

## ***Closing the Governance Gaps***

### **Submission to the UN “Protect, Respect, Remedy” Framework – Expert Multi-Stakeholder Consultation Berlin, January 2010**

#### **Oxfam Australia January 2010**

##### **Introduction**

This submission to the UN Special Representative of the Secretary General (SRSG) for Business and Human Rights is a contribution to the Expert Multi-Stakeholder Consultation to which we were invited but are unable to attend.

Oxfam Australia is an independent, not-for-profit, secular international development agency. We are a member of Oxfam International, a global confederation of 15 Oxfam's that work with others to overcome poverty and injustice in more than 100 countries around the world. We have worked with local communities around the world to combat poverty and injustice for over 50 years. We support more than 400 long-term development projects in 30 countries across Africa, Asia, the Pacific and Indigenous Australia.

Oxfam Australia's vision is of a fair world in which people control their own lives, their basic rights are achieved and the environment is sustained.

Oxfam Australia undertakes long-term development projects, provides emergency response during disaster and conflict, and undertakes research, advocacy and campaigning for policy and practice changes which promote human rights and justice.

Our approach to bringing about change is guided by our central commitments to active citizenship and accountability, and a rights-based approach to development. Our work is guided by our four external change goals: economic justice, essential services, rights in crisis and gender justice.

Our advocacy work has a strong focus on the issue of business and human rights. Our mining advocacy program is a component of this work – the aim of this program is to improve the policy and practice of Australian mining companies operating offshore. The mining advocacy program draws on the Framework and related work of the SRSG and his team.

Oxfam Australia believes that private sector investment can be a driver of economic growth and poverty reduction, provided appropriate regulations and controls exist. Our work in the mining sector clearly demonstrates the need for greater transparency and accountability by Australian mining companies operating offshore, and particularly when doing business in weak governance and conflict zones.

Oxfam Australia recognises the key role and responsibility of the Australian Government to foster sustainable development, business integrity and respect for, and protection of, human rights among both Australian companies and the government departments and diplomatic missions that support and strengthen trade and investment.

Our work encompasses private sector engagement and political influence at a national and international level, including through multilateral organisations such as the World Bank, the Asian Development Bank and the OECD Investment Committee through our work with OECD Watch.

Oxfam Australia holds full accreditation status with AusAID, the Australian Government's Agency for International Development and is a signatory to numerous industry codes of practice including the Australian Council for International Development (ACFID) Code.

### **Submission context**

This submission is based on our experiences and observations of the responses of the Australian Government and the Australian mining sector to the Framework and matters it raises.

The submission draws on the expertise of Oxfam Australia's mining advocacy team – Serena Lillywhite and Christina Hill – who have participated in past SRSG multi-stakeholder consultations (India and Bangkok) and work closely with members of the SRSG's team based in Australia and internationally.

Oxfam Australia is a member of OECD Watch and Mining Advocacy Coordinator, Serena Lillywhite, is a regular speaker at the OECD Investment Committee and related corporate accountability forums.

Comments in this submission are structured in response to the consultation agenda.

### **The role of the Framework in developing national government policy**

In Oxfam Australia's experience, the role of the Framework in developing national government policy here in Australia has not yet been put to the test.

In June 2008 the Australian Government supported a parliamentary motion on business and human rights. The motion was introduced to Parliament following endorsement by the United Nations Human Rights Council of the Framework.

The parliamentary motion called on the Government to:

1. encourage Australian companies to respect the rights of members of the communities in which they operate and to develop rights-compliant grievance mechanisms, whether acting in Australia or overseas,
2. consider the development of measures to prevent the involvement or complicity of Australian companies in activities that may result in the abuse of human rights, including by fostering a corporate culture that is respectful of human rights in Australia and overseas, and
3. support development at the international level of standards and mechanisms aimed at ensuring that transnational corporations and other business enterprises respect human rights.

In our view, 2010 will be an important test of the Australian Government's commitment to addressing the issues the Framework raises and the Parliament's aspirations as expressed in the motion. Some key tests will be the forthcoming review of the OECD Guidelines for Multinational Enterprises; growing interest in reform and strengthening of the Australian National Contact Point; and growing civil society demands for improved safeguards to be applied to our Export Credit Agency.

In these cases the Framework will serve as a useful reference point for civil society to frame its demands. By way of a further example, Jubilee Australia, an anti-poverty NGO, recently published a report on Australia's Export Credit Agency (the Export Finance and Insurance Corporation, EFIC). Jubilee Australia found, amongst other things, that EFIC policies have a number of

outstanding deficiencies including that specific human rights policies or commitments are missing<sup>1</sup>. Jubilee Australia specifically references the Framework when arguing for reform of EFIC.

More generally we have seen many recent examples where civil society – Oxfam Australia included – has called on the Australian Government to develop, or strengthen, national policy to guide business practice in relation to human rights. For example, we have recently made a submission to a Parliamentary Inquiry into ‘Australia’s Relationship with the Countries of Africa’ – a key aspect of that relationship is the growing presence of Australian mining companies in many parts of Africa and Australian Government support for this. In our submission we recommend that the Australian Government limit access to Australian Government services, such as trade and investment advice and export finance and insurance, to companies who can demonstrate compliance with international human rights standards, provide access to remedy when standards are breached and undertake human rights impact assessments.

A visit to Australia by the SRSG to meet with Government, civil society and business representatives could provide much needed momentum in this regard. Oxfam Australia would welcome the opportunity to liaise with team members to support such a visit.

### **The role of the Framework in developing company policy and practice**

In Oxfam Australia’s experience, the role of the Framework in developing mining company policy and practice is mixed. Among leading companies, the Framework is recognised as the reference point against which companies will be judged.

Those Australian companies that comprise the world’s top 40 mining companies generally have a good understanding of their responsibilities to respect human rights. This is reflected in company policies that state explicitly that the company will protect, uphold or respect human rights. While company policies do not always use the Framework language (ie to ‘respect’ human rights) the intent is the same. We have also seen some explicit references to company policy requiring human rights impact assessments and the establishment or formalisation of local level grievance mechanisms (even if this exact wording is not used by companies) in some instances – including with mention of the Framework as a reference point.

Unfortunately the uptake of elements of the framework is limited to the ‘big end of town’. Oxfam Australia has undertaken a desk-top review of policy commitments (ie public commitments) made by Australian mid-tier mining companies. This review has found that very few mid-tier company policies mention human rights let alone make any commitments to respecting human rights or describe how they will ensure this. Our review has also found that very few mid-tier companies have signed onto key voluntary initiatives (including the Global Compact and the Voluntary Principles on Security and Human Rights).

On a more positive note, we are seeing elements of the Framework reflected in multi-stakeholder and industry initiatives. For example, the Responsible Jewellery Council’s Principles and Code of Practice for the jewellery supply chain (which includes mining) requires members to respect human rights, and mining company members to establish rights-compatible grievance mechanisms at the operational level, and to undertake social impact assessments and management plans which explicitly requires assessment of human rights impacts.

There has been a much needed focus on the issue of company-level grievance mechanisms within Australia recently. This has revealed an ‘appetite for information<sup>2</sup>’ from parts of the mining industry. There may be further opportunities for the SRSG to provide such information through his mandate, in addition to the current BASESWiki and local-level pilot (which includes the Cerrejon mine in Colombia) projects.

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<sup>1</sup> Jubilee Australia, Risky Business: Shining a spotlight on Australia’s Export Credit Agency, December 2009, <http://www.jubileeaustralia.org/>

<sup>2</sup> Centre for Social Responsibility in Mining, Mining industry perspectives on handling community grievances: Summary and analysis of industry interviews, April 2009, <http://www.csr.m.uq.edu.au/docs/Mining%20industry%20perspectives%20on%20handling%20community%20grievances.pdf>

As mentioned above, a key gap that our analysis has revealed is the limited uptake of the Framework in developing company policy and practice for mid-tier (and junior) companies. With this in mind there may be opportunities for the SRSG to tailor practical recommendations and concrete guidance – as it relates to both company-level grievance mechanisms and the other elements of Framework – relevant to smaller companies, and to specifically target smaller companies when communicating this.

### **The application of the Framework to the extended enterprise**

The application of the Framework to the extended enterprise in the mining sector has been limited at best.

Our analysis suggests that even the few Australian mining companies who have used the Framework to influence their own human rights policies rarely implement the Framework throughout their supply chains and among sub-contractors, subsidiaries, and joint venture partners. The practice of decentralised management structures for offshore operations is a significant challenge to the application of the Framework, even when there is knowledge and intent by head office.

Interestingly, it may be the financial services sector, via loans and the provision of financial services in support of mining investment, that is best placed to apply the Framework as part of the 'extended enterprise'. However, to date there is little evidence of this occurring. In one case, the ANZ Bank, a major provider of financial support to Australia's mining sector, has begun the process of developing a human rights policy. We have not seen this policy and hence can not comment on the extent to which it reflects the Framework.

### **Conclusion and recommendations**

While some Australian mining companies operating off shore may enjoy a better reputation than some of their competitors, significant governance gaps remain. We believe that the Framework has a role to play in influencing the development of Australian Government policy, and company policy and practice especially in the mining sector where, as you know, the risk of human rights abuses is higher than other sectors. With this in mind, Oxfam Australia:

1. Encourages the SRSG to consider a visit to Australia to meet with Government, civil society and business representatives. We believe that such a visit would generate increased interest in the Framework and as a result encourage greater application of the Framework by both Government and business.
2. Encourages the SRSG to tailor his 'practical recommendations and concrete guidance' to smaller companies who in our experience have a limited understanding of the Framework and the matters it raises, and to specifically target these smaller companies in communication and outreach with business.

### **For further information regarding this submission, please contact**

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