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Nowhere to Turn

Addressing Australian corporate abuses overseas



Human Rights
Law Centre



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Human Rights Law Centre

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About this Report

The case studies in this report are based on publicly available information previously published by media outlets or other civil society organisations. Where companies have responded publicly to the allegations or contacted us directly with responses, we have attempted to incorporate their comments.

All information correct as at 1 December 2018.

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Cover image

Cambodian farmers protest outside the headquarters of ANZ Royal Bank in 2014 regarding ANZ's involvement in funding Phnom Penh Sugar, which forcibly evicted them from their land in Kampong Speu. Credit: Thomas Cristofolletti

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“The company came with police with guns... Bulldozers literally pushed over whole houses, anything that was in their way...Before the demolition, our kids lived well. We had community and fresh fish from the ocean. Now, where we are, we don't have anything. It is like we are just floating.”¹

Betty Mogerema, 52, Port Moresby, Papua New Guinea

In recent years, some of Australia's most prominent companies from ANZ to BHP have been implicated in serious human rights violations overseas.

Australian mining companies have been linked to hundreds of workplace fatalities across Africa,² public health scandals in Colombia³ and Thailand,⁴ and environmental devastation in Brazil.⁵

Australian banks have been exposed for funding land grabs in Cambodia and Indonesia⁶ and Australian clothing companies and supermarkets for sourcing from South-East Asian factories using forced and child labour.⁷

Australian private security contractors have been responsible for a suite of violations in Australia's offshore detention centres on Manus Island and Nauru, including violent assaults, sexual abuse and homicide.⁸

Too often, such abuses make temporary headlines in Australia and then quickly fade from public consciousness.

Business continues as usual and the communities harmed are left to live with the consequences: poverty, injury, homelessness or loss of livelihood.

This report shines a spotlight on ten cases of serious violations involving Australian companies operating in different countries and industries. It tracks the impacts of those violations on local people and their uphill struggle to pursue justice and remedy.

These stories paint a devastating picture not only of corporate wrongdoing but also of corporate impunity.

In most cases, communities' attempts to seek justice locally have been thwarted by corruption, poverty or lack of effective law enforcement. Local authorities have in some cases been directly complicit in the violations or compromised by their financial dependence on the business operation.

Attempts by communities to take legal action through the Australian courts have likewise faced enormous legal, procedural and cost hurdles and have rarely succeeded.

Australia's criminal laws for extraterritorial corporate human rights violations have never been used, and its only non-judicial grievance body, the Australian OECD National Contact Point (ANCP), is barely resourced and dysfunctional.

Australian government action is urgently needed to prevent such abuses, ensure that serious crimes committed by Australian companies or their employees overseas are prosecuted and that communities can obtain justice and remedy in Australia where they cannot do so locally.

Recommendations for the Australian Government

Elaborated in further detail on pages 36–41

- 1 Transform the Australian OECD National Contact Point (ANCP) into an effective corporate human rights watchdog with the power and resources to investigate alleged human rights abuses linked to Australian corporate activity abroad, publicly report on its findings and recommend remedies.
- 2 Introduce mandatory human rights due diligence and reporting obligations for large Australian companies and those operating in high-risk locations and sectors.
- 3 Create a statutory civil cause of action for serious human rights or environmental violations committed by Australian companies and subsidiary companies they control.
- 4 Remove obstacles to the effective investigation and prosecution of extraterritorial corporate human rights violations under the Commonwealth Criminal Code and ensure that companies involved in serious criminal wrongdoing overseas are prosecuted in Australia.
- 5 Close Australia's offshore immigration detention centres and immediately bring the men, women and children detained on Manus Island and Nauru to safety in Australia.
- 6 Develop a National Action Plan on Business and Human Rights to implement Australia's obligations under the United Nations Guiding Principles on Business and Human Rights.

The global impact
of Australian
corporations



SRI LANKA

Ansell’s responsibility for
alleged labour rights abuses.

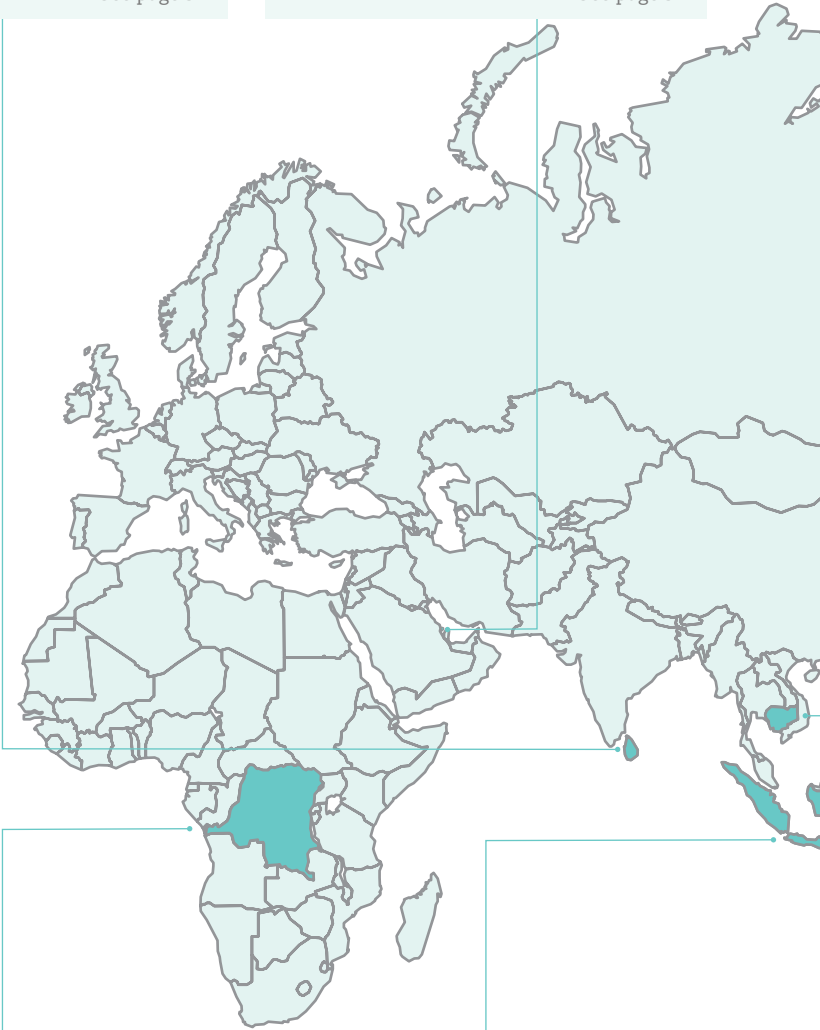
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Map not to scale



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ANZ's involvement in financing land grabs.

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PAPUA NEW GUINEA

Paga Hill Development Company (PHDC) and Curtain Bros' involvement in forced evictions.

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BOUGAINVILLE

Rio Tinto's legacy of conflict and environmental devastation.

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BRAZIL

Brazil: BHP's responsibility for the Samarco Dam Disaster.

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T.N. (61) walks back home after a day working in the plantations. She was evicted from her seven hectares of land in 2011 by Phnom Penh Sugar, financed by ANZ. Now she and her family have no land and are no longer self-sufficient. Omlaing commune, Kampong Speu Province, Cambodia, 2013. Credit: Thomas Cristofolletti





Brazil

BHP's responsibility for the Samarco Dam Disaster



THE COMPANY:

Anglo-Australian BHP is one of world's largest mining companies, with 60,000 employees worldwide. Its global headquarters are in Melbourne.

2017 PROFIT
\$US 6.7 billion¹

THE COMMUNITY:

The families of 19 people killed, thousands displaced and untold numbers of other Brazilian civilians left with polluted water sources, loss of livelihood or other losses as a result of the Samarco dam failure.²

SUMMARY:

The Samarco dam collapse in November 2015 caused a massive mudslide that killed 19 people, flooded communities and caused Brazil's worst environmental disaster. Documents subsequently revealed by prosecutors suggest that Samarco – a joint venture between BHP and Brazilian mining giant Vale – knew of the risks, but neither company has accepted liability for the disaster. Three years on, most of those who suffered losses have yet to receive compensation. There has been little recovery of affected river systems and the full environmental, social and economic impacts of the disaster are still being assessed. In 2016, 21 company executives, including 8 BHP directors, were charged in Brazil with homicide and environmental damage. Brazilian civil society organisations remain sceptical, however, as to whether any will ultimately face jail time.

MORE DETAIL:

The Fundão iron-ore mine in the Brazilian state of Minas Gerais was run by Samarco Mineração S.A., a 50/50 joint venture between BHP and Brazilian company Vale S.A.³

On 5 November 2015, the world watched in horror as one of the mine's three tailings dams collapsed, sending an avalanche of mud tailings pouring down the mountainside. Nineteen people were killed and three other villages were swept away in a sea of red mud.

Around 45 million litres of contaminated slurry were ultimately released into the Doce river basin.⁴ Within two weeks, the pollution had travelled 650km downstream, crossing two states and ultimately spilling into the Atlantic Ocean.

The pollution devastated the ecosystems of the river basin, and communities reliant on it as a source of food, water and livelihood. Around 700 people were left homeless by the disaster and 300,000 others without drinking water.⁵ The UN Special Rapporteur on human rights and hazardous substances and wastes estimates that up to 2.3 million people who relied on the Rio Doce for key ecosystem services like fishing, agriculture and tourism lost their livelihoods.⁶ Indigenous communities living along the river such as the Krenak

“We stood on the hillside watching the sea of mud going past, making a terrible noise. It was unimaginable. There were boulders and masonry and bits of machinery carried along on top of the mud and the noise was horrific. We spent the night scrambling round on the hillside in the dark, trying to find each other”.

Resident of Bento Rodrigues¹⁹



and Tupi-Guarani peoples were particularly severely impacted.⁷

An investigation commissioned by the companies in 2016 found that the collapse occurred as a result of a series of design and drainage issues over a number of years.⁸ Documents subsequently filed by Brazilian prosecutors, however, suggest that Samarco knew of the potential risks and did nothing to prevent them or warn communities living downstream.⁹

The documents indicate that cracks and seepage were seen at the mine in 2012 and again in 2014. Despite this, the mine had no warning sirens and the companies had been decreasing their investments in dam security since 2012. When the dam burst, residents were warned by phone calls or word of mouth.¹⁰ The companies have maintained that at the time of the disaster, sirens were not legally required and that they had no reason to believe BHP people knew the dam was at risk.¹¹

In 2016, 21 company executives were charged by Brazilian prosecutors with “qualified homicide”, including eight BHP representatives who sat on Samarco’s board.¹² The three companies have also been charged with environmental damage.

If convicted, directors could face up to 50 years imprisonment. Brazilian human rights organizations, however, are sceptical that any will end up doing jail time.¹³

A separate civil action was also commenced by the Brazilian government and the states of Minas Gerais and Espírito Santo, as well as other environmental agencies in both state and federal levels, seeking compensation for the disaster. In June 2018, the companies

reached a without liability settlement with the Brazilian government to pay \$US5.3 billion (BRL20 billion) in damages, in exchange for the state suspending a further claim of \$US 41.5 billion (BRL155 billion) by two years, during which the parties will attempt to renegotiate the larger sum.¹⁴

Civil society organisations representing affected communities, however, say the system set up to administer the compensation is unfair and imposes an unreasonable burden on affected communities to prove their losses. Caio Borges, co-ordinator of the Brazilian Human Rights NGO Conectas, says many communities are still struggling to be recognized under the system as having been affected by the disaster:

*“The Foundation set up to administer compensation is composed mainly of executives appointed by the three companies. The remedy programs are designed to minimize their liability, rather than ensuring proper clean up and justice for the communities affected. They require people seeking to be recognized to complete questionnaires that run to almost 600 pages, and to provide documentary proof of their losses which are impossible for many people who were informal workers, or those who lost their homes and belongings in the disaster”.*¹⁵

In June 2018, Conectas brought an urgent appeal to the United Nations to urge greater inclusion of affected communities in the negotiation of any new settlement and compensation framework.¹⁶

Global and Brazilian unions have also recently filed an international complaint under the OECD Guidelines for Multinational Enterprises against BHP and Vale in Brazil, Australia and the UK,

alleging the companies’ have failed to provide appropriate remedy to impacted communities and workers or put in place adequate measures to prevent future disasters.¹⁷

BHP says that while it acknowledges that issues remain, some significant progress has been made in the last 12 months to address the impacts of the dam failure, both in terms of environmental recovery efforts and reconstruction works in Bento Rodrigues, as well as greater participation by communities in the remediation response. The company says that as at November 2018, close to 268,000 individual compensation payments have so far been made relating to impacts of the dam collapse and 11,000 people are receiving financial assistance for loss of livelihood.¹⁸

Left: Mud covers the town of Bento Rodrigues in Minas Gerais following the collapse of the dam. Credit: Alamy stock image

Top: José Barbosa stands in front of the remains of his house in Bento Rodrigues. Credit: Gustavo Basso



Cambodia

ANZ's involvement in financing land grabs



THE COMPANY:

Australia New Zealand Banking Group Ltd (ANZ), headquartered in Melbourne, is the third largest bank in Australia and among the top 20 banks in the world.

2017 PROFIT
\$6.94 billion¹

THE COMMUNITY:

1,300 farming families forced off their lands in Kampong Speu province, Cambodia.

Top: Labourers leave a manual labourers' camp to go to work harvesting sugar cane, Phnom Penh Sugar plantation.

Credit: Thomas Cristofolletti/Ruom

Right: Cambodian farmers protest outside the headquarters of ANZ Royal Bank in 2014 regarding ANZ's involvement in funding Phnom Penh Sugar, which forcibly evicted them from their land in Kampong Speu.

Credit: Thomas Cristofolletti/Ruom

SUMMARY:

Between 2011 and 2014, ANZ provided financial backing to Phnom Penh Sugar (PPS) – a Cambodian company responsible for forced evictions and other human rights violations. PPS is accused of having forcibly evicted over 1,300 Cambodian families in order to develop its sugar plantation, leading to loss of livelihood, food insecurity, and child labour. Audits revealed that PPS had not implemented environmental, health and social management programs required by ANZ to meet its ethical lending obligations. In 2014, 681 families brought a complaint against ANZ through the Australian OECD National Contact Point (ANCP), calling on ANZ to divest the profits it earned from the PPS loan and compensate the affected families. In 2018, the ANCP found that ANZ did not meet its own human rights standards when it financed the plantation, but stopped short of recommending that the bank provide compensation.

MORE DETAIL:

Cambodia is notorious for large-scale corporate land grabs. Over the past two decades, the Hun Sen regime has granted over two million hectares of the country's arable land to private companies for agro-industrial development in the form of Economic Land Concessions.² It is estimated that as many as 850,000 people – almost 5% of the population – have been displaced as a result.³

In 2010, the Cambodian government granted two land concessions to a Cambodian company called Phnom Penh Sugar Co. Ltd. (PPS), to develop a large sugar plantation in Kampong Speu province.⁴ PPS is owned by Ly Yong Phat, a senator from the country's ruling political party and one of Cambodia's richest business tycoons.

The concessions encroached on farms, grazing land, water sources and registered community forests belonging to over 1,300 local Cambodian families. Villagers report that with no prior notice and no court order, in February 2010 company staff accompanied by military, police and local authorities began clearing and seizing the villagers' land and crops.⁵ Those evicted were offered little or no compensation⁶ and no replacement shelter.

The loss of their land left the communities destitute. Many were ultimately compelled

“Before we were free to do what we wanted – we worked for ourselves [...] Now, we have nothing, only firewood. Even water is hard to find now so we have to buy it in the dry season. We have bowls, but no food”.

Woman from Pis village, Cambodia¹⁸



to work on the sugar plantations for the very company that had displaced them.⁷ Loss of family income meant some families were also compelled to withdraw their children from school to work on the plantations with them, depriving them of education and compromising their health.⁸

The forced evictions that accompanied the development of PPS' plantation were widely publicised in the Cambodian English-language press. Despite this controversy, the notoriety of Ly Yong Phat, and the prevalence of forced displacements in Cambodia, in late 2010, ANZ decided to provide PPS with financing for the project via its subsidiary, ANZ Royal Bank.⁹

In deciding whether to fund PPS, ANZ commissioned an environmental and socio-economic site assessment by Bangkok-based International Environmental Management. The audit made no mention of PPS' history of illegal conduct and forced displacement. It did, however, recommend that ANZ urgently conduct a detailed impact assessment of the project area. According to NGOs Equitable Cambodia and Inclusive Development International, this recommendation was never acted on and ANZ decided to fund the project regardless.¹⁰

The bank has never disclosed the total amount it loaned PPS for the project, but it is believed to be tens of millions of dollars.¹¹

ANZ's financial backing of PPS only became public in January 2014 when it was exposed by Fairfax Media.¹² Following this exposure, ANZ made half-hearted efforts to use its leverage with PPS to address the affected communities' grievances, and then abruptly cut ties with PPS. Despite ANZ's substantial

financing that helped enable the project and the profits it earned from the loan, the bank asserted that it had no responsibility for contributing to the remediation of the impacts of PPS' illegal conduct. In a statement to Fairfax Media in 2014, a spokesman for ANZ said that relationships with the local community were now a matter for PPS and it was 'not appropriate for ANZ to consider any compensation measures'.¹³

On 6 October 2014 Cambodian NGO Equitable Cambodia and Inclusive Development International therefore submitted a complaint against ANZ to the Australian National Contact Point (ANCP) on behalf of 681 families affected by the forced evictions. The complaint alleged that ANZ had breached its human rights obligations through its failure to carry out proper due diligence before providing the loan to PPS or to take responsibility for addressing the abuses once it was made aware of them.¹⁴

The ANCP accepted the complaint for investigation. Four years later, in October 2018, the ANCP finally released a Final Statement with its findings.¹⁵ The ANCP concluded that there was 'some doubt in this case around the extent to which ANZ's actual business practices aligned with its stated approach to human rights...As the notifiers have pointed out, there was publicly available information at the time (in 2010) that suggested the existence of risks associated with ANZ's former client and its project.'

The ANCP recommended that ANZ instigate methods to promote internal compliance with its stated corporate human rights standards, strengthen its due diligence and establish a grievance resolution mechanism. However it

stopped short of recommending that the bank compensate the affected community, stating that '[t]he ANCP does not consider its role extends to making specific recommendations about financial redress'.

In response to questioning by a parliamentary committee about this decision, ANZ's CEO Shayne Elliott stated that the bank would look at the report and if it presented new information suggesting the bank should reconsider its position, it would.¹⁶ ANZ has since said it believes it has already addressed or is addressing the substance of the ANCP's recommendations.¹⁷

Spotlight: KHORN KHORN



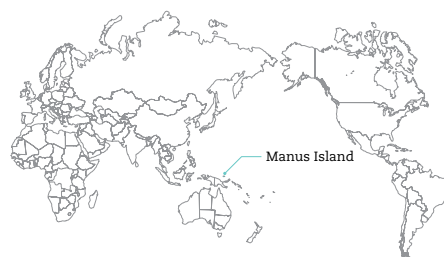
61-year-old grandmother Khorn Khorn was visiting her husband in hospital when private military officers acting for ANZ-backed Phnom Penh Sugar came to take control of her land. She returned from hospital to find her house a smoking ruin. Her husband died a short time later. In a bitter twist of irony, the loss of her small subsistence farm forced Khorn to remove her grandchildren from school and send them to work for PPS: "It makes me angry and resentful, but I have no choice" she says.¹⁹

Credit: Penny Stephens



Manus Island

G4S Australia's involvement in violent assaults and murder



THE COMPANY:

G4S Australia Pty Ltd (G4S) is a private Australian security company and subsidiary of UK-based G4S Plc, the world's largest security multinational.

2017 GLOBAL PROFIT
£236 million¹

THE COMMUNITY:

Over 1,300 asylum seekers, mainly young men from Afghanistan, Sri Lanka, Iran, Myanmar and Sudan, detained by the Australian and PNG governments on Manus Island.

SUMMARY:

G4S was contracted by the Australian Government to manage its offshore immigration detention centre (ODC) on Manus Island from February 2013 to March 2014. In February 2014 following protests by detainees, G4S guards and other contract staff went on a violent rampage through the centre, beating 23-year-old Iranian asylum seeker Reza Berati to death and injuring 77 others. A local G4S security guard and another contractor were subsequently convicted of Berati's death, but other expat G4S staff involved fled the country and were never prosecuted. The incident led to a class action in Australia against G4S, the Australian government and a number of other contractors which ultimately settled before trial in 2017 for \$AUD 70 million. Most of the men who brought the action are still detained on Manus.

MORE DETAIL:

Since 2012, Australia has pursued a deliberate policy of refugee deterrence by indefinitely and forcibly warehousing people seeking to come to Australia by boat in offshore detention centres (ODCs) on Manus Island, PNG and Nauru.

The offshore detention regime has been repeatedly condemned by expert human rights bodies, medical practitioners and the international community as breaching fundamental human rights.² The arbitrary and indefinite nature of the detention, conditions of the camps and the lack of adequate medical care have so far contributed to the deaths of 12 people and unprecedented rates of mental illness and self-harm among the men, women and children held there.³ Private contractors managing the ODCs have been deeply complicit in these abuses.

G4S was responsible for management and security of the Manus Island ODC from February 2013 to March 2014.⁴ Over this time, the number of men detained there grew rapidly from around 200 to over 1,300, double the ODC's capacity.⁵ Conditions were overcrowded, unhygienic and oppressively hot. Medical and health facilities were insufficient and illness among the detainee population was widespread.⁶ Men transferred to the ODC were given almost no information about when and

“We are in danger.
They attacked us again.
Somebody please help us.
They cut off the electricity
and attacked us”.²⁵

Message from an unnamed asylum seeker
sent during the February violence



Left: Vigil to commemorate the death of
Reza Berati. Credit: GetUp

Top: There have been a number of violent attacks
on refugees held on Manus since 2014. Kamran
(not his real name), was attacked and beaten by a
group of men in Lorgengau in August 2016.
Credit: Matthew Abbott/GetUp

whether their claims for asylum would
be processed or how long their detention
would continue.⁷

In February 2014, after weeks of protests
regarding the lack of progress in
processing their refugee claims, detainees
were called to a meeting with Australian
immigration officials at which they were
told that they would never be resettled in
Australia and would remain indefinitely
detained on Manus.

Shortly afterwards, a group of 30 men
protested the decision by running through
an open gate of the compound when
a food truck arrived. They were cut off
some way down the road by around 100
G4S guards. The guards tackled them and
then, as they fled back into the compound,
pursued them into the accommodation
blocks attacking them with sticks and
pipes.⁸ 25 detainees were treated for
serious injuries following this incident
including broken bones, serious head
injuries and in one case a lung contusion.⁹

Having witnessed the assaults, the
following night other detainees began
large-scale protests in several parts of the
camp, damaging property and throwing
rocks. At the height of the protests,
members of the PNG police mobile
squad pushed over the perimeter fence
and rushed into the accommodation
blocks firing shots.¹⁰

A group of G4S local security guards, other
local contractors and several ex-pat G4S
guards then followed the police into the
compound and began indiscriminately
beating detainees.¹¹ Detainees reported
being dragged from under their beds and
beaten with chairs, water pipes, stones
and fists.¹² Some broke off the door
handles of their rooms from the inside to
try to protect themselves.¹³

In the midst of the violence, 23-year-old
Reza Berati was attacked by G4S guards
and other contractors and locals while
attempting to flee up some stairs. He fell
down the stairs where the group gathered
around him, kicking him repeatedly in
the head and beating him with a piece of
wood with a nail in the end of it. A local
Salvation Army contractor then brought
a large rock down on his skull. He was
treated for massive head injuries and
died a short time later.¹⁴

Medical staff treated at least 69 other
detainees for injuries after the incident,
including serious head injuries, a gunshot
wound, broken bones and lacerations.
One detainee lost his eye. Another had
his throat slit. Eight detainees were
transferred to Port Moresby hospital and
one flown to Australia for specialised
medical care.¹⁵

The Australian Senate Inquiry which
investigated the violence concluded
that it was ‘undeniable that a significant

number of local service provider staff,
as well as a small number of expat staff,
were involved in the violence against
the transferees’. It recommended
the Australian Government ensure
‘an adequate and effective investigation
into the criminal assaults’ perpetrated
against individuals injured during
the violence.¹⁶

Several former G4S staff, who testified
at the Senate Inquiry into the violence
described security training provided by
G4S to guards at the centre as ‘woefully
inadequate’¹⁷ and said the lack of proper
operating procedures and training for
locally employed staff in particular was a
major contributor to G4S losing control of
their team during the violence.¹⁸

Despite this evidence, G4S was never
criminally investigated in relation to the
incident either in PNG or Australia.

Only two local PNG contract staff
were ultimately prosecuted in PNG for
Berati’s murder. G4S guard Louie Efe
and Salvation Army contractor Joshua
Kaluvia, were found guilty of murder by a
PNG court in 2016. The judge gave them
a reduced sentence of 10 years with 5
suspended on the basis that other ex-pat
staff involved had fled the jurisdiction
and avoided prosecution.¹⁹

PNG police informed the court that two
ex-pat contractors, an Australian named



“One of the things that led me to the decision that I could no longer work there was when I had young people, refugees, who were terrified, saying to me “Please, please keep us safe, don’t let them kill us!”. And I said “I will”. And in the back of my mind I was thinking...I can’t.”²⁴

Former G4S guard Steve Kilburn

Paul and a New Zealander named Anton involved in the attack had fled the country before they could be arrested, and they had not had any cooperation in bringing the men back to PNG to face charges.²⁰

In September 2014, the Human Rights Law Centre and Rights & Accountability in Development (RAID) submitted a complaint against G4S for serious human rights breaches to the Australian OECD National Contact Point (ANCP), a corporate complaints body based within Treasury.²¹ The ANCP refused to investigate, citing among other reasons that it was ‘inappropriate...to comment on government policy’.²²

A civil class action was ultimately brought in the Victorian Supreme Court by Slater & Gordon on behalf of 1,905 asylum seekers against the Australian Government, G4S and other contractors for unlawful imprisonment and negligence. After numerous legal and procedural challenges, the case ultimately settled without an admission of liability in 2017 for \$AUD 70 million. As the terms of the settlement were confidential, it is unclear what, if any, proportion of the settlement was paid by G4S.

G4S was subsequently replaced by Transfield Services as the contractor for Manus. Four years later, most of the men injured in the February 2014 attack remain abandoned on Manus.

Spotlight: BENHAM SATAH



Benham Satrah is a 32-year-old Kurdish Iranian refugee. He was Reza Berati’s room-mate. He was a witness to Berati’s murder and gave the following account about his friend’s death:

“Reza was my best friend, like a brother. I met him the first day we got on the boat together. He was Kurdish, like me, and we got on immediately. He was a huge guy, really athletic but with a warm, beautiful heart. Everyone called him “the gentle giant”.

On the night of the February violence, I cannot describe what it was like. We were all terrified. Reza had gone to try to make a phone call to get us help. He was on his way back to our room when they caught him.

“When he came up the stairs, J..., a local who worked for the Salvation Army, was waiting for him. He was holding a large wooden stick. It was about a metre and a half long... it had two nails in the wood. J... said ‘fuck you motherfucker’. He then swung back behind his shoulder with the stick and took a big swing at Reza, hitting him on top of the head...

Reza fell on the floor. I could see a lot of blood coming out of his head, on his forehead, running down his face. He was still alive at this stage. About 10 or 15 guards from G4S came up the stairs. Two of them were Australians. The rest were PNG locals. I know who they are. They started kicking Reza in his head and stomach with their boots. Reza was on the ground trying to defend himself. He put his arms up to cover his head but they were still kicking. There was one local...I recognized him...he picked up a big rock...he lifted the rock above his head and threw it down hard on top of Reza’s head. At this time, Reza passed away... After that, as the guards came past him, they kicked his dead body on the ground”.²⁶

Benham Satrah was himself later tied to a chair and beaten by guards for giving this testimony at Reza Berati’s murder trial.

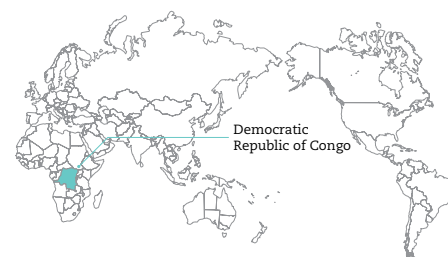
Top: Men on Manus Island protesting their incarceration. Credit: Nick McKim, Australian Greens Senator

Inset: Benham Satrah, Reza Berati’s room-mate, who testified at his friend’s murder trial, despite death threats from guards. Credit: ABC, Eric Tlozek



Democratic Republic of Congo

Anvil Mining's involvement in the Kilwa massacre



THE COMPANY:

Anvil Mining Ltd is an Australian-Canadian mining company, with offices in Melbourne. In 2012, it was bought out by Minmetals Resources Ltd (MMG).

2017 PROFIT
Unknown

THE COMMUNITY:

Residents of the small town of Kilwa in Katanga Province, DRC, killed and tortured by the Congolese military with logistical support from Anvil Mining.

SUMMARY:

In October 2004, a small-scale uprising in the town of Kilwa was brutally suppressed by the Congolese military. Over 70 residents were killed and many others were detained, raped or tortured. Australian Anvil Mining was subsequently exposed as having supplied crucial logistical support for the operation. Australian Federal Police initially launched an investigation into the company's role in the massacre but controversially discontinued it. The families of the victims subsequently initiated legal action against Anvil in the Australian and then in the Canadian courts. Both cases failed for different reasons at the procedural stage. In 2017, the African Commission on Human and People's Rights directed the DRC Government to re-open the criminal investigation into Anvil's role in the massacre.

MORE DETAIL:

Anvil Mining was an Australian mining company which in 2004 had its main offices in Perth. Its principal asset at that time was the Dikulushi mine, a copper and silver mine in Katanga province, DRC. In 2004, the mine had an operating profit of \$12.4 million.¹ Anvil transported ore from the mine out of the country via the port in the nearby town of Kilwa.

On the 14th of October 2004, a handful of poorly-armed rebels entered Kilwa, proclaiming that they were liberating Katanga. They were led by a 20-year-old fisherman from a nearby town and, according to the United Nations investigators who documented the incident, posed no serious threat to the local population.² Their actions did, however, block Anvil's access to its main port.

The following day, the Congolese Armed Forces (FARDC), led by a notorious commander, Colonel Ademar Ilunga, launched an attack to retake the town. They shelled the town, destroying a number of houses, and then went on a rampage, conducting house-to-house searches, raping women, looting shops and homes, and arbitrarily detaining and killing those they found left in Kilwa. In the days that followed the assault, at least 73 people were killed, including at least 28 who were summarily executed and their

Above: FARDC soldiers.
Credit: Alamy stock image

“There were a number of deaths, I don’t know how many. It’s unfortunate ...it’s not the sort of thing we like to see happen”.¹⁹

Former Anvil CEO Bill Turner,
Four Corners, 2005



Above: Rose Kapyia lost her husband, Musa Shina, in the attack

bodies dumped in mass graves.³ Others were detained in a makeshift prison and brutally tortured.

After the company was exposed by a *Four Corners* investigation in 2005, Anvil admitted to having provided vehicles and drivers to the military and chartering flights to transport Congolese troops to Kilwa to undertake the operation.⁴ The company also admitted to providing food and fuel for the soldiers throughout the operation and to contributing to their payment.⁵ According to the Congolese army commander, the company’s assistance was instrumental to the success of the military operation.⁶

Since its exposure, Anvil has maintained that the support it provided to the military was requisitioned, and that it had no knowledge at the time of any human rights abuses by the military.⁷ The only requisition “order” ever produced by the company, however, was a letter dated a full year after the events, and just days after the company’s role in the incident was exposed by *Four Corners*.⁸ In earlier press releases about the incident, the company praised the military’s intervention as “rapid and supportive of a prompt resumption of operations”.⁹

In 2006, Congolese military prosecutors recommended that three Anvil employees, along with the Commander of the FARDC brigade and other military

personnel who led Kilwa offensive, be tried for alleged complicity in war crimes in the DRC. After a military trial marked by political interference and irregularities, however, all were ultimately acquitted.¹⁰

The Australian Federal Police also opened an investigation into Anvil’s role after the incident was exposed on *Four Corners*, but controversially closed the case shortly after the verdict of the DRC military court.¹¹ Rights and Accountability in Development (‘RAID’), a UK NGO assisting the community to seek justice, described the AFP investigation as “pitifully inadequate”.¹² They noted that AFP investigators interviewed Anvil staff in South Africa, but not Congolese victims or witnesses and did not attend the military trial.¹³

The families of those killed subsequently sought justice through civil proceedings. A preliminary application was initially brought in the Western Australian courts in 2005, seeking to obtain internal company documents about the events.¹⁴ These proceedings came to an abrupt halt, however, when the victims’ Congolese lawyers began receiving death threats and the Congolese authorities prevented the claimants’ lawyers from entering the country to meet with their clients.¹⁵

A class action was subsequently commenced in Quebec, where Anvil had

its Canadian office.¹⁶ These proceedings were ultimately dismissed in 2012 on the grounds that the Canadian courts did not have jurisdiction to hear the case.¹⁷ The merits of the case against Anvil were therefore never considered by the courts.

Eight Kilwa victims continued their fight for justice through a complaint to the African Commission on Human and Peoples’ Rights. In 2017, in a landmark decision, the Commission found the DRC Government responsible for the Kilwa massacre. It directed the DRC Government to launch a new criminal investigation and to “take all due measures to prosecute and punish agents of the state and Anvil Mining Company staff”.¹⁸

To date, neither the DRC Government nor Anvil has responded to the decision.

“When I came back to the house at Kilwa I found only blood and bullet marks... I never found the bodies of my other two children”.²⁰

Adele Faray-Mwayuma, who lost her two sons, Lukumani and Nombele, in the massacre



Spotlight:

CHRISTOPHE MUSSINGUE SAMBA

Christophe Samba is a 68-year-old farmer from Kilwa. When a group of rebels entered the town, he knew the military would seek swift revenge. He told his wife to take his five children and get out of town while he stayed to gather their belongings...

“I was just outside my house when [Col] Ademar arrived accompanied by soldiers driving a pickup that belonged to Anvil. They grabbed me and took me to Ademar, who gestured to me to sit on the ground next to him.

...Some of Ademar’s soldiers returned, with around 15 people who had... been captured. They were naked and had been seriously tortured. They had cuts all over them and swollen faces and they were naked. One of them was crying because of the pain, and Ademard said – “this one is making too much noise, I need some calm”. The soldiers immediately took him aside and shot him.

After that, Ademar told the soldiers, put everyone else in the vehicles and take them away and kill them. One of the soldiers asked him, pointing at me “...and this old papa, what shall we do with him?” Ademar said, “him too”. The soldiers tied us up with our hands behind us and put us in the vehicle. There were fifteen of us who were put into the vehicle. They left the body of the young man they had shot where he lay.

The vehicle we were loaded into was a white Anvil pickup. There was a driver who worked for Anvil who was driving it...The soldiers put their boots on us. They took us to Nsensele and stopped beside the road. There was a big hole there already. There were two dead bodies already next to the hole...

They took us one by one out of the vehicle and made us kneel down to kill us. There were two people killed before it was my turn. I didn’t know these two people.

They were shot and pushed into the hole. When my turn came, I knelt down and began to pray. And God exists. I heard the shot, but the bullet didn’t hit me. I fell into the hole. I thought I had been shot, but I hadn’t been. A young boy was shot next and his body fell on top of me. His blood soaked my shirt. I remained lying still under him...I heard them shoot the others one by one and the bodies fell on top of each other.”²¹



Christophe Samba contemplates the site of the mass grave where he was nearly killed.



Papua New Guinea

Paga Hill Development Company (PHDC) and Curtain Bros' involvement in forced evictions



THE COMPANIES:

Paga Hill Development Company (PHDC) is an Australian-managed¹ development company incorporated and based in Papua New Guinea.

2017 PROFIT
Unknown

The Curtain Bros Group (Curtain Bros) is a Queensland-based building and civil construction company with interests in property development, shipping and mining projects in Australia and Papua New Guinea.

2017 PROFIT
Unknown

THE COMMUNITY:

Residents of Paga Hill, Port Moresby, forcibly evicted from their homes.

SUMMARY:

Between 2012 and 2014, Paga Hill Development Company and Curtain Bros were involved in a series of forced evictions of residents of Paga Hill, a settlement in Port Moresby, to make way for the development of a luxury hotel complex and ring road. Many of the houses demolished were ultimately found by the PNG Supreme Court to fall outside PHDC's lease area. The community fought for several years to seek redress through the PNG legal system but without funding for good legal representation, their case was ultimately dismissed on procedural grounds. Four years on, many are still homeless and living on the streets of Port Moresby.

Top: Paga residents constructed makeshift shanties out of the materials left after the demolitions.
Credit: International State Crime Initiative

Right: Paga children in makeshift accommodation following the demolitions.
Credit: Phillippe Schneider

MORE DETAIL:

Forced evictions are a widespread problem in Papua New Guinea.² A rapid rise in rural-urban migration over several decades, lack of available land supply and the Government's failure to provide affordable housing options have led to the proliferation of informal settlements throughout the country, particularly in the capital, Port Moresby.³

Communities living in such settlements, even the most well-established, have no formal land title and remain vulnerable to eviction by both the State and private owners.⁴ Evictions are in many cases conducted without adequate due process or compensation and have in some cases been accompanied by significant police violence.⁵

Paga Hill is an area of land in central Port Moresby, overlooking the city's harbour. Until 2012, it was home to a settlement of approximately 3,000 people. It had its own church and pre-school as well as access to power and water. Those who lived there were a mixture of public servants, small business owners and fishermen.⁶ They had no formal title to the land on which they lived, but had a longstanding agreement with local customary landowners to live and build on the land, and many had resided there for several generations.⁷

“After they cleared us out from Paga, I was living just outside the Westpac building in downtown Port Moresby for almost two years. I slept on pieces of cardboard with my two kids. My younger daughter’s pre-school was burned in the demolition so she couldn’t go to school. I washed her in the public toilets and had to beg the building security guard to use the drinking tap to get water for her to drink.”

Margaret Kaupa, former Paga resident³⁰



In the late 1990s, Australian developers earmarked Paga Hill as a prime site for the development of a five-star hotel and residential complex. Paga Hill Development Company (PHDC), a PNG company run primarily by Australians, sought and was ultimately granted a 99-year business lease over the site.⁸

In early 2012, after a period of negotiation with community leaders, PHDC initiated proceedings in the PNG courts seeking an eviction order over the land. They presented to the court consent orders signed by just two community representatives stating that the community had agreed to leave their homes within 30 days in exchange for small amounts of compensation.⁹ Other community members dispute ever having seen or consented to these orders.¹⁰ The company proposed to relocate people to Six Mile, a site on the outskirts of the city with limited access to basic services.

On 12 May 2012, as community leaders were in court seeking an injunction against the eviction, a PHDC-funded excavator,¹¹ supported by around 100 police officers armed with rifles and machetes, descended on Paga Hill. As they began destroying homes, many with the owners’ possessions still inside, police opened fire over the crowd.¹² Some residents trying to protest the demolitions and photograph what was happening report being assaulted with iron bars and machetes.¹³ Other residents report that police forced them at gun point to demolish their own houses.¹⁴ Some of the violence of the demolition was captured on film by an Australian documentary filmmaker and became the subject of the award-winning documentary, *The Opposition*.¹⁵

By the time community leaders were able to return from court with a stay order, a large number of homes along the foreshore had already been destroyed. Residents gathered what remained of their possessions and slept under tarpaulins.¹⁶

For more than two years, the community fought the eviction order in PNG’s courts. On 1 July 2014, the PNG Supreme Court upheld PHDC’s right to vacant possession within its lease area, but ruled that the area on the foreshore, where a large number of houses had already been bulldozed, fell outside the area of PHDC’s lease.¹⁷

While the Supreme Court case was being heard and apparently without informing the community,¹⁸ a subsidiary company of PHDC sought a lease over the land along the foreshore.¹⁹ At the same time, Port Moresby’s local council, the National Capital District Commission (NCDC), contracted Australian company Curtain Bros to construct a ring road around the project, running directly through the community’s houses.²⁰

In July 2014, just three weeks after the Supreme Court decision had found that the foreshore area was excluded from the company’s lease, Curtain Bros, NCDC and armed police, with PHDC security guards looking on, moved in again, demolishing all remaining houses along the beach and leaving families with young children stranded with nothing but the clothes on their backs.²¹ Between July and October 2014, the developers demolished the last remnants of Paga Hill’s once vibrant community.

The evictions were strongly condemned in the PNG media by retired PNG Supreme Court justice Mark Sevua as “inhuman and unconstitutional”.²²

In 2014, the Paga Hill community filed a compensation claim against PHDC, NCDC and the PNG police on the basis that the manner of the evictions breached their constitutional rights.²³ By this stage, however, they were scattered across the city and had exhausted their legal funds. Without funding for good legal representation, their case stalled and was ultimately dismissed on procedural grounds.²⁴

Investigations conducted by NGOs Aid/Watch and Jubilee Australia in 2017 found that of the former Paga Hill residents, two-thirds received little to no resettlement assistance and no compensation. Many of those who had accepted PHDC’s offer to move to Six Mile were still living in tents or homes of sticks, fibro and tarpaulins, often without electricity and running water.²⁵ Up to 500 settlers remained homeless on the streets of Port Moresby.²⁶

PHDC denies the Paga Hill settlers were forcibly evicted, instead describing the events as a “comprehensive relocation solution” which has “achieved a harmonious resettlement to a donated site that makes for transformative life outcomes for the residents”.²⁷ The company maintains that it acted pursuant to valid court orders and that it was not responsible for any violence used by police. It further maintains that the community were extensively consulted and given every opportunity to challenge their relocation in the courts and that it cannot be held responsible for current conditions at the Six Mile site, which it handed over in October 2014.²⁸

Curtain Bros has not made any public statement on its involvement and did not respond our invitation to comment.



“PHDC has achieved a harmonious resettlement to a donated site that makes for transformative life outcomes for the residents”²⁹

Paga Hill Development Company

Spotlight: BETTY MOGEREMA

Betty Mogerema was in church the day the developers and police came to demolish Paga in May 2012.

“I came out and I saw and there were so many police vehicles that pulled up on the field near the church. The policemen started shouting, telling me to go home and get things out of my house because they were going to demolish the houses. I rushed home and grabbed things like certificates, paperwork, some clothes, whatever small things I could get hold of. It was chaos. Then police started beating people on the streets. The residents were scared for our lives. The police were firing their guns in the air – we were afraid we would get shot and we fled as quickly as we could with whatever we could grab. The bulldozer literally pushed over whole houses and anything in their way. I watched my life destroyed in a moment. Everyone was crying.

We never thought this would happen to us at Paga. Before the demolition, our kids lived well. We had community and fresh fish from the ocean. But now, where we are, we don’t have anything. It is like we are just floating. I want my life back. I want my family back together and to live peacefully again.”³¹



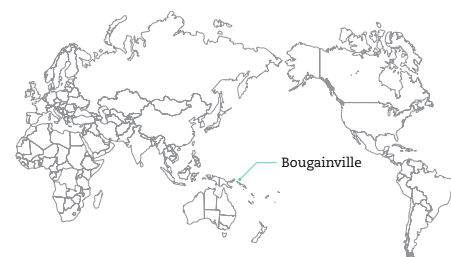
Top: Paga families constructing temporary shelters after the demolition. Credit: Jeffry Feeger

Inset: Paga resident Betty Mogerema sits in the ruins of her demolished house, May 2012. Credit: Jeffry Feeger



Bougainville

Rio Tinto's legacy of conflict and environmental devastation



THE COMPANY:

Rio Tinto is an Anglo-Australian multinational and one of the world's largest mining companies. It employs 47,000 people in 35 countries.

2017 PROFIT
\$US 8.8 billion¹

THE COMMUNITY:

The people of Bougainville, particularly communities living around the site of the Panguna mine.

SUMMARY:

From 1972 to 1989 Rio Tinto operated one of the world's largest open-cut copper mines on the island of Bougainville, in Papua New Guinea. During this period, the company discharged millions of tonnes of mine waste into local river systems. The resulting environmental devastation and socio-cultural impacts, along with discontent over poor wages and distribution of profits, ultimately led to a local insurrection that forced the mine's closure.

The PNG Government sent in police mobile squads and troops to crush the uprising and secure the mine, precipitating a brutal decade-long conflict which cost the lives of up to 15,000 people. Evidence has subsequently emerged indicating Rio Tinto exerted significant pressure on PNG to use military action as well as supplying logistical support for the military operations.

In 2001, Bougainville residents brought legal proceedings against the company in the United States alleging the company was complicit in war crimes and environmental destruction. After 13 years and several appeals, the case was ultimately dismissed in 2013 for jurisdictional reasons. In 2016, Rio Tinto passed on its shares in the Panguna mine and walked away, leaving behind a legacy of conflict and environmental devastation.

MORE DETAIL:

Rio Tinto's legacy on Bougainville is often cited as a leading example of corporate impunity.²

From 1972 to 1989, Rio Tinto, via its subsidiary Bougainville Copper Ltd (BCL), operated the Panguna copper mine in Bougainville. Over this period, it discharged millions of tonnes of waste directly into the Jaba and Kawerong Rivers, devastating the environment and the health and livelihoods of local communities.³

The profound socio-cultural disruption caused by the mine, as well as discontent over perceived discriminatory wage practices and unfair distribution of profits led in 1988 to an insurrection by local people which forced the mine's closure.

In response, the PNG Government sent in police mobile squads and troops to crush the uprising and secure the mine. An extensive, bloody campaign of "destructions" was initiated, during which hundreds of villages around the mine area were looted and burned and their inhabitants moved into detention camps known as "care centres" run by the military, where torture, rape and extra-judicial killings were recorded.⁴

In early 1990, in response to a counter-attack by locals, the PNG Government,

Top: Copper pollution from the Panguna mine continues to turn local rivers blue.
Credit: Friedrich Stark/Alamy stock image

“Because of Rio Tinto’s financial influence in PNG, the company controlled the government”

Former PNG Prime Minister,
Sir Michael Somare



Above: A family panning gold in the polluted Jaba river flowing from Panguna copper mine.
Credit: Friedrich Stark, Alamy stock image

with support from Australia, then instituted a naval blockade of the island, denying the local population access to essential goods, including food and medical supplies.⁵ It is estimated that over 3,000 people –the majority children– died as a result from malnutrition and preventable diseases.⁶

A lasting ceasefire on Bougainville was not reached until 1997. While the exact numbers of people killed during the conflict are unknown, estimates put the death toll from the conflict at between 10,000 and 15,000 people.⁷

Evidence has subsequently emerged revealing the key role played by Rio Tinto in instigating the Bougainville conflict and providing crucial logistical support for the military operations there.

In 2011, explosive testimony by PNG’s former Prime Minister, Sir Michael Somare was revealed by news program Dateline. In a sworn legal affidavit, Somare testified that when the uprising on Bougainville began in 1988, Rio Tinto had threatened to pull all its financial investments out of PNG unless the government took military action to recapture the mine:

‘Because of Rio Tinto’s financial influence in PNG, the company controlled the government. The Government of PNG followed Rio Tinto’s instructions and carried out its requests...

*BCL was also directly involved in the military operations on Bougainville and it played an active role. BCL supplied helicopters, which were used as gunships, the pilots, troop transportation, fuel and troop barracks’.*⁸

The former head of the PNG Armed Forces, Major General Singarok, likewise confirmed that the PNG military was ordered by Rio Tinto to “re-open the mine by any means necessary”.⁹

Internal BCL documents that have subsequently been published corroborate these accounts, showing Rio Tinto through its subsidiary, provided the PNG military with extensive logistical support and that BCL executives held regular strategy meetings with the military and senior politicians.¹⁰

In 2001, US lawyers filed a class action against Rio Tinto on behalf of 21 Bougainvilleans under the Alien Tort Claims Act (ATCA), alleging that the company was responsible for environmental torts and complicity in war crimes and genocide.¹¹

In 2011, the US Court of Appeal upheld the claimants’ right to bring claims under the ATCA.¹² This decision was subsequently reversed in 2013, and the matter was subsequently dismissed on jurisdictional grounds, leaving the affected communities without remedy.¹³

No criminal or civil claims against the company have ever been brought in Australia.

In 2016, Rio Tinto passed its controlling share in BCL to PNG and the Autonomous Bougainville Government (ABG) and renounced all legal responsibility for the mine.¹⁴

Communities in Bougainville have been left to cope with both the legacy of the conflict and an environmental disaster. Because the mine was never properly closed or remediated, polluted water continues to flow into local rivers from the mine site, turning the riverbed and surrounding rocks blue from the elevated copper levels found in the water. The mine waste dumped into these rivers have created a rocky wasteland, impacting peoples’ livelihoods and food security.

Neither the Bougainville nor PNG governments have the resources or expertise to clean up the site, which it has been estimated may cost billions of dollars.¹⁵

Bougainville’s President, John Momis, has described the company’s abandonment of its responsibilities to clean up and properly remediate the site as ‘unprincipled, shameful and evil’.¹⁶

“When Rio walks away like this, the resource owners are left high and dry through no fault of their own. They are now going to be left with this hugely destroyed environment...It is a major disaster which the people of Bougainville do not deserve”

Dr John Momis, President of the Autonomous Region of Bougainville



Above: Rusting BCL mining equipment at the mine site. Credit: Alamy Stock Image

Inset: Theonila Roka-Matbob. Credit: Antony Loewenstein

“When Rio walks away like this, the resource owners are left high and dry through no fault of their own. They are now going to be left with this hugely destroyed environment... It is a major disaster which the people of Bougainville do not deserve”¹⁷

Rio Tinto has always maintained that the allegations in the Sarei case were without foundation and that the company complied with all regulatory requirements at the time it operated the mine.¹⁸ The company says that given its lack of access to the site since 1989 it has “not been possible...to confirm the nature, extent or cause of any alleged damage or pollution”.¹⁹

Spotlight: THEONILA ROKA-MATBOB



Theonila Roka-Matbob comes from the heartland of the Panguna mine and knows more than most people the suffering that the mine and subsequent conflict have caused on Bougainville.

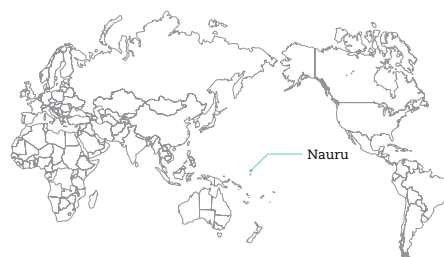
When she was just three years old, her father John Roka, was murdered by BRA soldiers. She subsequently spent several years in a “care centre” run by the PNG defence force. Bougainvillean boys and young men at the camp frequently disappeared and an atmosphere of fear was continually in the air.

“Growing up...I remember are gun shots and hearing stories like that person in that village has been dragged away from his family in the night and he has been murdered or is missing. Also, I have even more horrific memories of seeing slaughtered people and people whose bodies are like crushed in whatever way that is very violent, and seeing the corpse lying on front of me. Even today having grown up and already being a mother and married women these are like memories that I have seen yesterday”.²⁰



Nauru

Broadspectrum and Wilson Security's responsibility for alleged sexual assaults



THE COMPANIES:

Broadspectrum (formerly Transfield Services) is an Australian services and infrastructure company that was contracted by the Australian Government to run its offshore immigration detention centre (ODC) on Nauru. In May 2016 it was bought out by Spanish multinational Ferrovial.

2017 GLOBAL PROFIT
€454 million¹

Wilson Security is a private Australian security company with operations throughout the Asia Pacific.

2017 PROFIT:
Unknown

THE COMMUNITY:

Refugee women and children detained under Australian immigration policy at the Nauru ODC.

SUMMARY:

Since Australia re-initiated "offshore processing" of people seeking asylum in Australia by boat in 2012, the regime has been characterised by grave, systemic human rights abuses. At the Nauru ODC, one particularly disturbing feature of the abuse has been repeated allegations of sexual assaults on women and children held there, in many cases with the direct involvement of security guards or other contractors. Only a handful of these cases have resulted in arrests and even fewer in convictions.

There have been allegations of systematic downgrading of complaints by the companies and of contractors being paid to keep silent about the abuse. Recently, a number of women who allege they were raped have brought individual civil claims against the companies through the Australian courts either for assaults by their staff or failure to protect them from assaults. The companies have denied liability and the cases are ongoing.

MORE DETAIL:

Since 2012, Australia has pursued a deliberate policy of refugee deterrence by indefinitely warehousing people seeking to come to Australia by boat in offshore detention centres (ODCs) on Manus Island, PNG and the tiny island nation of Nauru.

Australia's offshore detention regime has been repeatedly condemned by expert human rights bodies, medical experts and the international community as breaching fundamental human rights. The arbitrary and indefinite nature of the detention, conditions of the camps and the lack of adequate medical care have so far contributed to the deaths of 12 people and unprecedented rates of mental illness and self-harm among the men, women and children held there.²

As at October 2018, over 650 people, including 52 children,³ were being held on Nauru, a tiny island atoll only 21 kilometres in size. Most are refugee families from Iran, Afghanistan, Iraq, Pakistan, Myanmar and Sri Lanka. Many have now been detained on the island for over five years.

Broadspectrum (formerly Transfield Services) was the leading private contractor on Nauru from September 2012 to October 2017. It also ran the Manus Island ODC for much of this time. Its contract with

“To go to the toilet at night involves crossing dark, open land, often under the gaze of large male guards. Many children and some mothers told us they wet the bed in their tents at night rather than risk the long walk past guards to the bathroom facilities.”

Paediatrician Professor David Isaacs, engaged to assess children on Nauru in December 2014²⁵



Left: A rally in Melbourne, 2015, calling on the government to bring Abyan to Australia for urgent medical treatment. Credit: Eddie Jim/SMH

Above: Children detained on Nauru. Credit: GetUp

the Australian Government was valued at \$US 1.9 billion.⁴ Wilson Security was sub-contracted by Broadspectrum to provide security services at both the Manus and Nauru ODCs.⁵

The issue of sexual abuse at the Nauru RPC, including the abuse of children, first came to public attention in mid-2014⁶ and has been well-documented since then in numerous media and other reports.⁷

The February 2015 Moss Review was the first serious investigation into allegations of sexual assaults at the centre. It found credible reports that at least two women inside the centre had been raped, that children had been sexually assaulted and that there was a culture of fear and sexual harassment at the centre, with likely under-reporting as women were too frightened to bring complaints or pursue charges.⁸

Many of the complaints revolved around Nauruan guards employed by Wilson Security spying on women in their tents, assaulting women when drunk or offering privileges like extra shower time, cigarettes or marijuana in exchange for sexual favours.⁹ A subsequent Senate Inquiry heard that there was such a climate of fear in the camp that children and some women were wetting their beds at night rather than daring to venture out of their tents past guards to go to the toilet.¹⁰

In June 2015, a former staff member accused Wilson Security managers of shredding reports that raised concerns about safety at the Centre.¹¹

Despite the Australian Government accepting the recommendations of the Moss Inquiry, allegations of sexual assaults at the centre continued. In October 2015, the case of a Somali woman Abyan who became pregnant after an alleged rape caused national outrage after she begged the Australian Government for an abortion and was flown to Australia for treatment, but was subsequently re-deported without having undergone the procedure.¹² In April 2016, another young African woman known only as S99 likewise became pregnant after allegedly being set upon and raped whilst she was in the middle of an epileptic seizure.¹³

In August 2016, the Guardian published over 2,000 leaked incident reports from the Nauru ODC. The Nauru files detailed a further 7 reports of sexual assaults on children and 59 reports of physical assaults on children, as well as 30 of children self-harming and 159 of threatened self-harm involving children.¹⁴ The leaked files also revealed that self-harm and sexual abuse incident reports were regularly altered and downgraded in seriousness by Wilson Security.¹⁵

There have been similar allegations of rapes of local women by Wilson Security

guards at the Manus Island RPC. In 2015, a young local woman named Sarah was allegedly drugged and gang raped by three Wilson Security guards. The guards were subsequently stood down and sent back to Australia before they could be prosecuted in PNG.¹⁶ In July 2016, it was revealed that Wilson Security paid at least one other Australian security guard to keep quiet about the alleged rape in a number of separate payments.¹⁷

In 2016, after a prolonged public campaign against them, both Wilson Security and Ferrovial stated that they would not seek to renew their contracts with the Australian Government.¹⁸ Another Australian company, Canstruct International, took over management of the Nauru ODC in October 2017.¹⁹

The majority of the alleged sexual assaults at the Nauru ODC have never been criminally prosecuted. While a number of security guards were dismissed after the Moss Inquiry, in August 2016 it was revealed that of 50 cases referred to the Nauruan police for investigation, only five charges were ever laid and only two convictions recorded.²⁰ A 2017 Australian Senate Committee Inquiry noted the limitations of the capacity of the Nauru police to investigate allegations of this kind, as well as “questionable willingness to do so where the complainant was a refugee or asylum seeker”.²¹



“Three days into my first rotation on Nauru there was an adolescent boy who had been sexually assaulted. It was an employee who was a cleaner and he actually admitted the assault...the manager told me that this person was going to be moved to another facility on Nauru... She said this is just normal, you have to accept it, this is the way it is”.

Viktoria Bibhakar,
Former Aid Worker on Nauru with
Save the Children²⁶

Above: The tiny nation of Nauru which has become Australia's offshore prison.
Credit: ARM Climate Research Facility

In July 2018, the United Nations Committee on the Elimination of Discrimination against Women expressed serious concerns about Australia's lack of accountability for sexual assaults perpetrated against women detained on Nauru. The Committee stated that it was ‘particularly concerned that women and girls seeking asylum in the State party are... exposed to rape, sexual abuse and physical harm, perpetrated with impunity by security guards, service providers, refugees and asylum seeker and by the local community in Nauru, and that women victims remain without access to justice’.²²

Recently, a number of women have commenced individual civil proceedings against Wilson and Broadspectrum in the Australian courts. The cases are subject to strict confidentiality orders, but Maurice Blackburn Lawyers, which represents a number of the women has confirmed that one of the cases relates to a woman who alleges she was attacked and raped by a Wilson guard in her accommodation quarters at the Nauru ODC, and another to a woman attacked by unknown assailants just outside the centre. Both rapes were reported, but no proper investigation or prosecution occurred.²³

Nicki Lees, one of the lawyers representing the women, says lack of accountability is a consistent theme the firm has encountered when investigating these cases:

*“Our clients are bringing these cases not only to try to achieve justice for their own matters, but to try to ensure other women and children still held on Nauru are better protected. The evidence we have seen suggests serious systemic failings by both the detention centre contractors and the Australian and Nauru governments to protect those in their care or to respond appropriately when they have been harmed”.*²⁴

Broadspectrum and Wilson Security have denied liability and the cases are ongoing.



Indonesia

PTTEP Australasia's catastrophic oil spill



THE COMPANY:

PTTEP Australasia (Ashmore Cartier) Pty Ltd (PTTEP Australasia) is a Perth-based petroleum company, a subsidiary of Thai petroleum giant PTTEP, which employs over 4,000 people globally.

2017 GLOBAL PROFIT
\$US 594 million¹

THE COMMUNITY:

15,500 Indonesian seaweed farmers and their families, who report losing their farms and livelihoods as a result of an oil spill caused by the company.

SUMMARY:

The Montara oil spill was the worst in the history of the Australian offshore petroleum industry.² In August 2009, the Montara wellhead exploded, causing oil to flow unabated into the Timor sea for 74 days which spread north towards Indonesia. Communities living on Indonesian islands closest to the spill report that in the weeks after the spill, oil washed into their seaweed farms and fishing grounds, turning coral white, killing fish and destroying their seaweed crops. In 2016, 15,500 seaweed farmers brought a class action against PTTEP Australasia, which operated the oil field, in the Australian Federal Court alleging negligence by the company. PTTEP Australasia has denied liability and the case is ongoing.

MORE DETAIL:

On 21 August 2009, an explosion at the wellhead of the Montara oilfield caused a major oil spill in the Timor Sea between Australia and Indonesia. Between August and November 2009, when the spill was finally plugged, up to 300,000 litres of oil (the equivalent of 10 Olympic swimming pools) gushed into the Timor Sea each day for 74 days, causing significant damage to the surrounding marine environment.³

In the weeks that followed the explosion, the oil slick drifted north in the direction of Indonesia. In September, communities in the closest Indonesian islands of Nusa Tenggara Timur (NTT) reported seeing oil in their fishing grounds, washing up on their beaches and in their trawler nets and mangroves.⁴

Many of these communities earned their living primarily from fishing and cultivating seaweed for commercial use in fertilisers, cosmetics and medicines. After the spill, they reported that their seaweed crops turned white and fell off their ropes and the water around the islands turned cloudy. They also reported significant declines in previously healthy fish stocks and health impacts including food poisoning and skin rashes which they attribute to the pollution.⁵

Top: Seaweed farmers in Rote, 2014.
Credit: Kristen Roy

“PTTEP did not come within a bull’s roar of sensible oilfield practice...Major shortcomings in the company’s procedures were widespread and systemic, directly leading to the blowout”.¹⁵

Montara Commission of Inquiry



Above: The wellhead blow-out at the Montara platform in the Timor Sea caused an environmental disaster.

Credit: PTTEP

Right: Boys in Oesapa fishing village, August 2013.

Credit: Australian Lawyers Alliance

The full extent of the impacts of the spill on communities and the environment in Indonesia and Timor Leste was not investigated at the time of the spill by the company or the Australian Government. A Commission of Inquiry was established by the Australian Government on the causes of the spill and its impacts within Australian waters, but this did not focus on transboundary impacts, although it noted that there was evidence that oil entered both Indonesian and Timor Leste’s waters ‘to a significant degree’.⁶

The Inquiry did find that the spill was caused by major shortcomings in PTTEP Australasia’s management of the oilfield. It found that PTTEP Australasia’s operations ‘did not come within a bull’s roar of sensible oilfield practice’ and that ‘widespread and systemic’ shortcomings in its procedures ‘directly led to the blowout’.⁷

The Inquiry was also highly critical of the Northern Territory Department of Resources’ failure to properly regulate the company, finding that it ‘adopted a minimalist approach to its regulatory responsibilities [which] gave it little chance of discovering PTTEP Australasia’s poor practices’.⁸

In 2011, PTTEP Australasia pleaded guilty to breaching the Offshore Petroleum Act. The company was fined just \$510,000 by the Darwin Magistrates Court.⁹

In August 2016, Maurice Blackburn Lawyers initiated a class action in the Australian Federal Court seeking compensation for over 15,500 Indonesian seaweed farmers who allege they lost their livelihoods as a result of the spill.¹⁰ A preliminary hearing regarding whether the farmers would be granted an extension of the time to bring their claim was heard by the Federal Court in October 2016 and was ultimately decided in their favour.¹¹

The parties are now serving evidence in support of their claims. It is understood that 100 witness affidavits have been filed in support of the seaweed farmers’ claims by seaweed farmers, community leaders and ex-patriate residents who report seeing greasy oil and waxy material in the coastal seawater at times between mid-September and late October 2009.¹²

PTTEP Australasia has always denied that oil from the spill ever reached Indonesia’s coastline and says no long-term damage was done to the environment in the Timor Sea.¹³

To date, none of the communities that report being impacted by the spill have received any compensation. In July 2018, PTTEP sold its 100% stake in the Montara petroleum field to Jadestone Energy (Eagle) for \$195 million.¹⁴

“If this oil had flowed into the Kimberley...people all around Australia would have been up in arms. The fortunate thing for the oil company is that it went north, it crossed the Indonesian boundary. No investigation was conducted in Indonesian waters at all. And people breathed a sigh of relief and hoped they’d never have to hear about it.”¹⁶

Lawyer representing the seaweed farmers,
Greg Phelps



Spotlight: DANIEL SANDA

Daniel Sanda is a 60-year-old seaweed farmer from the village of Oenggaut in Nusa Tenggara Timur and the lead applicant in the case against PTTEP Australasia. He is married with five children.

Sanda originally began farming seaweed in 2002 to supplement his family’s income from farming coconuts and peanuts, and it quickly became a crucial part of the family’s income: “I enjoyed... a level of income from seaweed farming which I did not previously think I would ever achieve. I was able to feed my family properly, educate my children,” he says.

In September 2009, however, all that changed.

“One day in September, I went into the water first thing in the morning when it was low tide, probably around 8am. All the other farmers were around in the water and we started shouting to each other. Usually the water was clear and we could see the seabed but it had become cloudy and yellow...I went into the water and my hands and legs felt slippery to touch...The next morning, I walked past dead squid and fish on the beach on the way to my farming area. I was shocked and I picked up a fish which smelt of kerosene...

I started to think that it could be oil. There were lumps of oily substance mixed in with the dead fish on the beach. The water was still cloudy but had changed to white....All the seaweed farmers in Oenggaut lost their seaweed crops....No one I spoke to was able to tell me what had happened.

Information travels by word of mouth in my village. I spoke about what had happened with my step-brother Adrianus Faturaja. Adrianus later told a group of farmers and me that there had been an oil spill from Australia and this is what caused our seaweed crops to die”.¹⁷



Seaweed farmer Daniel Sanda says Montara’s oil spill destroyed his livelihood. Credit: Greg Phelps



Sri Lanka

Ansell's responsibility for alleged labour rights abuses



THE COMPANY:

Ansell Ltd is one of Australia's largest manufacturers of industrial and medical gloves and clothing and medical safety devices. It has offices in Melbourne and subsidiaries in 16 other countries, including in Sri Lanka.

2017 PROFIT
\$US 148 million¹

THE COMMUNITY:

Workers, the majority young women, at Ansell's glove production factory in the Biyagama Export Processing Zone, Sri Lanka.

SUMMARY:

In 2013, 281 workers at Ansell's glove factory in Biyagama, Sri Lanka, went on strike in response to concerns around exploitative and unsafe working conditions at the factory and the summary dismissal of 11 colleagues. The workers were reportedly being required to work 7-days a week for less than \$US 80 cents per hour and to meet such severe production targets that some were fainting and being forced to urinate at their workstations in order to meet quotas. In response to the industrial action, Ansell sacked the striking workers en masse. Their dismissal was upheld as lawful by the Sri Lankan courts. Unions representing the workers subsequently lodged a complaint against Ansell with Australia's OECD National Contact Point for breaches of their human rights. It took three years of negotiations and a sustained international campaign, however, before the company ultimately agreed to reinstate most of the workers.

MORE DETAIL:

Ansell has been operating a latex glove factory in Sri Lanka since the 1970s.² As in many other Asian countries, the Sri Lankan garment industry has grown exponentially over this period, assisted by the government's decision to establish free trade Export Processing Zones with reduced taxation and regulation to encourage foreign investment.

Working conditions in the Export Processing Zones have tended to be characterised by insecure work, long hours, excessive production targets, poor occupational health and safety practices and repression of the right to organise or bargain collectively.³ The majority of workers in the zones, particularly in unskilled work categories, remain young, rural women with limited employment opportunities.⁴

In 2011, the Ansell Lanka factory employed around 2,500 local workers.⁵ According to interviews undertaken with its workers at that time for a comparative research report, the company had a history of unsafe and exploitative work practices, and of victimising workers at the factory for union activities, including summarily dismissing and blacklisting workers who tried to organise.⁶

The workers' local union, the Free Trade Zones & General Services Employees

“If the factory gets to know about workers’ attempts to organise in a union, the workers involved have to face severe punishments.”

Unnamed Ansell factory worker, 2012¹⁹



Union (FTZGSEU) attempted to raise concerns around safety and conditions at the factory, arguing that new production deadlines being imposed by Ansell, combined with low wages, substandard housing and limited access to medical care were leading to “inhuman” conditions at the factory.⁷

FTZGSEU reported that the company was paying its workers just \$US 80 cents per hour and imposing production speed-ups that required workers to make 60-70 pairs of surgical gloves per minute.⁸ As a result of these unreasonable targets, some workers were fainting or being forced to urinate at their workstations in order to try to meet their quotas.⁹ According to the union, workers had also expressed concerns about the company’s failure to properly investigate potential contaminants at the factory, after a number of employees were diagnosed with cancer and other health problems.¹⁰

The company reportedly initially refused to engage with the union or workers about these concerns. In November 2013, 11 employees who were members of the union, including its president, were summarily dismissed by Ansell and replaced with contract labourers.¹¹

This triggered a strike by a further 281 employees in support of their colleagues and in protest of the factory conditions. All were summarily dismissed. The workers attempted to appeal their dismissal through Sri Lanka’s court system, but the Sri Lankan Supreme Court upheld their termination as lawful.¹²

In November 2013, FTZGSEU and global union IndustriALL lodged a complaint against Ansell with the Australian OECD National Contact Point, alleging repeated

violations of its workers’ human rights and labour rights and disregard for their health and safety. They sought commitments from Ansell to immediately recognise the right of workers at the factory to raise concerns collectively, to conduct a joint investigation into employees’ health concerns and to commence a dialogue with the union to resolve the issues in dispute.¹³

Ansell denied all the allegations put forward by IndustriALL as baseless and unsubstantiated, reporting to the ANCP that all of the claims had already been raised with them and that they had responded diligently.¹⁴

It was only after a prolonged international campaign by unions in several countries including a boycott of Ansell products that the company agreed to negotiate.¹⁵

In August 2016, Ansell signed a Memorandum of Understanding with IndustriALL and FTZGSEU in which it agreed to re-hire fired workers, offer early retirement packages for others, not take any action that would interfere with trade union organising and not discriminate against rehired workers. The parties agreed to hold follow-up meetings to monitor implementation.¹⁶

Ansell continues to strenuously deny the allegations made by IndustriALL and FTZGSEU about its workplace conditions and health and safety standards and says that its termination of employees in 2013 was upheld by both the High Court and Supreme Court in Sri Lanka as lawful.¹⁷

“Ansell operates with a fundamental respect for the people we employ, do business with and interact with along our value chain... we respect workers’ rights to freedom of association as well as collective bargaining in all our businesses”.

Ansell Corporate Social Responsibility & Sustainability Report, 2017¹⁸



Left: Sri Lankan workers at their stations on the garment production line.
Credit ILO/M. Crozet.

Top: Sri Lankan garment workers in 2011 protesting against the death of 21-year-old Free Trade Zone factory worker shot by police during a protest.
Credit: Sanka Vidanagama

Inset: Ansell workers in Sri Lanka on strike for justice in 2013.
Credit: IndustriALL



Bahrain

iOmniscient's link to crackdowns on peaceful protesters

THE COMPANY:

iOmniscient is a private technology company, headquartered in Sydney, which develops and sells video analytics and surveillance technology, including facial recognition technology.

2017 PROFIT
Unknown

THE COMMUNITY:

Pro-democracy and other activists, political opponents and dissidents, peaceful protestors and human rights defenders in Bahrain.

SUMMARY:

In 2016, Australian company iOmniscient was exposed for supplying the Bahrain Government with facial recognition technology. It is well-documented that Bahrain uses video technologies and surveillance tools to locate, identify and target peaceful protestors, human rights defenders, political opponents and pro-democracy activists. Human rights abuses at the hands of the Bahrain Government against innocent civilians are egregious and widespread. They include arbitrary arrests, enforced disappearances, torture and harassment.



MORE DETAIL:

In June 2016, London-based NGO Bahrain Watch released a report which revealed that Australian technology company iOmniscient, together with US-based company Pelco, was likely to be supplying facial recognition and video surveillance technology to the government of Bahrain.¹

The facial recognition technology developed by iOmniscient is specifically designed to identify individuals in crowds and Bahrain Watch stressed that it could be used by Bahrain to identify and target peaceful protestors, human rights defenders and political dissidents.

Shortly after the release of this report, the company's chief executive officer, Dr Rustom Kanga, confirmed in a Fairfax article that iOmniscient had projects with Bahrain's Interior Ministry to the value of 'several million dollars'. Responding to allegations of potential misuse of iOmniscient's facial recognition technology, Dr Kanga said that such concerns were unwarranted and that 'innocent citizens have nothing to worry about'.²

Investigations by journalists and civil society organisations, however, have demonstrated that the Bahraini Government has a track record of misusing such technologies to locate

“They beat me on my nose and kicked me in the stomach. I fainted twice. I was threatened that they would harm my family. The men told me ‘no one can protect you’.”

Ebtisam al-Saegh, women’s human rights defender, Bahrain.¹¹



and target peaceful protestors, activists, members of the political opposition and human rights defenders, who are then subjected to arbitrary arrest, enforced disappearances and harassment by authorities.³

Reports published by the Bahrain Centre for Human Rights (BCHR) detail systematic extra-judicial killings, suppression of peaceful protest and enforced disappearances connected with the popular movement calling for political reform and democracy in Bahrain. BCHR’s data shows that since the suppression of the pro-democratic protests in early-2011, arbitrary arrests have become common practice in Bahrain. In 2016 alone, BCHR documented 1,312 arrests on politically-motivated charges, though the real figures are likely to be higher.⁴ Arrests generally occur without court order or warrant and, at times, without allowing access to a lawyer or communication with family.

Between 1 January and 30 June 2017, BCHR recorded 982 arbitrary arrests in Bahrain. Over this period, BCHR also reported increasing instances of intimidation and reprisals against human rights defenders, journalists and active members of civil society in Bahrain. This included deaths and injuries of peaceful protestors at the hands of security forces and widespread allegations of torture.⁵

In 2017, Bahrain also ended an unofficial moratorium on the death penalty and executed three men, amidst allegations of coerced confessions and torture. A UN Special Rapporteur referred to their executions as ‘extrajudicial killings.’⁶

In September 2017, Amnesty International released a report ‘No one can protect you: Bahrain’s year of crushing dissent’, which

documented at least 169 cases of peaceful government critics or their relatives being arrested, tortured, threatened or banned from travel.⁷

In its World Report 2018, Human Rights Watch found that Bahrain’s human rights situation continued to deteriorate in 2017. This included the country’s only independent newspaper being shut down and its preeminent human rights defender remaining in prison on speech charges. Bahraini authorities also restored arrest and investigation powers to the National Security Agency, despite its record of torture and abuse.⁸

In October 2018, four Bahraini pro-democracy activists launched legal action in the UK against British spyware manufacturer Gama Group for supplying the Bahraini Government with surveillance technology. The claimants allege that Gamma Group was an accessory with the government in targeting them in retaliation for their pro-democracy campaigning.⁹

No legal or other action has been taken to date against iOmniscient in Australia. The company denies that its software is used by the Government of Bahrain to recognize or target protesters and says that it is always fully aware of how and for what purpose its technology will be used.¹⁰

“Innocent citizens have nothing to worry about”

Dr Rustom Kanga
CEO, iOmniscient, 2016



Left: Facial recognition technology can be used to identify individuals within a crowd. Credit: Alamy stock image

Top: Protestors at the funeral of Jaffer Al Durazy, 23 years old, who died on 27 February 2014 due to complications of anemia and alleged torture while he was detained on charges related to protests in Bahrain.

Credit: Alamy Stock Image

Inset: Screenshot of iOmniscient video promoting facial recognition technology – used by Bahrain Watch to confirm the use of the technology by Bahrain

Australia's obligation to protect against corporate abuses overseas

The Australian Government has a clear responsibility to do more to prevent abuses like those highlighted in this report, to ensure serious corporate wrongdoing is appropriately sanctioned and to improve pathways for communities to raise grievances and pursue justice in Australia where they cannot do so locally.

Australia has formally endorsed both the United Nations Guiding Principles on Business and Human Rights (UNGPs) and the OECD Guidelines on Multinational Enterprises (OECD Guidelines), the authoritative global standards that set out the relationship between business and human rights and the expectations of States and businesses with regard to preventing and addressing business-related human rights abuses.

Under these standards, States have an obligation to protect against human rights abuses by businesses within their territory or jurisdiction, and to 'prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication'.¹

States are also required to ensure the effectiveness of domestic judicial and non-judicial mechanisms in addressing business-related human rights abuses, and to consider ways to reduce legal, practical and other relevant barriers to justice.²

Given the global impacts of transnational corporations, human rights treaty bodies have increasingly emphasised that the UNGPs require States to take action to address corporate abuses by companies within their jurisdiction, irrespective of where those abuses occur.³

In its General Comment in 2017, the United Nations Committee on Economic, Cultural and Social Rights emphasised that States' human rights obligations 'do not stop at their territorial borders':

The past thirty years have witnessed a significant increase of activities of transnational corporations, growing investment and trade flows between countries, and the emergence of global supply chains... These developments give particular significance to the question of the extraterritorial human rights obligations of States.

... States Parties are required to take the necessary steps to prevent human rights violations abroad by corporations domiciled in their territory and/or jurisdiction (whether they are incorporated under their laws, or have their statutory seat, central administration or principal place of business on the national territory).⁴

The Committee emphasised that States have a particular duty to act 'where the remedies available to victims before the domestic courts of the State where the harm occurs are unavailable or ineffective'.⁵

Addressing the accountability gap: priority areas for reform

1. An effective corporate human rights watchdog

Australia urgently needs a strong, independent regulator with the resources and mandate to effectively investigate and report on complaints of corporate human rights abuses overseas and address grievances between Australian companies and individuals or communities who may have been harmed by their activities.

The only body currently charged with this role is the Australian (OECD) National Contact Point (ANCP), based in Treasury.⁶

The ANCP is responsible for promoting compliance with the OECD's Guidelines for Multinational Enterprises, which set out international standards of good corporate behaviour in relation to human rights, environmental practices, bribery, consumer interests and industrial relations.⁷

One of its key functions is to examine complaints against Australian companies, determine whether companies have breached the Guidelines, make recommendations and assist in resolving disputes where possible.

Unfortunately, as the case studies in this report highlight, the ANCP has a poor record in carrying out these functions. It is virtually invisible, conducts few investigations and has never found an Australian company to be in breach of the Guidelines.⁸

A 2017 Independent Review of the ANCP, commissioned by the Department of Treasury, found that “across a range of indicators...the ANCP is significantly lacking” and that it “ranked amongst the poorest performing National Contact Points internationally”.⁸ It noted that the body

lacked resources and staff with appropriate expertise in human rights or mediation skills, was slow-moving and opaque and had lost the confidence of impacted communities and businesses alike.¹⁰

The Review recommended a complete re-structure of the mechanism to address its many failings, including re-establishing it as an independent office based within the Department of Foreign Affairs and Trade, setting up an expert panel to advise it, amending its procedures and allocating a dedicated budget and staffing sufficient to enable it to properly perform its functions.¹¹

On 21 November 2018, the Department of Treasury announced a number of proposed reforms to the ANCP, including the appointment of an ‘independent examiner’ to review complaints, an advisory body to assist them, improved procedural guidance, additional resources and improved outreach.¹² The details of some of these proposals are not yet clear, but they represent a welcome start to addressing some of the ANCP's past deficiencies.

For the ANCP to become a truly effective redress mechanism, however, the Human Rights Law Centre believes that its mandate also needs to be expanded to give it the explicit authority to:

- initiate independent investigations into allegations of corporate misconduct that breaches the Guidelines and report publicly on its findings;
- recommend remedies, mitigation measures and/or reforms to company practices or policies and monitor their implementation; and

- make determinations and recommend appropriate consequences where companies fail to engage in good faith or comply with its recommendations.

The Canadian Government has recently created a business and human rights ombudsperson with powers to investigate overseas abuses that provides an excellent model for what a reformed ANCP could look like.¹³ It will have the power to undertake independent fact-finding investigations, including compelling attendance of witnesses and seeking disclosure of company documents where necessary. It will also be able to make public recommendations for remedy, including compensation, an apology, cessation of particular activities, mitigation measures or corporate policy changes.

Importantly, it will also have the ability to recommend sanctions, including the withdrawal of government services such as trade advocacy and export development support, if companies do not cooperate in its investigations.¹⁴

Australia needs a similarly robust corporate human rights regulator with the power to compel engagement by business and assist communities to achieve remedy.

RECOMMENDATION 1

Transform the ANCP into an effective corporate human rights watchdog with the power and resources to investigate alleged human rights abuses linked to Australian corporate activity abroad, report publicly on its findings and recommend remedies.

Addressing the accountability gap: priority areas for reform

2. Mandatory human rights due diligence and reporting obligations

Australia should also ensure that Australian companies take greater responsibility for assessing the potential risks of their activities and those of their overseas subsidiaries by introducing mandatory human rights due diligence and reporting obligations for large Australian companies and those operating in high-risk locations and sectors.

It is already widely accepted that Australian companies should be required to undertake due diligence on the environmental impacts of their activities within Australia and submit environmental impact assessments outlining the likely impacts of a proposed project and identifying options to minimise environmental damage.

Human rights due diligence, similarly, requires companies to “know and show” what they are doing to prevent and mitigate potential human rights violations. It requires companies to develop an ongoing process for assessing actual and potential human rights impacts arising from their activities and business relationships, to take action to mitigate those risks and to track and report publicly on the actions they are taking in response.¹⁵

Recent steps by the Australian Government to develop legislation on modern slavery requiring companies to report on the risks of forced labour in their operations are a positive first step in this direction.

The Modern Slavery Bill (Cth) 2018, which passed both Houses of Parliament on 29 November 2018, will require all Australian organisations with annual

consolidated revenue of \$AUD 100 million to report annually on what they are doing to identify and address modern slavery risks in their operations and supply chains, including those overseas. The legislation aims to both raise awareness of modern slavery risks among the Australian business community and assist investors and consumers to make more informed decisions when using, buying and selling goods and services.¹⁶

However the legislation currently only requires companies to report on their existing approach to addressing these issues, not to adhere to any minimum standard or take any additional action to prevent abuses where risks are identified. Another major weakness of the legislation is that it currently contains no financial or other penalties for companies that fail to report or provide false or misleading information.¹⁷

A stronger model which already imposes due diligence requirements on Australian companies is Australia’s legislation for preventing the importation of illegally logged timber.¹⁸ Australian importers and processors of timber are required to investigate the source of the timber they are buying, identify and assess the risk that it was illegally logged against set criteria, and mitigate those risks by requesting further information from suppliers. A failure to comply with these steps incurs fines or, in certain cases, even jail time.

The Government should adopt a similarly rigorous approach to combating serious human rights violations in the operations and supply chains of Australian companies and mandate due diligence in

relation to all internationally recognized human rights, including but not limited to modern slavery. This requirement should apply principally to large Australian companies, or small and medium-sized companies at particular risk of causing adverse human rights impacts, for example because they operate in conflict zones or high risk sectors or countries.

RECOMMENDATION 2

Introduce mandatory human rights due diligence and reporting obligations for large Australian companies and those operating in high-risk locations and sectors.

3. A civil remedy for human rights and environmental violations

Extraterritorial claims through the Australian courts for human rights abuses are currently only possible in a limited number of circumstances and, as the case studies in this report show, face enormous practical, legal and procedural hurdles. The Manus Island class action discussed in this report is one of the very few examples of such claims in Australia to have resulted in compensation for those affected.

Unlike some other countries, Australia has no specific civil cause of action that permits affected communities to directly pursue Australian companies for human rights violations. Claims are generally brought on the basis of common law tort provisions, usually negligence, and due to the high cost of bringing such claims are often only viable where there is a large class of persons who have suffered injury or damage as a result of a company's actions.

Corporate defendants are often able to escape liability for claims on the basis of technical legal arguments. In particular, the principle of limited liability means parent companies can often avoid legal liability for the actions of their overseas subsidiaries, even where they wholly own and control those subsidiaries and derive enormous benefit from their activities.¹⁹ It is often extremely difficult for communities, without access to information about the internal workings of large corporate groups, to demonstrate that the parent company in Australia had sufficient knowledge or control over their subsidiary's operations to establish liability.

Companies also often dispute claims on the basis that the case should be heard

in the country where the harm occurred, even where it is clearly apparent that the plaintiffs will not be able to access justice there. Rio Tinto, for instance, relied on such arguments in the *Sarei* case regarding its alleged abuses on Bougainville, to argue the case against them should have been brought in PNG.²⁰

To enable more effective redress for communities impacted by business-related human rights abuses abroad, a number of other countries have enacted or are considering legislation introducing a specific legislative civil cause of action for communities harmed by such abuses.

The French Government has recently passed a “corporate duty of vigilance law” which establishes a legally binding obligation on very large French companies to identify and prevent adverse human rights and environmental impacts resulting from their own activities, from activities of companies they control and from activities of their subcontractors and suppliers with whom they have an established business relationship.²¹ The law permits communities who have suffered damage where such rights have been violated to sue the parent company directly for damages. The company has a defence to such a claim, however, if it can demonstrate that it undertook thorough human rights due diligence in relation to its subsidiary's activities.²²

The law not only assists impacted communities to overcome some of the current hurdles they face in achieving justice and remedy, it also incentivizes good corporate conduct by giving companies a strong inducement to undertake thorough due diligence on

their overseas operations, rather than setting up structures that deliberately shield the parent company from knowledge and consequent liability.

Australia should introduce similar legislative reforms to improve access to justice for communities impacted by the activities of Australian companies overseas.

RECOMMENDATION 3

Create a statutory cause of action for serious human rights or environmental violations committed by Australian companies and subsidiary companies they control.

Addressing the accountability gap: priority areas for reform

4. Enforcement of existing criminal sanctions

A number of the case studies in this report raise serious questions about whether Australian multinationals involved in criminal behaviour overseas are above the law.

The failure of Australian authorities to seriously investigate Anvil or Rio Tinto's role in military operations that involved gross atrocities against civilian populations, or to prosecute detention centre contractors or their employees known to have been involved in homicide and other serious acts of violence against refugee populations in their care are particularly stark examples of corporate impunity which call into question the adequacy of Australia's current framework for addressing transnational corporate crimes and its political will to do so.

In principle at least, Australian law already permits prosecution of some serious human rights violations committed by Australian companies overseas. The Criminal Code 1995 (Cth) (Criminal Code) contains a number of offences that apply extraterritorially, including genocide, war crimes, crimes against humanity, slavery, forced labour and people trafficking and which apply to both natural persons and corporations.²³

To date, however, no Australian company has ever been prosecuted under these provisions.²⁴

This is likely to be due at least in part to the complexity of establishing corporate culpability under the Criminal Code, particularly in the context of multinational enterprises. The Code does

not expressly regulate the transmission of criminal responsibility between entities within international corporate groups, meaning there are very few situations in which an Australian holding or parent company will be criminally responsible for offences by an overseas subsidiary.²⁵

Prosecution of "international crimes" under the Code also requires sign-off by the Attorney-General before a prosecution can proceed,²⁶ adding an additional political hurdle to prosecutions that may be highly significant – particularly in situations like Australia's offshore detention centres, where the Australian Government may itself be complicit or wish to avoid external scrutiny.

In the context of foreign bribery offences, after an inquiry into a similarly abysmal prosecution record,²⁷ the Australian Government has recently proposed reforms to encourage investigations and remove some of the obstacles to successful prosecutions under the Criminal Code. In particular, it has proposed a new "failure to prevent" offence which makes a company strictly liable for bribery of foreign officials conducted by its associates for the profit or gain of the company.²⁸ The company has a defence if it can prove that it had adequate procedures in place designed to prevent the conduct.

The Government should consider introducing a similar offence for other gross human rights violations under the Code.²⁹ As with the bribery offence, a defence could be included where a company can demonstrate that it has undertaken appropriate human rights

due diligence and put in place mitigation measures to prevent abuses.

The Government should also remove the requirement under s 268.121 for the Attorney-General to authorise prospective prosecutions and ensure that the Australian Federal Police and Commonwealth Director of Public Prosecutions (CDPP) have the resources and mandate to pursue investigations.

RECOMMENDATION 4

Remove obstacles to the effective investigation and prosecution of corporate human rights violations under the Commonwealth Criminal Code and ensure that companies involved in serious criminal wrongdoing overseas are prosecuted in Australia.

5. An end to offshore processing

Some of the most serious human rights abuses by Australian businesses have occurred and are continuing to occur in Australia's offshore detention camps on Manus Island and Nauru.

This report has highlighted the involvement of private contractors and their employees in gross human rights abuses within this controversial detention regime. But the very nature of the offshore detention regime – characterized by detaining people arbitrarily and indefinitely in conditions designed to inflict misery and suffering – is inherently abusive. As this report goes to print, the situation on Nauru has reached a crisis point, with large numbers of children now so ill and suicidal that the Government is finally conceding they may need to be moved to Australia for treatment.³⁰

Any business involved in running these centres will, inevitably, be complicit in fundamental human rights violations.

The Australian Government has the power to end these abuses tomorrow by closing its offshore processing camps and bringing the men, women and children held there to safety in Australia and it should do so as a matter of urgent priority.

RECOMMENDATION 5

End the mandatory offshore processing of asylum seekers on Nauru and Manus Island and bring the men, women and children held there to safety in Australia.

6. A National Action Plan on Business and Human Rights

Australia's approach to implementing its obligations to protect against corporate abuses is currently ad hoc and inadequate. In order to protect communities from harm, Australia should take steps to much more comprehensively translate its commitments under the UN Guiding Principles into domestic law and policy.

The primary way in which governments elsewhere are driving and guiding implementations of the UNGPs is through the development of National Action Plans on Business & Human Rights (NAPs).³¹ Over forty other countries including the US, UK, Japan and Indonesia have now developed or are developing National Action Plans on Business & Human Rights setting out concrete, coordinated steps to implement the UN Guiding Principles and prevent human rights abuses by business.³²

A National Action Plan would set a clear policy agenda for reforms to encourage good corporate conduct and protect against abuses overseas and within Australia. It would identify, prioritise and monitor the Government's regulatory and policy action on business & human rights and establish a process for responding to emerging needs in this area.

In 2017, the Australian Foreign Minister appointed a Multi-stakeholder Group from business, civil society and academia to advise it on implementation of the UNGPs. The Group recommended unanimously that Australia should develop a NAP and set out suggested priority areas for reform, many of which overlap with the recommendations in this report.³³

Australia should immediately proceed with this recommendation and set a clear agenda for legislative and policy reform in this area.

RECOMMENDATION 6

Develop a National Action Plan on Business and Human Rights to implement Australia's obligations under the UN Guiding Principles on Business and Human Rights.

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Endnotes

Papua New Guinea: Paga Hill Development Company (PHDC) and Curtain Bros' involvement in forced evictions

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