

Statement by the Australian National Contact Point

Specific Instance – G4S Australia Pty Ltd

10 June 2015

On 23 September 2014 the Australian National Contact Point (the ANCP) and United Kingdom National Contact Point (UKNCP) for the OECD Guidelines (the Guidelines) for Multinational Enterprises received a request to consider a specific instance complaint.

The complaint was made jointly by the Human Rights Law Centre (HRLC), an Australian non-government organisation (NGO) and Rights and Accountability in Development (RAID), a United Kingdom NGO. The complaint was also made public, including the identity of the company involved, by the HRLC and RAID. Details of the complaint are available here: <http://hrlc.org.au/complaint-of-serious-human-rights-abuses-lodged-against-g4s-australias-former-security-contractor-on-manus/>.

The complainants alleged that G4S Australia Pty Ltd, a private company incorporated in Australia and a wholly owned subsidiary of G4S Plc, breached the Guidelines. As the complaint pertains to the operations of G4S Australia Pty Ltd (G4S) rather than its parent company, the ANCP, rather than the UKNCP, has considered the complaint.

The complaint

The complaint alleges that G4S, in its capacity as the company contracted by the Government of the Commonwealth of Australia to oversee management and security at the Manus Regional Processing Centre (MRPC), failed to comply with the following sections of the Guidelines:

- Chapter II (General Principles)
 - Paragraphs A2, A8, A10, A11 and A12
- Chapter IV (Human Rights)
 - Paragraphs 2, 3, 5 and 6

The purpose of the Guidelines

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.

Initial assessment

Consistent with procedures agreed by the OECD for handling specific instances, the ANCP commenced an initial assessment as to whether the matters raised warranted further consideration under the Guidelines.

As part of its responsibility to interpret the Guidelines, the OECD Investment Committee has indicated that the following issues should be taken into account by a National Contact Point when undertaking an initial assessment:

- The identity of the party concerned and its interest in the matter.
- Whether the issue is material and substantiated.
- Whether there seems to be a link between the enterprise's activities and the issue raised in the specific instance.
- The relevance of applicable law and procedures, including court rulings.
- How similar issues have been, or are being, treated in other domestic or international proceedings.
- Whether the consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines.

Importantly, while the Guidelines have been endorsed within the OECD international forum, they are not a substitute for, nor do they override, domestic laws. They represent standards of behaviour supplemental to domestic laws and, as such, do not create conflicting requirements.

As the Australian company involved in this complaint is a multinational enterprise and falls within the scope of the Guidelines, the ANCP considered the issues involved. The ANCP ensured that both parties were consulted during the consideration process.

During the process the ANCP:

- considered the information in the specific instance;
- sought and considered information provided by G4S;
- exchanged emails and letters with both parties; and
- discussed the matter by telephone with the UKNCP and agreed that ANCP would be responsible for considering the complaint.

Outcome

At this time the ANCP is not able to accept the matter as a specific instance complaint under the Guidelines. In reaching this conclusion, the ANCP considered the three aspects to the complainant's submission:

- The role of G4S in giving effect to Government policy.

- The conduct of G4S staff in delivering on the contract with the Government.
- Legal liability for events at the MRPC.

1. The role of G4S in giving effect to Government policy.

The ANCP considers that aspects of the complaint could be interpreted as commentary on government policy. However, G4S as service provider is not accountable for government policy and other mechanisms exist for review and scrutiny of policy. The ANCP is not the most appropriate vehicle for resolution of such matters. It is not the role of the ANCP to issue commentary, whether intended or otherwise, on government policies or law.

2. The conduct of G4S staff in delivering on the contract with the Government.

The conduct of G4S staff is relevant to the OECD guidelines. In this regard, the ANCP notes the reviews that have already taken place in respect of the MRPC, which have reviewed the conduct of G4S staff:

- Two independent reviews and subsequent reports by Robert Cornall AO to the Secretary of the Department of Immigration and Border Protection. Amongst the recommendations of the *Review into the Events of 16-18 February 2014 at the Manus Regional Processing Centre* are those relating to conditions and training of staff. These reports are available here <https://www.immi.gov.au/about/dept-info/files/review-manus-offshore-processing-centre-publication-sep2013.pdf> and here <https://www.immi.gov.au/about/dept-info/files/review-robert-cornall.pdf>.
- A Senate Inquiry into the *Incident at the Manus Island Detention Centre from 16 February to 18 February 2014*. The Inquiry released its report on 11 December 2014 which contained a number of recommendations, including one relating to ensuring the adequacy of training for staff at the MRPC. A full copy of the report is available here: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Manus_Island/Report.

The ANCP is of the view that a further review of G4S conduct at the MRPC would be unlikely to add further value to these already extensive reviews. As G4S has not operated the facility since March 2014, there is unlikely to be any new information that can be brought to light on its operation of the MRPC.

3. Legal liability for events at the Manus Regional Processing Centre.

There have been various legal proceedings in relation to incidents at the MRPC, some of which are ongoing including:

- A civil proceeding, *RN v Commonwealth of Australia and Anor*, before the Supreme Court of Victoria relating to the alleged injury of a MRPC transferee.
- A class action, *Kamasae v Commonwealth & Ors*, to be considered in the Supreme Court of Victoria. Further details are found here: <http://www.supremecourt.vic.gov.au/home/law+and+practice/class+actions/manus+island+detention+class+action>.

- Legal proceedings within PNG, including cases with the PNG Supreme Court.

It is clearly not appropriate for the ANCP to intervene in any way in due legal processes, either domestic or international.