

Resorting to Mechanisms of International Institutions

This module has the following objectives:

- Enable the participants to discuss the advantages and disadvantages of using the mechanisms that have been established by international institutions (such as the Integrity Measures of the UN Global Compact and the National Contact Point [NCP] system of OECD) to address human rights and labor issues.

Time: 4 HOURS AND 15 MINUTES

Materials:

- Big size papers, colored pens, writing papers, adhesive tapes;
- Equipment - computer, projector, screen;
- Video/documents on the international mechanisms such as the National Contact Point of the OECD and the UN mechanisms.

Resorting to Mechanisms of International Institutions

I. Procedure

a. Opener - 30 MINUTES

Show a video on the National Contact Point (NCP) of the OECD. Ask the participants for comments.

b. Input

Provide an input on international mechanisms to resolve cases of adverse human rights impact:

1. Integrity Measures of the UN Global Compact (Annex A)
2. National Contact Point of the OECD (Annex B).

Activity – 1 HOUR

In small groups, ask the participants to review in small groups the cases decided by the NCPs and the Office of the UN Global Compact relating to Northeast Asian companies such as the following:

1. Korean Trans National Corporations Watch, et al., v Daewoo International, POSCO, et al., ruling of the Korean National Contact Point, 3 December 2014 (Annex C);
2. Canada Tibet Committee vs. China Gold Int. Resources, Canada National Contact Point, 29 January 2014 (Annex D); and
3. Complaint against Petro-China filed in the Office of the UN Global Compact (Annex E)

One group discusses one case. Use the text of the cases in the annexes.

Instruct them to take note of the process involved from the filing of complaint to the resolution of the case by the NCP or whatever stage the case has reached; who filed the complaint; reasons/explanations given the NCP, UN Global Compact on the cases.

Ask them to present the results of their discussion in the plenary.

List on the board the ideas/suggestions provided by the participants.

c. Input - 1 HOUR

Provide an input that answers the following questions:

- How have the National Contact Points (NCPs) and the Integrity Measures addressed the complaints brought before them?
 - What are the limitations of the NCPs and Integrity Measures?
 - What can be done to further improve the work of the NCPs and Global Compact Office (regarding Integrity Measures)?
 - What lessons can be learned from the use of the NCPs and Integrity Measures?
- (See F Annex E for an assessment of a NCP)

d. Activity - 1 HOUR AND 30 MINUTES

In small groups, ask the participants to

- discuss the feasibility of using the NCPs by local stakeholders (workers, members of the local community, etc.);

- cite practical ideas/suggestions on the use of these mechanisms to resolve disputes involving companies.

Instruct them to present the results of their discussion in the plenary.

II. Summary

Time: 15 MINUTES

Summarize the main points discussed during the session such as the following:

1. The existing international mechanisms to address “business-related human rights impacts” of company operations especially the NCPs and the Integrity Measures;
2. The advantages and disadvantages of using these international mechanisms especially for local stakeholders.

Annex A

Integrity Measures

Allegations of Systematic or Egregious Abuses

The Global Compact welcomes any participant that pledges to work towards implementation of the Global Compact principles through learning, dialogue, projects, process improvements or other such measures. Moreover, it is not now and does not aspire to become a compliance based initiative. Nevertheless, safeguarding the reputation, integrity and good efforts of the Global Compact and its participants requires transparent means to handle credible allegations of systematic or egregious abuse of the Global Compact's overall aims and principles. The Global Compact Office can assist or provide guidance in this regard, by means of the measures described below. The purpose of these measures in the first instance always will be to promote continuous quality improvement and assist participants in aligning their actions with the commitments they have undertaken with regard to the Global Compact principles. It should be noted that the Global Compact Office will not involve itself in any way in any claims of a legal nature that a party may have against a participating company or vice versa. Similarly, the measures set out below are not intended to affect, pre-empt or substitute for other regulatory or legal procedures or proceedings in any jurisdiction.

Thus, when a matter is presented in writing to the Global Compact Office, the Office will:

1. use its judgement to filter out prima facie frivolous allegations. If a matter is found to be prima facie frivolous, the party raising the matter will be so informed and no further action will be taken on the matter by the Global Compact Office.
2. If an allegation of systematic or egregious abuse is found not to be prima facie frivolous, the Global Compact Office will forward the matter to the participating company concerned, requesting
 - written comments, which should be submitted directly to the party raising the matter, with a copy to the Global Compact Office, and
 - that the Global Compact Office be kept informed of any actions taken by the participating company to address the situation which is the subject matter of the allegation. The Global Compact Office will inform the party raising the matter of the above-described actions taken by the Global Compact Office.
3. The Global Compact Office would be available to provide guidance and assistance, as necessary and appropriate, to the participating company concerned, in taking actions to remedy the situation that is the subject matter of the allegation in order to align the actions of the company with its commitments to the Global Compact principles.

The Global Compact Office may, in its sole discretion, take one or more of the following steps, as appropriate:

1. Use its own good offices to encourage resolution of the matter;
2. Ask the relevant country/regional Global Compact network, or other Global Compact participant organization, to assist with the resolution of the matter;
3. Refer the matter to one or more of the UN entities that are the guardians of the Global Compact principles for advice, assistance or action;

4. Share with the parties information about the specific instance procedures of the OECD Guidelines for Multinational Enterprises and, in the case of matters relating to the labour principles, the interpretation procedure under the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.
5. Refer the matter to the Global Compact Board, drawing in particular on the expertise and recommendations of its business members.

If the participating company concerned refuses to engage in dialogue on the matter within two months of first being contacted by the Global Compact Office under subparagraph (b) above, it may be regarded as “non-communicating”, and would be identified as such on the Global Compact website until such time as a dialogue commences. If, as a result of the process outlined above and based on the review of the nature of the matter submitted and the responses by the participating company, the continued listing of the participating company on the Global Compact website is considered to be detrimental to the reputation and integrity of the Global Compact, the Global Compact Office reserves the right to remove that company from the list of participants and to so indicate on the Global Compact website.

A participating company that is designated “non-communicating” or is removed from the list of participants will not be allowed to use the Global Compact name or logo if such permission had been granted.

If the participating company concerned has subsequently taken appropriate actions to remedy the situation that is the subject matter of the allegation, and has aligned its actions with the commitments it has undertaken with regard to the Global Compact principles, the company may seek reinstatement as an “active” participant to the Global Compact and to the list of participants on the Global Compact website. If there is a local network in the country where the company is based, the company should first approach the local network; in all other cases the Global Compact Office should be contacted directly. Only the Global Compact Office can make a final determination of reinstatement.

The Global Compact Office is committed to ensuring a fair process for the parties involved. In order to promote the productive resolution of matters raised, no entity involved in the process should make any public statements regarding the matter until it is resolved.

(Source: Text based on *Global Compact – Integrity Measures*. Available at www.unglobalcompact.org/docs/about_the_gc/integrity_measures/Integrity_Measures_Note_EN.PDF)

Annex B

National Contact Point

THE NATIONAL CONTACT POINT [NCP] will contribute to the resolution of issues that arise relating to implementation of the Guidelines [OECD Guidelines for Multinational Enterprises] in specific instances in a manner that is impartial, predictable, equitable and compatible with the principles and standards of the Guidelines. The NCP will offer a forum for discussion and assist the business community, worker organisations, other non-governmental organisations, and other interested parties concerned to deal with the issues raised in an efficient and timely manner and in accordance with applicable law. In providing this assistance, the NCP will:

1. Make an initial assessment of whether the issues raised merit further examination and respond to the parties involved.
2. Where the issues raised merit further examination, offer good offices to help the parties involved to resolve the issues. For this purpose, the NCP will consult with these parties and where relevant:
 - a. seek advice from relevant authorities, and/or representatives of the business community, worker organisations, other nongovernmental organisations, and relevant experts;
 - b. consult the NCP in the other country or countries concerned;
 - c. seek the guidance of the Committee if it has doubt about the interpretation of the Guidelines in particular circumstances;
 - d. offer, and with the agreement of the parties involved, facilitate access to consensual and non-adversarial means, such as conciliation or mediation, to assist the parties in dealing with the issues.
3. At the conclusion of the procedures and after consultation with the parties involved, make the results of the procedures publicly available, taking into account the need to protect sensitive business and other stakeholder information, by issuing:
 - a. a statement when the NCP decides that the issues raised do not merit further consideration. The statement should at a minimum describe the issues raised and the reasons for the NCP's decision;
 - b. a report when the parties have reached agreement on the issues raised. The report should at a minimum describe the issues raised, the procedures the NCP initiated in assisting the parties and when agreement was reached. Information on the content of the agreement will only be included insofar as the parties involved agree thereto;
 - c. a statement when no agreement is reached or when a party is unwilling to participate in the procedures. This statement should at a minimum describe the issues raised, the reasons why the NCP decided that the issues raised merit further examination and the procedures the NCP initiated in assisting the parties. The NCP will make recommendations on the implementation of the Guidelines as appropriate, which should be included in the statement. Where appropriate, the statement could also include the reasons that agreement could not be reached.

The NCP will notify the results of its specific instance procedures to the Committee in a timely manner.

4. In order to facilitate resolution of the issues raised, take appropriate steps to protect sensitive business and other information and the interests of other stakeholders involved in the specific instance. While the procedures under paragraph 2 are underway, confidentiality of the proceedings will be maintained. At the conclusion of the procedures, if the parties involved have not agreed on a resolution of the issues raised, they are free to communicate about and discuss these issues. However, information and views provided during the proceedings by another party involved will remain confidential, unless that other party agrees to their disclosure or this would be contrary to the provisions of national law.
5. If issues arise in non-adhering countries, take steps to develop an understanding of the issues involved, and follow these procedures where relevant and practicable.

(Source: *OECD Guidelines for Multinational Enterprises*, 2011 edition, OECD Publishing, pages 72-74. Available at <http://dx.doi.org/10.1787/9789264115415-en>)

Annex C

National Contact Point - Cases

KTNCW et al. vs. Daewoo, et al.

Case overview

Date filed: 3 December 2014

Current status: Rejected (7 July 2015)

Issue: Daewoo's use of cotton harvested with forced & child labour

Summary of the case

Uzbekistan is one of the few countries around the world that through the implementation of state policy subjects its citizens to forced labour. The government forcibly mobilises farmers to grow cotton and forces more than a million men, women and children to harvest it. Since its first investment in Uzbekistan in the 1990s, Daewoo has expanded to three factories and is currently the country's largest cotton processor, buying 5% of all Uzbekistan's cotton. In return, the Uzbek government provides Daewoo with discounted cotton prices, tax incentives and preferential loans.

The complainants have been in direct contact with Daewoo since 2012. The company repeatedly admitted to having purchased cotton produced with forced and child labour. Nevertheless, the complaint alleges that Daewoo refuses to cease purchasing forced-labour cotton or to conduct independent human rights monitoring of its supply chain in Uzbekistan. It also alleges that Daewoo failed to conduct comprehensive human rights due diligence in its supply chain and contributes to the ongoing human rights violations associated with the cotton harvest in Uzbekistan.

The complainants also ask Daewoo's parent company POSCO to take its responsibility to avoid contributing to human rights violations in its subsidiary's operations and supply chains. Complaints have also been filed against Norwegian pension funds NPS and NBIM, requesting that as institutional investors of Daewoo International, they use their leverage to ensure that they mitigate the adverse human rights impacts to which they are directly linked to through their financial relationship with Daewoo.

Developments/Outcome

After an extension to carry out its initial assessment, the Korean NCP rejected the complaints against Daewoo, POSCO and NPS in July 2015. The NCP recognised the internal guidelines for ethical business conduct that the companies have in place and could not establish that they have breached the due diligence provisions of the OECD Guidelines or contributed to child labour and forced labour. The NCP further takes into consideration that the companies are not in a position to have leverage over the Uzbek government.

Given its relatively recent conclusion of a complaint against NBIM on the same issues and the ongoing clarification process at OECD level on the application of the OECD Guidelines to the financial sector, the Norwegian NCP decided to close the case without further consideration in July 2015. The NCP did not reject the complaint, but concluded that a new examination of same questions of principles concerning the financial sector's compliance with the Guidelines will not contribute to the purpose of the OECD Guidelines. In its statement the NCP did make reference to its previous

decision and recommendations to NBIM formulated at the conclusion of a complaint filed by ForUM and concluded by the NCP in May 2013.

(note: list of relevant OECD Guidelines not included in this Annex)

Case keywords

Child labour, Forced labour

NCP Information

NCP name: National Contact Point Korea

NCP address: 1 Chungang-dong Gwacheon-si, Kyonggi-do, Korea, Republic of

NCP website: www.mocie.go.kr/

Other NCPs involved: National Contact Point Norway

Complainants

NGO

Anti-slavery International

Cotton Campaign

Korean Trans National Corporations Watch

Source: www.oecdwatch.org/cases/Case_354

Annex D

National Contact Point - Cases

Canada Tibet Committee vs. China Gold Int. Resources

Case overview

Date filed: 29 January 2014

Current status: Concluded (1 April 2015)

Issue: Environmental, HR & disclosure issues China Gold Int.

Summary of the case

On 29 March 2013, Chinese state media reported that 83 miners were buried after a major landslide hit part of the Gyama Copper Polymetallic Mine located in the Pulang Valley in Siphug Village of Tashi Gang Town in Central Tibet (Tibet Autonomous Region). There were no survivors. The workers were reportedly asleep in their tents when they were buried by a mass of mud, rocks, and debris that was three kilometres wide and thirty metres deep. The camp where the workers were buried belongs to Tibet Huatailong Mining Development Ltd., a wholly-owned subsidiary of China Gold International Resources.

Although the Chinese government has stated that the landslide was a natural disaster, CTC alleges that there is documented evidence that it was in fact a manmade disaster and that the company had ignored previous warnings and local protests.

In addition, the complaint describes numerous other disputes with local stakeholders that remain unresolved and are indicative of a range of continuing violations of the Guidelines.

The complaint was filed by CTC because members of affected communities are unable to bring forward public complaints for reasons of personal security.

Developments/Outcome

After confirming receipt on 28 January, CTC did not hear from the NCP until 17 April, when the NCP informed CTC that China Gold was unwilling to engage in the process despite multiple requests from the NCP.

Though it never formally issued an initial assessment, in April 2015 the Canadian NCP released a final statement “accepting” the case and concluding that China Gold had not demonstrated that it is operating in a manner that can be considered to be consistent with the OECD Guidelines.

Interestingly, in its final statement, the NCP took the unprecedented step of imposing sanctions on the company for failing to engage in the complaint process, including withdrawing Trade Commissioner Services and other Canadian advocacy support abroad. This is a first in the NCP system. The sanctions can be repealed if the company eventually does engage with the NCP or somehow shows that it has engaged in good-faith dialogue with CTC.

The final statement also made recommendations to China Gold with respect to human rights due diligence including the importance of undertaking human rights impact assessments of the potential impacts of anticipated activities, and of disclosing any past or future reports.

(note: list of relevant OECD Guidelines not included in this Annex)

Case keywords

Health and safety, Extractives / mining sector, Forced evictions and resettlement, Labour rights, Human rights, Environment, Disclosure of information

NCP Information

NCP name: National Contact Point Canada

NCP website: www.ncp-pcn.gc.ca/

Complainant

NGO

Canada Tibet Committee

Source: www.oecdwatch.org/cases/Case_324

Annex E

Complaint Against Petro-China

IN A 12 MAY 2008 LETTER, an international group of NGOs requested the UN Global Compact Board to exercise its authority under the so-called “Integrity Measures” to hold PetroChina accountable for the Darfur crisis. The group asked the Board to request PetroChina to 1) engage the Sudanese government, either independently or collectively with other foreign oil companies operating in Sudan, to implement the UN Security Council resolution on ending the conflict in Darfur; 2) make all possible efforts to contribute to the success of Sudan’s Comprehensive Peace Agreement (CPA), including utilizing leverage on its business affiliates on the [government of Sudan] and on the government of South Sudan, to ensure that the CPA is implemented without further delay. This group of NGOs subsequently filed a formal complaint on the issue with the UN Global Compact Board on 15 December 2008. The formal complaint has two major issues: a. Are signatory-companies accountable under the UN Global Compact for the actions of their shareholders? And if the shareholders were companies, can UN Global Compact hold them accountable regardless of their non-signatory status? b. Are signatory-companies accountable under the UN Global Compact for any link to activities of other companies that allegedly support the human rights violations of host government?

The response of the UN Global Compact Office (through the letter of the Vice-Chair of the Global Compact Board on 9 February 2009) addresses the two issues. On the first issue, the letter explains that PetroChina (a signatory to the Global Compact) is not operating in Sudan and thus cannot be held responsible for the crisis there. And while the China National Petroleum Company (CNPC), the “dominant majority shareholder” of PetroChina, operates in Sudan it is not a signatory to the Global Compact and thus it is not covered by the integrity measures. The letter cites the difficulty of holding a subsidiary “responsible for the activities of a non-signatory shareholder, even if that shareholder holds a significant majority of the shares.” A prior response by the Executive Director of the UN Global Compact Office to the NGO request to delist PetroChina says that the Global Compact Board decided “not to handle this matter as an integrity issue of an individual company, PetroChina” and that the UN “Global Compact’s approach to business and peace emphasizes engagement rather than divestment and the power of collective action rather than focusing on any one individual company.” On the second issue, the complaint argues that any company that takes “part in any activity which is a source of major government revenue is by definition complicit with any human rights [violations] of the host government whether or not there is direct connection with the company’s activities.” In this case, the “company should then either engage with the government in order to persuade it to desist [from committing human rights violations], or presumably withdraw from the country.” The letter of the Vice-Chair of the UN Global Compact, however, states that “companies have to make their own decisions based on whether they feel able to operate in line with the principle they subscribe to as well as any advice or sanction from their home government and of course whether there are United Nations sanctions involved.”

(Source: Huang Zhong and Chen Qian, “Merging Business and Human Rights in China: Still a Long To Go,” in *Bridging Human Rights Principles and Business Realities in Northeast Asia*, pages 40-42. Endnotes have been omitted.)

Annex F

Assessment of the Australian NCP by Monash University, the University of Melbourne and Deakin University's Non-Judicial Human Rights Mechanisms Research Project, April 21st, 2014

Has the NCP changed its structure or procedures in the present implementation cycle?

Although the Australian National Contact Point (ANCP) has not changed its structure or procedures in the past period, the establishment of the oversight committee in 2012 as a direct response to the 2011 review of the Guidelines is important to note. The prime duty of the committee is to assist the ANCP when complaints are made and there are contentious issues to be considered. Although it was introduced as part of the structure of the ANCP and members are expected to meet biannually, the ANCP website only has records of the minutes from its First Meeting in November 2012 suggesting that it has not been active. We encourage the ANCP to ensure an active role for the oversight committee.

How do you assess the general functioning and structure of the NCP in your country you have been in contact with?

The ANCP is considered to be relatively weak, even after the oversight body was established. The ANCP is under-resourced and its determination processes are less rigorous than 'best practice' NCPs. The ANCP receives significantly less funding than the model NCPs (UK, Dutch, Norway). It does not have a dedicated budget or any designated staff, and instead is supported by staff of the Foreign Investment and Trade Policy Division of the Commonwealth Treasury.* As a result of its lack of funding, its ability to investigate specific instance complaints, conduct consultations within Australia, participate at OECD meetings, and promote the OECD Guidelines is detrimentally affected. Whilst the ANCP is one of the 15 (33%) NCPs that have created a multi-stakeholder board** the continuing functionality of this board is in question (as discussed above). The ANCP is not very active when compared with other NCPs, and there is no reason to believe that Australian companies have better human rights records than companies based elsewhere in the OECD. It has only received 12 cases, of which 5 have been concluded, 5 rejected, 1 withdrawn and 1 still pending.*** If the ANCP chooses to refuse mediation or mediation fails, it does not continue to investigate the complaint and it does not make an assessment of whether a company has breached the Guidelines. This is an area where Australia is failing to uphold the Guidelines. Furthermore, where mediation is successful and the NCP releases a final statement, it does not have a follow up process to monitor a company's compliance with its recommendations.**** This allows multinational enterprises that are in violation of the Guidelines to avoid implementing the recommendations of the NCP to bring themselves in line with the Guidelines. The ANCP performs well by having a dedicated website with adequate web pages explaining its function and role. Key OECD materials on the Guidelines are accessible on the website in English. Far more can be done to improve accessibility, however, such as more thorough outreach activities

* Trade Union Cases, National Contact Point Comparison.

** Trade Union Cases, National Contact Point Comparison.

*** OECD Watch, NCP: National Contact Point Australia.

**** Trade Union Cases, Australia NCP.

and the publication of materials in different languages. The ANCP offers reasonable levels of transparency by publishing its initial statement in the complaint process and provides mediation to parties for the purpose of resolving disputes. The NCP uses independent mediators in this process, and upon the conclusion of the mediation process it publishes a final statement to the public which includes recommendations to the company on future implementation of the Guidelines. Despite this, there is much room for improvement within the ANCP.****

How do you assess the performance of information and promotion function of the NCP in your country?

The ANCP complaint process is well publicised on their website. The website details information on the stages involved in handling complaints, the review procedure for complaints, and provides time limits for each stage. However, in Australia, the NCP is not a widely known mechanism and the NCP itself does little promotional work. The ANCP website states that their role includes the promotion of the Guidelines and that they do this by undertaking activities such as conducting seminars and consultation session on the Guidelines with businesses, NGOs, government departments and agencies, and the interested public; and publicising a Service Charter on the role of the ANCP to multinational enterprises and more broadly.**** However, in practice, there is no evidence of these outreach activities being conducted in any substantive form. As a result, concerns have been raised about the lack of accessibility to the ANCP due to the lack of promotional activities undertaken. Furthermore, the NCP website states “Consultations are held at least once a year to complement the schedule of meetings of the OECD Committee on Investment. These sessions aim to provide a forum for stakeholders to address issues under the Guidelines with the ANCP and to promote the Guidelines as a useful framework for business.”***** However, members of OECD Watch complain that although there used to be 3 meetings a year in Sydney, Melbourne and Canberra, which operate as multi- stakeholder consultations, these no longer occur. According to the Trade Union Cases (TUAC), the ANCP does not hold regular consultations in cooperation with external stakeholders, including trade unions, and it does not organise events to promote the Guidelines either in Australia or abroad.*****

Whilst the ANCP does have publications and key materials on the OECD Guidelines and reports from the Annual Meeting of NCPs, it has not been updated since 2012, which further limits its information and promotion function.

Other comments

With respect to the structure of the ANCP, it is housed in a single government department, the Foreign Investment and Trade Policy Division at the Commonwealth Treasury. In general, scepticism has been expressed regarding the independence of the ANCP (from ACTU and Oxfam Australia) and its ability to operate impartially throughout the complaints process as the structure can influence how the NCP handles complaints. For example, decision-making by the ANCP ultimately sits within this government department which can result in conflicts of interest. Thus, the ANCP

**** Trade Union Cases, Australia NCP.

***** Australian Government, Implementation and Promotion.

***** Australian Government, The Australian National Contact Point.

***** Trade Union Cases, Australia NCP.

should consider having an independent location to avoid conflicts of interest with the goals of the Guidelines. In short, the Australian NCP is falling short of achieving the four core criteria of functional equivalence of NCPs recommended in the 2011 Guidelines. Though it is formally visible, accessible, transparent and accountable, in practice it takes a very minimalist approach to meeting these criteria and that has impacted adversely on its usefulness as a grievance mechanism and promoter of human rights in the Australian business community.

(Source: OECD Watch, *Assessment of NCP Performance in the 2013-2014 Implementation Cycle*, June 2014, pages 36-38. Available at www.oecdwatch.org.)

References

Norwegian National Contact Point, *Final Statement - Complaint from Lok Shakti Abhiyan, Korean Transnational Corporations Watch, Fair Green And Global Alliance and Forum For Environment and Development Vs. POSCO*

Assessment of the Australian NCP by Monash University, the University of Melbourne and Deakin University's Non-Judicial Human Rights Mechanisms Research Project, 21 April 2014

Caitlin Daniel, Joseph Wilde-Ramsing, Kris Genovese, Virginia Sandjojo, *Remedy Remains Rare (Amsterdam: OECD Watch, 2015)*

National Contact Point, HURIGHTS OSAKA, "Human Rights and Japanese Companies," pages 165 - 172; and Appendix C, pages 203-204, in Jefferson R. Plantilla, editor, *Bridging Human Rights Principles and Business Realities in Northeast Asia* (Osaka/Kuala Lumpur: HURIGHTS OSAKA and SIRD, 2014)