



**Australian Government**

**The Treasury**

***Australian National Contact Point  
OECD Guidelines for Multinational Enterprises***

# Final Statement

*This specific instance was submitted by the National Federation of Mining and Energy (FENAME) of Mali against Bayswater Contracting and Mining Group (BCM) for its conduct in Loulo, Mali.*

*Published 8 December 2016*

## **Disclaimer**

The information contained within this document is intended to inform the reader of the general processes and undertakings arising from a specific instance complaint raised with the Australian National Contact Point for the OECD Guidelines for Multinational Enterprises. It is made available on the understanding that the Australian Treasury, as a result of providing this information, is not engaged in providing professional or legal advice, nor does it accept any responsibility for the accuracy or completeness of any material contained herein. Readers should exercise their own judgement with respect to interpretation. This material includes the views of third parties, which do not necessarily reflect the views of the Commonwealth, or indicate its commitment to a particular course of action. Links to other websites and listings of other people or organisations are included for convenience and do not constitute endorsement of those sites, products or services. The Commonwealth Government respects the privacy of personal and commercially sensitive information provided by parties, as per the requirements of the *Privacy Act 1988* and the *Freedom of Information Act 1982*.

# Specific Instance Statement

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On 9 October 2015, Mr Karembé Boukassoum, on behalf of the **National Federation of Mining and Energy** (FENAME) of Mali, submitted a specific instance to the Australian National Contact Point (ANCP) alleging non-observance of the OECD Guidelines for Multinational Enterprises (OECD Guidelines) by **Bayswater Contracting and Mining Group** (BCM).

FENAME alleged that BCM, at their operating site in Loulo, Mali, dismissed 436 workers including 26 union representatives without correct approval from the relevant local Government agency - the Mali Directorate of Labour.

The ANCP conducted an initial investigation and determined that BCM is not a registered Australian enterprise. Attempts to contact BCM were made but not answered.

Under the OECD Guidelines, the ANCP is required to refer a grievance to another relevant NCP if the enterprise is not based in Australia. However at the time of the investigation, there appears to be no other NCP with operational jurisdiction.

As BCM is not an Australian multinational enterprise, the ANCP closed this specific instance in April 2016 and notified FENAME of its decision.

This statement will be published via the Australian NCP website – [www.ausncp.gov.au](http://www.ausncp.gov.au).

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OECD Guidelines for Multinational Enterprises

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# Institutional arrangements

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The Australian Government is committed to promoting the use of the OECD Guidelines and implementing them effectively and consistently. Through business cooperation and support, the Guidelines can positively influence business conduct and ultimately economic, environmental and social progress.

The OECD Guidelines are not legally binding. They are recommendations on responsible business conduct addressed by governments, including Australia, to multinational enterprises. Importantly, while the Guidelines have been endorsed within the OECD international forum, they are not a substitute for, nor do they override, Australian or international law. They represent standards of behaviour that supplement Australian law.

Companies operating in Australia and Australian companies operating overseas are expected to act in accordance with the principles set out in the Guidelines and to perform at minimum to the standards they recommend.

The Guidelines can be seen as:

- a useful aid to business in developing their own code of conduct (they are not aimed at replacing or preventing companies from developing their own codes);
- complementary to other business, national and international initiatives on corporate responsibility, including domestic and international law in specific areas such as human rights and bribery; and
- providing an informal structure for resolving issues that may arise in relation to implementation of the Guidelines in specific instances.

## Governance

Countries adhering to the Guidelines have flexibility in organising their NCPs and in seeking the active support of social partners, including the business community, worker organisations, other non-governmental organisations, and other interested parties.

Accordingly, the Guidelines stipulate that NCPs:

1. will be composed and organised such that they provide an effective basis for dealing with the broad range of issues covered by the Guidelines and enable the NCP to operate in an impartial manner while maintaining an adequate level of accountability to the adhering government;
2. can use different forms of organisation to meet this objective. An NCP can consist of senior representatives from one or more Ministries, may be a senior government official or a government office headed by a senior official, be an interagency group, or one that contains independent experts. Representatives of the business community, worker organisations and other non-governmental organisations may also be included; and
3. will develop and maintain relations with representatives of the business community, worker organisations and other interested parties that are able to contribute to the effective functioning of the Guidelines.

An **Oversight Committee** oversees the ANCP in its implementation of the Guidelines, including advising on specific instances and broader international issues. Members of the Committee meet formally biannually and out of session as required, working collegiately to support the ANCP in promoting a sustainable approach to business conduct and engender mutual confidence between multinational enterprises and the communities in which they operate.

Mr Adam McKissack, in his capacity as acting Australian National Contact Point, is the current chair of the Oversight Committee. Officials from the Australian Treasury provide secretariat services to the Committee. Members of the Committee include representatives from the Department of Foreign Affairs and Trade; Attorney-General's Department; the Department of Immigration and Border Protection; the Department of Industry, Innovation and Science; the Department of Employment, Export Finance and Insurance Corporation; and Australian Trade Commission (Austrade). Other Departments, including the Department of Prime Minister and Cabinet, may participate in Committee meetings on an ad-hoc basis when issues of relevance arise. With agreement from the Chair, the Oversight Committee may call upon further experts where appropriate.