



Update on the role of OECD National Contact Points with regard to the extractive sectors

London, 22 March 2013

Meeting Report

1. Executive Summary

On 22 March 2013, the Institute for Human Rights and Business (IHRB) together with the UK Department for Business, Innovation & Skills (BIS) brought together a range of OECD National Contact Points (NCPs), businesses within the extractive sectors, and trade union and civil society organisations focused on NCP “specific instances” in the extractives sectors for a second meeting of stakeholders since the establishment of the updated OECD Guidelines for Multinational Enterprises (the Guidelines) in 2011. The participants discussed progress since the March 2012 meeting and in particular looked at the “proactive agenda” as it might relate to high-risk investment contexts.

In the period since the updated OECD Guidelines have been in place, human rights has emerged as a common denominator across nearly all the cases brought to National Contact Points (NCPs) by NGOs and communities, and to a lesser extent also by trade unions. Whilst an increasing number of business sectors are the subject of cases, extractive sectors still dominate NCP activity and encompass a broad range of geographic attention. Some NCPs attract more extractive sector-related cases than others (for example: Australia, Argentina, Canada, Chile, Netherlands, Norway, UK and USA) given the composition of the industries in these countries. However, an increasing diversity of NCP cases can also be seen (for example, the following NCPs have also been involved in recent cases: Belgium, Japan, Luxembourg, Mexico, Morocco, South Korea and Switzerland). Increasing collaboration between NCPs in relation to specific cases is also evident, as well as peer-review and support more generally. The past year has also been a period during which several NCPs have been re-constituted or strengthened in line with the updated Guidelines and national priorities. Other interesting trends over the last 12 months include the growth of capacity in non-OECD members who currently adhere to the Guidelines (for example a recent NCP conference in Brazil) and the development of parallel mechanisms in other economies (such as in India for example).

Moves toward greater effectiveness in dealing with mediation and determinations are encouraging, however, some of the challenges identified during the 2012 London meeting persist. Some NCPs continue to see their role as predominately one of “facilitating mediation”, while others interpret their mandate more generally, serving as “problem solvers” in relation to the full “implementation of the OECD Guidelines”. Transparency is seen as essential to all, but the amount of disclosure at different stages still differs between NCPs. So too does the degree of willingness by NCPs to make public statements or determinations against companies found to be in breach of the Guidelines or those refusing to engage in the process at all. Businesses still complain that there are too many frivolous or poorly researched complaints, whilst civil society raises the lack of real consequences for any business having been found to be in breach of the Guidelines. Many communities and NGOs wishing to engage in the process continue to face fundamental capacity related challenges as well.

Linkages between export credit agencies (ECAs), trade missions, bilateral trade agreements and public procurement were all cited as examples of economic consequences that home governments might consider to enhance adherence to the Guidelines. Some OECD members have taken early steps in this direction: in June 2012 the OECD Working Party on Export Credits and Credit Guarantees recommended that NCP deliberations be included in the decision making processes of ECAs.

The meeting also focused on the “proactive agenda” of NCPs and in particular the role that could be played in relation to the extractive sector and high-risk geographies. The OECD Guidelines, in step with the UN Guiding Principles on Business and Human Rights, call on all companies to undertake human rights due diligence to manage risks and mitigate possible adverse impacts. However, what might be considered as appropriate levels of due diligence in some contexts will not be adequate in others, in particular in areas of higher risk or greater human vulnerability. Meeting participants discussed whether it is the role of NCPs to mediate or deliberate on what is “adequate due diligence” within the context of specific cases (i.e. after negative impacts have allegedly occurred) or be part of the process of clarifying expectations in advance. The last panel focused specifically on the example of Myanmar (Burma) and whether it was the role of NCPs, or home governments more generally, to set such expectations now. At least one NCP was reported to have issued guidance for companies in relation to operating in Myanmar and some home governments have been raising such issues within the context of the G8, European Union or through the development of specific national reporting requirements (in the case of the USA). Some felt that a specific Myanmar-related commission, with stronger powers, was needed. It was clear that the “expectation setting” role of home governments was sometimes an issue of regulation, other times of soft power, but that NCPs too would benefit from greater alignment and coherence between government agencies.

Moving forward, with the benefit of an increasing number of specific incidences, the OECD Guidelines and the work of NCPs might benefit from an assessment of their true impact, both in terms of mediation as well as statements made relating to specific companies. Despite the difficulties of measuring the preventative effect of NCPs, increased efforts should be made to do so, in part to demonstrate to all governments, business, civil society organisations, trade unions and the wider public, the true economic and social consequences of business acting responsibly. Likewise, more businesses need to be informed of the significant consequences – from the home state as well as the host state – of not operating in a manner consistent with the OECD Guidelines. One NCP reminded the meeting of the many companies that are still unaware of the Guidelines or the fact that their home government even has an NCP. All in all, the feeling of the meeting was one of steady, if sometimes patchy, progress but with the majority of hard work still lying ahead.

2. Background

2.1 The 2012 meeting and the focus for 2013

The meeting marked the one-year point since the first joint NCP meeting was held in London (23 March 2012) focusing on the role of NCPs in relation to the extractive sector. The key issues covered in the first meeting were:¹

- Opportunities presented by the updated OECD Guidelines;
- Diverse views on public determinations;
- Building trust among stakeholders;
- Elements of effective mediation;
- Trends associated with a more comprehensive approach;
- Interpretative role of NCPs;
- Consequences and outcomes;
- Shaping a pro-active implementation agenda.

¹ <http://www.ihrb.org/pdf/IHRB-NNCP-OECD-National-Contact-Points-and-the-Extractive-Sector-FINAL.pdf>

Despite the growing number of specific instances relating to a diversity of business sectors, the extractive sector still represents the majority of NGO initiated NCP cases. It is therefore important to share experiences in relation to this sector and develop new pro-active approaches, in particular those relating to high-risk contexts (such as Burma/Myanmar). As a contribution to this objective the UK NCP asked the Institute for Human Rights and Business (IHRB) to organize a second meeting focusing on the extractives sector in cooperation with the Norwegian NCP and the International Council on Mining and Metals (ICMM).

The second meeting, hosted by the UK government on 22 March 2013, followed up on some of the issues discussed previously – in particular those relating to a pro-active implementation agenda. The 2013 meeting gave greater centrality to the experiences of NCPs themselves noting the increasing amount of peer-support between NCPs and the increasing number of national governments developing national action plans on issues such as business and human rights. The meeting was held under the Chatham House rule and this report does not apportion information to any specific participant in the meeting with the exception of the four formal presentations by NCPs. The agenda and participant list are attached in the appendices.

2.2 NCP cases filed by NGOs in relation to the extractive sectors since 2011

The following table shows the specific incidents filed since January 2011.²

Company	NCP	Complainants	Date filed	Status
MRC Ltd	Australia	Amadiba Crisis Committee (South Africa)	1 February 2013	Filed
GCM Resources Ltd	UK	International Accountability Project; World Development Movement (Bangladesh)	19 December 2012	Filed
POSCO ABP Government Pension Fund	South Korea Netherlands Norway	Lok Shaki Abhiyan; KTHC Watch, Fair Green Global Alliance; Forum for the Environment and Development (India)	9 October 2012	Pending Concluded Pending
Royal Dutch Shell Royal Bank of Scotland Standard Chartered Barclays	Netherlands UK	Non-Commercial Gardening Association Sakhalin Environment Watch (Russia)	31 July 2012	Filed Rejected Rejected Rejected
Excellon Resources	Canada Mexico	Canadian Labour Congress; MiningWatch Canada; Proyecto de Derechos Economicos Sociales y Culturales etc.. (Mexico)	28 May 2012	Filed
George Forest International	Belgium	Action Contre l'Impunite pour les Droits Humains etc... (Democratic Republic of Congo)	4 April 2012	Concluded
Centerra Gold Inc	Canada	Mining Watch Canada; United Mongolian Movement of Rivers and Lakes etc... (Mongolia)	15 March 2012	Rejected
BHP Billiton	Chile	Escapes Santander (Chile)	15 December 2011	Pending
Royal Dutch Shell	Netherlands UK	Amnesty International, Friends of the Earth (Nigeria)	30 December 2011	Pending
Statoil	Norway Canada	Norwegian Climate Network and Concerned Scientists Norway (Canada)	28 November 2011	Rejected
Xstrata PLC Innospec TetraBoost Ltd	USA UK Switzerland Australia	The LEAD Group (various markets; production in Australia and the UK)	27 August 2011 23 December 2011	Withdrawn Concluded Rejected
Barrick Gold Corporation	Argentina	Citizen Participation Forum for Justice and Human Rights etc... (Argentina)	9 June 2011	Pending
Xstrata	Argentina	The Center for Human Rights and the	1 June 2011	Pending

² Statistics derived from information prepared by OECD Watch for the meeting and therefore only accurate up to March 2013. A full list of relevant cases between 2001-2013 is available. www.oecdwatch.org

	Australia	Environment etc... (Argentina)		
Usibell Coal Mine J-Power	USA Japan	Chickaloon Village Traditional Council (USA)	5 May 2011 5 May 2011	Rejected Rejected
Glencore International First Quantum Metals	Canada	Sherpa, Berne Declaration, Centre for Trade and Policy Development etc... (Zambia)	12 April 2011 12 April 2011	Filed Filed
Barrick Gold Corporation	Canada	MiningWatch Canda, Akali Tange Association, Porgera SML Landowners Association etc... (Papua New Guinea)	1 March 2011	Pending
Royal Dutch Shell	Netherlands	Amnesty International, Friends of the Earth (Nigeria)	25 January 2011	Pending
ArcelorMittal	Luxembourg Netherlands	Friends of the Earth, Sustainable Development Institute/Friends of the Earth Liberia (Liberia)	24 January 2011	Pending

3. Current Learning Amongst NCPs: Four Case Studies

3.1 The UK NCP

The UK NCP gave the example of a complaint received in October 2010 relating to BHP Billiton, one of the world's largest mining companies with revenues of over US\$72 billion. The complaint related to human rights, environmental, and health & safety concerns around an aluminium smelter (Mozal) in Maputo, Mozambique. The first administrative question was which NCP should take the case, as BHP Billiton is registered in both the UK and Australia. After deciding this should be the UK, meetings were held with the community and Mozal smelter, and then mediation was attempted. Although no final agreement was reached, the process was open and dialogue between the company and the community strengthened. The UK NCP invited both parties to send additional documentation and final assessment was published in 2012. Drafts were sent to both parties for comment. In that assessment, the UK NCP concluded that there were no breaches of the OECD Guidelines' chapters.

As a result of this case, the UK NCP identified some areas of learning, including:

- The unintended consequences of mediation – the company and the community talked at a local level where the issues were arising. The mediation was not a failure despite the fact that there was no agreed outcome. Both sides were engaged and can work collaboratively together in the future.
- The process was difficult for the NCP as it is challenging to maintain confidence and remain a “wise aunty”. This requires NCPs to be good listeners and to develop trust on all sides.
- Information was shared fully with the Australian NCP - there was no editing or withholding of information. This allows the experiences to be built on in other jurisdictions.
- The case took longer than hoped. It was very important to end the mediation process when it became clear that it was adding no further value and that a settlement would not be reached. Prolonged mediation in such circumstances can actually worsen relationships.

3.2 The Norwegian NCP

The Norwegian NCP reported the findings of its survey of 600 Norwegian companies: 90% did not know about the existence or remit of the national NCP. This has prompted much more promotional work within Norway. The NCP's experiences relating to the extractive sector were reported at the 2012 meeting, in particular in relation to a mining company in the Philippines. An ongoing case was shared, that relating to a Norwegian fishing company operating in the Western Sahara – a region plagued with conflict and also striving to have its identity officially recognized. The case has been complex, requiring cooperation with the Moroccan NCP as well as UN agencies and refugee groups.

The learning so far has included:

- Clarity about transparency. The first phase within a specific instance is fully transparent – the fact that there has been a complaint is posted on the NCP website. The second phase, of mediation and/or investigation, is non-transparent for very important reasons of trust building and confidentiality. The final phase is transparent and information on whether the case was settled through mediation and/or whether a determination was made is publicly recorded;
- Sticking to a clear process and timeline, as in the current Western Saharan case, is a challenge to all parties, but nonetheless extremely important.

3.3 The Dutch NCP

The Dutch NCP challenged whether it was the primary role of NCPs to be focused on “complaints handling” when fundamentally NCPs are tasked with the implementation of the OECD Guidelines. Few NCPs are formally trained as mediators and therefore they should also be interested in company performance. Specific instances help companies set up better systems and respond better to future challenges. A complaints-driven process may encourage companies to take a defensive posture and to field lawyers in relation to NCP cases and not the more pragmatic business manager.

3.4 The Canadian NCP

The extractive sector looms large for the Canadian NCP. The sector, sometimes labelled the “Canadian advantage”, sees Canadian oil, gas and mining companies (many of them SMEs) working across every continent. The way resource governance is aligned with international standards and transparency is core to responsible business conduct. The Canadian NCP sits within the nation’s vision of sustainable growth. Since 2000, the Canadian NCP has been involved in 15 cases, 11 of which involve the extractives sectors. The request for review shows a clear trend in 6 of the 15 cases, and there has been collaboration with other NCPs, namely Norway, Mexico and Switzerland. 2013 has been the most active year to date.

Some of the key observations are:

- Expanding global caseload with increasing collaboration with other NCPs and increased human rights and labour rights components;
- Dispute resolutions and requests are happening earlier than before and there are increasing calls for the review process;
- Fact-finding by the NCP is not just tied to determinations but can also be part of the mediation process;
- Better functional equivalency between NCPs is essential;
- Leverage – how do NCPs, companies, NGOs use their ability to influence? It is critical to use leverage, as peer and public opinion can change behaviour in a sustainable way.

3.5 Trends

Some trends across NCPs over the past year can be observed:

- The extractive sectors still account for over half of all cases initiated by NGOs, but a lesser percentage of those brought by trade unions. It should be noted that the number of cases relating to other business sectors is rising in both real and relative terms. It is likely that the extractive sectors will remain a dominant part of the mix for many years but NCPs will be called upon to engage in an increasing diversity of business sectors. For example, the first investor-related specific instance was brought in 2013, as was the first ICT-sector related complaint;
- Virtually all the new cases lodged over the past 12 months have invoked the human rights chapter of the Guidelines;

- Cases involving the extractive sector remain amongst the most complex and often lack predictability for all concerned;
- A coincidence and convergence in business and human rights is a feature of these extractive cases. There is blurring of the lines between environmental, social and human rights issues. There have been developments with cases that preceded the updated OECD Guidelines and interesting learning can come through that.
- There is some patchiness in capacity of NCPs. Anyone can raise a specific instance. Those that file complaints bear a burden of responsibility, which is important to acknowledge. They need to represent the interests of those on the ground who should benefit from resolution. Lack of access to other remedies means expectations are growing around the ability of NCPs to fill this gap. If those bringing the specific instance are not interested in mediation, it immediately limits the responsibilities of business to engage and seek to resolve the grievance in question.
- It is important to note that Indigenous Peoples' rights and free, prior and informed consent (FPIC) are increasingly being raised in the context of the OECD guidelines. It is a part of the broader stakeholder engagement to provide FPIC. One interesting trend has been in bringing cases related to pre-mine operational phases as well as the end of life mining operations.

4. NCPs and High-Risk Contexts: A Proactive Agenda?

Given the likelihood of cases relating to high-risk contexts, how might NCPs proactively contribute to clarifying due diligence expectations in advance? Greater clarity in this area might act to lower the number of resulting cases, or if not prevent them, work from a position of much clearer expectations in terms of what responsible business behaviour might mean in a specific, and often complex, context.

4.1 The mining sector: long horizons and changing risk patterns

Mining companies operate across long time horizons during which no assumptions can be made about the stability of the market concerned. Most new ventures will, almost by definition, be in emerging markets – a sub-set of which might be categorized as 'high-risk' in human rights terms. Due diligence is not new but the scope has expanded significantly. Human rights issues will be included in a whole range of social and environmental impact focused studies. However, once mining operations have started there is an immovable asset; it is harder to walk away once difficulties arise.

Complaints against mining operations, especially those involving multilateral institutions, can be long, expensive and time-consuming. Businesses prefer to deal with grievances as locally as possible, and there is much NCPs can do to learn about the industry and advise on such systems. Some mining environments can become high-risk due to challenging national situations – the company will need to review all of its relationships and deepen its due diligence to ensure that its own impacts are not increasing human insecurity and risk such contexts. Businesses see NCPs as part of the home (and sometimes host) government and expect much greater consistency between the different arms of government. At the moment, business often receives conflicting messages about how much due diligence is expected. Sometimes this means being more specific than broad references to "human rights" and taking the analysis down to specifics, such as land issues or impacts on indigenous peoples. Whilst due diligence is essential, it can never be foolproof, and it should not be discredited when negative human rights impacts still occur.

4.2 NCPs and the proactive agenda

The updated OECD Guidelines include a new element promoting observance of the Guidelines. The OECD itself has a very full agenda and will be limited in its capacity to lead the proactive agenda and therefore much will need to be done by NCPs themselves.

One part of this proactive agenda needs to be greater coherence across government. A number of governments have agreed a set of “common approaches” for their Export Credit Agencies (ECAs) within the context of the OECD. These approaches encourage ECAs to consider NCP deliberations and statements when making their own decisions on due diligence requirements and the granting of export credit and other support.³ Greater coherence between ECAs and NCPs is highly desirable, in particular in relation to high-risk countries. States cannot both incentivize a broad range of investments but then later criticize some of them for not meeting acceptable standards of due diligence when these standards were not clearly required by the home state itself at the time.

Some governments have made specific requirements in relation to their ECAs and the OECD Guidelines. For example, the Dutch Government has linked support for its development funding and infrastructure projects to implementing the Guidelines.

4.3 The example of Myanmar (Burma)

There have already been NCP specific instances relating to Myanmar, for example one brought by a small group of NGOs against a South Korean company relating to the Shwe gas pipeline. Since the country’s democratic reforms over the past two years, there have yet to be further cases. However, given the risks endemic to Myanmar, it is highly likely that there will be cases over the months and years ahead, including those relating to the extractive sector. It was noted that the Italian NCP is the only one so far that has issued specific guidance in relation to Myanmar.

IHRB identified six challenges, or risks, which businesses face in Myanmar (in no particular order of priority):

- Labour – there are two new labour laws, making it possible for the first time in 50 years for labour to organize, but the labour movement will need to develop and mature and is now factionalized.
- Land acquisition and tenure – possibly the most problematic issue for the country and for businesses. Land disputes are rife, many inherited from the previous government. Two new land laws were enacted last year, providing for land registration. While laudable they create their own set of problems. Farmers in rural areas face enormous difficulties in registering their land and contending with the local bureaucracy amidst fears that more powerful interests will register land actually belonging to farmers and other rural people. Moreover, much of the land the government classifies as vacant has in fact been occupied by upland people and others for decades. Companies will have to research the history of land tenure/use in any land they seek to lease in Myanmar, to ensure that farmers and others have not been forcibly evicted from such land.
- Business relationships – Investors entering Myanmar will need to work with local partners while avoiding complicity with businesses implicated in past human rights abuses.
- Discrimination and ongoing-armed conflict/inter-communal violence – 135 ethnic nationalities are recognized by the Myanmar government. There are eight major ethnic groups, with a history of conflict between ethnic nationalities and the state. Although ceasefires have been agreed with ten ethnic minority armed groups, these ceasefires are fragile. Moreover, fighting between the Myanmar army and the Kachin Independence Organisation continues after the breakdown of a 17-year ceasefire in June 2011. And the latest outbreak in March 2013 of inter-communal violence between Buddhists and Muslims in central Myanmar is a chilling reminder of violence between these two groups, which initially broke out in June 2012 in Rakhine State. The resolution of these armed conflicts and communal tensions is arguably the most important challenge facing the

³ OECD (2012) Recommendations of the Working Party on Export Credits and Credit Guarantees (the “Common Approaches”), OECD Trade Committee, 28 June 2012. At: [http://search.oecd.org/officialdocuments/displaydocumentpdf/?cote=tad/ecg\(2012\)5&doclanguage=en](http://search.oecd.org/officialdocuments/displaydocumentpdf/?cote=tad/ecg(2012)5&doclanguage=en).

country today. Myanmar civil society has said that such “nation building”, as it has been characterized, is the first and foremost task for the government and people.

- Corruption – exists at all levels and is pervasive in the country. The President has acknowledged this and has committed to address the problem. Ensuring that reforms permeate lower levels of government and administrative institutions has been identified as a key challenge.
- Lack of infrastructure – including legal and economic infrastructure. Only 25% of the population has access to electricity. Roads, railways, and telecommunications all need massive upgrading. International lawyers have noted that Burmese case law has not developed in 50 years, offering little history of legal precedent. The judiciary lacks independence from the executive, and is widely perceived as corrupt. There is a general lack of capacity among the civil service, conditioned by 50 years of harsh military rule. One positive development has been the recent agreement by the Myanmar government to ratify the “New York Convention” on international arbitration, providing an initial source of security to international investors as the country’s infrastructure and capacity develops over the longer term.

Many actors have stressed the need for “enhanced due diligence” in Myanmar. In this regard, the draft “US Reporting Requirements”⁴ serve as a useful guide for all companies, including those not subject to US jurisdiction. There are two sets of reporting requirements in the USA:

- The first requirement is on the Myanmar Oil and Gas Enterprise (MOGE): companies entering into any agreement with MOGE must report it to the US government.
- The second set of Reporting Requirements is mandatory for all companies investing more than \$500,000 in the country. Companies are required to report on policies and procedures on the following issues in Myanmar: anti-corruption; community and stakeholder engagement; and hearing grievances from employees and local communities. They are also required to report on their arrangements with and details of security service providers. A key requirement is reporting on land – these are: any purchase, use or acquisition of land over 30 acres or valued at over \$500,000; policies and procedures on ascertaining land ownership and whether there has been dislocation of the population, and if so, grievance processes and compensation, and whether there has been any involuntary dislocation. With respect to transparency, the company is required to report each payment over US\$10,000 made to a Myanmar government entity and any contact it has had with the Myanmar military. Finally, companies are required to report on risk mitigation with regard to human rights, worker rights, anti-corruption and environmental issues.

The Myanmar Centre for Responsible Business (MCRB)⁵, which IHRB and the Danish Institute for Human Rights have established and are currently forming in Yangon, will be engaged in the areas mentioned in the US Reporting Requirements.

The US Reporting Requirements are just one benchmark NCPs can look to when engaged on the issue of “how much due diligence” is required in Myanmar. There are a number of organisations and individuals who are conducting research on issues related to business and human rights in Myanmar. The Land Core Group, which comprises individuals from civil society organisations in Myanmar, is one such source; another is The Transnational Institute, which has recently published a report: “Developing Disparity: Regional Investment in Burma’s Borderlands”.⁶ The Karen Human Rights Group has also recently published a report on alleged land grabs by

⁴ At: http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201302-1405-001.

⁵ Website forthcoming. For further information see: <http://www.ihrb.org/about/programmes/multi-year-project-in-myanmar.html>.

⁶ At: <http://www.tni.org/sites/www.tni.org/files/download/tni-2013-burmasborderlands-def-klein-def.pdf>

businesses in Eastern Myanmar.⁷ The think tank Displacement Solutions has published a legal analysis of the new land laws.⁸

Myanmar is blessed with a vibrant, resourceful and energetic civil society movement. There are a number of local groups reporting on business ventures, including the Chinese-led Shwe gas pipeline, the planned Dawei Special Economic Zone, and the Monywa copper mine dispute, to give a few examples.

These are all places to start in obtaining a sense of some of the laws, policies and practices in Myanmar, which have had reports and complaints of negative human rights impacts on local communities and workers. And of course NCPs should get in touch directly with relevant Myanmar civil society and community-based organisations about complaints they receive. Finally, the Myanmar Centre for Responsible Business in Yangon will be publishing on a number of key areas, and will include sector-wide strategic human rights impact assessments (HRIA) on a number of industry sectors, including for extractive industries.

4.4 Lessons to be learned from Myanmar

There is clearly much more NCPs can do unilaterally, but also in partnership, in relation to a high-risk market such as Myanmar. The proactive NCP agenda should also make efforts to align with the activities of other home and host government activities. For example, the role of NCPs should become an integral part of trade missions, trade negotiations as well as the granting of export credit. One NCP has taken the step of issuing specific guidance to its companies on Myanmar. Might others follow over the coming months? It is noted that in some instances it has been the home government itself that has done this (e.g. the UK). It was noted that the UK's chairing of the G8 provided an opportunity for the eight governments in question (most of whom are OECD members), together with the European Commission, to communicate directly with the government of Myanmar on these matters. Another opportunity, this time for business leaders, would be the World Economic Forum event in NaiPyiTaw in June 2013.

NCPs cannot be the only form of accountability in relation to responsible business, and several actors discussed the need for stronger national mechanisms within Myanmar itself – something stronger than most existing NCPs, perhaps a national commission to oversee foreign investments to which investors might be accountable. Others felt that the first priority was much greater capacity within the government of Myanmar itself to both facilitate responsible investment and also hold irresponsible businesses to account.

5. Conclusions

The meeting raised a broad range of ongoing challenges for NCPs and the need for demonstrating the real benefit to communities, and to business, of mediation and the issuing of statements. Many challenged whether NCPs should be seen primarily as a remedy for specific grievances, although they clearly could play a role here, but rather the real potential of NCPs moving forward would be one of prevention. Such prevention would require NCPs to operate within a context where expectations of business in human rights due diligence terms were clearer than they are today. It was discussed whether NCPs themselves, together with the wider activities of home and host governments, might play a role in clarifying these expectations, particularly in relation to high-risk operating environments.

More specific conclusions were to:

⁷ Losing Ground: Land conflicts and collective action in eastern Myanmar, Karen Human Rights Group, 5 March 2013, <http://www.khrgh.org/khrgh2013/LosingGroundKHRG-March2013-FullText.pdf>

⁸ Myanmar at the HLP Crossroads: Proposals for Building an Improved Housing, Land and Property Rights Framework that Protects the People and Supports Sustainable Economic Development, October 2012, Displacement Solutions, <http://displacementsolutions.org/files/documents/MyanmarReport.pdf>

- Encourage NCPs to be problem-solvers and use all tools available – NCPs can continue to ameliorate problems even if mediation fails;
- Follow clear procedures for the three phases of NCP operation: 1) initial assessment 2) mediation and 3) fact-finding and determination;
- Clarify statements and recommendations and follow up in all cases;
- Ensure statements have consequences by, for example, linking statements to public support (e.g. Export Credit Agencies);
- Before encouraging NCP creation in other countries, make sure clear procedures are in place to follow. Poorly functioning NCPs can also have negative consequences on cases and therefore minimum quality standards are important.

6. Appendices

AGENDA

UK Government, Department of Business, Innovation and Skills
Conference Suite, 1 Victoria Street, London SW1H 0ET

(The meeting marks the one-year anniversary of the March 2012 Workshop hosted by the Norwegian NCP, ICMM and the Institute for Human Rights and Business)

9.15am *Coffee*

9.30am **Opening** Jeremy Carver CBE, Transparency International; UK NCP Steering Committee

9.35am **Reflections on the role of NCPs following the 2011 Review of the OECD Guidelines**

- Aidan Davy – Vice-President, International Council on Mining and Metals
- Marie-France Houde – Senior Economist, OECD
- Joseph Wilde-Ramsing – Secretariat, OECD Watch

(Chair: John Morrison, Executive Director, Institute for Human Rights and Business)

10.30am **Learning from recent NCP activities relating to the extractive sector**

- Danish Chopra – Secretariat, UK NCP
- Hege Rottingen – Secretariat, Norwegian NCP
- Frans Evers – Chair, Dutch NCP
- Bianca Bohanan – Canadian NCP
- Comments from a variety of other NCPs

(Chair: Jeremy Carver CBE, Transparency International; UK NCP Steering Committee)

12.00pm (Burma) **Case-study: Pro-active agenda relating to high-risk contexts, e.g. Myanmar**

- Donna Guest, South-East Asia Manager, Institute for Human Rights and Business
- Jon Samuel, Anglo-American
- David Fitton, Foreign and Commonwealth Office (G8 Chair)
- Kirstine Drew, TUAC

(Chair: Margaret Wachenfeld, Director of Legal Affairs, Institute for Human Rights and Business)

1.30pm *Lunch*

End

Participant list

Governments and NCPs

Juan Manuel Uribe – Embassy of Colombia to the UK
Hendrik Zechner – Federal Ministry of Economy, Family and Youth, Austria
Kristin Palsson – Ministry of Foreign Affairs, Sweden
Hege Rottingen – Norwegian NCP
Christina Skagen – Danish Business Authority
Frans Evers – Dutch NCP
Danish Chopra – UK NCP
Liz Napier – UK NCP
Colette Vanstraelen – Belgian NCP
Johannes Schneider – Swiss NCP
Bianca Bohanan – Canadian NCP
Michael Williams – Chair, UK NCP Steering Board
Marie-France Houde – OECD
Jeremy Carver CBE – UK NCP Steering Board/ Transparency International
David Fitton – Foreign and Commonwealth Office (G8 Chair)

Companies, Business Associations and Investors

Vicky Bowman – Rio Tinto
Chris Anderson – Rio Tinto
Roper Cleland – IPIECA
Philip Ruck – IPIECA
Ross Gallinger – Prospectors and Developers Association of Canada (PDAC)
Aidan Davy – International Council on Mining and Metals (ICMM)
Louise Moore – Herbert Smith Freehills LLP
Johanna Hull – Herbert Smith Freehills LLP
Rae Lindsay – Clifford Chance
Gemetchu Hika – Statoil
Andrew Bone – De Beers Group
Jan Klawitter – Anglo American
Rachel Cowburn-Walden – Unilever
Ian Wood – BHP Billiton
Anna Krutikov – Xtrata
Charlotte Wolff – Arcelor Mittal
Joseph Matthews – Arcelor Mittal
Mark Hodge – Global Business Initiative on Human Rights
Francesca Ciardiello – Eni s.p.a

Civil Society and Trade Unions

Joseph Wilde-Ramsing – SOMO
Anna Triponel – SHIFT
Adrienne Margolis – Lawyers for Better Business
Kirstine Drew - TUAC
Peter Frankental – Amnesty International UK
Gary Campkin – Independent Consultant and Strategic Adviser
Danielle McMullan – Business and Human Rights Resource Centre (BHRRC)
Tricia Feeney - Rights and Accountability in Development (RAID)
Sean Bamford – TUC
Jeffrey Vogt - ITUC

IHRB

Donna Guest
John Morrison
Kelly Davina Scott
Haley St. Dennis
Margaret Wachenfeld