



Submission No 85

**Review of Australia's Relationship with the  
Countries of Africa**

**Organisation:** Oxfam Australia - Answers to Questions on Notice

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# **Inquiry into Australia's Relationship with the Countries of Africa**

## **Supplementary Submission** Parliament of Australia

**Joint Standing Committee on Foreign Affairs, Defence and Trade**



Cabangile Myeni is a single mother of three, from Jozini, South Africa and now cares for her sister's two orphaned children. Oxfam Australia and local partner Sibambisene supports the family with food parcels and seeds to grow a home garden. Photo: Matthew Willman/Oxfam

**Oxfam Australia**  
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## **1 Supplementary Submission context**

- 1.1 This supplementary submission provides additional advice to the Australian Government to strengthen Australia's relationships with the countries of Africa to improve the lives of people in poor communities.
- 1.2 This supplementary submission responds to questions on notice received from the Inquiry Secretary as a follow up to the appearance by Oxfam Australia at the public hearing in Melbourne on Wednesday, 5 May.
- 1.3 This supplementary submission should be read in conjunction with the initial Oxfam Australia submission of January 2010, which responded to the following Terms of Reference (TOR):
  - Economic issues, including trade and investment;
  - Defense cooperation, regional security and strategic issues; and
  - Development assistance co-operation and capacity building.
- 1.4 Oxfam Australia is a member of the Australia Council for International Development (ACFID). This submission supports and complements the supplementary submission made by ACFID.

## 2 Response to Questions on Notice

### Business and Human Rights

#### Question 1:

Recommendations 2 and 14 seek to establish a linkage between company access to government services, such as trade and investment advice and export finance and insurance, to companies who can:

- demonstrate compliance with international human rights standards, voluntary initiatives and best practice, including access to remedy and redress and active participation in human rights impact assessments (Rec. 2) and
  - demonstrate best practice in mitigating the gender impacts of their operations (Rec. 14).
- Companies may have many subsidiaries, subcontractors and joint venture partners working in different areas—is it reasonable for the company to be held accountable for the activities of all its components and joint ventures?
  - Are some mining companies simply too large and complex for this recommendation to be feasible?
  - You set the bar at a very high level—some would say ‘too high’. How do you respond?
  - How have Australian companies responded to this potential strategy?
- 2.1 Multinational enterprises have the capacity to influence business practices within their supply chain through the contract terms they negotiate with or impose on their suppliers. It is increasingly recognised that multinational enterprises do have a responsibility to ensure they ‘do no harm’, as a minimum, throughout their production network and sphere of influence. Undertaking rigorous due diligence of suppliers, subsidiaries, sub-contractors and joint venture partners is considered a key element of corporate accountability best practice. It is also recognised as a challenging task, particularly when operating in conflict and post-conflict zones.
- 2.2 Within the mining sector there is capacity to establish direct, long-term, stable, vertically integrated supply chains and production networks. Such practices increase the potential for responsible supply chain management, including respect for human rights, the rule of law and international standards.
- 2.3 Oxfam Australia’s recommendations are based on the widely held view that companies have a responsibility to respect human rights (which means they must ensure that they do no harm). The company responsibility to respect is the second pillar of the Special Representative to the UN Secretary General’s ‘Protect, Respect and Remedy’ framework. Many companies have endorsed this framework, including the International Council on Mining and Minerals whose members include many Australian mining companies.
- 2.4 To ‘lower the bar’ would be to ignore the fact that the corporate responsibility to respect is acknowledged by virtually every company and industry Corporate Social Responsibility initiative, endorsed by the world’s largest business associations,

affirmed in the Global Compact and its worldwide national networks, and enshrined in such soft law instruments as the ILO Tripartite Declaration and the OECD Guidelines.<sup>1</sup>

- 2.5 Providing communities who may be affected by company operations with access to remedy and redress, undertaking human rights impacts assessments, and demonstrating compliance with international human rights standards are key elements of the responsibility to respect.
- 2.6 Globally, mining companies (large and small) have identified supply chain management as a key challenge. In April 2010, Oxfam Australia held a Mining Symposium (“Sustainable Mining: Unearthing human challenges and opportunities”<sup>2</sup>) and a number of companies identified the challenge of managing overseas operations and ensuring an alignment between the corporate culture and values of the ‘head office’ and the day-to-day practices at a site level and among suppliers and sub-contractors. Nonetheless, responsible supply chain management is a critical aspect of mining governance. Internationally, this is reflected in the decision by the OECD Investment Committee to include human rights and supply chain in the Terms of Reference for the review of the OECD Guidelines for Multinational Enterprises.<sup>3</sup> Further, the OECD has a project underway to draft “Due Diligence Guidance for Responsible Supply Chain Management of Minerals from Conflict-Affected and High Risk Areas”.<sup>4</sup>
- 2.7 A number of Australian mining companies have responded positively to the issues we have raised and are developing or implementing their own company-based grievance mechanism, human rights impact assessments, gender impacts assessments and so on. For example, Rio Tinto has developed a resource guide for integrating gender considerations into their communities work.

## Question 2:

An article in the magazine, *Habitat Australia* titled, *Out Of Africa* (Sub. 40) states that:

*In this decade alone, literally hundreds of thousands of Tanzanians have been unwillingly, often forcibly, removed from their homes to make way for foreign mining operations.*

- Are you aware of such instances happening?
  - Have similar instances occurred in other African countries?
  - Were Australian companies involved?
- 2.8 Oxfam Australia is not aware of the details surrounding the claims made in the *Out of Africa* article and we suggest that further information be sought from the author of the article, and organisations such as Action Aid that have specific expertise and experience in Tanzania. However, it is common for people to be forced from their homes to make way for mining operations hence it highly likely that this has occurred

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<sup>1</sup> Human Rights Council, A/HRC/11/13, 22 April 2009

<sup>2</sup> <http://www.oxfam.org.au/resources/filestore/originals/OAus-SustainableMiningCommunique-0410.pdf>

<sup>3</sup> <http://www.oecd.org/dataoecd/61/41/45124171.pdf>

<sup>4</sup> [http://www.oecd.org/document/36/0,3343,en\\_2649\\_34889\\_44307940\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/36/0,3343,en_2649_34889_44307940_1_1_1_1,00.html)

in other African countries, and that Australian companies could be involved in some situations.

- 2.9 Resettlement can cause harm to communities when it occurs without people’s consent (i.e. is not voluntary) and when inadequate or no compensation is offered. When people rely on land for their livelihoods it is important that replacement land be included as part of the compensation offered to resettled people. The International Finance Corporation’s “Performance Standard 5: Land Acquisition and Involuntary Resettlement”<sup>5</sup> is a useful guide.

## **Accountability and Grievance Mechanisms**

### **Question 3:**

Oxfam Australia advocates (Para. 5.21) that Australian mining companies should be accountable to the communities where they work which requires a formal and ongoing mechanism for stake holder engagement and a grievance mechanism through which complaints can be raised and resolved.

- How have Australian companies responded when you have raised this issue?
- 2.10 The response we have received from companies when we have raised this issue is typically positive, with companies acknowledging the value that such a proposal would bring in terms of improving their relationships with local communities and as a way to resolve community concerns in mutually beneficial ways. Companies also want information on how to establish a company-based grievance mechanism.<sup>6</sup> At the April 2010 Oxfam Australia Mining Symposium, the key note address was on corporate community relations and grievance mechanisms. Industry feedback on the Symposium confirms the high importance they place on this issue. There is significant scope, and need, to build capacity among the Australian mining sector in effective, rights-based corporate community relations and grievance mechanisms.
- 2.11 Research undertaken by the University of Queensland<sup>7</sup> supports our observations and has found that companies are keen for discussion and have a strong interest in information on grievance handling. The research also describes a trend towards a more considered and deliberate approach to dealing with community grievances. Additionally, while it is not yet the norm in the industry, leading companies require something similar to a formal grievance mechanism. Such requirements are (or will soon be) embedded in many corporate-level social and/or community policies, standards or guidance. Many companies are also looking to build and strengthen skills and capacity, both amongst operations personnel and specialist community relations practitioners, which Oxfam Australia considers to be a positive development.

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<sup>5</sup> [http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/pol\\_PerformanceStandards2006\\_PS5/\\$FILE/PS\\_5\\_LandAcqInvolResettlement.pdf](http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/pol_PerformanceStandards2006_PS5/$FILE/PS_5_LandAcqInvolResettlement.pdf)

<sup>6</sup> See page 10 for an overview of some key guides that will be of value to companies: <http://www.oxfam.org.au/resources/filestore/originals/OAus-GrievanceMechanisms-0410.pdf>

<sup>7</sup> <http://www.csr.uq.edu.au/docs/Mining%20industry%20perspectives%20on%20handling%20community%20grievances.pdf>

#### Question 4:

Oxfam Australia advocates (Para. 5.22) that the government must provide independent, effective and accessible complaint mechanisms to investigate allegations of poor conduct when company grievance mechanisms are inadequate or fail to resolve the concerns of communities and civil society.

- What is the responsibility of the host country in this regard?
- How can you ensure the complaints are not vexatious, being made by people opposed to mining on principle, or on political grounds?

2.12 Both home and host governments have a responsibility in this regard. Host governments should provide their citizens with some form independent, effective and accessible mechanism to investigate allegations of poor conduct and to seek a resolution for affected people. This forms part of the host government's 'duty to protect'. Unfortunately not all governments have the capacity or willingness to do this. In fact it is those situations characterised by conflict, weak governance and poor human rights protection and where corporate human rights abuse is most likely to occur, that local state-based remedies are least likely to be available.

2.13 Australia, as the home state for many companies, also has a responsibility here. The Australian Government must establish an independent, effective and accessible complaint mechanism to investigate allegations of poor practice, particularly when such mechanisms are not available in the country of operation. Home and host state grievance mechanisms should be seen as complementary – not mutually exclusive – of each other.

2.14 It is not possible to ensure that no vexatious complaints will ever be made. However, by ensuring that the complaints mechanism is rights-compatible, credible and effective, and designed and implemented in accordance with some key guiding principles<sup>8</sup> the number of vexatious complaints are likely to be few simply because communities will consider the mechanisms to be fair in dealing with their grievances.

#### Question 5:

Oxfam Australia raised the OECD Guidelines for Multinational Enterprises in your submission and during evidence.

- Would the National Contact Point structure under the OECD Guidelines fulfil your suggestion for an independent, effective and accessible complaint mechanism?
- How effective is the government in promoting the OECD Guidelines to business?
- Why do you consider that the NCP structure is not functioning effectively?

2.15 A restructured and well resourced NCP is one model of an independent, effective and accessible complaint mechanism that Oxfam Australia believes should be considered by the Australian Government, industry and civil society.

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<sup>8</sup> These principles are: legitimate, accessible, predictable, equitable, rights-compatible and transparent. These principles have been described by the SRSG Prof. John Ruggie in his 'protect, respect and remedy' framework.



- 2.16 For the Australian NCP structure to function effectively as a complaint mechanism it would require restructuring and increased resources. The Dutch, UK and Norwegian NCP structures are recommended for consideration. These structures include independent NCP’s, external advisors, and inter-departmental (government) guidance and support. They are also well resourced, and support in-country fact finding as required to help mediate complaints. Norway is also giving consideration to the establishment of a corporate responsibility Ombudsman.
- 2.17 Research undertaken by OECD Watch<sup>9</sup>, of which Oxfam Australia is a member, confirms that governments have a key role to play in promoting, monitoring and enforcing responsible corporate behaviour at home and abroad. Governments have an obligation by virtue of their adherence to the OECD’s Declaration on International Investment to establish a properly functioning NCP structure.
- 2.18 Oxfam Australia does not believe that the Government is currently effective in promoting the OECD Guidelines to business. In our discussion with industry, few companies appear to be aware of the guidelines or understand that they apply to their operations. The annual consultation hosted by the Australian NCP, and reliance on ad-hoc meetings and their website to promote the Guidelines is far from sufficient. Oxfam Australian believes that the Government should restructure the NCP, and significantly increase the capacity of and resources available to the NCP so that it can better promote the Guidelines and effectively respond to complaints.
- 2.19 Oxfam Australia does not believe that the Australian NCP structure functions as effectively as is requires. The NCP is the Executive Member of the Foreign Investment Review Board and is also the General Manager of the Foreign Investment and Trade Policy Division at Treasury. This presents a potential conflict of interest because the NCP is located in a part of Government that promotes trade and business interests. Furthermore, staff attached to the NCP are essentially part time staff with substantive roles elsewhere. As a result, the NCP, in its current form, does not have the capacity to effectively conduct outreach and promotion activities with business, and limited capacity to effectively mediate community-business conflicts (including conducting fact-finding visits to affected communities). A restructured NCP would ensure the NCP can act as an effective remedy for communities alleging impacts by Australian business activities overseas. The current review of the OECD Guidelines for Multinational Enterprises is likely to provide strengthened procedural guidance to NCPs on the handling of specific instances.
- 2.20 However, it should be noted that the Australian NCP has successfully mediated two cases (BHP Billiton and Global Solutions Limited). However, consultation with business and civil society, and the dissemination of relevant corporate accountability information and promotional activities are almost non-existent.

### **Question 6:**

Oxfam Australia advocates (Rec. 6, p. 19) the government review and broaden the definition of ‘conflict diamonds’ to include diamonds mined in the context of serious and systematic human rights abuses, regardless of whether these human rights abuses are

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<sup>9</sup> [http://oecdwatch.org/publications-en/Publication\\_2223](http://oecdwatch.org/publications-en/Publication_2223)

committed by rebel movements or legitimate governments, to ensure the definition of 'conflict diamonds' matches the intent of the Kimberley Process Certification Scheme.

- This recommendation would appear to rely on an international agreement. How do you get international agreement on changing the definition, and agreement whether or not human rights abuses are occurring, and therefore whether particular production areas fall within the definition of producing 'conflict diamonds'?
- 2.21 Changing the definition of 'conflict diamonds' would require the agreement of the participants – that is diamond producing, exporting and importing countries – in the Kimberly Process Certification Scheme. Australia is a participating country and therefore in a position to lobby for such a change. Industry (World Diamond Council) and civil society groups (Global Witness and Partnership Africa Canada) are official observers to the scheme. Industry, civil society and some participating country are likely to support such a move.
- 2.22 Oxfam Australia is aware of some criticisms levelled against Australia, including that it is a somewhat reluctant participant in the Kimberly Process Certification Scheme, that it is not proactive, and is represented at a junior level. Oxfam Australia believes that the Australian Government should take a much more proactive role in the Kimberly Process Certification Scheme including to push for a strengthened definition of 'conflict diamonds'.

## **Doing Business in Conflict Zones**

### **Question 7:**

Oxfam Australia comments (Para. 5.34) that as new international standards are incorporated into international laws, and as courts take a more expansive view of legal responsibility, the web of liability is expanding. You provide a reference to Red Flags (Para. 5.38)

- Are courts in Australia taking a more expansive view of legal responsibility?
  - Are companies taking note of the information in Red Flags and responding?
  - What are the responsibilities of Austrade, the AFP and Attorney General's Department in this regard?
- 2.23 Oxfam Australia recommends the Committee make contact with legal experts to address these questions.
- 2.24 The Australian Government has a duty to protect against human rights abuses by third parties including business. A diverse array of policy domains can be used by governments to fulfil this duty. The UN SRSG has noted significant policy incoherence in this regard: "vertical" incoherence, where governments take on human rights commitments without regard to implementation; and "horizontal" incoherence, where departments - such as trade, investment promotion, development, foreign

affairs - work at cross purposes with the State’s human rights obligations and the agencies charged with implementing them.<sup>10</sup>

2.25 With this mind, Oxfam Australia believes that Austrade, the AFP and Attorney General’s Department, amongst other parts of Government have an important role to play in upholding the rule of law and international standards, and in fostering a culture of responsible business and investment through the promotion and implementation of both judicial and non-judicial mechanisms of corporate accountability.

**Question 8:**

Oxfam Australia comments (Para. 5.31) that the likelihood of company involvement (even unknowingly) in bribery and corruption in conflict zones is significant, and the revenue transparency is critical. You recommend (Rec 10, p. 21) that the government promote revenue and payment transparency and full disclosure of mining licence terms, concessions and taxation arrangements.

- Much of this information is commercial-in-confidence. How feasible is this suggestion?

2.26 Companies and governments have consistently argued that confidentiality clauses keep them from disclosing information, particularly contracts. This argument is circular because the companies and governments put the clauses into the agreements themselves. However, in most cases, confidentiality clauses are not the major barriers to disclosure that parties claim. Parties can generally disclose by consent or unilaterally, pursuant to law.<sup>11</sup> Hence our recommendation that the Government promote revenue and payment transparency and full disclosure of mining licence terms, concessions and taxation arrangements is both feasible and desirable.

2.27 BHP Billiton recently advised of its intention to disclose all payments to governments, including royalties, taxation and other payments, on a country-by-country disaggregated basis. This information will be disclosed in future sustainability reports. This confirms that leading companies recognise the business case for revenue transparency, and refutes the argument of some that revenue transparency and disclosure is restricted by confidentiality clauses.

**Question 9:**

What advice would you give to companies operating or seeking to operate in conflict zones?

2.28 Oxfam Australia recommends that companies operating or seeking to operate in conflict zones undertake due diligence processes that specifically consider the increased risks that operating in a conflict zones brings. This includes undertaking:

- human rights impact assessments
- conflict screening and impact assessments

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<sup>10</sup> Human Rights Council, A/HRC/8/5, 7 April 2008

<sup>11</sup> CONTRACTS CONFIDENTIAL: Ending Secret Deals in the Extractive Industries (2009), Peter Rosenblum and Susan Maples, Revenue Watch Institute <http://www.revenuwatch.org/files/RWI-Contracts-Confidential.pdf>

- 2.29 If the assessment reveals that the risk of causing harm is too high then companies should not operate in that area.
- 2.30 International Alert's "Conflict-Sensitive Business Practice: Guidance for Extractive Industries" and the OECD "Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones", are two useful guides. Similarly, the Australian Government and companies are advised to monitor the outputs and guidance material from the OECD projects on "Responsible Investment in the Mining Sector through Enhanced Due Diligence" and the "Due Diligence Guidance for Responsible Supply Chain Management of Minerals from Conflict-Affected and High Risk Areas".
- 2.31 Additionally, companies should sign onto the "Voluntary Principles on Security and Human Rights".<sup>12</sup> The Voluntary Principles are widely recognised as a leading voluntary initiative to provide guidance to extractives companies on maintaining the security of their operations in a manner that respects human rights and fundamental freedoms. The Principles require companies to assess their security and human rights risks, and consider their relations with both public and private security providers.

## Free, Prior and Informed Consent

### Question 10:

Oxfam Australia comments (Para. 5.41, 5.42) that Australian mining companies must obtain the free, prior and informed consent from both indigenous peoples and mine affected communities before they undertake activities on community or indigenous people's land. You add that pursuing projects without such consent is not financially sustainable.

- Would you provide an example of better practice in this area?
  - In Australia it is difficult to obtain consent because of the number of groups/clans involved and their competing claims and aspirations. How feasible is your suggestion?
- 2.32 The United Nations "Declaration on the Rights of Indigenous Peoples" and "Declaration on the Right to Development" are two specific international standards that support the application of Free, Prior and Informed Consent (FPIC).
- 2.33 The identification of projects that demonstrate best practice in this regard is difficult, and FPIC remains a contentious issue for companies. While most companies are willing to consult with communities, albeit after a legal licence has been obtained, there is considerable resistance to obtaining community consent prior to a project proceeding.
- 2.34 The World Resource Institute publication, "Breaking Ground: Engaging Communities in Extractive and Infrastructure Projects",<sup>13</sup> provides useful guidance for the sector. Oxfam Australia has two publications on Free, Prior and Informed Consent, both available on the Oxfam Australia website.

<sup>12</sup> <http://www.voluntaryprinciples.org/>

<sup>13</sup> [www.wri.org/publication/breaking-ground-engaging-communities](http://www.wri.org/publication/breaking-ground-engaging-communities)

2.35 Anecdotal evidence suggests that without community (including Indigenous Peoples’) consent, the risk of site-based conflict, intermittent mine closure and damage to assets is increased.

2.36 In the Australian context, gaining consent is not necessarily easy, however, it can and is done as evidenced by the implementation of the *Aboriginal Land Rights (Northern Territory) Act 1976*.

## **Defence Cooperation, Regional Security and Strategic Issues**

### **Question 11:**

Oxfam Australia draws attention (Para 6.11–6.77) to responsible sovereignty which implies that Australia should act to address peace, security and protection challenges in Africa and elsewhere. Specifically, you recommend (Rec. 16, p. 28) that the government demonstrate international leadership by applying ‘responsible sovereignty’ to all aspects of foreign policy and practice, particularly: the aid program; defence; and diplomatic functions relating to peace and security.

- How would adopting this stance affect Australia’s provision of aid and development activity in Africa?

2.37 It is first important to note that responsible sovereignty goes beyond how Australia delivers aid and development activity and should be conceptualised as the full range of Government responsibilities and functions aimed at protecting Australian citizens and fulfilling Australia’s protection obligations internationally. Such activities would include preventative diplomacy with at-risk states, assisting fragile states to build their capacity to fulfil their own protection obligations, monitoring at-risk situations and responding to escalation of human rights abuses with the full range of legal, diplomatic and economic tools at the disposal of the Australian Government.

2.38 In adopting this stance the Australian Government would be committing to ensure the aid program fully advances Australia’s ability to meet its international protection obligations – particularly those obligations arising from the Responsibility to Protect (R2P), International Humanitarian Law, the Refugee Convention and international human rights laws. In practical terms, greater emphasis on these responsibilities would result in a combination of the following outcomes with regards to Australia’s provision of aid and development activity in Africa:

1. Greater predictability and volume of funds directed towards crisis affected states or those at high risk of crisis, including protracted crises that may not have attracted strong public attention in Australia;
2. Investment in early warning systems and mechanisms (within the Australian Government as well as external mechanisms such as UN, AU or civil-society early warning systems) to assist Australia to fulfil its responsibility to prevent mass atrocities and other crises;
3. Increased allocation of funds to humanitarian protection activities as part of Australia’s humanitarian action, including funds for community-based protection programs and protection mainstreaming through existing programs;

4. The creation of a Humanitarian Protection Unit within AusAID and development of a Humanitarian Protection Framework alongside the Humanitarian Action Policy;
5. AusAID taking an enhanced role in advancing humanitarian and civil-military coordination principles with ADF and AFP, particularly where they are engaged in complex crisis situations;
6. Clear articulation of commitment to protection obligations in the Humanitarian Action Policy, Peace Conflict and Development Policy and other relevant strategies, policy documents and budget statements;
7. Greater investment, coordination and collaboration between AusAID, DIAC and DFAT in responding to protracted crises in Africa through a combination of humanitarian and development assistance, diplomatic intervention and humanitarian resettlement to Australia; and
8. Investment in initiatives to build on successfully acquitted projects funded through the Australian R2P Fund.

### Question 12:

Oxfam Australia recommends (Rec. 32, p. 39) increasing Australia's diplomatic presence in Africa and ensuring Australian diplomats in Africa are well equipped to conduct diplomatic functions around peace and security issues.

- Where should Australia's diplomatic presence be increased?
- Would you explain what you mean by 'well equipped'?

2.39 To better meet Australia's protection obligations and tackle peace and security challenges in Africa the Government should substantially increase diplomatic capacity at post level in African countries at high risk of mass atrocities. While priority countries include Sudan, Central African Republic, Somalia, Chad, Democratic Republic of Congo, Rwanda and Angola,<sup>14</sup> Oxfam recognises the Australian Government's limited diplomatic resources and would therefore prioritise Sudan for an increased Australia presence.

2.40 Another priority should be Addis Ababa in Ethiopia, both as a strategy for increased diplomacy with the African Union and direct diplomacy with the Ethiopian Government.

2.41 Recommendation 32 of our submission recommended that Australian diplomats in Africa be well equipped to conduct diplomatic functions around peace and security issues. In this context, "well equipped" refers to the capacity and resourcing of staff to:

- Monitor and analyse risks of conflict and crisis;
- Relay escalation of risks to the appropriate parts of the Australian Government (so that Australia is able to relay concerns through the UN system);
- Understand how international and regional protection mechanisms and conventions can be applied to crises; and
- Leverage relationships and advocate to the AU and African Governments appropriate action to prevent crisis and protect civilians.

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<sup>14</sup> Note these countries are all in the top ten countries most at risk of the commission of genocide and mass atrocities according to the Asia-Pacific Centre for Responsibility to Protect. See *Preventing Mass Atrocities: Causes and Paths of Escalation*, 8 June 2009.

### Question 13:

Oxfam Australia supports World Vision’s recommendation that the Australian Government should use its diplomatic channels to influence African leaders to ratify the new Convention for the Protection and Assistance of Internally Displaced Persons, recently signed by African leaders. Ratification is required by 15 African Union members for the convention to take effect.

- Would you provide information on progress towards ratification of the Convention?

2.42 As at 23 April 2010 there were 27 signatories to the convention: Benin, Burundi, Central African Republic, Côte d’Ivoire, Comoros, Congo, Djibouti, Democratic Republic of Congo, Equatorial Guinea, Ethiopia, Gabon, Gambia, Ghana, Liberia, Mali, Mozambique, Namibia, Nigeria, Rwanda, Sahrawi Arab Democratic Republic, Sierra Leone, Somalia, Sao Tome & Principe, Togo, Uganda, Zambia, Zimbabwe. Of these, only Uganda has ratified the Convention, which requires 15 nations to ratify before being entered into force.

2.43 At the Kampala AU Special Summit on Refugees, Returnees and Internally Displaced Persons where the Convention was adopted in October 2009, African leaders called on member states to bring the Convention into force by the end of 2010. This is of crucial importance, as the African continent is home to at least 40% of the world’s conflict induced internally displaced people.

### Question 14:

Oxfam Australia applauds (Para. 6.51) the government’s achievement of the inclusion of a subsection on Protection of Civilians (PoC) in the annual report of the UN Special Committee on Peacekeeping Operations, but note that some states still view the PoC agenda as a threat to state sovereignty. This is the subject of Recommendation 37 (p. 42).

- What are the concerns of the African countries that view the PoC agenda as a threat?

2.44 Protection of Civilians (PoC) means any activities aimed at obtaining full respect of the rights of the individual in accordance with the letter and spirit of international human rights law, international humanitarian law and refugee law.<sup>15</sup> Thus PoC includes potentially sensitive activities such as monitoring and reporting human rights abuses, aggressive diplomacy with states around conflict resolution and pressuring governments to accept peacekeeping forces with a PoC mandate (to physically protect people from harm).

2.45 In some contexts these activities are viewed as a potential threat to state sovereignty. This is a view shared by a minority of African countries within the Non-Aligned Movement whose purpose is to ensure the national independence and sovereignty, territorial integrity and security of non-aligned countries “in their struggle against imperialism, colonialism, neo-colonialism, racism and all forms of foreign aggression, occupation, domination, interference or hegemony”.

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<sup>15</sup> Based on the ICRC definition and definition agreed in the Inter-Agency Standing Committee Policy Paper on “Protection of Internally Displaced Persons”, New York, December 1999.

2.46 Former NAM leader Morocco had quite sceptical views about the PoC agenda but the current NAM Chair Egypt is more open to the concept, being the fifth largest troop contributor UN peacekeeping missions. Burkina Faso has been a vocal supporter of civilian protection issues and has contributed troops to most major DPKO missions in Africa, but has limited capacity to engage in thematic issues. Larger regional actors such as Uganda and South Africa have been instrumental supporters of the principle.

## **Business and aid delivery**

### **Question 15:**

The Australia-Africa Mining Industry Group (Sub. 50, p. 6) suggests that Australian mining and service companies could facilitate re-engagement with Africa via public-private partnerships to deliver social development assistance to ensure relatively limited government aid funding is applied to maximum social, financial, political and strategic advantage. The submission added:

*A mining operation or mining development project provides an immediate commercial focus for the delivery and management of social development programmes that could be branded as 'AusAID' or 'Australian' projects. Government agencies and/or the independent consultants could ensure that the programmes are appropriately implemented and managed, and are consistent with UN regional objectives. It is important to stress that companies do not see this concept as an opportunity to abrogate responsibility, but rather a mechanism to increase the scope of these programmes, and implement and manage them in a more strategic way.*

- How do you respond to this proposal?
- A perception could arise that the NGO had become associated with a particular mining company. How do you respond to this possibility?
- Are there opportunities for NGOs and mining companies to collaborate in enhancing the development of the host country?

2.47 As stated in our initial submission, it is first and foremost the responsibility of mining companies to ensure policies and practices are in place, which respect and protect human rights. To further the objectives of Australia's enhanced bilateral engagement with the countries of Africa, it is increasingly important mining companies conduct their operations as good corporate citizens.

2.48 Oxfam Australia has significant concerns with the proposal by The Australia-Africa Industry Group (submission 50) to distribute aid funding via public private partnerships

2.49 In summary, our key concerns are:

1. Mining companies do not have the skills, experience or mandate to deliver social development assistance even with the Australian Government providing supplementary funding. Mining companies need to focus on ensuring their core business—mining—does not have a negative impact on communities and their livelihoods. They need to focus on good mining governance—transparency, disclosure, accountability and remedy when things go wrong.



2. NGOs are best placed to support local initiatives, capacity building and social development projects. Their capacity to do this may well be compromised if they were closely associated with a mining company, particularly in situations where company-community conflict exists.
3. Mining companies frequently obtain a mining licence / concession from a host government with a commitment to deliver social development projects as part of the contract of operation. This proposal suggests the Australian aid budget be accessed to support projects companies have already undertaken to deliver.
4. The Australian aid budget is intended to support those communities and individuals in greatest need, and with greatest potential for sustainable development, capacity building and self-determination. The location of social development projects supported by mining companies is frequently located close to the mine site. This may not necessarily be a location that meets AusAID objectives, and as such the aid programme could be potentially compromised.
5. While mining companies have historically contributed to infrastructure projects such as schools, clinics, roads, water sanitation etc, these projects are not a substitute for good mining governance, transparency, disclosure, and the establishment of meaningful company-community relationships and site-based grievance mechanisms. Further, these infrastructure projects are often not sustained when the company leaves or the site closes. Dilapidated facilities, and legacy issues with regards to management responsibility as a result of mergers and acquisitions, would further compromise the use of Australian aid delivered via an ‘AusAID branded’ public private partnership (PPP) between the Australian Government and mining companies.
6. While PPPs can be a useful delivery model for certain projects in certain contexts, the lines of responsibility and accountability can at times be blurred. This will be particularly difficult to manage and monitor in conflict, post-conflict and weak governance zones

2.50 Oxfam Australia strongly advises the Australian Government not to adopt the recommendations of the Australia Africa Mining Group. As stated in both the Oxfam Australia and ACFID initial submissions, NGOs are best placed to administer aid funding and support the objectives of the AusAID programme.

2.51 There are opportunities for NGOs to collaborate with mining companies to enhance development in host countries. This could include:

- Advice to companies on policy and practice with regard to the social and environmental impact of their operations, including human rights, gender and corporate–community relations
- Advice to companies on the establishment of site-level grievance mechanisms and appropriate community consultation mechanisms
- Advice to companies who wish to support capacity building and service delivery in areas such as HIV/AIDS and health promotion

2.52 All of these opportunities for collaboration, and many others, are possible without Australian aid funding being delivered via a PPP with mining companies.

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

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