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Emerging Metrics for ESG Reporting on Indigenous Matters

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In recent years a variety of environmental, social and governance (**ESG**) reporting standards have evolved with a view to standardizing the measurement of performance on sustainability issues including greenhouse gas emissions, water usage, social and community development and human rights. However, international standards developed to date have largely ignored or inadequately dealt with Indigenous rights and interests.[1] Even more troubling is the fact that most reporting standards have been developed without Indigenous input or values. Credible reporting metrics are beginning to emerge as the global investment community begins to address this critical deficit.

Why Robust and Credible Metrics are Needed in Canada

In Canada, the need to report on Indigenous matters within an ESG framework is particularly important as the rights of Indigenous peoples are constitutionally-protected, and while the majority of energy and resource development occurs on or near Indigenous lands and resources, Indigenous people have been systematically excluded from participating in Canada's resource economy resulting in shameful levels of poverty, health, education, and social outcomes. Further, the *Universal Declaration of the Rights of Indigenous Peoples* (**UNDRIP**) was recently passed into federal law,[2] elevating the need to demonstrate compliance with international norms and expectations.

Many companies have also voluntarily committed to TRC Call to Action #92,[3] which calls upon the corporate sector to adopt the UNDRIP in terms of meaningful consultation, long-term sustainable economic opportunities as well as providing education and training on the history of Indigenous people, intercultural competency, human rights and anti-racism. Robust and transparent reporting on Indigenous reconciliation not only bolsters a company's Indigenous relations but may also provide a competitive advantage in terms of improved access to land and strategic partnerships with Indigenous businesses.

In April of this year, the Canadian Securities Association released a consultation paper seeking feedback from stakeholders about the efficacy of several key provisions of National Instrument 43-101 *Standards of Disclosure for Mineral Projects* including technical and scientific requirements, environmental and social disclosure, and impacts to the rights of Indigenous peoples.[4] Notably, the First Nations Financial Management Board provided extensive and detailed comments on the importance of disclosure requirements related to Indigenous perspectives and values.[5]

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[1] See M. Podlasly et al., *Indigenous Sustainable Investment: Discussing Opportunities in ESG,* First Nations Major Project Coalition, (January 2021), https://fnmpc.ca/resources/.
[2] The *United Nations Declaration on the Rights of Indigenous Peoples Act* S.C. 2021, c. 14 came into force on June 21st, 2021. This Act requires the Government of Canada to work in partnership with First Nations, Inuit and the Métis Nation to develop an action plan that identifies specific measures to implement the UNDRIP.
[3] Truth and Reconciliation Commission, *94 Calls to Action* (2015).
[4] CSA Consultation Paper 43-401 – *Consultation on National Instrument 43-101 Standards of Disclosure for Mineral Projects* (April 14, 2022), https://www.osc.ca/en/securities-law/instruments-rules-policies/4/43-401/csa-consultation-paper-43-401-consultation-national-instrument-43-101-standards-disclosure-mineral
[5] https://www.osc.ca/sites/default/files/2022-09/com_20220912_43-401_hungerfordg.pdf

Finally, mandatory ESG reporting disclosure is coming to Canada's financial services industry in 2024 in accordance with the *Task Force on Climate-related Financial Disclosures* (**TCFD**) framework.[6] These disclosure requirements are anticipated to have a penetrating effect on the Canadian economy as companies strive to comply with new disclosure requirements.

Corporate Reporting on Indigenous Matters

Currently, most energy and resource companies recognize the importance of establishing and building mutually beneficial long-term relationships with Indigenous communities, including demonstrating respect for rights and interests, and fostering opportunities to participate in the economic and social benefits of their projects and operations. These engagement efforts are generally described qualitatively in ESG reports and in some cases, companies provide a description of their benefit sharing agreements.

A few companies have moved towards providing quantitative metrics for substantiating the amount of procurement spend within Indigenous communities. For example, some companies include specific metrics for Indigenous-owned and affiliated supplier spend as a percentage of capital expenditures and number of Indigenous peoples hired to the company or project.[7] Other companies are reporting the number of training or employment opportunities associated with their project or operations in a geographical area, or in a few select cases are in a position to report on the placement of one or more Indigenous people on their board of directors.

The fundamental problem, however, is that many aspects of a company's involvement with an Indigenous community is relationship-based and therefore difficult to measure by means of a typical ESG rating framework.

With respect to reconciliation, a recent review of ESG reporting revealed that many, if not most, major Canadian energy companies are aware of the importance of their role in facilitating reconciliation with Indigenous peoples and attempt to address the issue to some degree in their ESG reports.[8] Several ways were used to provide information within the ESG reports. Approximately 76% of the reports included a discussion on the company's commitment to reconciliation. Most companies, however, are not reporting on compliance to corporate policies or on reconciliation action plans with respect to their relationships with Indigenous communities.[9]

International ESG Standards

In 2005, the United Nations formalized the concept of ESG and issued an initial recommendation on how to integrate sustainability criteria into the financial markets. This was quickly followed by the formation of a network of financial institutions committed to working together to implement the six *Principles for Responsible Investment*, which expressly included ESG matters.[10] Since that time, members of the

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[6]Government of Canada "*A Plan to Grow Our Economy and Make Life More Affordable*" (2022 Budget), https://budget.gc.ca/2022/home-accueil-en.html.

[7] For example, AltaGas Ltd. included two metrics at page 56 of its *2021 ESG Report*: Indigenous owned and affiliated supplier spend as % of Midstream capital expenditures % and Indigenous Peoples hired. See also Markoot, K. *Assessment of Indigenous Perspectives Embodied in Sustainability Reporting and ESG Disclosure Practices of Canadian Exploration and Production Companies*, University of Calgary Graduate Capstone (August, 2022) https://prism.ucalgary.ca/handle/1880/115185.

[8] M. Harris, Partner, Risk Assurance Services Board Chair, ESG Practice and Net Zero Leader, *How Canadian companies are reporting on climate, diversity and Indigenous reconciliation* PWC Canada, Mike Harris, Partner, Risk Assurance Services Board Chair, ESG Practice and Net Zero Leader, https://www.pwc.com/ca/en/today-s-issues/environmental-social-and-governance/esg-reporting-insights/climate-diversity-and-indigenous-reconciliation.html.

[9] M. Orenstein et al. *ESG and the Canadian Energy Sector* (August 2021), Canada West Foundation and the Canadian Energy and Climate Nexus.

[10] *Principles for Responsible Investment* www.unpri.org/about-us/about-the-pri

Sustainable Stock Exchange Initiative (stock exchanges and securities regulators) have also worked to promote responsible investment and advance corporate performance on ESG issues.

In parallel to these initiatives, several different ESG reporting standards have been developed by various global investment firms and companies. This has led to a vast assortment of criteria, making it difficult to understand exactly how ESG is being incorporated into an individual company's operations as well as how to meaningfully compare companies in the same industry.

In order to address this issue, several international organizations have worked to consolidate and develop consistent ESG standards, with the result that most institutional investors now use one of the four major ESG frameworks:

- the Global Reporting Initiative (**GRI**);
- the Sustainability Accounting Standards Board (**SASB**);
- the Financial Stability Board's Task Force on Climate-related Financial Disclosures (**TFCD**); or
- the Climate Disclosure Standards Board (**CDSB**).

This movement has been helpful; however, there has been little progress in terms of standardizing criteria for evaluating the incorporation of the benefits to Indigenous communities within ESG reports. While the majority of these standards include one or more criteria respecting Indigenous peoples, or the impact on their rights, they generally fall short in providing a fulsome and consistent approach to evaluating the impacts of a company's operations on Indigenous rights and interests, or to provide an Indigenous perspective on its lands and resources, values, culture, and traditional knowledge, principles and traditions.

Responsible Energy Development Standards

There has been some progress in the arena of responsible energy development standards. For example, the *Equitable Origins Standard for Responsible Development* (**EO100™Standard**) is a set of rigorous performance standards for energy development projects.[11] Developed through a three-year, multi-stakeholder engagement process, the EO100™ Standard is the product of extensive consultation with the energy industry, international NGOs, Indigenous organizations, financial institutions, government, and communities affected by energy projects.[12]

The EO100™ Standard incorporates and references other leading international ESG standards, initiatives and reporting frameworks, including: UNDRIP, international human rights standards and conventions (e.g. the *Universal Declaration of Human Rights* and the *UN Guiding Principles on Business and Human Rights*), IFC Performance Standards, Global Reporting Initiative, ISO 26000, AA1000 Assurance Standard, ISO 14001, ISO 45001, and the *Extractives Industries Transparency Initiative*. Best practices have been converted into specific and auditable indicators based on the experiences of and feedback from companies and stakeholders in the energy sector.

[11] https://energystandards.org/responsible-energy-development/

[12] The first 'consultation draft' of the EO100™ Standard was developed by Equitable Origin, in collaboration with four Indigenous Peoples' organizations, environmental and development NGOs, oil and gas companies and service providers, and local government agencies in the Amazon basin.

The EO100™ Standard measures sustainability across criteria in the following five areas:

1. Corporate Governance, Transparency & Ethics;
2. Human Rights, Social Impact & Community Development;
3. Indigenous People's Rights;
4. Fair Labor & Working Conditions; and
5. Climate Change, Biodiversity & Environment.

Notably, criteria for the assessment of Indigenous matters can be found in all five areas.

The EO100™ Standard establishes metrics and performance targets to objectively and independently evaluate the site-level ESG impacts of energy development projects. The EO100™ Standard incorporates a scoring system based on three levels of Performance Targets (**PTs**).

1. PT1 indicates that a site's performance meets industry best practices;
2. PT2 indicates that a site's performance exceeds industry best practices; and
3. PT3 indicates that a site's performance leads industry best practices.

The EO100™ Standard is slowly being embraced in Canada[13] and can be adapted to report on a company's overall ESG performance and not just one site development.

The Path Forward

ESG is quickly becoming a fundamental part of business in Canada. In addition, respect for Indigenous rights, reconciliation efforts and the inclusion of Indigenous peoples and businesses in the Canadian economy is on the rise. Currently, Indigenous peoples contribute over $30 billion annually to Canada's GDP. This number is expected to increase three-fold to $100 billion by 2024.[14]

Clearly, the time to advance ESG reporting on Indigenous matters is here. To date, the nature of reporting standards has proved difficult as they were developed primarily to assess factors such as the level of GHG emissions, the diversity of board members or the conservation of water, all of which can be readily quantified; the standards were not developed to address impact to Indigenous rights and lands, cultural or heritage values or the actions that may be required to effect reconciliation. Fortunately, new more comprehensive frameworks - developed in collaboration and with the input of Indigenous peoples - are starting to emerge, which should lead to more detailed, consistent and auditable ESG reporting.

[13] The first site certified under the EO100™ Standard for Responsible Energy Development and the EO100™ Standard Addendum for Shale Oil and Gas Operations was the Kakwa River Project in Alberta, Canada, originally owned by Seven Generations Energy Ltd. and now owned by Arc Resources Ltd. The Northeast British Columbia Montney Project in Fort St. John, BC, owned and operated by Pacific Canbriam, is the second certified site in Canada under the *EO100™ Standard for Responsible Energy Development* and the *EO100™ Standard Addendum for Shale Oil and Gas Operations*.

[14] See *Business Reconciliation in Canada Guidebook,* Canadian Council for Aboriginal Business (March 2021), https://www.ccab.com/wp-content/uploads/2019/09/Business-reconciliation-in-canada_WEB-final_AA.pdf.