

“Moving Beyond Voluntarism”

**A Civil Society Analysis of the Government Response
to the Standing Committee on Foreign Affairs and International Trade
(SCFAIT) 14th report, “Mining in Developing Countries – Corporate Social
Responsibility”,
38th Parliament, 1st session**

November 2005

“MOVING BEYOND VOLUNTARISM”

A CIVIL SOCIETY ANALYSIS OF THE GOVERNMENT RESPONSE TO THE STANDING COMMITTEE ON FOREIGN AFFAIRS AND INTERNATIONAL TRADE (SCFAIT) 14TH REPORT, “MINING IN DEVELOPING COUNTRIES – CORPORATE SOCIAL RESPONSIBILITY”, 38TH PARLIAMENT, 1ST SESSION

NOVEMBER 2005

INTRODUCTION

The 14th report of the Parliamentary Standing Committee on Foreign Affairs and International Trade (SCFAIT), tabled in June 2005, stressed the need for policy and legal changes in the Canadian government’s approach to Canadian mining companies’ activities abroad. The report also recounts the Committee’s hearings on the Philippines operations of Canadian mining company TVI Pacific Inc. in the Philippines.

The Government’s highly anticipated response to the SCFAIT report was released in October 2005. For many Canadian civil society organizations, the Government’s response is weak and inadequate given the severity of the problem and the strength of the SCFAIT reports’ recommendations. Disappointingly, the Government’s response does not make a commitment to move beyond a voluntary approach to corporate accountability, an approach that is widely viewed as inadequate. Moreover, the Government continuously confuses human rights with corporate social responsibility standards.

Canadian mining companies have been implicated in well-documented cases of human rights violations and environmental abuses ranging from toxic dumping and the destruction of protected areas, to death threats, murders and assassinations. The SCFAIT report acknowledges these problems, and advises the Canadian Government to change its method of dealing with Canadian mining companies. The SCFAIT report urges a move away from the Government’s voluntary approach to corporate social responsibility, to an approach centred on Canada’s international human rights obligations. Voluntary measures to achieve compliance with these standards have repeatedly failed in practice, as the SCFAIT report illustrates.

Human rights are not merely goals to strive for, or Canadian values that we would like to promote. Human rights are enshrined in international law, and the Government of Canada is legally obligated as a signatory to international human rights treaties to fulfill, protect and promote human rights. In keeping with these obligations, as well as our obligations to international labour and environmental treaties, human rights, labour and environmental standards are not optional. Instead, they must be enforced.

The SCFAIT report presented the Government with the opportunity to take an international leadership role in this area of growing concern, and outlined a number of well-researched

options to move the Government beyond voluntarism. In its response, the Government rejected these options. Indeed, the government refused even to adopt new voluntary standards, such as the US/UK Voluntary Principles on Security and Human Rights.

The Government presented a series of explanations for refusing to take up the SCFAIT report's recommendations including:

1. A lack of consensus on a set of Corporate Social Responsibility (CSR) standards, and a lack of means of measuring these standards;
2. A lack of clarity on the responsibilities of Governments, business and other stakeholders with respect to human rights;
3. That the primary responsibility for enforcing human rights rests with host states;
4. A lack of Canadian Government control over companies incorporated in Canada but headquartered elsewhere.

Canadian civil society organizations do not accept the Government's position and explanations.

The Government's response does not mark the end of discussion on this issue, but the beginning of a longer debate, which will take place within government, industry, the mining sector, and civil society in the coming months and years. The Government's response outlines seven areas for action that the Government perceives as important:

1. Facilitating five roundtables to further examine the issues raised;
2. Clarifying an international normative framework for CSR with like-minded countries;
3. Supporting the work of the UN Special Representative on Business and Human Rights;
4. Identifying, and possibly incorporating, human rights best practices into the policies and practices of Export Development Canada (EDC);
5. Creating CSR toolkits for Canadian companies and trade commissions to help them manage the human rights impacts of their projects;
6. Identifying opportunities to promote greater corporate disclosure and transparency.
7. Clarify the rules and mandate of the NCP with a view to strengthening it and incorporate more formal consultation process with stakeholders.

Moving Beyond Voluntarism presents a critical analysis of the Government's response, and a rebuttal of the "obstacles" that the Government has presented. It examines the Government's proposals for action against the recommendations of the SCFAIT report. Each SCFAIT recommendation is stated, followed by the Government's response, which is shadowed by the

civil society response and recommendations for actions that go beyond the SCFAIT report. Many of the civil society recommendations are premised on existing practices in other countries, and our own experiences with previous Government processes. These recommendations are the result of extensive consultation with civil society organizations, church groups, labour organizations, and our partners who live and work in communities that are affected by Canadian mining companies.

While *Moving Beyond Voluntarism* recognizes the importance of all the SCFAIT report's recommendations, some recommendations are considered more salient. Accordingly, we feel the key areas for Government action are:

1. Conditioning public support for companies on compliance with human rights and environmental standards (recommendation 2);
2. Development of legal mechanisms to hold companies to account for their actions overseas (recommendation 4);
3. Promoting human rights standards in World Bank policies and activities (recommendation 8).

We believe this critical analysis presents a way forward for the Canadian Government if it chooses to acknowledge the well-documented problems of Canadian mining companies abroad. As a leader in the global mining industry, with the greatest number of companies incorporated in Canada, and the largest amount of mining capital raised in Canada, Canada has a unique opportunity to lead the development of responsible mining standards, both in Canada and internationally. It is not enough to monitor what other countries are doing on this issue: We must also take the lead to ensure that the Canadian mining sector complies with human rights, environmental standards and labour standards.

SCFAIT RECOMMENDATION 1:

Put in place a process involving relevant industry associations, non-governmental organizations and experts, which will lead to the strengthening of existing programs and policies in this area, and where necessary, to the establishment of new ones.

Government Response: Over the course of the next year, in consultation with stakeholders, the Government will organize five roundtables across Canada to examine the issues raised in this report.

Civil Society Response and Recommendations: Multi-stakeholder dialogue involving Government, civil society, academia and industry is commonly accepted as good practice. In the case of corporate social responsibility however, civil society organizations have for many years participated in multi-stakeholder dialogues, and not yet seen meaningful action from the Government. The Broadbent Commission, the Government hearings on Sudan, and the World Bank Extractive Industries Review, among others, all produced clear recommendations that were largely ignored by the Canadian Government.

In the absence of strong Government commitment to change, these multi-stakeholder dialogues will remain public relations exercises.

For credible roundtables that will deliver effective solutions, the roundtables must be:

1. **Executed explicitly in accordance with the Code of Good Practice on Policy Dialogue**, developed by the *Voluntary Sector Initiative* in partnership with the Canadian Government.¹
2. **Targeted:** The roundtables should be focused on particular areas of policy and law requiring change or change of interpretation.
3. **Participatory:** Interested Canadian civil society organizations and industry must be present and have input on the agenda. Representatives from organizations and affected communities in Africa, Asia and Latin America should be present at each of the five roundtable discussions.
4. **Transparent and accountable:** To ensure accountability to the SCFAIT, and to roundtable participants, the Government must acknowledge the existence of the problem and the inadequacy of existing solutions to the problem, and make clear its commitment to implement solutions identified through the roundtable process. It must be publicly recognized that the purpose of the roundtables is to find solutions to a clearly identified problem.

SCFAIT RECOMMENDATION 2:

Put in place stronger incentives to encourage Canadian mining companies to conduct their activities outside of Canada in a socially and environmentally responsible manner and in conformity with international human rights standards. Measures in this area must include making Canadian Government support – such as export and project financing and services offered by Canadian missions abroad – conditional on companies meeting clearly defined corporate social responsibility and human rights standards, particularly through the mechanisms of human rights impact assessments.

Government Response: In its response, the Government made the following key points:

1. The Government will continue to work with like-minded countries and Canadian stakeholders to clarify a more comprehensive CSR framework against which the performance of mining and other companies can be measured.
2. There is currently no authoritative statement on business and human rights, nor any global consensus on the rights of indigenous peoples. The appointment of a UN Special Representative on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises will help clarify this and the Government will help support this work.
3. The Government will continue to work with EDC to identify, and, where possible, incorporate emerging best practices with respect to human rights into ongoing due diligence processes related to specific projects they support.
4. International Trade Canada, with assistance from Foreign Affairs Canada, Natural Resources Canada and other stakeholders, will develop further guidelines and training to help staff at Canada's missions abroad.
5. The Government of Canada will continue to strengthen its approach to increasing corporate transparency and reporting on social and environmental performance.

Civil Society Response and Recommendations: The Committee's report refers to social and environmental responsibility and specifically to international human rights standards as the framework for assessing the performance of companies.

Although a wide range of corporate social responsibility standards have been identified, a consensus is emerging on the responsibilities of business with regards to the promotion and protection of international human rights. Contrary to the Government's assertion that no authoritative statement on business and human rights exists, the UN *Norms on the responsibilities of transnational corporations and other business enterprises with regards to human rights* is such a statement. The Government of Canada should recognize it as such. An absence of a *commitment* to apply these international standards, not an absence of standards, is hindering action on the part of the Government.

What is needed is a clear set of procedures for assessing the human rights impacts of foreign investment and a means to taking action when violations are found. Canadian-based Rights & Democracy, is one of several international organizations working to develop a human rights impact assessment tool. Rather than deferring the question of standards to the new UN special representative on business and human rights, the Government of Canada should be working to standardize a human rights impacts assessment with its international partners, based on the UN Norms.

Using these new human rights assessment tools and existing environmental assessment tools, the Canadian Government should condition its financial and political support for companies, particularly those involved in conflict or conflict-prone zones, on human rights and environmental compliance. Government efforts to ensure that publicly-supported projects do not contribute to human rights and environmental abuses are, at best, ineffectual and, at worst, non-existent. The Government's response to this recommendation by the Committee is evasive.

In order to ensure effective implementation of these standards, the Government should put in place an ombudsperson with monitoring and investigative powers. Such an office should be able to receive and investigate human rights, labour, and environmental complaints - from individuals, civil society organisations, as well as from States - regarding possible violations of these international norms by Canadian companies. Oxfam's Community Aid Abroad Program has established a well respected Mining Ombudsman for projects involving Australian companies operating overseas.

The Government's stated intention to politically and financially support the new UN Special Representative on business and human rights is welcome. In its support for the Special Representative, the Government should support a set of regional consultations in Africa, Asia and Latin America, with communities directly affected by extractive industries. The current consultations should be opened up to a broader set of groups.

The Government's statement that it will continue to work with Export Development Canada (EDC) to study and "where possible incorporate" best practices from other countries is insufficient to address the problem of public funds supporting Canadian mining companies that are complicit in human rights violations. To date, human rights issues are only incorporated into EDC's political risk assessments of the countries in which a business is operating. It should be noted, however, that these assessments do not examine the impact of a project on human rights, but are assessments of the financial risks posed to a project by the political environment.

According to EDC, the institution has started to use "reverse flow analysis," or collecting information from grassroots groups to ascertain the human rights and social risk of a project to a community. This should be seen as a first step towards enhancing human rights, and incorporating a human rights screen of projects into EDC's review process.

For example, the British Export Credit Agency has a human rights screen, and by a Parliamentary mandate it no longer supports projects involving forced labour or child labour. The International Finance Corporation (IFC) of the World Bank is also in the process of developing a human rights impact assessment for business, and will soon adopt a performance standard on labour and working conditions based on all four ILO core labour standards, and reference the UK/US Voluntary Principles on Security and Human Rights. The Inter American Development Bank, in its Operational Policy on Indigenous Peoples recognizes the collective and individual rights of indigenous peoples and references a series of conventions that form the basis for these rights.

For a good overall model, the Canadian Government can look to Belgium, where the Belgian Government is considering linking public support for Belgian companies operating abroad to a set of standards, including the Organization for Economic Cooperation and Development (OECD) Guidelines, International Labour Organization (ILO) core labour standards, the UN Draft norms, the OECD Convention Against Bribery, and World Bank standards.¹

By articulating how these international obligations would play out in practice – through for example a human rights screen at Export Development Canada and the Canada Pension Plan – the Government can help provide clarity, predictability and a level playing field for all Canadian companies.

Providing additional training and guidelines to staff at the missions abroad is a good first step, but not sufficient. As long as trade promotion is the primary mandate of embassies and missions abroad, increasing awareness of human rights is not adequate to mitigate human rights abuses and environmental destruction caused by some companies. Embassy officials need to work within a strategy for promotion of human rights developed in the context of Canada's relations with the country in question

Finally, almost 60 percent of the world's exploration and mining companies are listed in Canada and these companies account for over 40 percent of global exploration budgets. As a result, the policies and regulations of the TSX Group and Canada's securities commissions are an essential consideration when developing options to improve the social and environmental performance of Canadian mining companies overseas.

¹ The Belgian Bill obliges companies to meet standards set out in the following sources: (1) the OECD Guidelines for Multinational Enterprises; (2) the four ILO core labor standards (ILO 29 and 105 on forced labor; ILO 87 on Freedom of Association; ILO 98 on collective bargaining; ILO 100 and 111 elimination of discrimination in respect of employment, occupation and wage; and ILO 138 and 182 on the abolition of child labor), all of which have been ratified by the Belgian Government; (3) the UN Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights; 4) the OECD Convention Against Bribery of Foreign Public Officials in International Business Transactions, which Belgium ratified in 1999; (5) the World Bank's environmental and social operational policies, included in its Pollution Prevention and Abatement Handbook. See Belgische Kamer van Volksvertegenwoordigers—Wetvoorstel. Doc 51 0648/001, Proposition de Loi, Chambre des représentants Belgique, January, 6, 2004. Available online at www.dekamer.be/FLWB/pdf/51/0648/51K0648001.pdf.

In recent years, a substantial amount of work has been done on the requirements of companies listed on Canadian stock exchanges to disclose material environmental information.² The foundation has been laid for a meaningful discussion about concrete actions that could help to improve the environmental performance of Canadian mining companies.

There are also ongoing policy reform processes that could have significant implications for the disclosure of environmental liabilities in the mining sector. For instance, the Canadian Institute of Chartered Accountants (CICA) has circulated a draft Interpretive Release on *Disclosing the Financial Impact of Climate Change and other Environmental Issues*.

SCFAIT RECOMMENDATION 3:

...The Government must... increase the resources available to the NCP (National Contact Point) to enable it to respond to complaints promptly, to undertake proper investigations, and to recommend appropriate measures against companies found to be acting in violation of the OECD Guidelines. The Government shall develop specific rules for companies operating in conflict zones.

Government Response: The Government is considering strategies to consult more formally with stakeholders, more frequently promote the Guidelines with the business community, and clarify the rules and mandate of the NCP as defined by the Guidelines. It will also continue to work with leading-edge think tanks and NGOs to develop tools to guide Canadian companies.

Civil Society Response and Recommendations: The OECD Guidelines lack any mechanism to ensure compliance by companies. Therefore, as a means of preventing and ensuring accountability for environmental and human rights abuses resulting from company activity abroad, the OECD Guidelines are largely ineffectual.

In its response, the Government has failed to understand the lack of credibility of the OECD National Contact Point as an effective investigative and complaints mechanism, and therefore the urgent need to reform it. The Government's intention to "clarify the rules and the mandate of the NCP" can not be seen as effective or sufficient when it is made clear in the same text that the government does believe that the NCP should play any quasi-judicial or investigative role. To give the NCP powers for positive and constructive dialogue with companies without the power to respond to complaints with independent investigations is not constructive.

² See, for example: Gil Yaron, Memorandum Regarding Corporate Disclosure of Material Social and Environmental Information, June 2005; Stratos, Corporate Disclosure and Capital Markets: Demand and Supply of Financially Relevant Corporate Responsibility Information, December 2004; Canadian Institute of Chartered Accountants, Financial Reporting Disclosure About Social, Environmental and Ethical (SEE) Issues, November 2004; Robert Repetto, Silence is Golden, Lead, and Copper: Disclosure of Material Environmental Information in the Hard Rock Mining Industry, July 2004; and, Robert Repetto, et al., Environmental Disclosure Requirements in the Securities Regulations and Financial Accounting Standards of Canada, Mexico and the United States, March 2002. The National Round Table on the Environment and the Economy is also in the process of preparing a "State of the Debate" report that will have direct bearing on these issues.

In practice, too often Canada's National Contact Point (NCP) has acted as a publicity mechanism, promoting the Guidelines, rather than working to ensure meaningful implementation. However, the NCP is not prevented in principle from undertaking a more active role in investigating complaints. Indeed, such investigative powers are essential for the NCP to effectively mediate disputes within the existing voluntary framework. This is particularly urgent in conflict zones. The mandate of the NCP in Canada could thus be expanded to undertake inquiries to follow the leadership of France, Great Britain and Sweden.

The National Contact Point (NCP) should clarify the individuals who could be involved in decision-making on a given case, the criteria that will be used to assess eligibility of complaints, and reporting procedures. Germany and Australia have sought appropriate experts' advice for difficult cases, and have established an "expert advisory board" to guide NCP decision-making processes and review controversial decisions.

The NCP should also introduce time limitations for responses to complaints. In 2004, the average time for all NCPs was 10 months; in Canada, the Burma case has been pending for 2 - 3 years.

Parliament should improve its scrutiny and oversight of the NCP by requiring an annual report to the SCFAIT. For example, the Netherlands circulates an annual report to stakeholders before the NCP's annual meeting.

SCFAIT RECOMMENDATION 4:

...Establish Clear Legal Norms in Canada to ensure that Canadian companies and residents are held accountable when there is evidence of environmental and/or human rights violations associated with the activities of Canadian mining companies.

Government Response: The responsibility to protect and promote human rights rests with States. The Government will therefore not move to enact legislation, but will continue to examine best practices in other countries.

Civil Society Response and Recommendations: In its response, the Government describes the current status of Canadian legal instruments to argue that little can be done to hold Canadian companies to account for activities conducted abroad. It does not, however, address the request on the part of the Standing Committee that the Government establish a legal environment that will facilitate holding Canadian companies and residents to account for environmental and human rights violations.

While numerous cases of abuse have been documented, no Canadian mining company has been legally pursued in Canada for human rights, labour and environmental violations committed outside Canada. The Government should address the barriers that exist in Canadian law in a number of ways:

1. The Canadian Government should consider implementing an up to date, expanded and effective form of the U.S. *Alien Tort Claims* Act for Canada.
2. The Canadian Government should implement legislation along the lines of laws under consideration in the U.S., United Kingdom, Australia and Belgium, which contains provisions for the more effective regulation of the activities of domestic corporations abroad. As a component of this legislation the Canadian Government should require that Canadian corporations operating abroad meet internationally recognized labour, human rights and environmental standards at their operations.³ These standards can be reflected in corporate code legislation as proposed in Belgium.⁴ Furthermore, independent environmental and human rights impact assessments can be required before Government support for a company is provided.
3. The Canadian Government should recognize and reflect in legislation the reality that home states have a responsibility under international law to regulate international corporate activities, particularly in the human rights realm.
4. The Canadian Government should implement conditions that will allow our courts to recognize Canada as an appropriate forum for legal action against Canadian corporations if decisions related to activities abroad were made in Canada. The Canadian Government should also consider changing the conditions for the test of *Forum Non Conveniens*. For example, in Australia, the onus lies on the defendant to prove that the Australian forum is so inappropriate that continuation of the proceedings would be “oppressive and vexatious.” In addition, cases from the United Kingdom suggest that in complex litigation against transnational corporations, access to justice in home state courts due to existence of legal aid and class action procedures may be enough to overcome *forum non conveniens*.
5. The Canadian Government should require all companies listed on a Canadian stock exchange, including foreign-based companies, to comply with environmental and social disclosure requirements on the basis of the effects doctrine – another version of the territoriality doctrine. (See Recommendation 4 above)
6. The Canadian Government should reform taxation policy to withhold incentives from companies complicit in human rights abuses
7. The Canadian Government should hold senior officers of companies responsible for harm they cause through extending the criminal negligence provisions of the Criminal Code to acts in foreign countries (support Bill C-369) and to human rights and environmental transgressions.

³ Sara L. Seck, (October 2005), “Exploding the Myths: Why Home States are Reluctant to Regulate”, Keynote Address for MiningWatch Canada Conference: Regulating Canadian Mining Companies Operating Internationally, on-line http://www.miningwatch.ca/updir/Keynote_SSeck.pdf

⁴ See footnote 1 above.

SCFAIT RECOMMENDATION 5:

Increase and improve services offered to Canadian mining companies operating in developing countries to ensure they a) are aware of their obligations under Canadian and international law...

Government Response: The Government will produce tool kits and training modules to sensitize and help companies better evaluate their operations.

Civil Society Response and Recommendations: Civil society recognizes that significant capacity building is needed within Government and the corporate community to raise the level of understanding of all stakeholders about the human rights impacts of mining projects. Providing knowledge, support and incentives to achieve this goal is important.

However such services are not sufficient to address the problems created by these companies. The “expectations” with regards to human rights that the Government plans to convey in its toolkits must eventually be codified in law. That is to say, promotional activities do not adequately deal with our responsibility to protect human rights.

Moreover, just as incentives encourage action that is desired, disincentives discourage action that is not desired. This report completely lacks any measures to discourage undesirable action. Promotion of voluntary adherence to human rights will not work with the companies that are most likely to be involved in violations. Legal mechanisms are therefore necessary.

SCFAIT RECOMMENDATION 6:

Make the building of governance capacity in the area of corporate social responsibility a priority in its efforts to promote good governance and private sector development in developing countries...

Government Response: The Government will use aid funds to strengthen poverty reduction and meet the needs of developing countries, including support for governance reform.

Civil Society Response and Recommendations: The Government’s commitment to use aid funds for poverty reduction and meeting the needs and priorities of developing countries is welcome. However, the promotion of good governance with host countries is not a straightforward solution to the problem.

While few systematic evaluations of donor governance programming are available, studies show that donor activity in this area has generally not resulted in sustainable improvements in developing country governance. The potential impacts of these programs should not be overestimated. Governance reform and the development of healthy democracies are lengthy, complex processes.

Moreover, the Canadian Government has obligations under international human rights law to fulfill, protect and promote human rights. We have a responsibility to ensure that our actions, including those of our companies, do not undermine the human rights of individuals in other countries.

Also, the Government response makes reference to Natural Resources Canada's participation in the notorious World Bank teams to "contribute to capacity building relating to mining governance". Governments and populations in mineral-rich countries continue to suffer from Natural Resources Canada and Canadian company involvement in the rewriting of developing country mining codes in the interest of mining companies. These practices are a shameful legacy of the Canadian mining sector.

Furthermore, by placing the responsibility for regulating the activities of Canadian companies solely on host countries, this Government response ignores capacity and resource issues at play within these countries. It also ignores the role the Canadian Government and companies have already played in undermining the capacity of many countries to address human rights violations and environmental damage caused by these companies. By playing a key role in the revising of mining codes and investment laws, and through bilateral investment treaties that prioritize investor rights over community rights, the capacity of host countries to hold Canadian companies accountable is increasingly circumscribed.⁵

SCFAIT RECOMMENDATION 7:

Work with like-minded countries to strengthen the OECD Guidelines for Multinational Enterprises... by making compliance with international human rights standards obligatory...

Government Response: The Government will encourage the OECD to closely monitor the work of the UN special representative on human rights and business and, where possible, incorporate emerging conclusions.

Civil Society Response and Recommendations: The OECD Guideline standards with regards to human rights are underdeveloped and fail to address the problem of corporate complicity with human rights violations. The Government's response shows no leadership in this area. Given the strong presence of Canadian companies in the natural resources sector abroad, and the history of human rights violations resulting from these activities, it is critical that Canada work to address this gap.

Canada should initiate a peer review of National Contact Points of OECD countries, and take immediate action to fill in gaps in the Guidelines.

In addition, Canada's National Contact Point should work towards establishing standard rules of evidence for complaints.

⁵ For more details see Campbell, Bonnie, "Regulating Mining in Africa : For Whose Benefit?", Discussion Paper 26, Nordiska Afrikainstitutet, Uppsala (Suède), 2004, 89 pages. Also see Campbell, Bonnie, GRAMA, "The Challenges of Development, Mining Codes in Africa and Corporate Responsibility ", in Elizabeth Bastida, Thomas Walde and Janeth Warden (dir.), *International and Comparative Mineral Law and Policy Trends and Prospects*, Kluwer Law International, La Haye (Pays-Bas), 2004, p. 801-822.

SCFAIT RECOMMENDATION 8:

...Work with like-minded countries to mainstream human rights within the IFIs ...

Government Response: The Government has stated that human rights are integral to the broader issue of improving governance and that the efforts of the International Financial Institutions (IFIs) to reduce poverty, promote development and ensure global financial stability are a crucial complement to international human rights standards.

The Government supports a focus on governance, and the work of the World Bank Institute in this area, and will continue to work with other like-minded countries to ensure that the World Bank and other IFIs to promote good governance.

Civil Society Response and Recommendations: As international and national legal bodies and public institutions, the World Bank Group (WBG), the International Monetary Fund (IMF) and export credit and investment insurance agencies (ECAs) can greatly affect the capacity of member states to fulfill their human rights obligations under international law. The policies and practices of these institutions should not undermine the ability of Governments to meet their international human rights obligations, but rather help Governments to respect, protect and fulfill them.

Despite the widespread use of the term “good governance,” there is little agreement on a common definition. The concept of good governance that is used by the Bank, and promoted by the World Bank Institute, underscores the Bank’s agenda of rapid trade liberalization and structural adjustment. In the mining sector, for example, the Bank has focused on revising Mining Codes to undermine the rights of affected communities, reinforce the rights of companies, and downgrade the royalties countries receive from these projects. This undermines both good governance and human rights. A focus on “good governance” is therefore not necessarily a focus on human rights.

As a member of the Board of Governors and the Executive at the Bank, Canada should ensure that the Bank does not support investments, projects or policies that undermine the ability of member countries to fulfill their own obligations, or that violate Canada’s obligations under international human rights law. In addition, Canada should pressure the World Bank Group to work with the United Nations agencies that specialize in human rights to develop an independent mechanism to undertake human rights impact assessments of the Bank’s operations and lending practices.

The Dutch Executive Director, and the Scandinavian Executive Director at the World Bank, as well as many others within the European Union, are active on human rights issues within the Bank and IMF. Canada should work with these and other Executive Directors to promote human rights concerns within the Bank.

SCFAIT RECOMMENDATION 9:

Conduct an investigation of any impact of TVI Pacific's Canatuan mining ...on the indigenous rights and the human rights of people...

Government Response: The TVI case highlights the complexities of evaluating company activities against standards that may be unclear or inconsistent between Governments. As stakeholders in Canada and abroad are raising concerns about the project, it can be dealt with through the OECD contact point.

Civil Society Response and Recommendations: The Government's response is inadequate in a number of respects. First, it pleads, but does not substantiate, that "complexity" makes an investigation impossible. Second, it fails to recognize that the requests for an investigation by the Canadian Government are supported by stakeholders and directly affected community members and indigenous people in the Philippines. Third, it refers the issue to the OECD National Contact Point (NCP) even though the same SCFAIT report clearly outlines why the current mandate of Canada's OECD NCP is inadequate and needs to be amended.

While the Government has abdicated responsibility for conducting this investigation, Rights and Democracy has responded to a request from local indigenous people and civil society groups in the Philippines and abroad and is currently conducting a Human Rights Impact Assessment of TVI Inc's operations.

The Canadian Government should not ignore the request of Parliament for an investigation into the impacts of TVI Pacific's Canatuan Project on Indigenous Rights, Human Rights and on the Environment - on the basis of the claim that there are "unclear or inconsistent standards" between governments. The suggestion is unfounded. With respect to environmental protection and human rights, an investigation can be made to determine whether this project is meeting Philippine and Canadian standards and the international obligations of both countries.

An independent investigation of the TVI mine is fundamental to the landmark work of the SCFAIT in this case. The Government should promptly carry out an investigation through consultation with a wide range of concerned and affected authorities, organizations and individuals. The Government can incorporate in this investigation the results of a recent Philippine Congressional Inquiry into the activities of TVI Pacific in Canatuan.

Canada has already set a precedent for a similar independent, Government authorized investigation of a Canadian corporation. During his term as Minister of Foreign Affairs, the Honorable Lloyd Axworthy sent an investigative team to Sudan to investigate Talisman Energy's operations. The investigative team had three human rights lawyers, an expert on militarism and field researchers.

SCFAIT RECOMMENDATION 10:

Ensure that it does not promote TVI Pacific Inc. pending the outcome of the investigation.

Government Response: In its dealings with TVI, the government will continue to operate according to standard procedures.

Civil Society Response and Recommendations: As the SCFAIT requested that the Government not promote TVI Pacific Inc. pending the outcome of a Government investigation of TVI Pacific's operations in the Philippines, and as this investigation has not yet occurred, the Government should comply with the recommendation in the SCFAIT report.

A few days after the Government released its response and made clear its intention not to investigate the case, Canadian Ambassador to the Philippines Peter Sutherland was publicly promoting TVI in the Philippines. In the Manila Times, he is quoted as saying "We will support TVI in every ways (sic) we can as we consider this matter as a purely private sector initiative to resolve."

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This analysis is a joint initiative of:

Amnesty International Canada (English Branch)
Canadian Council for International Co-operation
Friends of the Earth – Canada
Halifax Initiative
KAIROS – Canadian Ecumenical Justice Initiatives
MiningWatch Canada
Rights & Democracy