**Final Statement of the Canadian National Contact Point on the Notification dated March 1, 2011, concerning the Porgera Joint Venture Mine in Papua New Guinea, pursuant to the OECD Guidelines for Multinational Enterprises**

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**1. Executive Summary**

On March 1, 2011, the Porgera SML Landowners Association (PLOA), a Papua New Guinean association, and the Akali Tange Association (ATA), a Papua New Guinean NGO, assisted by Mining Watch Canada (MWC), a Canadian NGO [collectively referred to as the Notifiers], filed a Request for Review with the Canadian National Contact Point (NCP). A number of issues were raised in relation to the OECD Guidelines for Multinational Enterprises [referred to as the OECD Guidelines] and the operation of the Porgera Gold Mine in Papua New Guinea, which since 2006 has been majority-owned and operated by Canadian company Barrick Gold Corporation [referred to as Barrick Gold] through the Porgera Joint Venture (PJV).

The Notifiers raised issues related to the 2000 edition of the OECD Guidelines for Multinational Enterprises, specifically Paragraphs 1, 2, 5-8, and 11 of the General Policies (Chapter II), Paragraphs 1 and 5 of Disclosure (Chapter III), and the Preamble and Paragraphs 1 a, 2 a, and 4 of Environment (Chapter V) of the OECD Guidelines which deal with sustainable development, human rights, and the environment.  The Notifiers indicated that they were seeking Barrick Gold’s compliance with the OECD Guidelines for Multinational Enterprises and provided suggestions to that effect for greater compliance in line with best practices for mining companies.

The NCP’s initial assessment was that the issues raised merited further examination.  The review of the Specific Instance was conducted using the 2011 edition of the OECD Guidelines for Multinational Enterprises.  Pursuant to the process outlined in the OECD Guidelines for Multinational Enterprises, the NCP offered its “good offices” to facilitate a dialogue between the Parties.  The Parties accepted and the NCP engaged with them to set up a mediation process that was agreed to by all Parties.  The mediator, provided by the NCP and agreed to by the Parties, subsequently undertook a series of meetings to facilitate dialogue between 5 June, 2012, to 30 June, 2013.  Through this mediation process the Parties addressed a number of issues which resulted in an “Agreed Action Items” list, dated 24 May, 2013.  This list covered multiple issues, but did not address all of the subjects listed in the Request for Review given that agreement on all of the topics was not reached during mediation.

The Request for Review process was completed between March 2011 and the release of the Final Statement:

* The Initial Assessment phase was concluded in five months;
* The process of selecting a mediator mutually agreed to by all Parties was undertaken over a 10 month period;
* The mediation process itself was conducted over 12 months;
* Confidential feedback from the Parties on the mediation process was received 2 months following receipt of the Mediator’s report, and;
* The preparation of the Final statement was completed in three months.

The chronology of the NCP process can be found in Annex 2.

The NCP’s view is that the face-to-face mediation was effective in initiating the trust building needed to achieve resolution of a number of issues identified, but that the Parties should now build on this platform to continue efforts to reach a meaningful resolution of the issues outlined in the Request for Review.

The NCP recommends:

1. That the Parties build on the mediation process, and continue to meet and discuss, on a regular basis the remaining issues, and any additional issues that may arise, with a view to resolving outstanding concerns to the mutual satisfaction of the Parties;

2. That the Parties fully implement the Agreed Action Items, or such amendments as may be agreed to, in a timely fashion;

3. That regular and systematic follow-up be jointly undertaken by the Parties for the Agreed Action Items that would benefit from monitoring and/or updates, in order to better implement the OECD Guidelines for Multinational Enterprises;

4. That all Parties review international standards and best practices, e.g., the International Financial Corporation’s Environmental, Health, and Safety Guidelines, in order to identify and implement best practices which would strengthen the implementation of the OECD Guidelines for Multinational Enterprises;

5. That the Parties report back semi-annually, to each other, on progress in implementing the Agreed Action Items list, and continue their efforts towards resolving outstanding issues;

6. That the Parties provide a statement to the NCP, within 12 months of the closure of this Specific Instance by the release of this Final Statement, on the progress made in implementing the Agreed Action Items list.  Such a statement is intended to help inform the Canadian NCP on the effectiveness of the mediation process, and the final outcomes of the identified Agreed Action Items.

The NCP considers this Specific Instance to be closed.

**2. Introduction to the OECD Guidelines for Multinational Enterprises**

The OECD [Guidelines](http://www.oecd.org/document/28/0%2C3343%2Cen_2649_34889_2397532_1_1_1_1%2C00.html) for Multinational Enterprises are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. They provide voluntary principles and standards for responsible business conduct in areas such as employment and industrial relations, human rights, environment, information disclosure, combating bribery, consumer interests, science and technology, competition, and taxation.

Each OECD Member State is obliged to establish an NCP for purposes of promoting the Guidelines and contributing to the resolution of issues that arise relating to the implementation of the OECD Guidelines in specific instances.  The NCP will review specific instances of alleged non-observance of the OECD Guidelines by a multinational enterprise in Canada, or by a Canadian multinational enterprise operating in a country without an NCP.

Upon receiving a Request for Review in relation to a specific instance and allegations of non-observance of the Guidelines, an NCP will conduct an initial assessment with a view to determining whether the issues raised merit further examination.  If the NCP’s conclusion is that the issues raised merit further examination, the NCP will then offer its “good offices” as a platform for facilitated discussion between the Parties in an attempt to resolve the issues.  If the Parties involved do not reach agreement on the issues raised, the NCP issues a statement, and makes recommendations as appropriate, on the implementation of the Guidelines.
It is important to note that the Guidelines are not laws. Similarly, NCPs are not law enforcement agencies or courts. The primary value-added of NCPs is the facilitation of dialogue for purposes of resolving disputes.

Additional information on the Guidelines can be found in Annex 3.  The *Procedures Guide for Canada's National Contact Point for the Organisation of Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises* can be found in Annex 4.  The *Terms of Reference Canada’s National Contact Point for the OECD Guidelines for Multinational Enterprises* are attached in Annex 5.

**3. Parties to Specific Instance**

The Request for Review was formally submitted jointly by Catherine Coumans, Asia-Pacific Program Coordinator of Mining Watch Canada (MWC), Mark Ekepa, Chairman of the Porgera Special Mine Lease (SML) Landowners Association (PLoA), and Jethro Tulin, an Executive-Officer of the Akali Tange Association (ATA) (collectively referred to as the Notifiers). Each of these three are the named Notifier representatives, who participated in some or all of the stages of the process and mediation.

Mining Watch Canada (MWC) is an Ottawa-based non-governmental organisation that advocates for responsible mining in Canada, and by Canadian companies operating overseas. Catherine Coumans is MiningWatch Canada’s Asia-Pacific Program Coordinator and Co-Manager.

The Porgera SML Landowners Association (PLOA) is a Porgera-based organisation that was established to represent the interests of traditional landowners living within the SML area of the Porgera Joint Venture Mine (PJV). Mark Ekepa - a Porgera landowner whose traditional lands lay inside the SML PJV Mine - is Chairman of the PLOA. The organisation’s key concerns relate to resettlement issues, and allegations regarding environmental and potential health impacts of riverine disposal of tailings, losses suffered by landowners as a result of Operation Ipili 2009, and alleged abuses of men and women inside the mine lease area by PJV's security forces.

Akali Tange Association (ATA) is a community-based human rights organisation based in Porgera, which focuses attention on alleged human rights abuses perpetrated by security forces associated with PJV. It was founded by family members of men who have been killed or wounded by PJV security forces, as claimed by their families. The organisation's executive officer is Jethro Tulin, and its key concerns relate to the allegations of abuses by the mine's security forces, as well as other issues related to residency in the area.

The Notifiers were also advised by Rick Herz, Litigation Coordinator of Earth Rights International, Marco Simons, Legal Director, of Earth Rights International,  Jonathan Kaufman, Legal Advocacy Coordinator of EarthRights International,   Desmond Sweeney of Argent Lawyers, BJ Kim of the Environmental Defenders Office (NSW)  and Patricia Feeney, Executive Director of UK-based Rights and Accountability in Development (RAID).

The respondent to the Request for Review was Barrick Gold.

Barrick Gold is a Toronto-based gold mining company which holds 95% of the PJV through a subsidiary. The other 5% of the PJV is held by PNG-based Mineral Resources Enga (MRE).

MRE is 50% owned by the Enga Provincial Government, and 50% owned by local Ipili landowners who own the land contained in the Special Mining Lease (SML).

Neither the Enga Provincial Government nor the State of Papua New Guinea participated in the Specific Instance.  The State of Papua New Guinea is not an adhering government of the OECD Guidelines for Multinational Enterprises.

**4. The Porgera Mine**

The Porgera gold mine is a large gold and silver mining operation located at the head of the Porgera Valley in Enga province, Papua New Guinea (PNG). The mine is situated in the rain forest covered highlands at an altitude of 2,200 to 2,700 m, in a region of high rainfall, landslides, and frequent  earthquakes.

The Porgera gold mine is operated by the PJV. It began production in 1990, and was developed and operated by Placer Dome which was subsequently acquired, in 2006, by Barrick Gold. Emperor Gold Mine, holding a minority stake of 20%, sold its interest in the mine to Barrick in April 2007. This gave Barrick a 95% ownership of the operation. The remaining 5% is owned by MRE.

Porgera Gold Mine is the second largest mine in Papua New Guinea and is regarded as one of the world's top ten producing gold mines. In 2009 it produced 572,595 ounces of gold and 94,764 ounces of silver, had 2,500 employees and 500 contractors. Since it began operating, the mine has produced more than 16 million ounces of gold, and almost 3 million ounces of silver, accounting for about 12 percent of Papua New Guinea’s total exports. The mine's proven and probable mineral reserves as of 2009 amount to 8.1 million ounces of gold.

**5. Specific Instance**

The Request for Review relates to the operations of the PJV mine, located on land with which the Ipili peoples of Porgera (Enga province, Papua New Guinea (PNG)) are connected.

In the Request for Review, the Notifiers requested that Barrick Gold comply with the Guidelines, proposing several recommendations for greater observance of the Guidelines, and in line with other  international best practices for mining companies, identified by the Notifiers as: the 10 principles of Sustainable Development of the International Council on Minerals and Metals (ICMM); the United Nations Global Compact; the United Nations Covenant on Economic, Social and Cultural Rights; the United Nations Rio Declaration on Environment and Development; the Voluntary Principles on Security and Human Rights; the United Nations Guiding Principles on Business and Human Rights (Protect, Respect and Remedy Framework); the (Aarhus) Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters; and the International Organisation for Standardisation (ISO) Standard on Environmental Management Systems (14001).

The issues raised relate to the 2000 edition of the OECD Guidelines for Multinational Enterprises relating to Paragraphs 1, 2, 5-8, 11 of the General Policies (Chapter II), Paragraphs 1 and 5 of Disclosure (Chapter III), and the Preamble and Paragraphs 1a, 2a, and 4 of Environment (Chapter V) of the OECD Guidelines for Multinational Enterprises which dealt with sustainable development, human rights, and the environment.

The Notifiers outlined a number of concerns – summarising them under three categories under the OECD Guidelines for Multinational Enterprises:

A. Sustainable Development: Living conditions in the SML Area incompatible with OECD Guidelines for Multinational Enterprises on sustainable development;

B. Human Rights: Alleged violence by PJV guards - killing, beatings, rapes of women, and Operation Ipili '09 - forced evictions and destruction of homes at the PJV Mine; and

C. Environment: Riverine tailings disposal and impact on air quality*.*

A. Sustainable Development: The Notifiers claimed that the living conditions of people within the Porgera Joint Venture mine’s SML area, surrounding the open pit and underground mines and their extensive waste streams, are incompatible with human health and safety standards and with social, economic and cultural development standards as reflected in international best practice guidelines. They recommended resettlement of the people living in the SML area.

B. Human Rights: The Notifiers claimed there were two ongoing forms of human rights abuses committed by the PJV:

* a) alleged violence by PJV guards - killing, beatings, rapes of women.  The Request for Review included instances, from 2006 onwards of allegations of beatings and rapes, including gang rape, of Ipili women by PJV security guards, some of which have been made public; and
* b) alleged forced evictions and destruction of homes at the PJV Mine under “Operation Ipili '09”.  They noted the situation from April 18 to 27, 2009 where PNG troops  were deployed to the Porgera area and were alleged to have subsequently burned down 130 land-owner houses and buildings, as well as agricultural plots, in Waungima village, within the SML area of the PJV mine.  The Notifiers claimed that mobile police units were housed and fed on PJV property and provided with fuel by PJV.

C. Environment: The Notifiers claimed the riverine tailings disposal methods, and the emissions from the mine’s processing facilities, were having an adverse impact on the environment, water and air quality.  They also alleged that PJV did not share information on related environmental monitoring and reporting with the affected communities, or have a closure plan for the PJV mine.

**6. Initial Assessment**

Pursuant to the Procedural Guidance chapter of the 2011 edition of the OECD Guidelines for Multinational Enterprises, and the Canadian NCP’s own Procedures Guide (Annex 4), the NCP proceeded to consider the Request for Review through the Initial Assessment process.

Though the Request for Review was submitted using references to sections of the 2000 edition of the OECD Guidelines for Multinational Enterprises, the review of the Specific Instance, and the mediation, was conducted using the 2011 edition of the OECD Guidelines for Multinational Enterprises, given that the categories of the Request were equally covered by the updated Guidelines.  This was agreed to by the Parties, as the issues addressed during the subsequent mediation were disposed of in a substantive rather than an overly technical manner. The NCP concluded that the Request for Review merited further examination and proceeded to reach out to the Notifiers and Barrick Gold to offer its good services to facilitate dialogue, as set out by the Procedures in Annex 4.

On August 19, 2011, the NCP sent the Notifiers and Barrick Gold letters outlining its initial assessment:

*Re: Initial Assessment of Specific Instance under the OECD Guidelines for Multinational Enterprises relating to Barrick's Porgera Mine in Papua New Guinea*

*Although the OECD Guidelines were updated on May 25, 2011, it is the OECD Guidelines that were in effect at the time of the filing of the request for review that apply. The Procedural Guidance chapter of the OECD Guidelines provides that NCPs shall make an initial assessment by considering "whether the issues raised merit further examination".*

*The NCP has carried out its initial assessment by reviewing the documentation which you submitted, as well as the response from Barrick. The matters raised have a lengthy history and are complex in nature. It is acknowledged that Barrick has taken steps to address a number of the issues raised, particularly relating to security. It is also recognized that there are other procedures and institutions, for example local processes under the Mining Act for negotiating resettlement, which may be more appropriate for addressing and resolving some of the issues raised. In addition, there are limits on what the National Contact Point may do to address areas of concern.*

*The NCP is dedicated to the objective of contributing to the resolution of issues that arise in the implementation of the OECD Guidelines. The NCP believes that communication and dialogue may be useful in the resolution of the issues raised and the overall advancement of the community and stakeholder interests. Such a dialogue may necessitate the inclusion of other community groups and possibly government authorities.*

*The initial assessment of the NCP is that the issues raised merit further examination. However, the NCP is not a court or tribunal. This initial assessment should not be construed as a judgment of whether or not the corporate behaviour or actions in question were consistent with observance of the OECD Guidelines and should not be equated with a determination on the merits of the issues raised in the submission.*

*The Procedural Guidance chapter of the OECD Guidelines provides that where an NCP makes an initial assessment that the issues raised merit further examination, the NCP shall respond to the parties and offer good offices to help them resolve the issues. Consequently, we would like to consult with you and the notifiers, to whom we have forwarded a similar letter, and offer, with the agreement of the parties involved, to facilitate access to consensual and nonadversarial dialogue to assist in dealing with the issues.*

*If the parties are willing to participate, we would like to solicit your views and preferences with respect to the logistics of such facilitated dialogue and how it could be carried out in a fair and efficient manner (e.g location of meeting(s), parties involved, telecommunication options, etc.).*
*Subsequently, the NCP will proceed to draft the terms of reference for such a meeting which will include asking both parties to agree to maintain the confidentiality of information shared during the proceedings.*

*Please let us know in writing by September 14, 2011, whether you are willing to participate in this facilitated dialogue. If either or both of the parties are unwilling to participate in this process, the NCP will proceed to prepare a final statement which will note the offer by the NCP and the unwillingness to participate in the process by the concerned party or parties. Final statements may make recommendations as appropriate, and are made public on the NCP website and included in the NCP's annual report, as well as being reported to the OECD Investment Committee.*

*The mandate and procedures of the NCPs are outlined in the procedural Guidance chapter of the OECD Guidelines, and the associated Commentaries. These documents may be obtained through the links on the Canadian NCP's website at: www.ncp.gc.ca .*

*I also invite you to review the document titled "The Role of the NCP in helping to Resolve Issues", which is available at: http://www.international.gc.ca/trade-agreements- accords-commerciaux/nep-pcniresolve-resolution.aspx?lang=eng.*

*Sincerely,*

*Judith St. George*
*Chair, National Contact Point for the OECD Guidelines for Multinational Enterprises*

Following receipt of the letter, all Parties replied affirmatively that they were willing to participate in the NCP’s facilitated dialogue process.

**7. Mediation**

Upon acceptance of the NCP’s offer to facilitate a mediated dialogue between the Parties, the NCP proceeded to seek an appropriate mediator. The NCP believed that in order to maximize the likelihood of success, the mediator would have to be an accredited mediator, with knowledge of PNG and the relevant aspects of the local culture. The NCP also believed that the mediator had to be acceptable to all the Parties.

As a result, the NCP undertook a lengthy process of approximately ten months of canvassing the Canadian and Australian mediation associations, and conducting other research, to identify qualified candidates. The Parties were also invited to submit the names of potential candidates.  A list of approximately twenty-eight candidates was narrowed down to a short list of eleven, which was provided to the Parties for purposes of ranking the candidates in order of preference. Following interviews in which the Parties were invited to participate, one candidate emerged out of the process and was agreed to, by the Parties, as the Mediator in this case.

On 5 June 2012, the NCP retained Mr. Khory McCormick, of Brisbane, Australia, to act as the Mediator. The Articles of Agreement were initially for a term expiring 31 December 2012. It was subsequently extended to 30 June 2013 on the basis that the Parties needed additional facilitated dialogue to reach agreement and that there was reason to believe that an agreement was possible with the extension.

The Mediation Agreement included the Terms of Reference for the mediation, and outlined the mandate of the mediation process and procedural clauses, including on confidentiality.  At the conclusion of the mediation process the Mediator would submit a confidential report to the NCP summarising the mediation process, solely for the use of the NCP.  This Terms of Reference was signed by the Parties.

The Mediator organized two face-to-face meetings and a number of conference calls among the Parties. During the face-to-face session that was held in Sydney, Australia, on April 10-11, 2013, the Parties addressed a number of issues which resulted in an “Agreed Action Items” list, subsequently finalised and dated 24 May, 2013.

The Agreed Action Items list covered multiple topics, including:

1. Sustainable Development/Re-settlement;
2. Potable Water;
3. Licence and other conditions on the mine in relation to environmental or health matters;
4. Airborne emission monitoring;
5. Health Risk Assessments;
6. Information about future mine operations;
7. Grievance Mechanism;
8. Remedial Framework for Violence Against Women (VAW);
9. Existing commitments (from November face-to-face session) in relation to security issues; and
10. Timeframes

The specific elements of the Agreed Action Items list are confidential to the Parties of the agreement.

The Agreed Action Items list between the Parties touched on many of the issues and recommendations raised in the Request for Review. However, some of the Parties felt there are outstanding matters which were not addressed by the mediation process despite the attempts of the mediator, as not all Parties were willing to discuss all issues during the dialogue.

The Mediator submitted the above referenced confidential report to the NCP on June 19th, 2013.

**8. NCP Considerations on the Mediation Process**

The NCP deemed appropriate and necessary to offer a mediation process that the Parties would support and in which they would to participate.  While a lengthy and complex endeavour, this was achieved by having the Parties involved both in the process, and decisions related to the choice of the mediator.  This was intended to establish a sense of ownership and confidence, for the Parties, in the process and in the choice of the mediator.

It should be noted, however, that the time needed to identify and retain the services of a mutually agreed Mediator had an impact on the process timeframes outlined in the Commentary on the Procedural Guidance for NCPs in the OECD Guidelines for Multinational Enterprises.

The NCP is of the view that the provision of an independent mediation process was a first step to helping the Parties come to agreement on measures to provide resolution on key issues. Given the longstanding history of these matters, the successful engagement of the Parties in positive dialogue, and the development of an Agreed Action Items list, are considered a significant step forward.

However, the Parties recognised that the mediation process and the Agreed Action Item list did not cover all the issues outlined in the Request for Review.  The NCP believes the Parties would benefit from building on the mutual understanding engendered during the mediation process, in order to find compromises and actions that would lead to meaningful outcomes on any outstanding issues.

The NCP was encouraged to hear that the Parties involved appreciated the trust building the face-to-face dialogue provided through the mediation process, despite logistical challenges. All sides also noted appreciation for the efforts undertaken by the mediator and the NCP.

Although the mediation agreement made reference to the maintenance of confidentiality, there were allegations of breach of confidentiality during the process.  As noted with the terms of reference for the mediation process, the NCP made clear its expectations that all Parties will respect the confidentiality of the mediation process in order to maintain the spirit and intent of good will that underpins the dialogue and to maximise the possibility of a successful outcome.  Fortunately the mediation was not derailed, although the incident raised questions and concerns about this trust building exercise, the process, and the next steps.

**9. Recommendations**

The NCP recommends:

1. That the Parties build on the mediation process, and continue to meet and discuss, on a regular basis the remaining issues, and any additional issues that may arise, with a view to resolving outstanding concerns to the mutual satisfaction of the Parties;

2. That the Parties fully implement the Agreed Action Items, or such amendments as may be agreed to, in a timely fashion;

3. That regular and systematic follow-up be jointly undertaken by the Parties for the Agreed Action Items that would benefit from monitoring and/or updates, in order to better implement the OECD Guidelines for Multinational Enterprises;

4. That all Parties review international standards and best practices, e.g., the International Financial Corporation’s Environmental, Health, and Safety Guidelines, in order to identify and implement best practices which would strengthen the implementation of the OECD Guidelines for Multinational Enterprises;

5. That the Parties report back semi-annually, to each other, on progress in implementing the Agreed Action Items list, and continue their efforts towards resolving outstanding issues;

6. That the Parties provide a statement to the NCP, within 12 months of the closure of this Specific Instance by the release of this Final Statement, on the progress made in implementing the Agreed Action Items list.  Such a statement is intended to help inform the Canadian NCP on the effectiveness of the mediation process, and the final outcomes of the identified Agreed Action Items.

**Conclusion**

With the publication of this Final Statement, the NCP considers this Specific Instance to be closed.

**Annex 1**

**References to the 2000 Edition of the OECD Guidelines for Multinational Enterprises in the Request for Review**

The Notifiers referred to several sections within the 2000 edition of the OECD Guidelines for Multinational Enterprises:

The Request references parts of the Guidelines:

II. General Policies - Paragraph 1 states that enterprises should, “contribute to economic, social and environmental progress with a view to achieving sustainable development."

II. General Policies - Paragraph 2 states that enterprises should, "respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments,”

II. General Policies - Paragraph 5 states that enterprises should "refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to environmental, health, safety, labour, taxation, financial incentives, or other issues."

II. General Policies - Paragraph 6 states that enterprises should "support and uphold good governance principles and develop and apply good corporate governance practices."

II. General Policies - Paragraph 7 states that enterprises should “develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate."

II. General Policies - Paragraph 8 states that enterprises should “promote employee awareness of, and compliance with, company policies through appropriate dissemination of these policies, including through training programmes.”

II. General Policies - Paragraph 11 states that enterprises should "abstain from any improper involvement in local activities.”

III. Disclosure - Paragraph 1 states that enterprises should “ensure that timely, regular, reliable and relevant information is disclosed regarding their activities, structure, financial situation and performance.”

III. Disclosure - Paragraph 5 states that "enterprises are encouraged to communicate additional information that could include: (...) information on social, ethical, and environmental policies of the enterprise and other codes of conduct to which the company subscribes (...) and its performance in relation to these statements...."

V. Environment - The Preamble states that "enterprises should...protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development. ... "

V. Environment - Paragraph 1.a. follows the preamble and 1. Together they state that "enterprises should: Establish and maintain a system of environmental management appropriate to the enterprise, including; a) collection and evaluation of adequate and timely information regarding the environmental, health and safety impacts of their activities."

V. Environment - Paragraph 2.a. states that enterprises should "provide the public and employees with adequate and timely information on the potential environment, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance...."

V. Environment - Paragraph 4 states that enterprises should " [c]onsistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account human health and safety, not use the lack of scientific certainty as a reason for postponing cost-effective measures to prevent or minimise such damage."

**Annex 2**

**Chronology of Events**

March 1, 2011 – Notifiers file the Request for Review.

March 3, 2011 – NCP acknowledges receipt of Request for Review.

March 4, 2011 – The Request for Review was shared with Barrick Gold.

August 19, 2011 – The NCP shared its initial assessment with the Parties.

5 June 2012 - Mediator appointed.

19 June 2013 - Mediator's Report delivered to the NCP.

26 July 2013 – The NCP asks the Parties for confidential comments on the mediation process.

30 August-3 September – The NCP received comments from the Parties.

**Annex 3**

**Information on the OECD Guidelines for Multinational Enterprises**

The Guidelines constitute a set of voluntary recommendations to multinational enterprises in all the major areas of business ethics, including employment and industrial relations, human rights, environment, information disclosure, combating bribery, consumer interests, science and technology, competition, and taxation. Adhering governments have committed to promote them among multinational enterprises operating in or from their territories.

Although many business codes of conduct are now publicly available, the Guidelines are the only multilaterally endorsed and comprehensive code that governments are committed to promoting. The Guidelines' recommendations express the shared values of governments of countries that are the source of most of the world's direct investment flows and home to most multinational enterprises. They aim to promote the positive contributions multinationals can make to economic, environmental and social progress.

Adhering countries comprise all 34 OECD member countries, and 11 non-member countries (Argentina, Brazil, Colombia, Costa Rica, Egypt, Latvia, Lithuania, Morocco, Peru, Romania, and Tunisia). The Investment Committee has oversight responsibility for the Guidelines which are one part of a broader OECD investment instrument - the Declaration on International Investment and Multinational Enterprises. The instrument’s distinctive implementation mechanisms include the operations of National Contact Points (NCP), which are government offices charged with promoting the Guidelines and handling enquiries in the national context.

Because of the central role it plays, the effectiveness of the National Contact Point is a crucial factor in determining how influential the Guidelines are in each national context. While it is recognised that governments should be accorded flexibility in the way they organise National Contact Points, it is nevertheless expected that all National Contact Points should function in a visible, accessible, transparent and accountable manner. These four criteria should guide National Contact Points in carrying out their activities.

More information may be obtained about the Guidelines on the [OECD website](http://www.oecd.org/daf/investment/guidelines).
For a copy of the Guidelines, see the [PDF Version](http://www.oecd.org/dataoecd/56/36/1922428.pdf), 1.75 MB) [\*](http://www.international.gc.ca/trade-agreements-accords-commerciaux/ncp-pcn/report2011-rapport2011.aspx?lang=eng#ft1)

**Annex 4**

**Procedures Guide for Canada's National Contact Point for the Organisation of Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises**

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* [2. Definitions](http://www.international.gc.ca/trade-agreements-accords-commerciaux/ncp-pcn/statement-declaration.aspx#two)
* [3. Overview](http://www.international.gc.ca/trade-agreements-accords-commerciaux/ncp-pcn/statement-declaration.aspx#three)
* [4. Stages Involved in Processing Requests for Review](http://www.international.gc.ca/trade-agreements-accords-commerciaux/ncp-pcn/statement-declaration.aspx#four)
* [5. Timelines](http://www.international.gc.ca/trade-agreements-accords-commerciaux/ncp-pcn/statement-declaration.aspx#five)
* [6. Parties Who May File a Request for Review Regarding a Specific Instance](http://www.international.gc.ca/trade-agreements-accords-commerciaux/ncp-pcn/statement-declaration.aspx#six)
* [7. With Which NCP Should a Request for Review be Filed?](http://www.international.gc.ca/trade-agreements-accords-commerciaux/ncp-pcn/statement-declaration.aspx#seven)
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* [9. Stage 1: From Receipt to Initial Assessment](http://www.international.gc.ca/trade-agreements-accords-commerciaux/ncp-pcn/statement-declaration.aspx#nine)
* [10. Acknowledging Receipt of the Request for Review](http://www.international.gc.ca/trade-agreements-accords-commerciaux/ncp-pcn/statement-declaration.aspx#ten)
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* [13. Stage 3: Drafting and Publication of the Statement or Report](http://www.international.gc.ca/trade-agreements-accords-commerciaux/ncp-pcn/statement-declaration.aspx#thirteen)
* [14. Confidentiality and Transparency](http://www.international.gc.ca/trade-agreements-accords-commerciaux/ncp-pcn/statement-declaration.aspx#fourteen)
* [15. The Office of the Extractive Sector Corporate Social Responsibility Counsellor](http://www.international.gc.ca/trade-agreements-accords-commerciaux/ncp-pcn/statement-declaration.aspx#fifteen)

**1. Introduction**

1.1. The purpose of this document is to outline the process that Canada’s National Contact Point will follow when receiving a Request for Review of a specific instance under the OECD Guidelines for Multinational Enterprises.

1.2. This text is based on the “Procedural Guidance” chapter of the OECD Guidelines for Multinational Enterprises and the related “Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises”.

1.3. The OECD Guidelines for Multinational Enterprises were initially created in 1976 and are subject to occasional revisions. The most recent revision to the Guidelines was adopted on May 25, 2011. Prior to this, the Guidelines were last updated in 2000. Requests for review received by the National Contact Point are processed in accordance with the applicable version of the Guidelines in existence at the time of the filing of the request for review.

**2. Definitions**

2.1. The following definitions apply in this document.

* “Guidelines” means OECD Guidelines for Multinational Enterprises.
* “MNE” means multinational enterprise.
* “NCP” means Canada’s National Contact Point for the OECD Guidelines for Multinational Enterprises.
* “Notifier” means any individual, organization, or community that believes that a multinational enterprise’s actions or activities have not observed the OECD Guidelines for Multinational Enterprises and who files a Request for Review of a specific instance with the NCP.
* “Specific Instance” means an instance of alleged non-observance of the Guidelines by a multinational enterprise .
* “Website” means Canada’s NCP website accessible at [www.ncp.gc.ca](http://www.ncp.gc.ca/).

**3. Overview**

3.1. The role of the NCP is to further the effectiveness of the Guidelines. The NCP operates in accordance with the core criteria of visibility, accessibility, transparency and accountability.

3.2. The NCP contributes to the resolution of issues that arise relating to implementation of the Guidelines in specific instances in a manner that is impartial, predictable, equitable and compatible with the principles and standards of the Guidelines.

3.3. The NCP may provide a forum for discussion and assist the business community, worker organizations, other non-governmental organizations, and other interested parties to deal with the issue(s) raised in an efficient and timely manner and in accordance with applicable law.

3.4. When Canada’s NCP receives a Request for Review of a specific instance, it will review the documentation and supporting material received and make an initial assessment of whether the issue(s) raised merit further examination and will respond to the parties involved. If the NCP determines that the issue(s) raised do not merit further consideration, the NCP will issue a public statement and the case will be closed.

3.5. Where the issue(s) raised is/are considered to merit further examination, the NCP will offer its good offices to help the parties involved to resolve the issue(s). In doing so, the NCP will offer, with the agreement of the parties involved, to facilitate a dialogue to assist the parties in dealing with the issues. This may include access to consensual and non-adversarial means, such as conciliation or mediation.

3.6. Where the parties do not reach an agreement on the issue(s) raised or when a party is unwilling to engage in the procedures or participate in good faith, the NCP will issue a public statement. The statement will at a minimum describe the issue(s) raised, the reasons why the NCP decided that the issue(s) raised merit further examination and the procedures the NCP initiated in assisting the parties.

3.7. Where the parties reach an agreement on the issue(s) raised, the NCP will issue a report. The report will at a minimum describe the issue(s) raised, the procedures the NCP initiated in assisting the parties and when agreement was reached.

3.8. As part of the development of any report or statement, the NCP will circulate a draft to the parties involved for comments. The report or statement will then be made public by posting on the NCP website and possible inclusion in the annual NCP report to the OECD. It should be noted that the need to protect sensitive business and other stakeholder information is taken into account when finalizing the content of any report or statement that is made public.

3.9. The Canadian NCP’s languages of operation are English and French.

**4. Stages Involved in Processing Requests for Review**

4.1. There are several stages involved in handling the receipt of a Request for Review by the NCP.

* Stage 1 – From Receipt of the Request for Review to the Initial Assessment.
* Stage 2 – From the Initial Assessment to the conclusion of Facilitated Dialogue.
* Stage 3 – Drafting and publication of the Statement or Report.

**5. Timelines**

5.1. The NCP’s objective is to complete each stage of the processing of a specific instance within the timeframes indicated below. However, due to unforeseen circumstances beyond the control of the NCP, flexibility may be required on a case by case basis and various stages may take longer than anticipated.

* Stage 1: 3 months.
* Stage 2: 6 months.
* Stage 3: 3 months.

**6. Parties Who May File a Request for Review Regarding a Specific Instance**

6.1. A party that believes that an MNE’s actions or activities constitute non-observance of the OECD Guidelines for Multinational Enterprises may file a Request for Review of a specific instance with the NCP.

6.2. The notifying party, or notifier, may be an individual, an organization, a community affected by a company’s activities, employees or their trade union, or an NGO. A notifier may act on behalf of other parties who are identified. The notifier should have an interest in the matter and the nature and extent of the interest is a factor that will be considered by the NCP in its treatment of the Request for Review.

6.3. When a Request for Review is jointly submitted by more than one notifier, the notifiers should indicate whether they have agreed that one of them will act as the lead for purposes of liaison and communication with the NCP. The notifiers should further indicate whether correspondence from the NCP should be sent only to the one entity acting as the lead (and whether the others should be copied) or whether correspondence should also be addressed to all the notifiers. When several Canadian MNEs are listed in a Request for Review the NCP will consult with the MNEs to determine the most appropriate way to communicate with them depending on the circumstances. When dealing with situations involving MNEs from other countries, to determine how to best liaise with the MNE(s) in question, the NCP may communicate with the corresponding NCP in the home country of the foreign MNE(s) (if it is an adhering country).

**7. Appropriate NCP for filing a Request for Review**

7.1. Generally, issue(s) will be dealt with by the NCP in whose country the issue(s) have arisen.

7.2. Should the country where the issue(s) has/have arisen not adhere to the Guidelines and not have an NCP, then the Request for Review may be submitted to the NCP in the MNE’s home country if the home country adheres to the Guidelines.

7.3. Thus, the Canadian NCP may deal with all issue(s) that arise in Canada relating to the activities of any MNE operating in Canada, as well as the operations of Canadian MNEs operating in countries that do not have an NCP.

7.4. Cases of multi-jurisdictional specific instances that involve cooperation with the NCP of another country will be dealt with on a case by case basis. In such cases, normally one of the NCPs will assume the lead with respect to the processing of the specific instance.

7.5. Notifiers who wish to submit a Request for Review of specific instances to the NCP may do so by forwarding the request by mail, email or fax to the following addresses:
Mail:

Canada’s National Contact Point for the OECD Guidelines for Multinational Enterprises
Foreign Affairs and International Trade Canada
125 Sussex Drive
Ottawa ON
Canada
K1A 0G2
Email: ncp.pcn@international.gc.ca
Telephone: (613) 996-0245
Facsimile: (613) 944-7153
\*Attention –BTA Division

**8. Information to Include in the Request for Review**

8.1. Notifiers who wish to file a Request for Review of a specific instance with Canada’s NCP should provide the following information in either English or French with their request:

1. The notifier’s identity, including contact person, name of organization and contact details. Where a notifier is raising a matter on behalf of a number of organizations, they should list all the organizations.
2. The notifier’s interest in the matter. For example, if a Request for Review of a specific instance is being lodged on behalf of others (e.g., a union or local community), the notifier lodging the request should outline their interest in this case and mandate or reason for lodging the request.
3. The identity (name) and location of the MNE (e.g., location of the MNE’s headquarters) whose actions or activities are the subject of the Request for Review. If the MNE is a subsidiary of another company, the names of the corporate entities involved should be provided with a description of their affiliation.
4. A description of the action or activity which the notifier lodging the Request for Review believes constitutes non-observance of the Guidelines. The stakeholder must provide any supporting evidence they may have (e.g., documents, reports, studies, articles, witness statements, etc.). Please note that unsubstantiated allegations are not sufficient for the NCP to make an initial assessment.
5. The location(s) of the action or activity to which the specific instance relates.
6. The parts of the Guidelines (i.e., chapter(s) and paragraph(s)) which are considered to be most relevant.
7. A list of any applicable or relevant law and whether there is an issue relating to compliance with this (these) law(s).
8. Background on whether the action or activity has been discussed with the MNE and the results of such discussions.
9. A list of other fora where the same matter has been raised (e.g., other government offices, agencies, NGOs, legal action in the court system, etc.) and the status of any corresponding action that such offices may be taking.
10. A description of the action(s) the notifier lodging the Request for Review considers the MNE should take to resolve the issues.
11. Any additional details that the entity lodging the Request for Review wishes to bring to the attention of the NCP and/or the MNE.
12. In addition to the above information, the Request for Review should also clearly indicate that the entity submitting the request for review is aware/and consent that all information provided to the NCP may be shared with the MNE or other parties.

8.2. The Canadian NCP’s languages of operation are English and French. Documents that are submitted in other languages will not be considered by the NCP. All communications from the NCP to the notifiers or to MNEs will be in either French or English, and all public information on the Website will be in both languages.

**9. Stage 1: From Receipt to Initial Assessment**

9.1. Notifiers who wish to raise a specific instance with the NCP should do so by submitting a Request for Review in writing with supporting documentation. Notifiers should include all of the information listed above (as applicable) in their submissions. The NCP may request additional information at any stage in the process.

9.2. Notifiers may request a meeting with the NCP when making their submission.

9.3. All parties to a specific instance are requested to make it clear in all of their correspondence with the NCP that the information and documentation provided may be shared with the other party(ies).

**10. Acknowledging Receipt of the Request for Review**

10.1. Within five working days of the receipt of a Request for Review the NCP will issue a letter to the Notifiers acknowledging receipt. (Note: notifiers must ensure that their submission includes a return address for such communication.)

10.2 Parties to a specific instance are encouraged to forward all relevant and supporting documentation to the NCP in one or several messages within a reasonable time frame rather than submitting separate documents over an extended period of time. The NCP may fix a deadline beyond which any additional documentation in relation to the specific instance will not be taken into consideration.

**11. Initial Assessment**

11.1. Following the receipt of a Request for Review the NCP will proceed to carry out an initial assessment.

11.2. As part of the initial assessment, the NCP will endeavour to forward the Request for Review to the MNE in question with an invitation to reply, taking into consideration the need to protect sensitive and confidential information (e.g. to safeguard the identity and/or safety of the parties). The reply will be taken into account by the NCP in performing its initial assessment. For purposes of assisting with the timeliness and transparency of the process, the parties should indicate their provision of consent to share the material submitted with the other party(ies).

11.3. The NCP will carry out an initial assessment with a view to determining whether the issues raised merit further examination.

11.4. In determining whether the issues raised merit further examination, the NCP will determine whether the issues are bona fide and relevant to the implementation of the Guidelines. In this context, the NCP will take into account:

* the identity of the party concerned and its interest in the matter;
* whether the issues are material and substantiated;
* whether there seems to be a link between the enterprise’s activities and the issue raised in the specific instance;
* the relevance of applicable law and procedures, including court rulings;
* how similar issues have been, or are being, treated in other domestic or international proceedings; and
* whether the consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines.

11.5. The NCP may also consider a number of other issues, including:

* the request(s) and solution(s) that the notifier(s) is seeking and whether these are possible within the mandate of the NCP; and
* what the notifier(s) have indicated about their willingness or unwillingness to participate in a facilitated dialogue with a view to resolving the matter.

11.6. At this stage the NCP may also review open source information and consult relevant government departments with knowledge of the issues raised.

11.7. Following its initial assessment, the NCP will respond to the parties concerned.

11.8. Should the NCP decide that the issue(s) raised do not merit further examination, it will inform the parties of the reasons for its decision. The NCP will also consult with the parties for purposes of issuing a public statement. The statement will at a minimum describe the issue(s) raised and the reasons for the NCP’s decision. If the NCP believes that, based on the results of its initial assessment, it would be unfair to publicly identify a party in a statement on its decision, it may draft the statement so as to protect the identity of the party. The file will then be closed.

11.9. If the matter is considered by the NCP to merit further examination, the NCP will offer good offices to help the parties involved resolve the issues. The NCP may also make publicly available its decision that the issues raised merit further examination and its offer of good offices to the parties involved.

**12. Stage 2: From Initial Assessment to Conclusion of Facilitated Dialogue**

12.1. Where the issues raised are considered by the NCP to merit further examination, the NCP will offer its good offices, and with the agreement of the parties involved, to facilitate a dialogue to assist the parties in dealing with the issues. This may include access to consensual and non-adversarial means, such as conciliation or mediation.

12.2. For this purpose the NCP will consult with these parties and where relevant:

* Seek advice from relevant authorities, and/or representatives of the business community, worker organizations, other non-governmental organizations, and relevant experts.
* Consult the NCP in the third country or countries concerned.
* Seek the guidance of the OECD Investment Committee if it has doubt about the interpretation of the Guidelines in particular circumstances.

12.3. In common with accepted practices on conciliation and mediation procedures, these procedures would be used only upon agreement of the parties concerned and their commitment to participate in good faith during the procedure.

12.4. In the event Guidelines-related issues arise in a non-adhering country, the NCP will take steps to develop an understanding of the issue(s) involved. While it may not always be practicable to obtain access to all pertinent information, or to bring all the parties involved together, the NCP may still be in a position to pursue enquiries and engage in other fact finding activities. Examples of such steps could include contacting the management of the firm in the home country, and, as appropriate, government officials in the non-adhering country.

12.5. If the parties resolve the issue(s) raised and come to an agreement, the NCP will indicate that the matter was resolved by the parties on the NCP website and in its annual report, which is also posted on the website.

**13. Stage 3: Drafting and Publication of Report or Statement**

13.1. At the conclusion of the procedures and after consultation with the parties involved, the NCP will make the results of the procedures publicly available, taking into account the need to protect sensitive business and other stakeholder information.

13.2. Where the parties reach an agreement on the issue(s) raised, the NCP will issue a report. The report will at a minimum describe the issue(s) raised, the procedures the NCP undertook in assisting the parties and when agreement was reached. As part of the development of the report, the NCP will circulate a draft to the parties involved for comments. The report will then be made public by posting on the NCP website and possible inclusion in the annual report. Information on the content of the agreement will only be included insofar as the parties involved agree thereto.

13.3. Where the parties do not reach an agreement on the issue(s) raised or when a party is unwilling to engage in the procedures or participate in good faith, the NCP will issue a statement. The statement will at a minimum describe the issue(s) raised, the reasons why the NCP decided that the issue(s) raised merited further examination and the procedures the NCP undertook to assist the parties. The NCP will make recommendations on the implementation of the Guidelines as appropriate, which will be included in the statement. A statement may be issued without recommendations if the NCP believes that specific recommendations are not required. Where appropriate, the statement may also include the reasons why agreement could not be reached. The statement may also identify the parties concerned, the date on which the issue(s) were raised with the NCP, and any other observations the NCP deems appropriate. As part of the development of the final statement, the NCP will circulate a draft to the parties involved for comments. However, the statement is that of the NCP and it is within the NCP’s discretion to decide whether to change the draft statement in response to comments from the parties. The final statement will then be made public by posting on the NCP website and possible inclusion in the annual report.

13.4. If the NCP makes recommendations to the parties, it may be appropriate under specific circumstances for the NCP to follow-up with the parties on their response to these recommendations. If the NCP deems it appropriate to follow-up on its recommendations, the timeframe for doing so will be addressed in the statement of the NCP.

**14. Confidentiality and Transparency**

14.1. Pursuant to the transparency criteria of operations, the NCP will generally share all relevant information that it receives from one party(ies) with the other party(ies). However, the NCP may determine not to share certain information that it receives if it has been requested not to share the information and corresponding justification and rationale was provided.

14.2. Transparency is recognized as a core criteria and general principle for the conduct of NCPs in their dealings with the public. However, it is also recognized that there are specific circumstances where confidentiality is important. While the initial assessment and facilitated dialogue phases of the process are underway, confidentiality of the proceedings will be maintained. It is understood that proceedings include the facts and arguments brought forward by the parties. At the conclusion of the procedures, if the parties involved have not agreed on a resolution of the issues raised, they are free to communicate about and discuss the issues. However, information and views provided during the proceedings by another party involved will remain confidential, unless that other party agrees to their disclosure or this would be contrary to the provisions of national law.

14.2. The NCP Procedures Guide, in conformity with the laws of Canada, strives to strike a balance between these two principles.

14.3. Canada’s NCP is required by the Government of Canada’s Policy on Government Security to maintain an appropriate level of confidentiality in respect of information received by the NCP. Canada’s access and privacy legislation deals with specific circumstances. The Access to Information Act gives Canadians a right of access to records held by the Government of Canada, but at the same time protects confidential information provided by third parties from disclosure. This protection is backed up by mandatory notification to third parties before information supplied by them, or about them, is disclosed, giving them the opportunity to make representations to the government about disclosure and, if necessary, bring the matter before the Federal Court for judicial review. The Privacy Act protects personal information about individuals from being used for purposes other than that for which it was collected. Personal information can be disclosed only where specifically allowed by the Act, or where the subject individual has given his or her consent.

14.4 Subject to the Access to Information Act and the Privacy Act, the NCP follows the following rules regarding confidentiality and disclosure:

1. In order to facilitate resolution of the issue(s) raised, the NCP will take appropriate steps to protect sensitive business and other information. Equally, other information, such as the identity of individuals involved in the procedures, should be kept confidential. During a review process, confidentiality of the proceedings will be maintained. It is understood that proceedings include the facts and arguments brought forward by the parties.
2. At the conclusion of the procedures, if the parties involved have not agreed on a resolution of the issue(s) raised, they are free to communicate about and discuss the/these issue(s). However, information and views provided during the proceedings by another party involved will remain confidential, unless that other party agrees to their disclosure.
3. After consultation with the parties involved, the NCP will make publicly available the results of these procedures unless preserving confidentiality would be in the best interests of effective implementation of the Guidelines (e.g. to protect sensitive business information or the identity of individuals with a view to ensuring continued cooperation, etc.).
4. The NCP is required to report annually to the OECD. Such annual reports are expected to include an update on the status of specific instances and may be general in nature so as to maintain the confidentiality of commercially sensitive information. Such status updates may also be posted on the NCP’s website.

**15. The Office of the Extractive Sector Corporate Social Responsibility Counsellor**

15.1. As one of the pillars of the Canadian government’s corporate social responsibility (CSR) policy announced in March, 2009, (Building the Canadian Advantage: A Corporate Social Responsibility Strategy for the Canadian International Extractive Sector), the Government created a new office of the Extractive Sector Corporate Social Responsibility Counsellor (“Counsellor”). A Protocol between the NCP and the Office of the CSR Counsellor is available on the NCP website [www.ncp.gc.ca](http://www.ncp.gc.ca/).

15.2. The mandate of the Counsellor is to review the CSR practices of Canadian extractive sector companies operating outside Canada, and to advise stakeholders on the implementation of four performance guidelines (the International Finance Corporation Performance Standards on Social and Environmental Sustainability, the Voluntary Principles on Security and Human Rights, the Global Reporting Initiative and the OECD Guidelines for Multinational Enterprises).

15.3. If a Request for Review is received by the Counsellor that relates only to the OECD Guidelines for Multinational Enterprises, the Counsellor shall refer the request to the NCP.

15.4. If a Request for Review is received by the Counsellor or the NCP that relates to the OECD Guidelines for Multinational Enterprises and any other performance guidelines for which the Counsellor is responsible, the Counsellor shall lead the review and shall consult with the NCP on issues relating to the OECD Guidelines for Multinational Enterprises.

15.5 The Counsellor is subject to the [Access to Information Act](http://laws.justice.gc.ca/eng/acts/A-1/page-1.html) and the [Privacy Act](http://laws.justice.gc.ca/eng/acts/P-21/index.html).

**Annex 5**

**Terms of Reference Canada’s National Contact Point for the OECD Guidelines for Multinational Enterprises**

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**Introduction**

The Organisation for Economic Co-Operation and Development (OECD) Guidelines for Multinational Enterprises (Guidelines) constitute a well-established and authoritative set of international standards in the realm of corporate social responsibility (CSR). The Guidelines form a key component of the Government of Canada’s overall CSR policies. Canada is an adhering country to the OECD Guidelines and is required to maintain a National Contact Point for purposes of furthering the effectiveness of the Guidelines.

**1. Definitions**

1.1. In this Terms of Reference, the following terms shall be defined as follows:

Department: means federal departments of the Government of Canada

CIDA: Canadian International Development Agency.

DFAIT: Foreign Affairs and International Trade Canada.

EC: Environment Canada.

Finance: Finance Canada.

Guidelines: OECD Guidelines for Multinational Enterprises.

HRSDC: Human Resources and Skills Development Canada.

IC: Industry Canada

INAC: Indian and Northern Affairs Canada.

NCP: the National Contact Point for the OECD Guidelines for Multinational Enterprises. The Canadian NCP consists of an interdepartmental committee which is supported by a Secretariat housed at DFAIT. References to the NCP are to the interdepartmental committee.

NRCan: Natural Resources Canada.

Permanent Members: Departments of the Government of Canada who are permanent members of the NCP interdepartmental committee.

Primary Contact: Individual at a Department who is the main contact person or liaison official with respect to the NCP.

Specific instance: The term "specific instance" is one derived from the OECD Guidelines. Any individual, organisation, or community (“stakeholder”) that believes a corporation's actions or activities have breached the Guidelines may lodge a formal Request for Review regarding a “specific instance” with the NCP of the relevant country. Hence, a specific instance refers to allegations by stakeholders of an "issue or situation" that it is believed to constitute the non-observance of the Guidelines by multinational enterprises.

**2. Background**

2.1. The Guidelines are a government-endorsed comprehensive set of recommendations for multinational enterprises on principles and standards for responsible business conduct. The Guidelines are voluntary and are not intended to override local laws and legislation.

2.2. Canada has been an adhering country since the OECD adopted the Guidelines in 1976. The OECD Council Decision of 1991 created the requirement for all countries adhering to the Guidelines to maintain an NCP. The revisions to the Guidelines in 2000 set out the recommended Procedural Guidance for the NCPs.

**3. Purpose**

3.1. The purpose of this Terms of Reference document is to provide a guide for the composition and operations of the Canadian NCP. Moreover, its adoption is expected to contribute to the transparency and accountability of the NCP’s operations.

**4. Role and Responsibilities of the NCP**

4.1. The primary documents that outline the role and responsibilities of the NCPs are the “Procedural Guidance” chapter of the Guidelines, as well as the “Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises.”

4.2. According to the Procedural Guidance notes for the OECD Guidelines, the role of the NCP is “to further the effectiveness of the Guidelines”, while the responsibilities of the NCP consist of:

i. making the Guidelines known and available;

ii. raising awareness of the Guidelines;

iii. responding to enquiries about the Guidelines;

iv. contributing to the resolution of issues that arise relating to the implementation of the Guidelines in specific instances, and;

v. reporting annually to the OECD Investment Committee.

**5. Core Criteria of Operations**

5.1. The NCP will operate in accordance with the core criteria of visibility, accessibility, transparency and accountability, as recommended by the OECD Procedural Guidance.

**6. Institutional Structure**

6.1. Canada’s NCP is an interdepartmental committee composed of federal government departments. The NCP may elect to alter its composition if such alteration is agreed to by all permanent members of the NCP.

6.2 The NCP may, as required, create Ad Hoc Working Groups to perform specific activities in carrying out the NCP mandate.

**7. Chairperson and Vice-Chairperson**

7.1. The NCP shall be chaired by a Director General level representative of DFAIT.

7.2. The NCP shall designate a Vice-Chairperson, from among the Permanent Members of the committee other than DFAIT NCP Secretariat, who shall be at least at the Director level.

7.3. The Vice-Chair shall assume the role of the Chairperson when the Chairperson is absent.

**8. Secretariat**

8.1. The NCP Secretariat function shall be provided by DFAIT.

**9. Membership**

9.1. Permanent Members: The Permanent Members of the Committee are CIDA, DFAIT, EC, Finance, HRSDC, IC, INAC, and NRCan.

9.2. New Permanent Members: The NCP may by consensus accept new members.

9.3. Primary Contact: Each Permanent Member shall designate one of its employees to act as the Primary Contact.

9.4. The Primary Contacts will be responsible for liaising with the NCP and notifying the Secretariat of changes in representation or membership, as well as sharing information, providing appropriate input and coordinating views internally within their respective Departments. The Primary Contact person for each Department, or their proxy, with the respective Department’s approval, shall be the primary person with authority to express the views of the respective Department at NCP meetings.

9.5. The Chair of the NCP shall not be considered the Primary Contact for DFAIT. DFAIT shall designate another official to act as the Primary Contact for DFAIT.

9.6. Observers / Resource Persons: Each Department may have a number of operating units with an interest in NCP matters. The Primary Contact of each Department shall determine whether representatives of other units within their Department may participate in NCP meetings as an observer or resource person.

9.7. The Primary Contact for each Department shall ensure that the Secretariat is notified of the proposed participation of any additional Departmental representatives as either Observers or Resource Persons.

9.8. Ad Hoc Members: The NCP may seek to engage the participation of representatives from other federal government Departments on a case by case basis. In such situations, the respective Department may be invited to participate in the NCP’s work, and to contribute their knowledge and expertise on any particular subject matter as required.

**10. Meetings**

10.1. Calling of Meetings: The NCP shall meet at least twice annually, or as considered to be appropriate and necessary by the Chairperson.

10.2. The Secretariat, on behalf of the Chairperson, shall send meeting notices to the Primary Contact of each of the Permanent Members notifying them of meeting dates and times.

10.3. Any Permanent Member of the NCP may request a meeting of the NCP at any time through the Chairperson.

10.4. Quorum: Quorum shall be necessary for an NCP meeting to take place. Quorum shall consist of a gathering of the Primary Contacts, or their proxies, from at least fifty percent plus one (50% +1) of the Permanent Member Departments.

10.5. Decision-Making: Decisions may need to be made by the NCP from time to time on questions relating to the NCP’s fulfillment of its role and other matters. Each of the Permanent Members shall be able to express their views at NCP meetings through their Primary Contacts, or their proxies. The NCP will make every effort to make decisions based on consensus. Where a consensus cannot be reached, the majority shall prevail.

**11. Specific Instances**

11.1. Specific Instances shall be dealt with in accordance to the process outlined in the Guidelines, as well as in the procedures and protocols documents that are posted on the Canadian NCP website, as they may be amended from time to time.

**12. Confidentiality**

12.1. In order to facilitate the work of the NCP and in line with the OECD Guidelines Procedural Guidance notes, the NCP and all those invited to participate in its proceedings from various Departments shall take appropriate steps to protect sensitive business and other information.

**13. Reporting**

13.1. The Secretariat shall manage the website content for Canada’s NCP, as well as prepare and disseminate individual meeting reports and an annual report for submission to the OECD Investment Committee pursuant to the OECD requirements.

13.2. All Permanent Members shall be consulted and asked to contribute to the preparation of the annual report.

**14. Resources**

14.1. Permanent Members of the NCP shall, as necessary, endeavour to contribute resources (both human and financial) to the operations of the NCP for purposes of ensuring the timeliness and effectiveness of its work.

For more information about the [Canadian NCP](http://www.ncp.gc.ca/).

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