

Statement by the Australian National Contact Point - Specific Instance – Australian Multinational Mining Company

Canberra, 8 March 2013

1. On 1 February 2013, the Australian National Contact Point for the OECD Guidelines for Multinational Enterprises (the ANCP) received a request to consider a ‘specific instance’ complaint. The request was made by a representative of a community organisation from the Eastern Cape region of South Africa (the complainant) alleging that an Australian mining company had breached various provisions of the OECD Guidelines for Multinational Enterprises (the Guidelines).
2. Specifically, it is alleged that the Australian mining company has failed to comply with provisions in the following chapters of the Guidelines:
 - Chapter II: General Principles;
 - Chapter III: Disclosure;
 - Chapter IV: Human Rights;
 - Chapter V: Employment and Industrial Relations;
 - Chapter VI: Environment; and
 - Chapter VII: Combating Bribery, Bribe Solicitation and Extortion.
3. The Guidelines aim to develop a sustainable approach to business conduct and promote an atmosphere of mutual confidence between multinational enterprises and the societies in which they operate. The Guidelines provide voluntary principles and standards for responsible business in a variety of areas including human rights, anti-corruption, taxation, labour relations, environment, information disclosure and consumer protection. The ANCP process is designed around bringing disputing parties together to enable them to resolve their differences.
4. Consistent with published procedures for handling specific instances the ANCP commenced an initial assessment as to whether the matters raised warranted further consideration under the Guidelines.
5. Through the initial assessment process the following are taken into account:
 - whether the matter is material and substantiated;
 - the level of documentary evidence available; and
 - the relevance of applicable laws and procedures.

6. As the Australian company involved in this complaint is a multinational enterprise and falls within the scope of the Guidelines, the ANCP took steps to develop an understanding of the issues involved, including research into local procedures. The ANCP ensured that both parties were consulted throughout the initial assessment process.
7. In undertaking the initial assessment of this matter the ANCP:
 - 7.1. considered the information provided by the complainant and the company involved;
 - 7.2. exchanged emails with both parties and discussed the matter by telephone at length with the complainant and the South Africa-based CEO of the company seeking clarification and substantiation of issues raised.
8. At this time the ANCP is not able to accept the matter as a specific instance complaint under the Guidelines. This decision is based on the following:
 - 8.1. While the focus of the ANCP process is to facilitate mediation between parties, the complainant has clearly stated that the local community is not interested in mediation. In particular the complainant has stated that the community which they represent *“are not interested in any mediation process that carries with it even the remotest possibility of accommodation between the mining company and local residents.”* The complainant maintained this position throughout discussions undertaken as part of the initial assessment.
 - 8.2. Based on the information provided or available to the ANCP, the ANCP was not able to verify the assertions made by the complainant.
 - 8.3. Furthermore, it is understood that the application for mineral exploration rights is currently being considered by the relevant local authorities and that the local community is able to participate in the associated consultation process.