

Dr. Manfred Schekulin
Chair of the Investment Committee
Organisation for Economic Co-operation and Development
Rue André Pascal 2
75775 CEDEX 16
Paris, France

Dr. Roel Nieuwenkamp
Chair of the Working Party on Responsible Business Conduct
Organisation for Economic Co-operation and Development
Rue André Pascal 2
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Paris, France

27 November 2017

Substantiated submission regarding the Australian National Contact Point's failure to fulfil its responsibilities in a specific instance

Dear Dr. Schekulin and Dr. Nieuwenkamp,

We are writing with respect to the role of the Investment Committee as set out in the OECD Guidelines for Multinational Enterprises' Procedural Guidance, Part II, Section II, Paragraph 2.b to consider substantiated submissions by OECD Watch on whether a National Contact Point (NCP) is fulfilling its responsibilities with regard to its handling of specific instances.

OECD Watch requests the Investment Committee to review how the Australian National Contact Point (ANCP) handled a specific instance submitted by the Human Rights Law Centre (HRLC, an Australian NGO) and Rights and Accountability in Development (RAID, a UK NGO) against security firm G4S Australia Pty Ltd (G4S) in 2014. OECD Watch considers that the ANCP's handling of this complaint demonstrates a failure to conduct itself in an accessible, equitable and impartial manner in accordance with its responsibilities.

The specific instance dealt with alleged human rights abuses against asylum seekers detained at the Manus Island Regional Processing Centre (MIRPC), a remote offshore facility in Papua New Guinea which was, at the relevant time, run by G4S under a contract with the Australian Government. The complaint alleged breaches of the Guidelines relating to G4S's complicity in an unlawful detention regime, its failure to maintain basic human rights standards at the MIRPC and its failure to protect detainees from violence, including assaults by its own employees.

The ANCP rejected the complaint at the initial assessment stage on the basis that there were ongoing parallel legal proceedings in relation to incidents at the MIRPC; that several reviews had already taken place regarding the MIRPC; and that "*G4S as a service provider was not accountable for government policy.... and it is not the role of the ANCP to issue commentary on government policies or law*". This rejection was upheld by the ANCP following an appeal by the complainants.

OECD Watch contends that the ANCP's rejection of the complaint misapplied the criteria for initial assessment in the Procedural Guidance to the Guidelines and in some respects directly contradicted the Guidelines. Of greatest concern, the ANCP incorrectly conflated the responsibilities of the company with those of the state under the Guidelines. Companies are not exempt from the application of the Guidelines on the basis that their activities are consistent with domestic law and policy.

The consequence of the ANCP's failure to correctly apply the initial assessment criteria was that a well-substantiated complaint, which raised serious breaches of the Guidelines that were not being addressed in parallel proceedings, was not accepted for investigation. This was unnecessary and inappropriate, and it diminished the accessibility of the ANCP, in contradiction with this core criterion for NCPs.

The ANCP's handling of the complaint also raises serious concerns about its commitment to impartiality and to treating the parties in an equitable manner. The ANCP refused to pass on any of its correspondence with G4S to the complainants, despite this correspondence being material to the ANCP's decision to reject the complaint. In response to the complainants' request for review, the ANCP issued an appeal statement in 2016 (published and amended on 27 October 2017), which purported to exonerate G4S in relation to every allegation despite its rejection of the specific instance.

We note that the ANCP's failure to handle this specific instance, and others, in accordance with its responsibilities has led to a loss of confidence in the ANCP among both civil society organizations and individuals impacted by the activities of Australian multinational enterprises.

In order to restore civil society's confidence in the ANCP, it is essential that the ANCP uphold its responsibilities under the Guidelines and Procedural Guidance. For this reason, OECD Watch requests the Investment Committee to:

- Find that the ANCP has not fulfilled its responsibilities with regard to its handling of this specific instance, particularly in relation to operating in an accessible and impartial manner;
- Provide recommendations to the Australian government on how to improve the ANCP's handling of specific instances;
- Request that the ANCP reconsider this specific instance, taking into account the abovementioned recommendations; and
- Provide additional guidance to all NCPs in relation to the application of the initial assessment criteria set out in Paragraph 25 of the Procedural Guidance and how these should be interpreted in order to meet the core criteria of accessibility.

Please find attached further information and substantiation, including the specific instance complaint, the ANCP's response, the complainants' appeal and the ANCP's final appeal statement.

Thank you for your consideration of this submission. We look forward to your reply.

Sincerely,
On behalf of OECD Watch,



Dr. Joseph Wilde-Ramsing, Ph.D.

OECD Watch Coordinator

Copies to:

Mr Brian Pontifex, Australian Ambassador and Permanent Representative to the OECD

Mr. John Fraser, Secretary, The Australian Treasury

Mr. John Lonsdale, Deputy Secretary, Markets Group, The Australian Treasury

Ms. Victoria Anderson, Australian National Contact Point

Mr. Angel Gurría, Secretary-General, OECD

Ms. Gabriela Ramos, Chief of Staff and Sherpa to the G20, OECD

All Ambassadors to the OECD

Ms. Ana Novik, Ms. Christina Tebar-Less, Ms. Kathryn Dovey, Ms. Barbara Bijelic, OECD
Investment Committee secretariat







Mr. Pierre Habbard, Acting Secretary General of Trade Union Advisory Committee to the OECD

Ms. Kirsty Drew, Senior Policy Advisor, Trade Union Advisory Committee to the OECD

Mr. Bernhard Welschke, Secretary General, Business and Industry Advisory Committee to OECD

Ms. Hanni Rosenbaum, Senior Director, Policy and Strategic Planning, BIAC

Mr. Michael K. Addo, Mr. Pavel Sulyandziga, Mr. Dante Pesce, Ms. Anita Ramasastry, Mr. Surya
Deva, UN Working Group members on the issue of human rights and transnational corporations
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