Guiding Principles on Business and Human Rights, told *Business Ethics* that "for a world-class mining operation… there's a cost somewhere between $20 million to $30 million a week for operational disruptions by communities" and that the time it takes to bring oil and gas projects online has "doubled over the course of the previous decade, creating substantial cost inflation."[6] Additionally, a study by Environmental Resources Management found that nearly three quarters of delays associated with a sample of 190 of the world's largest oil and gas projects were attributable to "above-ground" or non-technical risk, including stakeholder resistance.[7] In 2014, Ernst and Young elevated the "social license to operate" to the third place on its list of the greatest business risks to the mining industry.[8] These numbers come from studies of community opposition in general. However, Indigenous community opposition is one of the most pressing social risks to extractives for the following reasons:

Indigenous rights movement

During the past several decades, Indigenous Peoples around the world have mobilized with the aim of amplifying their collective voice. A powerful Indigenous rights movement has emerged with a presence on every continent, and with strong alliances with environmental and human rights advocacy groups. The movement is active at the grassroots, national and international levels, and has strengthened rapidly in recent years thanks to social media. As a result, Indigenous Peoples have an expansive global network of allies they can turn to when their rights are violated, which enlarges the financial and reputational hazards to companies that perpetrate these violations.

International legal framework for FPIC

One of the landmark victories of the Indigenous rights movement has been the 2007 adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) with widespread support from the UN General Assembly. UNDRIP obligates states to obtain Free, Prior and Informed Consent (FPIC) from Indigenous Peoples "prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources." References to FPIC can also be found in the UN Convention on the Elimination of Racial Discrimination, the UN Convention on Biological Diversity, and other legally-binding international instruments. This international legal framework is being used by Indigenous Peoples to derive domestic laws and court rulings, and strengthen their legal basis to delay or stop unwanted development from moving forward.

High and growing overlap between extractives and Indigenous land

Indigenous Peoples comprise 5% of the world's population, but they are disproportionately affected by resource extraction because of their large territorial bases and social, economic and cultural ties to land. A recent review of 52 oil, gas and mining companies found about 39% of production and 46% of reserves on or near Indigenous land. These numbers are rough approximations, but they show a clear trend of high and growing overlap between extractives and Indigenous land, and they are likely to rise in the future as conventional resources become depleted and companies move further into remote areas where Indigenous Peoples are more likely to live. Therefore, companies that violate the rights of Indigenous Peoples expose themselves to social risk at a large proportion of their portfolios.

Indigenous Rights Risk Report

Heightened awareness of social risk is driven by the rising frequency and number of projects that have been delayed or blocked by community opposition, but there is a shortage of hard data demonstrating the full extent of the connection between social and financial performance. To begin filling this gap, First Peoples Worldwide published the Indigenous Rights Risk Report in 2014. The report is a quantitative assessment of the risk exposures facing 52 oil, gas and mining companies for potential violations of the rights of Indigenous Peoples. All 52 companies were publicly traded and based in the U.S.

Because of the highly diverse contexts in which these companies operate, the report assigned risk to 330 projects rather than to companies as a whole.[9] The report revealed that:

3. http://www.un.org/esa/socdev/unpfii/documents/5session_factsheet1.pdf.
4. http://www.ifad.org/pub/factsheet/ip/e.pdf.
5. http://www.un.org/en/events/indigenousday/pdf/Indigenous_Industry_Eng.pdf.
6. http://business-ethics.com/2011/10/30/8127-un-principles-on-business-and-human-rights-interview-with-john-ruggie/.
7. http://www.bsr.org/reports/BSR_LocalContent_March2011.pdf.
8. http://www.ey.com/GL/en/Industries/Mining---Metals/Business-risks-in-mining-and-metals.
9. A database of "scorecards" for each of the 330 projects assessed can be accessed at http://firstpeoples.org/indigenous-rights-risk-report. (See Appendix A: Sample Scorecard).

Table 1

Country Risk (20%)	Reputation Risk (20%)	Community Risk (25%)
Recognition (10%)	Presence of negative attention (30%)	Identification (10%)
Land rights (30%)	Scope of negative attention (30%)	Status and tenure (15%)
Consultation (30%)	Timeliness of negative attention (40%)	Self-governance (15%)
Civil liberties (30%)		Community development (15%)
		External influence (15%)
		Community opposition (30%)

Legal Risk (5%)	Risk Management (30%)
Presence of legal actions (50%)	Policy (20%)
Status of legal actions (50%)	Governance (20%)
	Reporting (10%)
	Consultation and agreement (20%)
	Social investments (20%)
	Social impact assessments (10%)

• Companies are not well positioned to build and maintain positive relationships with Indigenous Peoples and reduce social risk. 35% (115) of the 330 projects assessed were judged to have high risk exposure to Indigenous community opposition or violations of Indigenous Peoples' rights, 54% (177) had medium risk exposure, and 11% (38) had low risk exposure.

• Preliminary back testing found that companies with lower average project risk scores generated higher investment returns than companies with higher average project risk scores. Although there were some qualifiers to this statement, which are mentioned below, this finding marks an important step towards further demonstrating a strong connection between social and financial performance.

The methodology used to reach these conclusions was designed over a period of two years using input from investment analysts and industry professionals, as well as Indigenous Peoples. The starting point of the analysis was provided by the annual reports of the 52 companies, which were analyzed to determine which of their projects took place on or near the lands of Indigenous Peoples. Such projects were then assessed against five risk indicators (Country Risk, Reputation Risk, Community Risk, Legal Risk and Risk Management), and rated on a scale of 1 (low risk) to 5 (high risk) for each. The weighted average of these ratings determined a project's risk score. The five risk indicators were further broken down into weighted subindicators (as shown in Table 1).

After applying this methodology to 330 oil, gas and mining projects that were determined to be on or near Indigenous land, the results were back-tested to analyze the relationship between project risk scores and investment returns. The companies were ranked by their average project risk scores, and divided into a group of "leaders" and a group of "laggards." The groups were adjusted to ensure, to the extent possible, equal distribution of market cap and sub sector, and each group's annualized returns between December 31, 2010 and December 31, 2014 were calculated. The leaders, as reported in Table 2, outperformed the laggards by 4.21%.

Nevertheless, it should be noted that the leaders had significantly higher average market cap than the laggards. Given that the commodity price downturn during this timeframe was especially hard on smaller sized companies, it calls into question whether the results depict a relationship between project risk scores and investment returns, or simply reflect the average market cap differences between the two groups. To effectively control for this possible market cap bias, there is a need to enlarge the sample size to at least 100 companies. Nonetheless, these findings mark an important step towards further demonstrating a strong connection between social and financial performance, and call for more research.

Lack of Oversight

As stated earlier, there are two main barriers preventing companies from building and maintaining positive relationships with Indigenous Peoples and thereby reducing social risk. The first has to do with inadequate governance and oversight by corporate boards.

With the aim of evaluating the effectiveness of companies in identifying, measuring, and mitigating social risks at the board or executive level, the "governance" sub indicator in the Indigenous Rights Risk Report methodology assessed companies' capacity to identify, measure and mitigate social

Table 2

	Annualized returns	Average market cap	Average project risk score
Leaders	-4.52	33,511.97	3.00
Laggards	-8.73	27,023.29	3.48

risk at the board or executive level using the following criteria:

• Does the company have a board committee with social performance in its charter?

• Does the company have a board member or executive whose biography indicates social performance expertise?

• Does the company have an active and independent external body to advise and evaluate social performance?

Only four of the 52 companies—ConocoPhillips, ExxonMobil, Freeport-McMoRan and Newmont—could answer yes to one or more of these questions. This finding offers an explanation for the prevalence of risk in the sample: the absence of board oversight of social performance means the reporting chain is not reaching the highest level of management. This creates a lack of attention and accountability to social performance that permeates the rest of the company. It is important to recognize that since the term "social performance" here encompasses all issues related to community engagement, human rights or social investment. Companies are poorly positioned to build and maintain positive relationships with all communities, not just Indigenous Peoples.

Each of the four companies had a board committee with social performance in its charter. Specific provisions related to community engagement, human rights or social investment were found in the mandates of ConocoPhillips' Public Policy Committee, ExxonMobil's Public Issues and Contributions Committee, Freeport-McMoRan's Corporate Responsibility Committee, and Newmont's Safety and Sustainability Committee. However, only one of the four companies (Newmont) had a board member or executive whose biography indicated social performance expertise, and only two companies (ExxonMobil and Freeport-McMoRan) had an active and independent external body to advise and evaluate social performance.

Of course, board oversight of social performance is no guarantee of good practice on the ground. All four companies had some high risk projects. Nevertheless, they comprised four out of the five companies with the highest percentage of low risk projects among the 52 companies. They were also more likely than their peers to have policy commitments to the rights of Indigenous Peoples, and to provide evidence of community engagement and social investment at their projects. Although they did not have a lower percentage of high risk projects than their peers, they were among the four largest companies in the sample, and therefore were a) more frequently targeted by activist campaigns due to their global profile, and b) more likely to have projects in emerging markets. These two effects elevated their Reputation Risk and Country Risk profiles, offsetting the effects of stronger Risk Management.

The other 48 companies in our sample had no board oversight of social performance. To examine the effects this has on social risk management, we point to a 2014 study by the Harvard Project on American Indian Economic Development[10] on improving tribal corporate relations in the mining sector. The study established a continuum for measuring companies' capacity to achieve successful partnerships with Indigenous Peoples. As shown and elaborated on in Figure 1, the continuum followed four tracks: values, policies and systems, evaluation and accountability, and technical capacity.

The following paragraphs explain how lack of oversight positions companies at the low end of each track.

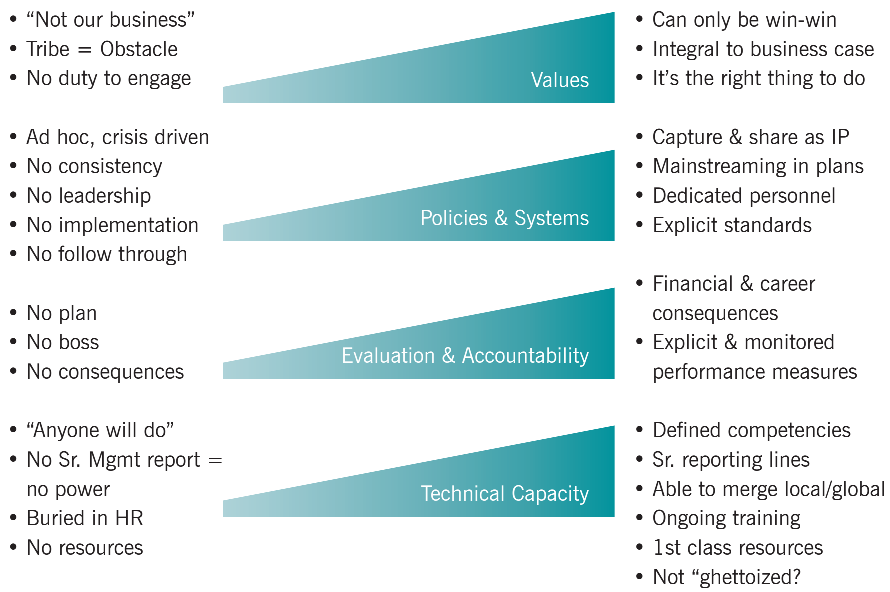
Values

The board plays a major role in defining a company's core values, which in turn serve as the guiding principles from which all decisions are made. It can be assumed that matters within the board's purview are considered most important to success, that matters excluded from the board's purview have lower priority, and that the distinction between the two shapes the behaviors, beliefs and attitudes of the rest of the company. The absence of board oversight of social performance gives rise to a corporate culture that views communities as "not our business" and accepts little or no duty to engage.

Of course, companies are not monolithic entities. There are certainly people and departments within companies whose values do not reflect these classifications, but without buy-in from the top, such people and departments become siloed and excluded from decision making. Table 3 shows quotes from oil, gas and mining company employees depicting two value systems: the "old school," which emphasizes compliance and regulation; and the "new school," which emphasizes engagement and relationship building. Both are found within most companies, often in conflict with

10. http://hpaied.org/sites/default/files/documents/miningrelations.pdf

Figure 1



each other. Without leadership to align companies with the "new school," these two values systems remain in perpetual gridlock, with the "old school" usually having the upper hand in decision-making.

Policies and systems

What is not valued by a company is unlikely to be supported with sound policies and systems. Another key finding of the Indigenous Rights Risk Report was that only 17 of the 52 companies had policy commitments to the rights of Indigenous Peoples. The majority of these policies were adopted during the past five years, signaling a positive trend, but it is still far from standard practice. Additionally, the prevalence of risk in the sample indicates that these policies are not being matched with effective and consistent implementation. Only one company (ConocoPhillips) supplemented its policy with publicly available implementation guidelines and metrics.[11]

Lack of oversight also elicits ad hoc, crises driven systems for social risk management that are reactive rather than proactive in nature. Boards find themselves alerted to social risk by bad press, lawsuits or protests rather than communication through an internal chain of command. This "management by headlines" approach to social performance inflicts simultaneous harm on companies and communities, and makes remediation difficult because companies are not viewed as responsive to local concerns until after they become local grievances, financial and reputational damage has been incurred, and resentment and distrust have been fostered.

Evaluation and accountability

As mentioned earlier, the absence of board oversight of social performance means the reporting chain is not reaching the highest level of management. This creates a lack of attention and accountability to social performance that permeates the rest of the company. It affects upper, middle, and lower management, as well as staff, supply chain, and joint venture partners. Employees are not given incentives or rewards for success, nor are there consequences for mishaps or failure. Like anything that inflicts financial and reputational harm on a company, conflicts with communities should result in corrective measures against those responsible for them. Without systems for evaluation and accountability, companies have no way to assign responsibility, let alone implement corrective measures. In doing so, they sow the seeds for repeating the same mistakes over and over again.

Lack of oversight also prevents companies from replicating successes. Relationships between Indigenous Peoples and extractives are largely characterized by contention, but there are isolated examples of working success. In Australia, successful Aboriginal partnerships involving cultural heritage, employment, and community development funding were identified at Apache's Devil Creek Gas Plant[12] and at Newmont's Boddington, Jundee, and Tanami mines.[13] In the U.S., the Northern Ute and Southern Ute Tribes have entered partnerships with numerous oil companies, including ConocoPhillips, QEP Resources, and Range Resources, with little to no evidence of community opposition. Without

11. http://www.conocophillips.com/sustainable-development/people-society/engaging-stakeholders/indigenous-peoples/Pages/management-systems.aspx.
12. http://gastoday.com.au/news/developing_domestic_gas_at_devil_creek/75497.
13. http://sustainabilityreport.newmont.com/2014/economic/economic-indigenous.php.

Table 3

"Old school"	"New school"
"We follow government laws for consultation. That is what it is here, not any of those international concepts."	"We align with ILO Convention 169. National laws vary so we need to bring our policies up to international standards."
"We are not a training institution. We are an oil and gas company."	"Respect for local traditions is key to our success."
"We avoid being direct. It is our corporate strategy to have options based on reactions. Communities get mixed messages."	"We work within their culture to support them. It is not whether we can give, take or receive, but how we can learn from Indigenous Peoples."

evaluation and accountability, companies have no way to capture the factors that lead to these successes and replicate them elsewhere. Sure enough, many companies had low risk scores at one or two projects, and medium or high risk scores at the rest, indicating that whatever is going well at those one or two projects is not being picked up and spread to the rest of the company.

Technical capacity

Finally, lack of oversight has implications for the technical capacity track. Without values, policies and systems, and evaluation and accountability, companies are likely to underinvest in the human capital needed for good social performance. This evokes an "anyone will do" approach to hiring and training social performance managers and staff, in which positions are filled by individuals who do not have the skills or expertise to execute their roles. One company had projects on or near Indigenous land in 20 countries, but its team of Indigenous Peoples "experts" consisted of five people based in one country, none of whom had any experience living or working outside that country.

Additionally, some companies do not have social performance managers and staff at all, instead "farming out" the entire community engagement process to consultants. Bringing in outside expertise certainly adds value in some cases, but companies need an adequate balance between outside expertise and building their own internal technical capacity. Too much reliance on consultants leads to relationships between communities and consultants, rather than communities and companies, and fails to position the company for long-term engagement.

Suboptimal data

The effects of lack of oversight on social risk management are compounded by a second major gap: suboptimal data. Companies do not have the information they need to identify, measure and mitigate social risk, which creates another set of problems for social performance managers and staff. The next section elaborates on three areas in which companies are showing the effects of too little data:

- costs of not having a social license
- benefits of having a social license
- baseline data for community engagement

Costs of not having a social license

As mentioned earlier, heightened awareness of social risk is driven by the rising frequency and number of projects delayed or stopped by community opposition, but there is a shortage of hard data demonstrating the full extent of the connection between social and financial performance. This is because companies lack accounting, budgeting and financial planning systems that demonstrate the costs of not having a social license.

Consistent with this observation, a 2014 study by the CSR Initiative at Harvard Kennedy School found that "most extractive companies do not identify, understand and aggregate the costs of conflict with local communities." The study established a typology of costs experienced by extractive companies arising from conflict with local communities that "suggests that the range of costs experienced by companies may be significant in their scope and magnitude, and that conflict is a means by which the social (and environmental) risks posed by projects can translate into serious business risks."[14] Without accounting, budgeting and financial planning systems that factor these costs, companies cannot understand their full impacts on their business, and social performance managers and staff cannot fully articulate the consequences of community opposition to their colleagues.

Consider, for example, the 2013 dispute between Southwestern Energy and the Elsipogtog First Nation in New Brunswick, Canada. The company's poor social performance prompted a blockade that halted its exploration activities for several weeks, and ended in violent confrontation with police that made international headlines. An injunction filed by Southwestern Energy to dismantle the blockade cited losses of $60,000 a day.[15] However, this number only reflected the costs of rental equipment that was unusable during the blockade. It did not consider legal fees, lost productivity, staff and executive leadership time, or the public relations expenditure needed in response to the surge in bad press. It did not account for the fact that hydraulic fracturing was later banned in New Brunswick, rendering its $37 million investment in the province stranded until further notice. The province "will require five conditions to be met before the moratorium is lifted. These include beefed up environmental and health regulations, a plan for waste water disposal, consultations with Aboriginal groups, a royalty structure and the establishment of a social license."[16]

Benefits of having a social license

Accounting for the benefits of having a social license is as important as accounting for the costs of poor social performance. Companies struggle with suboptimal data in this area as well. Many devote significant resources towards local procurement, charitable donations, and other forms of social investment, but few have the information they need to prove if and how these efforts yield tangible positive benefits—to communities or themselves.

In 2015, First Peoples Worldwide interviewed 20 CSR employees to assess the current landscape of social investment. When asked about their companies' greatest successes in contributing to community development, most respondents gave one-off examples, such as creating platforms for participatory development, empowering female entrepreneurs or reducing malaria, but most could not point to a case that proved communities are better off because of their presence in an area. This is the fundamental question of a social license, and companies do not have the information they need to answer it.

Additionally, most respondents could not point to a system for exhibiting how these successes contribute to the broader success of their company. At most, they could point to the financial and reputational hazards of community opposition and frame social investment as a preventative measure. While articulating the costs or "risk" aspect of social performance is a challenge, articulating the benefits or "value creation" aspect is even more difficult. A 2011 study on measuring returns on community investments in mining revealed that:

...a lack of hard financial data for community investments has made it difficult to assess their business benefits and hence justify budgets that compete with other corporate priorities. The inability to articulate the costs and benefits has traditionally left community initiatives outside the core project planning process impeding cross functional alignment, communications and strategy design.[17]

The "social investment" sub indicator in the Indigenous Rights Risk Report methodology assessed the social investment strategies of the 330 projects by looking for:

- local control over design and implementation
- sustainability

The report found that companies are lagging severely in this area. Almost all the companies had some sort of CSR giving program, but because the report assigned risk to projects, it counted only social investments with explicit ties to the places where they do business. When using this criteria, only 99 of the 330 projects had social investment strategies to begin with. Only 39 of the 330 projects had social investment strategies with evidence of local control over design and implementation. A non-participatory, top-down approach to social investment results in projects that communities do not necessarily need or want, while costing the company critical opportunities to engage.

Finally, just five of the 330 projects had social investment strategies with evidence of sustainability. Without a deliberate means of ensuring benefits accrue throughout and beyond the project life cycle, social investment becomes highly susceptible to market ups and downs, and disappears when a company exits an area, leaving communities no better or worse off than before. The few projects that had social investment strategies with evidence of sustainability did so by establishing or supporting community foundations: locally

14. http://www.hks.harvard.edu/m-rcbg/CSRI/research/Costs%20of%20Conflict_Davis%20%20Franks.pdf.

15. http://america.aljazeera.com/articles/2013/10/21/shale-gas-companylosesbidforinjunctiontohaltcanadaprotests.html.

16. http://ca.reuters.com/article/domesticNews/idCAKBN0MM2OZ20150326.

17. https://commdev.org/userfiles/SRMining%20Veronica%20Nyhan%20Jones,%20Jelena%20Lukic,%20Arjun%20Bhalla,%20Dafna%20Tapiero%20-%20July%2015.pdf.

controlled grant-making institutions that raise funds from a variety of sources, with the aim of building an endowment as a permanent resource for a local community. First Peoples Worldwide and Global Fund for Community Foundations is currently working on a study to explore the effectiveness of this practice and the feasibility of taking it to scale.

Baseline data for community engagement

Typically, companies acquire baseline data for community engagement by conducting social and environmental impact assessments (SEIAs). SEIAs are becoming an increasingly standard component of projects, and a growing number of jurisdictions now require them by law. However, in most cases, they contain sub optimal data. Social performance managers and staff need information not only about a project's expected impacts on a community, but about the community itself. The latter is usually excluded from SEIAs, or limited to boilerplate demographic statistics that lack key data points about the following:

• Political landscape: companies need to know the various groups and individuals within communities that represent decision makers and influencers of public opinion. In Indigenous communities, these often include both formal and informal or traditional authorities.

• Land tenure: companies need to know the full extent of ownership and use of the land on or near their projects. This also includes both a formal and informal component. A recent report by the Rights and Resources Institute, Oxfam, and the International Land Coalition found that 2.5 billion people lack formal title to the land on which they live.[18]

• Development capacity: Effective social investment requires companies need to know communities' existing capacity for social and economic development, as well as their development needs and aspirations.

The efficacy of SEIAs is further reduced by an extremely narrow definition of impact. Most assess only those impacts that are directly traceable to the project, while ignoring the cumulative impacts of multiple projects, companies and industries in close geographic proximity. Cumulative impacts do incur significant damage to communities, yet they are usually excluded from SEIAs and therefore overlooked in mitigation strategies.

One area where cumulative impacts have been particularly destructive is the Fort Berthold Reservation in North Dakota, which lies at the center of the Bakken Formation, one of the world's largest and most intense concentrations of oil and gas drilling. According to a 2016 paper by University of Colorado Law School:

...oil and gas development has brought an unprecedented rise of violent crime on and near the Fort Berthold Reservation. Specifically, the influx of well-paid male oil and gas workers, living in temporary housing often referred to as "man camps," has coincided with a disturbing increase in sex trafficking of Native women. According to one report, sexual assaults on women on the Fort Berthold reservation have increased by 75%. This increase comes at a time when Native women are already 2.5 times more likely to experience violent crimes than other groups of women in the United States.[19]

How are companies responding to these troubling statistics? They are not. No companies are accepting responsibility because (1) the problem is caused by the presence of multiple companies rather than one company, and (2) the perpetrators are largely employees off the clock, rather than companies themselves.

Some companies push back on their obligation to mitigate cumulative impacts by arguing that they cannot mitigate what they cannot control, or that they should not be held accountable for the actions of their competitors. This mode of thinking is understandable from a liability standpoint, but from a risk management standpoint it is shortsighted. One company's efforts to mitigate impacts, however well-executed, are unlikely to be acknowledged if communities are overwhelmed by cumulative impacts. This perpetuates a "race to the bottom" in which companies are discouraged from being leaders, responsible companies become grouped in with their less attentive peers, and the social license for the industry as a whole is jeopardized.

Although companies should not be held accountable for the actions of their competitors, they should be working together to mitigate cumulative impacts, rather than ignore them. Such collaboration is not unheard of. For example, numerous intercompany initiatives have been established for the purpose of developing rigorous standards and codes of conduct on workplace health and safety issues such as employee injuries, vehicle accidents, and proper use of chemicals.[20, 21] The same coordination is needed for collaborative solutions to violence against women and other cumulative social impacts.

Conclusion

A sea change is happening in the market, as evidenced by a 2016 letter from the CEO of Blackrock, the world's largest asset manager, that calls on companies to sharpen their focus on ESG in order to generate sustainable returns.[22] Companies are responding, but many have a long way to go. The Indige-

18. http://www.rightsandresources.org/en/news/many-indigenous-people-lack-title-to-land-where-they-live-research-shows/#.VuF8dMe8zzI.

19. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2723517.

20. http://www.api.org/GlobalItems/GlobalHeaderPages/About-API/Industry-careers/Oilfield-Training-Prog.

21. https://www.osha.gov/SLTC/oilgaswelldrilling/.

22. http://www.businessinsider.com/blackrock-ceo-larry-fink-letter-to-sp-500-ceos-2016-2.

nous Rights Risk Report revealed that companies are weakly positioned to build and maintain positive relationships with Indigenous Peoples and reduce social risk, and have little or no oversight of social performance at the board or executive level. This paper concludes with calls for more oversight and more data on the social component of ESG.

Corporate boards must assume a more proactive and direct role in identifying, measuring and mitigating social risk. This is just one step towards integrating social performance into the business model, but it is an important step that will help catalyze the changes needed within upper, middle and lower management. Currently, there is a movement underway to encourage boards to adopt a Statement of Significant Audiences and Materiality that informs management, providers of capital, and other stakeholders, which audiences the board believes are most important to the survival of the corporation. While it is the board's decision to define significant audiences and materiality, the Statement provides a placeholder for securing board and executive level accountability for social performance.[23] Additionally, a 2016 report by CERES details specific, actionable recommendations that can help boards oversee the production of tangible environmental and social impacts for their companies.[24] Moving forward, companies need to build on these tools and resources in ways that specifically address the social aspect of sustainability, where progress has come more slowly than in the case of environmental impact.

Additionally, companies need more information to understand the value that good social performance creates for business, and to equip them for building and maintaining positive relationships with communities. At the individual company level, this entails comprehensive and granular analysis of social risk, the full range of costs of conflicts with local communities, the benefits of having a social license, and quality baseline data for community engagement. At the macro level, each of these data points must be aggregated to understand their implications across industries. The Indigenous Rights Risk Report, whose findings are summarized in these pages, revealed that companies with lower average project risk scores generated higher investment returns that companies with higher average project risk scores, but this is only a start. We need to build on these findings with a larger sample size. Anecdotal examples of "the business case" for a social license can be strengthened only with much more hard data that demonstrates the full extent of the connection between social and financial performance.

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23. http://www.hbs.edu/faculty/Publication%20Files/16-023_f29dce5d-cbac-4840-8d5f-32b21e6f644e.pdf.

24. http://www.ceres.org/view-from-the-top.