



Department of Foreign Affairs and Trade's (DFAT) Review of Corporate Social
Responsibility

Jubilee Australia's views and comments

19 July 2011

Nicola Gordon-Smith
Acting First Assistant Secretary
Trade and Economic Policy Division
Department of Foreign Affairs and Trade

Dear Ms. Gordon-Smith,

Jubilee Australia welcomes the review by the Department of corporate social responsibility and is grateful for the opportunity to provide our comments and views.

About Jubilee Australia:

Jubilee Australia is an independent non-profit research and advocacy organisation established in 2001, in response to the success of the international Jubilee 2000 campaign for debt cancellation and the need for continued work in this area.

Today Jubilee's work seeks to draw attention to the policies of government and practices of business that hinder the alleviation of long term poverty, particularly in the Asia Pacific. Our research and advocacy agenda is focused in three thematic areas: debt and development, mining and development, and global economic governance.

Our purpose is ultimately to see the establishment of national and international economic policies and structures that work in the interests of the majority of the world's people, rather than the few. We believe that only structural change will see the lives of people in less-developed countries changed for good. We are driven by our relationship of solidarity with civil society groups in the Global South, in particular the Jubilee South Asia Pacific Movement on Debt and Development.

Jubilee believes that Australian based companies can have a positive affect in terms of alleviating long-term poverty overseas, however we are concerned about those companies that have been involved in human rights abuses and/or significant environmental damage

through their overseas operations. It is our view that better systems need to be introduced to ensure all Australian companies respect human rights and protect the environment when operating abroad.

Corporate Social Responsibility:

The term 'corporate social responsibility', is generally understood as *voluntary* actions taken by companies to go over and above the minimum regulatory requirements.¹

The Parliamentary Joint Committee on Corporations and Financial Services, in its 2006 report titled, 'Corporate Responsibility: Managing Risk and Creating Value', provides a general definition of CSR:

Corporate responsibility is usually described in terms of a company considering, managing and balancing the economic, social and environmental impacts of its activities. It is about companies assessing and managing risks, pursuing opportunities and creating corporate value, in areas beyond what would traditionally be regarded as a company's core business. It is also about companies taking an 'enlightened self-interest' approach to considering the legitimate interests of a company's stakeholders.²

Regarding the key voluntary CSR initiatives identified in your letter of May 24, 2011, we refer to the comments submitted by Oxfam Australia in June. In each case we concur with the views expressed by Oxfam and the subsequent recommendations made.

In the comments following, we would take the opportunity to draw the Department's attention to the broader context. The very existence of these voluntary CSR initiatives, and indeed the body of language around CSR, implies that taking social responsibility is not inherent in the operation of business. CSR is often treated by corporations as philanthropy, and even by some as part of their marketing strategy, rather than as an attitude pervading the whole operation which is embedded in core business and practice.

It is the view of Jubilee Australia that the only way to make social responsibility part of core business is for there to be 'social rules for business'.

The Australian Government's role in Corporate Accountability:

While Corporate Social Responsibility is not new, a recent development is the momentum of Governments' considering how to integrate mandatory and voluntary social responsibility obligations on their businesses.

It is the view of Jubilee Australia that unsanctioned codes of good intention from which business can opt-in and out, together with non-legislative 'encouragement' by government

¹ J. Nolan, 'Corporate responsibility in Australia: rhetoric or reality?', *Australian Journal of Human Rights*, vol. 12(2), pp. 67, available at: <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjnart%2FSW3O6%22>

² Parliamentary Joint Standing Committee on Corporations and Financial Services, *Corporate Responsibility: Managing Risk and Creating Value*, Canberra, June 2006, p. 4. see http://www.aph.gov.au/senate/committee/corporations_ctte/completed_inquiries/2004-07/corporate_responsibility/report/index.htm

of firms to be socially responsible, is an inadequate response in today's competitive global marketplace.

In many places social and environmental impacts, including human rights abuses have reached crisis level. Governments must be responsible for these negative effects, together with business, if they are to operationalise their duty well-established under international law, to *protect* against abuses by third parties, including business enterprises.

The 'Protect, Respect and Remedy' Framework of UN Special Representative Professor John Ruggie, was endorsed by the UN Human Rights Council on June 16 this year. The framework makes it clear that states have a duty to protect against human rights abuses by third parties including business enterprises, through appropriate policies, regulation, and adjudication. This makes it a key moment for States to consider how they will fulfill this obligation to hold corporations accountable.

South Africa, China and Brazil have already integrated mandatory and voluntary approaches into their national corporate responsibility strategies. The 2010 Dodd-Frank Financial Reform Act has put the US on the road to mandatory due diligence in relation to the sourcing of 'conflict minerals' in central Africa.³ And there is growing appetite in Europe to move beyond the 'voluntary-only' approach to CSR.

Yet in Australia where there exists no overarching national framework or strategy on corporate responsibility, corporations lack both authoritative guidance on how to avoid negative affects in their operations overseas, as well as accountability and enforcement mechanisms when such breaches occur.

More specifically, Jubilee Australia would suggest that the following key questions relating to corporate responsibility remain unanswered in Australian government policy:

1. What are the due diligence steps expected of companies operating in specific business sectors in specific countries?
2. Is there a higher threshold of due diligence in the context of environments with a high risk of human rights violations?
3. Should human rights due diligence be mandatory for some high risk geographies and business sectors?

For example, Jubilee has already proposed that there should be federal legislation to establish mandatory accountability standards for Australia extractive companies operating abroad, especially in less-developed countries.⁴

4. To what extent will there be extraterritorial accountability, besides the National Contact Point?

³ Seven companies (including HP, Dell, Microsoft and Ford) were amongst the diverse range of stakeholders supporting the move towards 'mandatory due diligence,' the rationale for which was explained by the partner NGO in the following terms:

"One reason why these companies worked with us in drafting these consensus positions is because they don't want their products indirectly enslaving people and causing rape and violence in other countries. But if they're the only ones doing it and a bunch of other companies aren't, then they're footing the bill. So they also welcome the legislation because it levels the playing field by making all companies abide by these standards." ([Diverse Stakeholders Support SEC Regulation of Conflict Minerals](#))

⁴ Jubilee Australia submission to the Parliamentary Inquiry into Australia's Relationships with the Countries of Africa, 29 November 2010: see <http://www.aph.gov.au/house/committee/jfadt/africa%2009/subs/Sub%2097.pdf>

Example - People of Didipio Village, Philippines and OceanaGold:

People from Didipio village, in the remote and mountainous area of Nueva Vizcaya, in the North Central Luzon region of the Philippines, have been fighting the impact of an Australian-owned mining project in their community for over a decade. Almost all members of the Didipio community depend on land for subsistence.

Documented allegations against the Australian company include forceful acquisition of land (including intimidation, harassment and use of military forces), failure to inform, and the potential for significant adverse environmental affects threatening water and food security.⁵

The Philippines' 1997 Indigenous Peoples' Rights Act guarantees Indigenous Peoples the right to free, prior, and informed consent to industrial development projects that would affect them. In Didipio, members of the Indigenous people were not consulted by the mining company, nor did they give their consent. However the National Commission on Indigenous Peoples failed to advocate for their rights under the act. The Philippine Local Government Code and the Mining Code also require the consent of local government bodies before mining projects can continue within their jurisdiction. Both the local Didipio village council and the Kasibu municipal council have opposed the mine since 2002, and the provincial government withdrew its support in 2008. Nevertheless, the Federal Government allowed the miners to continue and provided them with military support.⁶

Finally, in 2008, reports were filed with the Philippines Commission on Human Rights⁷ alleging that the company had illegally and violently demolished 187 houses in Didipio, despite the company failing to secure writs or special orders of demolition from the court, and before the company had paid just compensation and provided alternative options for relocation and resettlement. In the statement released 17 January 2011, the Commission presented its finding and declared it had unanimously resolved to recommend to the new administration of the Philippines under President Aquino, that it revoke the mining license granted to OceanaGold in light of the gross violations of human rights that the company has committed.⁸

In a written statement responding to an Australian Network News story in March this year on the Commission's findings, OceanaGold said that it will continue to develop the mine and that it is 'committed to ethical, responsible and sustainable mineral extraction.'⁹

In Jubilee Australia's view this example demonstrates critical questions of policy yet to be answered. Although the Department 'encourages Australian firms operating overseas to uphold local laws and best practices, and extraterritorial responsibilities', the OceanaGold case raises the following unresolved issues:

⁵ For more background information and details of allegations, see *Mining Ombudsman case report: Didipio gold and copper mine*, Oxfam Australia, September 2007 at <http://www.oxfam.org.au/resources/filestore/originals/OAus-MiningOmbudsmanDidipioPhilippines-0907.pdf>

⁶ <http://www.culturalsurvival.org/take-action/didipio-campaign/background-information-indigenous-communities-didipio>

⁷ The Commission on Human Rights of the Philippines is the major human rights body in the country and its mandate is enshrined in the Constitution

⁸ Commission on Human Rights of the Philippines, Statement on the Human Rights Situation in Brgy. Didipio, Kasibu, Nueva Vizcaya, see http://www.chr.gov.ph/MAIN%20PAGES/news/PS_17Jan2011_didipio.htm

⁹ Australian Network News, March 24 2011: see http://www.youtube.com/watch?v=RUZ11RWmU08&feature=player_embedded

1. What is the role of the Australian government when there is an accountability gap left by weak enforcement / governance systems in the host country; that is, when there are good laws but bad enforcement?
2. When an Australian company and people of an affected community in a less-developed country hold contradictory positions, such as the case with the Didipio gold mining project in the Philippines, is the Australian government discharging its 'duty to protect' if the burden of proof rests on the affected community to establish extraterritorial human rights violations?

A more comprehensive national corporate accountability framework in Australia could address these issues.

Conclusion:

We welcome the interest of DFAT in corporate social responsibility, and encourage the Department to consider development a national framework on corporate accountability which would provide authoritative guidance to Australian corporations on how to avoid negative affects in their operations overseas, as well as accountability / enforcement mechanisms when such breaches occur.

In developing such an overarching framework, Jubilee Australia recommends that the Australian Government:

1. Identify the due diligence steps expected of companies operating in specific business sectors in specific countries.
2. Consider a higher threshold of due diligence in the context of environments with a high risk of human rights violations.
3. Consider mandatory human rights due diligence obligations for the extractive and other high risk business sectors, and for some high risk geographies.
4. Establish an extraterritorial accountability mechanism apart from the National Contact Point.

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