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1. In your view, what makes a National Contact Point (NCP) successful?
Stakeholder awareness of the NCP and its work. The NCP acting consistently with the OECD Guidelines.
7. Do you have any other views for the ANCP Review to consider?
The Australian NCP, compared with many other NCPs from 'equivalent' countries, is far less active. This is apparent in both the minimal actions/events and, when it does something, in the extent to which the Guidelines are advanced. My *guess* is this is largely due to the lack of resources (ie. how the government has decided to fund and structure the NCP). In such a situation, the very limited work makes sense because at least the NCP can be consistent. However an NCP can do so much more in assisting responsible business conduct and, if the Australian Government is serious about that objective, then there should be a significant increase in the NCPs resources (financial and human), profile, and caseload. I will submit a longer letter responding to the various points requested, and also with some other ideas for the review. I regret that this will not be able to be provided by the 21 July deadline you have indicated, but aim to get this to you before 30 July.

Ms Alex Newton
Independent reviewer, Australian National Contact Point
Foreign Investment Division, Treasury
Langton Crescent
PARKES ACT 2600
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4 August 2017

Dear Ms Newton

Submission to 2017 Review of Australian National Contact Point

- [1] I refer to my response through the review's website on 22 July 2017 and provide the following submission in relation to the review. In summary:
- (a) it appears the key problem for Australia's National Contact Point (**ANCP**) is a lack of resources being provided by Government: see paragraphs [12]–[13] below;
 - (b) without adequate resources, the ANCP is unable to conduct its work properly, and certainly not successfully: [4]–[6];
 - (c) a government's failure to adequately resource its NCP is contrary to OECD directions [6], and what the Australian Government advocates [7]; so the ANCP must be better resourced: [14];
 - (d) there should be greater Government coherence with the objectives of the Guidelines and ANCP's work: [8] & [16];
 - (e) despite the resourcing inadequacies, there *are* ways in which the ANCP could increase its influence and reach, particularly through Final Statements [20], and its website: [23]; and
 - (f) I support and encourage the recommendations in the recent report *The Australian OECD National Contact Point: How it can be reformed*: [33].

Background

- [2] I am a member of the Academic Network for the *OECD Guidelines on Multinational Enterprises* (**Guidelines**). I am also a barrister and adjunct academic, doing work and research relating to business and human rights. While this submission is informed by my experience, it is made in my personal capacity and not on behalf of any organisation with which I am associated.

- [3] In relation to the questions on which you sought submissions, I make the following points.

1. What makes a National Contact Point (NCP) successful?

- [4] Fundamentally, no NCP can be successful in fulfilling the role required by the Guidelines unless the NCP has the capacity to do that work. ‘Capacity’ in both human and financial resources, which enable the NCP to have people to do the work of the NCP in promoting and implementing the Guidelines. Therefore, determining NCP success entails understanding what is required of an NCP under the Guidelines.

Guidance for measuring NCP ‘success’

- [5] The best guidance comes from the Guidelines themselves, with its statements that ‘The role of National Contact Points (NCPs) is to further the effectiveness of the Guidelines. NCPs will operate in accordance with core criteria of visibility, accessibility, transparency and accountability’,¹ which it further explains.

Visibility. ... Governments are expected to publish information about their NCPs and to take an active role in promoting the Guidelines, which could include hosting seminars and meetings on the instrument. ...

Accessibility. Easy access to NCPs is important to their effective functioning. This includes facilitating access by business, labour, NGOs, and other members of the public. ...

Transparency. Transparency is an important criterion with respect to its contribution to the accountability of the NCP and in gaining the confidence of the general public. Thus, as a general principle, the activities of the NCP will be transparent. ... Outcomes will be transparent unless preserving confidentiality is in the best interests of effective implementation of the Guidelines.

Accountability. A more active role with respect to enhancing the profile of the Guidelines – and their potential to aid in the management of difficult issues between enterprises and the societies in which they operate – will also put the activities of NCPs in the public eye. Nationally, parliaments could have a role to play. Annual reports and regular meetings of NCPs will provide an opportunity to share experiences and encourage “best practices” with respect to NCPs.²

- [6] The OECD, through its constituent governments and bodies, recognise that these core criteria cannot be met with the NCPs being adequately resourced, and so *the OECD Council specifically agreed and directed that ‘Adhering countries shall make available human and financial resources to their National Contact Points so that they can effectively fulfil their responsibilities, taking into account internal budget priorities and practices’.*³

¹ *Guidelines*, II. Implementation Procedures, Procedural Guidance, I. National Contact Points.

² *Guidelines*, Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises, para 9.

³ *Amendment of the Decision of the Council on the OECD Guidelines*, I National Contact Points, [4] (emphasis added).

- [7] That governments *should* be improving their NCPs is without doubt.
- (a) The G7 Governments stated in 2015 that they ‘commit to strengthening mechanisms for providing access to remedies including the National Contact Points (NCPs) for the OECD Guidelines for Multinational Enterprises. In order to do so, the G7 will encourage the OECD to promote peer reviews and peer learning on the functioning and performance of NCPs. We will ensure that our own NCPs are effective and lead by example’.⁴
- (b) Australia was one of the G20 members at the recent 2017 meeting, which agreed and stated as follows.

27. We underline the responsibility of businesses to exercise due diligence in line with the UN Guiding Principles, the ILO MNE Declaration and, where applicable, the OECD Guidelines, and we encourage our businesses to report on these due diligence procedures. ...

28. We underline the importance of providing access to remedy. We will encourage the establishment of non-judicial grievance mechanisms and welcome the development of national focal points to promote the use of the ILO MNE Declaration and its principles whenever appropriate. **Countries amongst us that adhere to the OECD Guidelines will strengthen and increase the visibility of the OECD National Contact Points.**⁵ [emphasis added]

- [8] There is an important role for any government with an NCP to ensure policy coherence on responsible business conduct.⁶ Various examples are summarised in the OECD’s 2016 report on Guidelines implementation.

Chile’s NCP is a permanent member of the Council on Social Responsibility for Sustainable Development, a multi stakeholder platform committed to Chile’s economic, social and environmental development, through the promotion of business and social responsibility. ...

The Norwegian NCP engages in ongoing domestic responsible business conduct processes to ensure that the OECD Guidelines and the NCP are mentioned in an appropriate way. The NCP sends comments and suggestions to governmental documents, plans and reports...

In France, the CSR Ambassador responsible for the creation of a NAP on business and human rights is also a member of the NCP. ...

In 2014 Canada released its Enhanced Corporate Social Responsibility (CSR) Strategy, “Doing Business the Canadian Way: A Strategy to Advance Corporate Social Responsibility in Canada’s Extractive Sector Abroad”. ... The CSR strategy

⁴ *Leaders’ Declaration G7 Summit* (8 June 2015), p5.

⁵ *Towards an Inclusive Future: Shaping the World of Work* (G20 Labour and Employment Ministers Meeting, 19 May 2017).

⁶ Policy coherence is crucial to ensure effective design and implementation of policies to promote responsible business conduct (RBC), including corporate respect of human rights’: *Concept note on National Action Plans on Business and Human Rights (NAPs) to enable policy coherence for responsible business conduct*, Roundtable for Policy Makers, 28 June 2017, OECD Global Forum on Responsible Business Conduct.

also emphasises the role of Canada’s NCP in implementing its objectives. Importantly under the strategy companies are encouraged to participate in the NCP mechanism and “[a]s a penalty for companies that do not embody CSR best practices and refuse to participate in the CSR Counsellor’s Office or NCP dispute resolution processes, Government of Canada support in foreign markets will be withdrawn”. In a specific instance concluded by the Canadian NCP in 2015, this was invoked for the first time against a company that refused to engage in dialogue through the NCP.⁷

Other examples include the following.

Finland’s Committee on Corporate Social Responsibility, a consultative body, together with the Ministry of Economic Affairs and Employment, act as the Finnish NCP.⁸

In 2016 six ECAs (Austria, Canada, the Netherlands, Slovenia, Sweden/SEK and the United States) reported having a formal process for considering, where appropriate, any statements or reports from their NCP...⁹

- [9] The ANCP, itself, identifies the importance of much of the above in its work. This is apparent from its website which states.

The ANCP's role includes encouraging the effective implementation and promotion of the Guidelines. In doing this, the ANCP undertakes the following activities:

...

- conducts seminars and consultation sessions on the Guidelines with business, NGOs, other government departments and agencies, and the interested public;
- responds to any enquiries about the Guidelines and ensures that the Guidelines are accessible;

...

- reports annually to the OECD Investment Committee on its activities;

...

- prepares reports of findings and a statement of outcome for complaints.

The ANCP is committed to carrying out these responsibilities in accordance with the Guidelines requirement for National Contact Points to be visible, accessible, transparent, and accountable.¹⁰

Australian Government context

- [10] There are repeated statements from the Australian Government about the importance of human rights to business, and the role of the Guidelines.

- (a) In 2014, the Government co-sponsored a resolution adopted by the UN’s Human Rights Council which ‘encourages all States to take steps to implement

⁷ OECD, *Implementing the OECD Guidelines for Multinational Enterprises* (21 June 2016), 83-85.

⁸ OECD 2017 (n6 above), p2.

⁹ OECD, *Annual Report on the OECD Guidelines for Multinational Enterprises 2016*, 21.

¹⁰ <http://www.ausncp.gov.au/content/Content.aspx?doc=ancp/implementation.htm>

the [UN] Guiding Principles [on Business and Human Rights], including to develop a national action plan or other such framework'.¹¹

- (b) The Attorney-General's website states 'The Australian Government believes that business and respect for human rights go hand in hand. Businesses must comply with all Australian laws. In addition, under international law, the government is obliged to ensure that non-state actors, including businesses, respect human rights'.¹²
- (c) The Foreign Investment Review Board says 'The Australian Government expects all entities operating in Australia to maintain the highest standards of corporate behaviour, irrespective of whether those entities are Australian or foreign owned'.¹³
- (d) The Guidelines indicate that governments should 'encourage' responsible business conduct. This is actively accepted and promoted by the Australian Government which publicly states that 'The government promotes responsible business conduct in a number of ways, including by ... Encouraging businesses to adhere to voluntary guidelines and codes of conduct, including the OECD Guidelines for Multinational Enterprises'.¹⁴

[11] Despite these international and domestic statements, nowhere on the Attorney General's page about business and human rights¹⁵ is there a reference to the ANCP.¹⁶ That may provide some indication of the Government's attitude to the ANCP's role, as does that a quick google search struggles to identify any Commonwealth agency website that indicates the existence of the ANCP and its role.¹⁷

[12] The most recent report from the ANCP that I was able to find, from 2015,¹⁸ indicated that the ANCP has no dedicated staff members and that challenges to fulfilling its mandate are the lack of financial resources and capacity.¹⁹ The fact this is from a report over two years old, and which I was not able to locate on the ANCP's webpage, reinforces the disjuncture between what the Government says and what appears to be the practice.

¹¹ *Human rights and transnational corporations and other business enterprises* (23 June 2104, A/HRC/RES/26/22), [2].

¹² <https://www.ag.gov.au/RightsAndProtections/HumanRights/Pages/Business-and-Human-Rights.aspx>

¹³ <https://firb.gov.au/resources/investor-obligations/>

¹⁴ <https://www.ag.gov.au/RightsAndProtections/HumanRights/Pages/Business-and-Human-Rights.aspx>

¹⁵ <https://www.ag.gov.au/RightsAndProtections/HumanRights/Pages/Business-and-Human-Rights.aspx>

¹⁶ There is a link to the Guidelines replicated on the ANCP's website (ie.

http://www.ausncp.gov.au/content/Content.aspx?doc=oeed_guidelines.htm)

¹⁷ This is from examining the first 100 hits of a google search for phrase "national contact point" and "Australia". Interestingly, there were some non-government references to it (although outdated) on <http://accessfacility.org/national-contact-point-australia>. The one exception was a FIRB document found under 'Investor Obligations' <https://firb.gov.au/resources/investor-obligations/fact-sheet-6/>.

¹⁸ *Report to the OECD*, 2015.

http://www.ausncp.gov.au/content/publications/reports/reports_to_OECD/ANCP_Annual_Report_to_OECD_2015.pdf

¹⁹ *ibid*, p5.

[13] Various parties have raised concerns about the ANCP's under-resourcing.²⁰ The most comprehensive assessment was in the recent report, *The Australian OECD National Contact Point: How it can be reformed*,²¹ which summarised:

‘Australia's only government body charged with hearing complaints of human rights by Australian business abroad is failing. This report finds that the Australian National Contact Point is tucked away in Treasury and barely resourced. The majority of complaints are dismissed at the initial assessment stage.’²²

Catherine Branson, former President of the Human Rights Commission and Federal Court Judge, considers the Australian Government is not ‘particularly anxious to have an active and influential NCP’.²³ That assessment was made 2014, but no subsequent developments indicate otherwise.

- (a) The latest OECD Annual Report on the Guidelines shows that many comparable countries staff their NCP in orders of magnitude more than the ANCP. In comparison to the ANCP's one (part-time) worker, Canada has 8 (2 FT and 6 PT), the UK has 3 (2 FT) and the US has 3 (all FT). Many other countries, smaller than Australia in population and income, also have more (full time) staff to enable their NCP to perform its work.²⁴
- (b) The ANCP's lack of staffing and resources of course affects the work it can undertake. The OECD Report noted ‘Part of the NCP mandate is to promote the Guidelines and to handle enquiries. In 2016, a total of 113 promotional events were hosted by NCPs. A total of 17 NCPs did not host any promotional events compared to 22 NCPs in the last reporting period’.²⁵ It perhaps unsurprising to learn that the ANCP was one of those indicated as in the minority of hosting no promotional events.
- (c) The inadequate resourcing, and resultant inadequacies in the ANCP's work in comparison to other NCPs and what the Guidelines require, is well documented in the recent Corporate Accountability Research report.²⁶

[14] All the above shows the most important issue for the ANCP's work, and success, is to receive adequate Government resourcing, which means more staff and dedicated funding. The ANCP seems unable to meet the Guidelines' core criteria (see [5] above) and must be better resourced to enable that to occur.

²⁰ eg. Oxfam, *Strengthening the Australian National Contact Point*, <http://www.aph.gov.au/DocumentStore.ashx?id=f464992a-cb1c-4c40-90ab-e513d312d21b>; *Implementing the UN Guiding Principles on Business and Human Rights in Australia: Joint Civil Society Statement* (Australian Human Rights Commission, August 2016), 7.4(c).

²¹ K Zornada, 2017, Corporate Accountability Research, Non-Judicial Human Rights Redress Mechanisms Project.

²² <https://corporateaccountabilityresearch.net/report-xx-ancp>

²³ ‘Business and Human Rights: The New Global Consensus?’ (2014) 16 *Flinders Law Journal* 187, 197.

²⁴ OECD, *Annual Report on the OECD Guidelines for Multinational Enterprises 2016*, 38-39.

²⁵ *ibid*, 41.

²⁶ See n21 above.

2. Problematic aspects of the ANCP current structure or location?

- [15] I do not consider these significant issues while the key limitation on the ANCP's work is resourcing, which I have addressed above.
- [16] However, a broader issue for Government, regarding the ANCP's work, is to ensure better engagement and coherence with objectives of responsible business conduct which is the reason for the Guidelines. There are various examples of Australian agencies acting in a way which runs counter to the Guidelines and ANCP work.²⁷ The examples identified above, at [8], could be considered by the ANCP *and* Government to identify and use structures which would contribute to the greater achievement of enterprises acting consistently with the Guidelines.

3. What administrative structure will work best for the ANCP?

- [17] As above, in my view this is not a significant issue because I suspect that *resources* rather than *structure* is the key limitation on the ANCP's work.
- [18] You requested submissions on the advantages and disadvantages of a proposed NCP model, 'including the ANCP's ability to handle specific instances (complaints) and promote the Guidelines; and any comparative models proven to be effective (e.g. other NCPs or non-judicial mechanisms for redress)'. I assume you are familiar with chapter on NCP Structures in the OECD's 2016 report on Implementing the Guidelines,²⁸ and I think the observations in there will best inform what conclusions the review may wish to make to Treasury.

4. How can ANCP engage most effectively?

- [19] Even given the resourcing limitations, there are still ways in which the ANCP could to increase its engagement and promotion of the Guidelines.
- [20] Engagement and promotion can be assisted through the drafting and use of Final Statements. These can help in not only addressing issues to the specific parties but also providing broader knowledge of matters the ANCP has examined. That would contribute to raising awareness of relevant matters without other parties having to individually contact the ANCP over these. This kind of dynamics was reinforced in the latest OECD Annual Report on the Guidelines.

Final statements can be an important tool regardless of whether cases are accepted for further examination as inclusion of recommendations and determinations can help enterprises better understand the Guidelines and what steps they can take to

²⁷ A recent example is Austrade conducting 'no due diligence on any of the Australian companies it promoted overseas, or on the foreign companies it pushed to local businesses': *Ponzi scandal sparks Austrade rethink after Pearls swindle* (The Australian, A Klan, 10 January 2017 <http://www.theaustralian.com.au/national-affairs/foreign-affairs/ponzi-scandal-sparks-austrade-rethink-after-pearls-swindle/news-story/b1fcb03f30627b426e0d858307063495>).

²⁸ OECD, *Implementing the OECD Guidelines for Multinational Enterprises* (21 June 2016), 67-75.

better observe them. Recommendations can be made by NCPs on the implementation of the Guidelines. In particular if the parties fail to reach agreement or if the NCP finds that one or more of the parties to the specific instance is unwilling to engage or to participate in good faith the NCP will make recommendations as appropriate in the public statement.

Determinations can be made by NCPs to indicate that a company has not fulfilled the recommendations of the Guidelines. Final statements were published for 34 of the 38 (89%) cases that were closed in 2016. ... Of the 22 final statements published for concluded cases, 13 (59%) included recommendations. Recommendations are especially useful in cases where parties have not been able to engage or come to a resolution. Determinations of whether an enterprise observed or did not observe the Guidelines were included in seven of the 22 final statements (32%).²⁹

- [21] This type of role for Final Statements is also giving greater transparency to decision-making. That would contribute to the Proactive agenda which the OECD is expecting of NCPs, relevant parts of which are extracted below.

The proactive agenda is a new prospective dimension added in the 2011 update that contributes to problem solving, as well as the avoidance of problems, in a broader context than the specific instance procedures. The proactive agenda complements the specific instance procedure by helping enterprises identify and respond to risks of adverse impacts associated with particular products, regions, sectors or industries.

...

Proactive agenda projects include:

- Extractive sector stakeholder engagement
- Financial sector due diligence
- Responsible garment and footwear supply chains
- Responsible investment in agricultural supply chains³⁰

- [22] The first and last of those 'projects' are areas in which Australia has considerable activity from multinationals and also experience in regulation. This suggests specific instances might be expected to arise, and therefore also the value of ANCP engagement and focus in these areas.

- [23] More use could be made of the ANCP website to enable the public and interested parties to understand the ANCP's work, even if the ANCP has no resources for any greater 'in person' engagement. Types of matters this may include are as follows.

- (a) Making available more ANCP documents such as the ANCP's quarterly reports to its Advisory Committee (with confidential material redacted).
- (b) Including links, and greater exposure, to the useful material produced by the OECD's Secretariat. For instance, many of these are found under a link called

²⁹ OECD, *Annual Report on the OECD Guidelines for Multinational Enterprises 2016*, 30-31.

³⁰ <http://mneguidelines.oecd.org/proactiveagenda.htm> .

‘Sectoral Guidance’³¹ but, even on that page, do not appear to have any hyperlinks to the OECD documents. As noted earlier, given the Australian experience and prevalence in extractives and agriculture, for these exceptionally useful materials to have only a sentence on the ANCP’s website seems to be failing to get what could be considerably more use from these documents. It would be ‘low hanging fruit’ for the NCP to use these materials to get to inform and engage the relevant industry sectors and related government agencies.

5. Extent of my engagement with Guidelines or the ANCP

[24] I refer to, and use, the Guidelines in my work, research and teaching - the majority of which is to an Australian audience. Without exception, whenever I raise or discuss the Guidelines, the people with whom I am engaging have no idea of their existence, relevance nor the role of the ANCP.

[25] To give some context for that observation, areas in which I use and discuss the Guidelines include:

- (a) advice and representation of clients (including companies, communities, NGOs, and government agencies) regarding land and resources disputes in Australia;
- (b) teaching human rights and extractives at a post-graduate level at the University of Western Australia,³² where most of the recent class involved staff from international extractives companies, government agencies and NGOs;
- (c) writing articles and papers on the area of human rights and business (the most recent being *Human rights and business lawyers: The 2011 watershed*); and
- (d) giving presentations and papers about the Guidelines to conferences and events, including the annual conferences of the *World Initiative of Mining Lawyers* (June 2017, Spain³⁴) and WA Branch of the *Australian Mining and Petroleum Lawyers Association* (May 2017, Perth³⁵), a legal seminar on *Innovation in Land Use* (June 2017, Perth³⁶), seminar *Human rights law and Mining* (March 2015, Chile³⁷), and a class on *OECD Guidelines for Multinational Enterprises: The Claytons Regulation* (February 2016, USA³⁸).

[26] As you can appreciate, from the relevant audiences above, this involves considerable contact with companies and lawyers who one might expect to have some familiarity

³¹ <http://www.ausncp.gov.au/content/Content.aspx?doc=guidance.htm> .

³² <http://www.law.uwa.edu.au/executive/seminars/human-rights-law-an-extractives-operations> .

³³ Australian Law Journal (December 2016), pages 896-899 of which address the Guidelines.

³⁴ Paper and slides **attached**.

³⁵ <https://www.ampla.org/documents/item/1487> (program).

³⁶ <https://www.docdroid.net/1QynKFe/170629-southalan-slides.pdf> (presentation).

³⁷ Organised by the *Centre for Public Policy*, Santiago

https://www.researchgate.net/publication/303994769_Human_rights_law_and_Mining .

³⁸ In the course *Comparative Environmental Law* (Sturm College of Law, Denver University, 16 February 2016).

with the Guidelines. Certainly, in some of the larger multinationals I've had contact with, there is *sometimes* knowledge of the Guidelines by those in sustainability, reporting or PR areas. But that knowledge seems absent (at least in my experience) at the operational, and advice, level of these companies. Thus, the Guidelines have no effect or, or use for, the acts and decisions of these companies.

[27] That reality, obviously, requires work from all interested parties. I endeavour to increase knowledge and use of the Guidelines in my work (described above). I consider the ANCP could also do more in increasing awareness and use of the Guidelines, some ideas of which I noted in the section above.

6. ANCP support to complainants and MNEs when handling complaints?

[28] While the ANCP remains significantly under-resourced, I consider an important aspect will be *consistency*.

- (a) There is some prudence in the ANCP seeking consistency in how matters are handled rather than a lottery of one matter being progressed and everything else having unequal treatment.
- (b) I assume it is impossible for the ANCP to provide advice or assistance to individual parties on a case-by-case basis. Access to mediators is important, and resources might prudently be prioritised for that. Where the ANCP *does* have ability to progress a matter, that should be chosen strategically rather than just what is the next in line.
- (c) If that does occur, then that process should be publicly and transparently acknowledged. That is – the ANCP should identify where it has insufficient resources to be able to progress matters, rather than simply delaying dealing with things or making decisions on matters to finish the ANCP's involvement but which do not accord with the Guidelines.
- (d) The website could provide more 'self-help' material such as a simple 'how to' guide on searching the OECD's database of NCP matters.

7. Any other views

[29] There are some previous decisions of the ANCP which seem inconsistent with 'successful' practice of NCPs (as examined in section 1), and attention to these may assist in focussing areas for improvement.

[30] The ANCP's Final Statement in *CFMEU – Xstrata* matter is a final statement which provides no guidance as to what responsible business should do because the document effectively just recorded that that particular company did not wish to engage.³⁹ As noted above, even where a company does not engage, the NCP can use

³⁹ Statement, 8 June 2011.

final statements to increase others awareness of what compliance with the Guidelines involves.

[31] The ANCP's Final Statement in the *Human Rights Law Centre – G4S Australia* matter indicates approaches considerably out of step with other NCPs. Particular aspects of this include the following.

- (a) 'The ANCP considers that aspects of the complaint could be interpreted as commentary on government policy'.⁴⁰ Most complaints or litigation involving a government or government-contracted service *could be interpreted* as a comment on government policy. That does not mean the matter is devoid of valid grounds which be addressed, particularly where that the alleged commentary is only 'aspects' of the complaint.
- (b) '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'.⁴¹ A specific instance, and its handling, need not be limited to the particular site, but still have very useful observations regarding: (i) remedy, (ii) those events or issues occurring elsewhere, and (iii) future guidance for other enterprises involved in detention.
- (c) 'There have been various legal proceedings in relation to incidents at the MRPC, some of which are ongoing including: [a civil proceeding and class action in the Victorian Supreme Court and legal proceedings in Papua New Guinea] ... It is clearly not appropriate for the ANCP to intervene in any way in due legal processes, either domestic or international'.⁴² Legal proceedings focus on the domestic law of the court hearing those proceedings by virtue of that court's jurisdictional limits. The Guidelines require companies to meet international standards which exceeds domestic law. Other NCPs have been able to address relevant aspects without interfering with domestic legal processes.⁴³ I note the class action has recently settled with the company being one of the defendants who 'will pay \$70 million ... to resolve the claims of all group members',⁴⁴ which suggests the company had some responsibility for the impacts suffered. These were impacts which, some years earlier, the ANCP considered it was unable to address.

The ANCP's statement in that matter opens with a paragraph on the purpose of the Guidelines which the ANCP describes as 'The Guidelines aim to develop ... mutual confidence between multinational enterprises and the societies in which they operate'.⁴⁵ The ANCP's actions and statements in this matter do not meet that identified purpose.

⁴⁰ Statement by ANCP *Specific Instance – G4S Australia Pty Ltd*, 10 June 2015, p3.

⁴¹ *ibid*, p3.

⁴² *ibid*, p3.

⁴³ eg. OECD, *Implementing the OECD Guidelines for Multinational Enterprises* (21 June 2016), 51-52.

⁴⁴ Supreme Court of Victoria *Notice of Proposed Settlement: Manus Island class action* (July 2017), p2.

⁴⁵ *ibid*, p1.

[32] The ANCP's most recent Final Statement, regarding *IndustriALL and Ansell Limited*, indicates a more encouraging approach. Even though there were legal proceedings ongoing, the ANCP assisted in mediation and this was explained in the Final Statement.

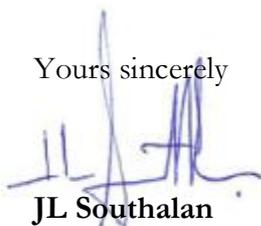
[33] I have recently skimmed the report *The Australian OECD National Contact Point: How it can be reformed* published by Corporate Accountability Research.⁴⁶ The analysis and recommendations in there appear to be well researched and offer useful and important recommendations. I support the 21 recommendations for reform identified in that report.⁴⁷

Closing

[34] Thank you for the opportunity to make submissions on the review. I realise these are after the advertised deadline but, as my short submission on your website indicated, these more detailed comments were coming. I hope that they are of use to the review.

[35] If you have any questions regarding this submission, please contact me.

Yours sincerely



JL Southalan

Attachments: paper and slides to World Initiative of Mining Lawyers (per [25](d) above)

⁴⁶ <https://corporateaccountabilityresearch.net/report-xx-ancp>.

⁴⁷ Pages 10-15 of that report.

Human rights and mining companies: standards and procedures

- [1] This document provides a summary of key concepts and materials about business/human rights law in relation to mining, and references pertaining to the same.
- [2] For resources companies and advisers: it is no longer sufficient to follow (or know) just the domestic law of the country of operations. International human rights standards, which impose obligations on the nation state, also apply to businesses (regardless of what national law says), and to supply-chain partners (e.g. financiers, legal advisers, customers).
- [3] Human rights were based traditionally only in international law: commitments between states about their obligations to citizens. Those obligations on states continue but, since 2011, there is international consensus that businesses have 'responsibilities' regarding human rights standards. This is set out in the UN *Guiding Principles on Business and Human Rights* (UN 2011) (**UNGPs**).
- [4] The UNGPs contain three main obligations for every business.
 - (a) *Have a human rights policy* (UNGP 16). Explain your business approach to human rights, and ensure this is understood in the workplace.
 - (b) *Conduct due diligence* (UNGP 17). Examine your business & supply chain for actual and potential human-rights impacts. This is an ongoing commitment (i.e. not a 'once off').
 - (c) *Have remediation processes to address human-rights impacts* (UNGP 19, 22 & 31). Awareness of impacts may arise through due-diligence or other information. The business should remediate impacts that it has caused or contributed to. And if the business is 'directly linked to' an impact (caused by another party in its supply chain), the business should 'use leverage' to reduce that impact.

The extent of these obligations—what must be done to comply—depends on the size of the business, its nature, and the seriousness of the human-rights impacts.

- [5] The UNGPs have broad support from governments and businesses (e.g. Business Community 2015; IBA 2016a). The three UNGP requirements for business (policy, due diligence, remediation) have been adopted and adapted in many different standards and mechanisms. Most of these not legally *binding* - in that default triggers external enforcement against the company or its assets - but many involve independent investigations of and public reporting on the company's compliance. These UNGP compliance models can be grouped broadly into four categories:
 - (a) **National & regional regulation.** National examples include processes in France's recent *Duty of Vigilance* law, Canada's *Office of the Extractives Sector CSR Counsellor*, the UK's *Modern Slavery Act*, and California's *Transparency in Supply Chains Act*. A regional example is the EU's *Directive on Disclosures of Non-Financial Information*.
 - (b) **Contractual requirements.** Compliance with the UNGPs can be required under contractual obligations. To date, this occurs most frequently where the company is part of a group that imposes all or part of the UNGP processes (e.g. ICMM or the International Code of Conduct for Private Security Service Providers). Various certification programs also include UNGP processes within their requirements and supply-chain examinations, such as the Responsible Jewellery Council's *Code of Practices*, GRI's *Sustainability Reporting Guidelines G4*, and ISO26000 *Guidance on Social Responsibility*.
 - (c) **Financiers' obligations.** Best known examples are the IFC's *Performance Standards* and the commercial bank's *Equator Principles*. Various countries also have stock-exchange requirements (on companies seeking public investment in their shares), which mirror aspects of the UNGPs, including the US *Dodd-Frank Act* Section 1502 and the UK's *Companies Act 2006 (Strategic Report and Directors' Report) Regulations 2013*.

- (d) **General procedures.** Some general complaints/enquiry procedures examine company compliance with the UNGPs. Examples include the *OECD Guidelines for Multinational Enterprises* and procedures through the International Labour Organisation and United Nations.
- [6] Key questions when determining a company's requirements to 'respect' human rights:
- how much can you rely on the domestic government/legal structure of defining parties' rights and responsibilities; and
 - if processes/rights granted do not meet with international standards, what more is required from the company?
- Lawyers need to be increasingly familiar with this area of the law to properly advise/assist clients (and perhaps even avoid professional negligence/liability): e.g. A4ID 2013; Law Council of Australia 2016; Southalan 2016.
- [7] Materials of particular relevance to mining lawyers include the following:
- Lawyers & UNGPs in general: IBA 2016a; IBA 2016b.
 - Mineral supply chains: ICMM 2015; CFSI 2013.
 - Due diligence and impact assessments: OECD 2017; OECD 2011; Götzmann & o'rs 2016 .
 - Investment agreements: UN 2011.

References

- A4ID, 2013. Advocates for International Development, *The UN Guiding Principles on Business and Human Rights*, A guide for the legal profession, 31 July 2013. London. Available <<http://a4id.org/sites/default/files/user/A4ID%20Business%20and%20Human%20Rights%20Guide%202013%20%28web%29.pdf>> 14 Oct 2013.
- Business Community, 2015. UN Global Compact, *Statement in Support of UN Guiding Principles and Sustainable Development Goals*, November 2015 incl. BSR, IPIECA, ICC, OIE, WBCSD, ICMM, GBI, EICC, USCIB. Available <https://www.unglobalcompact.org/docs/issues_doc/human_rights/business-statement-supporting-GPs-SDGs.pdf> 23 Dec 2015.
- CFSI, 2013. Conflict Free Sourcing Initiative, *Reasonable Practices to Identify Sources of Conflict Minerals: Practical Guidance for Downstream Companies*, Revision 1, August 2013. Electronic Industry Citizenship Coalition and the Global e-Sustainability Initiative. Available <www.conflictreesourcing.org/media/docs/CFSI_DD_ReasonablePracticesforDownstreamCompanies_Aug2013.pdf> 8 Oct 2014.
- Götzmann, N & o'rs, 2016. *Human Rights Impact Assessment Guidance and Toolbox*, Road-Testing Version. Copenhagen: Danish Institute for Human Rights. Available <http://www.socialimpactassessment.com/documents/hria_guidance_and_toolbox_final_jan2016.pdf> 4 May 2017.
- IBA, 2016a. IBA Council, *IBA Practical Guide on Business and Human Rights for Business Lawyers*, 28 May 2016. Barcelona: International Bar Association. Available <<http://tinyurl.com/hm3y9hu>> 8 June 2016.
- , 2016b. Business and Human Rights Working Group and IBA Legal Policy and Research Unit, *Reference Annex to the IBA Practical Guide on Business and Human Rights for Business Lawyers*, 1 November 2016. London: International Bar Association. Available <<http://www.ibanet.org/Document/Default.aspx?DocumentUid=82b3381d-a27c-4ef8-b869-39d0aa2fcb18>> 19 Jan 2017.
- ICMM, 2015. International Council on Mining and Metals, *Demonstrating value*, A guide to responsible sourcing, 3 December 2015. London. Available <www.icmm.com/document/9674> 4 Dec 2015.
- Law Council of Australia, 2016. *Business and Human Rights and the Australian Legal Profession*, January 2016. Canberra. Available <http://www.lawcouncil.asn.au/lawcouncil/images/Business_and_Human_Rights_Paper_-_Jan_2016.pdf> 4 May 2016.
- OECD, 2011. Council at Ministerial Level, *Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*, Organisation for Economic Co-operation & Development, 25 May 2011. Paris: OECD Publishing. Available <www.oecd.org/dataoecd/62/30/46740847.pdf> 31 Jan 2012.
- , 2017. Secretary-General of the OECD, *OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector*, 2 Feb 2017. Paris: Organisation for Economic Co-Operation and Development. Available <<http://www.oecd-ilibrary.org/docserver/download/2016031e.pdf?expires=1494656046&id=id&accname=guest&checksum=3A5EA86D1EAE017F2A8733CDA4DECDC>> 13 May 2017.
- Southalan, J, 2016. 'Human rights and business lawyers: The 2011 watershed' 90(12) *Australian Law Journal* 889-907. Available <<http://sites.thomsonreuters.com.au/journals/2016/11/18/australian-law-journal-update-vol-90-pt-12/>> 22 Nov 2016.
- UN, 2011. Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, (Annex to UN doc A/HRC/17/31, 21 Mar 2011), 21 March 2011. Geneva: United Nations Human Rights Council. Available <www.ohchr.org/EN/Issues/Business/Pages/Reports.aspx> 25 Mar 2011.

“Diligence...the mother of good fortune”

Miguel de Cervantes, *Don Quixote* (1615)

OECD Guidelines on Multinational Enterprises

*Chinese Due Diligence Guidelines
for Responsible Mineral Supply Chains*



Resources **Law** Network

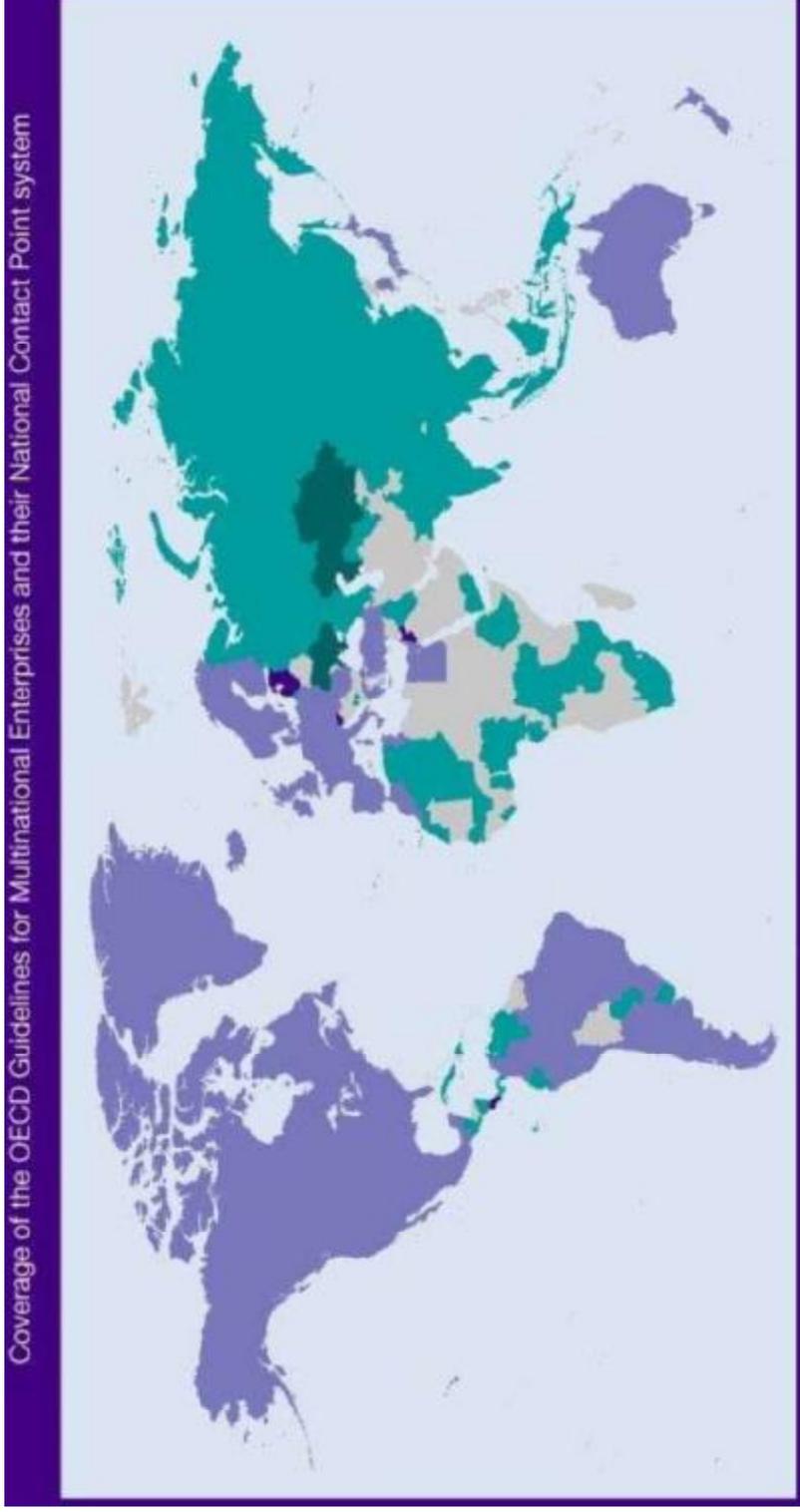
John Southalan

8 June 2017, WIOML Conference

Guidelines implementing the UNGPs



Relevance



- Adherents to OECD Guidelines and 'host' countries in previous cases
- Adherents to the OECD Guidelines
- 'In process of adhering to OECD Guidelines'
- 'Host' countries in previous cases.

(from Nieuwenkamp ,)

1. OECD Guidelines on Multinational Enterprises

- Overview
- Application
- Extracts & process

1.4 Case examples

1.5 Summary

1.1 OECD Guidelines - overview

- One application of UNGPs: *OECD Guidelines for Multinational Enterprises*.
 - Originally adopted 1976
 - Code of principles and standards for responsible business conduct, covering various subjects including human rights.
 - Latest version 2011 (OECD 2011), incorporates UNGPs
- Applies to the government and companies operating from or in an ‘adhering country’ .
 - Currently 44 ‘adhering governments’ (about 85% of foreign direct investment), including Australia
 - OECD Guidelines apply to any company operating from, or in, these ‘adhering countries’

1.2 OECD Guidelines: application

- If a resources company comes from ‘adhering countries’, then the *OECD Guidelines* apply.
- OECD Guidelines cover wide range of areas, including human rights
 - I. Concepts and Principles
 - II. General Policies
 - III. Disclosure
 - IV. Human Rights
 - V. Employment and Industrial Relations
 - VI. Environment
 - VII. Combating Bribery, Bribe Solicitation and Extortion
 - VIII. Consumer Interests
 - IX. Science and Technology
 - X. Competition
 - XI. Taxation

1.3 OECD Guidelines - extracts

- '[E]nterprises are encouraged to avoid infringing on the human rights of those affected by their activities and to address the adverse human rights impacts with which they are involved'
(Ch II item 2 & 31, Ch IV items 1 & 2)
- 'Enterprises should... Refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to human rights, environmental, health, safety, labour, taxation, financial incentives, or other issues'
(Ch II, A(5))

1.3 OECD Guidelines - process

- Governments:
 - commit to encourage MNEs operating in or from adhering states to comply with the Guidelines in their business activities
 - must establish National Contact Points (**NCPs**) for administering the Guidelines,
 - NCPs receive and consider “specific instances” (ie. complaints) alleging breach of the Guidelines.
- The findings of these NCPs are not legally enforceable but the NCPs’ procedure is enforceable.

1.4 Case examples

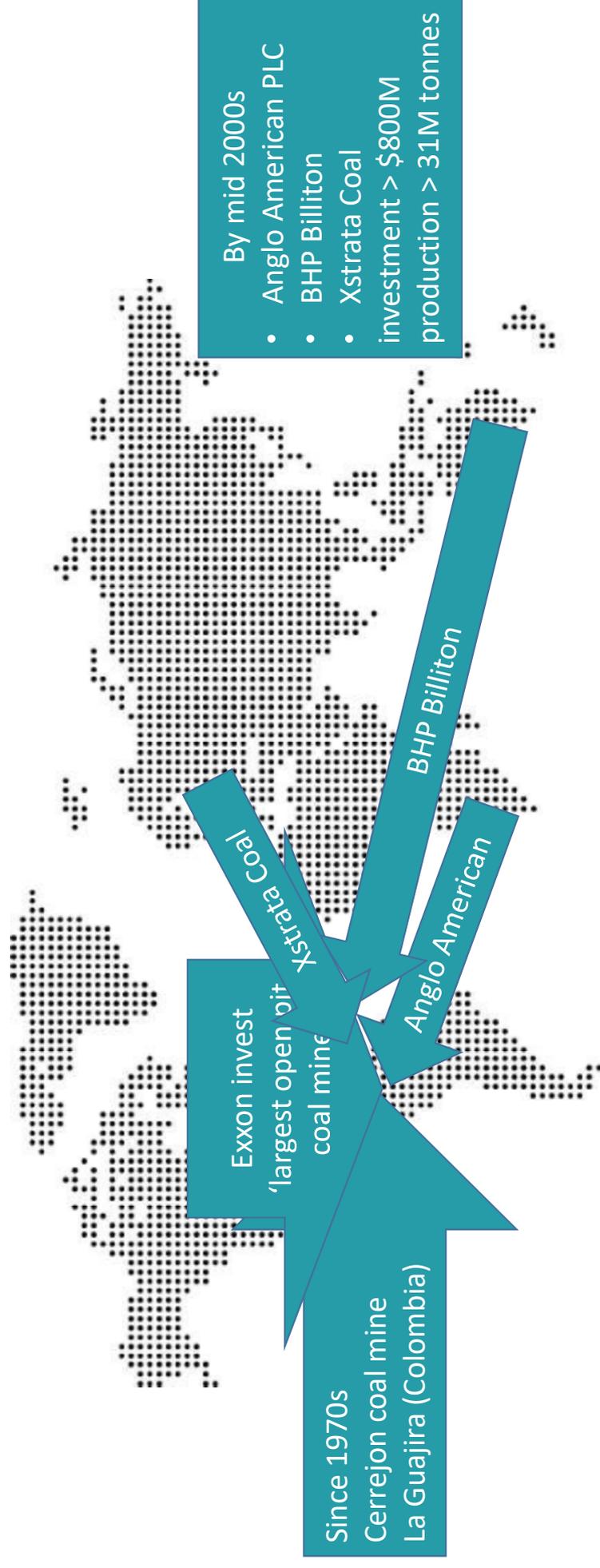
BHP (Colombia) - legacy

POSCO & financiers (India) – supply chain

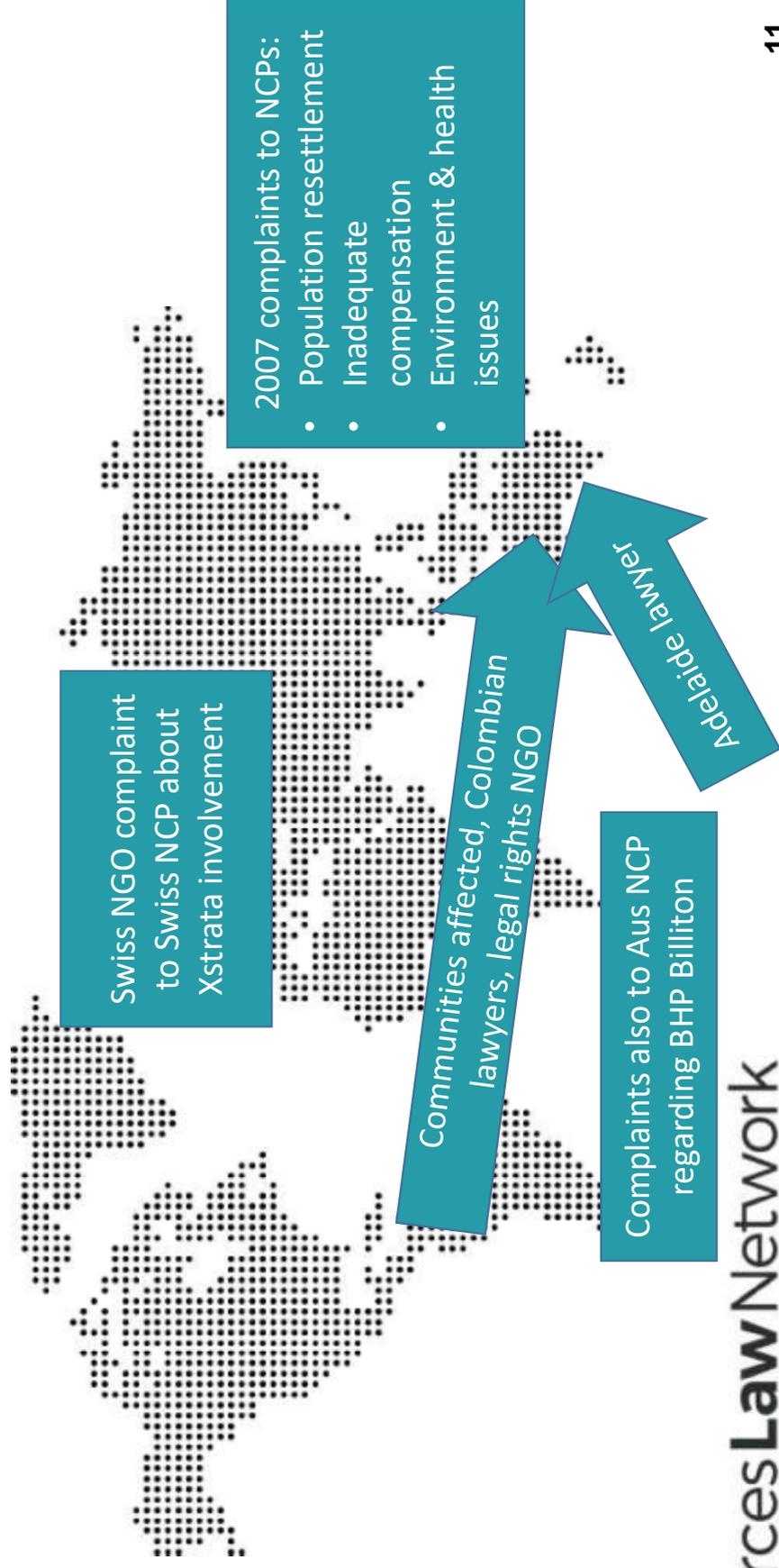
Mylan (USA) – ongoing monitoring

Intex (Philippines) – domestic law & consultation

(1) BHP Billiton – Cerrejon Coal



BHP Billiton – Cerrejon Coal



BHP Billiton – Cerrejon Coal

Jul & Aug 2007 - NCPs met with company and complainant's lawyer; decided that matter within jurisdiction

Oct 2007 - mediation with company and complainant's reps

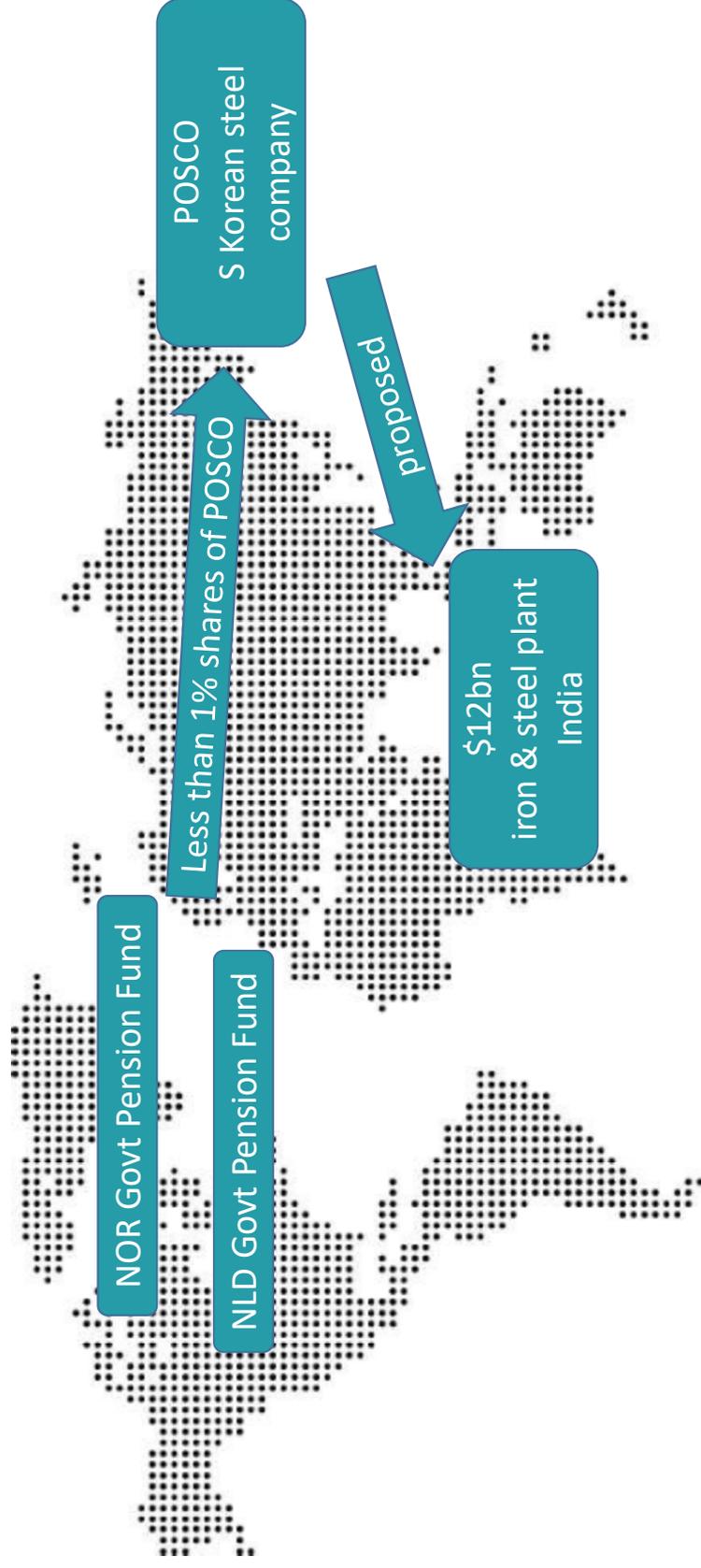
Feb 2008 - independent review of issues, recommended company and complainant's meet to address issues

Dec 2008 – parties' agreement including 'contributions ... totalling US\$1.8 million; and a further US\$1.3 million for sustainable projects' (AUS NCP 2009)

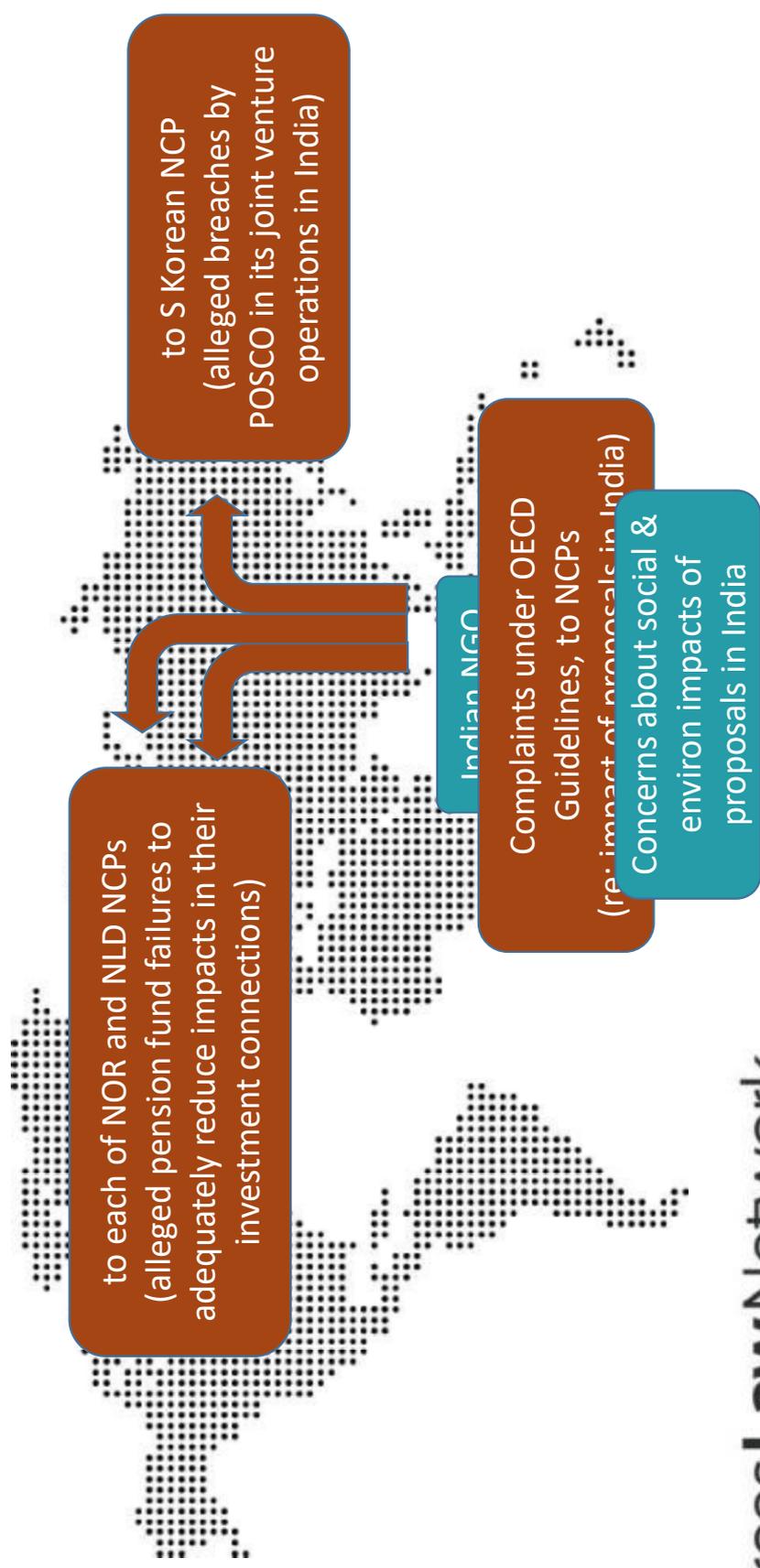
Feb 2009 - NCP facilitated discussions, BHPB agreeing to:

- pollution monitoring
- those results to be provided to communities

(2) POSCO



POSCO



POSCO

- South Korean NCP:
 - dismissed the complaint, saying the issues were about Indian government approvals ‘rather than the business activities of POSCO’: KOR NCP 2013
- Dutch NCP:
 - Met with Government pension fund, which explained its actions and attempts to reduce impacts
 - Dutch NCP decision – pension fund complied with *OECD Guidelines*
- Norwegian NCP (NOR NCP 2013)
 - Norwegian pension fund refused to engage, saying it had <1% investment
 - Pension fund indicated general HR work, incl. child rights
 - NCP ruled the pension fund had violated the *OECD Guidelines*, as no action regarding concerns here

(3) *Stapert v Mylan NV*



Stapert v Mylan NV



NLD National Contact Point

2015 Complaint by NLD lawyer

- Product being used in US executions
- Mylan not stopped sale to US prisons
- Breach OECD Guidelines in failure to 'seek ways to prevent or mitigate the human rights impacts' of products

Response by Mylan

- Product is 'only distributed in the U.S. to wholesale customers and hospitals ... for use consistent with approved labelling and applicable medical standards of care'
- Distribution monitored by US Govt for diversion
- Mylan 'never delivered, marketed, or distributed rocuronium bromide for use in lethal injections'
- all circumstances around complaint are in the US

Stapert v Mylan NV

- NCP noted US centre of activity but considered it appropriate for NLD attention ‘to affect change at the highest corporate entity; the Dutch entity Mylan’
- Mediation and involvement of NLD Gov, then Mylan statement:
 - seeking prompt assurance from US agencies that have not ‘purchased any Mylan product for use outside the bounds of its approved therapeutic purpose’
 - when no response, Mylan demanded return of product
 - Further contractual restrictions in supply chain ‘from distributing Mylan products ...for use in lethal injection or for any other use outside of the approved labeling or applicable standards of care.’
- NCP decision (NLD NCP 2016):
 - ‘enterprises should address any adverse impacts on matters covered by the Guidelines, even where they have not directly contributed to those impacts, if the impacts are nevertheless linked to their operations, products or services by a business relationship’
 - ‘distributors and purchasers of ...medicines distributed or purchased for purposes that are inconsistent with approved labelling and ... medical standards ... fall under a business relationship’
 - ‘the Guidelines are applicable to both the supply chain and the distribution chain’

(4) Intex Resources: Mindoro Nickel Project

Norway

- Various corporate structures (similar personnel)
- Currently Intex Resources SA
- Proposed nickel mining and processing operation in Philippines

Philippines

- Began late 1990s
- 2008 obtained FPIC (indigenous consent) certificates under PHI law
- 'Currently' at feasibility ()
- As at 2017, government and community concerns around environment and mining (generally) has slowed various incl. Mindoro

Intex Resources: Mindoro Nickel Project



NCP action

- 2009: receive complaint
- -2011: investigation (incl fact-finding mission)
- 2011: NCP decision
- Using the pre-2011 (UNGP) version of OECD Guidelines

NOR National Contact Point

OECD 'specific instance'

- From NGOs (NOR & GBR) and community groups (PHI)
- Concerns raised about indigenous engagement, bribery and environmental issues

Mindoro Nickel: NCP decision

- Noted NOR ratified ILO169 (re indigenous rights) therefore apply here
- Stated:
 - ‘the UN Committee on ... Racial Discrimination placed a duty on Norway to ensure that the standards affirmed in ILO ... 169 are applied not just in indigenous territories in Norway, but also by Norwegian companies operating overseas’: NOR NCP 2011, 21
- The FPIC agreement was only from some indigenous groups
- No agreement from other groups who will be impacted, including by infrastructure beyond mine site
- Decision:
 - ‘The NCP finds that Intex’ failure to undertake broader and more systematic assessments of affected indigenous groups and consult with these groups is inconsistent with the requirement of the OECD Guidelines...to “consider the views of other stakeholders.”’ (p29)

1.5 OECD Guidelines: summary

- Any party can make a complaint (don't need legal interest to be affected)
- 'costs-free' jurisdiction (no potential costs if 'lose', and some NCPs have also funded independent fact-finding missions and mediation)
- An NCP may investigate independently of the parties' materials
- A company must substantiate its policies and procedures addressing the human rights impacts of its operations
- Peripheral engagement does not excuse (ie. companies must attempt to reduce impacts with which it is linked – up & down chain)
- Non-engagement with an NCP is a breach itself.

2. Chinese Due Diligence Guidelines

2.1 Chinese Due Diligence Guidelines

Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains



中国五矿化工进出口商会

China Chamber of Commerce of Metals,
Minerals & Chemicals Importers & Exporters

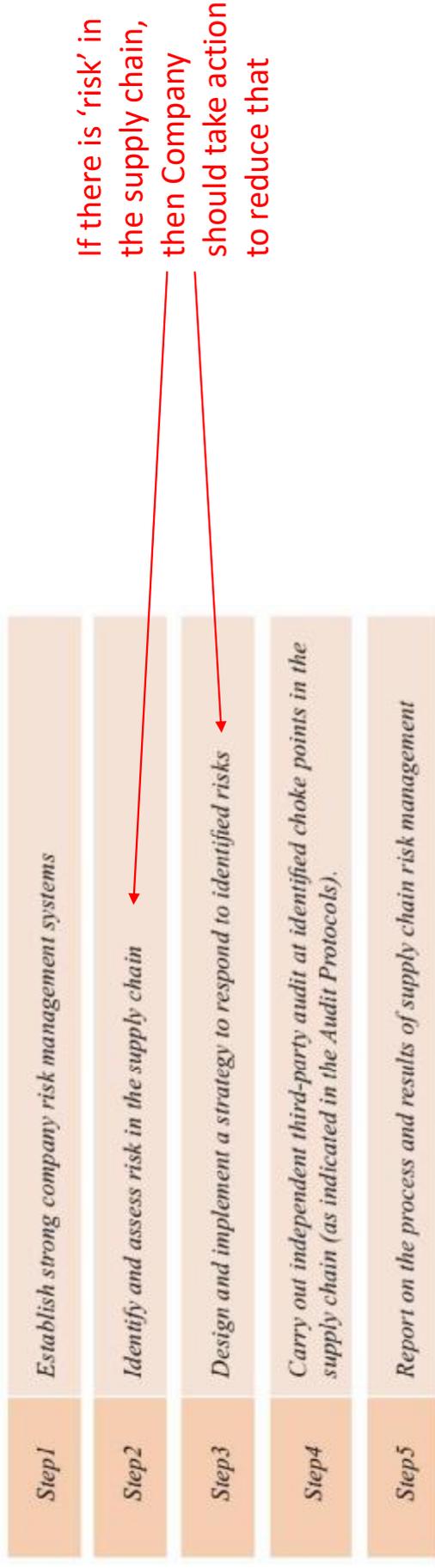
(CCCMC)

2.2 Chinese Due Diligence Guidelines

- Adopted 2015:
 - “apply to all Chinese companies which are...processing [or] using mineral resources and their related products” (p10)
 - require those companies to identify, assess and manage risk in their supply chain, and report on that (p10)
- ‘The Objectives of these ... Guidelines are ... providing guidance to all Chinese companies which are extracting and/or are using mineral resources and their related products ... to observe the *UN Guiding Principles on Business and Human Rights* during the entire life-cycle of the mining project’ (p8)
- Level of due diligence varies according to the potential risk and impacts involved.
- Guidelines are new. Not yet examples on how they operate.

2.3 Chinese Guidelines Risk Assessment

- ‘All companies ... shall carry out the 5-STEP risk-based supply chain due diligence framework which is outlined in these Guidelines.’ (p13)



2.4 Chinese Guidelines –risks include...

- ‘Extracting or sourcing resources from land where the free, prior and informed consent of local communities ... has not been obtained, including those for which the extractor holds a legal title, lease, concession, or license’: 5.2.1.4
- ‘Failing to avoid, minimise, ... the environmental impact and ecological footprint throughout the mining life-cycle by conducting thorough environmental impact assessments, minimizing waste and emissions’: 5.2.1.8
- ‘Failing to report, in a regular and timely manner to stakeholders, on their material impacts and disclose their ethical, social, and environmental performance to their stakeholders in ways that are appropriate and meaningful to their needs’: 5.2.1.10

Summary and where to...?

Expected developments

The scarcity of international jurisprudence on resources operations and human rights will change.

Expect coming years will see:

- (a) more decisions about Indigenous land issues, and where there has been lack of consultation/consent, findings against company regarding compliance with UNGP, and financier/supply-chain reaction;
- (b) for companies, a failure to have the UNGP process/procedures is likely to be the initial focus (many 'human rights' cases currently under assessment in NCP process of the OECD Guidelines) demanding mediation; and
- (c) more government initiatives/laws enforcing the UNGP process on companies, including extra-territorially (eg. *CRC AUS conclusions 2012*).

Lawyers will need increased familiarity in this area to properly advise/assist clients (and avoid negligence/liability): Southalan 2016, 2.3

References – documents (1)

- A4ID, 2013. Advocates for International Development, *The UN Guiding Principles on Business and Human Rights*, A guide for the legal profession, 31 July 2013. London. Available <<http://a4id.org/sites/default/files/user/A4ID%20Business%20and%20Human%20Rights%20Guide%202013%20%28web%29.pdf>> 14 Oct 2013.
- AUS NCP, 2009. Australian National Contact Point, *Statement on BHP Billiton – Cerrejon Coal Specific Instance*, Patrick Colmer (Department of Treasury), 12 June 2009. Canberra: OECD Secretariat. Available <www.oecd.org/dataoecd/17/53/4753559.pdf> 4 Mar 2015.
- CCCMC, 2015. *Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains*, 2 December 2015. Beijing: China Chamber of Commerce of Metals, Minerals and Chemicals Importers & Exporters. Available <https://www.globalwitness.org/documents/18138/201512_Chinese_Due_Diligence_Guidelines_for_Responsible_Mineral_Supply_Chains_-_En_K83fxzt.pdf> 20 Jan 2016.
- CERD decn NZL. Committee on the Elimination of Racial Discrimination, *Decision 1(66): New Zealand Foreshore and Seabed Act 2004*, UN doc CERD/C/DEC/NZL/1 (27 April 2005). Available <<http://uhri.ohchr.org/Documents/File/434d1aed-cf5f-4754-8bef-51044a79f9bd/ffbd153-476b-4584-b41d-256526c6d068>> 20 Nov 2013.
- CERD decn USA. Committee on the Elimination of Racial Discrimination, *Decision 1(68) on United States of America*, UN doc CERD/C/USA/DEC/1 (11 April 2006). Available <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/412/51/PDF/G0641251.pdf?OpenElement>> 23 Mar 2015.
- CERD NOR, 2011. Committee on the Elimination of Racial Discrimination, *Concluding observations: Norway*, UN doc CERD/C/NOR/CO/19-20, 8 April 2011. Geneva (CHE): United Nations. Available <http://bibinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2FC%2fNOR%2fCO%2f19-20&Lang=en> 25 May 2017.
- CRC Aus conclusions (2012). Committee on the Rights of the Child, *Concluding Observations: Australia*, UN doc CRC/C/AUS/CO/4 (28 Aug 2012). Available <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC_C_AUS_CO_4.pdf> 24 May 2013.

References – documents (2)

- Dembour, M-B, 2006. *Who believes in human rights?: reflections on the European Convention*. Cambridge (GBR): Cambridge University Press.
- KOR NCP (2013). Decision of National Contact Point Korea (KOR). *Initial Assessment of Complaint Annex 7 to Final Statement of the NLD National Contact Point for OECD Guidelines, ABP/APG - Lok Shakti Ab-hiyan & others*, September 2013 (21 June 2013). Available <<http://www.oecdguidelines.nl/documents/publication/2015/1/6/final-statement-abp-app---somo-bothends>> 26 Mar 2016.
- Länsman -v- FIN (1994). Decision of Human Rights Committee. *Länsman (Muotkatunturi Herdsmen Committee) -v- Finland UN doc CCPR/C/52/D/511/1992* (8 Nov 1994). Available <www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/7e86ee6323192d2f802566e30034e775?Opendocument> 13 Aug 2011.
- Mahuika -v- NZL (2000). Decision of Human Rights Committee. *Apirana Mahuika et al. -v- New Zealand UN doc CCPR/C/70/D/547/1993* (16 November 2000). Available <<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhshQIPV8YDIHSJbUdHMAK56v8AE6%2fbZINzxyQAsEMGp6TwVUhrAMzGeFYGz4yVGbZTYLe4nHBoww39TT6Z9Q0D73RswuvSeYUhj05naXs7dPXxmEk6Uwe3WyocpzSOKVA%3d%3d>> 23 Mar 2015.
- OECD, 2014. Secretary-General of the OECD, *Responsible Business Conduct Matters*, OECD Guidelines for Multinational Enterprises. Paris: Organisation for Economic Co-operation & Development. Available <https://mneguidelines.oecd.org/MNEguidelines_RBCMatters.pdf> 17 Feb 2015.
- , 2011 Organisation for Economic Co-operation & Development, *OECD Guidelines for Multinational Enterprises*, 25 May 2011. Paris: OECD Publishing. Available <<http://dx.doi.org/10.1787/9789264115415-en>> 22 Oct 2012.

References – documents (3)

- Nieuwenkamp, R, 2017. *OECD Grievance Mechanism on Employment & Labour*. Paper presented to 'Responsible Business Conduct and Labour Related issues', 10 April 2017. Available <<https://www.permanentrepresentations.nl/binaries/hlatio/documents/publications/2017/04/10/presentation-mr-roel-nieuwenkamp/Roel+10apr+ELSA+side+meeting.pdf>> 13 May 2017.
- NLD NCP, 2016. Decision of Ministry of Foreign Affairs, *Final Statement Bart Stapert, attorney, vs Mylan* (11 April 2016). Available <<http://www.oecdguidelines.nl/binaries/oecd-guidelines/documents/publication/2016/4/11/bart-stapert-attorney-vs-mylan/1604-final-statement-bart-stapert-vs.-mylan-11-april-2016.pdf>> 22 Apr 2016.
- NOR NCP, 2016 Decision of National Contact Point for OECD Guidelines and National Contact Point Sweden, *Final Statement Jijnjevaerie Saami village –Statkraft SCA Vind AB (SSVAB)* Final Statement (8 February 2016). Available <http://nettsteder.regjeringen.no/ansvarignaringsliv-en/files/2013/12/08022016_Final-statement_ENG.pdf> 1 May 2017
- , 2013 Decision of National Contact Point for OECD Guidelines, *Lok Shakti Abhiyan, Korean Transnational Corporations Watch, Fair Green and Global Alliance and Forum for Environment and Development vs. POSCO (South Korea), Abp/Apg (Netherlands) and NBIM (Norway)* Final Statement (27 May 2013). Available <www.regjeringen.no/contentassets/8d118fcbacdb41918795434c4838f848/nbim_final.pdf> 18 Dec 2015.
- , 2011 Decision of National Contact Point for OECD Guidelines, *Complaint from The Future In Our Hands (FIOH) against Intex Resources Asa and the Mindoro Nickel Project*, (Final Statement, 30 November 2011). Available <http://nettsteder.regjeringen.no/ansvarignaringsliv-en/files/2013/12/intex_fivh_final.pdf> 23 May 2017.
- Southalan, J, 2016. 'Human rights and business lawyers: The 2011 watershed' 90(12) *Australian Law Journal* 889-907.
- UN, 2011. Human Rights Council, *Human rights and transnational corporations and other business enterprises*, UN doc A/HRC/RES/17/4, 6 July 2011, Geneva (CHE): United Nations. Available <<http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/G11/144/71/PDF/G1114471.pdf>> 20 Oct 2011.

References - images



<http://www.karrathavisitorcentre.com.au/wp-content/uploads/2012/09/Karratha-Aerial-75-1024x832.jpg>



<http://www.ibtimes.com/conflict-minerals-enter-us-unchecked-hidden-blind-spots-supply-chains-1891692>



<http://legal.un.org/avl/images/ha/udhr/photo%20gallery/10-large.jpg>



<https://www.vecteezy.com/map-vector/50156-9-stylish-vector-world-map-vector>

Questions

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