

# **Corporate Social Responsibility at Kinross Gold's Maricunga Mine in Chile: A Multiperspective Collaborative Case Study**

## **Chapter Two**

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The positions taken in this report represent the views of the author, not those of any organizations or institutions he is associated with, nor of those who have provided research assistance, Team Members, or persons interviewed. Any errors or omissions are those of the author.

## **Table of Contents**

### **Corporate Social Responsibility at Kinross Gold's Maricunga Mine in Chile: A Multiperspective Collaborative Case Study**

- 1.0 Introduction
- 2.0 Methodology
- 3.0 The Chilean Political, Social and Economic Context for Kinross Gold Maricunga
- 4.0 The Regulatory Framework Applying to Kinross Gold Maricunga
- 5.0 Kinross Gold – Corporate Level Overview and Global Approach to Corporate Responsibility
- 6.0 The Kinross Gold Maricunga Operation
- 7.0 Issues Analysis
- 8.0 Multiperspective Analysis
- 9.0 Conclusions and Lessons Learned

#### **Annexes**

#### **Endnotes**

# **Corporate Social Responsibility at Kinross Gold's Maricunga Mine in Chile: A Multiperspective Collaborative Case Study**

## **1.0 Introduction**

Headquartered in Canada, Kinross Gold Corporation (hereafter “Kinross Gold”) describes itself as “a young, dynamic organization”<sup>1</sup> and the world’s fourth largest primary gold producer.<sup>2</sup> The company has mining operations in North and South America and Russia, with a particular concentration in South America.<sup>3</sup> From its creation in 1993 to 2010, Kinross Gold has undergone considerable growth through a series of mergers and acquisitions, to become the significant global gold mining player it is today.<sup>4</sup> In 2007, Kinross Gold corporate documents noted that the company was poised to expand total production by some 60% by 2009, thereby transforming the profile of the company.<sup>5</sup> As Kinross Gold has grown, and especially since 2007, increasing attention has been devoted to developing its approach to corporate social responsibility (CSR).<sup>6</sup>

Interviews and research conducted for this case study suggest recognition within Kinross Gold that the company’s corporate social responsibility (CSR) activities are in a maturing “learning curve” stage, moving from principles and commitments and first-generation reports (driven by the company’s Toronto headquarters in cooperation with the regions) to more operational-level concrete activities, and development of a more robust and complete set of reportable, site-specific, regional, and corporate-wide performance metrics.<sup>7</sup> A current focus of CSR attention at the Kinross Gold operational level is development of a systematic corporate approach to site responsibility guidance, addressing stakeholder engagement, evaluation of social responsibility efforts, effective social responsibility action and measuring and monitoring of results.

With respect specifically to the Kinross Gold Maricunga mining operation in Chile, it has only been since February 2007 that Kinross Gold has been in a position as 100% owner to implement its corporate approach to CSR, unimpeded by any possible differences of opinion with other owners.<sup>8</sup> Interviews with Kinross Gold Maricunga officials suggest that they -- like their headquarter counterparts-- seem to have an evolving understanding of the environmental, social and economic issues at play at the mine, as the issues themselves evolve.

Corporate social responsibility as practiced at the Kinross Gold Maricunga mine is in part the product of policies and directions emanating from headquarters – the sort of CSR policies and initiatives noted above. But CSR at the operational level is also reflective of the broader Chilean legal, political, social, environmental and economic context in which the Maricunga mine operates, and the distinctive local situation and community influences. As is discussed in greater detail later in the report, Chile is a country in transition, and these transitions have a direct bearing on the Kinross Gold Maricunga operation and its CSR activities.

Drawing on interviews and research undertaken for this case study, and using the Kinross Gold Ten Guiding Principles as a guide,<sup>9</sup> the key CSR challenges at Kinross Gold Maricunga identified through this case study include:

- those of a technical-operational nature associated with engaging in resource extraction in a remote, high altitude and extremely arid location with a fragile eco-system in the Andes mountains of Chile. The challenges in this regard relate to ensuring the health of workers in a high altitude environment, the need to transport workers and materials from distant locations across long distances on problematic roads that pass through indigenous communities, the need to carefully use scarce water resources, the need to protect a unique mountainous environment, and the need to ensure compliance with legal standards and extra-legal instruments in a situation where there is minimal government oversight;
- those associated with contributing to the development of a sustainable community for those living in the territory closest to the mine, ensuring harmonious and positive relations with comparatively impoverished and historically disadvantaged local Colla indigenous populations and with the non-indigenous population located further from the mine, both while the mine is in operation and upon closure of the mine ;
- meeting evolving environmental laws and standards (e.g., new laws pertaining to mine closure have recently been introduced, cyanide standards that have been embodied in an international certification initiative, and increasing concern with the need to minimize water and energy consumption, and address climate change implications);
- meeting evolving worker laws and standards (e.g., laws pertaining to sub-contracted workers, and proposed laws addressing high altitude mining and the location of mining camps);
- meeting evolving laws and standards pertaining to indigenous persons (e.g., Chile has recently ratified ILO Convention 169, which includes among other things requirements concerning consultation on resource projects affecting indigenous lands, and prior informed consent where territorial re-settlements are being considered);
- meeting evolving royalty/benefits laws (e.g., Chile has recently introduced a new royalty on mining);
- addressing problems associated with under-capacity in terms of governmental ability to effectively monitor and regulate private sector activity (e.g., a limited number of government inspectors attempting to monitor and investigate regulatory compliance/non-compliance in remote mountainous locations) or meet other government responsibilities (e.g., responsibilities associated with the Colla); and
- attempting to develop mechanisms for anticipating and preventing, addressing and resolving potential or actual conflicts (e.g., concerning road conditions, environmental damage, benefits distribution, and water allocation issues).

These issues are discussed in greater detail in the body of the report. Research for this case study revealed that despite different perspectives and positions, and a certain amount of friction, there was an evident willingness by all parties to work out constructive and innovative solutions,<sup>10</sup> including:

- development of trilateral and bilateral agreements between Kinross Gold Maricunga and the local indigenous communities and government agencies to address social, environmental and economic issues;
- agreements among government agencies, Kinross Gold Maricunga and other companies, environmental non-governmental organizations, and indigenous populations to address protected ecologically sensitive areas;

- bilateral agreements between Kinross Gold Maricunga and government authorities to address infrastructure and environmental issues; and
- unilateral efforts by Kinross Gold Maricunga to address certain issues in advance of legal requirements to do so.

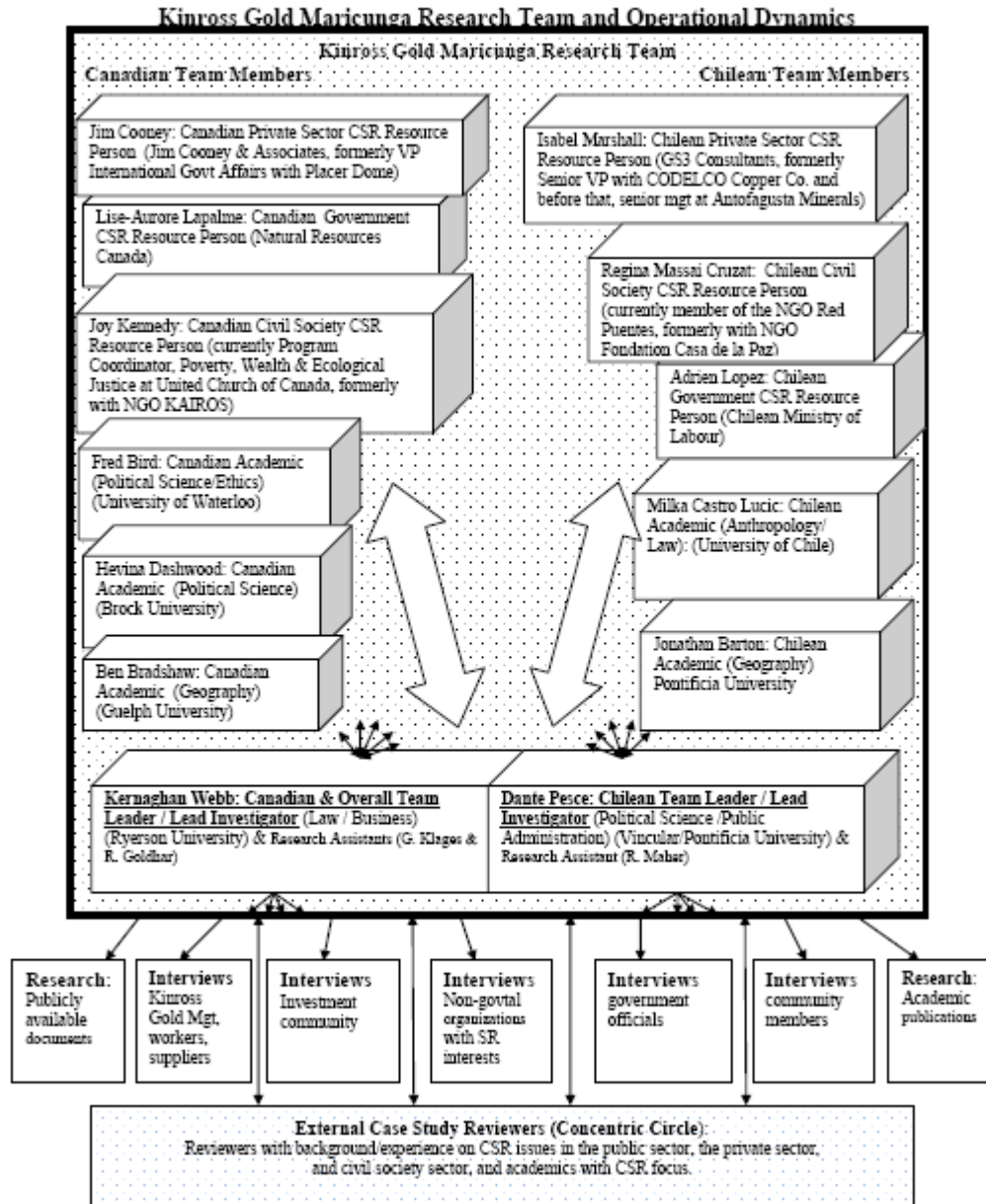
All of these points are explored in the body of the report.

What follows in the next section of the report is a description of the Kinross Gold Maricunga research team and its application of the multiperspective collaborative CSR case study methodology. Then, the Chilean political, economic, social and regulatory context in which the Kinross Gold Maricunga mine operates is described. With that background, a review of Kinross Gold and its approach to CSR is then provided, and an analysis of its Maricunga operation is undertaken. Then, the key corporate responsibility challenges at Kinross Gold Maricunga and multiple perspectives on those challenges are discussed. Finally, conclusions and “lessons learned” are provided.

## **2.0 Methodology**

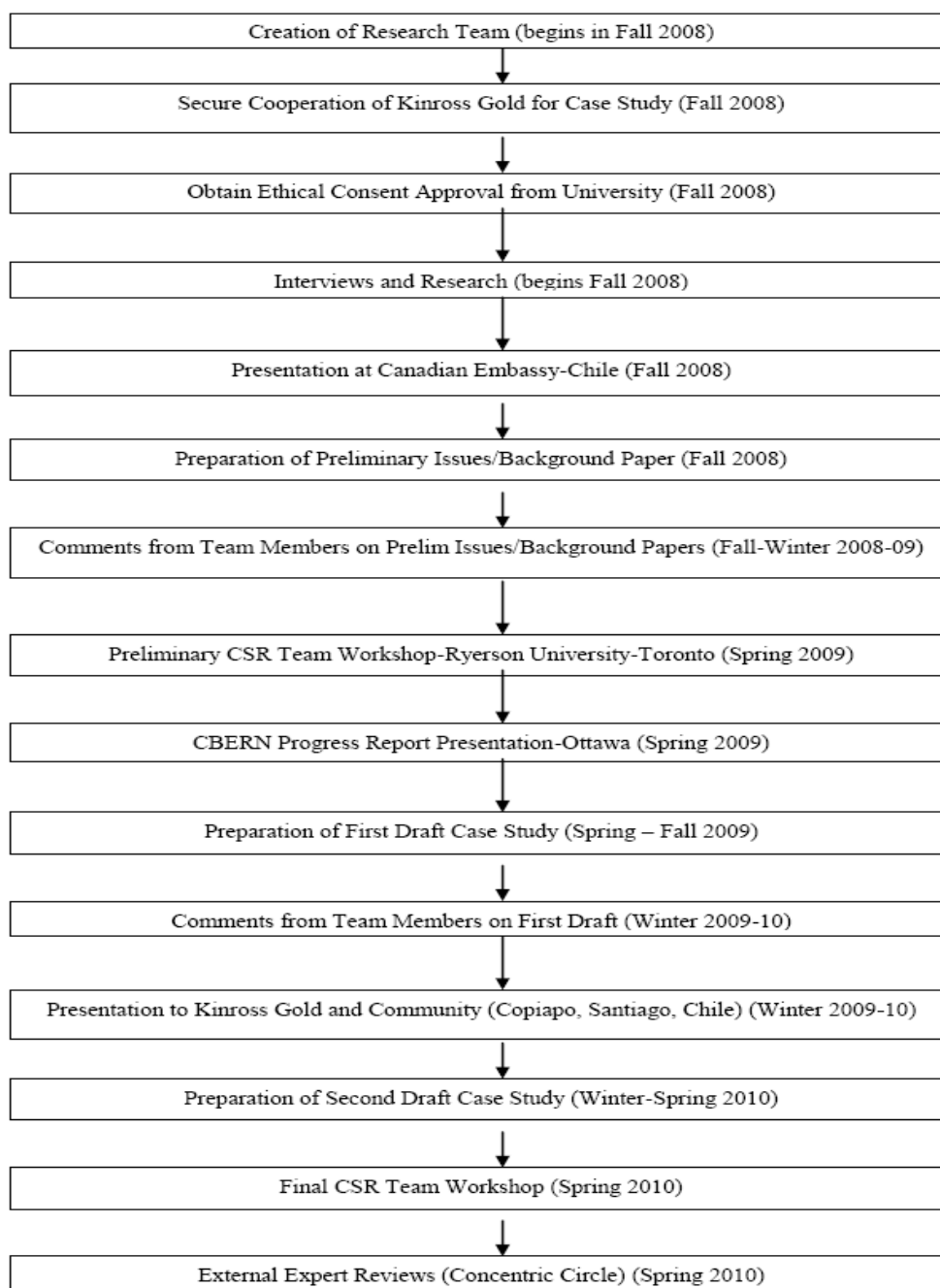
As noted in Chapter One of this report, this case study is part of a pilot project testing a multi-perspective and collaborative methodology for case study development that is designed to describe in and analyze in as evenhanded a way as possible the corporate social responsibility approaches and challenges associated with mining by Canadian companies in developing countries.<sup>11</sup> A key objective of the case studies is grounded, balanced, accurate and nuanced accounts, analysis, and discussion of “lessons learned” for use by all interested parties. Accounts developed using the multiperspective collaborative methodology are intended to be especially helpful in identifying, exploring and understanding the range of social responsibility issues, views and dimensions of a mining operation in a way that conventional accounts (e.g., those prepared by a single academic or consultant or organization) would be less capable of doing. Thus, the expectation is that case studies developed through use of the multiperspective collaborative methodology will provide particularly useful information, analysis and insights that can be a basis for improved public policy, business practices and community action, and will be accepted as such by parties in the public, private and civil society sector.

A key element of the collaborative multiperspective CSR methodology is the composition of the research team, which in the case of the Kinross Gold Maricunga case study included diverse Canadian and Chilean academics and persons from the mining sector, government, and non-governmental organizations (NGOs) with practical experience on CSR issues. While all members of the team were selected for their CSR expertise and for the distinctive and valuable perspective that they could each contribute, care was taken to ensure that none had any direct involvement in the case study in question (i.e., none of the team members were “stakeholders” whose interests were affected by the Kinross Gold Maricunga mining operation). The below graphic, “Kinross Gold Maricunga Research Team and Operational Dynamics” lists the Canadian and Chilean team members and their backgrounds/affiliations, and also attempts to depict the functions and activities undertaken by the research team. The key research (i.e., interviews, reviews of public documents, and academic research) was undertaken by the Canadian and Chilean Team Leaders and their research assistants, while the other team members acted in a supporting capacity, providing advice and comments.



Each team member had password-protected access to a digital “workspace” which included all background documents, draft versions of the case study, interview summaries,<sup>12</sup> and comments. The chart “Kinross Gold Maricunga Research Process” outlines the various steps in the research, which included approvals, research and interviews, team meetings (electronic and in-person) and workshops, as well as presentations to company officials, community representatives and others, followed by a “concentric circle” review of the case study by external persons from the public, private, and civil society sector and academia.

### Kinross Gold Maricunga Research Process



In order to better understand the CSR challenges associated with the Kinross Gold Maricunga mine operation and the perspectives of various interested and affected parties, approximately 40 semi-structured interviews were conducted by team researchers at different times and locations, over the period November 2008 to March 2010 (see Annex A for an “anonymized”<sup>13</sup> list of interviewees). The interviews were conducted in Canada and in Chile, with Kinross Gold headquarters, regional and Maricunga mine officials, workers, suppliers and sub-contractors, Colla indigenous persons, non-Colla

community persons, government officials, non-governmental organizations, members of the investment community, and others. In Chile the interviews were conducted in Santiago (the capital city of Chile), in Copiapo (the closest large city to the Maricunga minesite), in Tierra Amarilla (the closest large town to the Maricunga mine site), in local Colla communities on the road to the Kinross Gold Maricunga minesite, and at the Kinross Gold Maricunga minesite. Multiple interviews were conducted with the same persons where necessary (e.g., when further clarification was needed on a particular point, or when new information had come to light). In accordance with the approved ethics protocol for this research, the identities of all interviewees has been kept confidential, and those who were interviewed were given the opportunity to review summaries of the interviews to ensure the accuracy of the information obtained from the interview. Further information was obtained from company documents, industry documents, government and other documents and reports, academic articles, and media accounts.

In an effort to secure optimal access to and cooperation of Kinross Gold officials in the interview and case study review process, the company's prior consent to have its Maricunga operations be the subject of a case study was obtained.<sup>14</sup> In this respect, there could be a selection bias at play, in the sense that only companies who consented to participate have their operations the subject of a case study, while operations of companies who refused to participate remain unstudied. Other than noting this, we do not here attempt to ascribe motivations for those corporations who have chosen to participate and those who have not.

The "perspectives" portion of this case study represents a synthesis of the positions of different parties as revealed through the various interviews, as well as based on information derived from other sources. Thus, for example, based on available information, the report attempts to articulate a Kinross Gold management perspective, Kinross Gold worker perspective, Chilean government perspective, Colla community perspective, community (non-Colla) perspective, supplier/sub-contractor perspective, NGO perspective, investment community perspective, and so on. The limitations associated with ascribing "perspectives" to a grouping of stakeholders on the basis of interviews with select persons is acknowledged. The position taken in this report is that through the use of the multiperspective collaborative methodology, and presentations/discussions of the case study results with key stakeholders at the draft stage,<sup>15</sup> the report is considered by the author as representing as balanced and accurate account as possible of the social responsibility challenges and activities associated with the Kinross Gold Maricunga mine, and the perspectives of the key parties involved.

### **3.0 The Chilean Political, Social and Economic Context for Kinross Gold Maricunga**

The broader Chilean political, social and economic context described in summary form here provides an important backdrop for understanding the CSR challenges associated with the Kinross Gold Maricunga mine operation. Chile is a country in transition, moving from a socialist period involving active nationalization and expropriation of industries (from the mid-1960s to 1973), to a military dictatorship of General Pinochet (from 1973 to 1989), characterized by repression of rights and installation of neo-liberal, pro-market approaches, to a post neo-liberal or "reformed neo-liberal"<sup>16</sup> democratic period (from 1990 to the present). The timeline below attempts to highlight some of the major Chilean political, social, and legal developments over the last fifty years of relevance to mining activities



undertaken within the country. Of particular interest is the different type of laws and government actions undertaken in each of the socialist, Pinochet neo-liberal and reformed neo-liberal periods. We will return to this timeline below.

The foundation for the foreign investment-friendly approach to mining in place today was put in place during Pinochet's military dictatorship. However, since the return to democracy in 1990 there has also been a conscious effort by the government of Chile to address a range of negative socio-environmental side effects associated with neo-liberalism. For example, Chile has launched targeted efforts to reduce poverty, improve worker protections, implement environmental protections, and recognize indigenous rights. Information provided in this section reveals that Chile has emerged as one of the most stable and prosperous countries in South America -- and the mining sector has played a prominent role in this rise to prosperity. However, the discussion below also explores some of the more problematic aspects of a pro-free market, natural resource-dependent economy.

### Key Chilean Developments in the Last Fifty Years

Year	Development
1964	President Eduardo Frei elected
1965	Agrarian Reforms begin (including expropriation of lands)
1966	Start of nationalization of Chile's foreign-owned copper mines
1966	Codelco (state-owned copper mining corporation) is established
1970	Marxist President Salvador Allende elected
1972	Legislative recognition of Mapuche (Decree 17729)
1972	Nationalization of mining sector continues
1973	President Salvador Allende overthrown by General Augusto Pinochet
1973 - 1989	Period of military dictatorship
1973 - 1989	Mapuche law repealed, indigenous assimilationist policies begin
1973 - 1989	Widespread suppression of human and labour rights
1973 - 1989	Law changes re: constitution, foreign investment, mining, water.
1990	Democracy restored
1990	President Patricio Aylwin elected
1990 - 1994	Indigenous and environmental protection laws adopted
1994 - 2000	President Eduardo Frei Ruiz-Tagle elected
1994 - 2000	Environmental laws, labour laws, free-trade agreement with Canada adopted
2000	President Ricardo Lagos elected
2000 - 2006	Mine safety law, new deal for indigenous policy, mining royalty adopted
2002	Population census reveals 692,000 indigenous persons (out of ~16 million total)
2006	President Bachelet elected
2006 - 2010	Sub-contracted labour law adopted, ILO 169 (Indigenous) ratified
2010	Chile signs agreement to become first South American member of OECD
2010	President Sebastian Pinera elected (Coalition for Change)

With a population of close to 17 million,<sup>17</sup> Chile is the sixth most populous country in South America. Measured in terms of Gross Domestic Product (GDP) per capita in 2007, Chile is one of Latin America's wealthiest countries and strongest performers,<sup>18</sup> with a per capita income of US\$14,688 (purchasing power parity).<sup>19</sup> The average GDP growth of 4.1% per annum over the period 1991 – 2005 is significantly higher than the average world growth during the same period and is significantly higher compared with Chile's own performance prior to 1991.<sup>20</sup> Chile's rating of 0.874 on the UNDP Human

Development Index<sup>21</sup> (measuring life expectancy, adult literacy and school enrolment, and purchasing power parity) is first among South American countries.<sup>22</sup> In terms of governance,<sup>23</sup> according to the World Bank's Worldwide Governance Indicators Project for the years 1996 – 2008, compared with its sixteen other Latin American counterparts, Chile was a strong performer over the six World Bank governance indicators -- voice and accountability, political stability, government effectiveness, regulatory quality, rule of law, and control of corruption – scoring first of all Latin American countries in four of six categories, second in one category (political stability) and third in another (voice and accountability).<sup>24</sup>

The continued political and economic stability of Chile since the early 1990s (following the turmoil of the 1970s and 1980s) has recently met with the approval of different international rating agencies.<sup>25</sup> In addition, economists in one 2008 study stated that Chile now has “by far” the most progressive distribution of social expenditures among 17 countries in Latin America,<sup>26</sup> with absolute poverty in Chile cut in half from 38% in 1990 to 19% in 2003.<sup>27</sup> By 2006, the poverty rate had continued to decline, to 13.7%.<sup>28</sup> The above description suggests an impressive “Rise to Prosperity” narrative at play in Chile. But this is only part of the story. The potentially problematic dimensions of the Chilean prosperity narrative are explored later in this section (e.g., dimensions such as inequitable wealth distribution, concern about over-dependence on the resource sector, concern that the Chilean people are not extracting adequate “rent” from private mining firms).

In the 1960s, the mineral industry (particularly, the foreign-owned mining industry) figured prominently in Chilean political and economic decision-making. In 1966, President Eduardo Frei started the nationalization of Chile's foreign-owned copper mines (acquiring a 51% share in them) and established the state-owned copper mining company CODELCO<sup>29</sup> (parallel to an Agrarian Reform policy that involved expropriation of agriculture lands in 1965).<sup>30</sup> With the election of Marxist President Salvador Allende in 1970, the Chilean government continued the policies of agrarian reform and nationalization of the remaining component of the foreign-owned copper mines.<sup>31</sup> By 1973, the Chilean government owned nearly 500 firms.<sup>32</sup> However, with Pinochet's military coup in September, 1973, Chile's leftward direction was stopped in its tracks.<sup>33</sup> It is important to note, however, that despite the strong free-market orientation of Pinochet's military regime, his government did not reverse the privatization of CODELCO: and to this day, 10% of the revenues of CODELCO are channeled to the Chilean military through a special allocation.<sup>34</sup>

Pinochet's military dictatorship was described by commentators as “arguably among the most politically repressive and pro-elite that any country in Latin America has ever experienced.”<sup>35</sup> A government commission later documented 3,428 cases of disappearances, killings, tortures and kidnappings during the Pinochet regime.<sup>36</sup> During the period of the Pinochet military dictatorship (1973 – 1989), Chile developed an international reputation as a human rights (including labour rights) abuser.<sup>37</sup> The Pinochet regime also actively persecuted indigenous organizations and enacted legislation which posed an explicit threat to indigenous lands, cultures and peoples<sup>38</sup> and maintained an official position that there were no indigenous people in Chile.<sup>39</sup> The Pinochet regime also weakened Chilean labour laws,<sup>40</sup> and failed to put in place a modern environmental protection regime.<sup>41</sup> In addition, it has been said that electoral

reforms imposed by the military regime coupled with the “renovation of centre-left parties created disincentives for popular participation and contributed to widespread disenchantment with political parties and political institutions.”<sup>42</sup> This has had ramifications to this day: according to a 2005 study, only 22% of the public has confidence in the Chilean Senate, 20% in the judiciary, 18% in the Chamber of Deputies and 9% in political parties.<sup>43</sup>

Chile’s position in the world mineral economy is described by commentators as being a primary supplier of many raw minerals, ores and concentrates,<sup>44</sup> and as having an economy that is “one of the most natural resource dependent in the world.”<sup>45</sup> Chile is the world’s leading copper producer and exporter, accounting for about 35% of total world mine production of copper, and is also a leading producer of lithium, rhenium and molybdenum.<sup>46</sup> In 2006, about 23% of the country’s GDP was attributed to mine production.<sup>47</sup> In 2000, 46.4% of Chilean exports were said to be from the mining sector, and a study indicated that this was expected to rise over the next ten years.<sup>48</sup> A 2006 report indicated that the Chilean government expected to continue to have large budget surpluses based mostly on revenues from the copper mining sector: <sup>49</sup> in 2006, CODELCO, the government owned copper company, was estimated to account for 22% of total Government revenue for that year,<sup>50</sup> including through the 10% royalty that CODELCO pays to the Chilean military. Also in 2006, a new Chilean mining royalty took effect that has been earmarked for development of an Innovation and Competitiveness Fund, to be used to invest in diversifying the Chilean economy away from extractive industries.<sup>51</sup>

A 2006 review of the Chilean mineral industry by the U.S. Department of the Interior and Geological Survey concluded that many of the world’s leading private mining companies were deeply invested in the mineral industry of Chile, along with Chilean owned companies such as CODELCO and SQM.<sup>52</sup> Canada is the largest investor in the mining sector in Chile: in 2007, \$13 billion was invested in developing 11 Chilean mines by Canadian interests.<sup>53</sup> In addition to Kinross Gold, many other Canadian mining companies such as Barrick Gold,<sup>54</sup> Goldcorp,<sup>55</sup> Yamana Gold,<sup>56</sup> Teck Resources,<sup>57</sup> and Exeter Resources<sup>58</sup> also have significant investments in Chile in the same region as Kinross Gold Maricunga. Foreign direct investment (FDI) in the Chilean mining sector increased in 2006 to US \$1.158 billion, up from about \$775 million in 2005, \$392 in 2004, and \$350 million in 2003.<sup>59</sup> According to the Chilean Copper Commission, more than US \$21 billion will be invested in Chilean copper and gold projects between 2008 and 2012, with \$5.3 billion in 2009 alone.<sup>60</sup> It has been estimated that the Chilean national income per capita would have been 11% lower by 2000 had no mining investment taken place in the period 1990 – 2000.<sup>61</sup> One study states that for each worker employed by a mining firm in Chile, approximately 1.76 indirect jobs are generated.<sup>62</sup>

However, while there is impressive progress on a number of important Chilean socio-economic indicators since democracy returned in 1990, and while the data shows that the mineral sector has played an important role in this progress, the Chilean picture does have some troubling imperfections. In a 2008 article, economists Lopez and Miller point out that behind the apparently successful case of development in Chile -- the relatively fast economic growth over almost two decades and the significant reduction in absolute poverty -- inequality has nevertheless persisted “in one of the most unequal countries in the world.”<sup>63</sup> Wealth is tightly concentrated in a small elite: ten percent of the population

controls 80% of its wealth.<sup>64</sup> At the other end of the scale, in 2006, more than 2.2 million Chileans were living with incomes of less than US \$90 per month in urban areas, and less than US \$60 per month in rural areas.<sup>65</sup> In a 2010 report, the OECD noted that Chilean income inequality, as measured by the Gini coefficient, has not declined markedly over the past 20 years and remains very high by OECD standards, despite fast growth of per capita GDP and a reduction in poverty and some noted recent improvement in the Gini coefficient.<sup>66</sup> According to the OECD, "sustained growth will need to be accompanied by the right social policies to further reduce poverty and improve income distribution."<sup>67</sup>

Demographic information for Chile also reveals that indigenous persons are substantially more impoverished than non-indigenous Chileans. According to the 2002 census, there were at that time approximately 692,000 people in Chile, representing 4.6% of the total population.<sup>68</sup> The incidence of poverty among Chile's indigenous populations is 57% higher than the incidence of poverty among non-indigenous Chileans.<sup>69</sup> Average indigenous incomes are less than half that of the non-indigenous population.<sup>70</sup> School attendance among indigenous children is 2.2 years less than the average for non-indigenous children (9.5 years).<sup>71</sup> Only 41% of indigenous people's homes have drains, 58% running water and 65% have electricity.<sup>72</sup> The infant mortality rate among indigenous peoples is above average, particularly in rural areas, where it exceeds 50% in some municipalities.<sup>73</sup> For rural Colla (the indigenous group in the vicinity of the Maricunga mine), one study suggests there are on average five persons per household, with houses constructed of wood, mud, and scrounged tin and metals, with an earth floor.<sup>74</sup> Usually there is no electricity, no running water, and more than half have no sewage system.<sup>75</sup> Within the Colla, an estimated 70% lack a basic understanding of legal terminology and contracts.<sup>76</sup>

Of growing concern to some in Chile is the perceived inadequate compensation paid by private mining firms for "the country's national patrimony."<sup>77</sup> Lopez and Miller suggest that since democracy was restored in Chile in 1990 - 1991, the government has limited itself to mainly minor changes to the tax system inherited from the previous military government: "this has caused a narrow tax base which has severely restricted the scope of an essentially adequate pro-equality public expenditure policy and at the same time has allowed the elites to contribute very little to the development effort."<sup>78</sup> Lopez and Miller have also suggested that three features of the tax system diminish the capability of Chile to address its wealth inequities: low tax revenues and an extreme dependency of government revenues on indirect taxes; (2) the preservation of a vast collection of tax loopholes; and (3) the "almost complete failure by the state to tax the rent from the raw natural resources (including ore resources, fisheries, lumber, water and others) that are removed from the national patrimony."<sup>79</sup>

Lopez and Miller suggest that the key factors explaining this persistent inequality have been a low level of fiscal expenditures caused by low tax revenues that have not permitted enough public investment in human capital and knowledge generation and diffusion. While noting that the Chilean economy is one of the most natural resource dependent in the world: "the issue is not whether resource dependence is bad or good for growth, which is an issue not yet fully resolved....The key point is that the resource based sectors in Chile obtain large indirect subsidies that distort the structure of incentives in the economy inducing it to be even more dependent on natural resource industries."<sup>80</sup> In addition to these observations suggesting problematic conflicts of policy objectives at the macro level (i.e.,

encouragement of foreign investment vs. need to extract adequate compensation for resource extraction), there is also evidence “on the ground” of conflicts between resource developers and local communities and indigenous populations in Chile that have received national and international attention.<sup>81</sup>

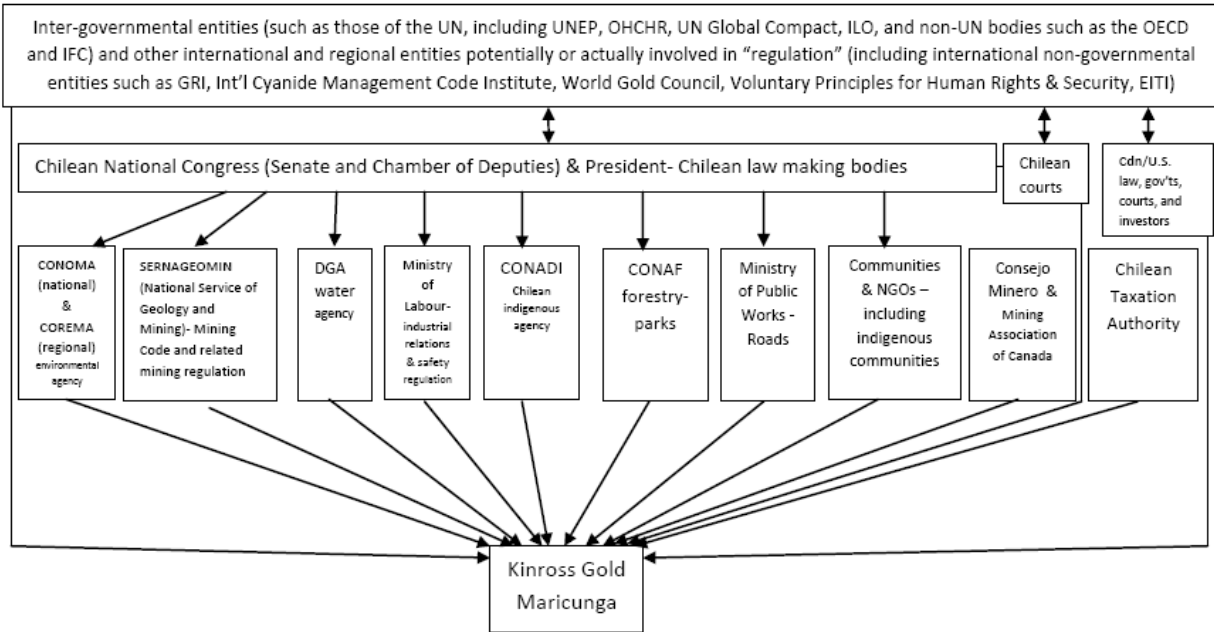
The introduction in 2006 of a mining royalty that is specifically earmarked for development of an Innovation and Competitiveness Fund, to be used to invest in diversifying the Chilean economy away from simple resource extraction activities, may represent a modest step towards addressing the observations concerning the need for Chile to tax the rent from its natural resources. However, it has been noted that “the rate [of this small royalty] is by far one of the lowest in the world. The net royalty payments effectively amount to less than 2% of profits and less than 0.6% of the value of sales.”<sup>82</sup> At the time of writing, in the aftermath of the earthquakes of early 2010, there are reports that the Chilean government is considering raising mining royalties to assist in financing re-building efforts.<sup>83</sup>

#### **4.0 The Regulatory Framework Applying to Kinross Gold Maricunga**

What follows is an overview description of the regulatory framework applying to mining operations in Chile. Mining operations in Chile such as Kinross Gold Maricunga are regulated through a wide variety of regulatory instruments, involving a diverse grouping of international, regional, national, and local governmental entities, as well as those of the private sector and civil society. It should be emphasized that a wide definition of the term “regulation” is used in this report that acknowledges that in addition to conventional command and control regulations, mining companies such as Kinross Gold may choose to subject themselves to “consent-based” rules of international, national, and local entities that may not be part of government – rules taking the form of principles, codes, certification standards, and community protocol agreements – all intended to shape or affect corporate behaviour.

The below figure, entitled “Entities Potentially or Actually Involved in Regulating the Kinross Gold Maricunga Mine,” attempts to depict the range of key governmental and non-governmental entities that play or could play some role in structuring the environmental, social and economic activities of the Maricunga operation. In interviews for this case study, Kinross Gold officials, community representatives, and government officials variously commented on the inadequate capacity of Chilean government agencies to fully and effectively enforce their laws, and Colla representatives expressed frustration with the poor coordination among government agencies. Inadequate governance capacity has also been identified as a deficiency by external reviewing agencies, such as the OECD.<sup>84</sup> While transnational mining companies operating in Chile have recently been involved in high-profile law-based disputes and controversies with Chilean courts, government regulatory agencies, workers and communities concerning pollution/water and other environmental issues, worker issues, and community issues,<sup>85</sup> research for this case study could find no evidence that Kinross Gold’s Maricunga operation has been involved in any CSR-oriented litigation or attracted significant CSR-oriented legal/regulatory attention (e.g., enforcement actions).

#### **Entities Potentially or Actually Involved in Regulating the Kinross Gold Maricunga Mine\***



\* Note: the term “regulating” is used in a broad sense here, to encompass both law-based, command and control regulation as well as consent-based instruments emanating from non-governmental entities.

Source: Compilation of the author from various sources.

Chile has laws addressing virtually every aspect of mining, from basic laws for allocating subsurface mineral exploration and exploitation rights, laws setting out the capabilities and rights of investors and laws establishing the corporate taxes and royalties to be paid, to environmental protection and water allocation laws, worker rights and health and safety protection laws, and indigenous laws. This legislation has gradually been put in place and adjusted over time, and is still evolving at the time of writing. The table “Key Chilean Legal/Regulatory Developments re: Mining” provided below, identifies many of the most important Chilean laws relevant to mining that have been adopted over the years, and gives the reader a sense of the time sequencing in which laws have been introduced.

### Key Chilean Legal/Regulatory Developments re: Mining

Year	Development
1973 - 1989	Military dictatorship of General Pinochet
1973	Foreign Investment Statute (Decree 600) adopted
1980	Constitution of 1980 adopted
1981	Water Code (Decree 112229) adopted
1982	Organic Constitutional Law on Mining (Decree 18,097) adopted
1983	Mining Code (Decree 18,248) adopted
1986	Regulation on Mining safety (32,382) adopted
1990	Democracy restored
1990	President Patricio Aylwin elected
1993	Indigenous Law (Decree 19,253) adopted
1994	Environmental Framework Law (Decree 19,300) adopted
1994	President Eduardo Frei Ruiz-Tagle elected
1996	Kyoto Protocol ratified
1997	Environmental impact assessments become mandatory
1997	Canada-Chile Free Trade Agreement implemented
1999	Chile ratifies ILO 87 on freedom of association
1999	Chile ratifies ILO 98 on right to organize and bargain collectively
2000	Chile ratifies ILO 182 on child labour: all eight core ILO conventions now ratified
2000	President Ricardo Lagos elected
2004	Mine safety regulations (Decree 132) adopted
2004	New Deal for Indigenous Peoples policy declared by President Lagos
2005	Water Code reforms adopted
2006	Mining royalty adopted
2006	President Bachelet elected
2007	Law on sub-contracted labour adopted
2007	Law in support of renewable energy sources adopted
2008	ILO 169 (Indigenous and Tribal Peoples) ratified
2008	Cda-Chile MOU re: Cooperation on Sus Development of Minerals & Metals
2009	"Code of Responsible Conduct" for resource projects proposed and rejected
2009	High altitude Mining Camp Law proposed
2010	President Sebastian Pinera elected (Coalition for Change)

In Chile, the key laws pertaining to mining operations can roughly be classified into those promulgated during the period 1973 – 1990, when the Pinochet military dictatorship was in power, and those from the post-Pinochet era. Those developed during the military dictatorship addressed basic mining industry issues, such as the *Foreign Investment Statute* (Decree Law Nr. 600 of 1973), the *Water Code* (1981), the *Organic Constitutional Law on Mining Constitutional Law* (1982) and the *Mining Code* (1983).<sup>86</sup> In broad-brush strokes, the laws from the Pinochet period reflect a clear attempt to encourage foreign investment in mining activity in Chile, largely stopping in its tracks the direction of the previous leftist governments of Allende and Frei, but not reversing the nationalization activities from those earlier periods.<sup>87</sup>

Since the return to democracy in 1990, laws reflecting on the whole a more balanced, nuanced and measured approach to mining have gradually been put in place, with increased emphasis on ensuring that there are adequate safeguards and benefits for Chilean workers, communities, indigenous persons, and the environment. However, the “fit”, or integration, between the formative pro-mining laws of the

Pinochet era, and the more balanced laws of the democratic era that followed, is very much a work in progress.

Companies like Kinross Gold and communities such as the Colla of Rio Jorquera are largely left to their own devices to try to figure out how in practice the laws originally passed during the Pinochet era which pull one way, in favour of investors (such as the Water Code and mining laws), play out against the later, post-Pinochet laws which pull the other way, more in favour of communities and the environment (such as the Indigenous Law No. 19,253 of 1993, the Environmental Framework Law No. 19300 of 1994 and ILO Convention 169, ratified by Chile in 2009). Thus for example, Kinross Gold Maricunga has committed to assist the Colla in acquiring water rights.<sup>88</sup> Here we see a company put in the position of attempting to address a perceived weakness or inequity in terms of the Water Code's distribution of water rights to indigenous persons.

#### *4.1 The Mining Code and related laws*

The *Mining Code* (Decree 18248) was adopted in 1983, interpreting the *Organic Constitutional Law on Mining* of 1982.<sup>89</sup> Salient features include the distinctive treatment of sub-surface resource rights:<sup>90</sup> pursuant to these laws, although the State retains ownership of the resources, it grants secure mineral rights to investors by means of “concessions” pursuant to judicial proceedings of the Chilean's ordinary court system. This process is intended to remove or lessen the likelihood of arbitrary administrative decisions. The property rights to the sub-surface are transferrable. Concessions can be for either exploration or exploitation (development), subject to nominal licensing fees. Exploration is for a maximum of four years, while exploitation can be indefinite, subject to an annual licence fee. The effect is to create as attractive an investment opportunity as possible. One commentator explains that “...the Mining Law of 1982 paved the way for foreign investment in mining by ....assuring foreign mining companies of the virtual property of the mine and that events such as a new nationalization could not occur; clear indemnization criteria in case of future expropriation; stability of the rules due to the constitutional status of the law; freedom of companies in decisions regarding mine development and other business activity.”<sup>91</sup>

A new mining law seeking to streamline the processes for management of natural resources<sup>92</sup> was passed in late 2009. Under the new law, mining and exploration firms must declare reserves and resources, and report drilling results. The law also aims to enhance the ability to finance mining projects across the country, in part as a response to the recent economic downturn.<sup>93</sup> At the same time, the government is seeking to use revenue from the recently revised mining tax laws to diversify the economy away from the extractive sector.<sup>94</sup>

#### *4.2 Foreign Investment and Tax Law*

In the *Foreign Investment Statute* (1973), Chile has established a regime favourable to foreign investment in the mining sector, with rules based on constitutionally enshrined principles of non-discrimination, neutrality and equal treatment for national and foreign investors.<sup>95</sup> In South America, political instability and radical shifts in attitudes toward foreign investment have been more the rule than the exception in the past 40 years. The situation in Chilean over the period 1970 to 1990 is an example of this. Pursuant



to the *Foreign Investment Statute*, foreign investment is legally guaranteed.<sup>96</sup> Investor rights include: unlimited repatriation of profits plus repatriation of capital one year after first entry; a fixed tax rate of 42% for ten years and VAT-free import of machinery and equipment not manufactured in Chile; mining investment projects of US \$50 million and up are eligible for additional benefits for 15 calendar years such as a freeze on the specific mining tax required by the Income Tax Act, unaffected by any rate increases; exemption from new taxes, royalties and other costs imposed on mining operations; and exemption from increases re: exploration and development licences. As noted earlier, Chile has in place a high dividend remittance tax, which encourages foreign investors to re-invest profits in Chile.

The Chilean tax regime is set out in the *Taxation Code*, the *Income Tax Act* (Decree-Law 824/74) and the *Goods and Services Sales Tax Act* (Decree 825/74) which established a Value-Added Tax.<sup>97</sup> The *Income Tax Act* levies a tax on all income earned from in-country assets and operations, irrespective of the taxpayer's country of origin or residence. Corporate profits are subject to a 17% tax. As noted, pursuant to the Foreign Investment Statute, foreign investors operating under a foreign investment contract pay 42% income tax. Article 64 bis of the *Income Tax Act* applies a specific tax on mining operations. Rates are progressive and based on sales amounts. These range from 0.5 to a full 5% of operating taxable income (Law 20026). As noted above, in 2006, a new Chilean mining royalty took effect that has been earmarked for development of an Innovation and Competitiveness Fund, to be used to invest in diversifying the Chilean economy away from extractive industries.<sup>98</sup> In 2010, in order to defray earthquake reconstruction costs which are expected to exceed \$8 billion, the Pinera Administration has submitted legislation to Congress to increase taxes and royalties, including a specific mining royalty somewhere between 3.5% and 9%.<sup>99</sup>

#### 4.3 Environmental Law

In 1994, Chile's basic *Environmental Framework Law* (Decree 19300) was adopted, bringing together and modernizing an existing diverse collection of environmental protections, and since 1997 environmental impact assessments (EIAs) have been mandatory.<sup>100</sup> Established in 1994, CONOMA is the National Environmental Commission, charged with administering the Environmental Framework Law.<sup>101</sup> While CONOMA implements Law 19300 at a national level, the Regional Committee on the Environment (COREMA) administers the law at the local level. COREMA includes representatives from the regional officials of all the key government agencies. Companies intending to conduct mining activities are required to submit EIAs or environmental declarations, depending on the project's environmental impact. Environmental impact studies are paid for by the proponent and are carried out by an accredited institution (consultant or university), after the reference terms have been defined by COREMA. The submissions are reviewed by COREMA, which has the power to issue or decline the approval. If the proposal is approved, then the various Chilean regulatory agencies involved issue the appropriate permits, "thus constituting a single window system."<sup>102</sup> As part of this process, proponents prepare an environmental management plan (EMP) which include aspects such as prevention, mitigation, waste management, monitoring and follow up procedures, emergency plans, decommissioning and post decommissioning, and include new standards when there are no established national standards for specific emissions or other environmental effects.<sup>103</sup> However, EISs "do not include the creation of decommissioning, post-commissioning or emergency funds at the start or during a project."<sup>104</sup> The EIA includes a phase of participation of the community and other stakeholders through public hearings and

comments that can be made by those who may be affected by mining projects. It is not uncommon for EIAs to go through various iterations and adjustments before they are approved, and when they are approved, many conditions may be attached, so that the project cannot proceed until proponents commit to meet the conditions.

The Chilean EIA approach under Environmental Framework Law 19300 has been described by some commentators as effective, but the same commentators have also noted that “there is a lack of control of the environmental commitments made by the companies.”<sup>105</sup> Others have stated that the system of environmental impact assessments does not take sufficient account of involving either indigenous peoples or the general public in decisions regarding projects that affect their ecosystems.<sup>106</sup> Although there have been environmental enforcement actions against mining companies that have led to penalties,<sup>107</sup> in 2005 the OECD concluded that Chile expended inadequate resources for enforcement in Chile,<sup>108</sup> and a 2009 media report suggested that a Chilean environmental agency director had resigned after allegations of collusion with a foreign mining company.<sup>109</sup> Responding to the OECD criticism, in 2009, Chile introduced measures to restructure and improve the institutional framework for environmental enforcement and create a Chilean Ministry of Environment, replacing CONOMA.<sup>110</sup> The new Ministry is not yet in place. According to the 2010 version of the Yale and Columbia University’s Environmental Performance Index (EPI) which since 2006 has compared environmental protection activities of countries around the world, Chile ranked 16<sup>th</sup> in the world, with the researchers noting that “substantial investments in environmental protection have been made.”<sup>111</sup> In comparison, the United Kingdom placed 14<sup>th</sup>, Germany ranked 17<sup>th</sup>, Japan was 20<sup>th</sup>, Canada was 46<sup>th</sup>, United States was 61<sup>st</sup>, and Argentina ranked 70<sup>th</sup>.<sup>112</sup>

Pursuant to the Environmental Framework Law of 1994, general regulations concerning project design, construction, operation and closure of mining operations have been put in place.<sup>113</sup> The issue of mine closure is addressed as part of their EIAs, but it has been noted that the current regulations lack any detailed requirements, and do not specify what sorts of issues need to be addressed.<sup>114</sup> In late 2008, the government introduced new measures governing the decommissioning of mines that would require companies to incorporate closing costs into total operating cost projections for the mine by requiring companies to table their closing plans in advance of beginning mining operations.<sup>115</sup> The new measures pertaining to mine closures as well as those intended to enhance enforcement suggest governmental commitment to improving the environmental framework.<sup>116</sup> It should be noted that indigenous groups in Chile have used the courts to successfully challenge and overturn EIAs that were not performed according to law.<sup>117</sup>

Energy production is another challenging issue in Chile, and energy production has self evident environmental implications. Chile ratified the Kyoto Protocol in 1996. In 2007, Chile passed a law requiring that a part of Chile’s new electricity projects from 2007 until 2020 will be based on renewable sources.<sup>118</sup> In recent years, Chile has experienced considerable difficulties in terms of energy production, with significant consequences for the mining sector.<sup>119</sup> The almost complete absence of fossil fuels in Chile created a problem of energy dependence on unreliable external sources and oftentimes, environmentally problematic sources. The only significant domestic source is hydroelectric power, but that has not been developed. According to Alfonso Guijon, the head of a Chilean consulting firm specializing in engineering projects, Chile made a decision in 1995 to rely on gas from Argentina as

a primary energy source, moving away from locally produced hydroelectric power because it was cheaper at the time. Then in 2004, Argentina began granting domestic users privileged access, restricting the supply to Chile, and then raising taxes on fuel to Chile. This led to a switch in Chile to more expensive imported diesel fuel. By the start of 2008, electricity prices were 40% higher than in 2006. As a result, coal plants are becoming increasingly popular, but their environmental effects are also problematic. Natural gas-regasification plants are also being developed.<sup>120</sup> The Swiss mining company Xstrata has proposed developing a large hydro electric facility at Rio Cuervo in Region XI, but there is local opposition to it on a number of environmental grounds. The bottom line is that the Chilean mining industry and indeed Chile as a whole are experiencing challenges associated with finding reliable, inexpensive and environmentally benign energy sources, and these problems will likely continue for some time to come.

In 1997, Canada and Chile signed an Agreement on Environmental Co-Operation,<sup>121</sup> as a side agreement to the Canada -Chile Free Trade Agreement. The Agreement includes commitments by the two countries to enhance environmental cooperation and work to enforce environmental laws governing water, air, toxic substances and wildlife. The goal of the agreement is to ensure that environmental laws and regulations in both countries provide for high levels of environmental protection. In 2009, the Government of Canada and the Government of Chile signed a Memorandum of Understanding regarding Cooperation on the Sustainable Development of Minerals and Metals.<sup>122</sup> The Agreement is intended to promote cooperation between the Participants, through, inter alia, information and knowledge sharing, technical capacity building, official-level discussions, collaboration on projects of mutual interest, joint consultations with industry, academia and other stakeholder groups, and/or public-private initiatives. The Participants intend to carry out cooperative activities for the mutual benefit and support of both countries in the promotion of the sustainable development of their respective minerals and metals sectors and related industries.

#### 4.4 Water Code

Like the *Foreign Investment Statute* and the *Mining Code*, the *Water Code* (1981) was introduced during the Pinochet military government era, and as with the *Foreign Investment Statute* and the *Mining Code*, it adopts a “market-based” approach to property allocation, by in essence creating a privatized freshwater market under which water rights are bought, sold and traded as commodities.<sup>123</sup> Building on the constitutional assertion that the rights that individuals have over water give the holders ownership of those rights, the *Water Code* defines the country’s water resources as a national good to be used publicly and over which private individuals are given usage rights. The advantage of this approach is that it recognizes water to be a scarce resource so that price signals can then be used to set the appropriate price depending on supply and demand, and it creates a real incentive for private investment because the rights are secure and cannot be taken away without compensation.

The approach has been described by experts as working fairly well in the context of “single water using sectors” (e.g., agriculture, with trade among farmers), but not working as well where there are multiple water uses or environmental issues –where an integrated water management approach is needed.<sup>124</sup> To mitigate water shortages, one technique that has been suggested is water swaps, whereby mining companies located at high altitudes provide desalinated water to lower altitude farmers, in exchange for

access to mountain-sourced water at high altitudes. The net effect is the same -- lower altitude users continue to access water, but not from the traditional high altitude sources. But the high altitude mining operations will not have to pipe desalinated water to the tops of mountains – an economically non-viable option.<sup>125</sup>

Although the *Water Code* has facilitated the transference of water rights to mining companies, farmers and other interests that could afford to purchase them, it should be noted that the Code does include a transitory provision recognizing occupants who used waters at the time the *Water Code* came into effect (1981). Pursuant to this provision, the Colla communities have rights to 34 valleys that they have occupied on an ancestral basis.<sup>126</sup>

In 2005, reforms to the *Water Code* were passed<sup>127</sup> that include giving authority to the President to exclude water resources from economic compensation where necessary to protect the public interest; obliging the DGA (the Water Authority) to consider environmental aspects when establishing new water rights; charging a licence fee for unused water rights to reduce speculative hoarding of scarce resources.<sup>128</sup> In 2009, the Chilean Supreme Court upheld lower court and tribunal rulings granting water rights to indigenous groups in Region I, against a claim by a company seeking the rights to bottle and sell freshwater from a source used historically by the Aymara.<sup>129</sup> The lack of harmonization between the granting of water rights under the *Water Code* for mining purposes on the one hand and the traditional usage of water by indigenous populations is an example of the “lack of fit” between laws that was described earlier. As noted above, Kinross Maricunga has committed to assisting the Colla of the Rio Jorquera community in the purchase of water rights. However, this appears to be an ad hoc response until the Colla can secure rights through the legal regime.

#### 4.5 Worker Laws

With respect to worker rights, the Constitution of 1980 provides that everyone has the right to work in a non-discriminatory environment, and the right to form a union, to bargain collectively and to go on strike unless prohibited by law (see esp. Article 16). Commentators have suggested that General Pinochet’s military is responsible for features in the labour code that have kept the labour movement weak, such as providing the businesses with the right to replace striking workers and to negotiate with bargaining groups.<sup>130</sup> The Chilean government is a signatory to and has ratified all eight core worker rights conventions of the International Labour Organization (ILO).<sup>131</sup> In particular, in 1999, Chile ratified both Convention No. 87 on the freedom of association and protection of the right to organize and Convention 98 on the right to organize and collective bargaining. Workers have the right to form unions without prior authorization and are free of government regulation of their internal organization. Workers have the right to collective bargaining. Workers in the private sector have the right to strike.

In 2007, a law on sub-contracted labour came into force, intended to clarify what protections and rights such workers possessed.<sup>132</sup> It has been said that while sub-contracting has been common in Chile for some time, it was the rise of outsourcing by the mining and white collar industries that persuaded the Chilean government to bring in the new law pertaining to sub-contracted labour.<sup>133</sup> Outsourcing has typically been used to bring in skilled, specialist labour for particular tasks, or to offload routine, non-core tasks. No matter what the merits of the practice, prior to the introduction of the new

subcontracting law, it was apparently unclear in many cases who – the contractor or the contractee -- was responsible for a sub-contracted worker's welfare (e.g., in situations where an accident had taken place). The new law provides a clear definition of subcontracted labour and lays out the conditions under which companies may employ temporary workers. With the introduction of the new law, companies can only employ temporary workers in clearly specified, exceptional circumstances, and only for non-renewable, limited duration contracts. The law also requires that the principal company (i.e., the company seeking the services of the sub-contractors, either directly or indirectly) take more responsibility for the health and safety of subcontracted workers as well as for matters like ensuring payment of their social security contributions. It has been reported that one effect of the law has been to stimulate companies to convert workers from subcontracted to directly employed workers. Note however, that the subcontracting law does not guarantee equality of salaries for previously contracted workers. There are reports of “increased militancy” of Chile's subcontracted workers.<sup>134</sup> The law has sparked litigation by major mining companies operating in Chile (e.g., CODELCO and BHP Billiton/Escondida).<sup>135</sup>

With respect to worker health and safety, the key protections are contained in the *Mine Safety Regulations* (Decree 132, 2004) and the *National Geology and Mining Service Act* (Decree 3525, 1980), which address all key worker health and safety issues. Currently under consideration is a law that would require that high altitude mining camps not be constructed or operated above the 3000 metre level.<sup>136</sup> As discussed later, in the Kinross Gold Maricunga situation, work toward construction of a mining camp at a level below 4000 is in progress.

#### 4.6 Indigenous Law

Mining companies such as Kinross Gold look at first instance to legal instruments such as the Water Code of 1981, the mining laws of 1982-1983 and the Environmental Framework Law (No. 19,300 of 1994) for authority to extract resources. But the exploration and development rights provided to mining companies in these instruments need to be juxtaposed against and considered in light of the legal protections afforded to indigenous peoples in Chile. Arguments have been made that the law in Chile has tilted the situation in favour of mining exploitation before resolving competing indigenous claims.<sup>137</sup> Commentators have also suggested that there is a conflict between legal and indigenous concepts of resources:

Companies that exploit natural resources in Chile face an underlying problem relating to the concept of “territory”. In indigenous cultures territory is an indivisible whole: ground and underground, air, water, forest, etc. In Chilean law however, for each resource there are separate laws regulating the rights of use and exploitation. Coexisting with surface ownership of the land, mineral resources belong to the state, while the right to explore and exploit minerals belongs to the mining concessionaire. Similarly, competition exists for water as a result of its great scarcity in the arid climate of northern Chile. The New Water Code of 1981 separated water rights from land rights, allowing parties to obtain rights over water located in historically communal lands. Competition over resources has not triggered aggression among the parties.

Rather conflict is expressed through judicial disputes over indemnities or the constitution and regulation of water rights.<sup>138</sup>

As noted earlier, this sort of standoff between law and traditional indigenous conceptions of ownership has manifested itself in the particular situation of Kinross Gold Maricunga and the Colla in the form of the company undertaking to assist the Colla in purchasing water rights. However, it seems clear that this is an ad hoc response to a more fundamental incongruity of approaches to resource ownership and use that has not yet been satisfactorily resolved in law at the State level.

The prospect exists of a “re-balanced” legal regime in which the interests of Chilean indigenous persons are strengthened as a result of the recent Chilean ratification of ILO 169. Before examining this new and potentially game-changing legal development, it is necessary to examine the current legal protections afforded to indigenous persons. The key existing indigenous law of Chile is Law No. 19,253, which came into effect in 1993. The second key law pertaining to indigenous persons is ILO Convention 169 (Indigenous and Tribal Peoples Convention, 1989), which was ratified by Chile in September, 2008.<sup>139</sup> The “fit” between Chilean mining law on the one hand and Chilean indigenous law on the other is not a perfect one in the sense that the State has long been making concessions concerning rights to water and mineral resources to one set of actors (mining companies) in advance of having worked out the rights and capacities of indigenous populations.<sup>140</sup> The two key indigenous laws and their relation to mining laws are briefly discussed here.

The first indigenous law, Law No. 19,253, recognizes that the culture and existence of many indigenous persons is strongly connected to the territory where they live, and attempts to protect the relationship between indigenous peoples and the land by requiring the consent of each family for the transfer of land rights, as well as approval by the *Comisión Nacional de Desarrollo Indígena* (CONADI).<sup>141</sup> It has nevertheless been noted that the law does not recognize indigenous peoples as such but simply as “ethnic groups,” and does not recognize the traditional organizations, nor the political or territorial rights of indigenous groups.<sup>142</sup>

Pursuant to Article 1 of Law No. 19,253, the State has explicitly recognized the Colla and eight other indigenous peoples. Article 1 emphasizes the importance of indigenous peoples to the identity of Chile and commits Chilean society in general and the State in particular to protecting and promoting the development of indigenous peoples, their cultures, families and communities by adopting appropriate measures for such purposes and to protecting indigenous lands, to ensure their appropriate use from an ecological and development standpoint. By Article 12, lands that are “historically occupied and held” by individuals or communities of Colla are protected, provided that their rights are registered. Specific protections concerning the Colla are also provided in Title VIII of the Act (articles 62 – 65), in which CONADI (the Chilean governmental authority responsible for indigenous affairs) is legally obligated to safeguard native lands and culture.<sup>143</sup>

Pursuant to Law No. 19,253, starting in 1994, a process of negotiations regarding “territorial demarcation” has taken place between Chilean government agencies such as CONADI and indigenous groups such as the Colla concerning ownership of lands.<sup>144</sup> One problematic aspect of this law has been

reconciling notions of “effective occupation” with the more nomadic living patterns of the Colla who traditionally have moved with the seasons.<sup>145</sup> An exercise in territorial demarcation pertaining to the Colla concluded in 2003-2004 with the recognition of 8,622 hectares of effective occupation by the Colla communities in the Atacama region (the same region where the Maricunga mine is located), corresponding to certain key valleys and waters.<sup>146</sup>

The second important law pertaining to indigenous rights in Chile is ILO Convention 169. In 2008, Chile ratified ILO Convention 169, which promotes and protects indigenous forms of participation when their territories are affected.<sup>147</sup> Prior consultation (i.e., a duty of government to consult with affected indigenous populations) is one of the mechanisms to be used to ensure indigenous community participation in activities of exploration and exploitation of natural resources in their territories (Art. 6, 7, 13, and 15). In particular, Article 7 states the following:

The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation, evaluation of plans and programmes for national and regional development which may affect them directly.

Importantly, the Convention recognizes not just rights of indigenous peoples to land ownership, but also to access and protection of sacred and spiritual places and territories. Pursuant to Article 16, where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their “free and informed consent.” In furtherance of their State obligations under ILO 169, in 2009, the Chilean government published a draft Code of Responsible Conduct to address resource project issues such as what constitutes acceptable consultation, and acceptable compensation. The draft Code was not well received by indigenous groups or the mining sector.<sup>148</sup> There has been considerable controversy concerning the terms of the draft Code (e.g., is “prior, informed consent” of affected indigenous communities required, or would meaningful consultation suffice?), the legal status of the Code, and the application of the Code to both public and private projects.<sup>149</sup> As a result, the draft Code of Responsible Conduct initiative has been terminated. In its place, the Government has issued a “Presidential Instruction” limited to regulating the process of public consultation contemplated in the ILO 169 Convention. The Government is now developing legislation to fully implement the Convention.

As noted earlier, in 2009, the Chilean Supreme Court ruled in favour of granting water rights to the Aymara, an indigenous group located in Region I, against the claims of a private company seeking rights to bottle and sell freshwater from a source used historically by the Aymara. In reaching this conclusion the Court drew for the first time on ILO Convention 169.<sup>150</sup>

#### *4.7 Extra-regulatory instruments*

As in Canada, mines of Canadian firms operating in Chile may be subject to a range of voluntary regulatory codes, guidelines, standards, principles and certification initiatives, in addition to these mines

being required to command and control regulations of the Chilean government. The following are some key voluntary regulatory instruments applying or potentially applying to Kinross Gold Maricunga:

- Kinross Gold is a member of the *Consejo Minero*,<sup>151</sup> a mining association representing Chile's major mining companies. In 2002, the Consejo Minero signed a voluntary Framework Accord for Clean Production with the Government of Chile.<sup>152</sup> The aim of the Accord is to promote the improvement of productivity while increasing proficiency of the sector in pollution prevention and cleaner technology. In addition the accord is designed to encourage a greater dialogue with the appropriate regulatory bodies and the Consejo Minero's membership to address health and safety and environmental issues. Sub-committees are to address acid drainage, mine closure, efficient use of energy and water, and liquid and solid wastes. A committee of the *Consejo Minero* (which includes mining company representatives as well as contractors, providers, and sub-contractors) meets regularly to discuss sustainable development concerns.<sup>153</sup> In 2007 and 2008, the Consejo Minero released sustainability reports outlining the commitments and activities of member companies, including Kinross Gold.<sup>154</sup>
- Another important voluntary initiative used in the Chilean mining industry is the ISO 14001 environmental management system (EMS).<sup>155</sup> The value of an EMS for mining has been to provide a platform for the training and heightened awareness of large number of workers in a relatively dangerous industry, and to demonstrate a level of commitment to employees, clients and stakeholders, backers and other countries. It has been reported that 12 of the 22 largest mines in Chile were certified to the ISO 14001 environmental management system standard, with another four committed to be certified by 2004 – 2005.<sup>156</sup> At this point, the Kinross Gold Maricunga operations are not certified to ISO 14001, although Kinross Gold has modeled its environmental management system after ISO 14001,<sup>157</sup> and one Kinross operation in Chile is ISO 14001 certified.<sup>158</sup>
- Like other gold companies operating in Chile and elsewhere, Kinross Gold is a signatory to the International Cyanide Management Code for Manufacture, Transport and Use of Cyanide in the Production of Gold.<sup>159</sup> The Code is a program for gold companies that promotes the responsible management of cyanide in gold mining, enhancement of the protection of human health, and the reduction of the potential environmental impacts of the project. Companies that become signatories to the code must have their operations audited by an independent third party to demonstrate compliance. As discussed below, the Kinross Gold Maricunga operation has been certified by a third party as being in compliance with the Code.
- Canada is a signatory to the OECD Multinational Enterprise (MNE) Guidelines.<sup>160</sup> The OECD Guidelines are voluntary principles and standards for responsible business behaviour addressed to multinational companies that are based in countries that adhere to the OECD guidelines. Ultimate enforcement of the OECD Guidelines rests with the National Contact Point (NCP) which is established in each of the adhering countries. The NCP accepts complaints and is mandated to resolve any issues brought before them. Because Canada is a signatory to the OECD MNE Guidelines, Kinross Gold could be the subject of a complaint regarding its Maricunga operations, which could trigger a review through the NCP.



- Kinross Gold is a member of the Mining Association of Canada, which has a “Towards Sustainable Mining” (TSM) initiative,<sup>161</sup> by which members with operations in Canada are required to report on performance. The TSM initiative focuses on improving the mining industry’s sustainable development performance by following certain guiding principles and by reporting on indicators that measure company performance in development areas such as safety and health, mining and aboriginal peoples, biodiversity, mine closure, energy use, greenhouse gas emissions management, tailings management and external outreach and crisis management. While not a requirement, some Canadian mining companies with operations outside of Canada have chosen to report using the TSM framework on their non-Canadian operations. To date, Kinross Gold has not done so.
- Kinross Gold has recently become a member of the United Nations Global Compact (UNGC).<sup>162</sup> The UNGC is an international initiative launched by the United Nations in 1999 to bring companies together UN Agencies, labour and civil society to support principles in the areas of human rights, labour, the environment, and anti-corruption. To be a part of UN Global Compact, a company’s chief executive officer must commit to making the Compact’s ten principles an integral part of its business strategy, day-to-day operations and decision making processes. The ten principles set out core values in the areas of human rights, labour, the environment and anti-corruption practices. In addition, UNGC members are expected to engage in partnerships to advance broader development goals, such as the UN’s Millennium Development Goals.
- As part of its first CSR report, Kinross Gold drew on the approach of the Global Reporting Initiative (GRI).<sup>163</sup> The GRI is an independent, network-based institution which developed, and continues to improve on, a globally applicable sustainability reporting framework, through a consensus-seeking process with globally-sourced input from business, civil society, labour and professional institutions.
- Kinross Gold is a member of the World Gold Council (WGC).<sup>164</sup> The WGC provides a forum for education and dialogue that helps to address the range of sustainability issues faced by the industry. The World Gold Council is an active member of both the International Council on Mining & Metals (ICMM)<sup>165</sup> and the Responsible Jewellery Council and fully endorses the principles and mission statement of both organizations in regard to sustainability.<sup>166</sup> The ICMM has developed a set of ten sustainable development principles and a sustainable development framework.<sup>167</sup> The principles address ethical practices and sound corporate governance, integration of sustainable development considerations in corporate decision-making, upholding fundamental human rights and respecting cultures in dealing with employees and other affected parties, implementing risk management strategies, seeking continual improvement of health and safety and environmental performance, contributing to biodiversity, facilitating responsible product design, use and disposal, contributing to social, economic and institutional development, and implementing effective and transparent engagement, communication and reporting arrangements with stakeholders.

- Although not with respect to its Maricunga mine, Kinross Gold has received financial support for its financial operations from the International Finance Corporation (IFC).<sup>168</sup> The IFC is a member of the World Bank Group. IFC's mandate is to foster sustainable economic growth in developing countries. IFC is the largest multilateral financial institution investing in private sector enterprises in emerging markets. The IFC applies its IFC Performance Standards to the full range of IFC investment activities.<sup>169</sup> An IFC client is responsible for meeting the standards throughout the life of an investment. The eight standards are: Social and Environmental Assessment and Management Systems; Labour and Working Conditions; Pollution Prevention and Abatement; Community Health, Safety and Security; Land Acquisition and Involuntary Resettlement; Biodiversity Conservation and Sustainable Natural Resource Management; Indigenous Peoples; and Cultural Heritage. In addition, extractive industry projects must demonstrate a free prior informed consultation with the affected community and that broad community support exists for the project.
- Launched in 2000, the Voluntary Principles on Security and Human Rights (Voluntary Principles)<sup>170</sup> provide guidance to extractive companies on maintaining the security of their operations in a manner that respects human rights and fundamental freedoms. The Government of Canada was welcomed as an engaged government at the 2009 Plenary meeting of the Voluntary Principles on Security and Human Rights. The Voluntary Principles are intended to help corporations anticipate and mitigate risks associated with the hiring of public or private security companies to safeguard extractive sector operations. On its website, Kinross Gold indicates its support for the Voluntary Principles.<sup>171</sup>

Later in the report, these voluntary regulatory instruments will be selectively referred to vis-à-vis the Kinross Gold Maricunga as relevant. The important point to note at this point is the wide range of extra-regulatory initiatives that apply or could apply to the Maricunga operation.

## **5.0 Kinross Gold – Corporate Level Overview and Global Approach to CSR**

### *5.1 Kinross Gold Corporate Level Overview*

Kinross Gold Corporation was created in 1993, through the amalgamation of CMP Resources, Plexus Resources, and 1021105 Ontario Limited.<sup>172</sup> Since then, the company has experienced considerable growth through a large number of acquisitions, mergers, divestitures and asset swaps (see chart below).<sup>173</sup> Although Kinross Gold has had a certain amount of overseas exposure from its first year as a company, an initial focus on North America has given way over time to a more diversified assets base -- in particular, to projects and developments in South America and Russia, as can be seen in the table below of recent acquisition and other activities.

### Recent Kinross Gold Merge/Acquisition/Other Activities

1998	Merger with Amax Gold (becomes 50% owner of Maricunga mine & 50% in Russian mine)
1999	Acquisition of La Teko Resources (True North property, Alaska)
1999	Completed Acquisition of True North
2003	Merger with TVX Gold and Echo Bay Resources (acquires 50% of La Coipa, Chile, 49/50% owner of Paracatu and Crias in Brazil, and various North American interests)
2004	Acquisition of remaining 51% interest in Paracatu (Brazil) from Rio Tinto
2005	Tye Burt (formerly Vice Chair and Exec Director of Corporate Development at Barrick Gold, and prior to that 16 year career in corporate finance and mergers and acquisitions)
2006	Acquisition of Crown Resources (U.S. properties)
2007	Completes Acquisition of Bema Gold (becomes 100% owner of Maricunga, 49% owner of Cerro Casale, 75% interest in Kupol project in Russia, 90% interest in Julietta Mine in Russia)
2007	Asset swap with Goldcorp (becomes 100% owner of La Coipa in Chile)
2008	Acquisition of Aurelian Resources (Ecuador), divests Julietta and another Russian property
2008	Acquisition of Lobo Marte (Chile) from Teck
2009	Acquisition of interest in Diavik mining partnership
2010	Sells 25% in Cerro Casale (Chile) to Barrick Gold

This spate of growth activity has turned Kinross Gold from a small player into a major gold producer in the world,<sup>174</sup> employing approximately 5,500 employees globally, generating annual revenues of about \$1.6 billion.<sup>175</sup> The table below provides a basic comparison of where Kinross Gold ranks against other global gold mining companies.<sup>176</sup> Kinross Gold is not a “super-major” such as Barrick Gold or Newmont Gold,<sup>177</sup> but it is now a significant global gold producer.

### Major Global Gold Mining Companies (2009 Data)

Company	Headquarters	Operating mines	Employees and contractors	Financial	Gold Production
Barrick Gold	Canada	26	Approx. 20,000	\$8.4 billion	7.4 Moz
Newmont Gold	U.S.	20	Approx. 31,000	\$7.7 billion	8.0 Moz
Anglo Gold Ashanti	South Africa	21	Approx. 63,364	\$3.8 billion	4.6 Moz
Kinross Gold	Canada	8	Approx. 5,500 employees & 2000 contractors	\$2.4 billion	2.2 Moz

## 5.2 Kinross Gold Evolving Approach to Corporate Social Responsibility

As the global portfolio of Kinross Gold has expanded, a complex legal structure involving over thirty different corporate entities located around the world has been put in place.<sup>178</sup> The development of the Kinross Gold approach to corporate responsibility needs to be understood against a backdrop of these acquisitions, mergers and other growth activities. Although the social responsibility activities of mining companies are important no matter where the mining activity takes place, CSR takes on particular significance in developing country contexts, where the regulatory/legal infrastructure tends to be less well developed.<sup>179</sup> Thus, a case can be made that the need for a sophisticated corporate-wide CSR approach has increased for Kinross Gold as the company itself has grown, become more sophisticated and has increasingly diversified its asset base into developing countries.

Particularly during the 1998 – 2006 period, Kinross Gold devoted significant attention to reclamation projects and decommissioning of non-productive mines that it had acquired (thereby meeting environmental requirements and minimizing liabilities),<sup>180</sup> and identification and disposal of underperforming assets. For example, with the purchase of Amax in 1998, Kinross Gold not only acquired three operating mines, they also obtained eight reclamation projects, and was legally required to address the environmental issues associated with those projects.

In addition to addressing environmental responsibilities associated with reclamation projects, in 2005, Kinross Gold was required to address “some serious accounting problems” caused by the merger with TVX Gold and Echo Bay Mines.<sup>181</sup> In October 2005, Kinross was forced to report a US \$416 million loss as the company cleaned up its accounting problems and restated two years of financial results.<sup>182</sup> Most of that declared loss was a one-time, non-cash charge related to goodwill that had been improperly accounted for as a result of previous mergers. The situation was explained in a 2006 article as follows:

Goodwill is a touchy subject for gold companies, since their shares usually trade at a hefty premium to the value of underlying assets. When a company is taken over, that premium is recorded as goodwill. After nearly a year of negotiations with regulators, Kinross adopted a new method of recording goodwill that has since been accepted by other gold companies, as well as the Securities and Exchange Commission..... “We pretty much had to take one for the team and come up with a new way to account for goodwill,” says Burt.<sup>183</sup>

With these major “house-building” and “housekeeping” activities behind them, in 2006, and with the emergence of the company as a global gold producer with a portfolio increasingly weighted toward developing country activity, the need to develop a robust and effective CSR approach came into sharp focus, building on it earlier environmental activities. As was said in Kinross Gold’s first CSR report “with that growth, and our large mineral endowment, comes a major responsibility.”<sup>184</sup>

The table immediately below provides a snapshot indication of the increasingly elaborate and formalized CSR approach that Kinross Gold has been taking in recent years.

#### **Recent CSR Developments at Kinross Gold Corporation**

<b>Year</b>	<b>Initiative</b>
2007	Adopts “Living our Values....the Kinross Way” (Four key values)
2007	Publishes “Ten Guiding Principles for Corporate Responsibility”
2008	Publishes “Taking Responsibility,” the first Kinross Gold Corporate Responsibility Report
2009	Creates Position of VP Corporate Responsibility
2009	Reorganizes Board Committees and Operating Groups to reflect CSR prioritization
2010	Appoints VP Corporate Responsibility
2010	Joins United Nations Global Compact
2010	Developing policies re: Indigenous and human rights, climate change, and suppliers
2010	Developing Site Responsibility Guidance on engagement, evaluation, action and monitoring
2010	Publishing second Kinross Gold Corporate Responsibility Report

It could be said that 2007 represented a turning point for corporate level engagement on CSR issues at Kinross Gold. In 2007, the company issued two foundational CSR policy documents -- “Living our Values.....the Kinross Way”<sup>185</sup> (hereafter “the Kinross Way”) and “Ten Guiding Principles for Corporate Responsibility.”<sup>186</sup> In many ways, these documents can be said to “stake out” the Kinross Gold approach to responsible gold mining in the global context.

The first of these two documents, “the Kinross Way,” is a basic statement of four values that anchor the firm’s core purpose. The Kinross Gold core purpose is described as follows:

To lead the world in generating value through mining... [t]his goal is not just about profits or growth – although both are important. It recognizes that the idea of “value” is relevant not only to our shareholders, but equally to our people and the communities in which we operate. Everyone in our organization has an important role to play in bringing this vision to life.

Thus, a broad conception of “value” is espoused that goes beyond profit making and shareholders to encompass the communities in which Kinross Gold operates. The four values underlying the core purpose can be summarized as: (1) putting people first; (2) outstanding corporate citizenship; (3) a high performance culture; and (4) a rigorous financial discipline. The document includes some preliminary statements about the personality of Kinross Gold, including: “[w]e do not take a short-term view – either financially or otherwise,” “[w]e do not compromise when it comes to doing the right thing in the communities where we operate,” and “[w]e do not seek to copy the business models or practices of other mining companies.”

With respect to the first value of “putting people first,” the document speaks of health and safety being a number one priority for both employees and other stakeholders, and states that “we will always treat each other with fairness and respect.....sensitive to local cultures, customs and practices.”<sup>187</sup>

Concerning “outstanding corporate citizenship,” the document links explicitly to the Kinross Gold “Ten Guiding Principles for Corporate Responsibility” (discussed below), and also expressly commits the company to “the highest ethical and governance standards in the industry,” “integrity and transparency in everything we do,” vigilance in “protecting the environment...to minimize our environmental footprint wherever we operate,” and supporting “sustainable initiatives to provide lasting benefits to the communities where we work.” With respect to the concept of a “high performance culture,” the document speaks of a results-oriented company, valuing innovation, adaptability and accountability, with continuous improvement central to the business culture. Concerning “rigorous financial discipline,” the document notes the need for prudence, discipline and efficiency.

The second key document is Kinross Gold's "Ten Guiding Principles for Corporate Responsibility," also published in 2007.<sup>188</sup>

**Kinross Gold "Ten Guiding Principles for Corporate Responsibility" (2007)**

[Note preamble not included here. See Annex for full preamble and principles]. We are committed to ensuring that our people and our partners live by these principles and that our actions on the ground across our global operations consistently reflect their spirit.

1. We put people first and our number one priority is the safety of every employee.
2. We maintain the highest standards of corporate governance, ethics and honesty in all of our dealings, and operate in compliance with the law wherever we work.
3. We promote an ongoing dialogue and engagement with stakeholders in the communities where we operate, maintained in a spirit of transparency and good faith.
4. We exercise utmost vigilance in protecting the environment and seek ways to minimize our environmental footprint wherever we operate. We will always meet, and where possible exceed, regulatory requirements in our environmental performance.
5. We consider all aspects of an operation or new project – including social, environmental, and post-closure issues – in making our investment decisions.
6. We conduct all of our activities in accordance with accepted standards in the protection and promotion of human rights. We respect the cultural and historical perspectives and rights of those affected by our operations, in particular indigenous peoples.
7. We provide a rewarding and meaningful livelihood to our employees and strive to be an employer of choice.
8. We seek to maximize employment, business and economic opportunities for local communities from our existing operations and new projects.
9. We provide lasting benefits to the communities where we work by supporting sustainable initiatives to develop their social, economic, and institutional fabric. We recognize that every community is unique and we work with our community partners to ensure that our support matches their priorities.
10. We maintain an active engagement and dialogue with our global industry peers, associations, governments, and civil society on CSR best practices and evolving global standards.

In the preamble to the Guiding Principles, it is noted that "we believe we have both a moral and a business imperative to be a good neighbour wherever we operate", that the principles define what "doing the right thing means" and that "we understand that maintaining our social license to operate means maintaining strong and mutually beneficial relationships with communities and stakeholders wherever we live and work."<sup>189</sup> While recognizing that social responsibility is "more a journey than a

destination”, the principles are nevertheless described as “firm, non-negotiable guidelines” that will provide a foundation for detailed policies addressing a wide range of issues. The ten principles commit the firm to the pursuit of safety, compliance with the law, ongoing dialogue with stakeholders, environmental protection, respect for human rights, provision of rewarding work, maximization of local community opportunities, provision of lasting benefits to communities, and engaging in dialogue with global representatives re: CSR.<sup>190</sup>

In order to better understand how the Kinross Gold “Ten Guiding Principles for Corporate Responsibility” match up against those of the global mining industry, and against Canadian government-supported global principles of good behaviour, a comparative content analysis of the Kinross principles was undertaken for this study, comparing them to the “Sustainable Development Principles” of the International Council on Mining and Metals (hereafter also referred to as the “ICMM SD Principles”) and the Performance Standards of the International Finance Corporation (hereafter also referred to as “ICMM SD Principles”). The full analysis is located in Annex F. The conclusion of the analysis is that, while the Corporate Responsibility Principles of Kinross Gold (hereafter also referred to as “KG CR Principles”) have their distinctive elements when compared with the ICMM SD Principles and the IFC Performance Principles, there is nevertheless considerable alignment among the three instruments. When compared with the ICMM SD Principles, the KG CR Principles put more emphasis on employees and communities. Comparing the KG CR Principles and the IFC Performance Standards, the KG Principles include an explicit commitment to uphold accepted human rights standards while the IFC performance standards speak only of rights in the context of worker rights.

The third foundational Kinross Gold CR document is its Code of Business Conduct and Ethics.<sup>191</sup> The Code applies to Kinross Gold directors, officers and employees.<sup>192</sup> It addresses workplace policies, environment, health and safety issues, third-party relationships, legal compliance, confidentiality associated with Kinross Gold information and the use of Kinross Gold assets. The Code also prohibits corruption, including participation in any bribes, kickbacks, improper profit-sharing arrangements, illegal gratuities or improper inducements or payments to any public official. All employees are required to read and annually acknowledge understanding of and compliance with the Code, which includes policies that promote a discrimination-free and harassment-free workplace. A procedure has been established so that employees can report Code violations. In 2008, the company launched a company-wide “Whistleblower” Policy, as well as a corresponding internet and toll-free telephone-based reporting hotline, in multiple languages, through a third-party service provider.<sup>193</sup> There is also a procedure in place for non-employee whistleblowing.<sup>194</sup>

Underlying these three Kinross Gold Corporate Responsibility foundational documents are a range of more issue specific documents. With respect to environmental and health and safety matters, Kinross Gold has a company-wide Environmental Health and Safety (EHS) management system, modeled on the ISO 14001 environmental management system standard and OHSAS 18001 occupational health and safety management system standard.<sup>195</sup> Supporting the Kinross EHS management system is:

- An environmental policy and a health and safety policy: among other things, the two policies commit to the company complying with all applicable laws, establishing and maintaining standards, training all employees and contractors, establishing and implementing performance

measures, verifying compliance, and requiring the Corporate Responsibility Committee of the Board of Directors to meet on a regular basis to monitor performance and confirm adherence;

- water management guidelines: among other things, the policy acknowledges the use of water in ore processing and dust suppression, and commits to minimizing water consumption, requires that all milling process operations are designed to be closed loop systems and recirculate water, recapture run-off and other water where possible, and reporting on same;
- energy and climate change management guideline under development that acknowledge the impact of Kinross Gold fuel consumption and the imperative to improve efficiencies and limit greenhouse gas emissions;
- air emissions guideline that acknowledge the dust and vehicle exhaust emissions, and commits to dust suppression and reporting annually through the Carbon Disclosure Project;
- commitment to compliance with the International Cyanide Management code;
- A closure and reclamation standard that states that returning land disturbed by mining to stable and productive post-mining land uses is a cornerstone Kinross Gold commitment. Upon cessation of mining operations, responsibility for the reclamation of facilities, final reclamation and compliance with all applicable regulatory requirements is assumed by Kinross Gold's reclamation unit, a separate organization within the company since 2002;
- A biodiversity standard that includes identification and assessment of biological communities in the vicinity of Kinross Gold operations, and operation designs to avoid, minimize or mitigate their effects.<sup>196</sup>

Kinross Gold is on record that it is developing policies with respect to human and indigenous rights, supply chain and climate change.<sup>197</sup> In addition, Kinross Gold is developing a Site Responsibility Plan document, addressing site-level guidance concerning stakeholder engagement, SR impact evaluation, monitoring and action.<sup>198</sup>

### *5.3 CSR Decision-Making at the Kinross Gold Corporate Level*

A new operating model and associated re-organization launched in the fall of 2009 now acknowledges the key strategic importance of corporate responsibility in achieving the company's goals, by establishing a new External Relations/Corporate Responsibility (ER/CR) group as one of the company's four strategic operating groups (the other three strategic operating groups being Mining Operations; Strategic Development & New Investment; and Project Development). The ER/CR group is under the leadership of the Executive Vice-President External Relations and Corporate Responsibility, reporting to the President and CEO. The ER/CR group includes Environment, previously part of the mining operations organization, as well as large project permitting, recognizing the connection between corporate responsibility and the ability to successfully permit major new projects. The new position of Vice-President Corporate Responsibility was also established as part of this structure, recognizing the importance of having a senior person dedicated to the corporate responsibility function at a corporate level.

Complementing its management team and operating approach at the headquarters level, Kinross Gold has also developed a region-based decision-making structure, with Regional Vice-Presidents and senior management personnel in place at a country level in Brazil, Chile, Ecuador, the United States and Russia.



This involves a matrix-based management model, whereby functions at a regional level (including environment, community relations, government relations, permitting, and other functions) are co-managed by functional leaders at a corporate level. The corporate level is responsible for establishing the overall direction of the company and (mandates, standards and governance) and the regions and sites are responsible for executing on the specific local deliverables (e.g., safety, production targets, stakeholder engagement, etc).

Along with these organizational and operational changes at the headquarters and regional level, there have also been changes at the Board level. In February, 2010, a Corporate Responsibility Board Committee was established, encompassing and replacing the existing Environmental Health and Safety Committee of the Board (hereafter also referred to as “the CR Committee”), with a new Charter embracing an expanded corporate responsibility mandate for this committee (hereafter also referred to as the “CR Charter”).<sup>199</sup>

The mandate of the CR Committee is to review the development and implementation of strategies, policies and management systems of Kinross Gold relating to corporate responsibility. The CR Committee is responsible for confirming that Kinross Gold demonstrates a leadership role among its peer group mining companies in CR, by the company consistently exhibiting and promoting ethical, transparent and responsible behaviour; by meaningfully engaging its key stakeholders and communities; and by contributing to the development and growth of healthy and sustainable communities wherever it operates.

In addition, the mandate includes reviewing the company’s activities related to the permitting of its operations, development projects and exploration activities and monitoring key legislation, regulations and government policies that may impact on the company’s business strategy and activities. The CR Committee has the responsibility to review management’s development and implementation of CR strategies and procedures, permitting, performance, and communications and reporting. The CR Committee is to be comprised of at least three directors, a majority of whom shall be independent directors. While the environmental, worker health and safety, and community dimensions now all report up to the Corporate Responsibility Board Committee, activities associated with the Kinross Gold Code of Business Conduct and Ethics report up to the Corporate Governance Committee.<sup>200</sup>

A final point to note is that Kinross Gold has built corporate responsibility-related performance incentives into the evaluations of headquarters, regional, and key operations-level officials, through something called a “four point plan.”<sup>201</sup> The net effect is that bonuses are based upon meeting annually negotiated goals focusing on four pillars, and those individuals with environmental, worker, community, or other corporate responsibility functions are evaluated on this basis.

#### *5.4 Kinross Gold Corporate CSR Performance Reporting*

Kinross Gold’s first CSR report, “Taking Responsibility,” was published in 2008. It describes the company’s CSR commitments and activities globally, highlighting specific initiatives at various operations. The company plans on issuing its next comprehensive report in 2010.<sup>202</sup> The report was prepared using the Global Reporting Initiative guidelines as a structure, and the data provided in the report was independently reviewed.<sup>203</sup> In preparing “Taking Responsibility,” the conclusion of Kinross Gold executives was that it was not realistic to be an “A” level GRI reporter on the first attempt.<sup>204</sup> Data was gathered on 30 indicators using a detailed questionnaire, followed up with on-site interviews.

### *5.5 Kinross Gold Involvement in Third Party CR Initiatives/Organizations*

As discussed earlier, a number of voluntary regulatory instruments apply or potentially apply to Kinross Gold in general, and the operations of Kinross Gold Maricunga in particular. In an interview for this case study with a senior Kinross Gold executive, the Kinross Gold approach towards external CR-related standards, codes, guidelines and organizations was explained as follows:

We examine them on a case by case basis, drawing on them in our own corporate instruments or “signing on” to external instruments as we feel is appropriate. The CEO has ...focused on ....on building and internalizing rather than saying “We’ve joined this or that so therefore we have good CSR.” So, for example, here’s the way we developed our ten principles: rather than just putting our hand up, and saying “Yes, sign us up to some external standard,” we felt we need to break down the external standards and express them in our own words in a way that worked for us. It’s true we drew heavily from the ICMM SD framework in these ten principles. But rather than just say “we sign on to them” we felt we needed to restate them in our own words. We felt that this makes things more meaningful for our company, to internalize them and articulate them.... This is similar to the way that we have a corporate EHS policy and then each operational EHS level policy is customized by those operations to their circumstances, because it’s very important for the workers to see the GM’s name at the bottom of a document on the wall in a particular operation rather than CEO Tye Burt’s name. Kinross Gold joined the UN Global Compact in 2010 because we see the benefit in being part of that organization. To be a part of the Compact, a company’s CEO must commit to making the Compact’s ten principles an integral part of its business strategy. CEO Tye Burt is prepared to do this. We are embarking on human rights training consistent with the Voluntary Principles on Security and Human Rights and will have everyone trained by the end of this year. We are reporting to the GRI which has a sustainability reporting framework for the extractive sector to enhance transparency and encourage market-based rewards for good CSR performance. We are members of the World Gold Council that subscribes to the ICMM.

Kinross Gold is also a member of U.S.-based Business for Social Responsibility, and Canadian Business for Social Responsibility, and a responding company to the Carbon Disclosure Project.

### *5.6 External Reception of Kinross Gold’s Corporate CR Approach*

In interviews for this case study, Kinross Gold executives stated that the company has been positively received by governments because of their good CSR record.<sup>205</sup> CSR ratings by third party organizations reflect the increasing attention being paid by the company to its social and environmental responsibilities. In July 2005, Kinross Gold was selected as a constituent of the Jantzi Social Index (a leading Canadian index of ‘socially responsible’ companies). In a spring 2007 rating of Canadian mining companies, a joint Globe & Mail/Jantzi Research initiative gave Kinross Gold a “C-” rating, noting that while the firm had “a relatively good compliance record on environmental and health and safety matters, its related management systems are average. The firm discloses little information in these areas.”<sup>206</sup> By November 2007, however, a Jantzi survey for the popular Canadian newsmagazine Maclean’s gave Kinross Gold an “A-” rating (tied for the top rating among Canadian mining companies), based on its adoption of a detailed set of CSR guidelines and principles, and its participation in development of an international code for gold mining firms’ use of cyanide.<sup>207</sup> In 2009, Kinross Gold was one of only two

mining companies included in the Jantzi-Maclean's "50 Most Socially Responsible Corporations."<sup>208</sup> Interviews for this case study with investment organizations that consider social responsibility dimensions of firms as part of their investment decision-making, and interviews with non-governmental organizations that track Canadian mining companies revealed that they feel that Kinross Gold has made significant progress to develop and implement its corporate responsibility approach in recent years, is responsive to queries, and is seen as a good CSR performer. Several did note that Kinross Gold has been fortunate to date in that, unlike some its Canadian extractive sector counterparts, it has not had a significant mishap that has "put the company under the microscope."

## 6.0 The Kinross Gold Maricunga Operation

Following a brief review of the Chilean mining context within which Kinross Gold Maricunga operates, then key features associated with the location of the mine are discussed. Next, the technical aspects of the operation are described. After that, corporate responsibility decision-making at Kinross Gold Maricunga is examined. Then, a timeline of the significant corporate responsibility issues, events and activities at Kinross Gold Maricunga is discussed.

### 6.1 The South American/Chilean Kinross Gold Context

Approximately 42% of Kinross Gold's global production originates from Kinross Gold's three South American operations: Paracatu in Brazil and two sites in Chile, Maricunga and La Coipa. Kinross Gold also has two additional Chilean projects in development, Lobo-Marte and Cerro Casale (with Barrick Gold), as well as one in Ecuador (Fruta del Norte). The map below shows the location of the Kinross Gold mines and mine projects in Chile.

**Map: Kinross Gold Mines and Mine Projects in Chile**



From: Kinross Gold Corporation, Annual Information Form for the year ended December 31, 2009

As can be seen in the map, all of the Chilean Kinross Gold mines and mine projects are located in “Tercera Region de Atacama” -- Region III (Atacama) of Chile, in the north of Chile. Chile is divided into 15 regions, or provinces. The region of Atacama is second only to its more northerly neighbour, the region of Antofagasta (Region II), in terms of Chilean mineral production.<sup>209</sup> Mining accounts for 45% of Atacama’s GDP and more than 83% of its exports, while mining accounts for 70% of Antofagasta’s economic activity and over 90% of its exports.<sup>210</sup> According to the 2002 national census, the population of Atacama is 254 336.<sup>211</sup> The traditional territory of the Colla indigenous group is almost entirely located in Atacama (discussed later in the case study).

The table below is intended to provide the reader with an indication of how Kinross Gold Maricunga compares with some other major mines in Chile.<sup>212</sup>

**Snapshot Comparison of Kinross Gold Maricunga with Other Chilean Mines**

Name of mine	Majority owner	Mineral	Region	# of employees	# of contractors	ISO 14001 certified	OHSAS 18001 certified
Norte, Salvador, Andina, Venanas, El Teniente	CODELCO (State-owned)	Copper/moly	various	17,000	28,000	Yes	Yes
Esperanza	Antofagasta Minerals	Copper/gold	Antofagasta	1,500 total	1,500 total	Yes	Yes
Escondida	BHP Billiton	Copper/gold	Antofagasta	2,951	2,786	All major BHP operations	Some now working toward it
Zaldivar	Barrick Gold	Copper	Atacama	712	560	Yes	No
Maricunga	Kinross Gold	Gold	Atacama	431	425	No	No
La Coipa	Kinross Gold	Gold	Atacama	424	548	Yes	No

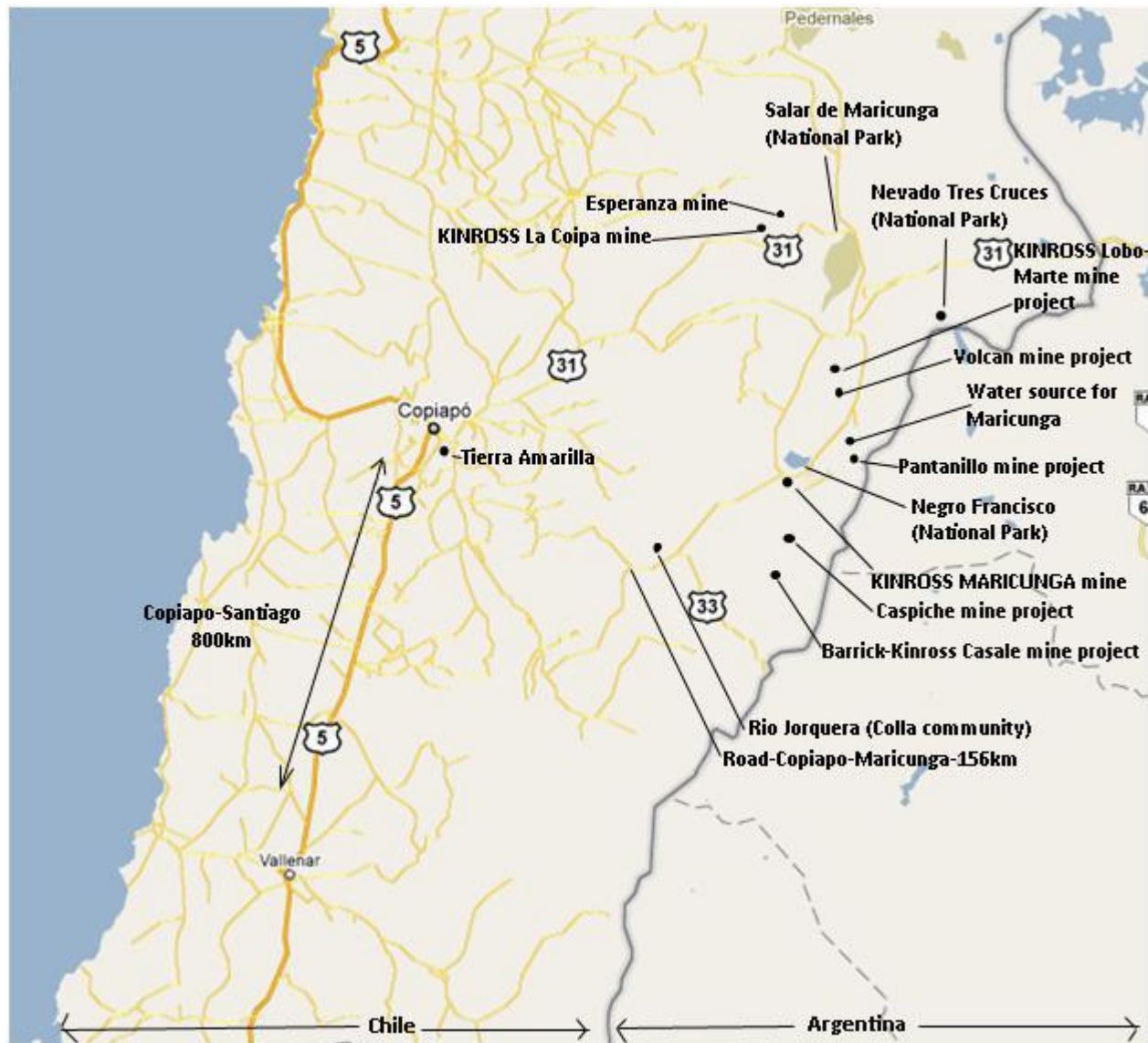
Thus far in this case study, an attempt has been made to provide:

- an understanding of how the case study research and writing was undertaken, by whom, and why it was undertaken in that manner;
- an overview description of the broader socio-political-economic Chilean context and the role of mining in that context, inter-acting in a variety of ways, positively and negatively, with other individuals, groups, activities and issues;
- a summary analysis of the regulatory environment within which Kinross Gold and other mining companies operate in Chile;
- a review of the evolution of Kinross Gold as a company from its inception, focusing on its emerging corporate approach to CSR as revealed in its policy and other documents and in its decision-making structure;
- summary information concerning the Atacama region where the Maricunga mine is located; and
- a snapshot of how Kinross Gold Maricunga compares with some of other mines operating in Chile on a number of simple metrics.

With this background we are now in a position to focus our attention specifically on the Kinross Gold Maricunga mine, its evolution, and its interactions with other actors, and the social, environmental and economic issues and challenges associated with its activities.

## 6.2 Kinross Gold Maricunga: Key Features Associated with the Location of the Mine

**Map: Kinross Gold Maricunga in the Greater Region III Context**



Kinross Gold Maricunga is an open pit gold mine operation located in the Maricunga District of Region III, about 120 km east of Copiapó, the region's capital city. Copiapo is about 800 kilometres north of Santiago, the capital city of Chile. The minesite is situated approximately 4,200 metres (nearly three miles) above sea level in the high Andes, in one of the driest climates on earth. The area topography consists of steep mountainous terrain with slopes up to a 35% gradient. The area is largely devoid of vegetation, with the exception of the spring fed marshes found along the valley floors. Wildlife is sparse.

It has been reported that in the summer, the winds reach velocities in excess of 96 km per hour, and in winter the temperature can drop to -29 degrees Celsius or more.<sup>213</sup> Visitors to the mine require a physical before making the ascent and another when they arrive, and workers are checked daily by medical personnel for evidence of altitude sickness.<sup>214</sup> As the map presented above suggests, the Maricunga Volcano Belt is emerging as a major gold mine development region in Chile,<sup>215</sup> and within this region, Kinross Gold – as an operator of two mines in the region, and as a developer of two other projects --has emerged as the leading player. Discussion of the development of the Maricunga mine, and Kinross Gold involvement in it, is provided later in this report.<sup>216</sup>

Access to the Kinross Gold Maricunga property is via 156 km of two-lane dirt road connecting with the paved highway (Highway C-35), about 10 km south of Copiapó (the “launching pad”).<sup>217</sup> The first 96 km of the dirt road are an international, public highway. Approximately 60 km from the Kinross Gold Maricunga site, the road branches to the southeast to Argentina and to the northeast to the mine site. The mine is about 20 km from any indigenous (or non-indigenous) community, and about 8 km from the Lagoon Negro Francisco which is part of the Nevado Tres Cruces National Park. Most of the major equipment supply and support originates from Santiago or Antafagasta. Manpower is attracted from regions throughout Chile, with the majority of the employees residing in Copiapó or La Serena. Because of the mine’s remoteness, workers are transported in and stay for periods at camp facilities at the minesite. The mine operates using two twelve-hour shifts per day, with a schedule of 355 working days annually. According to a Kinross Gold report published in 2008, there are 431 unionized employees and 425 contractors working at Kinross Gold Maricunga.<sup>218</sup>

**Photo: the Road from Kinross Gold Maricunga**



Source: Kinross Gold website

Community re-settlement issues are not relevant at Kinross Gold Maricunga because there is no community located near the mine. For similar reasons, security (intrusion) issues such as are common when a mine is located near a community, are less of an issue at the Maricunga operations. Moreover, because of the mine’s remoteness, there is no community in the immediate vicinity of the mine that is in a position to be a recipient of any dust, noise or other emissions emanating from the minesite. This is not to suggest that the mine is not subject to environmental emissions requirements, but rather to point out that the sort of friction between mining operations and communities common when the two are in close quarters to each other is not evident in the Kinross Gold Maricunga situation. This is also not to suggest that there aren’t sources of friction (environmental and otherwise) between the Kinross Gold



Maricunga and communities. However, it is the road to and from the minesite, not the mine operation itself that tends to be the focus of irritation. The Colla-road issues are discussed separately below.

The Maricunga mine was reported in 2009 as having a significant minerals resource base consisting of 6.5 million ounces of proven and probable gold reserves and 2.3 million ounces of measured and indicated resources.<sup>219</sup> The mine processes an average of 40,000 tonnes of ore per day (11 million tonnes per year). A pre-feasibility study completed in 2009 concluded that there was the potential for a 50 per cent enhanced core processing capability at Maricunga through increasing the capacity of the existing crusher plant and construction of a new primary crusher. Kinross Gold Maricunga has begun an environmental impact analysis in support of this possible expansion and expects to complete a feasibility study in the first half of 2010. Kinross Gold reports that it anticipates that the mine will close in 2024 (i.e., the last tonne of ore will be placed on its leach pads in 2024 – with decommissioning and maintenance to follow).<sup>220</sup>

### 6.3 Kinross Gold Maricunga: Technical Aspects

The Kinross Gold Maricunga mining operation uses a high-altitude, cold weather 3-stage crushing, pad-type heap leach and an ADR (adsorption–desorption–recovery) plant for gold recovery (see flowsheet diagram below).

**Diagram Showing the Mine Production Process at Kinross Gold Maricunga<sup>221</sup>**



Note: Diagram shows extraction (row one), ore crushing (row two), and chemical leaching (row three).

The pad-type heap leach technology is also used at other Kinross Gold mines such as its operations in Fort Knox, Alaska and Round Mountain, Nevada.<sup>222</sup> The recovery process uses cyanide and lime (see usage statistics below). In 2009, the Kinross Gold Maricunga mine was certified as compliant with the International Cyanide Management Code, which addresses issues of transportation of cyanide to and from the mine, use, training and disposal (more on the Code later in the case study). Kinross Gold

officials report that there is no mercury in the ore at Maricunga. The dry climate and low acid generating character of the ore at Maricunga offer favourable conditions for mining and reclamation operations.

**Table: Performance Statistics (Consumption) – Kinross Maricunga – 2006 - 2008**

	Total energy consumption (gigajoules)	Greenhouse gas emissions (tonnes)	Groundwater withdrawn (cubic metres)	Water discharged (cubic metres)	Diesel fuel consumed (cubic metres)	Cyanide consumed (tonnes as CN)	Lime consumed (tonnes)	Blasting agents consumed (tonnes)
2008	852,302	89,418	2,006,711	0	13,697	2,967	32,380	8,295
2007	748,635	83,666	1,627,824	0	11,404	280	39,719	6,265
2006	752,484	75,846	37,500	0	11,462	2,225	44,230	5,998

Source: Kinross Gold Corporate Responsibility 2008 Regional data tables

The water at Kinross Gold Maricunga is piped in from three groundwater wells located near Pantanillo, which is about 26 km northeast of the Kinross Gold Maricunga minesite (see map above). The Pantanillo groundwater source does not feed into or affect the Laguna del Negro Francisco or the water supply of the Colla located on the road to the mine. Kinross Gold officials report that there is a high level of naturally occurring arsenic in the water piped to the minesite from Pantanillo. Kinross Gold Maricunga has water treatment facilities at the mine site that process the water before its use. There is no reported surface or groundwater discharge by the mine.

**Table: Performance Statistics (Wastes) – Kinross Gold Maricunga – 2006 – 2008 (Tonnes)**

	Waste rock mined	Tailings produced	Hazardous waste disposed onsite	Hazardous waste disposed offsite	Non-hazardous waste disposed onsite	Non-hazardous waste disposed offsite
2008	10,793,205	0	0	79	3,308	0
2007	10,749,750	0	0	15	2,672	0
2006	11,154,000	0	0	12	1,727	0

Source: Kinross Gold Corporate Responsibility 2008 Regional data tables

The Kinross Gold Maricunga minesite includes leaching and carbon Acidification/Desorption/Recovery (ADR) facilities, auxillary power generation, maintenance shops, office facilities and a permanent camp for the workers (a new 600 person camp will be operational in 2010, at a lower altitude than the current camp).<sup>223</sup> The existing infrastructure also includes the fresh water supply system (piped in from Pantanillo, treated/processed by Kinross Gold Maricunga prior to use), a truck shop, warehousing and lay down areas, an in-pit crushing and conveying system and a secondary/tertiary crushing and screening plant (see photos above and below). Following the decision to de-commission the mine in 2001, significant upgrades designed to increase production throughput were undertaken and completed in 2005. The upgrades included an in-pit crushing and conveying system as well as the secondary/tertiary crushing and screening infrastructure. Kinross recently approved investment in a Sulphidization, Acidification, recycling and Thickening (SART) plant.<sup>224</sup> With the copper content in order mined at Maricunga expected to increase significantly beginning in the second half of 2011, the SART plant is



expected to optimize gold recovery by removing copper from the heap leach solution. The plant is expected to be operational by late 2011.

**Photo: Conveying, Crushing and Screening Infrastructure at Kinross Gold Maricunga**



Source: Kinross Gold “Maricunga HydroProcess” powerpoint presentation, May, 2008

**Photo: Conveying, Crushing and Screening Infrastructure at Kinross Gold Maricunga (2)**



Source: Kinross Gold website.

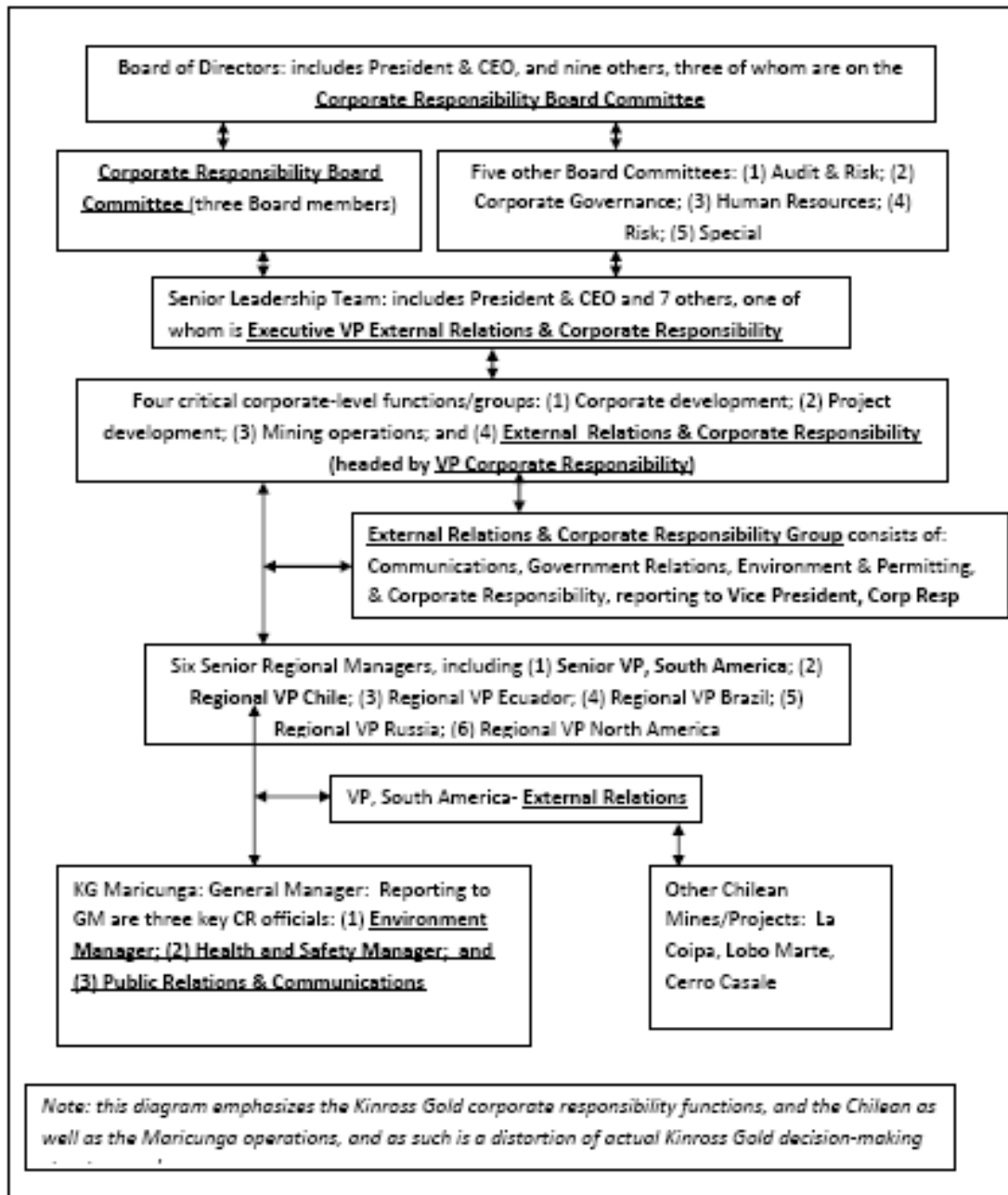
Since 2000, power has been supplied by the main power grid from the SIC (Sistema Interconectado Central), through Guacolda, a power provider. Prior to that time, the mine was powered by diesel generators, which was expensive, had significant climate change/energy consumption side effects, and posed a transportation danger. The generators now act as backup/auxillary power in case of problems with the power grid. In interviews for this case study, Kinross Gold officials noted that when connecting the minesite to the powergrid, they worked closely with affected Colla communities to identify and

protect important cultural/religious sites. The electricity provided to Kinross Gold Maricunga through the power grid is coal sourced.<sup>225</sup>

#### *6.4 Kinross Gold Maricunga: Corporate Responsibility Decision-Making Aspects*

Corporate responsibility decision-making at Kinross Gold Maricunga is nested within a broader Kinross Gold CR decision-making structure, at a Chilean level, at a regional South American level, and also at corporate headquarters management and Board of Directors level. The corporate headquarters level CR decision-making process at Kinross Gold has been described earlier in this case study. As the diagram below suggests, in order to ensure consistent CR decision-making throughout the organization, there are persons, or groups, or committees with CR responsibilities at every level. Within this broader structure, there are managers and others within Kinross Gold Maricunga who are making CR decisions and carrying out CR responsibilities.

**Kinross Corporate Responsibility Decision-Making Hierarchy at Board, Corporate Headquarters Management, Regional, and Maricunga Level\***



In terms of the corporate responsibility decision-making structure at Kinross Gold Maricunga, the Environmental Manager, the Health and Safety Manager, and the Public Relations and Communications officer, all report directly to the General Manager.<sup>226</sup> A major responsibility of the Public Relations and Communications Officer is continued good relations with the Colla, several of whom live near the road leading to the mine. The Environment Manager, Health and Safety Manager, and Public Relations/Communications Officer all hold senior positions within Kinross Gold Maricunga, where they can oversee and ensure compatibility among their roles and those of the key responsibility centres at Maricunga: the Mine Manager, Plant Manager, Maintenance Manager, Project Manager, Finance and

Accounting Manager and the Human Resources Manager. While there are special agreements and relationships between Kinross Gold Maricunga and the Colla, and different governmental actors (as discussed elsewhere in this case study), there is no Kinross Gold Maricunga Stakeholder Committee or Community Advisory Board, as has been implemented at other Kinross Gold operations.<sup>227</sup> In 2010, site responsibility plans (developed pursuant to a guide prepared by headquarters) will be implemented at Kinross Gold Maricunga and all other Kinross Gold operations.<sup>228</sup>

One of the processes for determining which corporate responsibility projects will proceed at Kinross Gold Maricunga, and which will not, involves what is referred to by Kinross Gold officials as an “enterprise risk assessment process.” As described in interviews with Kinross Gold officials, it is done on a regional basis in conjunction with the General Managers, and covers all aspects: operations, financial implications, political implications, social implications, environmental impacts, with the General Managers responsible for the action plan:

We ask: “What’s the scenario? What’s the potential impact on our business?” Unless there is an alignment of Kinross Gold and community interests with respect to a particular project, it has little chance of success. It doesn’t make sense for Kinross Gold to take on something in Region III that is unrelated to the Kinross Gold core business of mining.<sup>229</sup>

This project risk assessment project can be compared with Kinross Gold’s “comprehensive approach to risk management,” designed to minimize the likelihood of unexpected events impacting performance:

.....in every country where Kinross operates, we conduct annual risk management workshops, which bring together corporate and local leaders, plus outside experts, to analyze and rank operational, economic, political, and social trends and risks that could affect current performance or future plans. As a key part of each site’s management plan, site risks are reviewed and reported on monthly and progress is tracked.<sup>230</sup>

The picture that emerges is that an organization-wide approach to CR decision-making is being put in place, that is integrated into the other decision-making processes of the company, and includes headquarters-driven strategies and policies, and top-down decision-structures, linked to bottom-up realities, initiatives and issues. Thus, CR decisions are made by Kinross Gold Maricunga officials, within a broader structure which includes over-arching checks and balances.

With this background, the reader is now in a position to review the evolving corporate responsibility story at Kinross Gold Maricunga.

## *6.5 Kinross Gold Maricunga’s Evolving Corporate Responsibility Approach*

### *6.5.1 CR-related Events at the Maricunga Mine Preceding Kinross Gold Involvement*

We have noted that the corporate responsibility approach and activities at Kinross Gold Maricunga can only be understood within broader contexts that include an appreciation of the broader Chilean social, environmental, economic, and regulatory context within which the company operates, and an understanding of the distinctive nature of the company, its corporate level strategies and policies, and its

approach to decision making. All of these elements frame corporate responsibility as practiced at the local level in Maricunga. But of course, corporate responsibility as practiced at the local level is also very much a product of the unique environmental, social and economic circumstances faced by that particular company, its workers, the communities, government officials, and other stakeholders that all interact in unique ways that lead to unique responses. To gain an understanding of this evolving approach at the local level, it is useful to note some of the key events, issues and activities that have taken place over time. In this regard, we look first at the developments that took place at Refugio (the original name for the mine), prior to the involvement of Kinross Gold, and then look at the key developments that have taken place since Kinross Gold acquired an interest in the Maricunga mine operation.

**Key Events in Development of Maricunga Mine (pre Kinross Gold involvement)**

1984 – Gold mineralization found at Maricunga, claims acquired for Compania Minera Refugio (CMR).  
1989 – CMR signs letter of intent to explore Maricunga property with Bema Gold.  
1993 – CMR sells to Amax/Bema who form **Compania Minera Maricunga (CMM)**, 50/50 joint venture.  
1993 – CMM submits non-legally required environmental impact assessment (EIA) for Maricunga.  
1994 – COREMA approves CMM EIA. Subsequent CMM EIAs re: roads, powerlines, camps, etc.  
1996 – 2001 CMM in operation, produces approx 920,000 ozs of gold from 46 million tonnes of ore.  
1997 – Colla road blockade/ lawsuit against CMM.

Source: various

In the period prior to Kinross Gold involvement, there are three key events to note: one pertains to the nature and content of the original environmental impact assessment (EIA) that was submitted by the original mine owner/operators (Amax/Bema); the second pertains to an early source of friction between Amax/Bema and a Colla community member concerning the road to the mine; the third pertains to allegations that in 1996 the mining company opposed a request by the Colla to the Chilean government for water.

The original EIA that was submitted by Amax/Bema for the Refugio mine (as it was originally called) preceded the legal requirement for such an EIA. As noted earlier, it was not until 1997 that EIAs were considered to be mandatory for mining and other projects. Perhaps anticipating that EIAs would eventually be mandatory, or perhaps in recognition of the fact that submission of an EIA was the right business and ethical decision to make even if it was not legally required, Amax/Bema voluntarily prepared and submitted an EIA to COREMA (the regional office of the national environmental agency, CONOMA) in 1993. It was approved in 1994. There have been many environmental declarations<sup>231</sup> submitted and approved by Amax/Bema/Kinross Gold concerning the Maricunga operation since the original 1994 project was approved, as various adjustments and expansions to the project have been undertaken (e.g., electrification, a new mining camp, the extraction of ore from both Verde and Pancho pits). It should be noted that in Canada, the federal EIA also started as a voluntary instrument, and only became a law after legal challenges. So the Canadian experience in transitioning from a voluntary to a mandatory EIA process, and doing so after legal challenges, is not that much different from the Chilean experience.

The original EIA continues to be a base document for addressing the environmental activities of the mine. For example, a reclamation plan to address current mining activities was approved in 2002, based on commitments made in the original EIA of 1994.<sup>232</sup> The original plan addressed closure of physical activities such as earthworks, but did not address chemical closure of the heap. A closure plan for chemical stabilization of the heap was prepared and has been submitted to COREMA. Officials from the agencies who are part of COREMA are currently considering the proposed chemical stabilization approach and further discussions with agencies are expected prior to a decision regarding the chemical stabilization plan, but Kinross Gold reports that submittal of the chemical stabilization plan is considered by the relevant officials as meeting the commitments in the original environmental impact assessment. There is no requirement to post financial assurance to secure site restoration costs in Chile at present, but the company is reporting on this cost.<sup>233</sup>

The second important development that took place prior to Kinross Gold involvement was an initial level of friction between one Colla resident who lived beside the road going to the minesite. According to interviews for this case study, the particular Colla resident was upset about the high level of mine company traffic on a stretch of road used by the family. Upset by the traffic, he cut off access to the road. According to the Colla interview, this dispute was resolved when Amax/Bema paid compensation to the Colla resident.

A third development that allegedly took place prior to Kinross Gold involvement was a request by the Colla for water rights that was supposedly opposed by a number of mining companies. In a de-briefing meeting for this case study in which both Colla and Kinross Gold officials attended, this grievance was aired by the Colla in attendance, and it was pointed out by the Kinross Gold officials in attendance that Kinross Gold was not part of any group of mining companies that opposed the Colla getting water in 1996. This point seem to be accepted by the Colla in attendance at the meeting. The Kinross Gold officials at the meeting actually emphasized that it was their view that the Chilean government should secure water rights for the Colla, and that Kinross Gold is attempting to help the Colla in securing water rights.

An insight emerging from this research is that while companies may change hands (i.e., there can be transfers of ownership), the changing of hands may not be all that visible to the local affected communities, who then will carry forward grievances associated with previous owners and apply them to the new owners. This is an identifiable CSR challenge associated with changes in ownership. The change of name of the mining company (from Refugio to Maricunga) may signal that the company is “under new management” and new ownership, but the sentiments may still linger and may be difficult to overcome.

#### *6.5.2 CR-related Events at the Maricunga Mine Since Kinross Gold Involvement*

As is apparent from even a cursory review of the timeline (below) of key CR events since Kinross Gold first acquired an interest in the Maricunga mine in 1998, there have been a number of significant

developments pertaining to corporate responsibility that have taken place over the period 1998 to the present. Key among these has been the suspension/upgrading of the mine, the increased presence of Kinross Gold and other mines in the region around the mine, continued friction with some Colla members concerning the road, an increasingly formalized relationship between Kinross Gold and the Colla, a continued positive and non-adversarial company-worker record, and an apparent increase in Kinross Gold Maricunga CR activities and agreements. These points are briefly discussed below.

**Key Events in Development of Maricunga Mine (from time of first Kinross Gold acquisition)**

1998 – Kinross Gold acquires Amax Gold thereby acquiring 50% of **Compania Minera Maricunga (CMM)**.  
 1998 – Kinross Gold becomes CMM operator.  
 1999 – CMM recognized for continued support in preserving High Andes environment by CONAF.  
 2001 – CMM mining operations are suspended due to depressed prices.  
 2002 – In response to rising gold prices, CMM reviews and renews exploration of Maricunga property.  
 2003 – CMM decides to recommission the mine, approx. \$140 million spent on upgrading the process.  
 2003 – Kinross Gold acquires 50% ownership of La Coipa mine (also in Maricunga Volcanic Belt)  
 2004 – Chilean Govt grants limited land ownership to Colla, following lengthy demarcation process  
 2004 – Colla complaint re: Kinross road dust investigated by COREMA, found insufficient evidence.  
 2004 – CMM conducts study to identify Colla sustainability projects in Rio Jorquera  
 2005 – CMM re-opens, following \$10.1 million upgrade/investment.  
 2005 – CMM and Colla Rio Jorquera agree to “first generation” Protocol.  
 2005 – CMM and CONAF sign environmental agreement re Park preservation  
 2006 – CMM, CONAF, others establish Committee for Conservation /Use of High Andean Wetlands.  
 2007 – Kinross Gold completes acquisition of Bema Gold, thereby becoming 100% CMM owner.  
 2007 – Kinross Gold acquires 49% interest in Cerro Casale mine project (in Maricunga Volcanic Belt)  
 2007 – Kinross Gold becomes 100% owner of La Coipa mine (in Maricunga Volcanic Belt)  
 2007 – Colla complaints about road investigated by COREMA. Insufficient evidence found to proceed.  
 2008 – CMM and Colla Rio Jorquera agree to “second generation” Protocol.  
 2009 – CMM begins construction on new CMM mining camp at lower altitude than current camp.  
 2009 – CMM-sponsored Tierra Amarilla apprentice program produces seven mining graduates.  
 2009 – Kinross Gold La Coipa and unionized workers negotiate new collective agreement after 24 day strike.  
 2009 – CMM negotiates agreement with Sindicato de Trabajadores de CMM re: work schedule.  
 2009 – CMM-CONAF parks agreement renewed.  
 2009 – Kinross Gold becomes 100% owner of Lobo-Marte mine (near CMM).  
 2009 – CMM certified to International Cyanide Management Code.  
 2009 – CMM given safety award from Chilean authorities due to no man-days lost as result of accidents.  
 2009 – CMM conducts multi-stakeholder Sustainability Workshop in Tierra Amarilla.  
 2009 – CMM conducts feasibility study and EIA preparation for significant expansion.  
 2010 – CMM, CONADI and Colla form Environmental Board, reach agreement re: C-611 road maintenance .  
 2010 – CMM negotiates new 4 year collective agreement with Sindicato de Trabajadores de CMM  
 2010 – Kinross Gold (Chile) donates \$707,000 to Chilean earthquake relief  
 2010 – Kinross Gold reduces ownership in Cerro Casale mine project to 25%

Source: Various

It is important to note the increasing presence of Kinross Gold, and other mining companies in the Maricunga Volcanic Belt region. With increasing presence, Kinross Gold has opportunities for economies of scale in terms of investments in support of training and human and built infrastructure

(e.g., electricity generation, investments in improvement of roads, communities). It is also likely that Kinross Gold visibility and name recognition by community members will also increase. Interviews with community members suggest that some do not make distinctions between different Kinross Gold mines or mine projects. Thus, a problem with one mine operation may be considered a problem with the company as a whole. More will be said about the implications of this later in the case study.

The fact that the Maricunga Gold Belt is becoming a focal point of mining activity by a number of different mining companies also suggests the growing need for companies to work in close cooperation to address their cumulative impacts. On the positive side, this sort of cooperation can allow for responses beyond the capability of any one company operating alone (e.g., investment in the development of a de-salinization plant or a hydro-electric facility or educational facility). On the negative side, it can also mean that an environmental or social mishap at one mine can be viewed by community members as a problem with the mining sector as a whole. Finally, with numerous mining projects underway, there can be a cumulative negative environmental or social impact (e.g., with dust, or road traffic, or consumption of water, or a perceived increased influx of workers that come from elsewhere) that was less of a concern when a smaller number of mines were in operating in the area.

A third point evident from the timeline is that friction concerning the concerning the volume of traffic and environmental impacts of the road has been ongoing. At the same time, a related fourth key trend evident from a review of the timeline is that an increasingly formalized relationship is emerging, both between Kinross Gold and the Colla communities along the road, but also with other parties, as reflected in a number of different agreements. The details and implications are discussed later in the case study.

A fifth point suggested by the timeline is that mining company-worker relations seem to be an area where over time agreements are reached without strikes or disruptions, worker issues are addressed (e.g., new mining camps) and safety efforts are receiving external recognition.

A final observation is that the number and variety of corporate responsibility-related activities, initiatives and agreements undertaken with the involvement of Kinross Gold Maricunga seems to be increasing over time. This may reflect the fact that as researchers, we are more aware of and hence in a better position to report on those events and initiatives that have taken place or been put in place since the time the research for this case study began, although every effort has been made to identify and report on activities which pre-date the research beginning.

With this background, we are now in a position to examine specific CR-related issues associated with the Kinross Gold Maricunga mine.

## **7.0 Issues Analysis**

### *7.1 Issues Analysis: Colla (Indigenous/Community) Issues*

Among other things, the 2009 report of the auditor who reviewed the activities of Kinross Gold Maricunga concerning compliance of the company's operations to the International Cyanide



Management Code, stated that “[Kinross Gold Maricunga]’s primary stakeholders are the indigenous Colla people, who hold legal rights to the lands surrounding the mine site. [Kinross Gold Maricunga] maintains a close relationship with the Colla communities, and ....the General Manager of Kinross Gold Chile [is] personally involved in a continuing process of engagement.”<sup>234</sup> While it is an overstatement to describe the Colla as “the” Kinross Gold Maricunga’s primary stakeholder -- shareholders, workers, and governments, for example, are other primary stakeholders -- there is no doubt that the Colla are a primary stakeholder of Kinross Gold Maricunga.

The operations of Kinross Gold with respect to its Maricunga mine and its other mines and mine projects in the area, and the activities of the Colla communities in the area are intertwined. On the issue of Colla impact on Kinross Gold Maricunga, for example, if Colla members chose to blockade the road to the mine, to launch lawsuits against the mining company, or to withhold support for new mining projects that cross through their territory, this could have a significant impact on Kinross Gold. As was noted earlier, prior to Kinross Gold assuming an ownership position in the Maricunga mine in 1998, a Colla community member did in fact blockade the road to the mine (over the issue of traffic to the mine), and there was in fact a lawsuit by this Colla member against the previous mine owners Amax/Bema (leading to a settlement), and Kinross Gold has itself publicly acknowledged that obtaining rights of way from the Colla for another mining project in the vicinity could present a significant challenge in terms of negotiation difficulties and time spent.<sup>235</sup>

The Kinross Gold Maricunga-Colla relationship is an evolving story that over time seems to be moving from ad hoc activities and discussions to a more structured approach, involving more formal agreements<sup>236</sup> and commitments<sup>237</sup> coupled with use of more formal deliberative processes for discussions<sup>238</sup> and more formal and deliberative processes for conflict resolution.<sup>239</sup> Perhaps this increased formalism in the relation between Kinross Gold and the Colla is reflective of a parallel evolving and increasingly formal Chilean Government-Colla relation. For example, in 2004, following years of negotiation, the Chilean government recognized and granted ownership of certain lands to the Colla in valleys adjoining the Kinross Gold Maricunga mine.<sup>240</sup> In addition, in 2009, the Chilean government ratified ILO Convention 169 as discussed earlier. The ratification of ILO 169 is likely to lead to more “juridification” (legal recognition) of protections for indigenous groups such as the Colla, vis-à-vis resource and other projects on or near their territories. Thus, as the property and perhaps other rights of the Colla are becoming more legally recognized and acknowledged, an argument can be made that the bargaining position of the Colla vis-à-vis Chilean regulatory authorities, and Kinross Gold, has changed. Indeed, an argument can be made that the Colla’s bargaining position has not only changed, it has been enhanced, and in recognition of this, the Colla are able to secure more formal and structured commitments from Kinross Gold and agencies of the Chilean government.

The current Kinross Gold Maricunga-Colla issues that are attracting attention revolve around:

- the road leading to the mine which passes at certain points in close proximity to Colla communities and dwellings or agricultural activity – the source of Colla complaints concerning the poor quality and maintenance of the road, the degree of traffic on it and the attendant dust and other environmental impacts, as well as safety dimensions associated with it; and

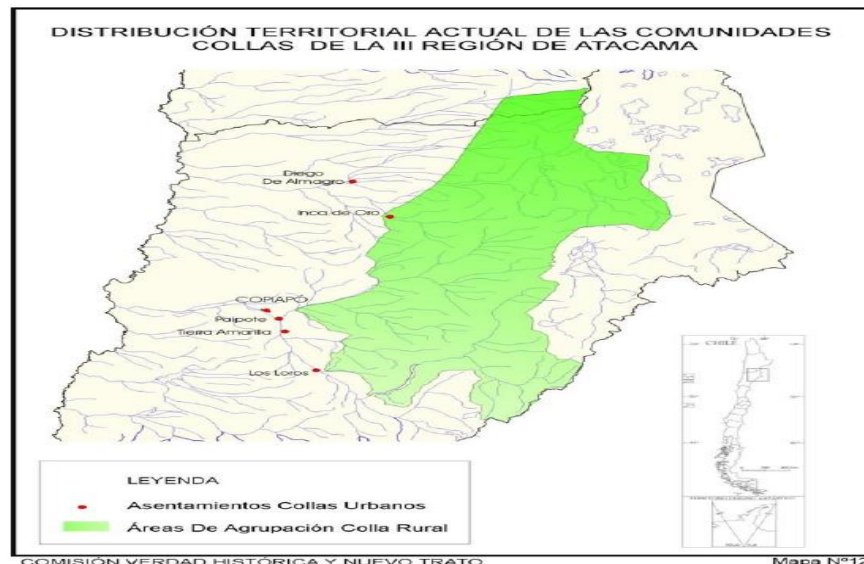
- water access by the Colla.<sup>241</sup>

In addition, it is becoming increasingly apparent that Kinross Gold Maricunga and the Colla have different and seemingly conflicting conceptions and perspectives of ownership.<sup>242</sup> It is useful to examine these issues against a backdrop of educational, employment, medical, environmental and other capacity-building activities provided by Kinross Gold Maricunga to Colla communities. Following a brief background discussion below of the Kinross Gold Maricunga-Colla activities, the focus of attention is on the Kinross Gold-Colla Rio Jorquera agreement that has been developed and its relation to the issues of the road and water access.

### 7.1.1 Background

Scholars claim that indigenous peoples have been living in Northern Chile for 10,000 years,<sup>243</sup> with evidence of them engaging in mining from early times.<sup>244</sup> The Colla peoples have been described as a nomadic northern Andean indigenous group, that have occupied a territory within Region III, the Atacama, including the valleys below the Maricunga minesite, since the 19th century (see map below).<sup>245</sup>

**Map: Territorial Distribution of Colla communities in Region III Atacama**



Source: Comisión Verdad Histórica y Nuevo Trato (2003)<sup>246</sup>

There are approximately 3,000 Colla persons living in Chile,<sup>247</sup> comprising about 0.46% of the total indigenous population of Chile.<sup>248</sup> Indigenous persons represent approximately 4.6% of the total population of Chile. The Colla represent about 1.26% of the population of the Region of Atacama.<sup>249</sup> As the above map indicates, almost all of the Colla are located in the Atacama region. There are several indigenous Colla communities on the road to the Maricunga mine,<sup>250</sup> with concentrations being in Rio Jorquera (where 30 families live) and the Wayra Manta Tujsy of Tierra Amarilla.

Studies suggest that major sustenance activities of the Colla people revolve around grazing livestock (sheep, goats, cattle), trading of goods, agriculture and mining.<sup>251</sup> For rural Colla, one study suggests there are on average five persons per household, with houses constructed of wood, mud, and scrounged tin and metals, with an earth floor.<sup>252</sup> Often there is no electricity, no running water, and more than half have no sewage system.<sup>253</sup> We have noted earlier the significantly higher incidence of poverty of Chilean indigenous persons when compared with their non-indigenous counterparts. According to a Kinross Gold study, an estimated 70% of Colla lack a basic understanding of legal terminology and contracts.<sup>254</sup>

**Photo: Colla Rio Jorquera Residence, Visible from Road<sup>255</sup>**



Religion is a central element of the Colla worldview, with the main Colla deities being the Pachamama (Mother Earth) and the Inti (the sun). The Colla concept of religion features a deep connection among people, animals and nature.<sup>256</sup>

Photo: Colla Rio Jorquera: Animal Sacrifice Offered to Pachamama<sup>257</sup>



The Colla have expressed special spiritual gratitude toward the precious minerals located in their lands, as noted in this statement from an elder Colla:

*“The mineral is something that can show you many things. It is like picking up a gift from the earth, which is tendered to you free with affection. It is there, you reach to it and you take it. It is ready for you like an offering. It is also an opportunity to celebrate life; it is like a new birth, someone that is born again, it could be replicated again. You can know who it is, you can know whether it is good or bad, it takes you to know who you are in a deeper sense.”<sup>258</sup>*

While the Colla have long engaged in mining activities, as noted earlier, one Colla member is on record as saying that in the case of the Maricunga gold deposits, there was in his opinion not a sufficient quantity or quality to warrant mining activity by the Colla.<sup>259</sup>

#### 7.1.2 Kinross Gold Maricunga Activities re: the Colla

Pursuant to Principle Seven of the Kinross Gold Guiding Principles for Corporate Responsibility, Kinross Gold has committed itself to respecting the cultural and historical perspectives and rights of those affected by its operations -- in particular, indigenous people.<sup>260</sup> In “Taking Responsibility,” the first Kinross Gold Corporate Responsibility Report (published 2008), a Kinross Gold official is quoted as saying that: “....[o]ne of our key goals at Maricunga is to help the surrounding indigenous communities become economically self-sufficient.”<sup>261</sup> It should be noted that the Colla are not a homogenous entity: there are Colla who live in towns and cities, and there are Colla who live in rural communities, and even within the rural category, there can be differences from one community to another. The focus of attention here is on the Colla community in Rio Jorquera, since it is a group with which Kinross Gold has significant interactions. In 2008, Kinross Gold Maricunga appointed a Public Relations and Communications Officer whose activities focus almost exclusively on interactions with the Colla in the vicinity of the mine.<sup>262</sup>

Kinross Gold has reported involvement in a wide number of capacity-building activities with the Colla, such as:<sup>263</sup>

- helping to launch local indigenous entrepreneurial/agricultural activities, such as assistance to the Colla of Rio Jorquera in building a 50,000 litre dam and irrigation pond, and planting alfalfa;<sup>264</sup>
- assisting in improving educational opportunities for youth, providing annual scholarships to Colla students, and monthly support to 12 Colla families to cover transportation costs to local schools and lunch expenses for their school-age children. In 2008, 50 bursaries were provided to Colla students. Two graduates are now working for Kinross Gold Maricunga in the areas of Health, Security and the Environment;<sup>265</sup>
- providing financial and in-kind assistance to local native communities or their representatives, including the Colla of Rio Jorquera, the Colla Wayra Manta Tujsy and the Multicultural Native Association;
- supporting the Colla community through PRODESAL, a project spearheaded by the Chilean government that pertains to the Municipality of Tierra Amarilla. This public-private alliance arranges bi-monthly visits to rural areas by a veterinarian and an agricultural engineer. Planning is underway to provide medical assistance in the future;
- in the Colla community of Rio Jorquera, Kinross Gold is working with local organizations and leaders to improve “legal literacy” through educational seminars featuring outside experts;
- providing assistance to the Colla for the fencing and surveying of their lands following the 2004 decision by the Chilean government to grant local residents ownership of property in valleys that adjoin our mines;
- in the Colla Wayra Manta Tujsy community, supporting a program to help residents manage their wells, produce household goods and learn new animal husbandry methods; and
- on behalf of the Multicultural Native Association, providing support for the House for Native Health, where traditional healing methods are practiced and taught.



Photo: Kinross Gold Maricunga Scholarship to Colla Student<sup>266</sup>



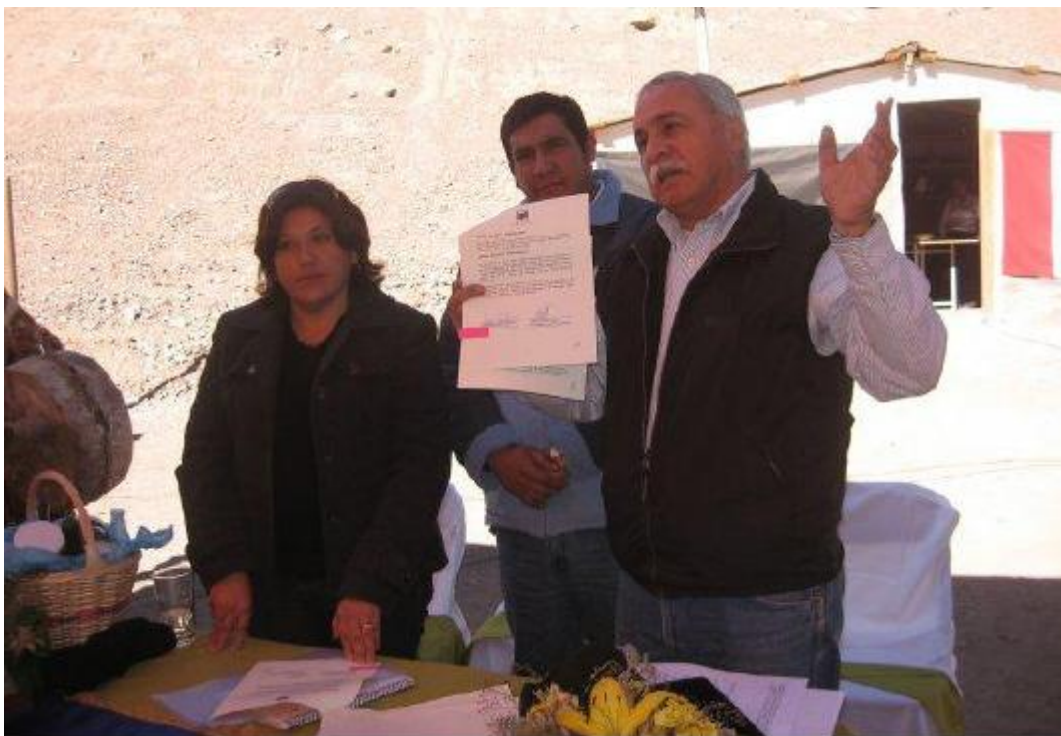
Photo: Colla Rio Jorquera Fencing, Pasture<sup>267</sup>



### 7.1.3 Activity Leading to Protocols

Interviews with Colla Rio Jorquera leaders reveal that an initial version of the Protocol was developed in 1996, when the mine owners were Amax/Bema, and Kinross Gold was not involved in the ownership of the mine.<sup>268</sup> However, that original 1996 Protocol was not signed. The move toward a more formal approach to structuring Kinross Gold Maricunga-Colla relations seemed to gain momentum in 2004, when Kinross Gold Maricunga conducted a study to help identify projects to assist the sustainability of the Colla community in Rio Jorquera.<sup>269</sup> Flowing from this, the first Kinross Gold Maricunga-Colla protocol agreement was agreed to by the parties in 2005.<sup>270</sup>

**Photo: Signing of the Protocol: Colla Rio Jorquera and Kinross Gold Maricunga<sup>271</sup>**



According to interviews with Colla Rio Jorquera residents, one of the attractions of developing a Kinross Gold Maricunga-Colla protocol was to get down in writing the details of arrangements that up until that point had not been in writing, thus decreasing problems that the Colla had experienced when dealing with a revolving cast of company officials, who may or may not have been familiar with arrangements agreed to earlier by other company officials. In 2005, in furtherance to the 2004 Kinross Gold Maricunga projects identification study, the company made a donation of agricultural material (fencing), and provided support in installation of a community water well, intended to assist the Colla of Rio Jorquera in cultivation of individual alfalfa and livestock grazing fields.<sup>272</sup> Since 2006, Kinross Gold Maricunga officials have been participating in a working group with the Colla of Rio Jorquera, holding monthly meetings to discuss community issues.<sup>273</sup> In June 2008, the first protocol agreement was replaced with a second Kinross Gold-Colla Rio Jorquera protocol.<sup>274</sup> In effect, the 2008 protocol can be viewed as building on the experience associated with the 2005 Protocol.

#### *7.1.4 The 2008 Protocol re: Kinross Gold Maricunga-Colla of Rio Jorquera*<sup>275</sup>

In some respects, the 2008 Kinross Gold-Colla protocol could perhaps be described as a Chilean version of the impact and benefit agreements that are prevalent between Canadian mining companies and First Nations communities in Canada. The Kinross Gold Maricunga-Colla protocol was signed by the General Manager of Kinross Gold Maricunga, Jorge Aceituno Sandoval, and the then-President of the Rio Jorquera community, Patricia Cruz Núñez, after review and approval through the Colla deliberative process (the Colla Community Assembly). From a gender standpoint, it is worth noting that on the Colla side, the key negotiating role was played by a woman. As of November, 2008, the main Kinross Gold Maricunga contact point for all Colla issues is the Kinross Gold Maricunga Public Relations and Communications Manager, who is also female.

The agreement starts from the explicitly stated premise that sustainable development within the Colla community depends not just on the community, but also on its relations with public and private bodies, and that Kinross Gold Maricunga contemplates within its social responsibility policies the provision of Colla community development, working together through dialogue tables (i.e., working groups). Key objectives of the agreement are to socially assist the community, to preserve and promote sustainable development, and to respect and support the Colla's culture, values and principles.

Pursuant to the protocol, the parties agree to work collaboratively through dialogue tables, in which Kinross Gold Maricunga agrees, through monthly meetings, to help the community to implement community projects and assist entrepreneurs, to assist in training, employment, educational scholarships, eco-tourism projects, to provide medical visits to homes in the community's territory (ideally, every three months), and to financially assist the Colla in securing specified water rights for their territory.

#### *7.1.5 Current Issues and Their Resolution*<sup>276</sup>

##### *7.1.5.1 The Road*

As noted earlier, while over the years Kinross Gold Maricunga has provided educational, employment, medical, environmental and other support to the Colla, the current issues attracting the most attention revolve around the road leading to the mine which passes at certain points in close proximity to Colla dwellings and agricultural activity, and the issue of water access. We have seen that the road to the minesite has been the source of ongoing complaints concerning the traffic and associated dust raised by Kinross Gold Maricunga vehicles and the related harm to the Colla, livestock and crops located near the road.<sup>277</sup> Kinross Gold-Maricunga has an arrangement with the Chilean Ministry of Public Works for maintenance of the road, in which the Ministry of Public Works is to undertake the maintenance, and Kinross Gold contributes a sum of money for road maintenance. As noted earlier in the study, complaints by the Colla in 2007-2008 concerning harm caused by dust from vehicles travelling to and from the Kinross Gold Maricunga were investigated by Chilean environmental authorities who concluded that there was not enough evidence to support the complaints against the company.



Maintenance of the road to Kinross Gold Maricunga mine involves road re-profiling (i.e., re-surfacing, using graders) and regularly applying water to keep the dust down. The Colla has complained that the method used by Ministry of Public Works for re-profiling has been done carelessly, leaving piles of rocks and holes in the road. An alternative approach that is being explored involves applying a chemical surfactant (surfacing) to the road that prevent dusts from rising and reduces the bumpiness of the road. However, at the time of research for this case study, this surfactant option is still being explored with no decision having been made. In 2009, new complaints about road damage were raised by the Colla Rio Jorquera community, with the Colla securing the services of a consultant biologist to document the incidents of environmental degradation. At the request of the Colla, this has led to a tripartite arrangement among the three parties (Colla Rio Jorquera, Kinross Gold Maricunga, and Chilean Government officials), to review and address the complaint. A researcher for this project was able to sit in and observe part of one of tri-partite meeting undertaken in pursuance of this arrangement. At that meeting, a total of 13 persons from the three parties were in attendance -- four Colla Rio Jorquera community representatives, five government officials (from CONADI and the Ministry of Public Works), and four officials from Kinross Gold Maricunga.

A Ministry of Public Works (roads) official played the lead facilitation role among the parties. In the part of the meeting that was observed by the researcher, the primary issue in discussion was whether Kinross Gold Maricunga would move from the current approach to road maintenance to the chemical surfactant approach. A major conclusion emerging from the meeting was an agreement for a series of tripartite inspections to take place regarding a 65 kilometre length of road to review the degradation and develop the appropriate remedies to it. Thus, the parties developed a tri-partite dispute resolution process that is in now in place at the time of writing. In the opinion of the researcher who observed the process, the meeting was conducted in a calm, professional, and constructive manner by all parties.

On March 10, 2010, as part of the tripartite negotiation arrangement that began in 2009 among the Colla of Rio Jorquera, Chilean government authorities, and Kinross Gold Maricunga, an agreement was announced for the maintenance of the road to the mine, providing for improvement of the road from a safety standpoint, as well as addressing and reducing the environmental effects on the Colla who live alongside the road.<sup>278</sup> As this report was being completed, researchers learned of a new dispute between Kinross Gold and the Colla of Rio Jorquera concerning modifications to an access road to the new camp for workers, with the Colla claiming that Kinross had infringed on Colla lands.<sup>279</sup> Meetings to resolve the issue were being arranged between Chilean government officials, the Colla of Rio Jorquera, and Kinross Gold Maricunga.

#### *7.1.5.2 Access to Water Issues*

The other major issue involving Kinross Gold Maricunga and the Colla pertains to water access. The desert conditions of the Atacama are well known, and recently the Governor of Atacama has expressed concern regarding projected significant water shortages in the area.<sup>280</sup> The Kinross Gold Maricunga-Colla water issue is part of a larger concern about global and regional water scarcity and competition

among potential and actual water users, but it is a concern which is particularly acute among countries which include the Andes mountains, in light of indications that climate change is hastening the melting of Andean glaciers.<sup>281</sup> And the differences in water needs and capabilities to gain access to water are often particularly clear when comparing those of large industrial interests such as mines with impoverished indigenous groups.

Earlier in this case study, it was noted that companies such as Kinross Gold Maricunga and communities such as the Colla of Rio Jorquera have been largely left on their own to reconcile the effect of laws such as the Water Code of 1981 developed during the Pinochet era that adopt a market-oriented approach (with water rights auctioned off to the highest bidder), with later laws from the post-Pinochet period that attempt to address the interests and needs of stakeholders other than resource developers, such as communities and indigenous populations (e.g., the Environmental Framework Law of 1993, the Indigenous Law of 1993, and ILO Convention 169, ratified by Chile in 2009).<sup>282</sup>

As well, it was noted earlier in this case study that the sources of water for Kinross Gold Maricunga operations emanate from groundwater wells near Pantanillo, 26 km north of the minesite, and as such do not impact on or deplete water supplies to the Rio Jorquera community. However, the fact remains that within a market based system for water allocation, the financial capabilities of companies in the position of Kinross Gold (and other mining interests, and larger scale agricultural interests, etc.) to secure water for their purposes while other, marginalized groups such as the Colla have struggled with very little.

Kinross Gold Maricunga officials have acknowledged the water scarcity problems in the Atacama region<sup>283</sup> and the water needs of the Colla,<sup>284</sup> and have and consistently expressed their support for the proposition that the Colla should be provided greater water access by the Government of Chile. At one level, this can be framed as an issue between the Government of Chile and the Colla to address. After all, it is the Government of Chile that adopted the Water Code, and it is the Government of Chile that has statutory obligations to protect indigenous peoples. Recent Chilean court decisions suggest that the 2009 ratification of ILO Convention 169 might strengthen the position of indigenous peoples that their water rights are deserving of special state protection.<sup>285</sup> These court decisions have also thrown into question the apparent inviolability of rights previously granted under the Water Code.<sup>286</sup> In addition, there have been recent constitutional reform discussions in Chile that, if adopted into law, would see the availability of freshwater considered a public good as a matter of national security, no matter where that water is located.<sup>287</sup>

Arguably, the Protocol commitment of Kinross Gold Maricunga to assist the Colla in acquiring water rights should be understood in this broader context. In terms of their actions and words, this appears to be a situation where company officials at Kinross Gold Maricunga understand the intertwining of the fate of the company and the fate of one of the company's primary stakeholders – that is, Kinross Gold Maricunga has expressly stated that they understand the importance of water to the Colla community's long term sustainability. The company thus finds itself in a position of attempting to address a perceived weakness or inequity in terms of the Water Code's distribution of water rights to indigenous

persons, and the State's other obligations to protect indigenous interests.<sup>288</sup> The Colla of Rio Jorquera have been trying to assist Kinross Gold in identifying "leads" on people who are interested in selling their water certificates. However, on many occasions, on investigation by the company, the identified sellers have their own problems with the water certificates (e.g., they are mortgaged), thus making the purchase of water rights difficult.

At one level, it is the Government of Chile that through its laws has created a system whereby resource developers such as mining companies have the advantageous position in terms of their ability to secure water rights when compared with indigenous groups, and it is also the Government of Chile that has legal obligations to protect less well off interests such as those of the Colla. At this level, one could attribute the blame and the responsibility for the inadequate Colla water access rests with the Government of Chile. Kinross Gold officials, however, seem to recognize that the Colla do not necessarily draw a fine distinction between the Government of Chile and Kinross Gold Maricunga on this point. Moreover, it also needs to be acknowledged that the Colla do have the ability to make life difficult for companies like Kinross Gold, by refusing to cooperate with the company on particular projects and issues (such as for new mine developments). For this reason, it appears that Kinross Gold Maricunga recognize the importance of assisting in securing water rights for the Colla for moral and practical reasons, even if technically speaking this task of securing water rights is not their legal responsibility. In addition to actively attempting to find and acquire water rights for the Colla, the company is also working with the Colla to develop dams and irrigation ponds to make better use of the water that is available,<sup>289</sup> and is exploring the possibility of development of desalinization plants for other mine projects that they are involved in.<sup>290</sup>

#### *7.1.6 Other Kinross Gold Maricunga-Colla Agreements*

The Kinross Gold Maricunga-Colla Rio Jorquera protocol represents the central instrument developed to date that describes the interests and relations between the two parties. But Kinross Gold Maricunga and the Colla are also involved in other bi-partite or multi-partite arrangements on issues of mutual interest. For example, since 2006, a tri-partite public sector-private sector-civil society agreement has established a Committee for the Conservation and Sustainable Use of High Andean Wetlands in the Atacama región, for the protection of the wetlands located near the Maricunga minesite (the Maricunga mine is 7 kilometres from part of the Laguna Negro Francisco/Nevado Tres Cruces National Park).<sup>291</sup> CONAF (the Chilean National Forest Authority) plays a lead role in this agreement, but other parties include Kinross Gold Maricunga, the Colla, Barrick, a tour operator, two universities, an environmental organization, SERNAGEOMIN (National Service of Geology and Mining), SAG (Chilean agriculture and livestock agency), MOP (Ministry of Public Works), and CONAMA (environmental agency).

#### *7.2 Issues Analysis: Broader Community Issues*

While the Colla living near the road leading up to the minesite represent one set of stakeholders directly affected by Kinross Maricunga activities, the company has a community impact that extends well beyond the Colla. At an economic level, the impact of the mine is national in scope (for example,

through payment of taxes, royalties, licences and other rights). With respect to taxes, Tye Burt, the Kinross Gold CEO has reported that the company pays approximately 52% of its profits from its Chilean operations to the State.<sup>292</sup> In terms of investments into the Chilean economy, the initial development of the mine in the 1990s is reported to have been US \$200 million,<sup>293</sup> the refurbishment following temporary closure in 2003 is reported to have required an investment of US \$160 million,<sup>294</sup> an estimated US \$46 million investment has been approved for installation of an enhanced gold extraction process (SART) at Maricunga,<sup>295</sup> and more significant investments are projected if a further expansion of the mine takes place.<sup>296</sup> Kinross Gold is contemplating another \$1.6 billion investment in Chile for two development projects.<sup>297</sup> The wages and benefits provided to Kinross Gold Maricunga's employees and contractors are another direct economic benefit to the community.<sup>298</sup> In addition, Kinross Gold Maricunga provided US \$174,064 in community donations in 2008.<sup>299</sup>

In terms of social and environmental impact in the Atacama region, the town of Tierra Amarilla has been a focus of attention for Kinross Gold Maricunga. Tierra Amarilla is the nearest town beyond the Colla communities discussed above. It has a population of about 12,000.<sup>300</sup> Tierra Amarilla is about 10 kilometres from Copiapo, the capital city of Atacama, and more than 100 kilometres from the Maricunga mine. Along with Copiapo, Tierra Amarilla is the launching pad for Kinross Gold's activities in the Maricunga Gold Belt, and as such is a source location for the company's employees and contractors. Results from Kinross Gold Sustainability Stakeholder Workshops held in Tierra Amarilla in 2008 and 2009<sup>301</sup> and interviews conducted as part of this case study revealed a number of social and environmental concerns by Tierra Amarilla residents regarding the impacts of mining on the community, revolving primarily around the effect of mining activity on water shortages, the effect of mining pollution on residents (especially particulate/dust pollution), and the need for mining sector jobs and adequate skills training (education) for residents.

As noted earlier, Kinross Gold has publicly acknowledged the seriousness of water shortage issues in Atacama and has indicated a willingness to explore ways in which it can contribute to solve this issue,<sup>302</sup> and has also indicated its desire to assist in further scientific study of water issues.<sup>303</sup> The air pollution problems experienced in Tierra Amarilla emanate from local sources (e.g., Minera Candelaria, located on the border of Tierra Amarilla), not from Kinross Gold Maricunga. However, the results from the Kinross Gold Sustainability Stakeholder Workshops suggest that many local citizens do not make distinctions between mining companies: there is a tendency by some to treat Kinross Gold as a source of the pollution problem even if they are not.

With respect to jobs and adequate skills training, Kinross Gold hires local workers whenever possible, but many mining jobs at Kinross Gold require specialized skills (e.g., geologists, engineers, crushing and grinding specialist, maintenance specialists, human resource specialists, etc.).<sup>304</sup> In this regard, Kinross Gold has been working to address the local skills gap problem, through, for example, sponsorship of an Apprentice Program at the Technical High School in Tierra Amarilla, conducted by the Technical Training Centre at the University of Atacama, with the first seven graduates from the program announced in December 2009.<sup>305</sup>

**Photo: Tierra Amarilla Apprentice Graduate Ceremony (December 2009)**<sup>306</sup>



Commentators have suggested that “size matters” when referring to the potential and actual social, environmental and economic impact of mines on communities in Chile and other Latin American countries.<sup>307</sup> As the presence of Kinross Gold in the Atacama increases, there would appear to be increased capabilities, responsibilities and opportunities for the company to take a leadership role in terms of addressing social, economic and environmental impacts on the people and communities of Atacama. Interviews with Kinross Gold officials for this case study suggest an awareness and acceptance on their part of this increased capability, responsibility and opportunity, with explorations underway concerning how best to carry this forward.

### *7.3 Issues Analysis: Worker/Contractor Issues*

In 2008, Kinross Gold Maricunga had 431 unionized employees and 425 contract workers.<sup>308</sup> The unionized employees are members of two unions (a large one for 95% of the unionized workers at Maricunga -- the Sindicato de Trabajadores Cia Minera Maricunga<sup>309</sup> -- and a much smaller one for management and supervisors).<sup>310</sup> In view of the remoteness of the location, mine work is conducted on a seven days on, seven days off schedule, while management and supervisors work on a 4 days on, 3 days off schedule.<sup>311</sup> Contract workers perform such services as: supplying worker transportation to and from the mine, supplying, driving and maintaining Caterpillar haul trucks, operation of a medical clinic and food services at the minesite, human resources administration, and transportation of sodium cyanide to and from the minesite.

As with the Kinross Gold Maricunga relationship with the Colla community, so too, the company-worker relationship is an evolving story. The key issues at the present appear to revolve around:

- health and safety, and in particular anticipated changes in the safety requirements applying to high altitude mining (specifically, the location of mining camps);
- compensation and benefits, in the context of negotiations concerning the 7 day on, 7 day off work schedule, and collective agreement renewal (in 2010); and

- adjustments to changes in the legal requirements pertaining to sub-contracted workers.

Through its stated values, principles, codes, policies, guidelines, and standards, Kinross Gold has made commitments to “put people first,”<sup>312</sup> to have employee safety a number one priority,<sup>313</sup> to act in accordance with human rights,<sup>314</sup> to upholding the right of employees to choose whether they want to belong to a union (freedom of association),<sup>315</sup> to maintain good labour and employment relations,<sup>316</sup> to provide a meaningful livelihood to employees,<sup>317</sup> to maximize employment, business and economic opportunities for local communities,<sup>318</sup> to ensure that partners and contractors adhere to Kinross Gold Environmental, Health and Safety standards and to provide training in that regard,<sup>319</sup> to identify and implement local employment and purchasing opportunities,<sup>320</sup> to comply with all legal requirements and Kinross Gold standards,<sup>321</sup> to foster a work environment that supports diversity,<sup>322</sup> and to sustain a workplace culture that is equal-opportunity and discrimination-free.<sup>323</sup> Kinross Gold holds regular company-wide employment engagement surveys in which values, corporate responsibility and safety score highly as drivers of employee engagement.<sup>324</sup>

### *7.3.1 Safety at Kinross Gold Maricunga*

The high altitude Andes mountain location of the Kinross Gold Maricunga mine makes working conditions very difficult, with winds exceeding 100 km/hr and temperatures dipping as low as -30 Centigrade.<sup>325</sup> Both the mine site and the current mine camp (including dormitories) are located more than 4,000 metres above sea level.<sup>326</sup> Because of the high altitude, Kinross Gold requires that mine visitors undergo a physical exam before going to the mine, and workers are medically checked daily for signs of altitude sickness at a mine clinic located at the minesite.<sup>327</sup> Medical studies concerning Chilean miners working at extremely high altitudes such as the situation at Kinross Gold Maricunga suggest that sleep at high altitudes is negatively affected and suggest that miners working at high altitudes have a risk of acute altitude-induced illnesses.<sup>328</sup> Figures from the Confederacion Minera de Chile (the main union for mining workers in Chile) suggest that the life expectancy of high altitude miners is 60 years -- 16 years less than the national average -- and that the shorter life expectancy is attributable to the working conditions at the high altitude.<sup>329</sup> Kinross Gold Maricunga is building a new camp at a lower altitude (expected to be operational by June 2010),<sup>330</sup> with the location approximately 600 metres below the current location (i.e., at approximately 3500 metres).

The decision by Kinross Gold Maricunga to build the new camp at a lower level seems to have anticipated current government-led discussions concerning a new regulation requiring that mine camps be located at lower altitudes, and as such could be interpreted as constituting an example of proactive social responsibility by the company to address worker needs. Discussions in 2008 concerning the substance of the regulation suggested a new requirement that mining camps must be constructed below 3000 metres,<sup>331</sup> which would have put Kinross Gold’s new camp out of compliance with the new regulation, in spite of apparent good faith efforts on the part of the company to address the issue before any new regulation has been announced. If the new regulation had required Kinross Gold to abandon its current construction of the new camp at the 3500 metre level in favour of another camp at the 3000 metre level, this would in effect have penalized Kinross Gold for taking the initiative to attempt to improve worker conditions in the absence of a legal requirement to do so. However, according to the

most recent reports, the regulation will allow for an exception to a requirement that mine camps be constructed at the 3000 metres requirement, if camps constructed above 3000 metres included special oxygenation equipment in the dormitories, and companies provided onsite medical clinics with 24 hour, 365 days-a-year trained medical staff (Kinross Maricunga has the onsite medical clinic).<sup>332</sup>

Transportation to the mine site from Copiapo (175 kilometres away) is provided by Kinross Gold Maricunga (through a contracted service), and takes about three hours, on a very treacherous road. Access to the site is being improved through a new access road that eliminates passing by a cliff, with the expected result being a safer road and a route that will reduce the time to get to and from the mine site.<sup>333</sup>

Interviews with government authorities confirm that Kinross Gold Maricunga has had no convictions under Chilean labour or health and safety laws. Kinross Gold statistical data for the four years 2005 – 2008 reveal that there were no fatalities at Maricunga over the period, an average lost-time injury frequency rate at Maricunga of 1.16, a restricted work activity frequency rate of zero, and a medical treatment frequency rate of .37.<sup>334</sup> In August, 2009, Kinross Gold Maricunga was the recipient of a safety award from the Government of Chile's mining safety regulator (Sernageomin), based on its low accident rates for the year 2008, and also received a second safety award from the Chamber of Commerce.<sup>335</sup>

On April 30, 2009, a crane operator at Kinross Gold Maricunga had an apparent heart attack at the mine site, before the start of the working day.<sup>336</sup> According to one media account, the body showed no indications of trauma attributable to third parties.<sup>337</sup> In May, 2009, it was reported that Kinross Gold Maricunga was instituting a policy restricting workplace alcohol and drug use.<sup>338</sup> Kinross Gold Maricunga has also publicly highlighted what they consider to be exemplary safety practices of contractor companies for their work at Maricunga. An article in "Area Minera", a local online mining bulletin, notes that Kinross Gold Maricunga gave recognition to Finning International, a contractor that provides and maintains Caterpillar machinery for Maricunga: with a contract staff of 103 employees working at Maricunga, Finning is reported as having gone two years without a lost time accident at the Maricunga mine.<sup>339</sup>

For all of its operations, Kinross Gold has put in place an Environmental Health and Safety (EH&S) management system and standard modeled after ISO 14001 and OHSAS 18001, covering policy, planning, implementation and operation, checking and corrective action, and management review, with targets, performance standards, and metrics.<sup>340</sup> While some Kinross Gold operations such as its Paracatu mine have obtained third party certification to international health/safety and labour standards such as ISO 14001, OHSAS 18001 and/or SA 8000,<sup>341</sup> the Kinross Gold Maricunga operations have not been so certified. Interviews with Kinross Gold Maricunga officials for this case study suggest that certification is being considered for Kinross Gold Maricunga.

A useful insight into health and safety practices at Kinross Gold Maricunga comes from a review of their activities with respect to handling and use of cyanide. Cyanide is used to extract (or leach) gold from the ore. Relatively low concentrations of cyanide can be highly toxic to people and wildlife.<sup>342</sup> For that

reason, extreme care must be paid to all aspects of cyanide production, transportation, storage, use, and disposal, involving coordinated action among employees and a variety of contract workers. As noted earlier, there is an International Cyanide Management Code, a voluntary program, for which companies can be audited and certified if their safe management practices adhere to the terms of the code, from production through use and disposal.<sup>343</sup>

Kinross Gold Maricunga operations have been certified to the International Cyanide Management Code. The audit results are made public, and in the case of Kinross Gold Maricunga, the audit took place in 2008, with finalization of the summary audit report publicly issued in February, 2009.<sup>344</sup> The Code and the audit of compliance with the code involves reviewing: the safety and environmental training and qualifications of the supplier (in the case of Kinross Gold Maricunga, the supplier is DuPont Chile SA), the transportation contractor (Transportes Verasay Limitada), and the medical contractor (Mutual), the adequacy of Kinross Gold Maricunga's handling and storage facilities and practices; prevention, monitoring, quality control and emergency procedures, training practices and personnel qualifications. The auditor approved and certified the cyanide-related facilities of Kinross Gold Maricunga, its procedures, training, personnel, partners, and practices, noting with apparent approval that several Colla employees for Kinross Gold Maricunga have been provided with the appropriate health and safety training and are carrying out cyanide-related activities at Maricunga.

### *7.3.2 Labour Relations at Kinross Gold Maricunga*

Management-labour relations at Kinross Gold Maricunga over the period 2005 - 2010 appear to have been on the whole peaceful and constructive, with no strike activity and two significant agreements during this time. The good company-worker relations at Maricunga occur against a backdrop of recent increased strike activity in Chile.<sup>345</sup> And as noted earlier, in 2007, Chile's new law on subcontracted law came into effect, leading to a reported "increased militancy" in Chile's subcontracted workers<sup>346</sup> (although we could find no evidence of such militancy at Kinross Gold Maricunga). In 2008, there were major strikes at two other major Chilean mines (CODELCO and BHP Billiton/Escondida<sup>347</sup>). In the summer of 2009, there was a 24 day strike at the nearby Kinross Gold La Coipa mine that was settled with a 3% wage increase and a bonus.<sup>348</sup>

In the spring and summer of 2009, there were strained discussions between Kinross Gold Maricunga management and the Sindicato de Trabajadores Cia Minera Maricunga regarding renewal of the "seven day on, seven day off work-week" schedule that was in place. The Chilean work-week norm is five days work with two days off, or six days work and one day off, but due to the remoteness of the mine, the seven days on seven days off schedule is more practical. By the end of July, 2009, the company and union reached a reported "satisfactory agreement" to continue the "seven day on seven day off" work week schedule.<sup>349</sup> In February, 2010, a new, 4 year collective agreement was agreed to by a reported 95% of workers.<sup>350</sup> Among other things, the agreement included a 4.5% in salaries.



**Photo: Signing of New Collective Agreement, February, 2010<sup>351</sup>**



In terms of diversity, in interviews with Kinross Gold officials, they pointed to problems of illiteracy that impede the ability of Kinross Gold to hire persons from the Colla community. Interviews with company and government officials indicate that environment, health and safety regulations necessitate that workers have basic literacy skills, and that this is an area where Chilean indigenous persons (including the Colla) have been historically disadvantaged. This having been said, in a long term effort to be in a position to hire more Colla, and to enhance the long term self sufficiency of the Colla, Kinross Gold Maricunga has put a program in place to provide scholarships and other education assistance to the Colla and has hired several Colla.<sup>352</sup> Some Colla community members are currently employed by Kinross Gold Maricunga on the leach pads or in other cyanide process-related areas, and as per the above-mentioned Cyanide Code audit, have received the full range of health and safety training associated with handling cyanide.<sup>353</sup> As noted earlier, Kinross Gold Maricunga has also provided scholarship and apprenticeship programs to local students (including members of the Colla).<sup>354</sup>

In terms of gender, it has been generally noted that mining in Chile has long been a preserve of men, but there have been sector-wide efforts to increase female participation.<sup>355</sup> Interviews suggest that a major challenge to hiring more women at Kinross Gold Maricunga is its remote location: while another Chilean mine has been able to attract a 25% female workforce,<sup>356</sup> that mine is located near a town so that workers can commute to and from work every day, and not be estranged from their families. Thus, there are currently nine women employed at Maricunga. In 2008, Kinross Gold Maricunga hired a female Public Relations and Communications Officer (previously, the position was held by a male). This is a senior position within the company, with a primary responsibility for interactions with the Colla. In view of the fact that women play a primary decision-making role in the Colla community (for example, the past President of the Colla community in Rio Jorquera Colla is female), the switch to a female Public Relations and Communications Officer at Kinross Gold Maricunga is perhaps not accidental. While the numbers of female workers in Chilean mining generally and at Kinross Gold Maricunga specifically remains very small, the issue is on the government radar screen with government-sponsored workshops addressing the issue.<sup>357</sup> At least one female Kinross Gold Maricunga worker has become a centre of media attention. The presence of Ms. Paola Ortiz, a female truck operator for Kinross Gold Maricunga (and a participant at a government sponsored workshop on women in mining), has been remarked upon in media accounts.<sup>358</sup>

### *7.3 Issues Analysis – Environmental issues*

As noted earlier, in the legal overview discussion, the key Chilean environmental protection legislation applying to the mining sector (the *Environmental Framework Law*, Decree 19300) was introduced in 1994. Since that time, and building on this legal base, the environmental dimensions of mining have gradually become the subject of legal regulation.<sup>359</sup> The main legal instruments used to address the environmental aspects of mining are permitting (e.g., mining exploration permits) and an environmental impact assessment (EIA) process. The EIA process applies to project design, construction, operation and closure of mining operations.

Pursuant to the Chilean regime, proponents of projects with potential environmental impacts prepare EIA studies which are then reviewed by the Chilean environmental authority (CONOMA, and its regional versions, called COREMA). However, it took until 1997 before the EIA process was enshrined in regulation, following litigation that compelled the Chilean government to switch from a voluntary to a mandatory approach (this is not dissimilar to the Canadian EIA experience, which also started as a voluntary process until litigation triggered the federal government to create a regulatory EIA process).<sup>360</sup>

Prior to 1997, Chilean industry proponents of projects (mining or otherwise) prepared and submitted their EIAs voluntarily for review by the Chilean authorities.<sup>361</sup> After review and discussion, the voluntarily submitted EIA, if accepted (perhaps with modifications suggested by the Chilean authorities), would then become binding on the proponent. It was pursuant to this voluntary EIA process that the Refugio mine was initially approved for operation in 1994.<sup>362</sup> The original commitments made by the in 1994, as agreed to by COREMA, remain in force on Kinross Maricunga operations today (as varied or modified by subsequent EIA applications that have been approved by COREMA since 1994).

At the time of the initial voluntary EIA review in 1994, the composition of the Region III Atacama COREMA included representatives from the regional Ministries of Mines and Public Works, the Regional Directorates of the National Service of Geology and Mining (Sernageomin), the Atacama Health Service, the National Forestry Agency (CONAF), the National Agriculture Ministry, and the Directorate responsible for water (DGA). Thus, the officials involved in review of the submission involved represented a cross-section of Chilean authorities having responsibility for key affected socio-economic interests.<sup>363</sup>

Based on its 1994 review, COREMA concluded that the study met the requirements of an EI Study in terms of its description of:

- the proposed project (addressing underlying geology, method of operation, processing and use of water, waste management approach, facilities and infrastructure support, transportation , labor, ongoing environmental management, mitigation and contingency plans, and mine closure);
- the baseline environment;
- environmental impacts (air, water, soil, biological, socio-economic and archaeological/cultural heritage);
- proposed mitigation measures; and
- proposed monitoring plan.

Adding in some conditions of their own, COREMA adopted the EIA study, so that the commitments made by Amax/Bema for addressing the social-enviro-economic impacts contained in the EIA study became binding on it (and later, on Kinross Gold) from that point on. Additional measures imposed in 1994 by COREMA on the mine included the requirement that company address road signage and minimize road dust, and hence damage to sensitive protected park areas, that the company conduct additional studies re: potential acid generating potential runoff, a commitment that the company will address any increase in acidity, that the company cooperate with CONAF re: protection of the adjacent park areas, develop a cyanide mitigation plan, include additional waterflow monitoring commitments, agree to assist with tuition and schooling of children if needed, and undertake additional monitoring of chemical usage. Subsequently, as various expansions, alterations, and adjustments to the operation have been undertaken, the Kinross Gold Maricunga mine has been the subject of more than ten additional EIA approvals under the mandatory EIA process.<sup>364</sup>

As noted earlier, underlying the Kinross Gold foundational documents for corporate responsibility (the “Kinross Way,” the 10 Corporate Responsibility Principles, and Kinross Gold Code of Conduct) the company has developed an environmental policy, a water management policy, an energy and climate policy, an air emissions policy, a cyanide management policy, a closure and reclamation policy and a biodiversity policy. These policies create a structure within which individual Kinross Gold mines such as Maricunga then operate.

The main environmental challenges associated with the Kinross Gold Maricunga operations identified through this research revolve around the condition of the road and the impact of road dust on the Colla community and Colla livestock and crops, and access to water, as described earlier. On the horizon are new rigorous standards applying to mine closures.<sup>365</sup> Based on interviews with Kinross Gold officials, officials from Chilean environmental authorities, Colla community members, and environmental non-governmental organizations, it appears that Kinross Gold Maricunga has not been the subject of any successful environmental enforcement actions. Environmental officials interviewed for this research have frankly noted that with limited resources, the remoteness of the Kinross Gold Maricunga mine location makes it difficult for government staff to monitor the operation. For this reason, the cooperative tri-partite monitoring and dispute resolution arrangements that have been developed by government authorities, the Colla community, and Kinross Gold Maricunga (described earlier), seem promising.

Another potentially useful supplement to the regulatory regime is use of third party certification arrangements, such as the International Cyanide Management Code, for which Kinross Gold Maricunga is a member in good standing (as discussed earlier). Pursuant to the terms of the Code, the third party auditor conducted a site visit, reviewed company records prepared in compliance with the Code, investigated a cyanide spill that was addressed by company officials with no apparent lasting environmental or other harm (the spill was reported to government environmental authorities), ascertained the cause of the spill (defective equipment), and ultimately concluded that appropriate measures had been put in place so that a recurrence would be unlikely.<sup>366</sup>

While bilateral arrangements such as the protocol between the Colla of Rio Jonquera and Kinross Gold Maricunga, tripartite arrangements such as the Colla-Chilean government-Kinross Gold Maricunga road monitoring and dispute resolution approach, and third party certification mechanisms such as the International Cyanide Management Code are all potentially useful supplements to a properly functioning regulatory regime, they are not in any way replacements for such government enforcement of effective regulatory regimes. There is reason to believe that improvements to the environmental regime are in the offing: as noted earlier, the Chilean government has publicly committed itself to a more effective environmental protection regime, through use of a variety of measures.<sup>367</sup>

## **8.0 Multiperspective Analysis**

The “perspectives” portion of this case study represents a synthesis of the positions of different parties (e.g., Kinross Gold management perspective, the Chilean government perspective, the Colla community perspective, the non-Colla community perspective, the worker perspective, the contractor perspective, the NGO perspective and the investor perspective) as revealed through the various interviews as well as based on information derived from other sources. It perhaps goes without saying that it is very difficult to ascribe a position on a particular issue as representative of a larger group – be it a community, a corporation, a government, or an NGO. Thus, although drawing on interviews and other sources, the synthesis of positions provided here represents an approximate gauging of a variety of different perspectives. Except where direct quotes are provided, it should not be taken to be the views of any one individual. This multiperspective analysis, as with the rest of the report, has benefited from the input of Canadian and Chilean multistakeholder collaborative team members, as well as the input of others who commented on the report. The sources for the various assertions and points made in this section have been referenced earlier in the report, and so except where new sources or quotes are provided, they are not repeated here.

### **8.1 Kinross Gold Management Perspective**

Kinross Gold management is of course centrally concerned with producing positive financial returns for its shareholders, while maintaining or improving its position vis-à-vis competitors, and minimizing undue risk. Operating in a sector that is sometimes characterized by political instability and uncertainty (particularly for operations in developing countries), that is subject to uncontrollable global economic/market fluctuations, that is not infrequently the target of critical public scrutiny (international, national and local), and that is often faced with shifting government laws and policies on a range of issues, Kinross Gold management navigates through a challenging socio-political, economic and legal landscape.

In interviews with Kinross Gold management there was emphasis that social responsibility is an integral foundation for their success, not just a philanthropic add-on. This is reflected in the decision making processes for community projects, where one senior Kinross Gold official stated:

.....unless there is an alignment of Kinross Gold and community interests with respect to a particular project, it has little chance of success. It doesn't make sense for Kinross Gold to take

on something in Region III that is unrelated to the Kinross Gold core business of mining.

The idea of integration of economic, social and environmental is also evidenced in the four values articulated in the “the Kinross Way” Principles. CEO Tye Burt talks about the need for Kinross Gold to be a “good neighbour” and so in interviews with senior officials the question was asked “How do you define a ‘good neighbour’?” The answer was: that’s why we developed “the Kinross Way” and the Kinross Gold “Ten Guiding Principles”. Essentially, they “flesh out” what “good neighbour” means for Kinross Gold. It is not about hand outs.

One senior Kinross Gold official noted with approval his experiences with other mine companies earlier in his career, where positive relations with local communities -- in which real and sustainable economic opportunities were generated for community members -- were seen as the optimal solution for all parties. Kinross Gold officials wished to emulate this sort of approach at Kinross Gold.

Top management seemed particularly cognizant of the need to hire experienced social responsibility persons for key regional and local operations. Kinross Gold management also spoke of a strong CR program as producing a competitive advantage for them – noting in particular an example of one Latin American government that was receptive to them investing in their jurisdiction, specifically citing Kinross Gold’s good CSR reputation and program as a factor in the warm reception.

Senior Kinross Gold officials also spoke of the need to respect the cultural and historical perspectives and realities of indigenous peoples near their mines. They did express concern about creating dependency relationships with both local communities and governments. Thus, they were particularly interested in approaches and activities that were capable of being self-sustaining in the long term – be it investments in education and training, provision of tools that would improve the agricultural capacity of the local community, or in new business opportunities such as eco-tourism. The idea was to find projects that fit with the values and approach to living of the communities, and that would be capable of carrying on long after the mine was gone.

While the emphasis is on developing proactive approaches to address issues before they become problems, there is acknowledgement that friction and differences of opinion are to some extent inevitable. In preparation of this report, a senior Kinross Gold official stated the following:

The fact is that disputes and disagreements do occur and will continue to occur. Whether the issue is disrupts operations or tarnishes a reputation is dependent upon the approach the company takes. If done with transparency, respect, and within the law, the potential for escalation is decreased.

Kinross Gold management talked of not wanting to be perceived as “government”, or to take on government responsibilities. One Kinross Gold Maricunga official expressed frustration with the failure of the Chilean government to fulfill its legal obligations, and expressly challenged the view that Chilean regulatory agencies do not have adequate resources. In the view of this official, it was a question of the Chilean government failing to make the environment, or indigenous issues, a priority.

On the issue of labour relations, Kinross Gold management expressly noted the need to respect the right of workers to organize. While relations have sometimes been tense during periods of negotiation, Kinross Gold officials also felt that worker relations have been constructive and there has been mutual respect.

On the issue of environment, Kinross Gold officials do not attempt to deny the significant impacts on the ecosystem. One senior official said the following:

When looking at CR, it's important to note at the beginning that we are a mining company and so we do have a significant environmental footprint. It's not like we are a bank or a small manufacturing facility. If you are mining, you are affecting the environment and communities. So the point is that it has to be done in a responsible manner. It's kind of been a debate between anti mining and mining interests: "what's not good enough?" This puts the industry in a defensive stance. That is why we are now working on a benefits footprint, to show how our actions leverage community value and wealth.

Compliance with the law (economic, environmental, social) seems to be viewed by management as an absolute priority throughout Kinross Gold operations, and a foundation for social responsibility. Unlike other mining companies, Kinross Gold has not adopted a confrontational litigious approach to address any social responsibility issues -- not bringing any legal actions with respect to the Maricunga operations to address environmental, worker, indigenous or other problems they might be experiencing, while other mining companies operating in Chile have not been shy about resorting to such actions.

This may in part be simply good fortune on the part of Kinross Gold -- that no issues have yet arisen which necessitate legal action. But there does appear to be a tacit understanding in Kinross Gold management to "quietly" go about their social responsibility activities, not boasting, nor taking aggressive stances to address legal issues. Similarly, Kinross Gold officials exploring the possibility of signing on to certain global SR initiatives, but only if there is a good "fit". They are just as likely to read over and digest an existing external initiative and then develop their own wording. However, officials also seemed open to signing on to third party standards and programs, but only if there was a clear value added.

As noted elsewhere in this report, senior Kinross Gold officials view the social responsibility program at the company as in its early stages, an evolving program, with much yet to be done to ensure that it is systematically and consistently delivered, monitored, measured and reported at all its operations. The "roll out" of the Kinross Gold CSR program is at this point largely a "top down" exercise in the sense that it largely emanates from headquarters, after discussions with senior officials from the regions, although senior officials also recognize the need for flexibility and recognize that local operations (in particular, new acquisitions) may have developed or signed on to initiatives that are reflective of the needs of the local community, that could potentially be emulated throughout the global operations of the company. At the same time there is a strong component of grassroots involvement in the implementation of the new strategy. In the fall of 2009, the company convened a three-day workshop on the new CR strategy that included on-the-ground personnel with responsibilities for environment, health and safety, and

community relations from all of the company's operations. Among other activities, the workshop included a group session to help determine the common elements and criteria for the template which each site will use in creating their site responsibility plan, a key component of the new CR strategy.

## *8.2 Government Perspective*

Chilean governmental authorities with responsibilities pertaining to the mining sector are operating in a changing, challenging landscape. New royalty laws have been put in place, reflecting recognition of the need to extract greater returns for mining activity in Chile. Environmental, worker, water, and indigenous laws have been or are being revised in ways that give more protections to disadvantaged societal interests. Thus, the "open for business" approach of previous years is perhaps beginning to be moderated. Seeking membership in the Organization for Economic Cooperation and Development, Chile has had their environmental regime reviewed, found wanting, and has committed to reforms to address deficiencies in the accountability and effectiveness. Resource management, environment, indigenous, and worker decisions of government agencies have been the subject of successful legal actions by business, NGOs, and indigenous persons with the effect that those governmental decisions have been overturned. The legal ground is moving beneath the feet of government officials, as environmental, worker, and indigenous laws are being amended or new regulations introduced. Communities, interest groups and non-governmental organizations have launched successful media and internet-based campaigns to criticize government actions.

Some government officials interviewed for this study have frankly admitted that they are under-staffed, and that outlying operations such as those of Kinross Gold Maricunga represent a particular challenge. Perhaps for this reason, it is not uncommon for Chilean government authorities to work directly with industry and other stakeholders to develop supplementary approaches, be they Cleaner Energy Production pacts with the mining sector, mining clusters to address common issues in particular areas, or bilateral or multilateral agreements with individual companies such as those between Kinross Gold Maricunga, CONAF and others for park protection, or dispute resolution processes such as those between the Colla, regional authorities, and Kinross Gold Maricunga. Third party certification programs such as ISO 14001 have been looked upon favourably by government officials as ways of supplementing government-based regulatory approaches.

## *8.3 Colla Community Perspectives*

As noted earlier, there are Colla living in towns and cities, and there are Colla living in rural settings. The focus of attention here is on Colla communities located along the road to the Maricunga mine. It has been noted that religion is an integral component of the Colla worldview, with the main Colla deities being the Pachamama (Mother Earth) and the Inti (the sun). A deep connection among people, animals and nature is central to the Colla worldview. Colla from the Rio Jorquera community interviewed for this case study expressed deep concern that their entire way of life is under threat. They have seen members of their community move to the city, and then never return. One member stated the following:<sup>368</sup>

We would like to go back to our traditional lifestyle. In 20 years from now, there won't be one Colla left. If you don't take our kids to see your customs they're not going to follow them. You eliminate the culture. You say to them: go to work in Copiapo. They go down, and then they forget about the culture. As soon as they get to the city, they lose the culture. We want self sufficient work to ensure that the kids don't leave. We'd rather recover our culture and work in our land and in our culture on productive projects and become self sustainable. Our children are our future.

When asked if their worldview was compatible with that of Kinross Gold Maricunga, one community member said:

The worldviews are completely different. The mining company just wants to make money. Their mentality is just to make money. The community's objective is to create human life that continues on, such as farming. These guys are on our land. It's not a question of when they go away. They are dependent on us not the other way around.

Researchers for this case study witnessed an exchange between Kinross Gold Maricunga officials and Colla members from Rio Jorquera over the issue of ownership which showed quite different perspectives. The Kinross Gold Maricunga official indicated that "we're all equal under Chilean law," and that the Maricunga mine property was owned by the company: "We regard it as Chilean land that was deeded to us. It's not in Colla territory." On the other hand, the Colla Rio Jorquera community members stated that "....Maricunga is in our territory. We have studies of this....and litigation against the Chilean state claiming it is Colla territory." One Colla Rio Jorquera member stated that "[a]s when you are in someone's house, you follow their rules. CMM[Kinross Gold Maricunga] is following Colla rules through the protocol." Another Colla Rio Jorquera member stated that "[u]nder 169 [ILO Convention 169], we have special constitutionally protected rights to be consulted, informed."

The perspective of the Colla communities located on the road below the mine vis a vis Kinross Gold Maricunga -- and also towards Chilean governmental authorities -- seems to be in transition. While historically impoverished and marginalized, and at an educational disadvantage, increasingly, these Colla seem to be taking confident and sophisticated negotiating positions vis-a-vis both mining companies and governments, bringing legal advisors to meetings, drawing on the services of consultants to prepare reports that substantiate their claims, and networking with indigenous populations in other regions to exchange views and compare positions.

Underlying the growing confidence and sophistication seems to be two key factors: first, increasing legal rights and protections being afforded to Chilean indigenous populations in general (e.g., as discussed earlier, recent Chilean ratification of ILO Convention 169, recent Chilean Supreme Court decision upholding indigenous rights, and recent concessions of legal rights to the Colla for lands adjacent to the Kinross Maricunga Gold mine); and increasing "bargaining power" vis-à-vis mining companies near their community, as the greater Maricunga Gold Belt region becomes a target of multiple exploration and development projects.



A major concern of the Colla seem to be that there is adequate and appropriate compensation to them in exchange for having mines located near their communities, that they have a real “voice” in decisions and activities that affect them, that there is respect for their way of life, religion, and views toward nature and mines, that there is no environmental harm to their community, that there are culturally appropriate employment and business opportunities afforded to them, and that there is support for education, training, medical services and modern infrastructure.

In conducting research for this report, there were expressions of frustration by members of the Colla Rio Jorquera community when perceived problems arose (e.g., dust and safety issues associated with the road) and in their opinion, the solutions were not quickly and appropriately implemented. Much of the frustration was directed at the Chilean government, which in their opinion is not fulfilling its responsibilities vis a vis the Colla, has not fully recognized Colla rights, and is poorly coordinated. But at the same time, the Colla Rio Jorquera community appeared willing to participate in the development of protocols and other arrangements with Kinross Gold and Chilean government agencies which offered solutions to ongoing problems.

#### *8.4 Non-Colla community perspectives*

As noted earlier, although the Colla living along the road leading up to the Kinross Gold Maricunga mine represent communities that are directly affected by the mine’s activities, and are in a position to directly affect the continued operation of the mine, there are also Chilean towns and cities such as Tierra Amarilla and Copiapo which represent “launching centres” for Kinross Gold Maricunga (and other mining operations). We have seen that Tierra Amarilla residents who attended Kinross Gold stakeholder meetings expressed concern about pollution from mining (particularly air pollution), that mining was depleting the water supply, and that mining companies needed to hire more local persons and invest in training so that residents could gain employment in the mines. An interview with a local government official revealed a view that in this person’s view, mining companies were not giving their “fair share” back to the local community. It should be emphasized that these expressions of concern and dissatisfaction did not seem to be directed particularly toward Kinross Gold, but rather were more generalized opinions about the contribution of mining companies of all types.

#### *8.5 Employee perspectives*

Based on research and interviews conducted for this study, the key concerns for workers at Kinross Gold Maricunga revolve around the high altitude of the mining camp and the discomfort caused by it, the long and dangerous drive to the mine, and compensation. While interviews with workers did reveal a certain amount of dissatisfaction or frustration on these points, it is worth pointing out that each of these issues is being or has been addressed (i.e., a new camp at a lower altitude is being built, the access road is being improved, an agreement has been reached concerning the “seven and seven” schedule, and new four year collective agreements have been negotiated).

### *8.6 Contractor perspectives*

Although there are a large number of contract workers at Kinross Gold Maricunga (with such workers typically having less security, receiving less remuneration and having less benefits), researchers did not find evidence of direct tension caused by this two-tiered arrangement. It is possible that the new sub-contracting law may change the dynamic between the two sets of workers.

### *8.7 Non-Governmental Perspectives*

Researchers for this case study interviewed representatives from a local Chilean environmental organization and a Chilean national social responsibility organization and several Canadian non-governmental organizations that have tracked or commented on or worked with Canadian mining companies operating overseas. Some were more familiar with Kinross Gold activities than others, but none had any particular direct knowledge of or opinion on the activities of Kinross Gold Maricunga specifically. Some of the NGOs adopted “constructive engagement” approaches toward social responsibility of mining companies, others were more detached, and others indicated more fundamental concerns with the unjust structures within which mining companies, communities and others were operating. One apparent similarity among them was a perception that the current legal/regulatory framework is inadequate, as are the parallel legal regulatory /frameworks for other competing commercial activities such as agriculture, as well as legal structures/regulatory frameworks for the protection of indigenous, environmental, community and other interests).

### *8.8 Investment community perspectives*

Representatives from institutional investors as well as from investor service providers were interviewed for this case study. They were familiar with Kinross Gold’s activities, and had interacted directly with Kinross Gold. The general view expressed was that Kinross Gold was a good performer on social responsibility issues, was willing to constructively engage with them on issues of concern, and was making observable progress on social responsibility issues. One point that was raised in different interviews was that to date, Kinross Gold was fortunate to have been able to avoid any serious corporate responsibility-related controversies.

## **9.0 Conclusions and “Lessons Learned”**

There are two main objectives underlying the development of this case study and the other case studies in this pilot project. The first is to gain a better understanding of the environmental, social and economic interactions, issues and challenges associated with a Canadian mining company operating in a developing country context through balanced, accurate and nuanced accounts, analysis and discussion of “lessons learned” for use by all interested parties. The second is to test out a new collaborative multiperspective methodology for carrying out a CSR case study. These will both be briefly examined in turn.

An examination of the broader Chilean political, social and economic context within which Kinross Gold Maricunga operates has revealed a country in significant transition. Chile is emerging from a tumultuous recent past involving significant shifts from socialist approaches to governing including expropriation and nationalization of foreign mining companies, to a military dictatorship that was largely dedicated to putting in place a neo-liberal “pro-development” market oriented framework, to a post-dictatorship period where a focus of attention has been on addressing and protecting some of the other non-commercial interests that had been marginalized, while at the same time remaining attractive to foreign investors.

In many ways, Chile has navigated these shifts with great skill, become a stable, prosperous and on well-governed country, ranking at the “top of the class” when compared with its Latin American peers. Resource extraction has figured prominently throughout these shifts and today is a major economic driver for the country. That being said, there are significant inequities in terms of wealth distribution in Chile, and growing concerns that the people of Chile are not obtaining sufficient rent in exchange for the extraction of its natural resources. In particular, the indigenous persons of Chile have been marginalized, significantly less wealthy and less educated than those Chileans who are not Indigenous.

A review of the regulatory framework has suggested a somewhat uneasy and evolving overlaying of laws and regulatory regimes from different time periods, some pointing in one direction (e.g., in favour of foreign investment) while others point in different directions (e.g., in favour of protecting the interests of others). The regulatory framework for mining companies such as those of Kinross Gold also includes an additional layer of “extra-legal” rules (standards, certifications, guidelines, codes, compacts) addressing various environmental, social and economic aspects of mining activity. Many of these extra legal rules are international in origin and administration. As voluntary initiatives, it is at first instance in the discretion of mining companies as to which of these instruments they choose to adhere to. In short, the activities of Kinross Gold Maricunga are potentially or actually subject to a complicated and evolving set of government and non-government-based rules.

With this background, an examination of the evolution of Kinross Gold and its corporate-level approach to social responsibility was provided, showing a company that has grown rapidly, largely through acquisitions, mergers and joint ventures, and that has recently put significant attention and investment into the development of its social responsibility policies and procedures, as well as its corporate level decision-making processes. In research for this case study, Kinross Gold officials said: “Our attention to CSR has evolved from being focused on environmental stewardship and business ethics, to now taking a more consistent approach to the social aspects and our potential to positively influence the community.”<sup>369</sup> The net effect suggests that significant efforts are now being undertaken by Kinross Gold to systematically integrate social responsibility dimensions into its day to day decisions and actions. Based on an analysis undertaken in the study, the Kinross Gold CR policies and commitments compare favourably to the ICMM Sustainable Development principles and IFC Performance Standards.

Looking specifically at the Kinross Gold Maricunga operation, it can be seen that the mine has undergone significant development and growth over the past 15 years, with Kinross Gold only being

involved in that development for part of that time (thus inheriting the problems and approaches of earlier owners). There are a range of social, environmental and economic challenges facing the company at Maricunga, from those of a technical nature associated with the difficulties of operating at high altitudes in extremely dry and difficult weather conditions, to those associated with supporting and contributing to, and not detracting from, the sustainable well-being of the local indigenous communities living on the road leading to the mine, and the non-indigenous community living further from the mine, to ensuring positive and healthy relations with workers and sub-contractors, and complying with a range of evolving environmental, social and economic laws and standards.

Research undertaken for this study indicate that members of the Colla indigenous community located along the road to the Maricunga mine are concerned with preserving the Colla culture and their traditional way of living. In addition, some residents in the community of Tierra Amarilla are anxious to ensure that jobs and training come to them, and that environmental impacts are minimized. There has been a certain amount of frustration expressed by affected parties as particular environmental, worker and indigenous/community issues associated with Kinross Maricunga are navigated and addressed. While in some cases this friction has led to complaints to, and investigations by, Chilean authorities, the researchers were not able to identify regulatory convictions against Kinross Gold with respect to the Maricunga mine, or corporate responsibility lawsuits against the company.

Working with government, Colla, and non-indigenous community partners, the company has made efforts to develop and implement a corporate responsibility approach at Maricunga which complies fully with the evolving laws and attempts to contribute to the social, environmental and economic well being of the workers and sub-contractors, the Colla living in communities near the road leading to the mine, and to the non-indigenous community living further from the mine. Key innovations that have been developed by the parties include a protocol agreement between the company and the Rio Jorquera community, a tri-partite arrangement for identifying and resolving issues associated with the road, and a number of partnerships and agreements to address environmental, social and economic impacts.

Studies suggest that mining can bring wealth, higher standards of living, education, literacy, and infrastructure.<sup>370</sup> But it is equally that mining can also bring community conflict, worker strife, and environmental damage.<sup>371</sup> In the current climate, any mining company – be it Canadian or otherwise -- is just one community, worker, or environmental issue away from a significant disruption to its operation, a tarnished reputation, as well as potential more long-term financial damage, including reduced ability to gain approval for new operations. It is also clear that an incident occurring in an operation of a mining company located in one jurisdiction can affect or taint operations in other jurisdictions.

CSR can be seen as simply a way of decreasing the likelihood of negative incidents happening – a form of risk management. But this short term risk management perspective may miss an important dimension of CSR as practiced by mining companies such as Kinross Gold. If instead of viewing CSR exclusively through a risk management lens, companies were to adopt more of an ethics-based “value added perspective” to social responsibility -- to look upon communities, government agencies, and concerned

civil society organizations as partners that need to benefit from a mining project in their own ways just as mining companies need to benefit financially -- then when problems do arise, there is an increased likelihood that the mining companies will have allies, that those problems will be resolved in a constructive manner as perceived by all parties involved, and that the partners can act as goodwill emissaries for the company when future projects arise.

On the one hand, this “value added” CSR perspective may sound naïve (e.g., some might say: “firms must occupy themselves with business partners and are in no position to be partnering with communities and governments to solve societal problems – their legal obligation is to maximize corporate value”). On the other, it might sound calculating (e.g., some might say: “firms need to carefully anticipate and ascertain what long term benefit they will receive in exchange for working with this or that stakeholder”). We have seen in this case study that Kinross Gold at its Maricunga operations is devoting considerable energies to developing and fulfilling agreements with a number of different parties to address a number of different social, economic and environmental issues.

We have also seen that Kinross Gold is now in a position where the approval and cooperation of the Colla (and regulatory agencies) is needed if another Chilean project for which they have a major interest is to proceed in an expeditious manner.<sup>372</sup> Short of having a crystal ball, it can be argued that Kinross Gold could not have fully anticipated that good relations with the Colla vis-à-vis its Maricunga operation could have such important impacts on future non-Maricunga projects. In a similar manner, Kinross Gold is discovering that their good worldwide CSR reputation is paying dividends in terms of their reception by governments in other jurisdictions where they are seeking approval for their projects. In short the benefits of an ethical values-based CSR approach in which stakeholders are treated as partners are impossible to predict, and may be difficult to quantify in advance, but in practice, an ethics-based CSR approach can have quite tangible impacts.

The rise in interest in the mining potential of the Maricunga Volcanic Belt region can be viewed in at least two ways. On the one hand, it represents a potential opportunity for Kinross Gold to develop the needed critical mass of mining activity in the area, allowing it to pursue “economies of scale” in terms of investment in “area wide” approaches to energy production, training, water desalination, etc.. On the other hand, there is also the potential that the cumulative effect of multiple mine projects (Kinross Gold and those of other companies) might overwhelm the communities and facilities in the area. There is also the increased possibility that a mining problem at another non-Kinross Gold mine operation will be “held against” Kinross Gold Maricunga. For a disgruntled local community member, the fine distinctions between one and another mine might not matter. For this reason, the potential value for several mines in a region to come together and develop common approaches to particular issues might be sensible.

From a substantive “lessons learned” standpoint, one dimension of the Maricunga experience which stands out is the constantly evolving nature of the challenges. The laws are changing, and as they change, the points of consensus and understanding shift. This is perhaps most apparent with respect to ILO convention 169, which seems to represent a significant strengthening in recognition of the unique needs and interests of indigenous persons, but it can also be seen in evolving Chilean environmental and

worker health and safety laws. At the same time, the nature of the environmental and social challenges faced by the company those with whom it interacts are also changing in ways which the law has not yet addressed. For this reason, voluntary codes, standards and agreements seem to be playing valuable supplementary roles in creating flexible frameworks for constructive engagement and development – be they organic agreements developed by the parties themselves (e.g., the protocol of Kinross Gold Maricunga-Colla of Rio Jorquera) or third party certification standards such as the Cyanide Code, particularly valuable in addressing mountaintop activities that rarely are monitored through conventional regulatory programs.

A second substantive “lesson learned” was that while for some sectors (e.g., the retail food sector), social responsibility may be perceived as something that can be attempted or rejected without much consequence, for mining companies such as Kinross Gold, it is not a luxury add on. Putting in place an effective approach to corporate responsibility is a necessity, and if it not done properly, consequences can be significant and negative (as is apparent from a glance at situations elsewhere in the world where violence and litigation have accompanied resource development).

A third substantive “lesson learned” is that while the remote and challenging location of Maricunga may in some ways be a complicating factor, at another level, it can be seen as an advantage, when compared with those situations where mining operations and communities are in close proximity to each other. In the latter situation, the opportunities for conflicts may increase.

Looking at the methodology, the combination of Canadian and Chilean team members from the private sector, civil society, and government, as well as academics from a range of different academics acted as an extremely important “check and balance” mechanism in the research and writing phase of the project. In addition, the team members were invaluable sources of guidance concerning issues, individuals and information. The concentric circle of reviewers represented an additional check and balance and source of information for the researchers. In the opinion of the principal investigator of this project, to the extent that this case study is seen to be balanced, accurate and nuanced account and analysis, the methodology is largely responsible for the balance, accuracy and nuance. A two-country team of 13 members has proven to be workable. In the opinion of the principal investigator, the collaborative multiperspective methodology could be very useful as a preliminary fact finding step for use by National Contact Points, CSR Counsellors or Ombudsman.

The structure of the case study (with significant effort expended to understand and describe the country and regulatory context, and the overall approach to CR within the firm, before examining the operation in question, followed by a review of key issues and the different perspectives of those interacting with the company) was necessary for the investigators themselves and for the readers. In the absence of such a structure, there is a risk that the issues and challenges will be seen as “springing out of nowhere”.

From a lessons learned standpoint, it is apparent that the selection of the team members, and the overall management of the project are both very important components in the success of the approach,

and are very challenging and time consuming. That said, it is also an extremely rewarding exercise that brings insights and understandings beyond the immediate circumstances that are the focus of analysis.

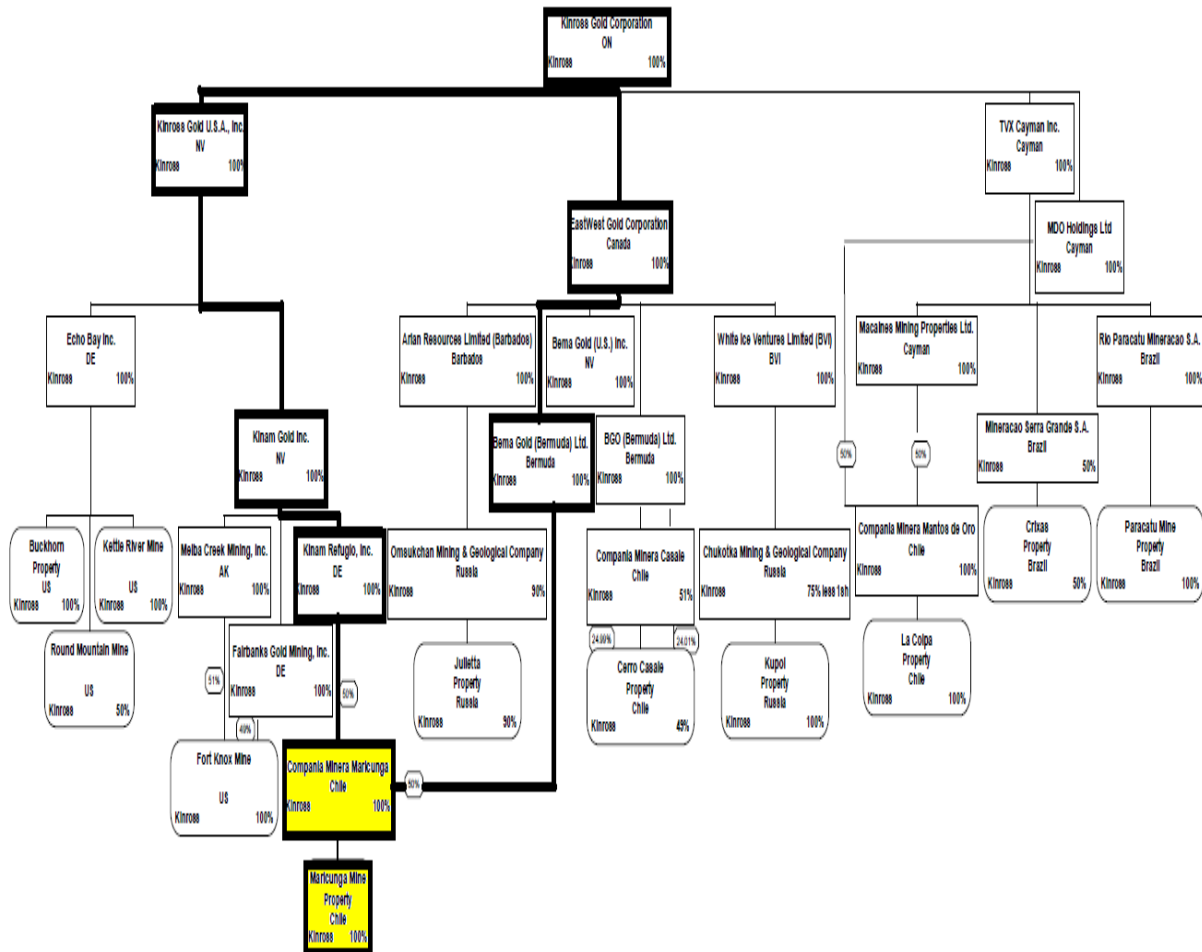
There would appear to be much opportunity to test out variations: for example, smaller teams, or larger teams, with different types of members, done over a shorter or a longer time frame. It might also be interesting to conduct a case study without the consent of the company (this would reduce the selection bias inherent in the current approach).

## Annex A – Interviews -- Kinross Maricunga Case Study

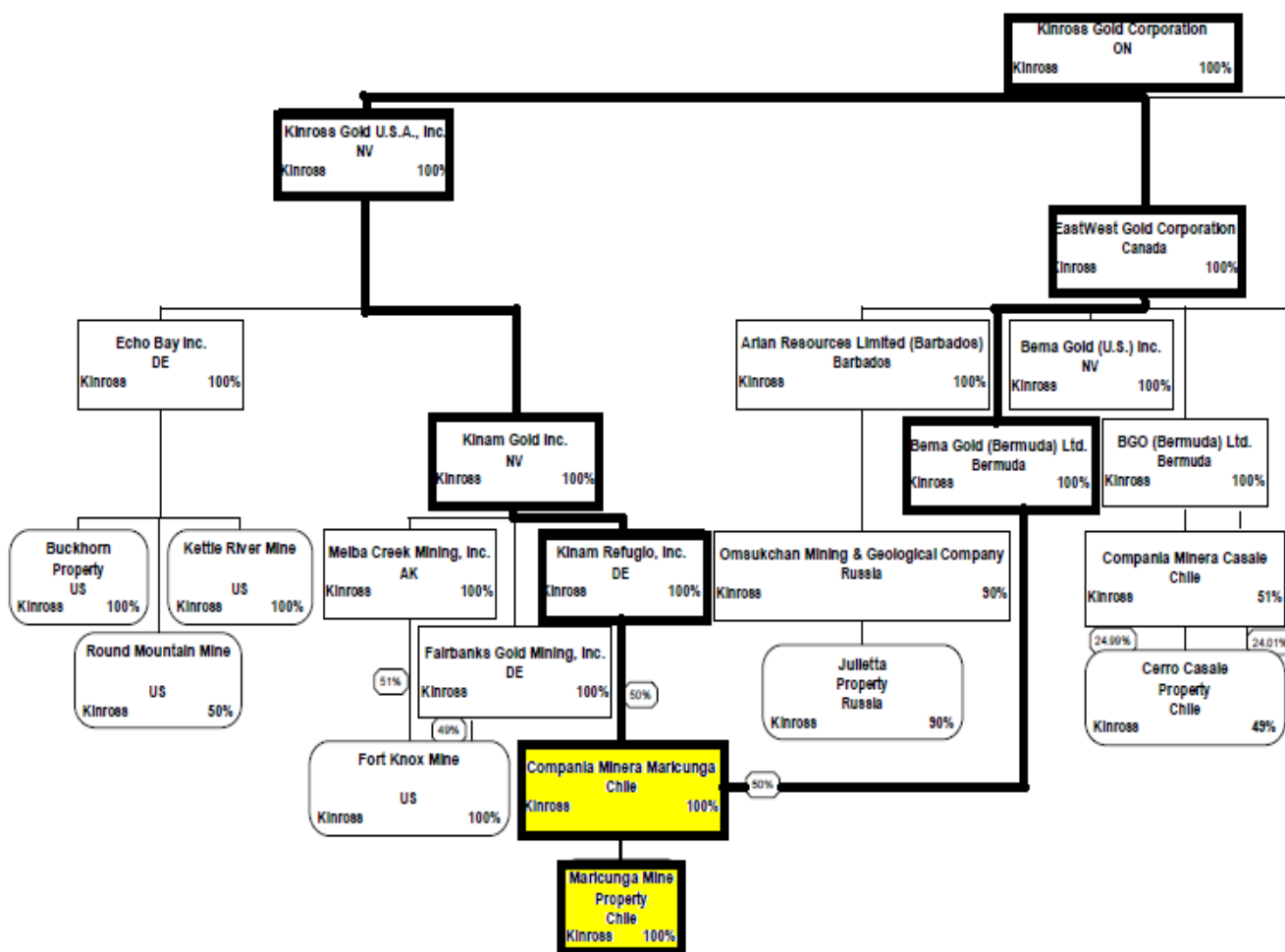
Canadian CSR-oriented NGO (national) representative (1)	Chilean government official (local)
Canadian CSR-oriented NGO (national) representative (2)	Chilean indigenous person 1 (local)
Canadian Ethical investment company representative	Chilean indigenous person 2 (local)
Canadian institutional investor official	Chilean indigenous person 3 (local)
Chilean academic indigenous expert	Chilean indigenous person 4 (local)
Chilean CSR non-governmental organization (national) 1	Chilean mining association official
Chilean CSR non-governmental organization (national) 2	Kinross Gold Chile Maricunga Manager 1
Chilean environmental non-governmental organization official (local)	Kinross Gold Chile Maricunga Manager 2
Chilean government official 1 (national)	Kinross Gold Chile Maricunga Manager 3
Chilean government official 1 (regional)	Kinross Gold Chile Maricunga Supplier 1
Chilean government official 2 (regional)	Kinross Gold Chile Maricunga Supplier 2
Chilean government official 3 (regional)	Kinross Gold Chile Maricunga Worker 1
Chilean government official 4 (regional)	Kinross Gold Chile Maricunga Worker 2
Chilean government official 5 (regional)	Kinross Gold Chile Regional Executive 1
	Kinross Gold Headquarters Executive 1
	Kinross Gold Headquarters Executive 2
	Kinross Gold Headquarters Executive 3
	Kinross Gold Headquarters Executive 4



**Annex B – Overall Kinross Gold Corporate Structure,<sup>373</sup> with  
Maricunga Elements Highlighted**



Annex B-- **Kinross Gold Corporation Corporate Structure, focusing on Maricunga Elements**



## Annex D – Kinross Gold “Living our Values.....the Kinross Way”

### Kinross Gold “Living our Values.....the Kinross Way”

*Note: the full document (URL at bottom of this page) including introductory wording, is not included here. Only the four values are included here.*

Our values shape our culture, inform how we work, and guide us in managing the opportunities and responsibilities that come with being a global mining company in the 21st century.

#### Putting People First:

Health and safety are our number one priority. We treat each other with fairness and respect, and seek constantly to provide opportunities for professional development and personal growth. We foster a working environment that celebrates and supports diversity. We recognize that as a *global* company we must remain sensitive to local cultures, customs and practices. We regard communication as a top priority, and work diligently to ensure that all of our people are kept informed of important company developments and issues.

#### Outstanding Corporate Citizenship

Our **Ten Guiding Principles for Corporate Responsibility** are a key priority for our company. We are committed to the highest ethical and governance standards in the industry. We value integrity and transparency in everything that we do. We are vigilant in protecting the environment, and strive to minimize our environmental footprint wherever we operate. We support sustainable initiatives to provide lasting benefits to the communities where we work.

#### High Performance Culture

We are a results-oriented company, with a relentless focus on the delivery and execution of high business objectives. We value innovation, adaptability and accountability in executing against our business strategy. We want our people to be known across the industry for their passion, sense of urgency, ability and initiative. Teamwork is essential to what it means to work at Kinross. Continuous improvement is central to our business culture. We recognize and reward excellence.

#### Rigorous Financial Discipline

We will at all times be prudent with shareholders' money. Discipline is central to our management philosophy. We will always seek new, more efficient ways to use the company's resources.

From: <http://www.kinross.com/about-kinross/the-kinross-way.aspx>

### **Ten Guiding Principles for Corporate Responsibility**

At Kinross, we believe we have both a moral and a business imperative to be a good neighbour wherever we operate, and regard social responsibility as a core Kinross value.

We understand that maintaining our social license to operate means maintaining strong and mutually beneficial relationships with communities and stakeholders wherever we live and work.

In order to provide a clearly understood and consistent standard for defining our working relationships with our employees, partners, governments, civil society, and communities where we live and operate, we have articulated ten guiding principles for corporate social responsibility.

These principles define what “doing the right thing” means to Kinross and are central to how we conduct our business. While the principles are grounded in practical experience they are also aspirational, recognizing that social responsibility is more a journey than a destination.

At the same time, they are intended as firm, non-negotiable guidelines that apply to every Kinross employee across our global operations, from senior management to front-line operators. They provide a foundation for detailed policies in specific areas such as corporate ethics, environmental stewardship, and health and safety, while also serving as guidelines in the ongoing development of strategies, business plans, and processes at both a corporate and regional level.

These CSR principles operate within the context of our fundamental business objective, which is to create value for our stakeholders. We believe strongly that profitability and social responsibility are not mutually exclusive, but rather are mutually reinforcing. Only by thriving as a profitable and successful business can we generate the wealth that brings sustainable benefits to our employees, suppliers, and communities, as well as to our shareholders.

We are committed to ensuring that our people and our partners live by these principles and that our actions on the ground across our global operations consistently reflect their spirit.

1. We put people first and our number one priority is the safety of every employee.
2. We maintain the highest standards of corporate governance, ethics and honesty in all of our dealings, and operate in compliance with the law wherever we work.
3. We promote an ongoing dialogue and engagement with stakeholders in the communities where we operate, maintained in a spirit of transparency and good faith.
4. We exercise utmost vigilance in protecting the environment and seek ways to minimize our environmental footprint wherever we operate. We will always meet, and where possible exceed, regulatory requirements in our environmental performance.
5. We consider all aspects of an operation or new project – including social, environmental, and post-closure issues – in making our investment decisions.
6. We conduct all of our activities in accordance with accepted standards in the protection and promotion of human rights. We respect the cultural and historical perspectives and rights of those affected by our operations, in particular indigenous peoples.
7. We provide a rewarding and meaningful livelihood to our employees and strive to be an employer of choice.
8. We seek to maximize employment, business and economic opportunities for local communities from our existing operations and new projects.
9. We provide lasting benefits to the communities where we work by supporting sustainable initiatives to develop their social, economic, and institutional fabric. We recognize that every community is unique and we work with our community partners to ensure that our support matches their priorities.
10. We maintain an active engagement and dialogue with our global industry peers, associations, governments, and civil society on CSR best practices and evolving global standards.



## **Annex F -- Comparative Analysis: KG CR Principles, ICMM SD Principles, IFC Performance Standards**

Before engaging in this comparative content analysis of the three instruments, a preliminary issue should be addressed: why choose the “Sustainable Development Principles” of the International Council on Mining and Metals (hereafter also referred to as “ICMM SD Principles”) and the Performance Standards of the International Finance Corporation (hereafter also referred to as “ICMM SD Principles)ICMM SD Principles and IFC PS’s for comparison with the Corporate Responsibility Principles of Kinross Gold (hereafter also referred to as “KG CR Principles”), when there are so many other instruments to choose from? [Note: the ICMM SD Principles are accessible at: <http://www.icmm.com/our-work/sustainable-development-framework/10-principles> and the IFC PS’s are accessible at: <http://www.ifc.org/ifcext/sustainability.nsf/Content/EnvSocStandards> ]

Some might argue that an analysis of these three instruments is in some respects a comparison of apples and oranges, in the sense that one is a statement of principles of a company (the KG CR Principles), one is a statement of principles of a global mining industry organization (the ICMM SD Principles), and one is a statement of standards of an inter-governmental financing organization (the IFC Performance Standards). And many other standards and guidelines exist. So why draw on these two for a comparison with the KG CR Principles?

It is true that the three instruments have somewhat different scopes and purposes. At the same time, there are perhaps self evident connections between the three instruments. Research for this case study revealed that in the preparation of the KG CR Principles, Kinross Gold officials drew on the ICMM SD principles for inspiration. Moreover, Kinross Gold is a member of the Mining Association of Canada and the World Gold Council, both supportive of the ICMM SD Principles. It is clear that the global mining industry including Kinross Gold itself views the ICMM SD principles as an important global benchmark for their own activities.

With respect to the IFC Performance Standards, some of Kinross Gold’s operations have received IFC assistance. [For example, in 2007, Kinross Gold completed the acquisition of Bema Gold, and thereby became 100% owner of, among other things, the Compania Minera Maricunga in Chile, and the Kupol operation in Russia. The latter received IFC assistance to source locally in the Russian Far East. See IFC, “Building Industrial Supply Chains and Developing Communities, [http://www.ifc.org/ifcext/eca.nsf/content/PEP\\_Linkages](http://www.ifc.org/ifcext/eca.nsf/content/PEP_Linkages) (Accessed August 10, 2010).].

Moreover, in their 2009 document, ***Building the Canadian Advantage: A Corporate Social Responsibility (CSR) Strategy for the Canadian International Extractive Sector***, the federal government has stated that they will promote the IFC Performance Standards:

The International Finance Corporation (IFC) Performance Standards on Social & Environmental Sustainability address the specific challenges facing extractive sector companies operating in developing countries. They are the *de facto* performance benchmark for projects in developing countries that require substantial financial investment. [ The federal government CSR Strategy document is available at: <http://www.international.gc.ca/trade-agreements-accords-commerciaux/ds/csr-strategie-rse-strategie.aspx#3> ]

Thus, while acknowledging the distinctiveness of the organizations that have created the three instruments, and the associated differences in purpose and scope of each of them, there is nevertheless value in examining how well the Kinross Gold CR Principles align with the ICMM SD principles and the IFC performance standards, since the latter two represent recognized global benchmarks by Kinross Gold itself, by the global mining industry, and by the Canadian government.

Finally, it is acknowledged that that because each of the documents was developed for different purposes by different organizations, there are some inevitable differences which makes comparisons somewhat simplistic. For example, the IFC Performance Standards are a considerably more lengthy document than is a statement of principles, so inevitably going to be differences in the amount of elaboration of one document when compared with another. This is not disputed. An entire study could be devoted to reviewing all of Kinross Gold's CR guidance documents with all of those of the ICMM and all of those of the IFC. However, with this having been said, there is still merit in doing a high level content analysis comparison of what each document covers or emphasizes. With this preliminary discussion having taken place and bearing in mind these points, it is now possible to turn to the comparative content analysis.

In conducting the comparative content analysis, a chart in which "condensed versions" of the principles of the three instruments was prepared (see below).

**Chart -- Comparative Content Analysis of Kinross Corporate Responsibility Principles, ICMM Sustainable Development Principles and IFC Performance Standards**

KG Ten Guiding CR Principles (abbreviated)	ICMM's SD Principles (abbreviated)	IFC Performance Standards (abbreviated)
Employee safety number one priority (Principle 1)	Continual improvement of health safety performance (ICMM 5)	PS 2 – labour and working conditions PS 4 – community health, safety and security
Maintain highest standards of corporate governance, ethics/honesty and operate in compliance with the law (Principle 2)	Implement/maintain ethical practices and sound corporate governance (ICMM 1)  Implement risk management strategies based on valid data and sound science (ICMM 4)	PS 1 – social and envtal assessment and management systems, including impact/risk assessment and communication with all affected stakeholders
Promote ongoing dialogue & engagement with stakeholders in communities done in transparency & good faith (Principle 3)	Effective transparent community stakeholder engagement & independently verified reporting arrangements (ICMM 10)	PS 4 – community health, safety and security PS 7 –special consideration of indigenous peoples
Utmost vigilance in protecting the environment, minimize environmental footprint & meet or exceed regulatory requirements (Principle 4)	Continual improvement of environmental performance & contribute to biodiversity & integrated land use planning & facility responsible product design re-use, recycling of products (ICMM 6, 7, 8)	PS 3 – pollution prevention and abatement PS 6 – biodiversity of ecosystems, habitats, species and communities
Consider all aspects including socio-environmental and post-closure aspects in making investment decisions (Principle 5)	Integrate sustainable development considerations within the corporate decisionmaking process (ICMM 2)	
Conduct all activities in accordance with accepted human rights standards & respect cultural/historical perspectives and rights of affected persons, in particular indigenous peoples (Principle 6)	Uphold fundamental human rights and respect cultures customs and values in dealing with employees and others who are affected by our activities (ICMM 3)	PS 5 – land acquisition and involuntary resettlement PS 7 –special consideration of indigenous peoples PS 8 – cultural heritage
Provide rewarding/meaningful livelihood for employees, employer of choice (Principle 7)		PS 2 – labour and working conditions
Maximize employment, business and economic opportunities for local communities for existing and new projects (Principle 8)	Contribute to social, economic and institutional development of communities in which we operate (ICMM 9)	
Provide lasting benefits to communities, support sustainable initiatives, work with community partners to ensure support matches their priorities (Principle 9)	Contribute to social, economic and institutional development of communities in which we operate (ICMM 9)	PS 4 – community health, safety and security PS 7 –special consideration of indigenous peoples
Maintain active engagement with global actors re CSR best practices and standards (Principle 10)		

Comparing the Kinross Gold CR Principles and the ICMM SD Principles, the KG CR Principles put more emphasis on employees. On the Kinross Gold side of the ledger, there is KG CR Principle 1, pertaining to employee safety, KG CR Principle 7, pertaining to meaningful livelihood for employees, and KG CR Principle 8, pertaining to maximizing employment (and other) opportunities for local communities. With respect to the ICMM SD principles, ICMM SD Principle 5 speaks more generally of improvement of health and safety performance and ICMM SD Principle 3 refers to upholding human rights and cultures in dealing with employees and doesn't mention meaningful employee livelihoods.

The ICMM SD Principles put more emphasis on the environment (i.e., through ICMM principles 2, 6, 7, and 8, ICMM has devoted four of its principles to environmental performance, sustainable development, biodiversity and re-use recycling, and disposal), whereas the Kinross CR Principles include KG CR Principle 4 committing to environmental performance that goes beyond regulatory requirements, and KG CR Principle 5 commits to consideration of socio-environmental and post-closure aspects in all investment decisions.

The Kinross Gold CR principles put more emphasis on communities (through KG CR Principles 3, 8 and 9, Kinross has three principles devoted to community engagement, investment and community lasting benefits), whereas ICMM makes one reference in ICMM SD Principle 9 to community development. ICMM puts more emphasis on decision-making (through ICMM SD Principles 2 and 4, ICMM speaks of integrating SD into decision making, implementing risk management strategies based on valid data and sound performance. In contrast, Kinross Gold in KG Principle 5 speaks more briefly of considering all social, environmental and post closure issues, but only with respect to “investment decisions.”

Kinross Gold uniquely speaks of engaging dialogue with global players re: global standards (KG CR Principle 10) and ICMM uniquely speaks of risk management strategies based on valid data and sound science (ICMM SD Principle 2).

Comparing the Kinross Gold CR Principles and the IFC Performance Standards, there is on the whole considerable alignment with few notable differences between the two instruments. The IFC performance standards put greater emphasis on indigenous persons and land acquisition/involuntary settlement (IFC PS 7 and IFC PS 5 specifically address these issues), but it is possible to maintain that the subject is addressed in a general way in KG CR Principle 3, KG CR Principle 6, and KG CR Principle 9. KG CR Principle 3 commits to ongoing dialogue and engagement with stakeholders in communities done in transparency and good faith (no explicit reference to indigenous groups), KG CR Principle 6 (commits to conducting activities in accordance with accepted human rights standards and respect for cultural historical perspectives and rights of affected persons, especially indigenous peoples) and KG CR Principle 9 (commits to providing lasting benefits to communities, supporting sustainable initiatives, working with community partners to ensure support matches their priorities).

IFC Performance Standard 1 puts emphasis on social and environmental assessment, and management systems, including impact/risk assessment, with the closest counterpart in the Kinross CR Principles being KG CR Principle 6, which refers to consideration of socio-environmental and post closure aspects in all investment decisions (i.e., in the evaluation of new acquisitions). The Kinross Gold CR principles include an explicit (albeit general) commitment to uphold accepted human rights standards while the IFC performance standards speak only of rights in the context of worker rights (in IFC Guidance notes, there are references to some human rights, but not in the IFC Performance Standards themselves).

A notable absence in all three instruments is reference to health/safety, meaningful livelihoods, and rights of association of sub-contractors/suppliers. On this point, Kinross Gold has committed to introducing a supply chain policy in 2010. [Per: SHARE, Shareholder Association for Research and



Education, Engagement Report (2009, Quarter 2): accessible at:  
[http://www.share.ca/files/2009\\_Q2\\_Engagement\\_Report\\_PUBLIC\\_FINAL.pdf](http://www.share.ca/files/2009_Q2_Engagement_Report_PUBLIC_FINAL.pdf) Accessed April 10, 2010.

Annex G – **Kinross Code of Business Conduct and Ethics** (note: this is an abridged version of the Code: the full version is on the Kinross website [www.kinross.com](http://www.kinross.com) )

## **I. PURPOSE OF THIS CODE**

This Code of Business Conduct and Ethics (“Code”) is intended to document the principles of conduct and ethics to be followed by Kinross’ employees, officers (including, without limitation, the President and Chief Executive Officer, Chief Financial Officer and other executive and senior financial officers) and directors. Its purpose is to:

- Promote honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;
- Promote avoidance of conflicts of interest, including disclosure to an appropriate person of any material transaction or relationship that reasonably could be expected to give rise to such a conflict;
- Promote full, fair, accurate, timely and understandable disclosure in reports and documents that Kinross files with, or submits to, the securities regulators and in other public communications made by Kinross;
- Promote compliance with applicable governmental laws, rules and regulations;
- Promote the prompt internal reporting to an appropriate person of violations of this Code;
- Promote accountability for adherence to this Code;
- Provide guidance to employees, officers and directors to help them recognize and deal with ethical issues;
- Provide mechanisms to report unethical conduct; and
- Help foster Kinross’ longstanding culture of honesty and accountability.

Kinross will expect all its employees, officers and directors to comply and act in accordance, at all times, with the principles stated above and the more detailed provisions provided hereinafter. Violations of this Code by an employee or officer or director are grounds for disciplinary action up to and including, but without limitation, immediate termination of employment or directorship.

## **II. WORKPLACE**

- a. A Nondiscriminatory Environment
- b. Harassment-Free Workplace
- c. Sexual Harassment
- d. Substance Abuse
- e. Workplace Violence
- f. Employment of Family Members
- g. Employee Privacy and Personal Information

## **III. ENVIRONMENT, HEALTH AND SAFETY**

- a. Environment
- b. Health and Safety

## **IV. THIRD PARTY RELATIONSHIPS**

- a. Conflict of Interest
- b. Gifts and Entertainment
- c. Competitive Practices

- d. Supplier and Contractor Relationships
- e. Public Relations
- f. Government Relations
- g. Directorships

#### **V. LEGAL COMPLIANCE**

- a. Compliance with Laws, Rules Regulations (including Insider Trading Laws and Timely disclosure), and Investigations

#### **VI. INFORMATION AND RECORDS**

- a. Confidential and Proprietary Information and Trade Secrets
- b. Financial Reporting and Records
- c. Record Retention

#### **VII. KINROSS' ASSETS**

- a. Use of Kinross Property
- b. Destruction of Property and Theft
- c. Intellectual Property

#### **USING THIS CODE AND REPORTING VIOLATIONS**

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<sup>1</sup> Kinross Gold (2007) *Living our values....the Kinross way*, available online at <http://www.kinross.com/media/18753/living-our-values-english.pdf> (accessed January 12, 2010).

<sup>2</sup> Kinross Gold (2007) *Taking Responsibility... : Kinross Gold 2007 Corporate Responsibility Report* (und.), p. i <http://www.kinross.com/media/109816/07-cr-report.pdf> (accessed January 12, 2010) [hereafter Kinross Gold (2007) *Taking Responsibility*].

<sup>3</sup> Ibid.

<sup>4</sup> More in-depth discussion of the origins of Kinross Gold Corporation, its development, key mergers and acquisitions is provided below in the body of the report.

<sup>5</sup> Kinross Gold (2007) *Living our values...the Kinross way*, op cit..

<sup>6</sup> Note that, throughout this case study, the terms “corporate social responsibility” and “corporate responsibility” and the acronyms “CSR” and “CR” will be used inter-changeably. The Government of Canada has publicly aligned itself with two definitions of social responsibility: first, the definition contained in Government of Canada (2006) *Corporate Social Responsibility: An Implementation Guide for Canadian Business*, Ottawa, available online at [http://www.ic.gc.ca/eic/site/csr-rse.nsf/vwap/CSR\\_mar2006.pdf/\\$FILE/CSR\\_mar2006.pdf](http://www.ic.gc.ca/eic/site/csr-rse.nsf/vwap/CSR_mar2006.pdf/$FILE/CSR_mar2006.pdf) (accessed January 11, 2010). This definition is adopted in the Department of Foreign Affairs and International Trade document (2006), *National Roundtables on Corporate Social Responsibility and the Canadian Extractive Sector in Developing Countries: Discussion Paper*, Government of Canada, available online at [http://geo.international.gc.ca/cip-pic/current\\_discussions/csr-roundtables-en.aspx](http://geo.international.gc.ca/cip-pic/current_discussions/csr-roundtables-en.aspx) (accessed January 2010). It is also used with approval by the multi-stakeholder Advisory Group Report (2007) *National Roundtables on Corporate Social Responsibility (CSR) and the Canadian Extractive Industry in Developing Countries*, available online at <http://www.halifaxinitiative.org/updir/AdvisoryGroupReport-March2007.pdf> (accessed January 11, 2010). The Government of Canada is also participating in the development of the ISO 26000 Social Responsibility standard (the latest draft of the standard is available online at: [www.iso.org/wgscr](http://www.iso.org/wgscr) (accessed January 11, 2010)). Taking the Government of Canada and multi-stakeholder Extractive Sector Advisory Group usage as indicative of Canadian understanding of the term, for the purposes of this case study, these two definitions of social responsibility will be used as a point of departure for analysis. Note finally that Kinross Gold has publicly expressed its support of the Government of Canada’s CSR approach: “...we are committed to working with the Canadian Government’s CSR strategy to ensure that it achieves its objective of building the Canadian advantage....” Per: Barrick Gold Corporation, Kinross Gold Corporation, Goldcorp Inc., ***Submission to the Standing Committee on Foreign Affairs and International Development (Bill C-300: An Act respecting Corporate Accountability for the Activities of Mining, Oil or Gas in Developing Countries)*** (November, 2009), available online at: [http://www.barrick.com/Theme/Barrick/files/docs\\_csr/Bill-C-300-Submission-to-the-Standing-Committee.pdf](http://www.barrick.com/Theme/Barrick/files/docs_csr/Bill-C-300-Submission-to-the-Standing-Committee.pdf) (accessed February 10, 2010).

<sup>7</sup> See also comment this effect in Kinross Gold (2007) *Taking Responsibility*, ibid., p. 5: “Some key challenges include...[ t]ranslating our commitment to corporate responsibility into concrete initiatives, operating metrics and policies.”

<sup>8</sup> In February 2007, through the purchase of Bema Gold Corporation, Kinross Gold assumed 100% ownership of the Maricunga operation, building on its earlier 1998 acquisition of Amax Gold Inc. and its subsidiaries, which had given it a 50% interest in the Maricunga mine. Per Kinross Gold, *Maricunga (100% ownership and operator) – Chile*, available online at <http://www.kinross.com/operations/chile-maricunga.html> (accessed July 24, 2009).

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<sup>9</sup> A comparative content analysis of the Kinross Gold Corporate Responsibility Principles against the ICMM Sustainable Development Principles and IFC Performance Standards is provided later in the report.

<sup>10</sup> In one instance, a researcher for this case study was able to observe the operation of a nascent multi-party dispute resolution process in early operation. Discussed in greater detail below.

<sup>11</sup> For a more full description of the multiperspective collaborative CSR case study approach origins, elements, and teams, see K. Webb, *The Multiperspective Collaborative Corporate Social Responsibility Case Study Approach: Genesis, Key Elements and Case Study Teams* (Chapter 1 of this report).

<sup>12</sup> The interview summaries provided on the password protected workspace were available in an “anonymized” form which removed all personally identifying references to particular individuals.

<sup>13</sup> All personally identifying references to particular individuals have been removed.

<sup>14</sup> In the preliminary days of this pilot project, other mining companies were approached as possible candidates for case studies, and did not agree to be part of the pilot project.

<sup>15</sup> Most notably, presentations were made in January 2010 with Kinross Gold officials and Colla community representatives. Chilean government officials were invited to attend the January 2010 presentation, and had expressed an interest in participating; however, on the day of the presentation, they did not attend.

<sup>16</sup> The term “reformed neo-liberal” has been used to describe the current Chilean context, in J. Grugel and P. Ruggirozzi, eds., *Governance after Neoliberalism in Latin America* (New York: Palgrave, 2009), at p. 175.

<sup>17</sup> Per United Nations Department of Economic and Social Affairs Population Division (2009) *World Population Prospects, Table A.1*. 2008 revision, available online at [http://www.un.org/esa/population/publications/wpp2008/wpp2008\\_text\\_tables.pdf](http://www.un.org/esa/population/publications/wpp2008/wpp2008_text_tables.pdf) (accessed July 23, 2009).

<sup>18</sup> International Monetary Fund, *Report for Selected Countries and Subjects*, available online at <http://imf.org/external/pubs/ft/...=NGDPDPC&grp=0&a=> (accessed 19 Feb. 2009).

<sup>19</sup> Per CORFO (Chilean Economic Development Agency), Mining Cluster in Chile (2009), available online at: [http://www.investchile.com/opensite\\_20080630172802.aspx](http://www.investchile.com/opensite_20080630172802.aspx) (accessed March 10, 2010).

<sup>20</sup> Per Schmidt-Hebbel, K. (2006) “Chile's Economic Growth,” *Cuadernos de Economía*, 43, 5 - 48, at p. 5.

<sup>21</sup> The Human Development Index provides a composite measure of three dimensions of human development: living a long and healthy life (measured by life expectancy), being educated (measured by adult literacy and enrolment at the primary, secondary and tertiary level) and having a decent standard of living (measured by purchasing power parity, PPP, income). The index is not in any sense a comprehensive measure of human development. It does not, for example, include important indicators such as gender or income inequality and more difficult to measure indicators like respect for human rights and political freedoms. What it does provide is a broadened prism for viewing human progress and the complex relationship between income and well-being. Per: UNDP (2008) *Statistical Update--Chile--The Human Development Index - going beyond income*, available online at [http://hdrstats.undp.org/2008/countries/country\\_fact\\_sheets/cty\\_fs\\_CHL.html](http://hdrstats.undp.org/2008/countries/country_fact_sheets/cty_fs_CHL.html) (accessed July 24, 2009).

<sup>22</sup> UNDP (2009) *Human Development Reports*, available online at <http://hdr.undp.org/en/statistics/> (accessed July 24, 2009).

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<sup>23</sup> According to the World Bank Worldwide Governance Indicators (WGI) project, governance is defined as consisting of the traditions and institutions by which authority in a country is exercised. This includes the process by which governments are selected, monitored and replaced; the capacity of the government to effectively formulate and implement sound policies; and the respect of citizens and the state for the institutions that govern economic and social interactions among them. This definition from World Bank (2009) *Governance Matters: Worldwide Governance Indicators, 1996-2008*, available online at <http://info.worldbank.org/governance/wgi/index.asp> (accessed August 10, 2009).

<sup>24</sup> Ibid.

<sup>25</sup> E.g., Moody's upgraded Chile's foreign-currency bond rating to A1 in March, 2009, with the strength of Chile's credit quality stated to be the result of the country's credible economic policies, sound financial institutions and structural reforms, and an economic policy framework designed to mitigate macroeconomic volatility; and the World Economic Forum referred to Chile as the safest and most stable country in Latin America and a good partner for doing business. Per: InvestChile (The Chilean Economic Development Agency) (2009, April 17) "Authorized foreign investment reaches a historic \$US 10.4 billion", available online at [http://www.todochile.cl/corfo\\_det\\_20090417103120.aspx](http://www.todochile.cl/corfo_det_20090417103120.aspx) (accessed August 10, 2009).

<sup>26</sup> ECLAC (2005) *Social Panorama of Latin America*, Santiago, Chile: UN/ECLAC, per Lopez & Miller, op cit., at p. 2681.

<sup>27</sup> Per: Lopez, R. & Miller, S.J. (2008) "The Unbearable Burden of Inequality", *World Development*, 36(12), 2679 – 2695.

<sup>28</sup> Vincent, I. (2007, September 24) "Chile: well on the way to eradicating poverty," *Maclean's*, available online at [http://www.macleans.ca/world/global/article.jsp?content=20070924\\_109285\\_109285](http://www.macleans.ca/world/global/article.jsp?content=20070924_109285_109285) (accessed June 30, 2009).

<sup>29</sup> Helen Osieja, *Economic Sanctions As an Instrument of U.S. Foreign Policy: The Case of the U.S. Embargo of Cuba* (Florida: Dissertation, 2005).

<sup>30</sup> Per: Castro Lucic, M., "Challenges in Chilean Intercultural Policies: Indigenous Rights and Economic Development," *PoLaR: Political and Legal Anthropology Review*, Vol. 28, No. 1, pp. 112 – 132.

<sup>31</sup> Ibid.

<sup>32</sup> M. Garcia, *The Path to the 2002 Association Agreement Between the European Union and Chile* (New York: Edwin Mellen Press, 2008).

<sup>33</sup> Pinera, J. (2004) "Wealth Through Ownership: Creating Property Rights in Chilean Mining," *Cato Journal*, 24(3), 295-301, at p. 295.

<sup>34</sup> In 2009, legislation was introduced which would withdraw the special earmarking of Codelco profits for the military, and instead divert the revenues into the general Chilean budget: Per Xinhua, "Chilean president seeks to repeal copper mining law," September 9, 2009.

<sup>35</sup> Lopez & Miller, op cit., at p. 2679.

<sup>36</sup> Per: National Commission for Truth and Reconciliation (Comisión Nacional de Verdad y Reconciliación or the "Rettig Commission") (1990), translated form <http://www.usip.org/resources/truth-commission-chile-90> (accessed August 10, 2009).

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<sup>37</sup> Per: U.S. Department of Labor, Labor Rights Report: Chile (2003), available online at: [www.dol.gov](http://www.dol.gov) (accessed August 10, 2010).

<sup>38</sup> A. Jose, "Indigenous Rights in Chile: Progress and Contradiction in the Context of Economic Globalisation," (1999) Indigenous Law Bulletin 72.

<sup>39</sup> Ibid.

<sup>40</sup> See discussion below.

<sup>41</sup> See discussion below.

<sup>42</sup> Per: P. Posner, *State, Market, and Democracy in Chile* (New York: Palgrave Macmillan, 2008) at p. 83.

<sup>43</sup> Centro de Estudios de la Realidad Contemporanea, *Informe de Prensa Encuesta Nacional*. August, 2005, at p. 2, as reported in Posner, *ibid.*, at p. 83.

<sup>44</sup> Anderson, S.T. (2008) "The Mineral Industry of Chile in 2006", U.S Department of the Interior and U.S. Geological Survey 2006 Minerals Yearbook, at p. 7.1.

<sup>45</sup> Lopez & Miller, *op cit.*, at p. 2689.

<sup>46</sup> Anderson (2008) "The Mineral Industry of Chile in 2006", *op cit.*, at p. 7.1.

<sup>47</sup> Ibid.

<sup>48</sup> International Development Research Centre and Mining Policy Research Initiative (2003) *Mining Companies and Local Development – Latin America: Chile, Colombia and Peru (Executive Summary)*, available online at [http://www.idrc.ca/uploads/user-S/11133339091exec\\_summary\\_alianzas.pdf](http://www.idrc.ca/uploads/user-S/11133339091exec_summary_alianzas.pdf) (accessed July 24, 2009).

<sup>49</sup> Anderson (2008) "The Mineral Industry of Chile in 2006", *op cit.*, at p. 7.9.

<sup>50</sup> Ibid, at p. 7.3.

<sup>51</sup> Ibid.

<sup>52</sup> Ibid, at p. 7.4.

<sup>53</sup> Lok (20099) "Ongoing Opportunities for Canadians in South America," *op cit.*.

<sup>54</sup> While the Pascua Lama project is perhaps the highest profile Barrick Gold project in Chile, the company is also involved (with Kinross Gold) in the Cerro Casale project, located in the same region (Region III) as the Kinross Gold Maricunga mine. The Cerro Casale project is discussed later in the report.

<sup>55</sup> E.g., see Goldcorp (Press Release), "Goldcorp Announces Agreement With New Gold Inc. To Acquire Xstrata's 70% Interest In The El Morro Project," January 7, 2010, accessible at: [http://www.goldcorp.com/news/goldcorp/index.php?&content\\_id=750](http://www.goldcorp.com/news/goldcorp/index.php?&content_id=750) Accessed January 30, 2010.

<sup>56</sup> E.g., see Yamana Gold (Press Release), "Yamana Gold Provides New Optimization Strategy at El Penon," March 1, 2010, accessible at: <http://www.yamana.com/NewsEvents/PressReleases/PressReleaseDetail/default.aspx?PressReleaseId=053b9251-8628-4676-9a82-d5460116448a> Accessed March 2, 2010

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<sup>57</sup> E.g., see Teck Resources (website), “Operations,” accessible at: <http://www.teck.com/Generic.aspx?PAGE=Operations&portalName=tc> Accessed March 10, 2010.

<sup>58</sup> E.g., see Exeter Resources(website), “Building a mid-tier company,” accessible at: <http://www.exeterresource.com/index.php> Accessed March 10, 2010. The Caspiche mine project of Exeter Resources is located near the Kinross Gold Maricunga project.

<sup>59</sup> Anderson, op cit., at p. 7.2.

<sup>60</sup> Per Lok, K. (2009 January) “Ongoing Opportunities for Canadians in South America,” *MINING.com*, 8–11 at p. 10.

<sup>61</sup> Lagos et al (2002) pp. 338 – 361, as reported in Mainardi, S. (2007) “Resource exploitation and cross-region growth trajectories: Nonparametric estimates for Chile”, *Journal of Environmental Management*, 85, 27–43, at p. 39. However, Mainardi notes that questions have been raised as to whether that growth is sustainable.

<sup>62</sup> Schmidt-Hebbel, op cit., at p. 17: the study notes that it assumes that all of a worker’s income is spent in the region.

<sup>63</sup> Lopez & Miller, op cit., p. 2689.

<sup>64</sup> The total after-tax income of the richest 10% of the households is larger than the total income of the poorest 80% of the households: per Lopez & Miller, op cit..

<sup>65</sup> Vincent, I. (2007, September 24) “Chile: well on the way to eradicating poverty,” *Maclean’s*, available online at [http://www.macleans.ca/world/global/article.jsp?content=20070924\\_109285\\_109285](http://www.macleans.ca/world/global/article.jsp?content=20070924_109285_109285) (accessed June 30, 2009).

<sup>66</sup> Per OECD, Economic Survey of Chile, 2010 (Policy Brief), downloadable at: <http://www.oecd.org/dataoecd/24/3/44464700.pdf> (accessed February 10, 2010).

<sup>67</sup> Ibid.

<sup>68</sup> According to the 2002 national census, the total indigenous population in Chile is 692,192; thus, the indigenous peoples represent 4.6% of the total population of Chile, which was 15,116,435 in 2002. Per 2002 Chilean census, available online at: <http://www.ine.cl/cd2002/sintesiscensal.pdf> (accessed March 10, 2010). For comparison, in Bolivia, indigenous persons represent 71% of the population, in Guatemala, 66%, in Peru, 50%, in Ecuador, 43%, and in Mexico, 14%. Per: Munarriz, G. (2008) “Rhetoric and Reality: The World Bank Development Policies, Mining Corporations, and Indigenous Communities in Latin America”, *International Community Law Review*, 10, 431 – 443, at p. 442.

<sup>69</sup> The incidence of poverty among Chile’s indigenous populations is 35.6% whereas the incidence of poverty within its non-indigenous population is 22.7%: per World Bank, August 2001, as reported in UN Economic and Social Council (2003) *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen*, submitted in accordance with Commission resolution 2003/56, available online at <http://daccessdds.un.org/doc/UNDOC/GEN/G03/170/91/PDF/G0317091.pdf?OpenElement> (accessed July 24, 2009) at p. 8.

<sup>70</sup> Per: International Work Group for Indigenous Affairs (2006) *The Indigenous World 2006*, Copenhagen, Eks-Skolens Trykkeri, p. 230, fn. 3.

<sup>71</sup> World Bank, August 2001, as reported in UN Economic and Social Council Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen, submitted in accordance with Commission resolution 2003/56, at p. 8.



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<sup>72</sup> World Bank, August 2001, as reported in UN Economic and Social Council Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen, submitted in accordance with Commission resolution 2003/56, at p. 8.

<sup>73</sup> World Bank, August 2001, as reported in UN Economic and Social Council Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen, submitted in accordance with Commission resolution 2003/56, at p. 8.

<sup>74</sup> Tellez Lugaro, op cit..

<sup>75</sup> Tellez Lugaro, ibid..

<sup>76</sup> Per Kinross Gold (2007) *Taking Responsibility*, op cit.

<sup>77</sup> Lopez & Miller, op cit., p. 2690.

<sup>78</sup> Lopez & Miller, op cit., p. 2685.

<sup>79</sup> Lopez & Miller, op cit., p. 2686. It should be noted that Chile has a high dividend remittance tax, which encourages foreign investors to re-invest profits in Chile, thus contributing further to the country's economic growth. For further discussion concerning taxation of foreign mining companies in Chile, see M. Riesco, G. Lagos, and M. Lima, The "Pay Your Taxes" Debate: Perspectives on Corporate Taxation and Social Responsibility in the Chilean Mining Industry (UNRISD: 2005), accessible at: [http://www.unrisd.org/80256B3C005BCCF9/\(httpPublications\)/D0911BEE223DF74EC12570AC0032E4E2?OpenDocument](http://www.unrisd.org/80256B3C005BCCF9/(httpPublications)/D0911BEE223DF74EC12570AC0032E4E2?OpenDocument) (accessed August 10, 2010).

<sup>80</sup> Lopez & Miller, op cit., p. 2689.

<sup>81</sup> For example, see discussion concerning the apparent conflict between communities and farmers in Region III and the proposed Pascua Lama mine of Barrick Gold (as evidenced by Barrick Gold's website description of the situation, available online at: <http://www.barrick.com/CorporateResponsibility/KeyTopics/PascuaLama/default.aspx> (accessed August 10, 2009); conflict and litigation between the Aymara indigenous group in Region I and a company seeking the rights to bottle and sell freshwater from a water source used historically by the Aymara (see references below in Legal Framework section); conflicts and litigation between CODELCO workers and management over labour issues (see references below in Legal Framework section); and conflicts and litigation between the Mapuche indigenous group in Region IX, resource developers and governments (as discussed in: Skjævestad, A. (2008) "The Mapuche People's Battle for Indigenous Land: Litigation as a Strategy to Defend Indigenous Land Rights", CMI Working Paper, Prepared for the workshop on: "Courts and the Poor", Annual Conference of the Norwegian Association for Development Research (NFU), Oslo 13-15 September 2006, available online at <http://www.cmi.no/publications/file/3002-the-mapuche-peoples-battle-for-indigenous-land.pdf> (accessed August 10, 2009).

<sup>82</sup> Lopez & Miller, op cit., p. 2689.

<sup>83</sup> Reuters [author unattributed], Chile mulls raising mining royalty after quake," March 19, 2010, accessible at: <http://www.reuters.com/article/idUSN1913635020100319>

<sup>84</sup> OECD (2005) "Environmental Performance Reviews: Chile (2005) - OECD praises Chile's environmental progress but...", available online at [http://www.oecd.org/document/32/0,3343,en\\_2649\\_34307\\_34856224\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/32/0,3343,en_2649_34307_34856224_1_1_1_1,00.html) (accessed August 10, 2009). More particular references to and comments on various laws and other instruments and their

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implementation are made later in the case study, in the context of discussion of specific issues that directly apply to the Kinross Gold Maricunga operations.

<sup>85</sup> For example, BHPBilliton has been engaged in litigation regarding subcontracting at its Escondida operation (see below), and Barrick Gold has been involved in controversies (judicial, regulatory, and community) regarding its Pascua Lama project. See Estrada, D. (2009, May 18) "Environment-Chile: Activists Try to Block Start of Pascua Lama Mine," *IPS*, available online at <http://ipsnews.net/news.asp?idnews=46895> (accessed August 10, 2009).

<sup>86</sup> Business Monitor International (2008) *Chile Mining Report – Executive Summary*, available online at <http://www.businessmonitor.com/mining/chile.html> (accessed June 30, 2009). -

<sup>87</sup> Pinera, J. (2004) "Wealth Through Ownership: Creating Property Rights in Chilean Mining," *Cato Journal*, 24(3), 295-301.

<sup>88</sup> Although the Colla are legally entitled to certain water rights based on their traditional usage, in the market-based water allocation regime set up pursuant to the Water Code (which was adopted during the Pinochet dictatorship), communities such as the Colla of Rio Jorquera were largely financially outmatched by other private actors and hence unable to secure significant water rights for their members.

<sup>89</sup> For a first-hand description of the constitutional "translation" of State-ownership of lands and resources to private property rights, see Pinera (2004) "Wealth Through Ownership: Creating Property Rights in Chilean Mining," *op cit.*.

<sup>90</sup> The following description draws substantially from: (1984, march 5) "Chile Approves new mining legislation," *Business America*, available online at [http://findarticles.com/p/articles/mi\\_m1052/is\\_v7/ai\\_3167681/](http://findarticles.com/p/articles/mi_m1052/is_v7/ai_3167681/) (accessed August 10, 2009).

<sup>91</sup> G. Lagos, "Developing National Mining Policies in Chile: 1974 - 96," (1997) *Resources Policy* Vol. 23, No. ½, pp. 51 – 69, at p. 61.

<sup>92</sup> Business Monitor International (2008) *Chile Mining Report – Executive Summary*, available online at <http://www.businessmonitor.com/mining/chile.html> (accessed June 30, 2009).

<sup>93</sup> *Ibid.*

<sup>94</sup> Anderson, S.T. (2007) "The Mineral Industry of Chile," United States Geological Service 2005 Minerals Yearbook, Washington, DC: US Department of the Interior, US Geological Survey, p. 7.2.

<sup>95</sup> Per: Chilean Government (2009) "Invest in Chile!", available online at [www.chileangovernment.cl](http://www.chileangovernment.cl) (accessed August 10, 2009). See also G. Lagos, "Developing National Mining Policies in Chile: 1974 - 96," (1997) *Resources Policy* Vol. 23, No. ½, pp. 51 – 69.

<sup>96</sup> *Ibid.*

<sup>97</sup> The following information extracted from: Chilean Government, Chilean Copper Commission (Cochilco), "Foreign Investment in the Mining Sector – General Guidelines", available online at [http://www.cochilco.cl/english/atencion\\_usuario/pauta\\_gral.asp](http://www.cochilco.cl/english/atencion_usuario/pauta_gral.asp) (Access August 10, 2009).

<sup>98</sup> *Ibid.*

<sup>99</sup> Per A. Soto, "UPDATE 4-Chile to raise taxes, issue debt for quake rebuild," Reuters, (April 16, 2010), available online at: <http://www.reuters.com/article/idUSN1614065820100417> (accessed April 20, 2010).

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- <sup>100</sup> Aprueba Ley Sobre Bases Generales Del Medio Ambiente, Law 19300, available online at <http://www.leychile.cl/Navegar?idNorma=30667> (accessed August 10, 2009).
- <sup>101</sup> A new Environmental Ministry will replace CONOMA in 2010, but has not yet been operationalized.
- <sup>102</sup> Lagos, op cit., at p. 64.
- <sup>103</sup> Ibid.
- <sup>104</sup> Ibid.
- <sup>105</sup> Bastida, E., Irarrazabal, R. & Labo, R. (~2005) "Mining Investment and Policy Developments: Argentina, Chile and Peru", available online at [http://www.dundee.ac.uk/cepmlp/journal/html/Vol16/Vol16\\_10.pdf](http://www.dundee.ac.uk/cepmlp/journal/html/Vol16/Vol16_10.pdf) (accessed August 10, 2009).
- <sup>106</sup> Per: International Work Group for Indigenous Affairs (2009) *The Indigenous World 2009*, Copenhagen, Eks-Skolens Trykkeri, at p. 220 and fn 3 [hereinafter IWGIA (2009) *The Indigenous World 2009*].
- <sup>107</sup> E.g, see: "Corema aprobó inicio de proceso sancionatorio por contaminación en Quebrada Mani" June 11, 2009, available online at [www.conoma.cl](http://www.conoma.cl) (accessed August 10, 2009); unattributed, "Los Pelambres mine fined after second toxic spill," *Santiago Times*, November 13, 2007, available online at [www.santiagotimes.cl](http://www.santiagotimes.cl) (accessed August 10, 2009); "Chile files lawsuit against company for environmental damage," 2009-09-39, available online at [www.chinaview.cn](http://www.chinaview.cn).
- <sup>108</sup> OECD (2005) "Environmental Performance Reviews: Chile (2005) - OECD praises Chile's environmental progress but...", available online at [http://www.oecd.org/document/32/0,3343,en\\_2649\\_34307\\_34856224\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/32/0,3343,en_2649_34307_34856224_1_1_1_1,00.html) (accessed August 10, 2009).
- <sup>109</sup> *El Ciudadano* (2009) "Director de CONAMA Atacama renuncia tras conocerse su colusión con transnacional minera", available online at <http://www.elciudadano.cl/2009/06/25/remueven-de-sus-cargos-a-director-y-abogado-de-conama-tras-posible-caso-de-colusion-con-minera-candelaria/> (accessed August 10, 2009)
- <sup>110</sup> Chile has announced the creation of a Ministry for the Environment, a Superintendency, and an Environmental Evaluation Service. See: Bachelet, M. (2009) "Chile at the OECD", Address by the President of Chile to the Council of the Organisation for Economic Co-operation and Development, Paris, reprinted in OECD Observer, June 2009, available online at [http://www.oecdobserver.org/news/fullstory.php/aid/3041/Chile\\_at\\_the\\_OECD.html](http://www.oecdobserver.org/news/fullstory.php/aid/3041/Chile_at_the_OECD.html) (accessed August 10, 2009).
- <sup>111</sup> Environmental Performance Index, "Iceland Ranks at Top of 2010 Environmental Performance Index" (Press Release, January 28, 2010), available online at: <http://epi.yale.edu> (accessed January 30, 2010).
- <sup>112</sup> Ibid.
- <sup>113</sup> See: Regulation No. 248/2006.
- <sup>114</sup> Per: Chilean Copper Commission (Cochilco) (2002) *Research on Mine Closure Policy*, MMSD project of IIED, Paper 44.
- <sup>115</sup> Anderson, S.T. (2008) "New Law to Mandate Clean Mine Closings," *La Nación*, trans., October 7, 2008.
- <sup>116</sup> Bradley, R. (2008) "Environmental Reform: For Better or Worse?" *Business Chile*, August 2008, available online at <http://www.businesschile.cl/portada.php?w=old&lan=en&id=648> (accessed August 10, 2009).

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<sup>117</sup> See, for instance, Orellana, M.A. (2004) *Indigenous Peoples, Energy, and Environmental Justice: The Pangu/Ralco Hydroelectric Project in Chile's Alto BíoBío*, Washington, DC: Center for International Environmental Law, available online at [http://www.ciel.org/Publications/Ralco\\_Brief\\_22Jul04.pdf](http://www.ciel.org/Publications/Ralco_Brief_22Jul04.pdf), p. 7 (accessed January 11, 2010).

<sup>118</sup> Per: Wharton School of Public Policy and Management, "The Trials and Tribulations of Chile's New Energy Strategy." (January 13, 2010), available on the internet at: <http://www.wharton.universia.net/index.cfm?fa=viewArticle&id=1829&language=english> Accessed March 10, 2010.

<sup>119</sup> The following draws substantially on Wharton School of Public Policy and Management, "The Trials and Tribulations of Chile's New Energy Strategy." (January 13, 2010), available on the internet at: <http://www.wharton.universia.net/index.cfm?fa=viewArticle&id=1829&language=english> Accessed March 10, 2010.

<sup>120</sup> Per: R. Cockerill, "Chilean re-gasification terminal receives first LNG shipment," Gasworld (July 14, 2009) <http://www.gasworld.com/news.php?a=3986;r=2> (accessed April 10, 2010)

<sup>121</sup> Per: <http://can-chil.gc.ca/English/Default.cfm> (accessed August 10, 2010).

<sup>122</sup> <http://www.canadainternational.gc.ca/chile-chili/highlights-faits/metal-metaux.aspx?lang=eng> Accessed August 10, 2009.

<sup>123</sup> The following description draws on Bauer, C. (2004) *Siren Song: Chilean Water Law as a Model for International Reform*, Washington, DC: Resources for the Future; and Witte, B. (2009) "Pressure builds to renationalize Chile's Water," *Santiago Times*, May 20, 2009, available online at <http://www.patagoniatimes.cl/index.php/20090520812/News/Environment/PRESSURE-BUILDS-TO-RENATIONALIZE-CHILES-WATER.html> (accessed August 10, 2009).

<sup>124</sup> E.g., see C. Bauer (2004) *Siren Song: Chilean Water Law as a Model for International Reform*, Washington, DC: Resources for the Future.

<sup>125</sup> P. Gaeta, "Minister suggests water rights swap to mitigate shortage – Chile," *Business News Americas*, March 29, 2007.

<sup>126</sup> Molina, 2001, as cited in Maturana and Silva, 2009 (below).

<sup>127</sup> Global Water Partnership (2005) "Water and Sustainable Development: Lessons from Chile", Policy Brief 2, available online at <http://www.gwpforum.org/gwp/library/Policybrief2Chile.pdf> (accessed August 10, 2009).

<sup>128</sup> Ibid.

<sup>129</sup> Per: Valeriote, J. (2009) "Chile's Supreme Court Upholds Indigenous Water Use Rights," *Santiago Times*, November 30, 2009, available online at [http://www.santiagotimes.cl/index.php?option=com\\_content&view=article&id=17739:chiles-supreme-court-upholds-indigenous-water-use-rights&catid=19:other&Itemid=142](http://www.santiagotimes.cl/index.php?option=com_content&view=article&id=17739:chiles-supreme-court-upholds-indigenous-water-use-rights&catid=19:other&Itemid=142) (accessed December 2, 2009).

<sup>130</sup> Per: P. Posner, *State, Market, and Democracy in Chile* (New York: Palgrave Macmillan, 2008) at p. 62.

<sup>131</sup> The following information is derived primarily from International Confederation of free Trade Unions (2003) *Internationally Recognised Core Labour Standards in Chile: Report for the WTO General Council Review of the Trade Policies of Chile* (Geneva, 2 and 4 December 2003).

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<sup>132</sup> The following information derived from: Long, G. (2008) "Regulating Labor Outsourcing," *Business Chile*, March 2008.

<sup>133</sup> Ibid.

<sup>134</sup> Ibid.

<sup>135</sup> See, e.g., *Reuters* (2008) "Chile Escondida copper mine wins labor appeal," February 7, 2008, available online at [www.reuters.com](http://www.reuters.com) (accessed August 20, 2009); and *Reuters* (2007) "Chile copper miner Codelco to challenge labor edict," December 11, 2007, available online at [www.reuters.com](http://www.reuters.com) (accessed August 20, 2009). NOT SURE IF NAME OF SOURCE SHOULD COME AT THE BEGINNING OF THE CITATION

<sup>136</sup> Per interviews for this case study.

<sup>137</sup> Thus, for example, a 2009 report concludes that the Water Code, Mining Code, and Basic Environmental Law 19,300 of 1994 have enabled concession and exploitation of natural resources by mining companies on indigenous lands. Per: International Work Group for Indigenous Affairs (2009) *The Indigenous World 2009*, Copenhagen, Eks-Skolens Trykkeri, at p. 220 and fn 3.

<sup>138</sup> IDRC Mining Policy Research Initiative, Mining Companies and Local Development: Latin America: Chile, Colombia and Peru (Executive Summary) 2003, at p. 8.

<sup>139</sup> Per Muller, N. (2009) "Chilean businesses worried about indigenous protection code," *Santiago Times*, May 26, 2009, available online at <http://www.santiagotimes.cl/santiagotimes/index.php/2009052516336/news/human-rights-news/chilean-businesses-worried-about-indigenous-protection-code.html> (accessed August 10, 2009).

<sup>140</sup> This point is noted in IDRC, Instituto de Estudios Indígenas at the Universidad de La Frontera (2005) "Grupos étnicos y minería en pequeña escala (MPE) en América Latina y el Caribe, Análisis de experiencias en Chile," Proyecto 050317-044, available online at [http://www.idrc.ca/uploads/user-S/11424412171Inf\\_final\\_cl.pdf](http://www.idrc.ca/uploads/user-S/11424412171Inf_final_cl.pdf) (accessed August 10, 2009) (hereafter "IDRC (2005)").

<sup>141</sup> Orellana, M.A. (2004) *Indigenous Peoples, Energy, and Environmental Justice: The Panguel/Ralco Hydroelectric Project in Chile's Alto BíoBío*, Washington, DC: Center for International Environmental Law, available online at [http://www.ciel.org/Publications/Ralco\\_Brief\\_22Jul04.pdf](http://www.ciel.org/Publications/Ralco_Brief_22Jul04.pdf), 7 (accessed January 12, 2010).

<sup>142</sup> Per: International Work Group for Indigenous Affairs (2009) *The Indigenous World 2009*, Copenhagen, Eks-Skolens Trykkeri, at p. 219 – 220.

<sup>143</sup> Per Colla EIA study (2009) referenced in Minera Santa Rosa Technical Report.

<sup>144</sup> Molina & Correa (1996); Molina & Correa (1997); Molina, Yáñez & Peña (2001), as reported in Maturana, F. & Silva, N. (2009) Caracterización ambiental componente antropología, Kinross DIA (Impact Ass. Declaration), DIA del Proyecto de Prospección Minera, Kinross Lobo Marte.

<sup>145</sup> IDRC (2005), op cit., and Maturana, F. & Silva, N. (2009) Caracterización ambiental componente antropología, Kinross DIA (Impact Ass. Declaration), DIA del Proyecto de Prospección Minera, Kinross Lobo Marte.

<sup>146</sup> IDRC (2005), op cit., and Maturana & Silva, op cit. In Kinross Gold (2007) *Taking Responsibility*, op cit., p. 40, it is noted that Kinross provides "....assistance to the Colla for the fencing and surveying of their lands following the 2004 decision by the Chilean government to grant local residents ownership of property in valleys that adjoin our mines."

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- <sup>147</sup> ILO 169 ratification texts, available online at <http://www.webhostingconadi.cl/convenio169/index.html> (accessed January 11, 2010).
- <sup>148</sup> Per Estrada, D. (2009) "Chile: Mixed reception for Indigenous Protection Code," *IPS News*, June 13, 2009, available online at <http://ipsnews.net/news.asp?idnews=47209> (accessed August 10, 2009).
- <sup>149</sup> See generally, International Work Group for Indigenous Affairs (2009) *The Indigenous World 2009*, Copenhagen, Eks-Skolens Trykkeri, at pp. 220 – 225.
- <sup>150</sup> Valeriote, J. (2009) "Chile's Supreme Court Upholds Indigenous Water Use Rights," *Santiago Times*, November 30, 2009.
- <sup>151</sup> Consejo Minero, "About Us" (und.), available online at <http://www.consejominero.cl/english.html> (accessed August 10, 2009).
- <sup>152</sup> Per: Newbold, J. (2006) "Chile's environmental momentum: ISO 14001 and the large-scale mining industry – Case studies from the state and private sector," *Journal of Cleaner Production* Vol. 14.
- <sup>153</sup> Consejo Minero, "Desarrollo Sustentable," available online at [http://www.consejominero.cl/desarrollo\\_economico.html](http://www.consejominero.cl/desarrollo_economico.html) (accessed July 2, 2009).
- <sup>154</sup> Consejo Minero (2007) *Informe Ambiental y Social de Consejo Minero de Chile A. G. 2007*, available online at <http://www.consejominero.cl/home/doc/RCONSEJOMINERO2007.pdf> and Consejo Minero (2008) *Informe Ambiental y Social de Consejo Minero de Chile 2008*, available online at <http://www.consejominero.cl/home/doc/REPORTECM2008.pdf> (accessed August 10, 2009).
- <sup>155</sup> The following information is from Newbold, op cit..
- <sup>156</sup> Newbold, ibid.
- <sup>157</sup> Per Kinross Gold (2007) *Taking Responsibility*, op cit..
- <sup>158</sup> The Kinross Gold's La Coipa mine received an ISO 14001 certification in July 2002, which was confirmed in 2006. Per: KINROSS GOLD CORP (SEC Form: 40-F), 03/31/2008.
- <sup>159</sup> See website of the International Cyanide Management Code for Manufacture, Transport and Use of Cyanide, at: <http://www.cyanidecode.org/>
- <sup>160</sup> Information concerning the OECD Guidelines for Multinational Enterprises are accessible at: [http://www.oecd.org/departament/0,3355,en\\_2649\\_34889\\_1\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/departament/0,3355,en_2649_34889_1_1_1_1_1,00.html) (accessed March 10, 2010).
- <sup>161</sup> Mining Association of Canada, "Towards Sustainable Mining," accessible at: [http://www.mining.ca/www/Towards\\_Sustaining\\_Mining/index.php](http://www.mining.ca/www/Towards_Sustaining_Mining/index.php) (accessed March 10, 2010).
- <sup>162</sup> Per Interview with Kinross Gold personnel.
- <sup>163</sup> The Global Reporting Initiative is accessible at: <http://www.globalreporting.org/Home>
- <sup>164</sup> The World Gold Council website is accessible at: <http://www.gold.org/>
- <sup>165</sup> The ICMM is accessible at [www.icmm.com](http://www.icmm.com).
- <sup>166</sup> Per: World Gold Council, Sustainability and the Gold Industry (2009), accessible at: [http://www.gold.org/assets/file/pub\\_archive/pdf/WGC\\_sustainability\\_statement.pdf](http://www.gold.org/assets/file/pub_archive/pdf/WGC_sustainability_statement.pdf) (accessed March 10, 2010).

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<sup>167</sup> Per ICMC SD Principles and Framework, accessible at: [www.icmm.com/our-work/sustainable-development-framework/10-principles](http://www.icmm.com/our-work/sustainable-development-framework/10-principles) (accessed March 10, 2010)

<sup>168</sup> Information about the International Finance Corporation (IFC) has been extracted from the IFC website, accessible at: <http://www.ifc.org/> (accessed March 10, 2010). Kinross Gold's Kupol mine in Russia has received IFC support. Per IFC, *Russia: Peer Review Community Development Strategy for the Kupol Gold Mine* (2007), accessed at: <http://econsult.worldbank.org/suite/public/collaboration/GetDocument.none?doid=84878>. (accessed March 10, 2010).

<sup>169</sup> Information re: the IFC performance standards is derived from: IFC, "IFC's Policy and Performance Standards on Social and Environmental Sustainability and Policy on Disclosure of Information: Report on the First Three Years of Application," accessible at: [www.ifc.org/ifcext/disclosure.nsf/AttachmentsByTitle/IFC\\_Third\\_Year\\_Report/\\$FILE/IFC\\_Third\\_Year\\_Report\\_PS\\_D\\_P\\_.pdf](http://www.ifc.org/ifcext/disclosure.nsf/AttachmentsByTitle/IFC_Third_Year_Report/$FILE/IFC_Third_Year_Report_PS_D_P_.pdf) (accessed March 10, 2010)

<sup>170</sup> Information concerning the Voluntary Principles on Human Rights and Security can be accessed at: <http://www.voluntaryprinciples.org/> (accessed March 10, 2010).

<sup>171</sup> Per: Kinross Gold website ([www.kinross.com](http://www.kinross.com)) at: <http://www.kinross.com/corporate-responsibility/guiding-principles/6.aspx> available online at: <http://www.kinross.com/corporate-responsibility/guiding-principles/6.aspx> (accessed April 10, 2010).

<sup>172</sup> The following discussion of the origins and evolution of Kinross Gold, through mergers, acquisitions, etc., is derived from the "Our History" portion of the Kinross Gold website, available online at: <http://kinross.com/about-kinross/our-history/2009.aspx> (accessed March 10, 2010).

<sup>173</sup> Ibid.

<sup>174</sup> Per Kinross Gold Corporation, Taking Responsibility, op cit..

<sup>175</sup> Per: Kinross Gold Corporation website, "Operations", available online at: <http://www.kinross.com/operations.aspx> (accessed January 10, 2010). Discussion of Canadian acquisitions at: Kinross Gold Corporation (2008) *Annual Report 2008: Growth, Discipline, Value*, unp., available online at <http://www.sedar.com/GetFile.do?lang=EN&docClass=2&issuerNo=00002968&fileName=/csfsprod/data96/filings/01403134/00000001/e%3A\Sarah\Kinross\AnnalsApril2009\annrep-Kinross.pdf> (accessed June 30, 2009).

<sup>176</sup> Information for this chart derived primarily from: Barrick Gold Media Fact Sheet, available online at: [www.barrick.com/News/MediaFactSheet/default.aspx](http://www.barrick.com/News/MediaFactSheet/default.aspx) (accessed April 10, 2010); Newmont Gold "About Newmont," available at: <http://www.newmont.com/about> (accessed April 10, 2010); AngloGold Ashanti, "Corporate Profile," available online at: <http://www.anglogold.com/About%20our%20business> (accessed April 10, 2010) and Kinross Gold Corporation, "Kinross 2009 production increases by 22%, revenue by 49%" (News release), available at: <http://www.kinross.com/news-articles/2010/kinross-2009-production-increases-22-percent-revenue-by-49-percent.aspx> (accessed April, 2010).

<sup>177</sup> This term was used to describe Barrick Gold and Newmont Gold by Kinross Gold CEO Tye Burt, in a 2006 article. J. Gray, "Sweet spot: Kinross stakes its place between majors and juniors," Canadian Business, November 20, 2006, available online at: [http://www.canadianbusiness.com/markets/commodities/article.jsp?content=20061120\\_82702\\_82702](http://www.canadianbusiness.com/markets/commodities/article.jsp?content=20061120_82702_82702) (accessed



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March 10, 2010). Mr. Burt is reported to have said: “Working the curve between the super-majors like Barrick and Newmont and the small high-risk companies, that’s the sweet spot for Kinross.”

<sup>178</sup> For a schematic view of the Kinross Gold corporate structure, see Annex B and C. Such complex structures are adopted for a combination of reasons including:

1. History – the complexity reflects the fact that the parent company frequently purchases an existing company, and so adoption of the existing corporate entity is expedient.
2. Financial – a local presence may attract local investors, and elaborate corporate structures may assist in tax planning facilitating the movement of profits from one jurisdiction to another where the tax laws are most favourable.
3. Managerial -- there may be some managerial advantage in having a parent-subsidary corporate structure in the sense that it acknowledges the value of having local, operational-level decision making.
4. Legal – it may be more difficult to ascribe liability to senior management or directors when there are parent companies and local companies.

<sup>179</sup> For further exploration of this topic, see, e.g., K. Webb, “CSR and the Law: Learning from the Experience of Canadian Mining Companies in Latin America,” in J. Sagebien and N. Lindsay, eds., **The Political Economy of Corporate Social Responsibility: Enabling or Disabling Sustainable Development in the Extractives Sector of Latin America** (Palgrave Macmillan, forthcoming).

<sup>180</sup> “In 2000, Kinross spent 9.6 million on reclamation and site closure activities, reclaiming over 500 hectares of land.” Per: “Our History” portion of Kinross Gold website, op cit..

<sup>181</sup> J. Gray, “Sweet spot: Kinross stakes its place between majors and juniors,” Canadian Business, November 20, 2006, available online at: [http://www.canadianbusiness.com/markets/commodities/article.jsp?content=20061120\\_82702\\_82702](http://www.canadianbusiness.com/markets/commodities/article.jsp?content=20061120_82702_82702) (accessed March 10, 2010). The following discussion draws substantially on the Gray article.

<sup>182</sup> Ibid.

<sup>183</sup> Ibid.

<sup>184</sup> Kinross Gold, Taking Responsibility, op cit., at p. ii.

<sup>185</sup> Kinross Gold Corporation, “Kinross Values,” available online at <http://www.kinross.com/media/18753/living-our-values-english.pdf>, (accessed April 10, 2010). See also Annex to this report for a summary of the four values.

<sup>186</sup> All references to the Ten Guiding Principles are from: Kinross Gold CORPORATION, *Corporate Responsibility, Ten Guiding Principles for Corporate Responsibility*, available online at <http://www.kinross.com/cr/index.html> (accessed August 10, 2009). See also Annex to this report.

<sup>187</sup> The following elaboration of the four values is taken from: Kinross Gold, *Living our values...the Kinross way*, op cit..

<sup>188</sup> As discussed below, the Kinross Gold 10 CR principles draws for inspiration on the ICMM’s Sustainable Development Principles.



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<sup>189</sup> All references to the Ten Guiding Principles are from: Kinross Gold CORPORATION, *Corporate Responsibility, Ten Guiding Principles for Corporate Responsibility*, available online at <http://www.kinross.com/cr/index.html> (accessed August 10, 2009).

<sup>190</sup> Ibid., p. 10.

<sup>191</sup> Originally approved in February 2004, and amended with Board approval in April 2007 Per: Kinross Gold Corporation, "Corporate Governance," available online at <http://www.kinross.com/corporate/governance.html> (accessed August 10, 2009).

<sup>192</sup> An abridged version of the Code can be found in Annex D of the case study. A full copy of the Code is available online at [www.kinross.com](http://www.kinross.com). The following discussion of the Code is derived from Kinross Gold (2007) *Taking Responsibility*, op cit., p. 15.

<sup>193</sup> Kinross whistleblowing approach is available online at <http://www.kinross.com/corporate/governance-whistleblower.html> (accessed August 10, 2009).

<sup>194</sup> Ibid.

<sup>195</sup> Per Kinross Gold, "Kinross' Environmental Responsibility," available online at: [www.kinross.com/corporate-responsibility/environment.aspx](http://www.kinross.com/corporate-responsibility/environment.aspx) (accessed April 10, 2010). At some Kinross Gold operations, such as at the Kinross Gold Paracatu operation in Brazil, there has been third party certification to ISO 14001 and OHSAS 18001, but not to date at Kinross Gold Maricunga. This is explored below in the discussion of Kinross Gold Maricunga.

<sup>196</sup> All of the above with the exception of the Health and Safety policy are available at Kinross Gold, "Kinross' Environmental Responsibility," op cit. The Kinross Gold Health and Safety policy is available online at: [www.kinross.com/corporate-responsibility/health--safety.aspx](http://www.kinross.com/corporate-responsibility/health--safety.aspx) (accessed April 10, 2010).

<sup>197</sup> Per SHARE, op cit..

<sup>198</sup> Per interviews with Kinross Gold officials as part of this case study.

<sup>199</sup> Kinross Gold, Charter of the Corporate Responsibility Committee (February 3, 2010), available online at: <http://www.kinross.com/media/128628/kgcr%20cr%20charter%20february%20final.pdf> (accessed April 10, 2010). Corporate responsibility is defined in the Charter as "all of those activities through which Kinross seeks to integrate the public interest into its day-to-day activities, decision-making, and business planning. These activities include the Company's performance relating to safety, health, environmental stewardship, local communities and society, and its engagement with employees, shareholders, suppliers, communities, governments, non-governmental organizations and other interested groups." The following discussion of the mandate, composition and responsibilities of the CR Committee is derived from this document.

<sup>200</sup> Ibid.

<sup>201</sup> The following information was provided by senior Kinross Gold official..

<sup>202</sup> Per Kinross Gold, Code of Business Conduct and Ethics, available online at <http://www.kinross.com/about-kinross/corporate-governance/code-of-business-conduct.aspx> accessed April 10, 2010).

<sup>203</sup> Ibid., p. 2.

<sup>204</sup> Per interviews with Kinross Gold executives.

<sup>205</sup> Interview with Kinross representative for this case study.

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<sup>206</sup> “CSR: Mining” (2007, Feb 22) *Globe & Mail Report on Business*, available online at <http://www.theglobeandmail.com/report-on-business/article743232.ece> (accessed July 2, 2009).

<sup>207</sup> “Doing business the right way: Corporate Social Responsibility Report” (2007, Nov 30) *Maclean’s*, available online at [http://www.macleans.ca/article.jsp?content=20071130\\_114344\\_4508&page=5](http://www.macleans.ca/article.jsp?content=20071130_114344_4508&page=5) (accessed July 2, 2009).

<sup>208</sup> “Jantzi-Macleans 50 Most Socially Responsible Corporations” (2009, June 18) *Maclean’s*, available online at <http://www2.macleans.ca/2009/06/18/the-jantzi-maclean%e2%80%99s-corporate-social-responsibility-report-2009-a-conscience-for-business/> (accessed July 23, 2009).

<sup>209</sup> Per: CORFO (Chilean Economic Development Agency), Mining Cluster in Chile (2009), available online at [http://www.investchile.com/opportunities/mining\\_cluster/mining\\_cluster](http://www.investchile.com/opportunities/mining_cluster/mining_cluster) (accessed March 10, 2010).

<sup>210</sup> Ibid.

<sup>211</sup> Per website of the Regional Government of Atacama, “Geographic information, available online at: [http://www.goreatacama.mix.cl/articulos\\_ver.php?id=19](http://www.goreatacama.mix.cl/articulos_ver.php?id=19) (accessed March 10, 2010).

<sup>212</sup> Information concerning numbers of employees and contractors at Kinross Gold Maricunga and Kinross Gold La Coipa from: Kinross Gold Corporate Responsibility Regional Data Tables, 2008; information concerning ISO 14001 at La Coipa from: Kinross Gold Corporation, **Annual Information Form for the year ended December 31, 2009** (dated March 30, 2010); information concerning CODELCO from CODELCO Sustainability Report 2007 (available online at [www.codelco.cl](http://www.codelco.cl)) (accessed March 10, 2010); information concerning Antofagasta Esperanza from The Esperanza Project: Sustainable Management, available online at [www.mineraesperanza.cl](http://www.mineraesperanza.cl) (accessed March 10, 2010); information concerning Barrick Gold Zaldivar from Infomine “Barrick Employer of Choice” website, available online at <http://www.infomine.com/careers/eoc/barrick/zaldivar.asp> (accessed January 10, 2010), and Barrick Gold, Zaldivar Mine, available online at: [http://www.barrick.com/Theme/Barrick/files/docs\\_performance/ABX009%20Zaldivar%20Site%20Rpt.3.pdf](http://www.barrick.com/Theme/Barrick/files/docs_performance/ABX009%20Zaldivar%20Site%20Rpt.3.pdf); information concerning BHP Billiton Escondida from BHP Billiton Sustainability Full Report 2005, available online at [www.bhpbilliton.com](http://www.bhpbilliton.com) (accessed March 10, 2010). See also: <http://www.bhpbilliton.com/bb/ourBusinesses/baseMetals/escondida.jsp> (accessed January 10, 2010).

<sup>213</sup> As described by Myers, R. (2008, Sep 1) “Digging In: With the economy in the pits, companies are leaving no stone unturned in their efforts to cut supply-chain costs,” *CFO Magazine*.

<sup>214</sup> Ibid.

<sup>215</sup> Based on 2008 statistics, there are 12 active gold mines in all of Chile, out of a total of 176 active mines. Per: Servicio Nacional de Geología y Minería (Sernageomin, Government of Chile) (2008), *Anuario de la Minería de Chile (Annual Mining Report)*, available online at [http://www.sernageomin.cl/index.php?option=com\\_content&task=view&id=200&Itemid=260](http://www.sernageomin.cl/index.php?option=com_content&task=view&id=200&Itemid=260) (accessed August 10, 2009).

<sup>216</sup> As is discussed later in this report, the mine was developed in 1990s. An environmental impact assessment for the initial project was completed in 1994. Construction was completed and operations began in 1996. Kinross Gold obtained a 50% share in the mine with its acquisition of Amax Gold in 1998. In 2001, mining operations were suspended due to unfavourable economics (low gold prices), and the mine was put into “care and maintenance” status pending an increase in the price of gold. By 2003, the price of gold had risen enough to make the operation profitable, and the decision was taken to recommence operations on an expanded basis. This expansion was

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completed in 2005, and leaching recommenced. Kinross Gold acquired the remaining 50% of the ownership of Maricunga in 2007.

<sup>217</sup> The following information concerning the road is extracted from: Kinross Gold Corporation (2008) *Annual Information Form for the Year Ended December 31, 2007*, available online at <http://www.kinross.com/investors/financials/pdf/07-aif.pdf>, at p. 30 (accessed March 10, 2009)

<sup>218</sup> Per interviews with Kinross officials.

<sup>219</sup> Per: Kinross Gold Corporation (2009) *First Quarter Report for the period ended March 31, 2009*, available online at <http://www.kinross.com/investors/financials/pdf/09q1.pdf> p. 8 (accessed August 10, 2009).

<sup>220</sup> Ibid., p. 47.

<sup>221</sup> Chart from: Miguel Antonio Mendez Cordero, "Elaboracion de una Herramienta de auditoria para la Evaluacion del Programa de Higiene Industrial y Salud Ocupacional. Caso de Compania Minera Maricunga, Project submitted in completion of Engineering Degree from Universidad de Dantiago de Chile, Facultad de Ingenieria, Departamento Ingenieria Geografica, 2007, available online at: [www.digeo.cl/doc/Mendez\\_Cordero\\_Miguel.pdf](http://www.digeo.cl/doc/Mendez_Cordero_Miguel.pdf) (accessed March 10, 2010).

<sup>222</sup> Information concerning other Kinross Gold mines can be found at: <http://www.kinross.com/operations.aspx> (accessed March 10, 2010).

<sup>223</sup> Per: Seeking Alpha, "Kinross Gold Corporation Q1 2010 Earnings Call Transcript," May 5, 2010, available online at: <http://seekingalpha.com/article/203119-kinross-gold-corporation-q1-2010-earnings-call-transcript> (accessed May 8, 2010).

<sup>224</sup> The following information from interviews with Kinross Gold officials.

<sup>225</sup> As noted earlier, Chile is in a difficult period in terms of developing a stable and adequate nation-wide energy infrastructure. The ability of Kinross Gold Maricunga to develop a "clean energy source" is limited, but as noted earlier, the Chilean Mining Council (Consejo Minero) has identified a need to work together to develop efficient energy production (among other things).

<sup>226</sup> Per Interviews with Kinross officials.

<sup>227</sup> Per Kinross Gold Annual Report 2009, available online at: <http://www.kinross.com/media/153615/kinross%202009%20ar.pdf> Accessed April 10, 2010.

<sup>228</sup> Ibid.

<sup>229</sup> Per interview, Kinross Gold official.

<sup>230</sup> Per Kinross Gold, Annual Report 2009, op cit., at p. 9.

<sup>231</sup> Comparing EIAs and environmental declarations, EIAs are more extensive in that there is a public consultation component. Environmental declarations are publicly noticed, and of public record, but are not subject to consultation.

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<sup>232</sup> The following information from: Kinross Gold, Annual Information Form for the year ending December 31, 2008, available online at: <http://www.kinross.com/media/56755/2008-annual%20information%20form.pdf> (accessed March 10, 2010), esp. at p. 33.

<sup>233</sup> Ibid. The net present value of future cash outflows for site restoration costs at Maricunga under CICA Handbook Section 3110, as at December 31, 2008, are estimated at approximately \$7.2 million.

<sup>234</sup> Per GeoEngineers, Inc. (2009) *Summary Audit Report for the July 2008 International Cyanide Management Code Audit*, prepared for Compania Mineral Maricunga, available online at <http://www.cyanidecode.org/pdf/KinrossMaricungaSumm.pdf> (accessed August 10, 2009)

<sup>235</sup> In a 2009 Kinross Technical Report for Cerro Casale, the following is stated: “There are no legal impediments to the granting of rights-of-way and other easements necessary to access the property, to develop production water, and to build the water and concentrate pipelines. **However, on the proposed concentrate pipeline route, around 60 km of the route runs through lands belonging to the Colla people. The route is being reviewed by the Project team to see if it is possible to reduce the kilometres of pipeline that pass through Colla lands. This could present a significant challenge for obtaining rights-of-way in terms of negotiation difficulties and time spent.** (emphasis added) In addition, if the original concentrate pipeline route is used, there will be a large increase in land now being used for growing grapes as compared to when the initial 2000 feasibility study was completed.” (emphasis added) P. 1-2. Per: Kinross Gold Corporation (2009) *Cerro Casale Project, Northern Chile, NI 43-101 Technical Report*, available online at <http://secfilings.nyse.com/filing.php?doc=1&attach=ON&ipage=6256054&rid=12> (accessed January 12, 2010).

<sup>236</sup> Such as the protocols that have been reached with Colla communities, as discussed below.

<sup>237</sup> Such as the commitments to purchase water rights, to support education and training, and provide medical assistance, contained in the protocols, as discussed below.

<sup>238</sup> Such as the “working tables” associated with the protocols, as discussed below.

<sup>239</sup> For example, the tripartite Kinross-Colla-Chilean Government road resolution process currently in use, as discussed below.

<sup>240</sup> This Chilean government grant of land ownership to the Colla is specifically noted in the Kinross Gold, *Taking Responsibility*, op cit., at p. 40 (and was discussed earlier in the legal portion of the case study).

<sup>241</sup> A 2006 report states the following: “the monopolization of water rights in the Colla territory by mining companies and the drying up of meadows and wetlands as a consequence of the over-exploitation of water resources, the most serious case being the environmental impacts caused by the Maricunga mining company.” Per: International Work Group for Indigenous Affairs (2006) *The Indigenous World 2006*, Copenhagen, Eks-Skolens Trykkeri, at p. 227.

<sup>242</sup> In the opinion of the author, the differing concepts of and perspective on land ownership expressed by the parties speaks to the increasing importance of the constitutionalization of indigenous rights in Chile, and is discussed in the multiperspectives section below.

<sup>243</sup> Romero, H. (2002) “The Andes of Chile: Clash between economic and sustainable development,” Newsletter of the International Human Dimensions Programme on Global Environmental Change, Nr. 1/2002.

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<sup>244</sup> There is recorded evidence of a mummified young indigenous miner who died in 550 A.D. at a northern Chilean mining site. Per Fuller, D.R. (2004) "The production of copper in 6<sup>th</sup> century Chile's Cuquicamata mine," *Journal of the Minerals, Metals and Materials Society*, Vol. 56, No. 11, 1543.

<sup>245</sup> Per Romero (2002) "The Andes of Chile: Clash between economic and sustainable development," op cit..

<sup>246</sup> **INFORME DE LA COMISIÓN VERDAD HISTÓRICA Y NUEVO TRATO 2003**

<sup>247</sup> Tellez Lugaro, E. (2001), "Los Collas 2001", Extracto de seminario los pueblos aborígenes de Chile contemporáneo, Carla Thompson Angulo, available online at <http://www2.udec.cl/~etellez/monografias.html> and <http://www2.udec.cl/~etellez/los%20collas.doc> (accessed August 20, 2009).

<sup>248</sup> Per IDRC (2005), op cit..

<sup>249</sup> According to the 2002 national census, there are 3,198 Colla in Chile, out of a total indigenous population in Chile of 692,192; thus, the indigenous peoples represent 4.6% of the total population of Chile, which is close to 17 million, and the Colla represent 1.26% of the population of Atacama. Per 2002 Chilean census, available online at: <http://www.inec.cl/cd2002/sintesisencensal.pdf> (accessed March 10, 2010).

<sup>250</sup> Interview with Professor Milka Castro Lucic, Director, Program of Legal Anthropology and Interculturality (PRANJU). Faculty of Law, University of Chile, August, 2009.

<sup>251</sup> Per Tellez Lugaro (2001) "Los Collas 2001", op cit., and IDRC (2005), op cit..

<sup>252</sup> Tellez Lugaro (2000) op cit..

<sup>253</sup> Tellez Lugaro (2001) op cit..

<sup>254</sup> Per Kinross Gold (2007) *Taking Responsibility*, op cit..

<sup>255</sup> Photo from Colla Rio Jorquera Facebook website, available online at: <http://www.facebook.com/group.php?gid=41129017526> (accessed March 10, 2010).

<sup>256</sup> Tellez Lugaro, *ibid*.

<sup>257</sup> Photo from Colla Rio Jorquera Facebook website, available online at: <http://www.facebook.com/group.php?gid=41129017526> (accessed March 10, 2010).

<sup>258</sup> Per Hector Salinas, as quoted in the IDRC (2005), at p. 70. Note that this is a translation from the original statement in Spanish, which is as follows: "El mineral es algo que le puede mostrar muchas cosas. Es recoger un regalo de la tierra, es servido, es cariño. Está ahí, llegar y sacarlo. Está listo, es como una ofrenda. Es una oportunidad de vida, es como nacer, uno nace de nuevo, se puede fabricar de nuevo. Se puede saber quién es, saber si es bueno o malo, uno toma más razón de lo que es uno." Thanks to Andres Recalde for assistance with the translation.

<sup>259</sup> IDRC (2005), op cit., at p. 68.

<sup>260</sup> Per Kinross Gold (2007) *Taking Responsibility*, op cit., p. 10.

<sup>261</sup> *Ibid.*, at p. 26.

<sup>262</sup> This point is reinforced by the Cyanide Code report for Kinross Gold Maricunga published in 2009 that states "...Kinross Maricunga's primary stakeholders are the indigenous Colla people, who hold legal rights to the lands surrounding the mine site. CMM maintains a close relationship with the Colla communities...." GeoEngineers, Inc. (2009) *Summary Audit Report for the July 2008 International Cyanide Management Code Audit*. Prepared for

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*Compania Mineral Maricunga*, pp. 38 – 39, available online at <http://www.cyanidecode.org/pdf/KinrossMaricungaSumm.pdf> (accessed August 10, 2009).

<sup>263</sup> Unless other indicated, all of the below points from Kinross Gold (2007) *Taking Responsibility*, op cit., p. 37 or p. 40.

<sup>264</sup> Per: Portal Minero, “Kinross Maricunga entrega fondos para proyectos productivos a comunidad Colla Rio Jorquera,” (March 17, 2010), available online at: [http://www.portalminero.com/editor\\_ambiente/notas/1268861476.htm](http://www.portalminero.com/editor_ambiente/notas/1268861476.htm) (accessed April 10, 2010).

<sup>265</sup> Per Consejo Minero (2008) *Informe Ambiental y Social de Consejo Minero de Chile A. G. 2008*, available online at <http://www.consejominero.cl/home/doc/REPORTECM2008.pdf> (accessed August 10, 2009).

<sup>266</sup> Photo from Colla Rio Jorquera Facebook website, available online at: <http://www.facebook.com/group.php?gid=41129017526> (accessed March 10, 2010).

<sup>267</sup> Photo from Colla Rio Jorquera Facebook website, available online at: <http://www.facebook.com/group.php?gid=41129017526> (accessed March 10, 2010).

<sup>268</sup> Researchers were not able to secure a copy of this original 1996 version of the Protocol.

<sup>269</sup> Per: Noticias (2005) *Minera Maricunga hizo vital aporte a comunidad colla*, *Diario Chanarcillo*, June 13, 2005, available online at <http://www.areaminera.com/Contenidos/Noticias/2005/4468.act> (accessed August 10, 2009).

<sup>270</sup> Ibid; and Firma de protocolo entre Minera Maricunga y comunidades colla, *El Diario de Atacama*, July 27, 2005, available online at [http://www.diarioatacama.cl/prontus4\\_notas/antialone.html?page=http://www.diarioatacama.cl/prontus4\\_notas/site/artic/20050727/pags/20050727060244.html](http://www.diarioatacama.cl/prontus4_notas/antialone.html?page=http://www.diarioatacama.cl/prontus4_notas/site/artic/20050727/pags/20050727060244.html) (accessed August 10, 2009).

<sup>271</sup> Photo from Colla Rio Jorquera Facebook website, available online at: <http://www.facebook.com/group.php?gid=41129017526> (accessed March 10, 2010).

<sup>272</sup> Per: Noticias (2005) *Minera Maricunga hizo vital aporte a comunidad colla*, *Diario Chanarcillo*, June 13, 2005, op cit..

<sup>273</sup> Kinross Gold (2007) *Taking Responsibility*, op cit., at p. 40.

<sup>274</sup> As noted in Consejo Minero (2008) *Informe Ambiental y Social de Consejo Minero de Chile A. G. 2008*, available online at <http://www.consejominero.cl/home/doc/REPORTECM2008.pdf> (accessed August 10, 2009).

<sup>275</sup> This discussion of the Protocol draws on information included in the 2008 Consejo Minero report, as well as information provided by the Colla and Kinross officials.

<sup>276</sup> Information based on interviews with Colla, Chilean government and Kinross officials.

<sup>277</sup> Road and mining dust is a common problem at many mining operations. In Kinross Gold (2007) *Taking Responsibility*, op cit., Kinross acknowledges that the “most common air emission at our operations is dust, which is produced from road travel and mining operations.” (p. 52).

<sup>278</sup> Per Portal Minero, “Vialid y Kinross Maricunga Acuerdan Conservacion de Tramo de la Ruta C-611,” available online at: [http://www.portalminero.com/editor\\_prensa/notas/1268253328.htm](http://www.portalminero.com/editor_prensa/notas/1268253328.htm) (accessed April 10, 2010).

<sup>279</sup> Per: *Diario Chanarcillo*, “Comunidad Colla se reúne con gobernador de la provincia de Copiapo,” March 30, 2010, available online at: [http://www.chanarcillo.cl/articulos\\_ver.php?id=25733](http://www.chanarcillo.cl/articulos_ver.php?id=25733) Accessed April 10, 2010).

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<sup>280</sup> E.g., see comment to this effect by the Governor of Atacama, as reported in El diario de Atacama, ""Kinross da a conocer el proyecto Lobo Marte," September 27, 2009, op cit..

<sup>281</sup> See, for example, discussion of changing conditions in General Secretariat of the Andean Community et al, "Is it the End of the Snowy Heights? Glaciers and Climate Change in the Andean Community," available online at: [http://www.comunidadandina.org/public/cambio\\_climatico\\_fin\\_cumbres\\_nevadas\\_english.pdf](http://www.comunidadandina.org/public/cambio_climatico_fin_cumbres_nevadas_english.pdf) (accessed August 10, 2009). Note that Chile is not a member of the Andean Community.

<sup>282</sup> Although the Colla are legally entitled to certain water rights based on their traditional usage, in the market-based water allocation regime set up pursuant to the Water Code (which was adopted during the Pinochet dictatorship), communities such as the Colla of Rio Jorquera were largely financially outmatched by other private actors and hence unable to secure significant water rights for their members.

<sup>283</sup> It has also been reported that Kinross Gold is exploring the possibility of developing desalinization plants for its new mine projects, such as for its Lobo Marte project. See comment to this effect in El diario de Atacama, ""Kinross da a conocer el proyecto Lobo Marte," September 27, 2009.

<sup>284</sup> E.g., in meetings with the Colla of Rio Jorquera in which researchers for this project were present.

<sup>285</sup> E.g., see: J. Valeriote, "Chile's Supreme Court Upholds Indigenous Water Rights," Santiago Times, November 30, 2009, available online at: [http://www.santiagotimes.cl/index.php?Itemid=142&catid=19:other&id=17739:chiles-supreme-court-upholds-indigenous-water-use-rights&option=com\\_content&view=article](http://www.santiagotimes.cl/index.php?Itemid=142&catid=19:other&id=17739:chiles-supreme-court-upholds-indigenous-water-use-rights&option=com_content&view=article) (Accessed January 10, 2010).

<sup>286</sup> Ibid.

<sup>287</sup> Per: D. Estrada, "Chile: Water a Matter of National Security," Inter Press Service News Agency, January 23, 2010, available online at: <http://ipsnews.net/news.asp?idnews=50082> (accessed February 10, 2010).

<sup>288</sup> According to Kinross Gold Maricunga officials, new stringent water regulations are making the task of acquiring water rights increasingly difficult: it used to be possible to purchase water rights in one "water zone" and transfer them to another zone. However, this is apparently no longer possible. Now, cross-zone water transfers are not possible. All the water in the zones where the Colla reside have been sold, so the company has been attempting to identify owners within the zone who might want to sell, and then purchase these water rights for the Colla.

<sup>289</sup> Per: Portal Minero, "Kinross Maricunga entrega fondos para proyectos productivos a comunidad Colla Rio Jorquera," (March 17, 2010), op cit..

<sup>290</sup> See comment to this effect in El diario de Atacama, ""Kinross da a conocer el proyecto Lobo Marte," September 27, 2009, op cit..

<sup>291</sup> CONAF (2006, October 10) "Constituido Comité para la Conservación de los Humedales Altoandinos " available online at [http://www.conaf.cl/?page=home/contents&seccion\\_id=007&unidad=0&articulo\\_unidad=0&articulo\\_id=1376&maestra=1&PHPSESSID=10bfe845783f228b6db7bcde3cd28b18](http://www.conaf.cl/?page=home/contents&seccion_id=007&unidad=0&articulo_unidad=0&articulo_id=1376&maestra=1&PHPSESSID=10bfe845783f228b6db7bcde3cd28b18) (accessed January 12, 2010) and CONAF (2009, February 27) "firma convenio de cooperacion con Minera Maricunga en beneficio de los humedales," available online at [www.chanarcillo.cl](http://www.chanarcillo.cl)



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<sup>292</sup> A. Hoffman, "Ecuador sets its price for resource development," *Globe and Mail*, March 4, 2009. In a follow up inquiry with Kinross Gold officials concerning this figure, it was indicated that this figure is based on a report prepared for Kinross Gold that stated that mining companies such as Kinross Gold calculate tax in Chile as follows: 17% income tax, and 35% dividend withholding tax, a .5 to 5% royalty (deductible), a 10% import duty, and 42% fiscal stability agreement, and a 4% withholding tax on loans. As noted earlier, there is a broader debate about mining companies and taxes, for which references were provided.

<sup>293</sup> Per Miguel Antonio Mendez Lamb, op cit.. Note that the initial investment to develop the Maricunga mine (then known as Refugio) was made by Amax/Bema, before Kinross Gold had any ownership in the mine.

<sup>294</sup> Per Miguel Antonio Mendez Lamb, op cit...

<sup>295</sup> Per: Seeking Alpha, "Kinross Gold Corporation Q1 2010 Earnings Call Transcript," May 5, 2010, available online at: <http://seekingalpha.com/article/203119-kinross-gold-corporation-q1-2010-earnings-call-transcript> (accessed May 8, 2010).

<sup>296</sup> Per: El diario de Atacama, "'Kinross da a conocer el proyecto Lobo Marte,'" September 27, 2009, op cit.. It is the author of this case study's interpretation that the projected \$350 million expenditure is scheduled to take place if the project meets Kinross Gold's feasibility study standards and also meets Chilean Environmental Impact Assessment approval.

<sup>297</sup> Per: International Mining, "New Chilean President a popular choice for the mining industry, as China moves in," January 29, 2010, available online at: [www.im-mining.com/2010/01/29/new-chilean-president-a-popular-choice-for-the-mining-industry-as-china-moves-in/](http://www.im-mining.com/2010/01/29/new-chilean-president-a-popular-choice-for-the-mining-industry-as-china-moves-in/) (accessed March 10, 2010).

<sup>298</sup> In its Corporate Responsibility Regional Data Tables for 2008, Kinross Gold does provide a quantification of this benefit.

<sup>299</sup> Per: Kinross Gold, Corporate Responsibility 2008 Regional Data Tables, op cit..

<sup>300</sup> Note that this population includes urban Colla. See Colla map earlier in the case study.

<sup>301</sup> We are grateful to Kinross Gold Maricunga officials for providing us with notes from these meetings. We note here that the summaries were prepared by Kinross Gold officials, and that no researchers for this case study were present at the meetings.

<sup>302</sup> See comment to this effect in El diario de Atacama, "'Kinross da a conocer el proyecto Lobo Marte,'" September 27, 2009, op cit.. Note that the expression of willingness to explore desalination options is in the context of Kinross Gold's mine developments, like Lobo Marte, where securing water access is an ongoing issue, whereas for Kinross Gold Maricunga, water rights have been secured .

<sup>303</sup> Per notes from Kinross Gold Tierra Amarilla Sustainability Workshop.

<sup>304</sup> This listing of jobs is available online at: <http://www.indeed.cl/Empleos-de-Kinross-Minera-en-Tierra-Amarilla,-Atacama> (Accessed March 10, 2010).

<sup>305</sup> Per Diario Chanarcillo, "Exitoso Programa de Aprendices Concluyo Kinross en Atacama," available online at: [http://www.xn--chaarcillo-v9a.cl/articulos\\_ver.php?id=22552](http://www.xn--chaarcillo-v9a.cl/articulos_ver.php?id=22552) (accessed January 10, 2010).



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<sup>306</sup> Ibid.

<sup>307</sup> Per: J. Castillo, J. Sanchez, V. Kunze, and R. Araya, Chile: Size Does Matter, Chapter 3 of G. McMahon and F. Remy, eds., *Large Mines and the Community: Socioeconomic and Environmental Effects in Latin America, Canada, and Spain* (IDRC/World Bank 2001), summaries of each chapter available online at: [http://www.idrc.ca/en/ev-9432-201-1-DO\\_TOPIC.html](http://www.idrc.ca/en/ev-9432-201-1-DO_TOPIC.html) (accessed August 10, 2009).

<sup>308</sup> Per Kinross Corporate Responsibility Report Regional Tables, 2008, op cit., at p. 6: This is out of a total Kinross employee base of 5,000 and 2000 contractors in 2007 (Per Kinross Gold (2007) *Taking Responsibility*, op cit., p. 28).

<sup>309</sup> The Sindicato de Trabajadores Cia Mineral Maricunga has its own website, available online at [www.sindicatocmm.cl](http://www.sindicatocmm.cl) (accessed August 10, 2009).

<sup>310</sup> About 10% of the country's work force is unionized. Per: Sullivan, M. (2003) *CRS Report for Congress, Chile: Political and Economic Conditions and U.S. Relations*, Updated August 5, 2003, at pp. 11 – 12).

<sup>311</sup> Per interviews.

<sup>312</sup> Kinross Gold (2007) *Taking Responsibility*, op cit., at p. 10.

<sup>313</sup> Ibid.

<sup>314</sup> Ibid.

<sup>315</sup> Kinross Gold (2007) *Taking Responsibility*, op cit., p. 36.

<sup>316</sup> Kinross Gold (2007) *Taking Responsibility*, op cit., p.11.

<sup>317</sup> Kinross Gold (2007) *Taking Responsibility*, op cit., p. 10.

<sup>318</sup> Ibid.

<sup>319</sup> Kinross Gold (2007) *Taking Responsibility*, op cit., p. 12.

<sup>320</sup> Ibid.

<sup>321</sup> Ibid.

<sup>322</sup> Kinross Gold (2007) *Taking Responsibility*, op cit., p. 28.

<sup>323</sup> Kinross Gold (2007) *Taking Responsibility*, op cit., p. 34.

<sup>324</sup> In 2007, Kinross conducted its second company-wide employee engagement survey and achieved a 77% participation rate. The following information is from Kinross Corporate Responsibility report, especially at p. 25. The intent of the survey was to measure employee engagement, a term that describes the level of commitment employees have to the organization and the effectiveness of core organizational practices. A key objective of the survey was to identify the priority "drivers" of engagement. The top three drivers are: the company's shared values; the company's commitment to corporate responsibility and its overall reputation; and, safety. On the whole, results were very strong, generally outperforming other companies in the global oil and chemical industry sector, with 80% of Kinross employees indicating that they are engaged contributors to Kinross' success. The three drivers of engagement – values, corporate responsibility and reputation, and safety – had favourable scores of 69%, 70% and 82%, respectively. These scores indicate positive results from significant efforts in these areas with opportunity for further improvement. Kinross operations are reported to hold regular meetings at which employees have the opportunity to raise issues of concern directly with local management. In addition, the President and Chief Executive Officer conduct periodic "town hall" teleconferences with employees across the

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organization, providing an opportunity for emerging issues to be discussed at the highest level in the organization. (Kinross Gold (2007) *Taking Responsibility*, op cit., at p. 35).

<sup>325</sup> Ibid.

<sup>326</sup> Per: Kinross Gold Corporation (2008) "Past, Present and Future: Maricunga mine," powerpoint presentation for HydroProcess, available online at [http://downloads.gecamin.cl/cierre\\_eventos/hydroprocess2008/prsntcns/00097\\_00488\\_pr.pdf](http://downloads.gecamin.cl/cierre_eventos/hydroprocess2008/prsntcns/00097_00488_pr.pdf) (accessed August 10, 2009).

<sup>327</sup> Per: Myers, R. (2008, September 1) "Digging In: With the economy in the pits, companies are leaving no stone unturned in their efforts to cut supply-chain costs," *CFO Magazine*.

<sup>328</sup> Richalet, J.P. et al. (2002) "Chilean Miners Commuting from Sea Level to 4500 m: A Prospective Study," *High Altitude Medicine and Biology*, 3(2), pp. 159 – 166.

<sup>329</sup> Atacama, D. (2008, December 31) "Debate por altura de campamentos mineros," *Area Minera*, available online at [http://www.aminera.com/index.php?option=com\\_content&task=view&id=14571&Itemid=2](http://www.aminera.com/index.php?option=com_content&task=view&id=14571&Itemid=2) (accessed August 10, 2009).

<sup>330</sup> Per: Kinross Gold (2008) "Past, Present and Future: Maricunga mine," op cit..

<sup>331</sup> Per: Atacama, D. (2008) "Debate por altura de campamentos mineros," op cit..

<sup>332</sup> Per: (2009, September 21) "Grandes mineras podran operar campamentos a mas de tres mil metros de altura," *El Mercurio*, available online at <http://diario.elmercurio.cl/detalle/index.asp?id={87d85093-4fe6-4b06-bd9c-518caf34978a}> (accessed September 30, 2009).

<sup>333</sup> Per: Kinross Gold (2008) "Past, Present and Future: Maricunga mine," op cit..

<sup>334</sup> Kinross Gold, Regional Data Tables, 2008, p. 6.

<sup>335</sup> Per SERNAGEOMIN (2009) Entregó Premios de Seguridad Minera 2008, 03.08.2009, available online at [http://www.sernageomin.cl/index.php?plantilla=detalle&option=com\\_content&task=view&id=515&Itemid=2&sectionid=4](http://www.sernageomin.cl/index.php?plantilla=detalle&option=com_content&task=view&id=515&Itemid=2&sectionid=4) (accessed August 10, 2009) ; see also Atacama, D. (2008, December 31) "Debate por altura de campamentos mineros," *Area Minera*, available online at [http://www.aminera.com/index.php?option=com\\_content&task=view&id=14571&Itemid=2](http://www.aminera.com/index.php?option=com_content&task=view&id=14571&Itemid=2) (accessed August 10, 2009).

<sup>336</sup> Per (2009, May 2) "Esta tarde sepultan a trabajador de Maricunga," *Chanarcillo*, available online at [www.xn--chaarcillo-v9a.cl/articulos\\_ver.php?id=13388](http://www.xn--chaarcillo-v9a.cl/articulos_ver.php?id=13388) (accessed August 10, 2009); and (2009, April 4) "Paro cardiac habria ocasionado muerte de minero en Maricunga," *El Diario de Atacama*, available online at [http://www.diarioatacama.cl/prontus4\\_notas/site/artic/20090502/pags/20090502001537.html](http://www.diarioatacama.cl/prontus4_notas/site/artic/20090502/pags/20090502001537.html) (accessed August 10, 2009).

<sup>337</sup> Ibid.

<sup>338</sup> Per CMM GM Hugo Herrera (2009, May 12) "Minera Maricunga y colaboradores revisan gestión," *Area Minera*, available online at [http://www.aminera.cl/index.php?option=com\\_content&task=view&id=17077&Itemid=2](http://www.aminera.cl/index.php?option=com_content&task=view&id=17077&Itemid=2) (accessed January 10, 2010).

<sup>339</sup> Ibid.

<sup>340</sup> Kinross Gold (2007) *Taking Responsibility*, op cit., p. 11.

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<sup>341</sup> Kinross Gold (2007) *Taking Responsibility*, op cit., p. 16.

<sup>342</sup> Background information provided here concerning the safety and environmental issues associated with cyanide use in mining is derived from: [www.cyanidecode.org](http://www.cyanidecode.org) (accessed August 10, 2009).

<sup>343</sup> Ibid.

<sup>344</sup> The following information is all from: GeoEngineers, Inc. (2009) *Summary Audit Report for the July 2008 International Cyanide Management Code Audit. Prepared for Compania Mineral Maricunga*, available online at <http://www.cyanidecode.org/pdf/KinrossMaricungaSumm.pdf> (accessed August 10, 2009).

<sup>345</sup> U.S. Dept of State (2009) *Chile Investment Climate Statement*, at p. 13, available online at <http://www.state.gov/e/eeb/ifa/2008/101854.htm> (accessed January 13, 2010). –

<sup>346</sup> Per Long, G. (2008, March) “Regulating Labor Outsourcing,” *Business Chile*, op cit.

<sup>347</sup> See, e.g., (2008, February 7) “Chile Escondida copper mine wins labor appeal,” *Reuters*, available online at [www.reuters.com](http://www.reuters.com) (accessed August 20, 2009); and (2007, December 2007) “Chile copper miner Codelco to challenge labor edict,” *Reuters*, available online at [www.reuters.com](http://www.reuters.com) (accessed August 20, 2009).

<sup>348</sup> Per: (2009, August 2) “Kinross Gold strike ends after 24 days”, *Reuters*, available online at <http://www.mineweb.co.za/mineweb/view/mineweb/en/page504?oid=87026&sn=Detail> (accessed January 10, 2009)

<sup>349</sup> Radio Maray (2009, July 31) “Minería: Acuerdo considerado ‘satisfactorio’ entre Maricunga y trabajadores,” available online at [www.maray.cl/articulos\\_ver.php?id=251](http://www.maray.cl/articulos_ver.php?id=251) (accessed August 10, 2009).

<sup>350</sup> Per: El Diario de Atacama, Firman convenio colectivo en Minera Maricunga,” February 22, 2010, available online at: [http://www.diarioatacama.cl/prontus4\\_notas/site/artic/20100222/pags/20100222034529.html](http://www.diarioatacama.cl/prontus4_notas/site/artic/20100222/pags/20100222034529.html) (accessed March 10, 2010).

<sup>351</sup> Photo from El Diario de Atacama, “Firman convenio colectivo en Minera Maricunga,” *ibid.*

<sup>352</sup> As noted above, Kinross Maricunga provides annual scholarships to Colla students, and monthly support to 12 Colla families to cover transportation costs to local schools and lunch expenses for their school-age children. Per Kinross Gold (2007) *Taking Responsibility*, op cit., p. 40. According to a CMM official, there were 30 scholarships provided in 2008.

<sup>353</sup> Per GeoEngineers, Inc. (2009) *Summary Audit Report for the July 2008 International Cyanide Management Code Audit. Prepared for Compania Mineral Maricunga*, at p. 39, available online at <http://www.cyanidecode.org/pdf/KinrossMaricungaSumm.pdf> (accessed August 10, 2009).

<sup>354</sup> Atacama, D. (2009) “Maricunga abre espacios a jóvenes de origen coya,” February 17, 2009, available online at [http://www.diarioatacama.cl/prontus4\\_notas/site/artic/20090217/pags/20090217001557.html](http://www.diarioatacama.cl/prontus4_notas/site/artic/20090217/pags/20090217001557.html) (accessed on August 10, 2009).

<sup>355</sup> Per (2008, September 26) “Se impone la figura femenina en la minería,” *Atacama*, available online at [http://www.aminera.com/index2.php?option=com\\_content&do\\_pdf=1&id=12612](http://www.aminera.com/index2.php?option=com_content&do_pdf=1&id=12612) (accessed August 10, 2009).

<sup>356</sup> Per: F. Pouiller, “Codelco's new Gabriela Mistral mine passes 180 000 t copper output,” *Mining Weekly* (October 22, 2009), available online at: <http://www.miningweekly.com/article/codelcos-new-gabriela-mistral-mine-passes-180-000-t-copper-output-2009-10-22> (accessed January 10, 2010).

<sup>357</sup> Ibid.

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<sup>358</sup> Ibid.

<sup>359</sup> For example, in addition to regulations applying to environmental assessments (passed in 1997, as discussed below), there are Hazardous Waste Management Regulations (Order 148), and Regulations on the Basic Sanitary and Environmental Conditions in the Workplace (Order 594).

<sup>360</sup> In 1997, the voluntary EIA process was the subject of a successful legal challenge in which the Chilean Supreme Court overturned the Chilean government's approval of a logging project pursuant to the voluntary approach. This led to the introduction of a mandatory EIA regime in 1997. See: Walsh, H. (1997, April 28) "Chile: Court ruling prompts new environment regulation," *Panos London*, available online at <http://www.sunsonline.org/trade/areas/environm/05050197.htm> (accessed August 10, 2009). See also discussion of this case in: Houck, O. (2008) "Symposium: Environmental Sustainability: A Case of Sustainable development: the River God and the Forest at the End of the World", *Tulsa L. Rev.*, 44, 275. It is interesting to note that the federal government of Canada also had a voluntary EIA process during this time, and that it too was the subject of a successful legal challenge, leading to the development of a law-based EIA regime: see, e.g., Canadian Environmental Assessment Agency (2009) *The Responsible Authority's Guide*, available online at <http://www.ceaa-acee.gc.ca/default.asp?lang=En&n=3939C665-1&offset=3&toc=show> (accessed August 10, 2009).

<sup>361</sup> All EIAs can be found on the EIA website, available online at [www.e-seia.cl](http://www.e-seia.cl)

<sup>362</sup> It is worth pointing out that at the time of the original voluntary Refugio submission of an EIA and its review by COREMA in 1994, there was no Kinross ownership or involvement in the mining project (as noted earlier, Kinross initially acquired 50% ownership of the mine in 1998, and became 100% owner in 2007).

<sup>363</sup> Per 1994 Maricunga EIA evaluation, available online at [www.e-seia.cl](http://www.e-seia.cl)

<sup>364</sup> See [www.e-seia.cl](http://www.e-seia.cl)

<sup>365</sup> Anderson S.T. (2008, October 7) "New Law to Mandate Clean Mine Closings," trans., *La Nación*.

<sup>366</sup> Information from: GeoEngineers, Inc. (2009) *Summary Audit Report for the July 2008 International Cyanide Management Code Audit*, prepared for Compania Mineral Maricunga (17 February 2009), available online at <http://www.cyanidecode.org/pdf/KinrossMaricungaSumm.pdf> (accessed August 10, 2009).

<sup>367</sup> Bradley, R. (2008, December) "Environmental Reform: For Better or Worse?" *Business Chile*, available online at <http://www.businesschile.cl> (accessed August 10, 2009).

<sup>368</sup> The following quotes are translated from Spanish.

<sup>369</sup> Per communication of senior Kinross Gold official with the author.

<sup>370</sup> UNCTAD (2007) *World Bank, ICMM, Chile: The Challenge of Mineral Wealth*, Country Case Study, available online at <http://www.icmm.com/page/9995/our-work/case-studies/articles/making-mining-count-in-chile-case-study> (accessed August 10, 2009).

<sup>371</sup> See discussion of these issues in Standing Committee on Foreign Affairs and International Trade (SCFAIT) (2005, June) *Fourteenth Report: Mining in Developing Countries—Corporate Social Responsibility*, 38th Parliament, 1st Session, available online at <http://cmte.parl.gc.ca/cmte/CommitteePublication.aspx?COM=8979&Lang=1&SourceId=178650> (accessed January 10, 2010)

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<sup>372</sup> In a 2009 Kinross Technical Report for Cerro Casale, the following is stated: “There are no legal impediments to the granting of rights-of-way and other easements necessary to access the property, to develop production water, and to build the water and concentrate pipelines. **However, on the proposed concentrate pipeline route, around 60 km of the route runs through lands belonging to the Colla people. The route is being reviewed by the Project team to see if it is possible to reduce the kilometres of pipeline that pass through Colla lands. This could present a significant challenge for obtaining rights-of-way in terms of negotiation difficulties and time spent.** In addition, if the original concentrate pipeline route is used, there will be a large increase in land now being used for growing grapes as compared to when the initial 2000 feasibility study was completed” (emphasis added) P. 1-2. Per: Kinross Gold Corporation (2009) *Cerro Casale Project, Northern Chile, NI 43-101 Technical Report*, available online at <http://secfilings.nyse.com/filing.php?doc=1&attach=ON&ipage=6256054&rid=12> (accessed January 12, 2010).

<sup>373</sup> From: Kinross Gold Corporation (2007) *Annual Information Form for the Year Ended December 31, 2007*, available online at <http://www.kinross.com/investors/financials/pdf/07-aif.pdf>, at p. 30 (accessed August 10, 2009)

<sup>374</sup> Kinross Corporate, *Ten Guiding Principles for Corporate Responsibility*, available online at [http://www.kinross.com/media/23923/k.4.4%20cr%20brochure\\_english.pdf](http://www.kinross.com/media/23923/k.4.4%20cr%20brochure_english.pdf) (accessed January 13, 2010).