

Supporting Inclusive Resource Development (SIRD)
East Africa
TRAINING PROGRAM
2019



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Regulating Resource Extraction and Revenues

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What you'll learn...

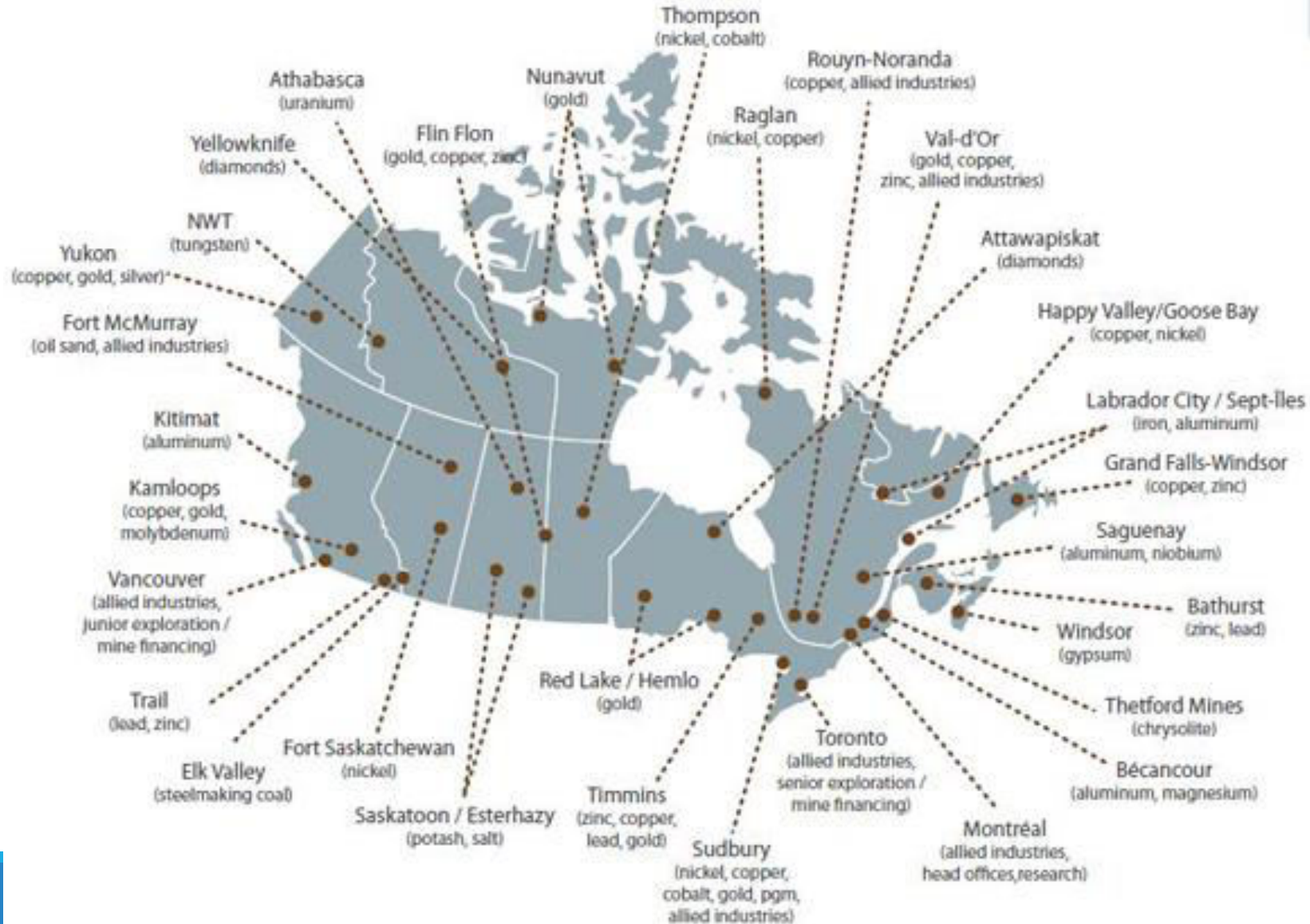
- How we regulate resource extraction in Canada
- How we regulate resource extraction revenues in Canada



Major oil pipelines in Canada (and to U.S.)



Clusters of Canadian mining activity



Regulating resource extraction

Oil and Natural Gas	Mining
<p>Federal (National)</p> <p>Activities in some territories, certain offshore areas, lands set aside for Indigenous people (reserves) and exporting *</p>	<p>Federal (National)</p> <p>Limited to:</p> <ul style="list-style-type: none"> • uranium in the context of the nuclear fuel cycle - exploration to the final disposal (reactor and mine waste) * • mineral activities related to federal Crown corporations • mineral activities on federal lands and in offshore areas *
<p>Provincial (Subnational)</p> <p>All onshore resources within their borders *</p>	<p>Provincial (Subnational)</p> <p>All resources within their borders *</p>
<p>If project crosses more than one Province (subnational jurisdiction) = Federal (national) jurisdiction</p>	
<p>* Includes: approvals, compliance and enforcement</p>	



Regulating resource extraction (cont.)

Other natural resources:

- Forestry (provincial)
- Water (federal and provincial/territorial)

Informal Regulation:

- Industry Associations
 - Voluntary principles
 - Guidelines
 - Codes of conduct
- International standards/conventions/protocols/etc.



Examples - legislation regulating resource extraction

Federal (National):

- *Canadian Environmental Assessment Act* - Conduct environmental assessments on federal lands or interjurisdictional projects
- *National Energy Board Act* – Regulates/authorizes construction, operation and abandonment of interjurisdictional pipelines
- *Canadian Oil and Gas Operations Act* – Regulates safety of national oil and gas operations
- *Canadian Petroleum Resources Act* - Regulates oil and gas exploration on frontier lands

Provincial (Subnational):

- *Responsible Energy Development Act and Oil and Gas Conservation Act, AB*
- *Mining Act, ON*
- *Petroleum and Natural Gases Act, BC*



Foreign ownership rules – extractive industry

Acquisition of Canadian extraction company:

- *Investment Canada Act*
 - Thresholds for WTO and non-WTO member countries for direct ownership
 - Must be in the “best interest” of Canadians
- *Competition Act*
 - Restrictions on mergers

Mining Rights:

- Company must be registered or otherwise authorized to conduct business in jurisdiction

Oil and gas rights:

- State Owned Enterprise (SOE) Guidelines –Restrictions on state-owned enterprises making oil sands acquisitions



Collecting revenues from extractive companies

Federal (National)

Collect national corporate income taxes from extractive companies

Provincial (Subnational)

Collect royalties and corporate income taxes from extractive companies

Municipal (District)

Collect municipal taxes from extractive companies

Equalization Formula

- If province has below-average ability to generate own-source revenues, then it is eligible for an equalization payment
- Calculate the revenue generating capacity of each province on a per capita basis
- Only 50% of natural resource royalties are included in formula, which means that resource-rich provinces receive higher per capita revenues than the other provinces when commodity prices are high
- All provincial corporate income taxes from the extractive sector are included in the formula



Mining royalties/taxes

Significant issues with Canadian system:

- Phased approach for money's owed
 - First few years of production companies don't pay certain fees until they recover costs
 - If company stops production before completing "cost recovery" phase, government could receive no compensation
- Royalties paid after costs deducted
 - Companies use "all-in sustaining costs" to report amount of money required to remove/process minerals
 - (i.e.: labour, energy, royalties, administration, exploration, capital expenditure and reclamation)
 - By only charging royalties on revenue above costs, government receives a fraction of the mineral's worth
 - By contrast, most countries calculate royalties based on production volume and the cost of the mineral



Case Study - Collecting mineral value

Barrick Gold extracted approximately \$250 million in gold from Helmo mine in northwest Ontario in Canada (2017)

- Company paid \$14.4 million in taxes/fees (5.8 % of gold's total value)

Same year, company extracted approximately \$817 million in gold from Pueblo Viejo mine in Dominican Republic

- Company paid \$327 million in taxes/royalties/fees /infrastructure improvements (40 % of gold's total value)
- Same year, in Peru government received \$45.5 million in compensation from Lagunas Norte mine (9.4 per cent of gold's total value)

In conclusion, company paid:

- Dominican Republic roughly \$503/ounce of gold
- Peru \$117/ounce
- Canada \$73/ounce

NOTE: Barrick was in compliance with fees to be paid in all 3 jurisdictions



Transparency and accountability – international

One example of an international standard:

Extractive Industries Transparency Initiatives (EITI)

- Global standard for good governance of oil and gas and mineral resources
- Requires disclosure of information along extractive value chain from:
 - point of extraction, to how revenues make their way through government, and how they benefit the public
- EITI seeks to strengthen:
 - public and corporate governance, promote understanding of natural resource management, provide data to inform reforms for greater transparency/accountability in extractives sector
- 52 implementing countries
 - Canada, Uganda and Kenya haven't implemented
- Canada joined in 2007 as a supporting country and donor



Transparency and accountability – Canada

Corruption of Foreign Public Officials Act (CFPOA)(1999)

Reinforces Canada's commitment to the OECD Anti-Bribery Convention

- Criminal offence to bribe foreign public official in the course of business
- Individuals/corporations can be prosecuted for offenses committed inside and outside of Canada



Transparency and accountability – Canada (cont.)

Extractive Sector Transparency Measures Act (ESTMA)(2015)

- Reporting standards for oil and gas and mining companies (combating international/domestic corruption)

Who is required to report:

If the Entity or the Entity's securities are listed on a stock exchange in Canada; OR

If the Entity has a place of business in Canada, does business in Canada, or has assets in Canada, and meets two (2) of the three (3) following minimum thresholds in one of its two (2) most recent financial years:

- Has at least C\$20 million in assets
- Generated at least C\$40 million in revenue
- Employs an average of at least 250 employees

Includes all: taxes, royalties, fees, bonuses, dividends, infrastructure improvements or any payments of more than \$100,000 made to to local or foreign government, including an Aboriginal government.



Sharing Extractive Revenues with Indigenous Communities

No federal (national) law/regulation/guideline for sharing benefits/extractive revenues with Indigenous communities

Most provincial (subnational) agreements are with particular communities, not the entire jurisdiction

Some tools for sharing extractive revenues with communities:

- Resource Revenue Sharing Agreements
 - Between government and communities
- Impact Benefit Agreements
 - Between companies and communities



Sharing Extractive Revenues with Indigenous communities (cont.)

Examples of subnational approaches:

- Nunavut
 - Mandatory IBAs for the entire territory, no matter the type of project (Nunavut Land Claim Agreement)
- Northwest Territories
 - Proposed changes to the territorial *Mineral Resources Act* (mandatory IBAs)
- British Columbia
 - Resource Revenue Sharing Policy (sharing mineral tax revenue)
- Ontario
 - Resource Revenue Sharing Agreements with certain communities (ex: forestry and mining)



Observations: Fair Share of Benefits

Some companies

- Under-report quantity and quality of production
- Sell within (intra-firm sales) at below market prices
- Report inflated costs for goods and services
- Do intra-firm financing – shift profits to other operations
- Do “Base erosion and profit shifting” – lower tax payments by shifting profits from higher-tax jurisdictions to lower-tax jurisdictions

Governments

- Are being criticized for not capturing “fair share” of revenues through tax, royalties or other fees



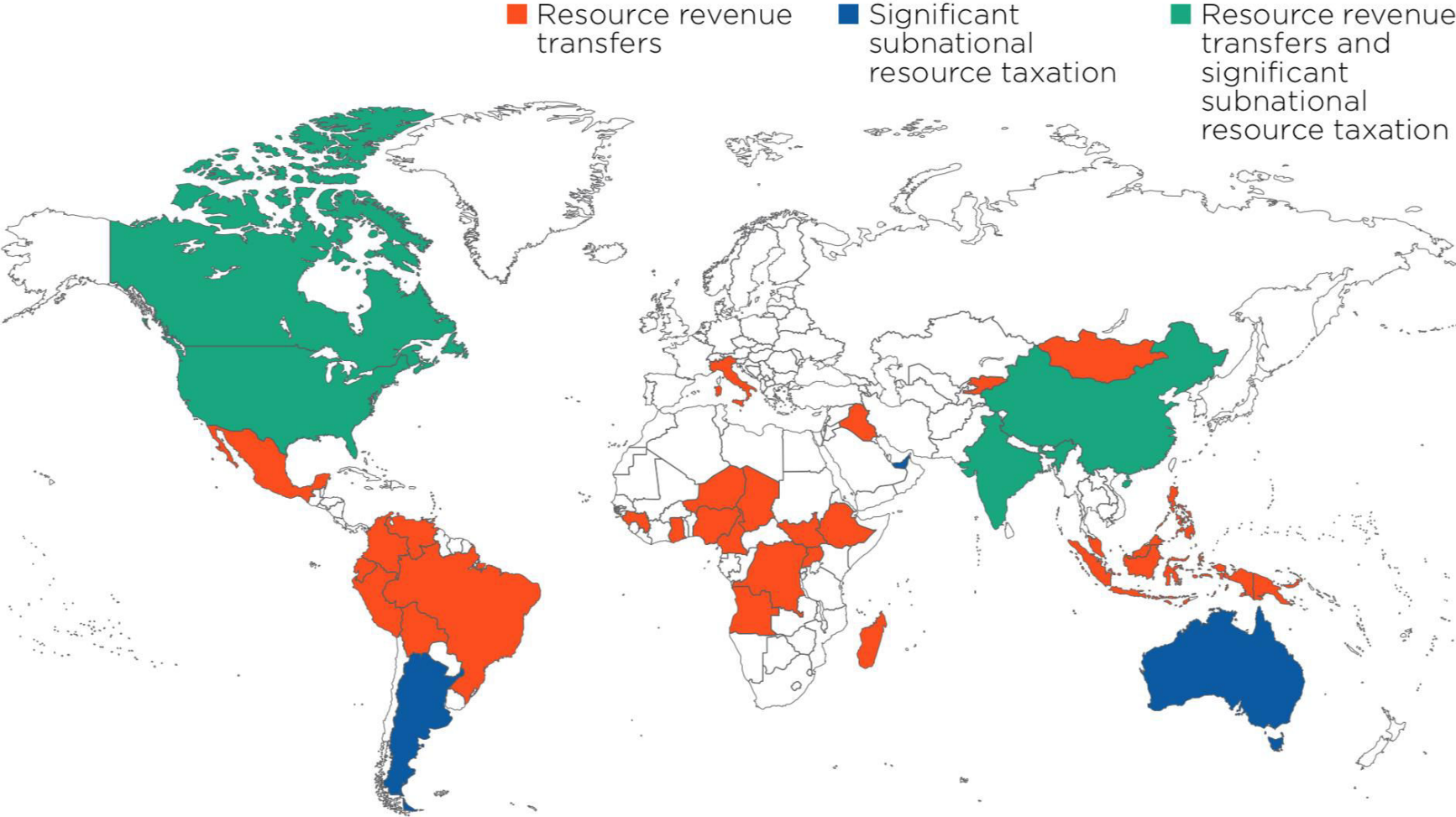
Why Share Extractive Revenues?

Four common objectives for establishing natural resource revenue sharing arrangements:

1. Recognizing local claims on natural resources
2. Compensating for the negative impacts of extraction
3. Promoting economic development in resource-rich regions; and
4. Mitigating or preventing violent conflict



Countries With Natural Resource Revenue Sharing



Canadian oil and gas resource revenues (2000-2013)

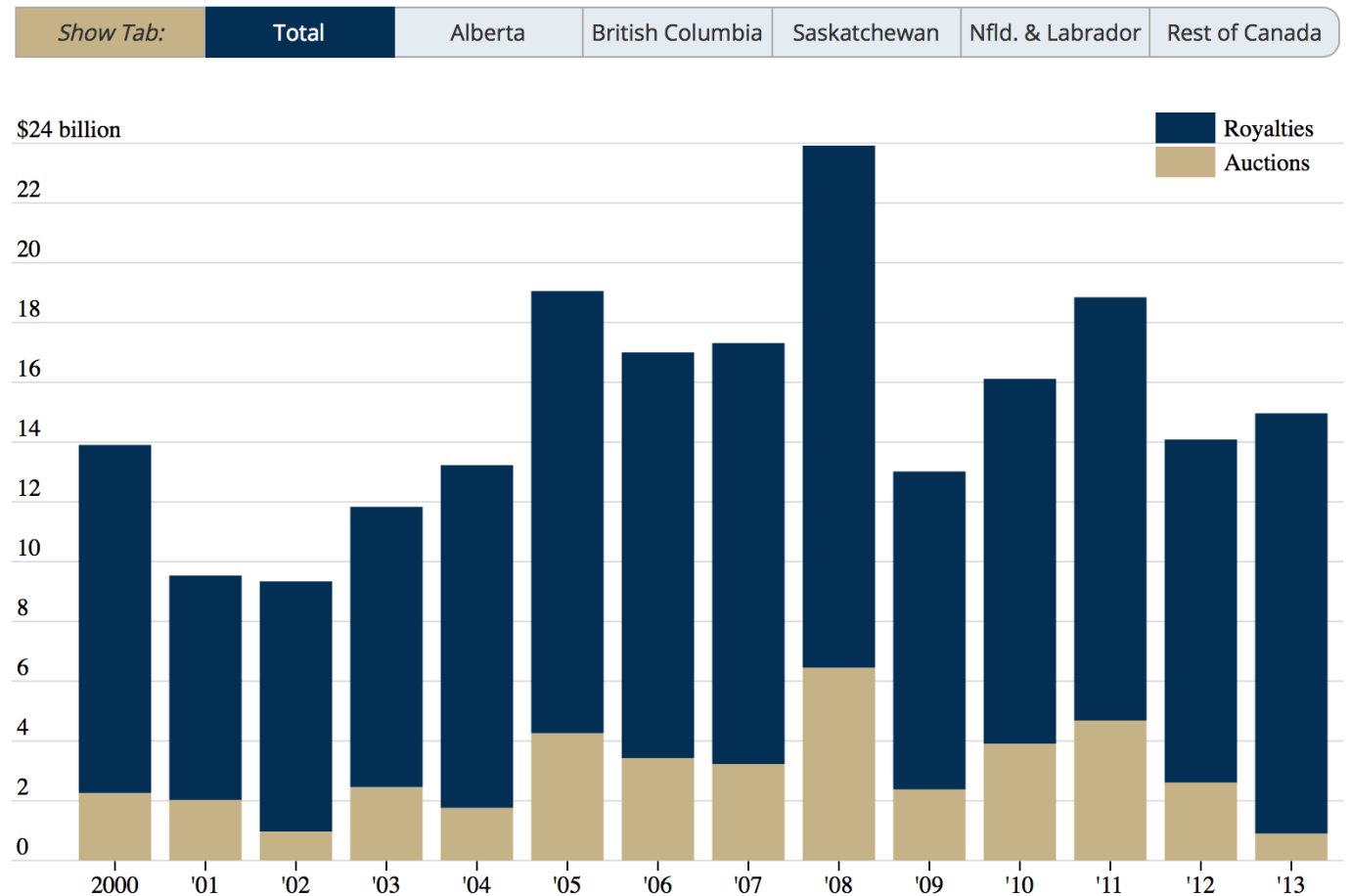
2009-2013

- Canadian governments collected \$79 billion in resource-specific revenues
 - \$75 billion - oil and gas*
 - \$4 billion - mining
- (*4 subnational jurisdictions collected over 90% of total oil and gas revenue)

NOTES:

When companies develop resources, they must pay a “royalty” to the province who owns the resources

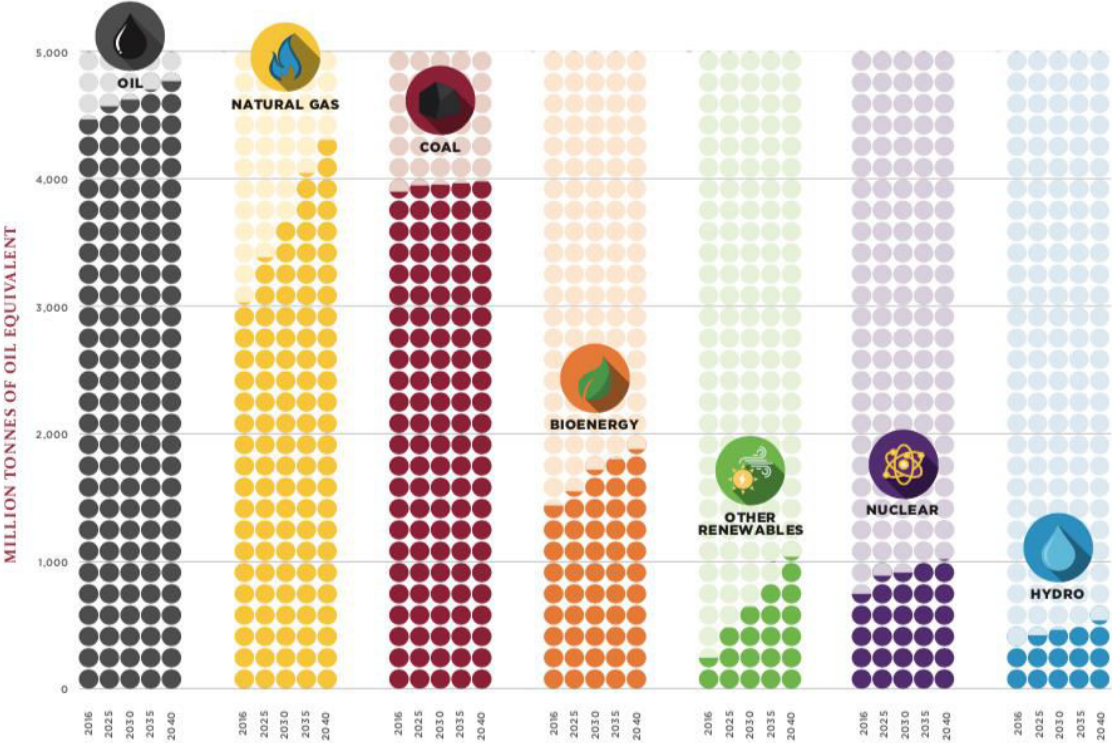
Resource-right auctions are when companies bid on the right to explore and/or develop resources on a given plot of land



Global Energy Needs up to 2040

Growth in the Global Energy Mix from 2016-2040

Source: IEA 2017 World Energy Outlook, New Policies Scenario



Resources

Natural resource laws in Canada

<https://www.nrcan.gc.ca/acts-regulations/57>

Roles and responsibilities of government – Natural Resources

<https://www.nrcan.gc.ca/mining-materials/taxation/8882>

Legislation and regulations for mining on Crown Lands

<https://www.nrcan.gc.ca/mining-materials/policy/8692>