



## Initial Assessment of the Complaint under the OECD Guidelines concerning Natural Gas Facilities in Nigeria

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### **1. Introduction**

The OECD Guidelines for Multinational Enterprises (hereinafter “the Guidelines”) are a set of voluntary and non-binding recommendations aimed at minimizing adverse impacts from the activities of multinational enterprises and strengthening their responsible business conduct.

The government of the Republic of Korea (ROK) established and is operating the Korean National Contact Point (hereinafter “the KNCP”) to promote the Guidelines and to handle specific instances regarding the activities of multinational enterprises which are based or operating in the ROK.

The KNCP offers good offices for parties to resolve issues raised in specific instances in accordance with the Implementation Procedures of the Guidelines. These procedures are to be used only upon agreement of the parties and their commitment to participate in good faith during the procedures.

The decision made by multinational enterprises to participate in the good offices procedure does not necessarily mean that they have conducted any activities that are not in accordance with the Guidelines. Furthermore, the KNCP shall not advise any party involved in the

procedure to concede or reserve their legal rights, or coerce them to violate any laws.

## **2. Progress of the Complaint**

On 30 December 2020, the KNCP received a complaint from Olephiri Franklin Igoma of the Aminigboko Community, Nigeria (hereinafter referred to the "complainant") against Daewoo Engineering & Construction Co., Ltd. and Daewoo Nigeria Limited (hereinafter collectively referred to as the "respondent").

On 25 February 2021, the respondent submitted its initial response to the KNCP and on 6 April 2021, the complainant submitted additional comments to the NCP. The respondent then submitted an additional response to the NCP on 26 April 2021. The complainant submitted additional comments and materials to the KNCP on 4 May 2021 and 10 May 2021 respectively.

## **3. Details of the Complaint**

- The respondent declined to engage and negotiate with the land owner, Olephiri Franklin Igoma. (Chapter II, paragraphs A.3, 7, 14)
- The respondent declined to sign the FTO/CTS (Freedom to Operate - Community Trust and Support Agreement for Contractor Entry) (hereinafter referred to as "CTS") regarding Enwhe East/West. (Chapter I, paragraph 4 and Chapter II, paragraphs A.14, A.15)
- The respondent declined to approve a Community Affairs and Security (CAS) representative recommended by the Akiro family, a Public Relations Officer (PRO), and a Community Liaison Officer (CLO). (Chapter II, paragraphs A.1, A.2, A.6, A.7, A.10, A.11, A.14, A.15)
- The respondent forcefully entered into the land of the Akiro and Ogbolo Families with military protection and without the consent of the community. (Chapter II, paragraphs A.14, A.15 and Chapter IV, paragraphs 1, 3, 4)

- The respondent declined to contribute towards developing the skills (capacity building) of the local community. (Chapter II, paragraph A.4, Chapter V, paragraph 5)
- The respondent discharged effluent chemical content which has yet to be ascertained from the Fabrication Yard into the neighborhood, causing environmental pollution. (Chapter VI, paragraphs 2.b), 4)
- The respondent excavated a massive borrow pit at the Fabrication Yard and declined to disclose the chemical content of the pit and its impact on the groundwater. (Chapter III, paragraph 4 and Chapter VI, paragraph 2.b))
- The respondent operated without conducting an environmental impact assessment. (Chapter VI, paragraphs 1.a), b))

#### **4. Position of the Respondent**

- As matters concerning the community are the responsibility of the project owner, the respondent entered into consultations with the land owner under the direction and supervision of the project owner.
- The complainant has no connection with the land owner or is embroiled in a land title dispute.
- The respondent has signed the CTS agreement with the Community Trust (CT), which was established by both the project owner and the community, and lawfully carried out relevant activities in accordance with local employment standards.
- The respondent employed the Nigerian military-police joint task force to protect and secure its employees against local militants.
- Given that the complainant is not a member of the CT nor the chief of the Akiro family, its

claims are not substantiated.

- With regard to capacity building, the respondent is duly implementing the capacity building project of the Nigerian Content Development and Monitoring Board (NCDMB). The respondent regularly submits its implementation reports to the project owner which in turn provides such reports to the NCDMB, contributing to the development of the community.
- The drainage that the complainant has raised concerns about is not waste water but rainwater discharged through public pipelines from rain pits which collect rainwater during the monsoon. The discharged rainwater is analyzed on a regular basis and the locations of rain pits and the analysis outcomes are available in relevant reports.
- An environmental impact assessment (EIA) is the responsibility of the project owner. The final report on the project was submitted to the Nigerian Ministry of Environment in December 2018 and temporary facilities for the contractor are not subject to an EIA.

## **5. Assessment of Factors**

In compliance with the Procedural Guidance in the Guidelines, the NCP conducts an initial assessment once a specific instance is received. The initial assessment is the process to determine whether the issue raised is bona fide and relevant to the implementation of the Guidelines. In making an initial assessment the following six factors are taken into account.

- . The identity of the party concerned and its interest in the matter
- . Whether the issue is material and substantiated
- . Whether there seems to be a link between the enterprise's activities and the issue raised in the specific instance
- . The relevance of applicable law and procedures, including court rulings
- . How similar issues have been, or are being, treated in other domestic or international proceedings
- . Whether the consideration of the specific issue would contribute to the purposes and

effectiveness of the Guidelines

Accordingly, the KNCP considered these factors based on the documents submitted by the parties.

1. The identity of the party concerned and its interest in the matter

The complainant is Olephiri Franklin Igoma from the Igoma family in the Aminigboko community, who claims to represent the Council of Chiefs and Elders and the Community Development Committee as well as the sub-base site where the field office of Daewoo Engineering & Construction is located.

According to the materials submitted, NCP is unable to judge whether the complainant has the right to represent the community as a litigation is currently pending in Nigerian courts on the power of representation in the region concerned.

The respondent, Daewoo Engineering & Construction, is a Korea-based construction company which has established Daewoo Nigeria Limited in Nigeria. The respondent constitutes a concerned party as it signed a contract with the Shell Petroleum Development Company of Nigeria Limited (hereinafter referred to as "SPDC") in 2018 and has since constructed natural gas production facilities for the SPDC and conducted relevant projects.

2. Whether the issue is material and substantiated

The issues raised by the complainant concern the rights and environment of indigenous peoples residing in areas for natural gas development projects in Nigeria, particularly the application of the Guidelines: General Policies (Chapter II), Human Rights (Chapter IV), Employment and Industrial Relations (Chapter V) and Environment (Chapter VI).

Given that the issues raised in the complaint, including the right of representation claimed by the complainant, are currently pending in Nigerian courts, the NCP is unable to judge

whether those issues have been substantiated.

3. Whether there seems to be a link between the enterprise's activities and the issue raised in the specific instance

The respondent, Daewoo Engineering & Construction, signed a contract with the SPDC via Daewoo Nigeria Limited in 2018. Since then, the respondent has constructed natural gas production facilities in the Enwhe East and Enwhe West areas within the Abua/Odual local government jurisdictions and conducted relevant projects.

The Igoma family in the Aminigboko Community in which the complainant is based asserts a claim over the sub-base site where the field office of Daewoo Engineering & Construction is located and another site in the Enwhe West area within the project owner's package. Therefore, the issues raised seem to be linked to the business activities of the respondent.

However, local issues arising from activities between the project owner (SPDC) and the community, the signing of the Global Memorandum of Understanding (GMOU) on indigenous peoples' rights, the CTS agreement as well as an environmental impact assessment, etc. fall within the scope of responsibility and authority of the project owner. As such, the respondent does not seem to be in a position to exert its influence on the relevant matters.

4. The relevance of applicable law and procedures, including court rulings

A litigation is currently pending in Nigerian courts on the power of representation of the community.

5. How similar issues have been, or are being, treated in other domestic or international proceedings

On 16 May 2019, the Aminigboko community submitted to the Dutch NCP a complaint against the Shell Petroleum Development Company of Nigeria Limited (SPDC), based in Nigeria, and Shell

Headquarters, based in the Netherlands. On 3 June 2021, the Dutch NCP conducted an initial assessment and decided to offer good offices to the parties but the respondent declined to participate in the good offices procedure.

6. Whether the consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines

The role of NCPs is to provide a venue for discussions and help parties concerned reach amicable solutions. However, given that a litigation is currently pending in Nigerian courts on the power of representation of the community, the NCP is unable to judge whether the respondent has consulted with those in authority.

According to the materials submitted, the SPDC, which is authorized to make decisions on the issues raised in the complaint, has declined to participate in the Dutch NCP's good offices procedure and the respondent does not seem to be in a position to exert its influence on the matters concerned. Furthermore, the respondent stated that it has established and implemented capacity building and environmental policies including compensation and employment of local residents through consultations with representatives of the community, and is committed to continuing consultations with the community in accordance with court rulings and the project owner's good offices. As such, further consideration of the complaint would not contribute to the purposes and effectiveness of the Guidelines for Multinational Enterprises.

## **6. Conclusion**

Based on the materials submitted by both parties, the KNCP concludes that the issues raised by the complainant do not merit further consideration including additional investigation or mediation. However, the respondent is recommended to provide explanations on the issues raised by the complainant in good faith. The KNCP hereby terminates the complaint.

28 September 2021  
Korean National Contact Point