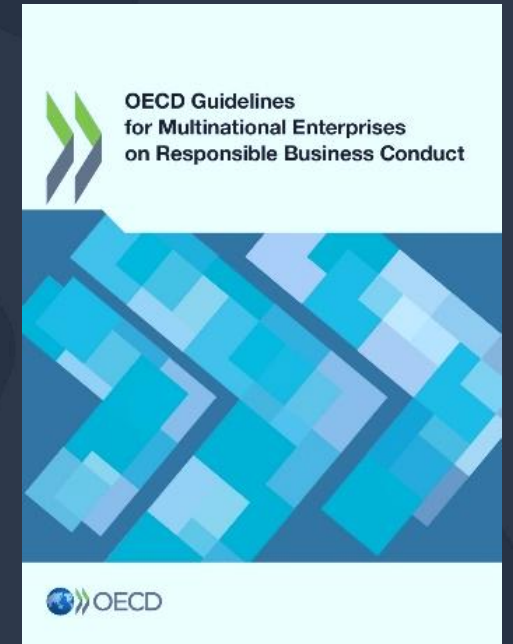


# OECD Guidelines and Indigenous Rights

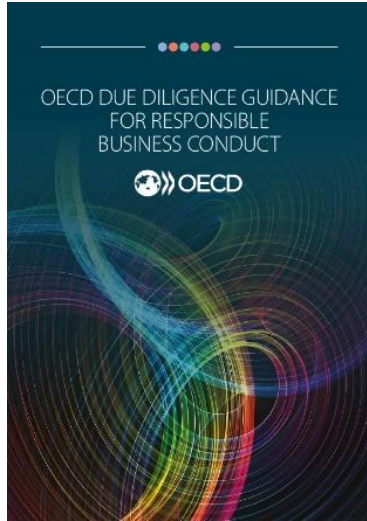
*Diplomacy Training Program and AusNCP webinar  
“Free, Prior and Informed Consent, Indigenous Rights  
and the OECD Guidelines”*

**Wednesday, 29 October 2025**

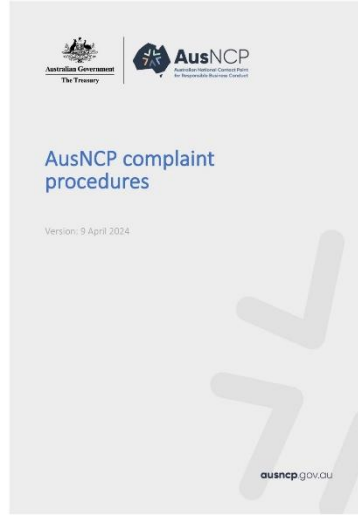
AusNCP Independent Examiner John Southalan



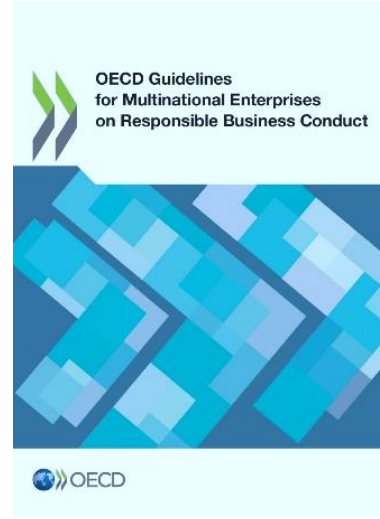
# Key documents – general



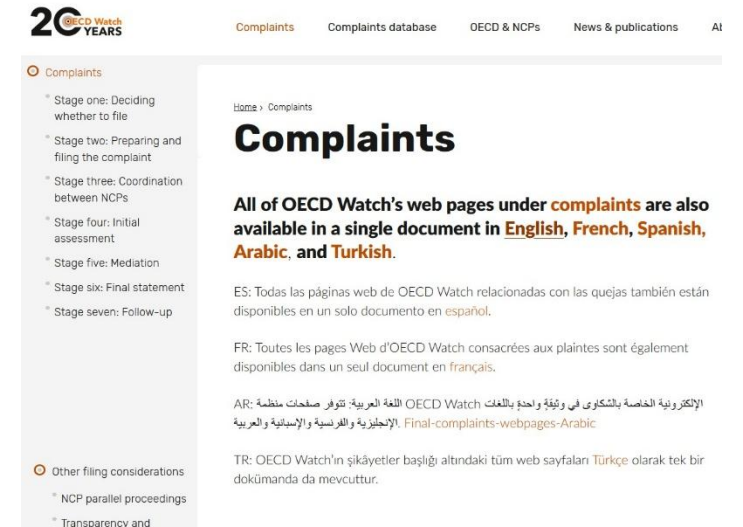
OECD's [\[general\] due diligence guide](#) (2018)



AusNCP [complaint procedures](#) (2024)

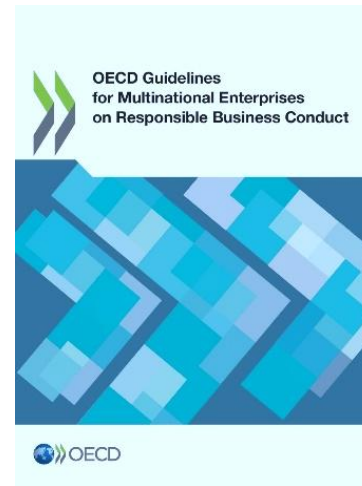
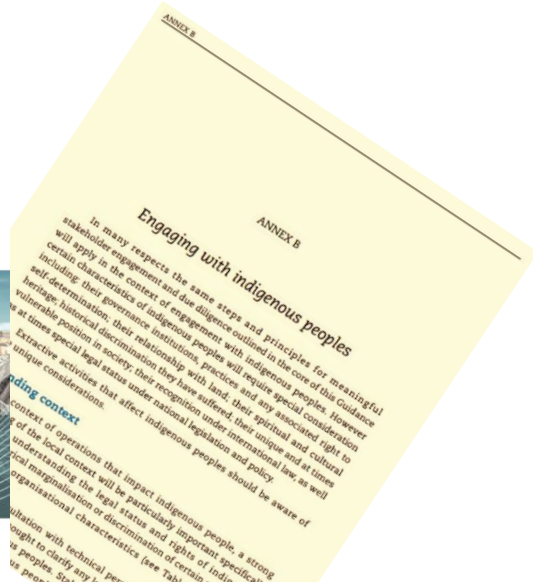
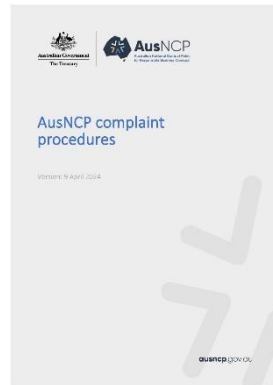
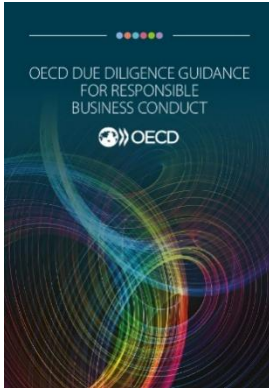


[Guidelines](#) (2023)

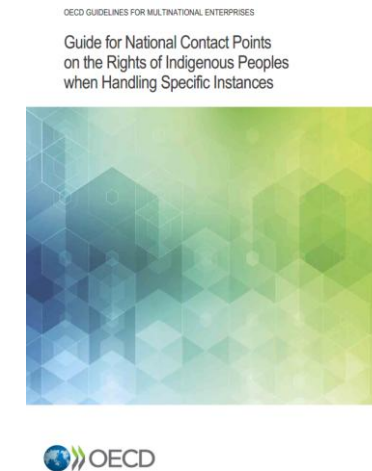


OECD Watch (NGO)  
[Complaints guide](#) (2024)

# Key documents – Indigenous rights / issues



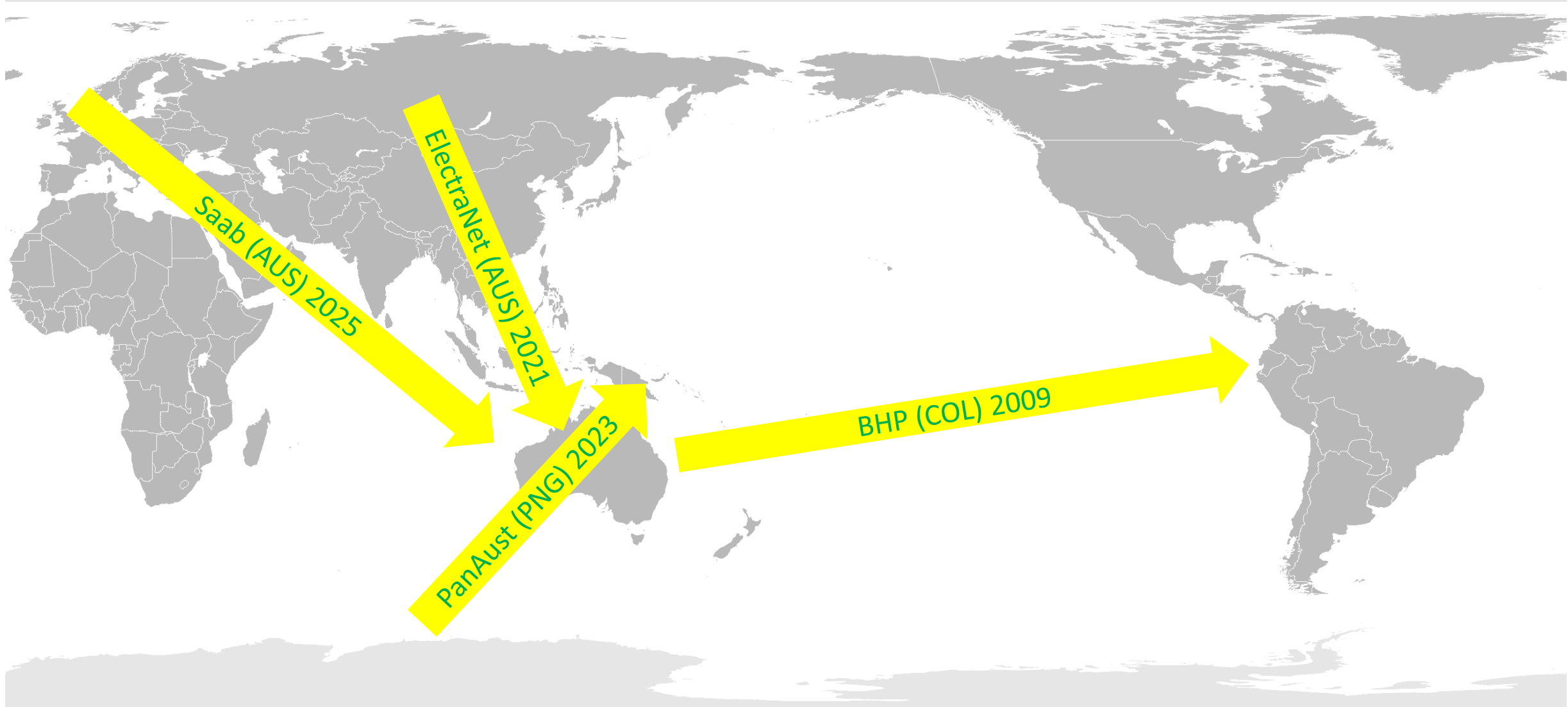
Guidelines (2023)



OECD's NCP guide re Indigenous complaints (2022)

OECD's (2017) extractives DD guide Annex B - Indigenous

# Key AusNCP cases – Indigenous issues / people



# BHP (COL) 2009

- 2007 NCP complaints:
  - by Colombian parties & communities, through an Australian lawyer
  - to the AusNCP (concerning BHP Billiton), and the Swiss NCP (regarding Glencore), about the Cerrejón mine (in Colombia)
  - concerns around population resettlement, inadequate compensation, environment and health impacts
- Independent review of mine effects commenced
- External mediation
- Agreement (incl. contributions of \$1.8M plus \$1.3M for sustainable projects)
- AusNCP statement (attaching review and agreement) [in June 2009](#)

# ElectraNet (AUS) 2021

- Complaint by two Indigenous men (through Australian lawyers):
  - about impacts on sites from electrical infrastructure construction
  - conducted by Australian company with Chinese ownership
- No good offices, so the AusNCP examined ([Final Statement June 2021](#))
  - **Relevant standards include UNDRIP** [para 28 of final statement]
  - **Compliance with domestic law not necessarily = consistent with Guidelines** [30]
  - Existing agreement between the company and the relevant Indigenous corporation(s) for most sites, which were therefore not examined. The relevant Indigenous corporation(s) investigated impacts in areas it had authority for, and raised no concerns [37]-[38]
  - For one site – outside of Indigenous group agreement areas – **the company was unable to substantiate that its conduct (e.g. sufficient due diligence)** accorded with the Guidelines, as it did not participate in good offices through the AusNCP, nor cooperate with a legitimate remediation mechanism, which was also inconsistent with the Guidelines [54]

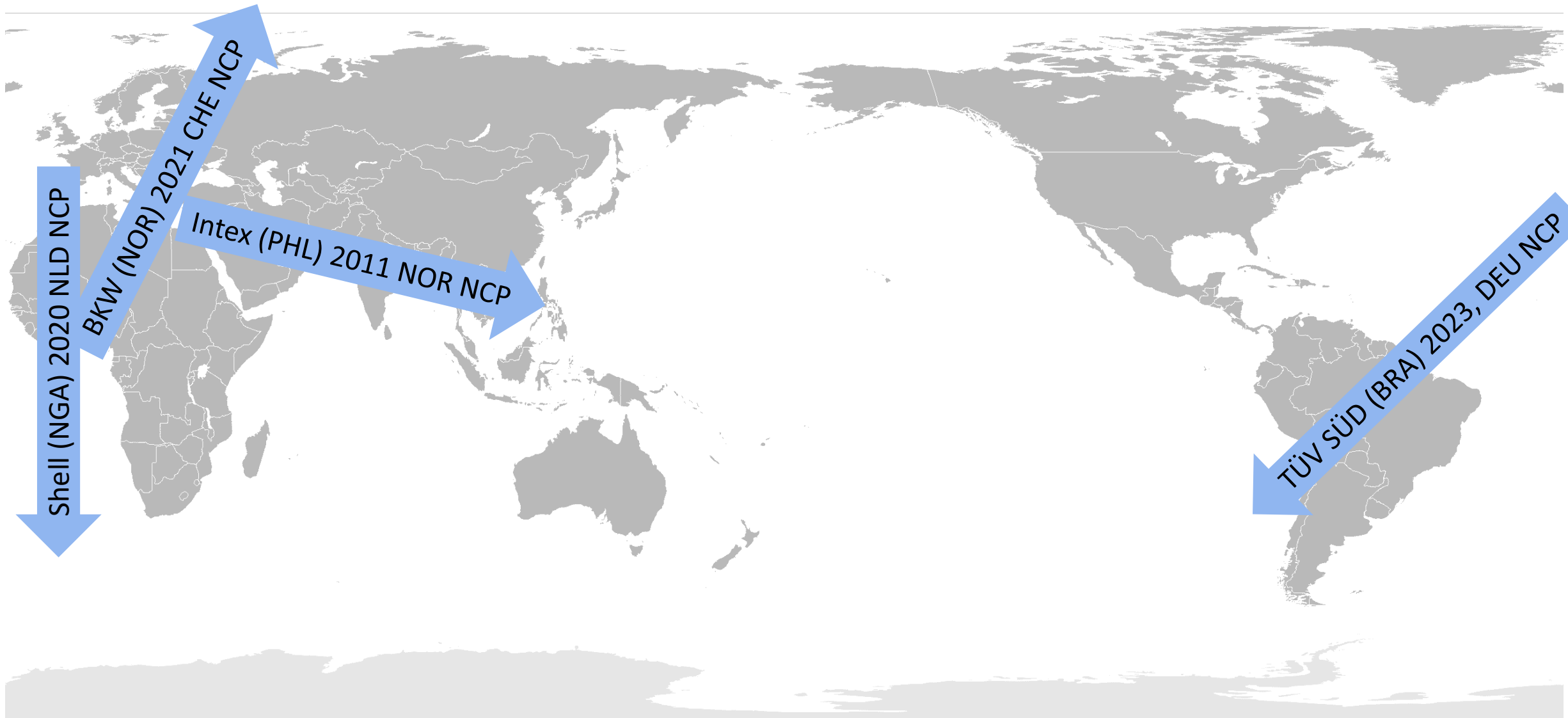
# PanAust (PNG) 2023

- Complaint by Papua New Guinea and Australian NGOs:
  - representing Indigenous PNG communities affected by mine / dam / energy proposal
  - regarding PanAust Limited (Australian company) and the actions of its PNG subsidiary
- No good offices, so the AusNCP examined ([Final Statement Oct 2023](#))
  - Free, Prior and Informed Consent (FPIC) is **required for significant impacts** [77]-[89]; FPIC **cannot be mitigated by compensation** [99]; and processes and engagement continuing in PNG, including for FPIC, so the AusNCP could not conclusively determine some matters [3.1]
  - FPIC is needed for some proposals [91], but there was insufficient information to determine whether FPIC was needed from the complainants or communities they represented [91.2]
  - **Public interest priority (securing broader human rights)** – State can proceed without FPIC, but a **company cannot proceed if FPIC required** [84]
  - Most of company's actions were not inconsistent with Guidelines [3], but the AusNCP recommended that PanAust Limited disseminate its analysis of a potential dam failure [73]
- **Currently in a follow up process** (about implementation of recommendations)

# Saab (AUS) 2025

- Complaint by Australian Indigenous parties:
  - regarding debris from a fired missile (from weapons testing) near Indigenous heritage sites
  - equipment made by Saab (Sweden), sold to Australian military, likely supplied and used in the 1990s
- Parties discussed in ‘good offices’, but no agreement, so the AusNCP examined ([Final Statement October 2025](#))
  - Found the presence of the missile debris (until its recovery) impacted human rights [63]-[64]
  - Prior to 2011, Saab’s conduct was consistent with the Guidelines [70]-[71]
  - From 2011 onwards, Saab should have undertaken sufficient human rights due diligence, rather than relying only on a government’s export licensing and approval processes [72]-[88]
  - Saab **did not cause / contribute** to the human rights impacts [125] – **was only directly linked to them** as the missile supplier [126], and this required Saab to **influence those causing the impacts to leverage their prevention, mitigation or remediation** [127]-[134]

# Some other NCP cases re Indigenous issues / people



# Intex (PHL) 2011 NOR NCP

- 2009 complaint by Norwegian NGO working with Philippines & UK NGOs:
  - regarding proposals for a Nickel mine in the Philippines, controlled by Intex (Norwegian company)
  - concerns raised about Indigenous consultations, bribery and environmental impacts
  - Norwegian NCP arranged for independent fact-finding in the Philippines
- No agreement, so the Norwegian NCP assessed and issued a [Final Statement in November 2011](#)
  - Company failed in ‘adequate and timely communication and consultation’ with the affected communities on environmental risks
  - No evidence of bribery
  - **Inconsistent with Guidelines to consult/agree, with only some Indigenous groups and not everyone impacted** by the proposals [28]-[29]

# Shell (NGA) 2020 NLD NCP

- 2018 complaint to the Dutch NCP:
  - by Nigerian community group, regarding impacts from a 1998 gas fire eruption
  - eruption was in operations of Shell subsidiary
  - impacts on local communities and land
  - 2018 Dutch NCP recommended community first use the company's grievance mechanism
  - No resolution reached, so the Dutch NCP then offered good offices, but company declined
- The Dutch NCP issued a [Final Statement in February 2020](#)
  - subsidiary failed to demonstrate a grievance mechanism consistent with the Guidelines, and should provide more transparency [8]
  - Shell was recommended to **use its leverage to ensure subsidiary's 'full compliance with the ...Guidelines and UNGPs'** [p8]

# BKW (NOR) 2021 CHE NCP

- 2020 complaint to the Swiss NCP:
  - by German NGO, regarding Swiss company (minority shareholder in construction of Norwegian wind power plant)
  - concerns about due diligence to prevent and mitigate possible impacts, including consultation around FPIC with an Indigenous community
- Parties negotiated and the agreement was summarised in the [August 2021 NCP Final Statement](#)
  - company to **revise** its Code of Conduct and integrate the respect of human rights, as well as **‘FPIC concerning vulnerable groups’**
  - also **demand similar commitment from its business partners**
  - also reflect its **human rights standards in contracts with business partners** [3]

# TÜV SÜD (BRA) 2023, DEU NCP

- 2020 complaint to the German NCP:
  - by a German NGO, arising from the 2019 collapse of the Brumadinho dam (in Brazil), which impacted nearby Indigenous populations
  - regarding TÜV SÜD – a Germany company, where related company provided stability declarations before the dam’s collapse
- NCP ‘good offices’, parties agreed, and the NCP issued a [Final Statement in July 2023](#)
  - terms of agreement confidential
  - includes ‘declarations of intent aimed at strengthening the rights of indigenous peoples in business contexts, at TÜV SÜD and at suppliers and clients of TÜV SÜD’ [10]

# Other factors – NCP cases & statements

- Indigenous group (or representatives) sometimes **withdraw from the NCP process**
  - Sometimes, the NCP continues & makes recommendations to company (eg. [EDF 2020 French NCP](#); [Glencore 2022 Swiss NCP](#))
  - Sometimes, the NCP ends process with no examination of events or company's actions (eg. [BHP AusNCP 2023](#))
- The Guidelines do not resolve all Indigenous-company differences
  - **FPIC is not expressly mentioned in the Guidelines – human rights due diligence however is** (and this process may prompt a company to realise that the consent of Indigenous communities, who will be significantly affected by its activities, may need to be sought)

# Key takeaways

- **It is understood and accepted that the Guidelines' expectations** for multinational enterprises respecting rights and conducting due diligence should **include Indigenous rights (UN Declaration on the Rights of Indigenous Peoples and FPIC)**
- **Companies should engage with Indigenous parties** affected by their proposals / actions: OECD's *'Engaging with Indigenous people'* annex in 2017 DD Guide useful
- If Indigenous parties have concerns, **engage first with the company in question**
- If a company is **inconsistent with the Guidelines, an NCP complaint may consider:**
  - a company's policies
  - remediation for impacts that a company caused / contributed to
  - a company's use of leverage/influence on parties responsible for identified human rights impacts
- If considering a complaint: review and plan with OECD Watch guide re complaints