

Ministry of Economic Development

National Contact Point for the OECD Guidelines

Specific instance submitted to the Italian NCP on the 15th December 2017 by Chima Williams & Associates (CWA) and Advocates for Community Alternatives (ACA), on behalf of Egbema Voice of Freedom, versus ENI S.p.A. and ENI International BV

REPORT ON THE AGREEMENT BY THE PARTIES

1. This document is the Report on the agreement of the 8th July 2019 signed by the Parties of the specific instance: Chima Williams & Associates (CWA) and Advocates for Community Alternatives (ACA), on behalf of Egbema Voice of Freedom and ENI S.p.A. and ENI International BV.
2. The agreement is the outcome of the good offices offered to the Parties by the Italian National Contact Point (hereinafter also the "NCP") in the framework of the OECD Guidelines for Multinational Enterprises (hereinafter also the "Guidelines").

Issues of the specific instance

3. The specific instance was submitted to the Italian NCP on the 15th December 2017.
4. The Complainants alleged that ENI acted in breach of the following recommendations of the Guidelines:
 - Chapter II, General Policies (A1; A2; A11);
 - Chapter IV, Human Rights, 1; 2; 3; 4; 6);
 - Chapter VI, Environment (3; 5).
5. ENI S.p.A. was informed of the complaint and it presented its written reply on the 2nd February 2018. The Complainants on the 26th February 2018 and ENI S.p.A. on the 19th March 2018 presented their respective counter-replies.
6. The Complaints denounced the negative impact of locations 11, 18 and 20 of the Mgbede oil fields, in Nigeria, that are operated by NAOC, the ENI's wholly owned subsidiary in Nigeria, since the early 1970s, when NAOC built a 40,000 ft² earthen embankment at each of these three locations, to support wellheads, and it also constructed access roads to connect these locations. According to the Complainants, these constructions constituted a complete blockage to the natural streams that used to flow through the land where the locations were built, while no adequate drainage channel were in place. As a result, the streams backed up and flooded large swathes of Aggah's farmlands and residential areas each year, typically during the rainy season.
7. The Company replied that NAOC had provided adequate culverts along the access roads, to allow free passage of water in the locations and that the access roads in question were not obstructing the flow of water nor causing over-flooding in the area. According to the Company the terrain of the area in question was low-lying, marshy, muddy and prone to all seasonal flooding, therefore, with or without NAOC's facilities, the Aggah community would have continually suffered over-floods. The Company argued that there was no link between NAOC's

operations and the poverty level in the community. On the contrary, NAOC had implemented numerous community development infrastructure projects and economic development programs in its host communities, including the Aggah community.

8. Given the incorporation of ENI International BV and ENI Oil Holdings BV, this specific instance has also being brought before the Dutch NCP. The two concerned NCPs, after consulting with each other on 22nd December 2017, agreed that the Italian NCP would have taken the lead and that it would have dealt with the case vis-à-vis ENI S.p.A.. The Dutch NCP was updated during the process.

Positive initial assessment - offer of good offices - acceptance

9. As part of the specific instance's procedure¹, the NCP carried out the initial assessment, to determine whether the issue raised in the specific instance merited further examination, namely whether the issue raised was *bona fide* and relevant to the implementation of the Guidelines on the basis of the criteria set forth in the Guidelines²:
10. By letter of 26th July 2018 the NCP communicated to the Parties that it had concluded that the issue raised merited further examination and that the Initial Assessment would not have been published since it considered that this approach could facilitate the achievement of an agreement.

Assistance to the Parties

11. In the aforesaid letter, dated July 26, 2018 the NCP offered its good offices to the Parties and submitted the Terms of Reference (ToR) of the conciliation procedure, to be subscribed in case of acceptance.
12. All the Parties accepted the offer of good offices and subscribed the ToR.
13. By letter of 5th September 2018, the NCP convened the first meeting of the conciliation between the Parties and, by letter of 25th September 2018, it proposed Prof. Tullio Treves as a third party Conciliator. On the 26th September 2018 at the premises of the Ministry of the Economic Development, in Rome, the first meeting between the Parties and the Conciliator took place. On that occasion the Parties communicated that they accepted Prof. Treves as Conciliator and clarified their expectations from the conciliation procedure. The Conciliator illustrated the procedures it would follow. Afterwards, in the same meeting, the Conciliator held a bilateral discussion with each of the two parties and outlined the following steps of the Conciliation procedure.
14. The deadline for concluding the Conciliation had been set for 26th March 2019, but, upon proposal of the Conciliator, the NCP, by letter of 5th April 2019, granted an extension until the 26th July 2019 to conclude the procedure.

1 The Italian NCP procedure is available at https://pcnitalia.mise.gov.it/attachments/article/2035924/Handbook%20procedures%20instances%20EN_2019.pdf

² Part II, *Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises*, § 25. The criteria are the following:

1. the identity of the party concerned and its interest in the matter;
2. whether the issue is material and substantiated;
3. whether there seems to be a link between the enterprise's activities and the issue raised in the specific instance;
4. the relevance of applicable law and procedures, including court rulings;
5. how similar issues have been, or are being, treated in other domestic or international proceedings;
6. whether the consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines.

15. The procedure had a positive outcome, the Parties agreed on the Terms of Settlement of the case proposed by the Conciliator and they signed them by the 8th July 2019.
16. By letter of the 30th July 2019, the NCP consulted the Parties on how and to what extent the contents of the Terms of Settlement should be published and the Parties agreed that they should be published on the NCP website in their integral version.
17. Therefore, the NCP published the text of the Terms of Settlement on its website.³
18. The Parties did not agree to seek the assistance of the NCP in the follow-up phase of the implementation of the agreement, therefore the NCP will not provide such assistance.
19. Nevertheless, the NCP will have the possibility to ask the Parties for information on the steps taken and the results achieved in the implementation of the agreement, and to publish this piece of information on its website.⁴
20. The NCP congratulates the Parties and the Conciliator for the agreement reached on the case and it hopes that the Parties will cooperate in good faith and with the utmost commitment for its implementation.

THE HEAD OF THE NCP SECRETARIAT

Maria Benedetta Francesconi

³ <https://pcnitalia.mise.gov.it/attachments/article/2035928/ACA%20v.%20ENI%20ToS%20DEF.pdf>

⁴ *Handbook for the management of the specific instances submitted to the Italian National Contact Point*, p, 17
(https://pcnitalia.mise.gov.it/attachments/article/2035876/Handbook%20procedures%20instances%20ENI_2019.pdf)