



Department of Foreign Affairs
and International Trade

Ministère des Affaires étrangères
et du Commerce international

Mining in Developing Countries – Corporate Social Responsibility

**The Government's Response to the
Report of the Standing Committee on
Foreign Affairs and International Trade**

October 2005

Canada

Table of Contents

Introduction.....1

Recommendation 1.....4

Recommendation 2.....4

Recommendation 3.....7

Recommendation 4.....8

Recommendation 5.....10

Recommendation 6.....12

Recommendation 7.....13

Recommendation 8.....14

Recommendation 9.....16

Recommendation 10.....16

Introduction

The Government of Canada would like to thank the members of the Standing Committee on Foreign Affairs and International Trade for their work leading to their report, *Mining in Developing Countries and Corporate Social Responsibility*. The report provides a range of important recommendations that the government agrees would help to enhance its capabilities to ensure that Canadian companies have the necessary knowledge, support and incentives they need to conduct their activities abroad in a socially and environmentally responsible manner.

The government promotes and supports Canadian investment activity abroad. Overseas investment by Canadian business, including in the mining sector, benefits Canada in many ways, including through increased exports, jobs created at home, repatriation of profits, and enhanced global competitiveness of the Canadian economy. At the same time, Canadian investment abroad can provide a much needed infusion of capital for developing countries. Development of natural resources is capital intensive, and many poor countries depend on foreign investment to convert their minerals, oil, gas and timber into jobs and revenues that host governments can use for the development of public infrastructure and services. The government expects and encourages Canadian companies investing abroad to conduct their activities in a socially and environmentally responsible manner. The government recognizes that strong social and environmental performance by Canadian companies benefits not only the communities in which Canadian companies operate, but can also make a positive contribution to the long-term success of those companies and to the reputation of Canadian industry as a whole.

The challenge of corporate social responsibility (CSR) is to achieve a sustainable balance of benefits for business, its employees, stakeholders and the communities within which business operates. Canada's prosperity, and that of other nations, is a measure of the success in meeting this challenge. Government plays a key role in establishing the conditions to achieve this balance, but all stakeholders share responsibility for ensuring the creation and sustainable distribution of benefits. Building and maintaining these conditions is a challenge for all societies, particularly developing countries. The absence of these conditions causes some businesses to forgo otherwise beneficial investments, while allowing others to achieve success at the expense of the communities in which they are operating.

This situation is true for all businesses, but in no area is it more evident than for extractive industries. Unlike manufacturing and the service sectors, extractive firms must operate where the natural resources are located. In response to increasing global demand, companies are looking for new sources of natural resources and are increasingly finding them in developing countries where governance mechanisms are often weak and sometimes non-existent. As many developing countries look to the natural resource sector for economic growth, the challenge for these countries and the extractive industries is to ensure that natural resources contribute to alleviating poverty and fostering economic and social development.

This has important implications for Canada and its extractive sector, particularly mineral exploration and mining. Almost 60 percent of the world's exploration and mining companies are listed in Canada. These companies account for over 40 percent of global exploration budgets and for interests in an international portfolio of almost 3,200 mineral properties located in more than 100 countries. There are close to 600 projects in Africa alone. Canadian companies account for \$50 billion of cumulative direct investment around the world, and plan to invest a further \$17 billion in new projects over the next five years. For many communities abroad, these exploration and mining companies are the "face of Canada." Consequently, issues of the type raised by the Committee are likely to increase in both intensity and volume in the coming years as further projects are developed to meet rising global demand for natural resources.

Governments in the United Kingdom, the United States, and other countries, companies in the extractive and energy sectors, and non-governmental organizations, all with an interest in human rights and corporate social responsibility, have developed a set of Voluntary Principles on Human Rights and Security to help guide companies in maintaining the safety and security of their operations within an operating framework that promotes respect for human rights and fundamental freedoms. The question of whether Canada should join the voluntary principles process is under consideration within the Government and no decision has yet been made. The Government of Canada is working with stakeholders to determine what additional steps can be taken to reflect the commitment of Canadian companies to socially responsible practices in international activities.

A greater role for government is warranted in ensuring that Canadian companies have the necessary knowledge, support and incentives to conduct activities abroad in a socially and environmentally responsible manner. However, there are a number of practical policy challenges in translating many of the Committee's recommendations into practice:

- a. The international CSR architecture is still underdeveloped—there is a proliferation of codes and standards and no agreement on how to define CSR or an accepted methodology with which to measure CSR performance.
- b. There is no consensus with respect to the appropriate boundaries between governments, companies and other stakeholders. For companies operating in weak states with little or no capacity to enforce their laws and little in the way of accountability or transparency, a blurring of lines between public and private responsibilities can result. Not only can this perpetuate weak governance, but it can also result in misdirected grievances.

c. There is a need to reconcile the call for global business standards and accountability mechanisms with the primary responsibility of host governments to ensure that companies act in compliance with domestic and international law. The difficulties that face the international community in addressing acts that take place within the jurisdiction of foreign states point to the need for long-term effort in two areas: strengthening host state capacity to regulate the activities that take place within their borders, and identifying how multilateral mechanisms can be strengthened or developed to address the most egregious corporate behaviour.

d. Finally, while the Government of Canada can influence companies that are headquartered in Canada and where officers are subject to domestic law, it has few mechanisms at its disposal with which to influence companies that are headquartered abroad and managed by non-residents but incorporated in Canada or listed on a Canadian stock exchange.

The government has identified a number of activities that it will undertake over the coming months. Some will help to lay the foundations to respond to the above challenges over the long term. Others will help to strengthen existing efforts to ensure that companies have the necessary knowledge, support and incentives to conduct activities abroad in a socially and environmentally responsible manner. To that end, the government proposes that, *inter alia*, it will:

a. Over the course of the next year, in consultation with stakeholders, organize five roundtables across Canada to examine the issues raised in this report;

b. Work with like-minded countries to enhance and clarify the international normative framework for CSR and accountability;

c. Financially and politically support the work of the UN Secretary-General's Special Representative on the issue of human rights and transnational corporations and other business enterprises;

d. 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;

e. Develop guidelines and training modules to assist Canada's Trade Commissioner Service to better advise Canadian companies on strategies to identify, anticipate and manage the impacts of their operations as well as to handle situations where company activities are called into question;

f. Identify opportunities to promote and support transparency and disclosure measures to help investors, consumers, local communities, governments and other stakeholders make informed decisions that recognize and reward Canadian corporate leadership and motivate companies to meet expectations on social and environmental performance.

RECOMMENDATION 1

Put in place a process involving relevant industry associations, NGOs 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: The government is committed to working with stakeholders to ensure that Canadian businesses have the necessary knowledge, support and incentives to conduct activities abroad in a manner that benefits shareholders, employees and communities. The government already supports a number of activities to promote CSR. In responding to the Committee's report, steps have been identified that will strengthen this approach. However, several issues raised in the report are in need of further consideration. **To that end, over the course of the next year and in collaboration with stakeholders, the government will organize a series of five roundtables across Canada to examine the issues raised in this report. At the conclusion of this process, the government will provide the Committee with a report, which presents recommendations for government, NGOs, labour organizations, businesses and industry associations on ways to strengthen approaches to managing the external impacts of international business activities to benefit both businesses and the communities within which they work.**

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: The government agrees that more could be done to ensure that Canadian business has the necessary knowledge, support and incentives to achieve positive financial, social and environmental results in their operations abroad. However, given that the international community is still in the early stages of defining and measuring CSR, particularly with respect to human rights, further developments in this area are necessary before the government could consider committing to the full implementation of this recommendation. **The government will continue to work with like-minded countries and Canadian stakeholders on efforts to clarify a more comprehensive CSR framework against which the performance of mining and other companies can be measured. These efforts will help to strengthen the basis upon which to build practical measures to encourage CSR and reward corporate leadership.**

In its report, the Committee asked that more attention be paid to the rights of Indigenous peoples as currently specified in the United Nations Draft Declaration on the Rights of Indigenous Peoples. The government would like to clarify that states have not yet agreed to or adopted this draft declaration, and many states and Indigenous organizations continue to seek amendments to it. Canada is actively participating with other states and Indigenous representatives from Canada and around the world in the UN Working Group on the Draft Declaration on the Rights of Indigenous Peoples with the objective of adopting a strong and effective declaration.

As the international community moves toward clarifying a comprehensive CSR framework, a number of challenges remain. The existing CSR framework is marked by numerous voluntary codes, moving benchmarks and ongoing debate regarding the appropriate boundaries between governments, business and other stakeholders. Furthermore, while most multilateral CSR initiatives make at least a reference to human rights, a significant gap in the existing framework is the lack of an authoritative statement—akin to the International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work—on business and human rights against which company activity can be measured, or an accepted methodology with which to assess such activity.

An important development on this front took place in April of this year, when the Commission on Human Rights adopted a decision requesting the UN Secretary-General to appoint a Special Representative to, *inter alia*, “identify and clarify standards of corporate responsibility and accountability for transnational corporations and other business enterprises with regard to human rights” and to develop materials and methodologies for undertaking human rights impact assessments of the activities of transnational corporations and other business enterprises. Canada was a co-sponsor of this decision, and will continue to participate in follow-up by the UN to the work of the Special Representative. **The government welcomed the appointment of John Ruggie as the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises, and will identify further opportunities to support his efforts—both financially and politically—as he works to fulfill his mandate.**

In fulfilling his mandate, the Special Representative will draw on ongoing work in several areas, including with respect to the development of human rights impact assessments. While efforts to define a human rights impact assessment are still at relatively early stages, projects by organizations such as Rights and Democracy and International Alert, supported in part by CIDA and the Human Security Program respectively, have done important work in adapting existing assessment procedures to include such issues as human rights and conflict and will provide a useful foundation upon which the Special Representative can develop his work.

The Government of Canada will continue also to pursue this work through domestic channels to reinforce progress in integrating the consideration of CSR issues into business development services and the due diligence processes associated with project support. For example, EDC has taken steps to address human rights issues such as involuntary resettlement, compensation, public consultation and Indigenous peoples, as part of its commitment to conduct environmental reviews and political risk assessments. These commitments were recently reviewed, resulting in a new draft *Environmental Policy* that reflects recommendations from the Office of the Auditor General arising from her 2004 audit of EDC's Environmental Review Directive and other environmental review processes; changes to the OECD Common Approaches on Environment and Officially Supported Export Credits; and EDC's own experience in reviewing environmental and social impacts.

EDC will continue to work with DFAIT (International Trade), DFAIT (Foreign Affairs) and other stakeholders to identify, and where possible, incorporate emerging best practices with respect to human rights into ongoing due diligence processes. EDC will also continue to work in concert with other export credit agencies under the auspices of the OECD to develop tools and policies that complement the human rights agenda. This will include drawing upon the experience of the World Bank institutions in this area.

Additionally, CSR has been integrated into the roles and responsibilities of the Trade Commissioner Service. **DFAIT (International Trade), with assistance from DFAIT (Foreign Affairs), NRCan and other stakeholders, will develop further guidelines and training to help staff at Canada's missions abroad. This training will help staff to advise Canadian business on managing the external impacts of their business operations, as well as on how to deal with situations where the social impact of a business operation is called into question (this activity is further elaborated in the government response to Recommendation 5).**

The Committee recommends linking the provision of government services to businesses, including export and project financing, to their adherence to CSR standards to provide an incentive for improved corporate performance. In addition to the lack of clearly defined standards to measure CSR performance, the government notes that the bulk of Canadian investment abroad takes place without the assistance of government services. Therefore, the impact of such measures would be limited. Given this dynamic, the government recognizes the importance of exploring other means to encourage CSR.

For example, investors, consumers and other stakeholders are beginning to recognize the financial risks and opportunities of environmental and social issues, and are paying close attention to how companies respond to these emerging challenges. This is generating an increased demand for transparency and disclosure of company information on their environmental and social performance. Such market-based demands reward corporate leadership, while encouraging business to meet market expectations. The Government of Canada has played a role in promoting transparency and disclosure by Canadian companies through such initiatives as the Online Sustainability Reporting Toolkit. **The**

Government of Canada will continue to strengthen its approach to increasing corporate transparency and reporting on social and environmental performance through support for and participation in international reporting initiatives (e.g. the Global Reporting Initiative), monitoring the approaches adopted in other jurisdictions, as well as working with other stakeholders to identify opportunities for the Government of Canada to enhance its role in this area.

RECOMMENDATION 3

Strengthen or develop new mechanisms for monitoring the activities of Canadian mining companies in developing countries, and for dealing with complaints alleging socially and environmentally irresponsible conduct and human rights violations. Specifically, the government must clarify, formalize and strengthen the rules and the mandate of the Canadian National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises and increase the resources available to the NCP 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 will develop specific rules for companies operating in conflict zones.

Government Response: The Government of Canada expects Canadian multinational enterprises to respect fully the laws and policies of the countries in which they operate. While the government is able to keep abreast of some Canadian private-sector activity through the Trade Commissioner Service both in Canada and abroad as well as through information from stakeholders, the primary responsibility for monitoring company compliance with local laws rests with host governments themselves.

As the Committee notes in its report, the Government of Canada deals with complaints related to the OECD Guidelines for Multinational Enterprises through our NCP. As a signatory to the OECD Guidelines, Canada established its NCP to promote the Guidelines, handle inquiries and contribute to the resolution of problems that pertain to matters covered by the Guidelines.

It is clear that the drafters of the OECD Guidelines did not intend the NCP to play an investigative or quasi-judicial role in settling disputes. Rather, the intention was to establish an NCP-led process to facilitate a positive and constructive dialogue between multinational enterprises (MNEs) and those affected by their operations with a view to finding solutions to problems. It is the government's view that the non-binding, voluntary nature of the Guidelines has significantly increased the ability of like-minded governments to build greater international support than would have been possible had the intention been to build an instrument that was binding.

The Government of Canada agrees that more can be done in Canada to strengthen the implementation of the OECD Guidelines for MNEs. Strategies under consideration include establishing a mechanism to consult more formally with stakeholders, more systematic and frequent promotion of the Guidelines with the business community, and clarifying the rules and mandate of the NCP.

Finally, while the current state of norm development with respect to CSR does not as yet lend itself to the development of a complete set of international rules governing the activities of companies operating in conflict zones or weak states, the Government of Canada has been active in supporting projects aimed at developing conflict-specific tools and guidance. **To that end, we will continue to work with leading-edge think tanks, NGOs and companies, as well as through the OECD to develop research-based tools and guidance targeted at companies operating in states at risk.**

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 primary responsibility for the promotion and protection of human rights and the environment rests with states. States implement their international obligations relating to human rights and the environment through a variety of measures, including through the adoption of domestic legislation.

In Canada, a number of legislative and regulatory mechanisms hold Canadian companies and residents accountable when there is evidence of environmental offences and/or violations of human rights legislation associated with the activities of Canadian businesses. For example, federal and provincial human rights legislation regulates the conduct of private employers in each jurisdiction and prohibits certain discriminatory practices. In addition, federal and provincial environmental legislation establishes various environmental offences that apply to Canadian businesses. Canadian criminal law may also apply in cases where there is conduct that is of the nature of a criminal offence. The Canadian Criminal Code provides for criminal liability for corporations as well as individuals. In 2004, the Criminal Code was amended to better ensure that organizations could be held accountable when they commit criminal offences. Corporate bodies (and other organizations) can now be found criminally liable for criminal offences as a result of the criminal actions of a wider variety of “senior officers” at all levels of the corporation than was previously the case: both those with operational authority (those who oversee day-to-day operations of the organization or a part thereof) and those with executive authority, such as directors or officers.

Canadian law does not generally provide for extraterritorial application. Extending the application of Canadian legislation abroad could raise several problems, including conflict with the sovereignty of foreign states; conflicts where states have legislation that differs from that of Canada; and difficulties with Canadian officials taking enforcement action in foreign states. Canada has objected to the extraterritorial application of other states' laws and jurisdiction to Canadians and Canadian businesses where there is no sufficient nexus to those states or where the action undermines Canadian legislative authority or Canadian policy in the area.

However, Canadian law may provide for extraterritorial application in cases where there is a sufficient nexus to Canada or where the international community has agreed (for example, by treaty) on the need for such jurisdiction. For example, while Canadian criminal law generally applies to offences committed in Canada, there are, however, two cases in which Canada will extend criminal jurisdiction on an extraterritorial basis. The first is where there is a factual link between Canada and the offence. While much of the activity may have occurred outside Canada, if a significant portion of the acts that constitute the offence took place in Canada, there may be a "real and substantial link" to Canada, which would provide Canada with a jurisdictional basis for prosecution. In determining whether there is such a link, the court must consider the facts that took place in Canada (at the corporate headquarters, for example, in the case of a Canadian company operating outside Canada) and also whether, in the circumstances, it would offend international comity if Canada were to exercise jurisdiction.

Second, Canadian criminal jurisdiction has been extended to cover certain offences, such as terrorist offences and torture committed by public officials, that the international community has determined are so important to prosecute that a country will have jurisdiction to prosecute, regardless of where the acts took place, on the basis of criteria established by treaty (such as the nationality of the offender or the victim). The most far-reaching example of this type of extraterritorial jurisdiction is the Crimes against Humanity and War Crimes Act (CAHWCA), which permits the charging of persons who commit genocide, crimes against humanity, and war crimes inside or outside Canada. The CAHWCA also allows for superiors to be held criminally liable for failing to prevent or to report the commission of such crimes by persons under their effective authority and control. The CAHWCA provides for jurisdiction over such crimes whether the crime was committed in Canada or abroad. The definition of "persons" in the CAHWCA is the same as that in the Criminal Code, and thus includes corporations. Charges may therefore be laid against individuals acting in their own capacity, corporations, and corporate actors such as directors and officers if they are the "directing minds" behind corporate decisions that amount to an offence under the Act. There remains some debate, however, as to whether the relevant crimes can, as a matter of international law, be committed by corporations. This legal ambiguity is relevant as the CAHWCA's definitions of war crimes, crimes against humanity and genocide refer to their international law definitions.

Legal remedies to address environmental or human rights violations can also arise from civil rather than criminal law. To the extent that crimes or wrongs, such as damage to the environment or personal injuries, committed outside Canada also constitute claims of the sort cognizable as a tort, civil law remedies **may** be available to the foreign plaintiff in Canadian courts. As such, Canadian corporations or their directors and employees **may** be pursued in Canada for their wrongdoing in foreign countries. Generally, if the defendant is a Canadian corporation incorporated under the laws of Canada, the Canadian court located in the jurisdiction of the defendant would be competent. The plaintiff does not need to be a Canadian resident or citizen. However, Canadian courts follow the common law doctrine of *forum non conveniens*, a discretionary principle allowing a court to decline to hear a matter where there is a stronger connection to a foreign jurisdiction. In deciding whether to apply this doctrine, Canadian courts will look at such things as the place where the harm or damage occurred, the location of the witnesses, which law applies, etc. Therefore, Canadian judges may decide that they should not exercise jurisdiction over a particular claim if another court is better placed to hear the matter.

Another piece of legislation through which extraterritorial jurisdiction is exercised is the United Nations Act, which implements Canada's obligations under the Charter of the United Nations. That Act allows for the making of regulations to implement Security Council resolutions made pursuant to Article 41 of the United Nations Charter. Those resolutions often require states to prohibit their nationals from engaging in the supply of arms and military technical assistance to particular countries, but have included a restriction on the import of diamonds and timber from a country. The regulations implementing the resolutions generally apply to Canadian individuals and corporations, either inside or outside Canada.

The government will continue to examine the best practices of other states attempting to address the accountability of businesses for activities conducted abroad.

RECOMMENDATION 5

Increase and improve services offered to Canadian mining companies operating in developing countries to ensure that they:

- a. are aware of their obligations under Canadian and international law and the law of the country where they operate as well as international corporate social responsibility norms and human rights standards;***
- b. are aware of the local political, social, and cultural context in which they intend to operate;***

c. have the capacity to conduct their activities in a socially and environmentally responsible manner, in particular by developing and promoting a specific toolkit to help Canadian companies evaluate the social, environmental and human rights impact of their operations.

Government Response: Helping Canadian mining companies, along with other Canadian companies, to succeed abroad, both for the business and the communities within which they operate, is a key component of the services offered by the government. The government will continue to work with Canadian business to increase their awareness of, and capability of dealing with, the potential impacts of their business operations. **DFAIT (International Trade) and DFAIT (Foreign Affairs) will collaborate with other government departments, industry associations and NGOs to develop further and disseminate a set of tools and training modules to sensitize and help companies better evaluate the social, environmental and human rights impacts of their operations. Specifically, the government will:**

- a. Develop a corporate social responsibility information package to be given to Canadian businesses operating in high-risk countries. The package will help to make companies aware of their obligations under applicable Canadian and local law and of the expectations of the Government of Canada with respect to their observance of existing international CSR norms and human rights standards;**
- b. Develop and deploy tool kits and training modules aimed at enhancing Trade Commissioner expertise in providing information and advice about socially responsible corporate behaviour. DFAIT (International Trade), in cooperation with DFAIT (Foreign Affairs) and NRCan, will work to ensure the development of training modules that address the corporate social responsibility challenges in the extractive industry. Toolkits and training will improve the capability of individual Trade Commissioners to effectively advise Canadian firms operating, or considering operating, in at-risk business environments, and will help to ensure that they are made aware of the political, social and cultural context of the business environment;**
- c. Prepare information material, toolkits and training modules aimed at Canadian businesses operating or considering operating in risky business environments where their operations could lead to negative social, environmental, labour or human rights impacts. The information would be designed to help companies evaluate risks and manage issues when they arise.**

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, as outlined in the April 2005 International Policy Statement.

Government Response: As the Committee notes, *Canada's International Policy Statement* identifies good governance and private-sector development as priorities for Canadian official development assistance. **In these areas, Canada will invest in initiatives that make a strong contribution to poverty reduction and ensure an effective role for Canada in responding to the needs and priorities of developing countries. Canada will help build governance capacity in developing countries through the creation of core public institutions and strengthening of technical and managerial capabilities, including measures to facilitate socially and environmentally responsible private-sector activity through more effective regulations, greater transparency and accountability, and initiatives to combat corruption among public and private officials.**

To date, Canada has supported diverse interventions in developing countries that build governance capacity, encourage public-private dialogue and collaboration, and raise awareness of standards and best practices related to social, environmental, human rights and gender equality issues, and corruption. Moving forward, Canada may support capacity building in specific sectors (e.g. mining, oil, textiles, etc.) depending on the development partner country's priorities consistent with its poverty reduction and relevant sectoral development strategies. **The government will support sustainable and responsible enterprise approaches to promoting entrepreneurship in developing countries, and encourage innovative partnerships involving public, private and voluntary players to address local development challenges.**

NRCan has also been present on World Bank teams contributing to capacity building relating to various aspects of mining governance, particularly with respect to taxation and the distribution of the benefits from mining, Indigenous peoples' rights and land ownership. Officials actively participated in the World Bank's Extractive Industries Review (EIR) through the scoping/planning meeting and membership in the Advisory Group that helped the Eminent Person draft the final report. With CIDA, NRCan has also been active in regions such as Guyana to strengthen government institutions with respect to environmental management, as well as in Brazil to develop multi-stakeholder approaches and institutional capacity building in the area of mine rehabilitation policy and related technologies.

Additionally, Canada helped to create and is the secretariat for the Intergovernmental Forum on the Sustainable Development of Mining, Minerals and Metals. Its objective is to promote the contribution of the mining, minerals and metals sector to sustainable development by enhancing local capacity for governance. As the sole global policy forum for the mining sector and with a focus on developing countries, the Forum provides a unique venue to bring governments together with the private sector and others to examine

sectoral issues and identify or develop best practices in dealing with them. The Forum can then make recommendations relating to the social, environmental and economic development of developing countries.

Given that weak governance is the most significant barrier to ensuring that business operations in developing countries maximize positive developmental results, and mitigate any negative impacts, Canada will continue to promote good governance more broadly through democratization, human rights and conflict prevention. Such initiatives will complement targeted efforts to build the capacity of core public institutions and officials in areas related to private-sector activity, and support for measures to encourage sustainable and responsible enterprise in developing countries.

In addition, improved governance within business can play a positive role in helping them understand, avoid or mitigate the negative effects of business operations—particularly in areas where the public sector lacks governance capacity. Canada, through measures discussed elsewhere in this response, can assist business in dealing with these challenges.

RECOMMENDATION 7

Work with like-minded countries to strengthen the OECD Guidelines for Multinational Enterprises, first by clearly defining the responsibilities of MNEs with regard to human rights, second by making compliance with international human rights standards obligatory, and third, by working toward establishing common rules of evidence.

Government Response: In developing the OECD Guidelines for Multinational Enterprises, the OECD has drawn on existing instruments such as the ILO’s Declaration on Fundamental Principles and Rights at Work, the Rio Declaration and the OECD Convention against Bribery of Foreign Public Officials. However, as highlighted in the government’s response to Recommendation 2, no similar authoritative statement on business and human rights exists. While the government agrees that it is necessary to clarify the responsibilities of MNEs with regard to human rights, in its view the OECD is not the best place for such clarification to take place.

As the UN body with the primary responsibility for addressing human rights issues and establishing international human rights standards and a membership drawn from all geographic regions, including both developed and developing countries, the UN Commission on Human Rights (UNCHR) is a more appropriate body to examine these issues. As mentioned in the response to Recommendation 2, the UNCHR’s adoption in April of this year of a decision requesting the UN Secretary-General to appoint a Special Representative to, *inter alia*, identify and clarify standards of corporate responsibility and accountability for transnational corporations and other business enterprises with regard to human rights, signals its intention to begin addressing this gap. Canada was a co-sponsor of this decision and will continue to participate in follow-up by the UN to the work of the

Special Representative. **The government, in collaboration with like-minded countries, will encourage the OECD to closely monitor and contribute to the work of the Special Representative and, where possible, incorporate emerging conclusions into the ongoing work of the Investment Committee.**

In the meantime, the Guidelines offer an important vehicle to influence corporate conduct as it relates to human rights, and can be used more effectively in this regard. They can be used as a tool to engage companies and NGOs on human rights issues and in identifying best practices, especially in countries where the human rights protections of host governments are weak. The NCPs can offer a forum for dialogue between companies and stakeholders. Furthermore, regular NCP meetings offer an important opportunity for NCPs to share best practices and engage in peer learning with respect to how human rights issues can best be handled within the existing framework of the Guidelines.

However, the government does not agree with the Committee's recommendation that the human rights aspects of the Guidelines should be made obligatory and that NCPs should work toward establishing common rules of evidence. Any movement toward making the Guidelines binding or more legalistic in nature would be contrary to the original intent of the drafters. The Guidelines are a negotiated instrument, and it was clearly the intention of the negotiating parties that the instrument be non-binding in its application to business. The non-binding nature of the Guidelines has significantly increased the ability of like-minded governments to build greater international support for them than would have been possible to achieve if the Guidelines were an obligatory instrument. **That said, there is value in using the regular NCP meetings at the OECD to share best practices and to engage in peer learning with respect to gathering information and mediating disputes. The OECD is taking steps to achieve these goals, and Canada will strongly support these efforts.**

RECOMMENDATION 8

Work with like-minded countries to integrate and mainstream international human rights standards in the work of international financial institutions (IFIs) such as the World Bank and the International Monetary Fund—as outlined, for example, in the final report of the EIR—to ensure that projects and investments funded by IFIs conform to international human rights standards.

Government Response: Canada believes that the human rights agenda is integral to the broader issue of improving governance and that the efforts of the IFIs to reduce poverty, promote development and ensure global financial stability are a crucial complement to the goals expressed in international human rights standards. While generally speaking, most IFIs do not have human rights included explicitly in their mandates, it is widely recognized that their work does contribute to the promotion and protection of human rights both through their individual mandates and in their collaboration with other institutions that do have explicit human rights mandates (e.g. the UN).

The World Bank has publicly expressed its belief that “creating the conditions for the attainment of human rights is a central and irreducible goal of development.” The Bank’s holistic approach to development also reinforces human rights within the broader context of its country and sectoral programming. During discussions of the management’s response to the Extractive Industries Review, Canada encouraged the Bank to pay greater attention to governance issues, and emphasized the benefits of strengthening the consultation process and engaging in an ongoing review of the Bank Group’s social safeguards. Canada also supported the World Bank’s recent updating of its Operational Policy on Indigenous Peoples to reflect the principle that there be a process of free, prior and informed consultation with the affected Indigenous peoples’ communities at each stage of a project to fully identify their views and ascertain their broad community support of the project.

In addition, the World Bank’s capacity development arm, the World Bank Institute, works with other units in the World Bank Group to support countries in improving their capacity to address governance and anti-corruption issues. This work directly addresses human rights issues such as civil and political rights and effective and appropriate public participation in governing (voice and participation). For example, the Institute assesses countries’ performance in terms of key governance components such as voice and participation, rule of law and control of corruption, among others.

The government will continue to work with other like-minded countries to ensure that the World Bank and other IFIs, including the Regional Development Banks, promote good governance, including human rights. The government will continue to reinforce the need for meaningful implementation of the Bank’s social and environmental safeguards and other elements of management’s response to the EIR. Additionally, an NRCan senior official has been appointed to the World Bank’s Extractive Industries Advisory Group, which informs the World Bank about best practices in the extractive industries and provides advice on how the Bank can be more effective in addressing the concerns of stakeholders.

The International Monetary Fund (IMF) does not fund projects or investments, but it contributes to the promotion of human rights through its support for macroeconomic stability and its encouragement of constructive dialogue with civil society. IMF programming, like that of CIDA and the other IFIs, is increasingly aligned with country-owned development strategies, such as the Poverty Reduction Strategy Papers. This approach encourages a strong participatory process involving civil society. **Canada will continue to promote country ownership of development strategies so that the priorities of developing country citizens are addressed.**

RECOMMENDATION 9

Conduct an investigation of any impact of TVI Pacific's Canatuan mining project in Mindanao on the Indigenous rights and the human rights of the people in the area and on the environment, and table a report on this investigation in Parliament within 90 days.

Government Response: The case of Canadian company TVI Pacific Inc.'s operations in the Philippines is illustrative of the difficulties Canadian companies can face when operating in foreign jurisdictions, and also highlights the complexities of evaluating company activities against standards that may be either unclear or inconsistent between governments. The project is located in an area of contested Aboriginal land claims, where anti-government groups are armed and active. The Government of the Philippines has indicated publicly that the project is in compliance with all local requirements. At the same time, some stakeholders in Canada and abroad continue to question the impact of the Canatuan mining project on the local community and have called on the Canadian government to intervene.

As the Committee has already noted, the government deals with complaints pertaining to the OECD Guidelines for Multinational Enterprises through our NCP. **The NCP remains open to receiving a formal submission regarding the conduct of TVI Pacific Inc. in the Philippines. Upon receipt of such a submission and in accordance with the procedures recommended by the OECD and outlined on the NCP Web site (www.ncp-pcn.gc.ca/resolve-en.asp), the government will consider facilitating a dialogue among the relevant parties with a view to resolving the issues raised.**

If the parties involved do not reach agreement through an NCP-facilitated process, the NCP will issue a statement and make recommendations as appropriate on the implementation of the OECD Guidelines.

RECOMMENDATION 10

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

Government Response: The government is committed to facilitating outcomes that are good for business as well as the communities in which they operate. As such, the government maintains that working with companies to help manage the impacts of their operations in the communities around them is more productive than non-engagement, and accordingly will continue to work with TVI Pacific Inc. **In any public or private dealings with TVI Pacific Inc., the government will continue to adhere to standard policies and guidelines, which call on officials to be factual, objective, even-handed and to exercise caution and due diligence.**

Furthermore, as indicated in the government response to Recommendation 2, the government will develop further guidelines and training to help staff at Canada's missions abroad advise Canadian business on managing the external impacts of their business operations, as well as on how to deal with situations where the social impacts of a business operation are called into question.

