Fit for Purpose?

A Review of the UK National Contact Point (NCP) for the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises 2008

A report by Rights and Accountability in Development (RAID)

in association with

The Corporate Responsibility (CORE) Coalition and

The Trades Union Congress (TUC)

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This report was prepared by RAID in collaboration with the TUC with contributions from Amnesty International UK, The Corner House, Global Witness, the London Mining Network, SPEAK and The Corporate Responsibility (CORE) Coalition. The description of the cases filed by unions was prepared by the Trade Union Advisory Committee to the OECD (TUAC). The authors acknowledge advice from Human Rights Watch – which is part of a coalition of NGOs seeking to improve the OECD Guidelines.

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RAID's mission is to promote a rights-based approach to development. RAID works to advance corporate accountability, fair investment and good governance to ensure the human rights of people living in poverty are respected by the private sector, international financial institutions and governments.

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The Corporate Responsibility (CORE) Coalition represents over 130 civil society organisations, including development, environment and human rights groups, trade unions and progressive businesses campaigning for a stronger rules-based approach to tackling irresponsible corporate behaviour.

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Executive Summary

This report by RAID reflects the views and experiences of UK-based NGOs and unions about the work of the UK National Contact Point for the Organization for Economic Co-operation and Development (OECD) in giving effect to the OECD Guidelines for Multinational Enterprises. Over the past year changes to the structure and the procedures of the UK National Contact Point (NCP) that were agreed after an 18-month multi-stakeholder consultation which ended in June 2006, have started to be put in place[1]. The government agreed to review the effectiveness of the changes to the UK NCP after the first full year of operations.

The NCP is a non-judicial mechanism that provides a degree of accountability for the environmental and human rights impacts of British companies operating abroad. It does not have any powers of enforceability, cannot impose penalties on companies or award compensation to victims. It has some capacity to investigate complaints directly, by seeking information from parties to the dispute, and plays a mediating role in bringing them together to facilitate dialogue and a resolution to the case. If there is no resolution, the NCP can review the evidence, consult experts, make a determination and issue a statement on the case.

While the NCP mechanism is not a substitute for judicial processes that can establish civil and criminal liability, it does have the potential to contribute towards an improvement in the standards of behaviour of companies. It is with regard to the realization of this potential that the NCP mechanism has come under critical scrutiny in the past from a range of sources, including NGOs, the TUC and the All-Party Parliamentary Group on the Great Lakes Region of Africa (APPGGLA). Their criticisms focused on the promotion of the guidelines, the structure and procedures of the NCP, its resourcing, its impartiality and its operational effectiveness. A more systemic criticism is that the role of the NCP is not reinforced by meaningful mechanisms for redress – legal or otherwise - at either national or international level.

Human Rights and Guidance for Business in Weak Governance or Conflict Zones

Without a doubt the most significant development since the new procedural changes were introduced over a year ago has been the outcome of two complaints concerning the activities of companies in the Democratic Republic of the Congo (DRC). The UK NCP found the carrier, DAS Air, and the minerals trading company, Afrimex, to have breached the human rights and supply chain provisions of the OECD Guidelines (details of the cases are provided in Annex IV). The decision of the NCP in these cases has set an important precedent. For the first time OECD-based companies have been held accountable by a home government for helping to fuel the war in the DRC that has cost the lives of an estimated 5.4 million people – the highest civilian death toll since World War II. Moreover the DAS Air and Afrimex decisions, which emphasize the responsibilities of companies involved in trade and services in conflict zones, have demolished the artificial barriers ('supply chain' and 'investment nexus') that some OECD governments have erected to try to shield their companies from scrutiny and censure.[2] The NGOs and unions welcome the statement by the Trade Minister Gareth Thomas that the British Government is "determined to promote the highest ethical standards and companies trading in conflict areas should take all possible steps to meet them".[3]

The OECD seems poised to review the Guidelines, in particular the human rights provision, in response to the reports of Professor John Ruggie, the Special Representative of the UN Secretary-General on business and human rights. It is imperative that the UK offers leadership in

these efforts to ensure that the standards are not diluted but strengthened.

Despite the recommendations of the Joint Working Group (JWG), chaired by Lord Mance, which was set up in March 2006 to explore common ground between business representatives and NGOs working in areas of conflict and weak governance; and the All-Party Parliamentary Group on the Great Lakes Region of Africa, there has been little progress in producing guidance for companies operating in weak governance areas or conflict zones. In May 2008, in a belated response to these recommendations (earlier calls had come from the Commission for Africa and the Gleneagles G8 Summit), the Department for International Development (DFID) commissioned a short study as a follow-up to the 2006 White Paper by Professor Rhys Jenkins of the University of East Anglia.[4] This remains a crucial issue to be tackled and where, as Professor Ruggie recently stated, 'there is a need for more proactive policies to prevent harmful corporate involvement in conflict situations'.[5]

Procedure

This report commends the significant improvements made in transparency, in the handling of cases and in the way the NCP deals with the complainants since the restructuring of the NCP. However, even after the restructuring some problems remain. In particular, proactive case management by the NCP is still required at an early stage of a case to ensure transparency, fairness and the efficient disposal of a case. Other concerns include the willingness of the NCP to suspend a case indefinitely because of on-going 'parallel proceedings' irrespective of whether these are likely to provide a satisfactory or timely outcome to the complaint. In addition, older cases (i.e. those filed before the reforms) continued to suffer from inadequate NCP case management: there was poor communication and crucial documents were mislaid, lost or destroyed. These problems are discussed in more detail in the main report.

The development of new procedures for complaints (known as 'specific instances') and the establishment of an appeals mechanism – called a review – have occupied much of the time of the newly created Steering Board, arguably the most important innovation to the UK NCP. But the size of the Steering Board, with civil servants outnumbering external members 2-1, has resulted in cumbersome and inflexible procedures which hamper its potential and efficiency. The changes in the UK NCP, which have already prompted improvements elsewhere, are being closely monitored by other governments and by the OECD Investment Committee.

Since 2000 the UK NCP has received 24 complaints from unions and NGOs (some related to the reports of the UN Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo[6]), and, in one case, a company. In June 2008, the Steering Board conducted its first review (appeal) in relation to the mishandling of a complaint about BP's Tbilisi-Baku-Ceyhan oil pipeline (BTC).

Structure

One of government's main aims, following the restructuring of the NCP, has been to clear the UK's embarrassing backlog of specific instances. That has been attempted at the cost of abandoning the fledgling inter-departmental structure. A key objective in formalizing the involvement of the Foreign and Commonwealth Office (FCO) and the Department for International Development (DFID) in the work of the NCP was so that an inter-disciplinary team could reach an informed view on how to interpret the Guidelines in specific instances. Spreading the responsibility across departments was also seen as a way of minimizing the risk of, or perception, of bias. Both NGOs and the TUC are concerned that decisions have been taken to alter the structure of the NCP

without discussion with the Steering Board and before the assessment of the first year's performance had been undertaken. The decision by the FCO to withdraw completely and DFID's plans to scale back its involvement after a relatively short engagement inevitably send out a negative signal about the commitment of these departments – and more broadly that of the government –to holding British companies to account.

The Need for Redress

In his report, 'Protect, Respect and Remedy: A Framework for Business and Human Rights', which was adopted by the Human Rights Council in June 2008, Professor Ruggie outlined the role that the NCPs could potentially play within the context of this framework. But he noted that "with a few exceptions, experience suggests that in practice [the NCPs] have too often failed to meet this potential".

This raises the question whether, despite the improvements to the UK NCP, this mechanism can ever be regarded as fulfilling part of the government's obligation to protect human rights and to provide a remedy for victims. At the very least, more effort will be required on the part of the ministers and senior officials to promote the Guidelines, and to use the NCP procedures effectively to curb corporate misconduct. The government should also recognize the inherent limitations of the NCP and be prepared to consider reforms that may be necessary to provide effective redress mechanisms – legal or otherwise - for victims of abuse committed by UK corporations in other jurisdictions.

Whatever the successes and limitations of the UK NCP there is one crucial area that will always remain beyond its powers and scope: access to a remedy. This indicates the need for the creation of a new body with a broader remit and greater powers than the NCP to hold companies accountable and to offer remedies to victims. Such a body would require the power to impose sanctions and penalties that would complement and reinforce the work of the NCP.

1. Introduction

The Government expects companies operating in the UK, and UK companies investing overseas, to act in accordance with the principles set out in the Guidelines…"[7]

This is a report by RAID produced in association with the Corporate Responsibility (CORE) Coalition and the Trades Union Congress (TUC) on the work of the UK National Contact Point (NCP) for the Organization for Economic Co-operation and Development (OECD) in giving effect to its Guidelines for Multinational Enterprises (OECD Guidelines). The OECD Guidelines set out a broad range of voluntary, socially responsible business principles for companies to follow. These apply to companies based in any OECD country that has signed up to them, irrespective of where in the world those companies operate.

Observance of the Guidelines is voluntary and not legally enforceable. While they are not directly binding on companies, adhering governments are expected to promote them and to put in place a procedure for responding to any allegations of company misconduct. These functions are embodied in the NCP.

The NCP is a non-judicial mechanism that provides a degree of accountability for the environmental and human rights impacts of British companies operating abroad. It does not have any powers of enforceability, cannot impose penalties on companies or award compensation to victims. It has some capacity to investigate complaints brought to it by NGOs or unions directly, by seeking information from parties to the dispute and plays a mediating role in trying to bring them together to facilitate dialogue and a resolution to the case. If there is no resolution, the NCP can review the evidence, consult experts, make a determination and issue a statement on the case.

While the NCP mechanism is not a substitute for judicial processes that can establish civil and criminal liability, it does have the potential to contribute towards an improvement in the standards of behaviour of companies. It is with regard to the realization of this potential that the NCP mechanism has come under critical scrutiny in the past from a range of sources including NGOs, the TUC and the All-Party Parliamentary Group on the Great Lakes Region of Africa. Their criticisms focused on the promotion of the Guidelines, the structure and procedures of the NCP, its resourcing, its impartiality and its operational effectiveness. A more systemic criticism is that the role of the NCP is not reinforced by meaningful mechanisms for redress – legal or otherwise - at either national or international level.

Over the past year, changes to the structure and the procedures of the UK NCP (agreed after an 18-month multi-stakeholder consultation which ended in June 2006) have started to be put in place. The government agreed to review after the first full year of operations the effectiveness of these changes.

Since 2000 the UK NCP has received 24 complaints: 23 from NGOs (some related to the reports of the UN Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo (DRC) (the UN Panel of Experts)) and trade unions; one from a company concerning the DRC. A complaint from a union, filed in 2006, was dropped after the parties resolved the matter through outside mediation. Nine cases concerned the DRC and the UN Panel of Experts' allegations concerning conflict and the illegal exploitation of natural resources in that country. Two complaints related to British companies were filed with, or transferred to, NCPs in other countries (Austria and Australia).

Since the introduction of new procedures in 2007, the UK NCP has issued six initial assessments and six final statements, one of which was subsequently withdrawn.[8] Another simply confirmed that the complaint had been withdrawn. Two union complaints are involved in mediation, one of which has been referred to outside mediation services. In two other trade union cases, NCP action has been suspended pending the outcome of parallel proceedings. In June 2008, the Steering Board conducted its first review (appeal) (see further below). The development of new procedures for specific instances and the establishment of the review mechanism have occupied much of the time of the newly created Steering Board, arguably the most important innovation to the UK NCP.

2. National Contact Point (NCP)

2.1 Improvements

NGOs and the TUC report improvements in transparency, in the handling of cases and in the way the NCP deals with both parties. The most significant development over the last year has been the outcome of two complaints concerning the activities of companies in the Democratic Republic of the Congo.

In July 2008 the UK NCP found DAS Air, a UK-based air cargo company, in breach of the human rights and supply chain provisions of the Guidelines for its part in transporting minerals from rebel-held areas of the eastern Democratic Republic of the Congo. Rights & Accountability in Development (RAID), who had filed the complaint, welcomed the NCP's decision as a major breakthrough – this was the first time a British company had been found to have breached the Guidelines.[9]

A month later, the UK NCP, in response to a complaint by Global Witness, concluded that Afrimex, a minerals trading company, contributed to fuelling conflict in the DRC, and that it failed to respect human rights and take adequate steps towards abolishing child and forced labour in its supply chain.[10]

The decisions in these cases have set an important precedent. Despite evidence from the UN and other sources that implicated over 50 multinational enterprises, no other OECD government has held any of its companies accountable for helping to fuel the war in the DRC which has cost the lives of an estimated 5.4 million people – the highest civilian death toll since World War II.

The DAS Air and Afrimex decisions, which emphasize the responsibilities of companies involved in trade and services in conflict zones, have demolished the artificial barriers ('supply chain' and 'investment nexus') that OECD governments had erected to try to shield their companies from scrutiny and censure.[11] John Ruggie, the Special Representative of the Secretary-General on business and human rights, referred to the Afrimex statement as "reaffirming the principle that companies must respect human rights, and that doing so requires them to have adequate due diligence processes not only to ensure compliance with the law but also to manage the risk of human rights abuse with a view to avoiding it".[12]

Despite these positive developments, problems remain with aspects of the procedures and there are other critical issues, which require urgent consideration by the NCP, the Steering Board and the British Government. These concerns, together with our recommendations are presented below.

2.2 Business and Human Rights: Weak Governance Zones and Conflict Zones

All companies have the same responsibilities in weak governance zones as they do elsewhere. They are expected to obey the law, even if it is not enforced, and to respect the principles of relevant international instruments where national law is absent.

(IOE, ICC and BIAC) [13]

The responsibilities of business for all human rights is a matter of the utmost concern to the trade unions and NGOs. The debate about the role of companies in weak governance zones and conflict zones has intensified partly as a result of the work of the United Nations Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo, which was appointed by the Security Council in 2000 to examine the link between exploitation of gold,

diamonds, and other minerals in the east of the DRC, and the war ongoing in that region since 1996. The Panel published a series of reports, the most controversial being the October 2002 report which included a list of 85 companies which were accused of being in violation of the OECD Guidelines.[14] Dossiers on 11 of these companies were forwarded by the UN to NCPs in Belgium, Germany and the UK for further investigation. The Panel recommended that two other companies should be monitored by the UK and Belgian NCPs. The Panel's allegations against the British companies: De Beers, Oryx Natural Resources Limited, Avient Limited and DAS Air were examined by the UK NCP.

In March 2005, the Commission for Africa recommended in its report, *Our Common Interest,* the development and implementation of comprehensive OECD guidelines for companies operating in areas at risk of violent conflict. The G8 governments at the Gleneagles Summit in 2005 also promised to work with the UN Global Compact and to develop OECD guidance for companies working in zones of weak governance. DFID's 2006 White Paper, *Making Governance Work for the Poor*, contained a commitment that DFID and the FCO would see how security and development could be more effectively addressed in UK development and diplomatic activity in Africa. The 2006 White Paper explicitly committed the government to working within the OECD to make the Guidelines more effective, particularly relating to business conduct in weak governance zones.

Yet it was as late as May 2008 that DFID commissioned a study into the usefulness of the Guidelines in weak governance and conflict zones. This has been presented as an NCP initiative. If that is the case, it is to be regretted that the terms of reference for the study were not discussed with the Steering Board in advance. The researcher was given a very limited time to prepare the report which was supposed to identify 'gaps' in the Guidelines. The study represents an initial step, but does not meet the calls for a review of the human rights provision of the Guidelines nor for a thorough review of guidance given to companies operating in conflict zones.

In his keynote presentation to the Annual Meeting of National Contact Points at the OECD in Paris in June 2008, Professor Ruggie observed that the fact that 'the human rights coverage of the Guidelines is anchored in host governments' international obligations no longer corresponds to the needs or practices of transnational business itself'. He noted that companies require greater guidance for dealing with the dilemma of conflicts between host country laws and international standards. He pointed out the lack of specificity in the Guidelines with regard to human rights other than labour practices and the complete neglect of other critical areas such as business impacts on communities, which accounts for 'some forty-five per cent of all public allegations of corporate-related human rights abuses that [he] tracked between 2005 and 2007'. Professor Ruggie advises against drawing up a limited list of rights for companies to take into consideration as his research shows that 'companies can impact virtually all internationally recognized human rights'. He favours 'process guidance' and 'effective grievance mechanisms'. As regards supply chain issues, Professor Ruggie recommends 'a human rights due diligence process' which would have companies take into account the performance of both current *and* potential business partners.[15]

In view of the importance of the issue and the planned work of the UN Special Representative on business and human rights on conflict zones, an expert meeting should be convened to discuss Professor Ruggie's report and the DFID study.

Furthermore in the light of the statements on DAS Air and Afrimex, we support the recommendation of the All-Party Parliamentary Group on the Great Lakes Region of Africa (APPGGLA) that the government should use the occasion of an

oral parliamentary statement to qualify some of the earlier NCP statements related to the UN Panel's reports, in particular the ones concerning Avient Limited and Oryx Natural Resources.[16] As long as such statements, widely acknowledged to have been the product of a flawed process, stand on the public record, they tarnish the British Government's reputation for being at the forefront of promoting responsible business conduct in conflict zones.

2.3 NCP Structure

Greater formalised involvement of the Department for International Development (DFID) and the Foreign and Commonwealth Office (APPGGLA Recommendation) [17]

The lead ministry for the UK NCP is the Department for Business, Enterprise and Regulatory Reform (BERR, formerly the Department of Trade and Industry (DTI)).

Following an 18 month stakeholder consultation that ended in June 2006[18], the UK Government announced that the NCP would be restructured to include officials from three ministries: BERR, DFID and the FCO. However, this arrangement quickly broke down. In March 2008, following a cross-departmental strategic review and without prior discussions, the FCO decided to withdraw, claiming that it could not afford to allocate 20 per cent of one of its official's time to staffing the NCP. The FCO will no longer have responsibility for the Global Compact, the OECD Guidelines or other CSR issues. The FCO's withdrawal is potentially damaging to the way in which the Guidelines are viewed nationally and internationally, and it is particularly damaging to the operations of the restructured NCP for the FCO to withdraw support even before the evaluation of the first twelve months of operations under the new system has been carried out.

The FCO states that it seeks 'partnership with companies in order to influence global change and meet our human rights obligations'. The withdrawal of the FCO from the NCP runs counter to its previous statements of support for its involvement in the NCP: in its 2007 Human Rights Report, the FCO announced that it had become part of the UK National Contact Point.[19] The FCO, in its first ever strategy on international corporate social responsibility, also explained how by participating in the NCP, it could help extend the reach of the most effective CSR initiatives such as the OECD Guidelines.[20] DFID has one official working 20 per cent of the time with the NCP. In July 2008, DFID also began to reassess its engagement with the NCP. It may withdraw its staff from active involvement with specific instances. Should DFID withdraw it would mean that, within the space of twelve months, the NCP would have gone from being an inter-departmental body to one within a single department, thereby reverting to the situation which pertained prior to the review. Sharing responsibility across several departments, a key recommendation of the Joint Working Group (JWG) accepted by government,[21] would appear to have been discarded without explanation.

There is a need for the NCP to be properly resourced to carry out its duties effectively and this requires funding from central government. The NCP cannot function adequately on a shoe-string. It should be funded from central government at least to the same level as the Dutch NCP, which has a budget of € 900, 000 for three years and two full-time staff who act as a secretariat to its independent members.

Continuity and consistency are essential elements of an effective NCP mechanism. But consistency was sacrificed when the government decided to parcel out cases to civil servants in different departments and continuity compromised by alterations to the NCP structure before the new arrangements had had a chance to be established. Any decision about the restructuring of the NCP should be discussed with the Steering Board before being put into effect.

Furthermore, the inter-departmental structure has not worked as the JWG envisaged. Possibly because of the backlog of cases, a decision was taken to divide the work among the civil servants in different departments. The outcome of this is that there has been little fruitful exchange of experience in dealing with the cases. For the FCO in particular, the resources available were insufficient for addressing complex issues raised by the Unilever cases in India and Pakistan.

The JWG had also recommended that:
The NCP should be a suitably qualified and senior civil servant... director level or above. This individual would carry out the initial assessment and conduct (or engage an expert mediator to conduct) the mediation process.

It would appear that senior civil servants are not giving full or adequate support to the work of the NCP.

2.4 Casework

A guidelines-based mechanism like the OECD process has the potential to play a useful and appropriate role in underpinning responsible corporate conduct, so long as it is properly implemented. In particular, to command the confidence of stakeholders, it must be credible, effective, fair, and timely, operating in accordance with due process and with proper safeguards against malicious, vexatious or insubstantial complaints.(JWG)

Case-handling not only lies at the heart of the NCP mechanism, but is a litmus test of its effectiveness.

Over the last year the UK NCP has dealt with eight cases: four NGO cases (three of which pre-dated the review) and four cases filed by trade unions. Global Witness's complaint against Afrimex is the first NGO case to be examined under the new procedures. The cases and the way they have been dealt with are briefly described in chronological order in Annexes II and IV to this report.

The revised complaints procedures are now available on the UK NCP's website.[22] The NCP has also prepared a standard format for complaints which is available online.

The UK NCP has spent a lot of time trying to conclude outstanding NCP complaints that had been presented before the stakeholder consultation process ended. It was decided that these older cases would not be dealt with under the revised procedures. Instead they were allocated to another civil servant operating on a part-time basis in isolation from the rest of the NCP. This *ad hoc* arrangement was unsatisfactory.

NGOs have voiced concerns about unnecessary delays in bringing some of the older complaints to conclusion and poor record-keeping by the NCP. In a number of cases, at crucial stages in the process, it has emerged that key documents have been mislaid, lost or destroyed. These losses were apparently due to mistakes made by former NCPs. But clearly **the process depends on the careful maintenance of case files and related correspondence, and this in turn requires adequate resources**.

The NGOs bringing the older complaints were doubly penalized. First, the initial mishandling of their complaints by a series of NCPs had led to inordinate delays. Secondly, instead of benefiting from the review of their cases these were being relegated to an unclear process, without any timetables and sidelined from the mainstreamed revised NCP process. **The manner in which the older complaints were dealt with was deeply unsatisfactory and untransparent both in terms of treatment of evidence and communication with the parties**.

There should be early case management meetings held between the NCP and all the parties involved in a specific complaint. The purpose of such meetings would be to i) timetable the complaint, ii) narrow the

issues in the complaint, iii) identify any additional evidence which is required.

Even after the new procedures were adopted, complaints continued to drift for months without apparent reason and the NCP had to be chased to progress cases. Active case management would avoid drift and ensure transparency as opposed to *ad hoc* contact between the parties and the NCP. It would also save significant time and expense if the issues were narrowed down at the outset.

2. 5 Time-frames

The OECD process must take place in as timely and efficient a manner as is compatible with due process, and according to a clear and justifiable timetable. The NCP should, in consultation with the parties, set a timetable for each stage of the process according to the circumstances of each specific instance. (JWG)

The NGOs and the TUC welcome the clearer time-frames, the agreement to publish initial assessments and the acceptance that the NCP in the final statement would make it clear when breaches have occurred. The unions and NGOs also report that the treatment of the parties to a complaint has become more balanced. **However, the unions warn of the need to ensure that compliance with the timetable – which is indicative only – does not take precedence over dealing with the substance of a complaint and become an end in itself.** Attempts to expedite some of the older cases have clearly been at the expense of due process.

Another problem that has beset many of the cases is the NCP's failure to establish which aspects of a complaint are admissible at the appropriate stage. The grounds on which the NCP accepts a complaint should be set out clearly in the initial assessment and then discussed during mediation or the examination phase. But in several older cases, where the NCP failed to make an initial assessment, issues that either were or should have been dealt with much sooner, have been reopened in the very last stages of the process.

2.6 Parallel Procedures

There are clearly circumstances in which the OECD Guidelines process should give precedence to other criminal or civil proceedings. However, this should only be where there is a real likelihood the OECD process could result in significant prejudice to the parallel procedures; there should be no automatic assumption that other proceedings should take precedence. Where the NCP rules that they should, the NCP should provide justification for that decision, which should be reviewable in the same way as other admissibility decisions. (JWG)

Despite this view of the JWG, the current practice of the UK NCP is to suspend specific instances if there is an overlap with other proceedings. The NCP is concerned with being perceived as infringing 'the sovereignty of host governments'. The NCP will only proceed with cases if there is some 'added value' to its intervention. Clearly, when the NCP decides to suspend its activities pending the outcome of proceedings elsewhere, it should ensure that it monitors the situation. The NCP should be prepared to resume examination of the specific instance if there is little evidence of a satisfactory or timely resolution of the issue in the other proceedings.

The unions have expressed great misgivings about the NCP's current practice which has allowed some multinational companies to exploit this loophole to block genuine worker representation at factories and plants abroad. The NCP, by continually invoking the existence of parallel procedures as a basis for ruling out or suspending complaints, will inevitably reduce the number of cases submitted and erode the power and capacity of the Guidelines to resolve issues related to labour rights and workplace practices.

A comprehensive survey of existing non-judicial grievance mechanisms carried out by the Corporate Social Responsibility Initiative, John F. Kennedy School of Government, Harvard University, shows that the vast majority of non-domestic, non-judicial grievance systems will consider matters which are in parallel legal proceedings.[23] As noted in by Hannah Grene in a recent study:

The OECD is one of very few mechanisms listed in the Harvard paper for which there is no explanation at all regarding parallel legal proceedings and how they should be handled.[24] **The Steering Board should consider the issue of parallel procedures at the earliest opportunity. Before guidance is issued, the Board should seek the views of experts and seek comments from the NGOs, unions and other stakeholders.**

2.7 Coherence between the OECD Guidelines and the Procedures of the Export Credits Guarantee Department (ECGD)

Professor Ruggie has expressed concern at the failure of most export credit agencies ECAs to consider explicitly human rights at any stage of their involvement. In his view ECAs represent 'not only commercial interests but also the broader public interest and should require clients to perform adequate due diligence on their potential human rights impacts. This would enable ECAs to flag up where serious human rights concerns would require greater oversight – and possibly indicate where state support should not proceed or continue.'[25]

The Export Credits Guarantee Department (ECGD) is the UK's official export credit agency. ECGD's role is to help British companies by providing insurance and/or backing for finance to protect against non-payment. In its Statement of Business Principles (2000) ECGD gave a commitment that it would "Ensure [its] activities take into account the Government's international policies, including those on sustainable development, environment, human rights, good governance and trade". In 2004 ECGD published its procedures for screening projects known as the Case Impact Analysis Process (CIAP). Although ECGD has acknowledged that there is an overlap, the criteria it uses to assess the environmental, social and human rights impacts of a project do not include any reference to the OECD Guidelines or its procedures.[26] The unions and NGOs have pressed the government to correct this anomaly.

A key recommendation from OECD Watch's 2007 survey was that NCPs should be involved in screening projects presented to ECAs for support.[27] However, the Trade Minister, Gareth Thomas, in a written response to SPEAK of 30 July 2008, rejected this proposal and reiterated the government's view that 'compliance with the Guidelines should not, of itself, be a necessary condition for Government support for business'. Documents obtained by Friends of the Earth under the Freedom of Information Act reveal that in mid-2003, when there was an internal Whitehall debate as to whether the ECGD should support a project 'which may have broken the OECD Guidelines', some government officials took the view that there was nothing objectionable in the notion that 'ECGD's project screening should be based on or include the standards set out in the Guidelines, which HMG is already committed to endorsing and promoting[28]. Other officials, from the FCO's Energy Section, disagreed: 'we should not do anything which disadvantages British companies compared with others, however noble …the purpose is'.[29]

ECGD should therefore ensure that its case handling procedures comply with the Guidelines.[30] Project screening should be based on, or include, the standards set out in the Guidelines. Support should be withheld by ECGD where companies are unable to prove they meet the Guidelines. In addition, where ECGD-supported projects are found to have broken the Guidelines, support should be withdrawn.

2.8 Retrospective Application of the Guidelines

Recent specific instances before the UK NCP have highlighted the need to clarify how company conduct in non-adhering countries prior to the adoption of the revised *2000 Guidelines* should be dealt with. A distinction can be drawn between: (i) an argument for application of the *1991 Guidelines* and; (ii) retrospective application of the revised *2000 Guidelines.*

The position of the UK NCP in November 2003, when seeking clarification from the Investment Committee (the OECD Committee that oversees and interprets the Guidelines, then called CIME) in the Anglo American specific instance, was that the *1991 Guidelines* applied in non-adhering countries because of 'the global intent behind the 1991 Guidelines'; moreover, no reference is made to the caveat that the parties must voluntarily accept their application in specific instances concerning pre-2000 conduct in non-adhering countries.

In the application of the *1991 Guidelines per se* to specific instances, it is made clear that conduct should be considered in respect of the chapter by chapter provisions contained therein. In this regard, the content of the *1991 Guidelines* was more limited than that contained in the revised *2000 Guidelines*.

However, to view past conduct only in respect of the *1991 Guidelines* misses entirely the issue of the retrospective application of the revised *2000 Guidelines*. As a result of the Investment Committee's [IC] clarification (that the revised *2000 Guidelines* applied retrospectively), and in the UK context, there is a strong precedent for retrospective application of the *2000 Guidelines*. The 23 May 2008 final statement by the UK NCP on the Anglo American specific instance states:

"10. The dates of the events (1995-2000) that are the subject of the complaint by RAID and the date of incorporation of Anglo American plc in the UK (1999) are relevant.

11. …the issue for the NCP to resolve was whether it would be legitimate to accept the case and retrospectively apply the 2000 version of the *Guidelines*, which do apply to the activities of multinational enterprises in non-OECD countries, to RAID's complaint.

12. The NCP sought the guidance of the OECD Investment Committee (CIME)…. The eventual view of CIME [IC] was that it would reasonable for the NCP to accept the case under the terms of the 2000 *Guidelines*.

13. In any event, irrespective of the view of CIME [IC], the company undertook to respond voluntarily to RAID's concerns and to explain the company's conduct from the mid-1990s."

The final statement on Anglo American establishes that specific instances concerning events prior to 2000 and outside OECD member countries can reasonably be accepted by the UK NCP under the terms of the *2000 Guidelines*. The fact that, in the Anglo American specific instance, the company voluntarily undertook to respond to concerns as to events prior to 2000 is 'irrespective of the view of CIME [IC]', i.e., retrospective application of the *Guidelines* arises from the Investment Committee's clarification and is not contingent on Anglo's voluntary acceptance of this.

In the final statements on the two aforementioned DRC cases concerning DAS Air and Afrimex, the NCP explained that it had not made any determination about allegations prior to June 2000 (when the *Guidelines* were revised), but had taken past behaviour into consideration when assessing the evidence related to events that occurred after June 2000. Whilst the consideration of past behaviour is to be welcomed, the reluctance to reach a determination on prior conduct is inconsistent with the position arrived at in the Anglo American final statement, which applies the *2000 Guidelines* retrospectively.

The matter of retrospective application was referred to the Steering Board. After a cursory discussion, the UK NCP issued a guidance note which stated that from now on complainants may only allege a breach of the guidelines in relation to activities prior to 2000 if those recommendations were in the *1991 Guidelines*. Such guidance is misplaced in that it fails to take into consideration retrospective application of the revised *2000 Guidelines* in line with the precedent set in the Anglo American case.[31] For example, a complainant might withhold information on human rights abuses committed prior to 2000 because there was no human rights provision *per se* in the *1991 Guidelines*, when, in fact, such information would be pertinent to retrospective application of the *2000 Guidelines*. Moreover, and to reiterate, the IC clarification and the UK NCP's final statement on Anglo American make it clear that retrospective application in non-adhering countries is not dependent upon the voluntary consent of both parties.

It should also be recalled that the government, in its response to the Stakeholder Consultation of 2006, agreed that "the NCP should be able to consider as a specific instance a complaint of past behaviour whose nature is such that there is a significant prospect of its recurring in the future[32]".

The UK NCP should not impose new requirements upon complainants alleging misconduct prior to 2000 and should follow the precedents set on retrospective application. There remains a need for the Steering Board, based upon the existing IC clarification and the position adopted in the Anglo American final statement, to review the guidance on how the UK should retrospectively apply the 1991 and, perhaps more importantly, the *2000 Guidelines*.

2.9 Coordination with other NCPs

The NCP's role in handling complaints that involve multiple jurisdictions has been the subject of criticism by a range of civil society actors internationally. The handling of the Baku-Tbilisi-Ceyhan (BTC) complaint is a case in point. The case highlights a serious lack of effective co-ordination between NCPs, to the detriment of the credibility of the Guidelines process and of the rights of complainants. In a statement presented at a March 2008 meeting between NGOs and the OECD Investment Committee, OECD Watch noted that:

It is now almost 5 years since non-governmental groups in the UK, France, Italy, Germany and the USA simultaneously submitted a Specific Instance complaint under the OECD Guidelines for Multilateral Enterprises against four companies that are part of the [Baku-Tbilisi-Ceyhan] Consortium.. . The complaint was later also submitted in Belgium[33].

Because the lead company in the BTC consortium is British, the NCPs in the countries where the specific instance was submitted had collectively decided in 2004 that the UK would "take the lead" in handling the case. As a result, the complainants had been given to understand that the UK would handle the case on behalf of all the NCPs. This understanding was shared by the NCPs outside of the UK. However in 2005 the UK NCP decided unilaterally that it would only deal with the UK complainants. Non-UK complainants were thus excluded from participating in the UK process except as observers. This decision was not apparently communicated to the other NCPs until January 2006.

The UK's unilateral decision to go back on its agreement to act as lead NCP on the specific instance of BTC effectively left the non-UK complainants in limbo, delaying the handling of their complaints by their own NCPs by two years. The complainants view this as "deeply detrimental to the credibility of the Guidelines as a process, which requires swift and transparent procedures if parties are to have confidence in their effectiveness as a means of improving MNE conduct.[34]" Despite improved procedures being

introduced in the UK in 2007, the UK NCP has failed to keep its NCP colleagues informed of its handling of the specific instance, resulting in further confusion and, worse still, in erroneous information being used as the basis for decision-making by NCPs. Italy, for example, was not informed that the UK's final statement on the case had been withdrawn following admission by the UK NCP that it was procedurally flawed.

A more successful example of collaboration took place in October 2007 when the UK NCP convened a meeting in London with the Australian and Swiss NCPs to discuss with a group of NGOs problems at the Cerrejon coal mine, in Colombia. Three multinational mining companies that jointly run the mine, BHP Billiton, Anglo American and Xstrata, participated. The meeting was held in response to complaints that had been filed in Australia and Switzerland.

2.10 Training and Mediation

The NCP should be trained in mediation techniques…(JWG)

The NGOs and TUC appreciate the efforts of the UK NCP to undertake mediation training. The TUC welcomes the willingness of members of the NCP to improve their understanding of industrial relations. The TUC also welcomes the way the NCP has facilitated outside mediation in a number of cases. However, in some cases it would be more appropriate for mediation to be handled by an independent, professional mediator. This is not a reflection on the quality of the mediation carried out by the NCP to date, but a point of principle to guarantee independence of the process. It would also protect the NCP against potential accusations of bias or conflicts of interest by either party involved in the mediation.

For the NGOs and unions, attempts to mediate are inappropriate when dealing with companies that are not seriously engaging in the process or in cases involving issues that cannot be regarded as appropriate for mediation such as alleged complicity in human rights abuses. In such cases the NCP should move directly to the investigation and determination phase.

2.11 Stakeholder Consultation

The UK NCP shared its 2007-08 report to the OECD's Investment Committee for the Annual Review of NCPs with the Steering Board, but it did not hold a wider consultation with the TUC and NGOs before the Annual Meeting of NCPs in June 2008. It is to be hoped that such a meeting can be held regularly in the future before the OECD Roundtables in June. Consultations with stakeholders or expert meetings on other issues, such as the role of business in situations of conflict or weak governance zones are also necessary.

2.12 Outreach and Webpage

In April 2008, the UK NCP hosted a meeting on the OECD Guidelines for a number of NGOs involved in the London Mining Network.

The NCP is currently developing a Guidelines promotion campaign which was discussed by the Steering Board. While this is appreciated, the NGOs and the TUC feel that BERR, as the lead government department, should be proactive and ensure changes to the web page, which is hosted on BERR's web site, are given priority. The government pledged after the consultation that ended in June 2006, to improve the website for the UK NCP within the first 12-months. This did not happen because of a reorganisation of government websites. The relocation of the NCP web page has been a cause of confusion.

3. Steering Board

3.1 Composition and Functions

The JWG recommends that a board be established to review the work of the NCP at regular intervals (at least once a year) and to make improvements as necessary

The Steering Board, which is chaired by a BERR official, has 17 members including government officials from a range of ministries and departments and four external experts proposed by the different constituencies. The Confederation of British Industry (CBI) is represented by Gary Campkin. Lord Jordan was the TUC's recommendation for appointment to the board. Richard Hermer and Jeremy Carver are legal experts nominated respectively by the NGOs and the APPG GLA. The external members have been effective in ensuring that the redrafted specific instance and appeals procedures reflect what was agreed with the government during the stakeholder consultation and that the process deals fairly with both parties to a complaint. But the size of the Steering Board, with civil servants outnumbering external members 2-1, has resulted in cumbersome and inflexible procedures which hamper its potential and efficiency.

There have been moves towards greater transparency by the NCP. For example, the minutes of the Steering Board are published on the NCP's web page. The review procedures were adopted in February 2008 and are available on BERR's website under the OECD Guidelines for Multinational Enterprises.[35]

External members of the Steering Board, dismayed at the glacially slow pace of the proceedings, point out that it has taken the best part of a year to revise the complaint procedures and agree on a review process. The Steering Board was scheduled to meet three times a year but there have been more frequent meetings in order to ensure that the revised procedures and review (appeal) process could be finalised before the end of its first term. In the view of the NGOs and the unions the need for additional meetings should have been anticipated and the work could have been carried out much faster if there had been greater flexibility regarding Steering Board meetings. The excessive number of civil servants attending the Steering Board is one reason given as to why its proceedings have been so lumbering and cumbersome. The number of civil servants on the Board should be reduced and, if necessary, consideration should be given to appointing additional external experts so as to achieve parity. Consideration should be given to appointing a suitable independent figure to chair the Board.

Concerns have been expressed on the quality of some of the documentation supplied to the Steering Board by the BERR secretariat and about 'the dead hand of officialdom' which risks undermining the potential, and value, of the procedures. The failure to give adequate resources to the NCP reflects the government's half-hearted attitude to the process, which is discussed further below.

The Steering Board will conduct an evaluation of its work which will be discussed in the latter part of 2008. NGOs believe that the Steering Board should continue but hope that with the new procedures in place it will be able to move on to discussing issues of substance and play a wider advisory role on the application and interpretation of the Guidelines. The NCP has indicated that it has found the Steering Board of great assistance in its work. The NCP has started to seek assistance from the Board on matters of interpretation such as the retrospective application of the Guidelines but there is a great need for much more work which would benefit not only the UK NCP but also the OECD Investment Committee.

Consideration should be given to paid external members of the Steering Board given the time-consuming and detailed work involved.

3.2 Review Committee

A number of Steering Board members have agreed to serve on the Review Committee (which considers requests for appeals about the NCP's handling of a complaint), including Richard Hermer and Jeremy Carver, as well as the CBI representative, Gary Campkin. BTC was the first ever case to be reviewed (see below). The Steering Board adopted a rule in order to ensure the impartiality of the process, 'that any board member who has been actively involved in the decision-making process for the complaint will not be entitled to participate in the review' (SB AP3 (08) 22 May 2008). **With the review process in place, and having dealt with its first case, it is essential that the Steering Board continue as it now forms an integral part of the functioning of the NCP.**

3.3 How the Review Procedure Works

Either party to a complaint can request a review by writing (emailing) to the Secretariat of the Steering Board at BERR directly or via the NCP. The request must be submitted, except in exceptional circumstances, within 10 working days from the date on which the NCP final statement was issued. The requester then has a further 10 working days within which to explain in writing why the NCP's decision should be reviewed. The review will usually be completed within 50 days. The Steering Board has nominated six members to form a Review Committee which will consider the request and make recommendations to the Board.

The grounds for review are limited to correcting procedural errors in the NCP process, although other issues, such as alleged unfairness in the NCP's treatment of the requester, may also be addressed.

Requests will be circulated to the Steering Board and members will be asked to declare any interest or involvement in the complaint. Any Board member who has been actively involved in the decision-making process for the complaint will not be entitled to participate in the review. Board members involved in a review will not take into account the interest of any constituency or department they represent. The quorum for the Review Committee is three.

The NCP will also have 10 working days to comment on the request and provide relevant background information. The NCP comments will be sent to both parties to the complaint, who will be given 5 working days to comment.

The Board will have 5 working days to consider the Review Committee's recommendation. Unless three members of the Board raise an objection, the recommendation will become final.

If the Board considers the request well founded it can:

- instruct the NCP to correct the irregularity
- acknowledge the deficiencies in the NCP process and make recommendations on how these can be avoided in the future.

If the Board asks the NCP to reconsider the case, the NCP will re-open the case, correct deficiencies and if necessary reconsider its final statement.

3.4 BTC Review

A Review Committee, set up by the Steering Board, has now conducted the first ever review of the NCP's handling of a specific instance, in relation to the BTC case. The review followed a request by The Corner House to the Steering Board. The Steering Board, whose operations are supposed to be transparent, has yet to decide whether the

outcome of the review can be made public prior to a new final statement on the case being issued. The original NCP statement issued in August 2007 has been withdrawn.

The review is not part of the specific instance procedure but an oversight mechanism. The review outcomes, which relate to the NCP's implementation of the Guidelines and not to the substance of a complaint, are distinct and therefore should not be governed by the specific instance confidentiality clause. The results should be made public as soon the Steering Board has approved the Review Committee's recommendations. This would build confidence in the mechanism and enhance the visibility of the Guidelines.

4. The British Government's Attitude to the OECD Guidelines

As mentioned in the first section, the UK Government's ambivalent attitude continues to undermine the effectiveness of the Guidelines. The NGOs and unions hope that Gareth Thomas MP, Parliamentary Under-Secretary of State for Trade and Consumer Affairs (the Minister with responsibility for the OECD Guidelines) will demonstrate the same level of commitment as his predecessor, Ian McCartney MP. To date, Gareth Thomas has participated in two meetings on the OECD Guidelines over the past 12 months. The first one was arranged by SPEAK, a national network of students and young adults who campaign on trade justice, the arms trade and corporate accountability. SPEAK members have called on the government to promote 'the Model NCP' recommendations at OECD level; to work with other EU governments to create a panel of MEPs to inspect the work of European NCPs; and, in the UK, to commit to proper consultation with all stakeholders before OECD meetings, to ensure that policies promoted there are consistent with wider trade policy. SPEAK met with Gareth Thomas, and the UK NCP, in January 2008.

In April 2008 the All-Party Parliamentary Group on the Great Lakes Region of Africa (APPGGLA) had a meeting with the Minister, as part of its continuing involvement in the work of the UK NCP. The APPGGLA convened the Joint Working Group (JWG) (composed of MPs,

business and NGOs) chaired by Lord Mance. The JWG's work during the multi-stakeholder consultation greatly influenced the restructuring of the UK NCP. The Minister reiterated the pledge to issue a parliamentary statement on the UN Panel Process, once the case concerning DAS Air had been concluded.[36] The statement to MPs was supposed to refer to all four dossiers which had been sent to the British Government by the UN Panel of Experts on the Illegal Exploitation of the Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo in November 2003 (De Beers, Oryx Natural Resources, Avient Limited and DAS Air). But the written parliamentary statement that was issued in July 2008 only refers to DAS Air. The NGOs and unions hope that the government might use the occasion of an oral parliamentary statement to qualify former NCP statements on some of the other DRC cases, in particular the ones concerning Avient and Oryx Natural Resources.

The NGOs and unions, however, welcome the statement by the Trade Minister, Gareth Thomas, that the British Government is "determined to promote the highest ethical standards and companies trading in conflict areas should take all possible steps to meet them".[37] They also support the government's recent initiative of issuing press releases to accompany the NCP's final statement as it contributes to increasing the visibility of the Guidelines.

5. Relations with the OECD Investment Committee

Currently there is a mood for change at the Investment Committee and there are various efforts underway to reform the NCP procedures, some from unexpected quarters: the Japanese government announced that they had set up an advisory board with representatives from the trade unions and business and that the NCP had agreed to adopt indicative time-frames for the consideration of cases.[38] The Japanese government also announced its intention to promote the Guidelines in the region and to put them on the agenda for an Asia-Pacific Economic Cooperation forum.

In his report, 'Protect, Respect and Remedy: A Framework for Business and Human Rights', which was adopted by the Human Rights Council in June 2008, Professor John Ruggie, the Special Representative of the UN Secretary-General on business and human rights outlined the role that the NCPs could potentially play within the context of this framework. But he noted that "with a few exceptions, experience suggests that in practice [the NCPs] have too often failed to meet this potential". If the UK NCP is indeed to be regarded as fulfilling part of the UK government's obligations to protect and to provide a remedy, then a great deal more effort will be required on the part of the ministers and senior officials to promote the Guidelines and to use the procedures to criticise and curb corporate misconduct.

The Investment Committee is poised to review parts of the OECD Guidelines, in particular the human rights provision in response to Professor Ruggie's report. **It is imperative that the UK offers leadership in these efforts to ensure that existing human rights standards are not diluted but strengthened.**

5.1 How the UK' s NCP Compares with other NCPs

There are changes occurring in the way other countries NCPs are structured and operate, some of which have been considerably influenced by the deliberations in the UK. But pressure for improvement has come from a range of sources. In 2007, the Investment Committee, in response to OECD Watch's proposals, [39] the commitments outlined in the G8 communiqué[40] and the observations made in John Ruggie's 2007 report to the Human Rights Council,[41] set up a task force to survey NCP performance.[42] The results of the survey were discussed at the June 2008 meeting of NCPs.

Since 2000 the structure of most NCPs has either been a unit made up of government officials or a tripartite structure involving business and union representatives. But some innovations have been introduced over the past year, the most interesting being the restructured Dutch NCP. In 2007, after an evaluation, the Netherlands adopted for a three-year trial period, a new structure composed of independent experts operating at 'arms length' from the government according to certain instructions published in an official 'Installation Ordinance' (see Annex VI: Restructured Dutch NCP). "While in the UK model, the decision-making power is retained by government, subject to oversight by the independent Steering Board, the Dutch model gives decision-making power to the four independent experts, assisted by the four government advisors."[43] It is envisaged that the work of the Dutch NCP will eventually be transferred to MVO Nederland (CSR Netherlands), a Dutch government funded foundation which promotes corporate social responsibility. [44]

Japan has also announced that it will adopt aspects of the Scandinavian NCP model by setting up a tripartite advisory board (with unions and business representatives). Many of the NCPs surveyed cited 'parallel proceedings' and the 'investment nexus' as the main reasons why cases are rejected.[45] But to date, the OECD Investment Committee has proved ineffectual in providing guidance, or taking a lead, in clarifying such issues. It is worth noting that the Chair of the Investment Committee's Working Party emphasised the absence of any formal oversight mechanism as a weakness with most NCP structures, which is why the UK's Steering Board has aroused such interest.

At the June 2008 meeting, the Japanese and Brazilian NCPs were noticeably more outspoken than at previous Roundtables. Both emphasized the need to promote the OECD Guidelines through regional fora in non-adhering countries. Japan noted that it has promoted other OECD instruments such as the Policy Framework on Investment in the Asia Pacific Region and announced that it planned to do the same with the Guidelines. Japan intends to encourage the Asia-Pacific Economic Cooperation forum (APEC) to make CSR a priority issue. This is undoubtedly, in part, a response to the growing strength of Chinese (and Indian) investment worldwide. But for the Guidelines to have a positive impact on the conduct of multinational enterprises based in non-OECD and non-adhering countries, it is crucial that NCP best practice is exported. To date this has not been embraced by either the Japan or Brazil.

Against the backdrop of the global banking crisis, the role of the Swedish and Norwegian NCPs in persuading other members of the Investment Committee to agree that the Guidelines apply to financial institutions seems prescient.[46] The matter was discussed at the 2007 OECD Round-table and agreement was reached that financial institutions qualify as multinational enterprises and that the implementation procedures of the Guidelines does apply to them. It is also noteworthy that in the view of the Investment Committee, irrespective of ownership – private, state or mixed – the Guidelines' recommendations for responsible business conduct applies to multinational financial institutions. [47] This means that the activities of the ECGD and the Commonwealth Development Corporation (CDC) could be the subject of a complaint to the UK NCP. The Investment Committee, at its March 2009 meeting, will consider whether additional guidance is needed 'to cover the various situations encountered by multinational financial institutions in their relations with business partners or clients'.[48] According to the Investment Committee, 28 adhering countries promote the Guidelines through export credit, investment promotion or guarantee programmes, but 'observance of the Guidelines is not a pre-condition for acceding to these financing services'.[49] **It is time for the OECD and adhering governments to accept that promotion without enforcement is a hollow exercise and that the moment has come for strengthening controls over financial institutions so as to ensure sustainable and responsible investment.**

6. Recommendations

6.1 Business and Human Rights Agenda

Companies in Weak Governance and/or Conflict Zones

Despite the recommendations of the JWG and the APPGGLA there has been little progress in producing guidance for companies operating in conflict zones. This remains a crucial issue to be tackled. In view of the planned work on conflict zones, to be undertaken by the Special Representative of UN Secretary-General on business and human rights, we recommend that the Steering Board convenes a meeting with stakeholders and experts from academia and the legal profession to discuss the findings of these reports and the role of the UK NCP in furthering this work.

If the UK NCP is to contribute towards the UK government's obligations to protect human rights and to provide a remedy for victims of corporate abuse, then it should be reinforced by adequate regulatory frameworks for corporate accountability at both national and international level. The effectiveness of the Guidelines and the NCP requires more effort to be directed towards identifying gaps in holding companies accountable and proposing changes to existing institutional mechanisms, or the establishment of new ones, to address these deficiencies. This should be combined with greater effort on the part of ministers and senior officials to promote the Guidelines and to use the procedures in a way that will have the effect of curbing corporate misconduct.

The OECD Investment Committee is poised to review parts of the Guidelines, in particular the human rights provision in response to Professor Ruggie's report. It is imperative that the UK offers leadership in these efforts to ensure that the standards are not diluted but strengthened.

In the light of the DAS Air and Afrimex decisions, the NGOs support the proposal by the All-Party Parliamentary Group on the Great Lakes Region that the government should use the occasion of an oral parliamentary statement to qualify some of the earlier NCP statements related to the UN Panel's reports on the illegal exploitation of the natural resources in the Democratic Republic of the Congo, in particular the ones concerning Avient Limited and Oryx Natural Resources.

The government should not soley promote the NCP procedures in circumstances when other mechanisms might be more effective in protecting human rights and providing a remedy for victims of abuse.

6.2. Structure

Any decision on the restructuring of the NCP should be discussed with the Steering Board before it is put into effect. There should be greater support given to the NCP by senior civil servants and government ministers, including central funding to a level similar to the Dutch NCP (i.e. €300,000 per annum for three years, plus two full-time posts).

Steering Board

With the Review process in place, it is clearly essential that the Steering Board continue as it now forms an integral part of the functioning of the NCP.

The number of civil servants participating as full members of the steering board should be reduced to enable the Board to function more efficiently. There should be parity between the external and government participants; only key departments need to be formally represented, whilst others should be invited to attend as required. Consideration should be given to paid external members of the Steering Board given the time-consuming and detailed work

involved. In particular, consideration should be given to appointing a suitable independent figure to chair the Board.

Now the procedures have been finalised, the Steering Board should play a much stronger role in advising how the Guidelines should be promoted to companies and across government. Apart from monitoring the NCP, the Steering Board should begin to undertake a wider advisory role on the application and interpretation of the Guidelines.

There is a presumption in favour of disclosure in relation to the work and deliberations of the Steering Board. The Review procedures should be amended to clarify that the results of Reviews undertaken by the Steering Board are posted on the NCP web page without delay. Any Review is not part of the specific instance procedure, but an oversight mechanism. Review outcomes which relate to the NCP's implementation of the Guidelines, and not to the substance of a complaint, are not confidential and should be made public as soon the Steering Board has approved the Review panel's recommendations.

The Steering Board has adopted a rule in order to ensure the impartiality of the process: 'that any board member who has been actively involved in the decision-making process for the complaint will not be entitled to participate in the Review'. Given that the government opted for a constituency-based representation on the Steering Board, when a conflict arises there should be an option for the relevant constituency to propose a suitably qualified replacement to ensure that all constituencies are adequately represented.

6.3 Procedures

6.3.1 Case Management

There should be early case management meetings held between the NCP and all the parties involved in a specific complaint. The purpose of such meetings would be to: i) timetable the case, ii) narrow the issues in the complaint, and iii) identify any additional evidence which is required. Even after the new procedures were adopted, cases continued to drift for months without apparent reason and the NCP had to be chased to progress cases. Active case management would avoid drift and ensure transparency, as opposed to *ad hoc* contact between the parties and the NCP. It would also save significant time and expense if the issues were narrowed down at the outset.

6.3.2 Time-frames

While making every effort to adhere to the time-frame for dealing with complaints, the NCP must ensure that compliance with the time-frame – which is indicative – does not take precedence over dealing with the substance of a complaint and become an end in itself.

6.3.3 Mediation

Attempts to mediate may be inappropriate when dealing with companies that are not seriously engaging in the process, or in cases involving issues that are not suitable for mediation, such as alleged complicity in human rights abuses. In such cases, the NCP should move directly to the investigation and determination phase.

6.3.4 Parallel Procedures

The decision on what actually constitutes 'parallel procedures' should be taken following full consultation with parties to the complaint.

The NCP should confirm that where a party feels that a case has been unfairly dismissed or suspended on the grounds of parallel procedures, that they have the right to request the Steering Board review the decision.

When the NCP decides to suspend its activities pending the outcome of parallel proceedings, it should give a reasoned justification and it should ensure that it monitors the situation. The NCP should be prepared to resume the specific instance if

there is little evidence of, or potential for, a satisfactory or timely resolution of the issue.

The Steering Board should consider the problem of parallel procedures at the earliest opportunity. Before guidance is issued, the Board should seek the views of legal and academic experts as well as of NGOs, unions and other stakeholders.

6.3.5 Coherence Between the Guidelines and the Procedures of the UK Export Credits Guarantee Department (ECGD)

As signatories to the OECD Guidelines, governments have affirmed their expectation that multinational enterprises (including their 'local entities') observe the Guidelines.[50] This has been reaffirmed by the British Government in a recent press release which stated: "The government expects all UK businesses to be able to prove they meet the OECD guidelines".[51] ECGD should therefore ensure that its case handling procedures comply with the Guidelines.[52] Project screening should be based upon, or include, the standards set out in the Guidelines. Support should be withheld where companies are unable to prove they meet the Guidelines. In addition, where ECGD-supported projects are found to have broken the Guidelines, support should be withdrawn.

6.3.6 Retrospective Application of the 2000 Guidelines

The NCP's recent guidance on retrospective application[53] should be withdrawn and redrafted to bring it into line with the precedent set in the Anglo American specific instance, itself based upon a clarification of the Investment Committee – the OECD body responsible for clarifying the Guidelines. According to the Anglo American final statement: '…the issue for the NCP to resolve was whether it would be legitimate to accept the case and retrospectively apply the 2000 version of the Guidelines, which do apply to the activities of multinational enterprises in non-OECD countries…The eventual view of CIME [renamed IC] was that it would reasonable for the NCP to accept the case under the terms of the 2000 *Guidelines*.'[54] Retrospective application of the Guidelines arises from the IC's clarification and is not contingent on Anglo American's voluntary acceptance of this. Moreover, the two recent statements on DAS Air and Afrimex take pre-2000 behaviour into consideration (although they fail to reach a determination *per se* on this prior conduct), whereas the NCP guidance might wrongly discourage the submission of such information in the first place. The Steering Board should consider and revise the current guidance.

6.3.7 Collaboration on Cases involving more than one NCP

The UK NCP should be encouraged to work collaboratively with other NCPs to resolve specific instances that involve more than one jurisdiction.

6.4 Stakeholder Consultation

The existence of the Steering Board does not dispense with the need for wider consultations with the TUC, its affiliates, international trade union bodies and NGOs on important issues confronting the NCP, or which are on the OECD Investment Committee's agenda. The UK NCP should hold a yearly consultation before the Annual Meeting of NCPs and convene other meetings with relevant stakeholders and legal and academic experts on matters of specific interest.

6.5 Web page, Outreach and Resources

The government must ensure that the process, which depends on the careful maintenance of case files and related correspondence, has adequate staffing and resources. In its July 2006 response the government pledged to revise and update the UK NCP's web page but improvements have been slow. It is confusing if the location of the NCP web page is continually being changed. BERR, as the lead government department, should be more proactive and

prioritise changes and regular updates to the NCP web page.

6.6 Establish a New Body with Wider Powers

Apart from the proposed reforms to the existing NCP structure and procedures outlined above, the government should recognize and address the inherent limitations of the NCP process. The British government should be prepared to consider the reforms necessary to provide effective redress mechanisms for victims of abuse committed by UK corporations in other jurisdictions. An example would be for the UK to establish a Commission for Human Rights, The Environment & Business with powers to sanction and impose penalties, which would complement the work of the NCP.

Annex I: Implementation of Post-Consultation (July 2006 Agreements

Involvement of other branches of government in NCP: apart from BERR (DTI), DFID and FCO will also be represented.	☒	FCO withdrew staffing. DFID reconsidering involvement in case work.
Promotion of Guidelines, improvements to web page	✳	Improvement delayed by general overhaul of government web sites.
Steering Board (with independent experts) to oversee the operation of the NCP and consider issues of 'both general and specific application of the Guidelines'	☑	But confusion over constituency basis of experts.
Past breaches admissible if problems recur	✳	Issue regarding retrospective application of *2000 Guidelines*.
Publishing initial assessments	☑	Identities of parties withheld if complaint not accepted.
Complaints acceptable unless identical to issues in legal proceedings	✳	Unclear. UK NCP suspends cases when there are legal proceedings in host country. Further consideration of issue required.
Improved timescales – target of 12 months	☑	Yes, for new cases.
Enhanced mediation efforts	☑	Yes.
NCP to investigate and seek additional information from inside and outside government	☑	Yes, more efforts made to consult relevant international bodies or industry associations.
Failure by one of the parties to a complaint to stick to the timetable may not deter the NCP from issuing a final statement on schedule	✳	Partial, but some companies stalling process.
Clearer rules on disclosure of information	☑	Yes.
Final statement to include the NCP's determination on compliance with the Guidelines	☑	Yes, in 2008 three final statements identified breaches.
Improved final statements	☑	Yes.
Appeals procedures	☑	Yes, 'Review' mechanism agreed.

ACTION KEY:
☑ Yes ☒ No ✳Partial

Annex II: UK NCP Steering Board Responsibilities

AGREED	ACTION	IMPLEMENTED
Keep its own Terms of Reference under review	☑	There has been some slippage regarding the review of these.. There is a concern that there has been no wider formal consultation with stakeholders as part of this review.
Oversee and monitor the effectiveness of the operation of the NCP, ensuring fair procedures are followed in line with the published NCP procedures for dealing with complaints	☑	This was one of the more successful outcomes of the consultation. The role of the non-governmental SB members has been invaluable. Their input is also appreciated by the NCP.
Agree any changes in the agreed procedures, and develop further guidelines, where necessary, in the light of experience	☑	This has absorbed most of the SB's time over the first year. The outcome has been positive, but the process has been inordinately slow.
Consider issues of general and specific application of the Guidelines when they arise. The Steering Board will consider requests from the NCP for guidance on the procedure to be followed. The Steering Board will not make decisions on the substance of Specific Instances	✳	So far little has been accomplished in this area. Discussions on general issues have been extremely limited.
Consider requests for Review in relation to Specific Instances examinations in respect of procedural issues only	☑	First Review request was handled with the case being remitted to the NCP for action. The Review procedures should be amended to allow for an alternative external expert to represent their constituency where a conflict of interest arises.
Assist and advise the NCP in relation to the promotion of the Guidelines	✳	Some work, but no thorough discussion of long-term activities. Improvements to the NCP web page delayed.
Consider issues where improvements to the Guidelines are proposed for bringing to the attention of the OECD Investment Committee. The Steering Board may make recommendations to ministers as appropriate	☒	Not much progress. The SB has not managed to improve the level of discussion at the Investment Committee on the interpretation and scope of the Guidelines.

ACTION KEY:
☑ Yes ☒ No ✳ Partial

Annex III: Specific Instances Submitted to the UK NCP 2000 – 2008

Company	Complainants	Host country	Issue	Date filed	Guidelines' provision	Status	Details
Binani/Roan Antelope Mining Company Zambia (RAMCOZ)	Rights & Accountability in Development (RAID)	Zambia	Alleged corruption and mis-management of Zambian mine	05/01	Chapter II.1 sustainable development, Chapter II.2 human rights, Chapter II.5 exemption from regulation, Chapter IV.1.a employee representation & negotiation, Chapter IV.6 employee consultation over lay-offs, Chapter VI combating bribery, Chapter X taxation	NCP referred case to anti-corruption unit. But no further action	Ramcoz in Zambia went into receivership. The case continued against Binani in the UK but when Ramcoz was liquidated it was dropped. Matter was transferred to another government department. Bribery allegations never investigated.
Anglo American plc/Konkola Mining Company (KCM)	Campaign for a Better Environment (CBE) Zambia; Afronet; Rights & Accountability in Development (RAID)	Zambia	Anti-competitive privatisation of copper mines, resettlement, social provision	02/02	Chapter II.1 sustainable development, Chapter II.2 human rights, Chapter II.5 exemption from regulation, Chapter IX.1, Chapter IX.3 anti-competition, Chapter V Environment, Chapter III.2 environmental/social reporting	Concluded	Initial assessment completed June 2002. Process stalled when the Investment Committee was asked to clarify the retrospective application of the *2000 Guidelines*: In April 2004 NCP decided the case should proceed. In May 2008 a final statement based on the NCP's initial assessment was issued.
BP and its consortium partners in the proposed Baku-Tbilisi-Ceyhan (BTC) pipeline	Campagna per la Riforma della Banca Mondiale ; TheCorner House; FERN; Friends of the Earth EWNI; Friends of the Earth France; Friends of the Earth Netherlands; Friends of the Earth US;	Turkey, Azerbaijan and Georgia	Pursuit of tax and legal exemptions; undue influencing of governments in construction of pipeline in Georgia and Turkey	04/03	Chapter II.5 exemption from regulation, Chapter III.1 disclosure, Chapter V.1 environmental management, Chapter V.2a information on environmental health/safety, Chapter V.2b community consultation,	Case re-opened after the Review	Subsequent to the filing of the complaint, HMG became a financial stakeholder in the project, raising concerns about conflict of interests. UK NCP conducted a site visit in Sept 2005. Meeting of parties in Nov 2005 after which UK NCP concluded that there was no possibility of reaching agreement. A final

	PLATFORM; Urgewald; WEED; GermanWatch; BUND				Chapter V.4 postponement environmental protection measures		statement was issued in August 2007 but withdrawn after NCP admitted procedural failings. After a Review by the Steering Board, the case was sent back to the UK NCP.
National Grid Transco	Citizens for a Better Environment (CBE)	Zambia	Consumer protection from tariffs; anti-competitive practice, exemptions from taxation, employment and industrial relations.	07/03	Chapter II.5 exemption from regulation, Chapter IV.6 employee consultation over lay-offs, Chapter VI combating bribery, Chapter VII.4 unfair representations to consumers, Chapter X taxation; Chapter IX.1a price fixing, Chapter IX.1d market division, Chapter IX.2 competition law, Chapter IX.3 cooperation competition authorities	Concluded	NGT conveyed its willingness to engage by a letter of 14 November 2003. Denied the allegations and breaching the Guidelines. CBE did not actively pursue the claim. Case closed by the UK NCP July 2005. Final statement issued stating case closed 'due to a lack of prosecution' by the complainants.
British American Tobacco (BAT)	International Union of Food and Allied Workers (IUF)	Burma	Joint venture with Burmese military government.	09/03	Chapter II General Policies, Chapter IV Employment and Industrial Relations	Withdrawn	In November 2003, BAT sold its factories because of a formal request from the British government to withdraw from Burma. Consequently, the IUF withdrew the case. No statement issued.
De Beers	Self-execution by NCP. But UN Panel of Experts referred to by NCP as the complainant.	DRC	Named by the UN Panel on the Illegal Exploitation of Natural Resources in the DRC.	010/03	Chapter II.10 supply chain, Chapter II.1 sustainable development, Chapter II.2 human rights	Concluded	Placed by the UN Panel in category III and 'referred to UK NCP for updating or further investigation'. Dossier received by UK NCP in October 2003. Final statement issued 2004, Key UN concern over claim that EC competition law prevented due diligence not addressed.
Oryx Natural Resources	Rights & Accountability in	DRC	Named by the UN Panel on the Illegal Exploitation	06/04	Chapter II.1 sustainable development,	Concluded	UN Panel referred the case to NCP for further investigation in October

	Development (RAID)		of Natural Resources in the DRC. Allegations concerning irregular acquisition of Sengamines diamond mine.		Chapter II.2 human rights, Chapter II.5 exemption from regulation, Chapter II.11 political involvement, Chapter III.3, Chapter III.4 disclosure, Chapter VI.1, VI.5, VI.6 combating bribery, Chapter IX.1 anti-competition, Chapter X taxation		2003. RAID presented complaint in June 2004. NCP did not acknowledge RAID as complainant until it resubmitted case in April 2005. Majority of issues disallowed by NCP on grounds that they had been 'resolved' by Panel. Final statement issued June 2005. NCP statement influenced by threat of judicial review by company.
Avient	Rights & Accountability in Development (RAID)	DRC	Named by the UN Panel on the Illegal Exploitation of Natural Resources in the DRC. Allegations that Avient involved in indiscriminate bombing of civilian targets in Equateur Province.	06/04	Chapter II.2 human rights, Chapter III.3, Chapter III.4 disclosure	Concluded	UN Panel referred to NCP for investigation in October 2003. RAID presented complaint in June 2004. Final statement issued August 2004, based solely on NCP interviews with company. RAID excluded from process. Human rights issue and military activities downplayed or omitted from the statement.
Das Air Limited	Rights & Accountability in Development (RAID)	DRC	Named by the UN Panel on the Illegal Exploitation of Natural Resources in the DRC. Allegations concerned flights into conflict zone in support of Ugandan military offensive; transporting minerals (coltan) without due diligence.	10/03 06/04 04/05	Chapter II.10 supply chain, Chapter II.1 sustainable development, Chapter II.2 human rights, Chapter III.1, Chapter III.2, Chapter III.5 disclosure	Concluded	UN Panel referred the case to NCP for investigation in October 2003. RAID co-presented the case in June 2004 but was excluded from the process until April 2005. Final statement issued July 2008 which found DAS Air to have breached the human rights provisions by flying into conflict zones in contravention of international regulations; a lack of due diligence about the supply chain and failing to identify the source of minerals it transported.
Tremalt/Bredenkamp	Rights & Accountability in Development (RAID)	DRC	Named by the UN Panel on the Illegal Exploitation of Natural Resources in the DRC. Alleged irregular acquisition of	06/04	Chapter II.1 sustainable development, Chapter II.2 human rights, II.5 exemption from regulation,	Case not accepted and no action taken.	UN Panel called for company to be monitored. RAID presented case April 2004 but no action taken by NCP. Bredenkamp, a BAE agent in South Africa, under investigation in

			mining rights.		Chapter II.11 political involvement, Chapter III.3, Chapter III.4 disclosure, Chapter VI.1, Chapter VI.5, combating bribery, Chapter IX.1b anti-competition		relation to the wider BAE corruption inquiry in the UK.
Alex Stewart Assayers Ltd	Rights & Accountability in Development (RAID)	DRC	Named by the UN Panel on the Illegal Exploitation of Natural Resources in the DRC.	06/04	Chapter II.10 supply chain, Chapter IV.1c forced labour, Chapter IV.4b health & safety, Chapter II.2 human rights	Case not accepted and no action taken	Placed by the UN Panel in category I 'resolved' but questions remain that the Panel reports leave publicly unanswered. NCP refused the case.
Ridgepointe Overseas Developments Ltd.	Rights & Accountability in Development (RAID)	DRC	Named by the UN Panel on the Illegal Exploitation of Natural Resources in the DRC. Alleged irregular acquisition of mining rights.	06/04	Chapter II.1 sustainable development, Chapter II.2 human rights, Chapter II.11 political involvement	Case not accepted and no action taken.	Company referred to in UN Panel's October 2002 report. NCP took no action despite fact that South Africa had issued an arrest warrant against Rautenbach for fraud. In March 2008 Rautenbach declared *persona non grata* and deported from DRC.
A. Knight International Limited [Assayers allegedly implicated in supply of coltan to German and Austrian companies]	Krall	DRC	Named by the UN Panel on the Illegal Exploitation of Natural Resources in the DRC. Alleged assistance in exporting minerals from Lueshe mine in conflict zone.	11/04	Chapter II.10 supply chain Chapter II. 2 human rights	Concluded	Company closely associated with Karl Heinz Albers on whom UN had proposed a travel ban and financial restrictions. Case filed with UK NCP via Austrian NCP who rejected it on absence of investment ground – decision supported by UK NCP. Later reconsidered, but Austrian and German NCPs concluded that conflict made verification impossible. Case linked to H.C. Stark and Treibacher.
BAE Systems (UK), Airbus (France) and Rolls Royce (UK)	The Corner House	UK	Alleged refusal of the companies to provide details of their agents and agents' commission to the UK Government's Export Credit Guarantee	05/05	Chapter VI. combating bribery	No Action	In May 2005 the NCP accepted the complaint and forwarded it to the companies concerned for comment. Airbus has been referred to the French NCP. Action suspended allegedly

			Department.				because ECGD engaged in consultation about payments through agents.
Global Solutions Limited (Australia) Pty Ltd & Global Solutions Ltd	Human Rights Council of Australia, ChilOut (Australia); RAID (UK), International Commission of Jurists (Switzerland); Brotherhood of St Laurence (Australia)	Australia	The detention of children in GSL-run immigration detention centres (IDCs); public misrepresentation of its policies and practices with regards to human rights.	06/05	Chapter II.2 human rights; Chapter VII.4 unfair representations to consumers	Concluded	Filed with both the Australian and UK NCPs, as GSL headquartered in the UK. On June 17 2005, shortly after the complaint was submitted the Australian Government announced that it was going to transfer all families – not just families seeking asylum - from detention centres to community detention. April 2006 the Australian NCP issued a final statement.
Coats Plc	ITGLWF	Bangladesh	Anti-union practices, unfair dismissals, harassment and arrests of workers.	12/05	Chapter IV. Employment and Industrial Relations	Suspended	Parallel legal proceedings.
PSA Peugeot	Amicus and T & G	UK	Failure to provide unions with adequate notice of closure of Ryton Plant.	07/06	Chapter IV, Para. 6	Concluded	February 2008 final statement issued. NCP concluded PSA Peugeot Citroen failed to give adequate information and notice about the closure of Ryton.
Unilever PLC/Hindustan Lever	IUF	India (Mumbai)	Refusal to enter into collective bargaining negotiations, disregard of court orders, illegal closure of Sewri factory.	10/06	Chapter I. Concepts and Principles; Chapter IV. Employment and Industrial Relations; Chapter V. Environment; Chapter X. Competition	Mediation Ongoing	Initial assessment May 2007. The NCP is hoping to help settle a dispute with 782 employees of the Sewri factory who did not accept a voluntary retirement scheme. British Deputy High Commissioner helped facilitate negotiations in Mumbai between the parties to resolve dispute.
G4S	Union Network International (UNI)	Multiple including: Nepal, Mozambique, Israel,	G4S allegedly violates national laws and drives down standards: failures include non-payment of entitlements including	12/06 Additional complaint filed	Chapter II, Para. 1 sustainable development Chapter IV, Para. 1(a) workers' right to organise into unions	Outside Mediation	Case suspended while parties tried to negotiate outside the NCP process. The specific instance reactivated in January 2008 when the initial statement issued . NCP

		Uganda, USA, Malawi, Germany, Panama and Uruguay	overtime; harassment, victimisation and firing of trade unionists; refusal to recognise unions.	01/07			accepted issues related to Mozambique, Malawi and Nepal but ruled out of consideration those concerning USA and Israel as they were addressed by other legal mechanisms. This was accepted by the union. Parties have agreed to enter into professional mediation.
Afrimex (UK) Ltd	Global Witness	DRC	Named by the UN Panel on the Illegal Exploitation of Natural Resources in the DRC. Allegations that the company's trade in minerals contributed to the conflict and human rights abuses in eastern DRC. Included alleged tax payments to rebel groups and sourcing products from mines with harsh labour conditions and forced labour.	02/07	Chapter II, General Policies, Para 1,2,10,11; Chapter IV, Employment and Industrial Relations, Para 1b, 1c, 4b; Chapter VI, Combating Bribery, Para 2,6.	Concluded	In September 2007 the UK NCP issued its initial assessment. Global Witness and Afrimex held several mediation meetings in October and November 2007. In January 2008, Afrimex decided to withdraw from the mediation. On 28 August 2008, the NCP published its final statement. It concluded that Afrimex initiated demand for minerals from a conflict zone and used suppliers who had made payments to a rebel group. It also stated that Afrimex applied insufficient due diligence to the supply chain, sourcing minerals from mines that used child and forced labour.
Unilever PLC/Hindustan Unilever Limited	IUF	India (Assam)	Anti-union practices, threats and harassment of workers, alleged corrupt relations with local police and politicians	10/07	Chapter IV. Employment and Industrial Relations	Suspended	The union feels that 12-month deadline can be counterproductive as the company has tried to exploit time-frame by stalling. Local authorities may authorise ballot of workforce. In the view of the complainants the NCP placed too much emphasis on procedures and too little on results. Initial assessment April 2008.

Unilever PLC/Unilever Pakistan Ltd	IUF	Pakistan	Systematic reduction of the permanent staff, workers forced to sign termination letters	11/07	Chapter IV. Employment and Industrial Relations	Ongoing	Union concerns include termination of the contracts of 292 temporary employees seeking permanent status.NCP initial assessment April 2008.
British American Tobacco	Malaysian Trades Union Congress (MTUC)	Malaysia	Anti-union practices – preventing workers from being represented by BATEU.	12/07	Chapter IV. Employment and Industrial Relations	Suspended	Initial assessment April 2008. NCP awaiting the outcome of a judicial review in Malaysia. The union is challenging a Malaysian law, prohibiting BATEU from representing workers and management in Malaysia.

Annex IV: Cases considered by the UK NCP

Anglo American Plc (Zambia): Complaint Filed February 2002

This complaint related to a number of issues arising from the privatisation of the copper industry in Zambia during the period 1995 - 2000. RAID alleged that Anglo American (AACSA, which later became Anglo American plc) influenced the privatisation process in the company's favour. Specifically, RAID alleged that AACSA was able to purchase the Konkola Deep Mining Project without entering into a competitive tendering process and that the company also obtained first right of refusal over the purchase of facilities at Mufulira (smelter and refinery) and Nkana (mine) thereby denying an opportunity for other enterprises from making an offer. Anglo American plc, after the company's incorporation in London, derived a continuing benefit from these actions.

RAID also alleged that the company sought and accepted derogations from Zambian legislation, in respect of taxation and environmental controls, with the result that standards of environmental controls, such as on emission targets, were weakened and the health and safety of workers and the population in general suffered, and that the weakened environmental controls were not disclosed. Linked to these taxation derogations, RAID further alleged that the company secured a number of financial incentives and concessions that were not available to other enterprises.

The company's response was that the RAID complaint was 'without foundation within the terms of the Guidelines'. It rejected RAID's allegation of favourable treatment stating: 'far from seeking to negotiate fiscal terms that would produce unusually attractive returns, terms were negotiated in a transparent manner between the parties'.

In most respects, this complaint – the first the UK NCP received following the 2000 review of the OECD Guidelines – was, in its initial stages, well handled. The NCP acknowledged the complaint promptly; immediately sought and obtained legal advice on its admissibility, and within a few weeks requested DFID Zambia to conduct a fact-finding visit. When the company raised objections regarding the UK NCP's competence, the NCP referred the matter to the OECD's Investment Committee for clarification. Upon receipt of that clarification, the NCP resumed the specific instance process. Its failure to conclude the matter within a reasonable period of time was ultimately due to the protracted dispute with the company over jurisdiction.

The final statement was eventually issued in May 2008, an unprecedented six years after the complaint had been filed. This stated: 'the NCP does not propose to make any recommendations aimed at achieving compliance for the pragmatic reason that a considerable period of time has passed since the ZCCM privatisation was concluded, during which Anglo American has sold the companies that are the subject of the complaint.' The original initial assessment was instead appended to the final statement.

RAID regrets the fact that the failure to timetable the case effectively meant that the NCP never reached a final determination on the substantive issues raised, despite the wealth of information presented by both parties. However, two important principles were established: firstly, that the *2000 Guidelines* could be applied retrospectively and; secondly, the acknowledgement in the final statement that 'it is usual practice for the NCP to make determinations of compliance and to issue recommendations in respect of a specific instance on those matters which remain unresolved'.

BP (the Baku-Tbilisi-Ceyhan Pipeline): Complaint filed April 2002

The complaint alleged that, in developing the BTC oil pipeline,[55] BP, as part of the BTC Consortium[56] that developed and operates the pipeline, contravened the OECD Guidelines by:

- Exerting undue influence on the regulatory framework for the project;
- Seeking or accepting exemptions from the three host governments (Azerbaijan, Georgia and Turkey) relating to social, labour, tax and environmental laws;
- Failing to operate in a manner contributing to the wider goals of sustainable development;
- Failing adequately to consult with project-affected communities on pertinent matters; and
- Undermining the host governments' ability to mitigate serious threats to the environment, human health and safety through clauses in the project agreements prohibiting the host governments from undertaking action with respect to the project except to address an imminent and material threat, thereby precluding any action whatsoever in instances when threats are long-term or when there is a lack of full scientific certainty concerning serious threats to the environment or human health.

The complaint was submitted in the UK by multiple complainants, namely Friends of the Earth (England, Wales and Northern Ireland), The Corner House, Kurdish Human Rights Project, Platform, Baku Ceyhan Campaign and Milieudefensie. The Complaint was also simultaneously submitted by NGOs in Germany, Italy, France and the USA to their national NCPs.

A final statement on the complaint was issued by the UK NCP in August 2007. **This statement was subsequently withdrawn in December 2007 after the NCP acknowledged that there had been procedural failures in the handling of the case**.[57] In a submission to the Select Committee on International Development's 2007 Inquiry on Cross-Departmental Working on Development and Trade,[58] The Corner House criticised the handling of the case, arguing that the NCP had conducted itself throughout the process with 'conspicuous unfairness, favouring the commercial organisations involved at every stage. The consultation with the complainants has been one-sided, limited and partial, and wholly fails to meet basic standards of fairness or natural justice. Moreover, this bias and procedural laxity has continued despite the introduction of the new handling procedures in 2006'.[59]

The Corner House concluded: 'The NCP's Final Statement on the BTC complaint strongly suggests that the lessons identified in the Government's 2005 Consultation on the Guidelines have yet to be learned.' More specifically, The Corner House pointed to the following procedural failures:

'The Complainants were not shown a draft of the Final Statement, contrary to the NCP's written undertaking, nor was any explanation given by the NCP as to why the bulk of the Complainants' comments on the first public draft had not been incorporated. The Statement relies almost exclusively on [a report by BP which was not disclosed to the Complainants] to exonerate the company. The Corner House holds that, as a matter of basic fairness, the Complainants should have been given the opportunity to see and comment on this important report *before* the Final Statement was published. It was wholly unfair to give BP the opportunity to comment on the Complainants' representations, but not to extend the same duty of fairness to the Complainants. Although a redacted version of the BP report, which had not previously been shown to the Complainants, is annexed to the Final Statement, the documentary evidence supplied by the Complainants, which disputes BP's claims, is not included. Although the Government has undertaken that the NCP will "justify its decisions and

any recommendations that it makes", [60] the Final Statement in the BTC case offers neither an attempt at a proper analysis of the facts nor any serious justification for the conclusions reached.'

In June 2008 the Steering Board's Review Panel considered a request from The Corner House – this was the first time a Review of an NCP has been requested under the new procedures. The Steering Board has yet to decide whether the outcome of the Review can be made public prior to a final statement on the case being issued. (For this reason, we have not included any summary of the Review's findings.) The NCP has withdrawn the final statement issued in August 2007.

DAS Air (Democratic Republic of the Congo): Complaint filed May 2004, resubmitted April 2005

The complaint alleged that DAS Air, one of the largest air transport companies operating in the Great Lakes Region of Africa:

- Participated in the transportation of the metal coltan from Goma in the DRC and its onward transportation from Kigali in Rwanda and Entebbe in Uganda. The coltan, originating in the eastern DRC, was exploited in an illicit trade condemned by the UN Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo for its financing of occupying forces and rebel militias.
- Flew into a conflict zone in support of the Ugandan military in an area controlled by the Republic of Uganda, found guilty by the ICJ (International Court of Justice or International Commission of Jurists?) of belligerent occupation and the violation of international human rights law.
- Operated civilian aircraft in a conflict zone, in contravention of international conventions governing civil aviation.

DAS Air denied the allegations in the complaint and strongly objected to the allegations that it contributed to the ongoing conflict in the DRC and to human rights' abuses. The company firmly denied that it had ever knowingly transported coltan sourced from DRC, explaining it believed the coltan it flew out of Kigali originated in Kigali. RAID provided detailed flight logs and other evidence gathered by the Porter Commission – a Ugandan judicial commission set up to investigate illegal exploitation in the DRC – to support its case.

At the meeting, in November 2006, with representatives of the Joint Working Group, the Minister, Ian McCartney, pledged that all the UN Panel cases would be concluded within six months, after which a statement would be made to parliament. However, there were still long delays (over 18 months) in bringing the case to a conclusion.

Nevertheless, RAID was appreciative of the efforts that the NCP took to seek the advice of the International Civil Aviation Authority and the British Freight Forwarders Association.

In October 2007, a year after the European Community (EC) imposed a ban on its aircraft, DAS Air Limited was forced into administration. The NCP continued to liaise with the administrators in its efforts to conclude the case.

In July 2008, a strongly worded final statement was issued. For the first time in any specific instance, the NCP concluded that DAS Air breached the Guidelines' human rights provision by flying into a conflict zone in contravention of international civil aviation regulations. DAS Air was also found to have failed to undertake due diligence with regard to the supply chain: its contention that it did not know the source of the minerals it was transporting was rejected given its 'intimate understanding of the situation and the conflict'.

The NCP did not make a determination in relation to events that occurred before 2000, but it took past behaviour into account in its final assessment of DAS Air's activities. There is concern that this treatment of past conduct is inconsistent with the retrospective application of the *2000 Guidelines* established in the Anglo American case.

Afrimex (Democratic Republic of the Congo): Filed February 2007

Global Witness's complaint detailed breaches of the Guidelines in connection with Afrimex's trade in minerals (coltan and cassiterite) which contributed to the armed conflict in eastern Congo. The main allegations relate to payment of taxes to the RCD-Goma - a rebel group responsible for grave human rights violations - and sourcing of products from mines where forced labour was used and where miners worked in life-threatening conditions.

Global Witness submitted its complaint in February 2007. The NCP issued its initial assessment in September 2007. The parties then entered a mediation process: representatives of Afrimex and Global Witness met three times, in October and November 2007, in meetings chaired and mediated by the NCP. In January 2008, Afrimex wrote to the NCP announcing it was withdrawing from the mediation; the parties had been unable to reach agreement on any of the substantive issues during the mediation. The mediation process then reverted to an investigation. In June 2008, the NCP wrote to both parties offering them a final opportunity to correct any misunderstandings before, or submit further information to, them prior to the final statement. Both parties responded in writing. In July 2008, the NCP sent the draft final statement to Global Witness and Afrimex for final comments.

On 28 August 2008, the NCP issued its final statement, upholding the majority of Global Witness's allegations. The final statement stated that Afrimex had initiated the demand for minerals sourced from a conflict zone and had sourced these minerals from suppliers who paid taxes and mineral licences to the RCD-Goma. It further stated that Afrimex did not apply sufficient due diligence to the supply chain and failed to take adequate steps to influence the conditions in the mines. The issues of supply chain and due diligence were central to the NCP's consideration of the complaint and its conclusions, as well as the recommendations contained in the final statement

Coats Plc (Bangladesh): Filed December 2005

The anti-union practices by a Bangladeshi subsidiary of the UK enterprise Coats Plc were raised by the International Textile, Garment and Leather Workers Federation (ITGLWF) with the UK NCP at the beginning of December 2005.

In November 2004, three trade union leaders had been dismissed on alleged charges of misconduct, although the union believed that the real reason was their repeated request of a copy of the company's financial statement. In March 2005, the union organised a peaceful sit-down strike in support of the discharged union leaders. Coats responded with a lock-out. The police arrived at the scene (the union believes they were called in by the company as this is a common practice in Bangladesh) resulting in a number of workers being injured and 27 arrested. They were later released on bail, but are now facing charges. Since then other union members have been dismissed as well.

The case was suspended because of legal proceedings that were being pursued in Bangladesh. The NCP is in discussion with the union and is considering reactivating the specific instance.

Unilever PLC (Mumbai): Filed October 2006

In a submission to the British and Dutch NCPs at the beginning of October 2006, the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) reported violations of the Guidelines conducted by Unilever subsidiary – Hindustan Lever in India, owned by Unilever Plc. While Unilever Plc is registered in the UK, Unilever NV is registered in the Netherlands. They have a common Board of Directors. The case was therefore filed with both NCPs.

Hindustan Lever has for twenty years refused to enter into any collective bargaining negotiations with the legally registered union at the plant, which is a breach of both the Guidelines and national law. Salary adjustments, following the rate of inflation, have only been achieved through court orders. In March 2006, the Labour Court filed criminal proceedings against Hindustan Lever because of its disregard of court orders.

In July 2005, Hindustan Lever was sold to another company (Bon Limited) through a loan from Hindustan Lever to Bon Limited although it did not have enough capital to operate the facility. One year later, the employees were informed of the closure of the plant and the termination of their employment. The closure was however illegal as it had yet to be approved by the Indian authorities.

At the end of October 2006, the Dutch NCP requested further information from the IUF in order to decide whether the case was admissible. Among other things, it enquired as to the value added by an NCP intervention in view of the legal proceedings. The IUF explained their aim was primarily to find an amicable resolution to the dispute and not to get Hindustan Lever management convicted. In addition, the legal proceedings have gone on for many years and can continue to do so as the company has refused to abide by the court decisions.

Representatives of the IUF met the UK NCP in April 2007, even though the NCP had not decided whether to accept the case because of the parallel proceedings. In May 2007, the NCP issued a statement acknowledging that the case merited further consideration.

Unilever PLC (Assam): Filed October 2007

In addition to the case registered one year earlier concerning the Unilever subsidiary Hindustan Lever's operations in India, the IUF filed another case involving the same company, now called Hindustan Unilever Limited with the UK NCP in October 2007. The case was accepted by the NCP in April 2008.

The workers were locked out at the company's plant in the Dooma Dooma Industrial Estate in the Indian state of Assam from 15 July to 3 September 2007 because of a dispute over salaries. According to their 2004 collective agreement, the workers were entitled to a monthly 'settlement implementation allowance' from 1 April 2007, which the company refused to pay.

In order to end the lock-out, management requested the workers leave the HLWU union and to join a new 'yellow' union (HUSS) that it had created. Workers were allegedly visited at their homes by HUSS and threatened with the loss of their jobs and/or closure of the plant if they did not terminate their union membership. Furthermore, one worker was attacked and beaten while collecting signatures in support of the locked-out workers.

When the lock-out was lifted on 3 September, only those workers that agreed to sign a printed form renouncing their union membership and joining the new union were allowed to enter the factory.

During 2008 the threats and harassment of workers continued. The IUF is concerned that management appears to be working with local police and politicians to harass HLWU and prevent it from exercising its rights under Indian and international law. When the president of the HLWU, after being threatened and physically assaulted, wanted to file a complaint, the local police refused to accept his sworn statement. Hindustan Unilever managers, in conjunction with police, together tried to force workers to attend a HUSS meeting by visiting them at their homes. When the workers refused, they were again threatened.

The IUF has experienced difficulties in their dealings with the UK NCP, finding the one year deadline for bringing the complaint to a conclusion to be counterproductive. The union feel that the company has deliberately stalled the proceedings and fear that the NCP may close the case prematurely. IUF believes that there appears to be too great an emphasis on procedural formalities rather than on results.

Unilever PLC (Pakistan): Filed November 2007

A case concerning a Unilever subsidiary, Unilever Pakistan Ltd, was submitted by the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) to the UK NCP in November 2007. The UK NCP accepted this case at the beginning of April 2008.

At the end of September 2007, the union at the company's factory in Rahim Yar Kahn decided to open membership to temporary workers. This was followed by individual petitions lodged in the labour court in order to obtain permanent employment status: those that had worked more than nine months of continuous service were entitled to permanent contracts. In response, the management issued termination letters to all 292 temporary workers on 20 October 2007. They were then gathered into a small meeting room with armed police and forced to sign these letters. Five workers nevertheless refused. The rest of the workers were immediately replaced by casual agency workers.

These events are part of the company's strategy to reduce systematically the permanent staff – only 509 remain from some 8000 employees. The Rahim Yar Kahn plant had 1200 permanent workers in 1970. Now there are only 250.

British American Tobacco (Malaysia): Filed December 2007

A third case concerning the breaches of the Guidelines by British American Tobacco (BAT) was raised by the Malaysian Trades Union Congress (MTUC) with the UK NCP in December 2007.

The case concerns the denial of the right of workers to organise. In August 2006, the company began to transform company posts at its Malaysian facility into positions that could not be held by members of the existing recognised trade union. The MTUC assert that this is a clear attempt to destroy the British American Tobacco Employees Union (BATEU).

The workers have had to carry out the same tasks as previously, such as operating machines, but by redefining a post in a management category, union membership has been reduced to a level where the company can, according to Malaysian law, cease to recognise BATEU and is no longer obliged to negotiate with the union on its members' behalf. Workers who did not accept the new designation were forced to leave the company. Consequently, the BATEU has now lost most of its members.

The Malaysian government's restriction on union recognition is the subject of a judicial review.

Annex V: Principles of Effectiveness for Human Rights Grievance Mechanisms[61]

- **Legitimate:** a mechanism must have clear, transparent and sufficiently independent governance structures to ensure that no party to a particular grievance can interfere with the fair conduct of that process;

- **Accessible:** a mechanism must be publicised to those who may wish to access it and provide adequate assistance for aggrieved parties who may face barriers to access, including language, literacy, awareness, finance, distance, or fear of reprisal;

- **Predictable:** a mechanism must provide a clear and known procedure with a time frame for each stage and clarity on the types of process and outcome it can (and cannot) offer, as well as a means of monitoring the implementation on any outcome;

- **Equitable:** a mechanism must ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair and equitable terms;

- **Rights-compatible:** a mechanism must ensure that its outcomes and remedies accord with internationally recognised human rights standards;

- **Transparent:** a mechanism must provide sufficient transparency of process and outcome to meet the public interest concerns at stake.

Annex VI: Restructured Dutch NCP

Composition

The Dutch NCP, based in the Ministry of Economic Affairs, changed from an interdepartmental office to a bipartite structure consisting of four *independent* experts (including the Chair) chosen for their knowledge and reputation on corporate responsibility issues and four government *advisors* (from the ministries of Economic Affairs, Foreign Affairs, Social Affairs and Environment. The change is intended to ensure the independence of the Dutch NCP and avoid conflicting requirements between the NCP functions and that of the responsible Minister who serves as a member of the Dutch Cabinet.

Oversight

There is no formal oversight of NCP activities. However, the government can issue a public comment on final statements on specific instances made by the Dutch NCP. The connection with the government is also upheld via the advisory members of the Dutch NCP. The Minister for Foreign Trade will instruct the Dutch NCP regarding any clarifications or other decisions by the OECD Investment Committee.

Relations with Stakeholders

The new Dutch NCP holds regular consultations.

Resources

The new NCP has a fixed budget (almost 900,000 Euros spread over three years). This includes the cost of one full-time officer for promotional activities located in MVO Netherlands (a separate private entity). In addition, two full-time officer equivalents from the Ministry of Economic Affairs have been made available to serve as the secretariat to the Dutch NCP.

Initial Assessments

The Dutch NCP always publishes the reasons for accepting to hear a case and in future, it will do this as well for denials.

Peer review

The new Dutch NCP, which has a trial period of three years, is to be evaluated next year and has decided to be reviewed by a team of NCPs from other countries, including the UK NCP. This is the first time an NCP has taken up the suggestion made by the unions and NGOs for a 'peer review' mechanism along similar lines to the OECD's Anti-Bribery Convention.

Endnotes

[1] DTI, "Government Response to the Consultation on the UK National Contact Point's Promotion and Implementation of the OECD Guidelines for Multinational Enterprises", 13 July 2006.

[2] The supply chain provision of the Guidelines (2.11) has been narrowly interpreted by some governments so as to limit the responsibilities of companies for the activities of subsidiaries, business partners, sub-contractors and suppliers. Under pressure from the USA and Germany, some NCPs have ignored the references to trade in the text of the Guidelines and cited an alleged lack of investment in a host country as a reason for rejecting complaints, arguing that the Guidelines only apply to investment.

[3] Department for Business, Enterprise & Regulatory Reform (BERR) Press Release, "Mineral Trade Helped Fund Rebels" 28th August 2008

[4] In March 2005, the report of the Commission for Africa (*Our Common Interest*) recommended the development and implementation of comprehensive OECD guidelines for companies operating in areas at risk of violent conflict. The G8 governments at the Gleneagles Summit in 2005 promised to work with the UN Global Compact and develop OECD guidance for companies working in zones of weak governance. DFID's 2006 White Paper, *Making Governance Work for the Poor*, contained a commitment that DFID and the Foreign and Colonial Office (FCO) would see how security and development could be more effectively addressed in UK development and diplomatic activity in Africa.

[5] *Protect, Respect and Remedy: a Framework for Business and Human Rights,* Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, April 2008; A/HRC/8/5

[6] The United Nations Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo was appointed by the Security Council in 2000 to examine the link between exploitation of gold, diamonds, and other minerals in the east of the DRC, and the war ongoing in that region since 1996. It published a series of reports. The UN Panel's October 2002 report included a list of 85 companies, which it declared to be in violation of the *OECD Guidelines for Multinational Enterprises.*

[7] DTI,UK National Contact Point Information Booklet, 2001

[8] Since 2007, when a complaint is withdrawn or found inadmissible, the UK NCP issues a statement to that effect without revealing the identities of the parties.

[9] UK NCP Final Statement of 21 July 2008: "DAS Air did not try to establish the source of the minerals they were transporting from Kigali and Entebbe, stating they were unaware of the potential for the minerals to be sourced from the conflict zone in eastern DRC. The NCP finds it difficult to accept that an airline with a significant presence in Africa including a base in Entebbe would not have been aware of the conflict and the potential for the minerals to be sourced from eastern DRC." available at: http://www.berr.gov.uk/sectors/sustainability

[10] UK NCP Final Statement Afrimex, 28 August 2008 available at: http://www.berr.gov.uk/sectors/sustainability

[11] The supply chain provision of the Guidelines (2.11) has been narrowly interpreted by some governments so as to limit the responsibilities of companies for the activities of subsidiaries, business partners, sub-contractors and suppliers. Under pressure from the US and German governments the OECD has ignored the references to trade in the text of the Guidelines and employed the alleged lack of investment in a host country to reject complaints, arguing that the Guidelines only apply to investment.

[12] John Ruggie, letter to Editor of the Financial Times, 12 September (http://www.business-humanrights.org/Search/SearchResults?SearchableText=Ruggie+Afrimex&x=0&y=0)

[13] International Organization of Employers, International Chamber of Commerce, and Business and Industry Advisory Committee to the OECD, Business and Human Rights: 'The Role of Business in Weak Governance Zones' December 2006.

[14] UN Panel report dated 16 October 20 available at <http://www.un.org/Docs/sc/letters/2002/sglet02.htm> and click on S/2002/1146

[15] Professor John Ruggie, Keynote Presentation, Annual Meeting of National Contact Points, OECD Paris 24 June 2008

[16] Letter from Eric Joyce MP, Chair of the All-Party Parliamentary Group on the Great Lakes Region of Africa to Gareth Thomas MP, Parliamentary Under-Secretary of State, 18 September 2008

[17] APPGGLA 'The OECD Guidelines and the Democratic Republic of the Congo' (February 2005)

[18] The All-Party Parliamentary Group on the Great Lakes Region of Africa (APPGGLA) in its 2005 report, "The OECD Guidelines and the Democratic Republic of the Congo", highlighted the need for greater involvement of other government departments in the work of the NCP. In its response, the government stated that other relevant departments are fully involved in consideration of the cases but that it saw 'merit in greater formalisation of these arrangements and will establish an official-level group, on which all interested departments are represented, to discuss the issues raised by cases and assist the NCP in their determination. See Government Response to the All-Party Parliamentary Group on the Great Lakes Region Report on the OECD Guidelines for Multinational Enterprises and the Democratic Republic Of Congo (July 2005).

[19] Foreign and Commonwealth Office (FCO) Human Rights Annual Report 2007 p. 22

[20] FCO "Corporate Social Responsibility: An FCO Strategy 2006-08"

[21] The Joint Working Group was established under the aegis of the APPGGLA to explore the scope for common ground between businesses and NGOs on frameworks for business conduct in areas of conflict and weak governance. Several meetings were held in 2006, which focused largely on the workings of the OECD Guidelines mechanism in the UK. In July 2006 the JWG submitted recommendations to the government concerning the promotion and implementation of the

Guidelines in the UK. The members of the JWG were *Anglo American* (Edward Bickham, Executive Vice-President for External Affairs) ,*Shell International* (Mike Wilkinson, Vice-President, Policy and Issues) ,*De Beers* (Simon Gilbert, Public Affairs Manager) ,*Standard Chartered* (Jonathan Angliss, Manager, Group Corporate Affairs),*The International Council on Mining and Metals* (Paul Mitchell, General Secretary),*Human Rights Watch* (Anneke van Woudenberg, Senior Researcher, Africa), *Amnesty International* (Tom Fyans, Business and Human Rights Campaigner), *RAID* (Tricia Feeney, Executive Director),*Christian Aid* (Sharon McClenaghan, Senior Policy Officer, Private Sector),*Global Witness* (Carina Tertsakian, Lead Campaigner, DRC)

[22] The NCP website can be found at: http://www.berr.gov.uk/whatwedo/sectors/sustainability/nationalcontactpoint/page45873.html. It was formerly located at: http://www.csr.gov.uk.

[23] Caroline Rees and David Vermijs, 'Mapping Grievance Mechanisms in t he Business and Human Rights Arena' (Corporate Social Responsibility Initiative, John F. Kennedy School of Government, Harvard University, January 2008) quoted in Hannah Grene 'The OECD National Contact Point System as a means of Assessing Corporate Responsibility for Human Rights Abuses' (LLM Thesis, Irish Centre for Human Rights, 2008).

[24] Hannah Grene *Op cit.* p. 46.

[25] Ruggie, *Protect, Respect and Remedy: a Framework for Business and Human Rights,* April 2008; A/HRC/8/5, paragraphs 39 and 40

[26] Email correspondence from Ben Llewellyn, ECGD to Nick Hildyard, The Corner House, 17 May 2005

[27] OECD Watch, Model National Contact Point, September 2007, p 13

[28] Redacted exchange of emails between officials in DTI and FCO June 2003 obtained by Friends of the Earth under the Freedom of Information Act.

[29] Ibid.

[30] ECGD's Statement of Business Principles requires that the Department's activities "accord with other Government objectives".

[31] BERR, 'Approach of the NCP to Any New Complaint that Alleges a Breach of the OECD Guidelines Taking Place Before June 2000' 21 August 2008 (URN 08/1208).

[32] DTI, "Government Response to the Consultation on the UK National Contact Point's Promotion and Implementation of the OECD Guidelines for Multinational Enterprises", 13 July 2006

[33] OECD Watch Statement to the Investment Committee, March 2008

[34] Ibid.

[35]

http://www.berr.gov.uk/whatwedo/sectors/sustainability/nationalcontactpoint/page45873.html

[36] The commitment that there would be 'an overarching' statement to the House on all of the UN Panel cases was made in a letter from a senior DTI official to RAID (2 February 2005) following inter-ministerial discussions between the FCO, DFID and DTI about the process. The commitment to make a full parliamentary statement on 'the UN Panel Process' was later confirmed by Ian McCartney MP in November 2006 to representatives of the Joint Working Group.

[37] BERR Press Release, "Mineral Trade Helped Fund Rebels" 28th August 2008

[38] Other NCPs that have adopted time-frames are: Argentina, Australia, Belgium, Canada, Denmark, Korea, Netherlands, New Zealand and Poland

[39] OECD Watch, The Model National Contact Point" September 2007

[40] G8 Summit Declaration "We commit ourselves to promote actively internationally agreed corporate social responsibility and labour standards (such as the OECD Guidelines for Multinational Enterprises and the ILO Declaration), high environmental standards and better governance through the OECD Guidelines' National Contact Points." Heiligendamm, Germany, (Paragraph 24), 7 June 2007

[41] John Ruggie, "Business and Human Rights: Mapping International Standards of Responsibility and Accountability for Corporate Acts", A/HRC/4/035, 9 February 2007

[42] OECD Review of NCP Performance: Preliminary Findings March 2008

[43] Hannah Grene 'The OECD National Contact Point System as a means of Assessing Corporate Responsibility for Human Rights Abuses' (LLM Thesis, Irish Centre for Human Rights, 2008).

[44] Ibid.

[45] OECD *Review of NCP Performance: Preliminary Findings* March 2008

[46] The Swedish NCP, with support from Norway, concluded in the CEDHA-Nordea specific instance (January 2008) that 'the Guidelines can and should be applied to the financial sector as well as to other multinational enterprises'. Available at: http://www.oecd.org/dataoecd/39/23/40016775.pdf

[47] OECD Application of the Guidelines to Multinational Institutions 18 September 2008. Document prepared by the Secretariat for the Working Party of the Investment Committee.

[48] Ibid.

[49] Ibid.

[50] OECD Guidelines, Concepts and Principles, para 3: "The Guidelines are addressed to all the entities within the multinational enterprise (parent company and/or local entities). According to the actual distribution of responsibilities among them, the different entities are *expected* to co-operate and to assist one another *to facilitate observance* of the guidelines."

[51] BERR, News release, 28 August 2008, http://nds.coi.gov.uk/imagelibrary/downloadMedia.asp?MediaDetailsID=250794. "The government expects all UK businesses to be able to prove they meet the OECD guidelines".

[52] ECGD's Statement of Business Principles requires that the Department's activities "accord with other Government objectives".

[53] BERR 'Approach of the NCP to Any New Complaint that Alleges a Breach of the OECD Guidelines Taking Place Before June 2000' 21 August 2008 (URN 08/1208).

[54] Statement by United Kingdom National Contact Point for OECD Guidelines for Multinational Enterprises (NCP): Anglo American, 31 May 2008, paragraphs 11 – 12.

[55] The oil pipeline, now completed, runs for 1,056 miles (1,760 kilometres) from the Azerbaijan capital of Baku, through Tbilisi, Georgia, ending in the Mediterranean city of Ceyhan, Turkey.

[56] At the time the Specific Instance was submitted, the BTC was operated by BP Exploration (Caspian Sea) Ltd., which holds 30.1% in the BTC Consortium (the "Consortium"). Unocal Corporation holds 8.9%, ConocoPhillips holds 2.5% and Amerada Hess holds 2.36% through its joint venture – Delta Hess – with Saudi Arabian-owned Delta Oil. Other shareholders included the State Oil Company of Azerbaijan (25%), Norway's state-owned Statoil (8.71%), Turkish Petroleum (6.87%), AGIP Azerbaijan (a subsidiary of the Italian-owned ENI group) (5%) and Japanese-owned Itochu (3.4%).

[57] On 20 December 2007, Mr Weller of the NCP Steering Board Secretariat wrote to Leigh Day & Co, the solicitors acting for The Corner House in the Appeal, acknowledging "the NCP agrees that there were some procedural failings" and recording that "we intend to remove the statement from the NCP's website, without prejudice to the eventual outcome [of the Appeal]".

[58] Select Committee on International Development, Development and Trade: Cross-departmental Working", http://www.publications.parliament.uk/pa/cm200708/cmselect/cmintdev/68/6802.htm

[59] Select Committee on International Development, Development and Trade: Cross-departmental Working", Memorandum by Corner House, http://www.publications.parliament.uk/pa/cm200708/cmselect/cmintdev/68/68we10.htm

[60] "Government Response to the Consultation of the National Contact Point's Promotion and Implementation of the OECD Guidelines for Multinational Enterprises", http://www.societyandbusiness.gov.uk/oecddoc/Hfile32038.pdf, paragraph 57.

[61] Professor John G. Ruggie, Special Representative of the UN Secretary-General for Business and Human Rights, Keynote Presentation, Annual Meeting of National Contact Points OECD Paris, 24 June 2008.

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