

# **DIRTY BUSINESS, DIRTY PRACTICES**

## How the Federal Government Supports Canadian Mining, Oil and Gas Companies Abroad

**Canadian Network on Corporate Accountability**

Ottawa, May 2007

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## Acknowledgements

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The CNCA is a civil society network that is focused on the human rights and environmental impacts generated by the overseas operations of Canadian extractive companies. Network members share a concern about the role of the Canadian government in promoting the overseas investments of these companies.

Mark Foss was the principal author of this report. Catherine Coumans (MiningWatch Canada) and Karyn Keenan (Halifax Initiative Coalition) provided additional content. The final text was edited by Ian Thomson (KAIROS) and Fraser Reilly-King (Halifax Initiative Coalition). Katia Gianneschi (CCIC) provided additional comments.

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Design and assembly by Craig Davey.

### Members of the CNCA

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Amnesty International Canada (English Branch)  
[www.amnesty.ca/](http://www.amnesty.ca/)

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Africa-Canada Forum  
[www.ccic.ca/e/003/acf.shtml](http://www.ccic.ca/e/003/acf.shtml)

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Canada Tibet Committee  
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Canadian Auto Workers (CAW)  
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Canadian Labour Congress (CLC)  
[canadianlabour.ca/](http://canadianlabour.ca/)

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Development and Peace  
[www.devp.org/](http://www.devp.org/)

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Entraide Missionnaire  
[www.entraide-missionnaire.com/](http://www.entraide-missionnaire.com/)

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Friends of the Earth (Canada)  
[www.foecanada.org/](http://www.foecanada.org/)

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GlobalAware Independent Media  
[www.globalaware.org/](http://www.globalaware.org/)

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Halifax Initiative Coalition  
[www.halifaxinitiative.org/](http://www.halifaxinitiative.org/)

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International Criminal Defence Attorneys Association (ICDAA)  
[www.aiad-icdaa.org/index.jsp](http://www.aiad-icdaa.org/index.jsp)

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Inter Pares  
[www.interpares.ca/](http://www.interpares.ca/)

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KAIROS-Canadian Ecumenical Justice Initiatives  
[www.kairoscanada.org/](http://www.kairoscanada.org/)

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MiningWatch Canada  
[www.miningwatch.ca/](http://www.miningwatch.ca/)

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The North-South Institute  
[www.nsi-ins.ca/](http://www.nsi-ins.ca/)

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Rights and Democracy  
[www.dd-rd.ca/](http://www.dd-rd.ca/)

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Steelworkers Humanity Fund  
[www.uswa.ca/program/content/humanity.php](http://www.uswa.ca/program/content/humanity.php)

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United Church of Canada  
[www.united-church.ca/](http://www.united-church.ca/)

# Executive Summary

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**Large-scale mining, oil and gas extraction is dirty business.** Extractive projects often pit investors, extractive companies and national governments against communities and indigenous groups who seek to protect land and resources that support their livelihoods. In their quest for profit, some governments and extractive companies cut corners on environmental protection and are complicit in human rights violations.

Canadian extractive companies have been implicated in controversies around the world—from California to Sudan to Guatemala. Yet the Government of Canada provides support to the extractive sector, often without assurances to the public that a project will not harm the environment or violate human rights. In some cases, the government has supported projects after well-documented human rights and/or environmental abuses have been revealed.

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There are at least eight ways that the Government of Canada supports Canadian extractive companies working in foreign countries:

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## 1 Financing

Export Development Canada (EDC) has provided significant amounts of funding to extractive companies through loans and guarantees (insurance). In 2005, it provided \$2.54 billion in total commercial loans and guarantees to the energy sector. Now EDC is looking to expand into China's extractive sector, a country with one of the worst mining safety records in the world and a long track record of human rights abuses.

## 2 Insurance

As a member of and shareholder in the Multilateral Investment Guarantee Agency (MIGA), Canada indirectly provides insurance for questionable projects—including those managed by Canadian companies. In October 2004, Canada's Anvil Mining Ltd. provided logistical support to the army in the Democratic Republic of Congo to help suppress a small-scale rebel uprising. According to the UN, the military committed a number of serious human rights violations including alleged summary executions of civilians. The next year MIGA provided \$13.6 million in insurance for the project to RMB International (Dublin) Ltd. and Anvil Mining Ltd.

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**3**

## Political Support through Embassies

Canadian ambassadors have promoted the interests of Canadian mining companies to generate business in their host countries. For example, on November 4, 2004, a national newspaper in Guatemala released a survey that indicated 95.5 percent of people living near the Canadian-owned Marlin mine opposed the operation. On the same day, in the same newspaper, the Canadian ambassador to Guatemala, James Lambert, published an article citing the benefits of mining for some 200 indigenous communities in Canada. The article cemented the perception among Guatemalan civil society that the current ambassador was more interested in promoting Canadian mining interests in the region than human rights.

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## Financial Support through Embassies

For more than a decade, Canada's TVI Pacific Inc. has intimidated and harassed an indigenous group and local community in the Philippines, sometimes through the use of paramilitary security forces. These forces have been implicated in blockading the free movement of community members, even on roads outside the concession site, forcibly evicting families on the concession site, and destroying houses. They have also fired shots at community members who oppose the mining project. TVI Pacific received funding from the Canadian Embassy in Manila for a development project that benefited women whose immediate families were TVI employees. Although the Canadian Embassy was aware of the violence and human rights abuses associated with the mining project, and the controversy caused by the TVI directed development project, it twice extended financial support for the income-generating project.

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## Diplomatic Intervention in Legal Cases

In 2001, the Presbyterian Church of Sudan filed a suit in a U.S. court under the *Alien Tort Claims Act* claiming that Talisman Energy Inc. was involved in crimes such as ethnic cleansing, enslavement, kidnapping and rape in Sudan. In 2004, the Canadian Embassy in Washington submitted a diplomatic letter to the Federal District Court via the U.S. Department of State. The letter, which pushed to have the suit rejected, called the case "an infringement in the conduct of foreign relations by the Government of Canada" that would have a "chilling effect" on Canadian firms trying to use trade to support the peace process.

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**6**

## Mining Code Reforms

The Canadian International Development Agency provided technical and financial support through its Energy, Mining and Environmental Project to redraft Colombian mining legislation. The revised 2001 Mining Code (Law 685/01), which was adopted without consultations with potentially affected indigenous communities, creates investment conditions that are extremely favourable to foreign companies. The Code weakened a number of existing environmental and social safeguards and created financial incentives including dramatically reduced mining royalties and taxes.

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## 7 Trade Rules

By supporting investor-state provisions in regional trade agreements, the Canadian government discourages the development of legislation that protects the environment and public welfare. In 2003, the State of California passed legislation that required metallic mining sites near indigenous sacred areas to be restored to pre-mining conditions through backfilling. Glamis Gold Ltd., a Canadian company acquired by Goldcorp Inc. in 2006, owned a mine in California that was affected by the new legislation. Glamis sued the U.S. government under the North American Free Trade Agreement, demanding \$50 million in compensation for anticipated loss of profit as a consequence of the new regulatory provisions. The case continues.

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## 8 Team Canada Trade Missions

In 1998, Manhattan Minerals Corp. joined the Team Canada trade and investment mission to Latin America. The following year, the Peruvian government granted mining concessions in the town of Tambogrande to Manhattan, overriding legal provisions that prohibit such development near international borders. The local community rallied to protest the gold mine, holding a referendum in which virtually all voters opposed the mine. The referendum, which played a vital part in halting the project, has since been replicated by other communities threatened by mining projects.

These Fact Sheets highlight several ways that the Government of Canada supports Canadian extractive companies working in foreign countries. It also describes the due diligence that the government undertakes before deciding whether to support an investment for some (but not all) forms of support and explains why this assessment process is often inadequate. Finally, it identifies steps that the Government of Canada could take to improve corporate practice in the mining, oil and gas sectors.

Due diligence is a financial term that describes the research and analysis done by a company before entering into a business transaction. Here, the term refers to the assessment process undertaken by government before supporting a proposed project.

The process seeks to:

1. ascertain the potential impact of the project;
2. establish whether the project complies with relevant standards;
3. identify necessary provisions to avoid (or mitigate) harm to persons, property or the environment.

# Financing

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The Government of Canada finances extractive companies by providing:

- **Loans** through Export Development Canada (a Crown corporation) and the International Finance Corporation (a multilateral agency that is part of the World Bank Group);
  - **Equity financing** (i.e. shares) through the Canada Pension Plan Investment Board;
  - **Equity financing** through the Canadian International Development Agency's Canada Investment Fund for Africa;
  - **Funding for feasibility studies** through the CIDA Industrial Cooperation Program (the commercial arm of the Canadian International Development Agency).
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## Export Development Canada

Export Development Canada (EDC), a federal Crown corporation that promotes Canadian trade abroad, is the primary source of public financing for Canadian exports and overseas private sector investment. Like other export credit agencies, EDC provides government-backed loans, guarantees and insurance to domestic corporations for overseas projects. EDC backing often helps corporations leverage additional private-sector capital for their projects.

In 2005, EDC provided more than \$57 billion in finance and risk management services, which included support for Canadian overseas extractive projects.<sup>1</sup> In that year, \$2.54 billion (or 13 percent) of EDC's total commercial loans and guarantees were made to the energy sector.<sup>2</sup> Between 2004 and 2005, of the projects submitted to EDC for its consideration, the Crown corporation determined that 14 fell within Category A, that is, they had "potential significant adverse impacts." Of these, seven were in the mining, oil and gas sectors.<sup>3</sup> In 2006, of seven Category A projects either approved or under consideration, six were in mining, oil and gas.<sup>4</sup>

### Respect for the Environment

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#### *Due Diligence*

Over the years, EDC has supported a number of highly problematic mining, oil and gas projects. These include the following:

- the OK Tedi copper mine in Papua New Guinea that severely contaminated 1,300 km<sup>2</sup> of productive forest land and 1,200 km of fertile river bank with acid producing and metal leaching mine waste;<sup>5</sup>
- the Marcopper mine in the Philippines, where 200 million tonnes of metal laden mine tailings were dumped into a wide, shallow bay destroying the livelihoods of 12 fishing communities and, according to the Philippine government, leading to lead contamination of children from villages on the bay;<sup>6</sup>
- the Kumtor gold mine in Kyrgyzstan, where a company truck spilled its load of sodium cyanide into the Barskoun River, raising the cyanide concentration in the water to 50,000 times above permissible levels.<sup>7</sup> Thousands of local residents were evacuated and several deaths were reported.<sup>8</sup>

In 2001, following public and political pressure, including harsh criticism from the Auditor General of Canada, EDC developed a framework to assess the environmental impact of those projects that it is asked to support. Subsequent reviews have led to improved environmental policies and greater disclosure. However, EDC still lacks sufficient levels of transparency to ensure accountability. The corporation does not disclose its due diligence process for proposed projects, or reveal the specific standards that a project is deemed to have met. Moreover, EDC does not require companies to consult with communities that would be affected by proposed investments.

## Respect for Human Rights

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### *Due Diligence*

While EDC has made some progress on the environment, it falls drastically short in terms of human rights. EDC purports to “promote the protection of internationally recognized human rights.”<sup>9</sup> Indeed, as a public institution, it has an obligation to do so.<sup>10</sup> However, current policies at EDC do not require it to assess the potential impacts of proposed investments on human rights. Instead, EDC focuses on how human rights violations could adversely affect a client company’s investment.<sup>11</sup>

This is particularly worrisome since EDC has made public its plans to explore options for expanding into the extractives sector in China. The Chinese mining industry is widely regarded as one of the worst in the world on worker safety and environmental performance. In 2004 alone, 6,000 Chinese mine workers died as a result of unsafe practices.<sup>12</sup> The Chinese government is also well known for its poor record on human rights.

## Good Practices

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Britain’s Export Credit Guarantee Department (ECGD) expects projects to comply with six core UN human rights treaties and eight International Labour Organisation conventions when ratified by the host country. The ECGD reports that it assesses proposed projects against these standards as part of its basic human rights screening process.<sup>13</sup> The British Parliament also prohibits ECGD from supporting projects that involve forced or child labour.<sup>14</sup>

In addition, several institutions have created, or are developing, models for screening the human rights impacts of proposed investments:

- The Danish Institute for Human Rights has developed a tool for companies that takes only 40 hours to implement;<sup>15</sup>
- Canada’s Rights and Democracy is developing a tool for communities to assess the impact of projects on human rights;<sup>16</sup>

- The International Finance Corporation, the private sector lending arm of the World Bank, in collaboration with the International Business Leader's Forum, is developing a Human Rights Impact Assessment for companies.<sup>17</sup>

EDC could draw on this work to improve its due diligence regarding human rights.

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## Canada Pension Plan Investment Board

The Canada Pension Plan Investment Board (CPPIB) controls one of the largest investment funds in the country. More than half of CPPIB assets are held in publicly-traded stocks of Canadian and foreign corporations, including a significant number of extractive companies, such as those highlighted below. In fact, at least \$3.4 billion of the fund is invested in Canadian mining companies.<sup>18</sup> Some of these companies' projects have caused serious environmental damage and have negatively impacted the quality of life in neighbouring communities.

Case Study

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### Gabriel Resources in Romania

CPPIB holds an \$8 million equity interest in Gabriel Resources Ltd.,<sup>19</sup> which hopes to develop the Rosia Montana mine—a project that has generated fierce opposition across Europe. The area's great archaeological significance, which includes historic Roman temples, led more than 1,000 scholars to voice objections to the mine.<sup>20</sup> In neighbouring Hungary, the Minister of the Environment has called the project a serious threat and is advocating for its abandonment.<sup>21</sup> Mine development would require the relocation of 2,000 people, at least half of whom refuse to leave.<sup>22</sup> Environmental concerns include the clear cutting of forests and the contamination of the water table.<sup>23</sup>

Case Study

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### IAMGOLD in Mali

CPPIB has a \$38 million equity interest in IAMGOLD Corp., the company that operates the Sadiola gold mine in Mali.<sup>24</sup> Two villages were displaced in order to make way for the mine. The vast majority of relocated agriculturalists and pastoralists, who did not possess title to their lands, have seen their livelihoods and quality of life diminish. Replacement lands are less fertile and some are located far from the villages. Water resources are scarce. Deforestation caused by the mine has degraded natural areas used by locals. Mine workers live in poor conditions and locals report a rise in prostitution, alcoholism, drug use and the spread of HIV/AIDS since the arrival of gold mining.<sup>25</sup>



## Ivanhoe Mines in Burma

CPPIB holds \$32 million worth of shares in Ivanhoe Mines Ltd., the company that operates the Monywa mine in Burma.<sup>26</sup> Burma is ruled by a repressive military junta. The government, which is accused of committing egregious human rights violations, is the subject of international sanctions. In 1990, opposition leader Aung San Suu Kyi handily won Burma's first multi-party elections in 30 years. The junta refused to relinquish control and has detained Aung San Suu Kyi for years. In 1991 she was awarded the Nobel Peace Prize.<sup>27</sup> Since 1996, Ivanhoe Mines has invested over \$90 million in a 50-50 joint venture with the ruling junta to develop the Monywa mine.<sup>28</sup> The company reports that it consulted with the Canadian government before initiating business with the military regime.<sup>29</sup>

### Respect for Human Rights

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#### *Due Diligence*

In October 2005, the CPPIB replaced its "Social Investing Policy" with a new "Policy for Responsible Investing." As part of the latter, the CPPIB now engages with companies to encourage improved performance and disclosure regarding their environmental, social and governance practices. However, the CPPIB does not screen its investments either to exclude companies or particular sectors with poor environmental and/or human rights performance or to preferentially invest in companies with strong records in these areas.

### Good Practices

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Other countries have responded to criticisms about the investment policies of their state-sponsored pension programs.<sup>30</sup>

In France, investments through the Fonds de Réserve pour les Retraites (FRR) must reflect "certain shared values that promote economically, socially and environmentally sustainable development." The FRR has added four investment guidelines for fund managers: a) respect for international law and basic worker rights; b) job development through better management of human resources; c) corporate environmental responsibility; and d) respect for consumers and fair trade in local markets.

The Norwegian Government Pension Fund has two key operating principles: 1) ensure that its wealth (which derives largely from oil exports) benefits future generations through investments that create a "sound return" in the "long-term," and 2) ensure that the Fund takes no "unacceptable risk" by investing in companies with human rights violations or a record of environmental degradation.<sup>31</sup>

## Further Information

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Britain's Export Credit Guarantee Department  
[www.ecgd.gov.uk/](http://www.ecgd.gov.uk/)

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Canada Pension Plan Investment Board  
[www.cppib.ca/](http://www.cppib.ca/)

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Danish Institute for Human Rights  
[www.humanrights.dk/](http://www.humanrights.dk/)

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Export Development Canada  
[www.edc.ca/english/index.htm](http://www.edc.ca/english/index.htm)

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Fonds de Réserve pour les Retraites  
[www.fondsdereserve.fr/spip.php?article22](http://www.fondsdereserve.fr/spip.php?article22)

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Norwegian Government Pension Fund  
[www.norgesbank.no/nbim/pension\\_fund/](http://www.norgesbank.no/nbim/pension_fund/)

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Rights and Democracy  
[www.dd-rd.ca/site/home/index.php?lang=en](http://www.dd-rd.ca/site/home/index.php?lang=en)

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## Insurance

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Many extractive companies seek insurance to protect their interests in developing countries against risks such as war, civil disturbance, expropriation and breach of contract. The Government of Canada provides insurance to Canadian extractive companies through Export Development Canada (see Fact Sheet 1) and the Multilateral Investment Guarantee Agency (MIGA), the insurance arm of the World Bank Group.

Established in 1988, MIGA's mission is to promote foreign direct investment in developing countries to support economic growth, reduce poverty and improve people's lives. The Agency provides non-commercial guarantees (insurance) for private sector investments made in developing countries.

According to its annual report, the Agency provided \$1.2 billion in guarantees to support 33 new projects in 2005. With its 5,225 shares in MIGA, Canada is the eighth largest member. Canada also has a representative on the Board of Directors, which decides what projects to support.

### Case Study

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## Anvil Mining in the Democratic Republic of Congo

Since 2002, Anvil Mining Ltd. has operated the Dikulushi copper and silver mine in the Democratic Republic of Congo (DRC). Anvil, a Canadian company with its head office in Australia, is listed on both the Toronto and Australian stock exchanges.

In 2004, the DRC was still emerging from years of brutal conflict. Tensions remained high and the government lacked control over large tracts of the country. In September, the MIGA Board of Directors approved political risk insurance for the Dikulushi mine.

The following month Anvil provided logistical support to the Armed Forces of the Democratic Republic of the Congo (FARDC) to help suppress a small-scale rebel uprising in Kilwa, a nearby town. The FARDC used company resources to carry out a number of human rights abuses, including alleged extrajudicial killings of civilians. The United Nations estimates that 100 people were killed during the military offensive.<sup>1</sup>

In 2005, after these human rights abuses occurred, MIGA's contract was issued for \$13.3 million in risk insurance to RMB International (Dublin) Ltd. and Anvil Mining Ltd.<sup>2</sup> Following a hard-hitting media report on Australian television about the Kilwa incident, the World Bank directed its Office of the Compliance Advisor Ombudsman (CAO) to audit MIGA's support for Anvil Mining's project. Among its findings, the audit revealed that:

- MIGA did not explicitly consider whether the project might influence the dynamics of conflict or whether security provision for the project could indirectly lead to adverse impacts on the local

community.

- MIGA essentially takes on faith that a client will implement the Voluntary Principles on Security and Human Rights—a code of conduct developed for the extractive industries by governments, civil society and industry. MIGA did not fully understand the implications for its client of implementing the Voluntary Principles and did not assess whether its client had the capacity to do so.

Weaknesses in MIGA’s treatment of conflict and security issues were raised by the CAO in a 2002 review of MIGA. Recommendations to address these concerns were not fully addressed by MIGA in its due diligence for the Dikulushi project.<sup>3</sup>

On December 12, 2006, criminal proceedings were initiated in the DRC against three former Anvil Mining employees, one of whom is Canadian. They were charged with complicity in war crimes, namely having “voluntarily failed to withdraw the vehicles placed at the disposal of the 62nd Brigade in the context of the counter offensive of October 2004 to recapture the town of Kilwa” and of having “knowingly facilitated the commission of war crimes.” The trial had reached no conclusions at the time of writing.

#### Further Information

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Anvil Mining Ltd.  
[www.anvilmining.com/](http://www.anvilmining.com/)

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Congo Trial Focuses Attention on Mining Industry  
[www.voanews.com/english/archive/2006-12/2006-12-14-voa13.cfm?CFID=49890412&CFTOKEN=37466706](http://www.voanews.com/english/archive/2006-12/2006-12-14-voa13.cfm?CFID=49890412&CFTOKEN=37466706)

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The Kilwa Incident: an Australian company implicated in a massacre  
[abc.net.au/4corners/special\\_edts/20050620/](http://abc.net.au/4corners/special_edts/20050620/)

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Kilwa Trial Chronicle  
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Multilateral Investment Guarantee Agency  
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Office of the Compliance Advisor Ombudsman for IFC & MIGA  
[www.cao-ombudsman.org/](http://www.cao-ombudsman.org/)

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Voluntary Principles on Security and Human Rights  
[www.voluntaryprinciples.org/](http://www.voluntaryprinciples.org/)

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## Political Support through Embassies

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On at least two occasions, Canadian ambassadors have publicly promoted Canadian mining companies whose operations were opposed by local communities. In principle, Canada expects its companies to comply with the highest standards of corporate social responsibility. In practice, it supports companies that have been associated with violence and violations of indigenous rights.

### Case Study

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#### Glamis Gold in Guatemala<sup>1</sup>

In 2002, Glamis Gold Ltd. (acquired by Goldcorp Inc. in 2006) began development of the Marlin gold mine in Guatemala. Marlin is the first major mining investment in Guatemala since neo-liberal reforms were introduced to attract global mining capital. The project is an important test case for the mining industry, which hopes to profit from the new frontier that Guatemala represents.

On November 4, 2004, a national newspaper released a survey indicating that 95.5 percent of people living near the Marlin mine, the vast majority of whom are indigenous, opposed the project. On the same day, in the same newspaper, then Canadian ambassador to Guatemala, James Lambert, published an article citing the benefits of mining to some 200 indigenous communities in Canada.

The following month, the Canadian embassy co-sponsored a National Mining Forum to showcase the mining industry. These events cemented the perception among Guatemalan civil society that the embassy was more interested in promoting Canadian mining interests than human rights.

On January 11, 2005, after a 40 day-blockade, hundreds of residents who opposed the Marlin mine engaged in a stand-off with 700 military and 300 police. One resident was killed and 10 others (including police) were injured. In June of the same year, indigenous communities in Sipacapa, an area affected by the project, held referenda on mining. An overwhelming majority voted against mineral development.

In press reports, Ambassador Lambert defended his controversial article. He argued that the embassy has a mandate to promote both Canadian interests and Canadian values such as sustainable development, and that “the two are not mutually contradictory... Far from being damaging, the fact that we have real interests at stake in Guatemala enhances our credibility locally.”<sup>2</sup>

## TVI Pacific in the Philippines

Calgary-based TVI Pacific Inc., through its Philippine affiliate, TVI Resource Development (Phils.) Inc., is currently operating a mining concession on indigenous land on the island of Mindanao, amidst a decades-old violent civil insurgency. TVI has been the focus of highly public and sustained opposition by local indigenous Subanon (who hold Ancestral Domain Claim to the area), as well as by local small scale miners, downstream Christianized farmers and coastal Muslim fishing communities. Opposition to the mine has been raised a number of times by indigenous representatives at the UN level and has been highlighted by United Nations special rapporteur Rudolfo Stavenhagen. There have been violent conflicts involving TVI personnel and security forces.

All of these issues are well-known at the Canadian Embassy in Manila, as are charges of forced evictions at the site. Nonetheless, Ambassador Peter Sutherland has maintained a high profile, public relationship with the company and has remained publicly supportive of the mining project.<sup>3</sup> Following recommendations by the Parliamentary Standing Committee on Foreign Affairs and International Trade that the Government of Canada investigate the activities of TVI in the Philippines and not “promote” the company until the investigation is completed, Ambassador Sutherland was quoted in the Philippine media as saying “[w]e will support TVI in every ways (sic) we can as we consider this matter (local opposition to TVI) as a purely private sector initiative to resolve.”<sup>4</sup>

### Further Information

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Canadian Embassy in Guatemala

[geo.international.gc.ca/latin-america/guatemala/menu-en.asp](http://geo.international.gc.ca/latin-america/guatemala/menu-en.asp)

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The Divisive ‘Demonstration Impact’ of the Marlin Mine

[www.halifaxinitiative.org/updir/Glamis-Final.pdf](http://www.halifaxinitiative.org/updir/Glamis-Final.pdf)

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Glamis Gold Ltd.

[web.archive.org/web/20050207103328/www.glamis.com/corporate/index.html](http://web.archive.org/web/20050207103328/www.glamis.com/corporate/index.html)

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Goldcorp Inc.

[www.goldcorp.com/](http://www.goldcorp.com/)

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Office of the Compliance Advisor Ombudsman for IFC & MIGA

[www.cao-ombudsman.org/](http://www.cao-ombudsman.org/)

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TVI Pacific Inc.

[www.tvipacific.com/](http://www.tvipacific.com/)

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TVI Resource Development (Phils.) Inc.

[www.tvicanatuan.com/](http://www.tvicanatuan.com/)

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### Endnotes

1. All facts and figures taken from: Halifax Initiative Coalition. “The World Bank and Extractive Industries—The Divisive ‘Demonstration Impact’ of the Marlin Mine.” June 2005.  
Available online at <http://www.halifaxinitiative.org/updir/Glamis-Final.pdf>
2. Patterson, Kelly. “Canadian mine strikes lode of unrest.” *Ottawa Citizen*, April 26, 2005.
3. See TVI Resource Development (Phils.) Inc. [www.tvicanatuan.com](http://www.tvicanatuan.com) and TVI Pacific Inc. [www.tvipacific.com](http://www.tvipacific.com) for references to high profile visits by Ambassador Sutherland to the mine site, statements of praise for the mine by the Ambassador, and introductions by the Ambassador of TVI executives to the President of the Philippines (accompanied by pictures).
4. del Rosario-Malonzo, Jennifer & IBON Features. “Dousing the Embers of Hope: Canadian Government Fails to Address Mining

## Financial Support through Embassies

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Through the Canada Fund for Local Initiatives (also known as the Canada Fund), embassies can provide money in their host countries for initiatives managed by local community groups.<sup>1</sup>

### Case Study

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### TVI Pacific in the Philippines

Calgary-based TVI Pacific Inc. (TVI), through its Philippine affiliate, TVI Resource Development (Phils.) Inc., is currently operating a mining concession on indigenous land on the island of Mindanao, amidst a decades-old violent civil insurgency. TVI has been the focus of highly public and sustained opposition by local indigenous Subanon (who hold Ancestral Domain Claim to the area), as well as by local small scale miners, downstream Christianized farmers and coastal Muslim fishing communities. Opposition to the mine has been raised a number of times by indigenous representatives at the United Nations level and has been highlighted by UN special rapporteur Rudolfo Stavenhagen. There have been violent conflicts involving TVI personnel and security forces, and forced evictions at the site.

Documents received through an access to information request show that in 2001, CIDA-INC (CIDA's commercial arm) rejected a request for funding from TVI because of "gun fire by a TVI security guard." In 2002, an ambush of a TVI vehicle left 13 people dead. Surprisingly, just one year later, CIDA funded a development project by channeling money from the embassy-directed Fund for Local Initiatives Program directly through TVI, in contradiction of the Fund's guidelines.<sup>2</sup> In October and November of 2004, a delegation of local people raised concern both at the Canadian Embassy in Manila and at CIDA headquarters in Gatineau that the money was being used by TVI to divide the community, thereby creating further conflict. Nonetheless, the funding for the project was renewed early in 2005. Furthermore, although CIDA has required that other development projects in Mindanao implement Peace and Conflict Impact Assessments, there was no such requirement for TVI, in spite of evidence of violent conflict associated with the mine.

Even after the issue was brought before the Parliamentary Standing Committee on Foreign Affairs and International Trade (SCFAIT) in March 2005, the project funding was continued. The parliamentary committee requested a moratorium on government promotion of TVI pending the outcome of a government investigation of the company's activities—a recommendation the government rejected.

### Human Rights and the Environment

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#### *Due Diligence*

Clear evidence of violent local conflict deterred CIDA-INC from investing in the TVI mine. The embassy had



long been aware of community and indigenous opposition to the mine. Nonetheless, the embassy used the discretionary funds in the Canada Fund for Local Initiatives to support TVI's development project.

## Good Practices

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Canada has set a precedent for an independent, government-authorized investigation of a Canadian corporation. As Minister of Foreign Affairs, the Honourable Lloyd Axworthy sent a team to Sudan to investigate the operations of Talisman Energy Inc. The team had three human rights lawyers, an expert on militarism and field researchers.

### Further Information

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Canada Fund for Local Initiatives

[www.acdi-cida.gc.ca/CIDAWEB/acdicida.nsf/En/EMA-218132433-PLZ](http://www.acdi-cida.gc.ca/CIDAWEB/acdicida.nsf/En/EMA-218132433-PLZ)

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Canadian Embassy in Manila

[geo.international.gc.ca/asia/manila/menu-en.asp](http://geo.international.gc.ca/asia/manila/menu-en.asp)

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SCFAIT 14<sup>th</sup> report: Mining in Developing Countries—Corporate Social Responsibility

[cmte.parl.gc.ca/cmte/CommitteePublication.aspx?COM=8979&Lang=1&SourceId=178650](http://cmte.parl.gc.ca/cmte/CommitteePublication.aspx?COM=8979&Lang=1&SourceId=178650)

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Moving Beyond Voluntarism: A Civil Society Analysis of the Government Response to the SCFAIT 14<sup>th</sup> report "Mining in Developing Countries—Corporate Social Responsibility"

[www.ccic.ca/e/docs/002\\_humanitarian\\_2005-11\\_scfait\\_mining\\_csr\\_analysis.pdf](http://www.ccic.ca/e/docs/002_humanitarian_2005-11_scfait_mining_csr_analysis.pdf)

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Presentation by Catherine Coumans to the 38<sup>th</sup> Parliament, 1st Session: Subcommittee on Human Rights and International Development of SCFAIT

[www.miningwatch.ca/index.php?/TVI/Hansard\\_050323](http://www.miningwatch.ca/index.php?/TVI/Hansard_050323)

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TVI Pacific Inc.

[www.tvipacific.com/](http://www.tvipacific.com/)

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TVI Resource Development (Phils.) Inc.

[www.tvicanatuan.com/](http://www.tvicanatuan.com/)

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### Endnotes

1. Until recently, this fund was administered by the Canadian International Development Agency and is now administered by Foreign Affairs and International Trade Canada.
2. Approximately CAD 31,000 was coursed through TVI Pacific Inc. according to access to information documentation obtained from the Canadian Embassy in Manila.

## Diplomatic Intervention in Legal Cases

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In addition to providing financial and political support for Canada's extractive companies, Foreign Affairs and International Trade Canada has also intervened in legal cases concerning corporate accountability.

### Case Study

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### Talisman Energy in Sudan

In 1998, Talisman Energy Inc., a Canadian extractive company, obtained a 25 percent stake in the Greater Nile Oil production and pipeline project in Sudan. Human rights groups had long argued that the Government of Sudan used oil revenues from the project to buy arms to fight the civil war.

In 2000, a Canadian government-sponsored team (the Harker Mission) concluded that "there has been, and probably still is, major displacement of civilian populations related to oil extraction. Sudan is a place of extraordinary suffering and continuing human rights violations, even though some forward progress can be recorded, and the oil operations in which a Canadian company is involved add more suffering."

In 2001, the Presbyterian Church of Sudan filed a suit in a U.S. court under the *Alien Tort Claims Act* claiming that Talisman was involved in crimes such as ethnic cleansing, enslavement, kidnapping and rape in Sudan. In 2003, a U.S. Federal District Judge dismissed Talisman's objections that the case was outside U.S. jurisdiction. That same year, Talisman sold its stake in the Sudan project.<sup>1</sup>

On two occasions Canada lobbied the U.S. to halt the case.<sup>2</sup> In 2004, as the Federal District Court continued to assess the merits of the lawsuit, the Canadian Embassy in Washington submitted a diplomatic letter to the court via the U.S. Department of State. The letter called the case "an infringement in the conduct of foreign relations by the Government of Canada" that would have a "chilling effect" on Canadian firms engaging in the Sudan. It argued that Canadian firms would think twice about working in Sudan since they would fear similar lawsuits in U.S. courts. A second Federal District Judge dismissed the objections, and allowed the case to proceed.<sup>3</sup>

The case was dismissed in September 2006 for lack of admissible evidence.

## Further Information

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### Canadian Embassy in Washington

[geo.international.gc.ca/can-am/washington/menu-en.asp](http://geo.international.gc.ca/can-am/washington/menu-en.asp)

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### Human Security in Sudan: The Report of a Canadian Assessment Mission

[dsp-psd.communication.gc.ca/Collection/E2-198-2000E.pdf](http://dsp-psd.communication.gc.ca/Collection/E2-198-2000E.pdf)

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### Talisman Energy Inc.

[www.talisman-energy.com/](http://www.talisman-energy.com/)

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### U.S. District Court, Southern District of New York

[www.nysd.uscourts.gov/](http://www.nysd.uscourts.gov/)

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## Endnotes

1. BBC News. "Talisman pulls out of Sudan." March 10, 2003. Available online at <http://news.bbc.co.uk/2/hi/business/2835713.stm>
2. Patterson, Kelly. "Building a Track Record of Tragedy: MPs Urge Government to Think Twice before Backing Controversial Mines." *Ottawa Citizen*, October 3, 2005.
3. Neumeister, Larry. "Judge lets Talisman genocide case proceed despite warnings from Canada, U.S." *The Canadian Press*, March 26, 2005. Available online at <http://www.cbc.ca/cp/business/050831/b083136.html>

## Mining Code Reforms

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Many developing countries have reformed their mining codes by rolling back environmental and social protections, eliminating royalties and creating tax holidays for business. These measures create a more favourable environment for foreign investment. However, they also raise concerns about governments' diminished ability to protect human rights and the environment, as well as the reduced benefit that accrues to host governments and populations from these investments.

Canada has provided technical assistance to support these reforms in two ways: directly, through the Canadian International Development Agency; and indirectly, through the World Bank.

### Case Study

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#### Direct Support in Colombia

Through its Energy, Mining and Environmental Project, the Canadian International Development Agency (CIDA) provided technical and financial support to redraft Colombian mining legislation. The revised 2001 Mining Code (Law 685/01), which was adopted without consulting with potentially-affected indigenous communities, created investment conditions that are extremely favourable to foreign companies. The Code weakened a number of existing environmental and social safeguards and created significant financial incentives including dramatically reduced mining royalty and tax rates.<sup>1</sup>

Indigenous groups in Colombia argue that the lack of consultation on this new legislation contravened International Labour Organization Convention 169, which was ratified by Colombia and formally adopted into national legislation in 1991. They argue that the Code places limitations on the concept of indigenous territory that violate the Colombian Constitution. Moreover, the legislation eliminates prior requirements that local communities receive economic benefits deriving from mining activity.<sup>2</sup>

### Case Study

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#### Indirect Support in Africa

The World Bank has played an important role in encouraging countries—by some accounts over 100—to “reform” their mining legislation in order to attract foreign investment. The result has been a dramatic increase in foreign direct investment in this sector in many areas of the world that previously had not experienced such activity, particularly in developing countries.<sup>3</sup>

The World Bank has promoted African mining code reform since the 1980s. As part of a World Bank-sponsored reform process, Ghana lowered income taxes and royalty rates, and created other financial incentives to encourage private sector investment in the mining industry in 1986. The ensuing mining boom benefited foreign investors over local communities. Guinea changed its laws in 1995 to make private companies, rather than the state, responsible for environmental protection. A 2001 study found a dramatic deterioration of air quality around Guinean mines and massive deforestation, among other environmental problems.

As a member of the World Bank, Canada has supported these reforms, which benefit Canadian companies. Tanzania is a case in point. By the early 1990s, Tanzania was generating about US\$30 million in official gold exports; artisanal miners were responsible for the bulk of this wealth. In the mid-1990s, mining code reforms encouraged Canada's Sutton Resources Ltd. to acquire exploration rights in the country. Artisanal miners were removed from the concession area with little or no compensation, as they were considered to be illegal squatters. By 2001, Canada's Barrick Gold Corp. had bought the Bulyanhulu concession and expected annual profits of US\$60-75 million. By "reforming" its mining sector, the Tanzanian government gave up US\$60-75 million in gold exports and a source of livelihood for at least 30,000 small-scale miners. In return, it received annual royalties of \$5 million, an estimated \$10 million per year in local goods and services, and 600 local jobs.<sup>4</sup>

#### Further Information

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Barrick Gold Corp.  
[www.barrick.com/](http://www.barrick.com/)

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Canadian International Development Agency  
[www.acdi-cida.gc.ca/index-e.htm](http://www.acdi-cida.gc.ca/index-e.htm)

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GRAMA: Research into mining activities in Africa  
[www.unites.uqam.ca/grama/](http://www.unites.uqam.ca/grama/)

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The Profits of Extermination: How U.S. Corporate Power is Destroying Colombia  
[www.commoncouragepress.com/index.cfm?action=book&bookid=322](http://www.commoncouragepress.com/index.cfm?action=book&bookid=322)

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Sutton Resources Inc.  
[web.archive.org/web/19991014020727/www.suttonresources.com/s/CorporateProfile.asp](http://web.archive.org/web/19991014020727/www.suttonresources.com/s/CorporateProfile.asp)

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World Bank  
[www.worldbank.org/](http://www.worldbank.org/)

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1. Ramirez, F.. "State Terrorism and the Dirt Business of Transnational Mining in Colombia." In North, L. et al. *Community Rights and Corporate responsibility: Canadian Mining and Oil Companies in Latin America*, 2006.
2. Weitzner, Viviane. "Through Indigenous Eyes: Toward Appropriate Decision-Making Processes regarding Mining On or Near Ancestral Lands." The North-South Institute, September 2002.  
Available online at <http://www.nsi-ins.ca/english/pdf/synenfinal.pdf>
3. Extractive Industries Review. "Striking a Better Balance: Volume 1: The World Bank Group and Extractive Industries. The Final Report of the Extractive Industries Review." December 2003.  
Available online at [http://iris36.worldbank.org/domdoc/PRD/Other/PRDDContainer.nsf/All+Documents/85256D240074B56385256FF6006843AB/\\$File/volume1english.pdf](http://iris36.worldbank.org/domdoc/PRD/Other/PRDDContainer.nsf/All+Documents/85256D240074B56385256FF6006843AB/$File/volume1english.pdf)
4. All references on Tanzania gold mining are from Paula Butler. "Race Shadow: Liberalization of Investment." 2001.

## Trade Rules

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Through multilateral, regional and bilateral trade agreements, the Government of Canada has created unprecedented rights for the private sector. These new rights were first established in the North American Free Trade Agreement (NAFTA).

The investor-state provisions found in Chapter 11 of NAFTA provide companies with the right to sue signatory governments if they take regulatory action that diminishes the company's expected earnings. Under this greatly expanded interpretation of expropriation, governments must compensate investors if they can demonstrate that their income will be adversely affected.

These provisions create stability for cross-border investors. They also create a regulatory chill, making governments reluctant to adopt legislation that provides greater environmental or social protections but that may require the private sector to incur additional costs. Governments fear that companies could challenge these regulatory provisions on the grounds that they diminish the profitability of their investments. If a corporation wins a Chapter 11 challenge, the taxpayers of the losing NAFTA nation must foot the bill. Chapter 11-style provisions have become standard in most bilateral and multilateral trade agreements, including the new Canada–Central American Free Trade Agreement.

### Case Study

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## Glamis Gold in California

Glamis Imperial Corp., a subsidiary of Canadian-owned Glamis Gold Ltd., sought to dig three large pits for its proposed Imperial mining project in California. The pits were to be located near a spiritual trail sacred to the Quechua Indian Tribe.

In 2000, under the Clinton Administration, the U.S. Department of Interior issued new mining standards that protected the sacred sites. Glamis launched a lawsuit in the U.S. District Court of Reno, Nevada, to challenge the new standards.<sup>1</sup> Ultimately, the Bush Administration reversed the Clinton policy, opening the door to mining in sacred sites.

In 2003, the State of California passed legislation that required metallic mining sites near sacred indigenous sites to be restored to pre-mining conditions through backfilling. Glamis argued that these requirements made its proposed mine economically unviable.<sup>2</sup> Glamis invoked NAFTA's Chapter 11 to sue the U.S. Government, demanding reimbursement for land it purchased (\$15 million) and for anticipated loss of profit (\$35 million).<sup>3</sup> The case continues.

In 2006, Canadian company Goldcorp Inc. acquired Glamis.<sup>4</sup>

## Further Information

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### Glamis Gold Ltd.

[web.archive.org/web/20050207103328/www.glamis.com/corporate/index.html](http://web.archive.org/web/20050207103328/www.glamis.com/corporate/index.html)

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### Glamis Gold Ltd. v. United States of America

[www.state.gov/s/l/c10986.htm](http://www.state.gov/s/l/c10986.htm)

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### Goldcorp Inc.

[www.goldcorp.com/](http://www.goldcorp.com/)

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### NAFTA Chapter 11: Corporate Cases

[www.citizen.org/trade/nafta/CH\\_\\_11/](http://www.citizen.org/trade/nafta/CH__11/)

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2. Friends of the Earth & Oxfam. “Glamis Gold: A Case Study of Investing in Destruction.” 2004.  
Available online at [http://web.archive.org/web/20040728184659/http://www.oxfamamerica.org/pdfs/glamis\\_en.pdf](http://web.archive.org/web/20040728184659/http://www.oxfamamerica.org/pdfs/glamis_en.pdf)
3. Glamis Gold Ltd. “Notice of Arbitration under NAFTA, Glamis Gold vs. The Government of the United States.” December 9, 2003.  
Available online at <http://www.state.gov/documents/organization/27320.pdf>
4. Gray, John. “Gold handshake: Goldcorp’s Glamis takeover.” *Canadian Business*, September 11-24, 2006.

## Team Canada Trade Missions

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Team Canada trade missions promote foreign direct investment by bringing Canadian extractive companies in direct contact with high-level government officials in foreign countries. In some cases, these trade junkets pave the way for lucrative mining, oil and gas contracts that threaten local communities.

### Case Study

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#### Manhattan Minerals in Peru

In 1998, a little-known mining junior called Manhattan Minerals Corp. joined a Canadian government trade and investment mission to Latin America. The following year, the corrupt Fujimori government in Peru granted the company mining concessions totaling 10,000 hectares. Because the concession area was close to the Ecuadorian border, Manhattan required a number of special government approvals. The company never acquired the requisite approvals but forged ahead with its exploration activity.

Manhattan's concession included the town of Tambogrande in the San Lorenzo Valley. This area, an oasis along Peru's barren coast, had been transformed into a major agricultural centre through a World Bank-financed irrigation system. It now produces 40 percent of the country's limes and 38 percent of its mangoes. The local community, which depends on agriculture for its livelihood, was concerned about scarce local water resources and the contamination caused by gold mining. The municipality held a referendum on mining—the first of its kind in the world—that was monitored by international observers. Virtually all voters opposed the mine.<sup>1</sup> The Tambogrande referendum, which played a vital part in halting the project, has since been replicated by other communities threatened by mining projects.<sup>2</sup>

#### Further Information

##### Manhattan Minerals Corp.

[web.archive.org/web/20050205172946/www.manhattan-min.com/s/InformationRequest.asp](http://web.archive.org/web/20050205172946/www.manhattan-min.com/s/InformationRequest.asp)

##### Unearthing the Truth: Mining in Peru

[www.christian-aid.org.uk/indepth/502peru/index.htm](http://www.christian-aid.org.uk/indepth/502peru/index.htm)

##### What is a Team Canada Mission?

[www.tcm-mec.gc.ca/tcm-en.asp](http://www.tcm-mec.gc.ca/tcm-en.asp)

#### Endnotes

1. Unless otherwise noted, references are from: Christian Aid. "Unearthing the Truth: Mining in Peru." February 2005. Available online at [http://www.christianaid.org.uk/indepth/502peru/peru\\_report.pdf](http://www.christianaid.org.uk/indepth/502peru/peru_report.pdf)
2. Esquel, Argentina; Sipacapa and Huehuetenango, Guatemala.