

Initial assessment by the UK National Contact Point for the OECD Guidelines for Multinational Enterprises: complaint from Bahrain Institute for Rights and Democracy (BIRD) against HPower Group Limited (HPG), Company A and Company B

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Summary of the UK NCP decision

- The UK National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises (the Guidelines) has decided the following in the complaint from Bahrain Institute for Rights and Democracy (BIRD) against HPower Group Limited (HPG), Company A and Company B:
 - The claim that the companies caused and contributed to abuses of human rights is not substantiated. Unless new information emerges, the NCP will not examine this claim further.
 - The claim that HPG may not be acting consistently with the Guideline's recommendation to seek ways to prevent or mitigate adverse human rights impacts linked to their business operation by their business relationships, merits further examination.
 - The claim that Company A and B may not be acting consistently with the Guideline's recommendation to seek ways to prevent or mitigate adverse human rights impacts linked to their business operation by their business relationships is not substantiated. Unless new information emerges, the NCP will not examine this claim further.
- This initial assessment decision is made on the basis of the information provided by the parties. The decision to examine further parts of the claim is not a finding against HPG.

- The NCP will now offer BIRD and HPG mediation. If the parties do not want to mediate or cannot reach agreement, the NCP will examine further the claim about whether HPG's actions are consistent with the OECD Guidelines.

Substance of the complaint

1. The complaint has been brought by the Bahrain Institute for Rights and Democracy (BIRD). BIRD is a Non-Governmental Organisation (NGO) based in the United Kingdom. The purpose of the organisation is to promote democracy and human rights in Bahrain.
2. The complainant refers to 3 companies:
 - a. HPG, a UK based events company that organises events worldwide
 - b. Company A and Company B, 2 entities which are multinational enterprises
3. The complainant alleges that in the course of organising and/or sponsoring the Royal Windsor Horse Show (RWHS), the companies acted inconsistently with the General Policies (II) and Human Rights (IV) sections of the OECD Guidelines for Multinational Enterprises (the Guidelines) and are linked to human rights abuses by their business relationships with the Bahraini authorities. As a consequence of this, they have failed to investigate and carry out adequate due diligence in relation to human rights.
4. The complainant requests the NCP's good offices to supervise a negotiated settlement of this complaint, which would result in the companies putting in place adequate human rights policies, a plan for the carrying out of effective due diligence and, relevant stakeholder engagement in relation to future events. The complainant also asks that the companies disclose all relevant due diligence and evidence relating to how they handle human rights matters.
5. HPG, Company A and Company B accepted an invitation from the NCP to respond to the complaint. The companies do not accept the allegations as set out by the complainant.

OECD Multinational Enterprises Guidelines provisions cited

6. The complainant has cited a number of general issues in their complaint. However, they specifically refer to the following articles of the guidelines:

Chapter II – General Policies

Enterprises should take fully into account established policies in the countries in which they operate, and consider the views of other stakeholders. In this regard:

Enterprises should:

- 2, Respect the internationally recognised human rights of those affected by their activities.

7, Develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate.

10, Carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts as described in paragraphs 11 and 12, and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation.

11, Avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur.

12, Seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship.

Chapter IV – Human Rights

2, within the context of their activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.

3, Seek ways to prevent and mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.

4, Have a policy commitment to respect human rights.

5, Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.

6, Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.

The Initial Assessment process

7. The initial assessment process is to determine whether the issues raised merit further examination. It does not determine whether any of the companies have acted inconsistently with the guidelines.

Handling process

24 April 2018	UK NCP receives the complaint.
24 May 2018	UK NCP receives a letter from HPG in response to the complaint.
20 June 2018	UK NCP receives a letter from Company B in response to the complaint.
25 June 2018	UK NCP receives a letter from Company A in response to the complaint.
27 July 2018	UK NCP receives a reply from the complainant. This is in relation to the

	responses provided by the companies.
15 August 2018	UK NCP requests clarification from HPG on a matter in relation the submitted response.
31 August 2018	UK NCP receives the clarification from HPG.
25 September 2018	UK NCP issues draft Initial Assessment to the parties.
9 October 2018	UK NCP receives comments back from BIRD.
11 October 2018	UK NCP receives comments back from Company A.
12 October 2018	UK NCP receives comments back from Company B.
15 October 2018	UK NCP receives comments back from HPG.
7 November 2018	UK NCP issues Initial Assessment

8. All documents provided in the complaint and response have been shared between the parties.

UK NCP decision

9. The NCP has decided to allow the complaint against HPG in relation to the Guideline's recommendation that businesses should seek ways to prevent or mitigate adverse human rights impacts linked to their business operation by their business relationships.

10. The NCP has decided to reject the parts of the complaint that relate to Companies A and B. The NCP took the following points, as set out in the OECD Guidelines, into consideration when it examined the complaint.

Identity of the complainants and their interest in the issue

11. The UK NCP accepts that the complainant has an interest in bringing this complaint in its capacity as an NGO. Its purpose is to act on behalf of victims of human rights abuses, including activists, based in the UK and Bahrain, who are involved in promoting democratic processes in Bahrain. The NCP is satisfied that it has a valid interest in the issues raised.

Whether the issues are material and substantiated and there seems to be a link to the enterprises' activities

12. The RWHS takes place in the UK. The UK NCP consulted with another NCP during the initial assessment stage as one company named in the complaint is not a UK-based entity. In line with the procedural guidance set out in the Guidelines, it was agreed between the 2 offices that the UK NCP would lead on this case and consider that part of the complaint that involved the non-UK based entity.

13. The information provided by the complainant included material relating to how human rights issues are handled within Bahrain. This included a report produced by the Bahrain

Commission for Independent Inquiry (BICI) which was established by the King of Bahrain following the unrest in the country in 2011. The Government of Bahrain has accepted the report and its recommendations.

14. The complainant has also provided reports produced by Human Rights Watch in 2015 and 2017. These discuss the progress of human rights activity in Bahrain. In addition to these reports, the complainant has also provided contemporaneous media coverage relating to human rights issues within the country. The UK NCP considers that the complainant has established prior existence of human rights abuses in Bahrain.

15. The complainant alleges that in the process of organising the RWHS and arranging financial sponsorship to support the event, HPG failed to consider the human rights impact of their business relationship with the Bahraini authorities and that the company did not follow any appropriate due diligence process.

16. The complainant goes on to state that as sponsors of the RWHS, Companies A and B's provision of funds for the event ensured its financial viability. In the process of doing so, they allowed their brand to be associated with the Bahraini authorities.

17. The complainant states that through their relationship with the RWHS, the companies have caused and contributed to alleged human rights abuses in following ways:

a. Through the presentation of an image to the world of the Bahrain authorities as “business as usual” which is at odds with the reality of the continuing human rights violations that exist in the country.

b. By creating further opportunities for human rights violations to occur in connection with the RWHS itself. This includes the detention of individuals in Bahrain who are related to UK based activists, by the local authorities. The complainant emphasises that these detentions coincided with the days the RWHS previously took place.

c. The prevention of demonstrations at the RWHS.

HPG do not accept these allegations. In their response to the NCP, HPG state that they should not be held responsible for events that take place outside of the RWHS itself.

18. The complainant also provided evidence of correspondence sent to HPG and Company A in 2017 from a group of NGOs. This sought to highlight how human rights issues were handled in Bahrain. The correspondence also encouraged the companies to sever ties between the RWHS and the Bahraini authorities, and to adopt ethical commitments to prevent their involvement with individuals or states linked to human rights abuses.

19. The complainant alleges there is little evidence any of the companies have an appropriate human rights policy in place. The complainant goes on to state that they do not apply any due diligence process to their business activity or participate in any stakeholder engagement.

20. The complainant also states that neither HPG or Company B have a publicly available human rights policy.

21. In its response to the NCP, HPG do not accept any of the allegations. HPG states that it is not a ‘multinational enterprise’ as intended within the Guidelines. In its opinion, the Guidelines do not apply to HPG. The UK NCP notes that a precise definition of multinational enterprises is not required for the purpose of the Guidelines. The OECD has previously applied the Guidelines to companies that have a recognised international impact. The UK NCP therefore considers that the Guidelines apply to HPG.

22. Company A disputes the allegations and states that its sponsorship agreement with HPG does not cause, contribute to or facilitate any adverse human rights impacts. They state that their agreement with HPG is not directly linked to the human rights abuses made in the complaint.

23. Company B, which is based outside of the UK, states that it is inappropriate for the complainant to have brought the case to the UK NCP due to its non-UK location. Company B also disputes the link between the human rights issues raised and its own activities, including sponsorship of the RWHS. Company B states that there is no formal relationship between itself and the Bahraini authorities. Company B did not make any reference to having a publicly available human rights policy.

24. The NCP does not consider that the information provided by the complainant demonstrates an infringement of human rights by any of the companies. The UK NCP therefore rejects the complaint so far as it raised a need to redress alleged harms caused by the companies.

25. The UK NCP, however, considers that the information provided by the complainant substantiates a business relationship between HPG and the Bahraini authorities in organising the RWHS. As set out in the Guidelines, business relationships include ‘relationships with business partners, entities in the supply chain and any other non-State or State entities directly linked to its business operations, products or services’. As stated above, the NCP considers that there is evidence to substantiate that the Bahraini authorities have been involved in adverse human rights impacts. The NCP believes that a further examination is merited of HPG’s business processes, with regards to how potential matters of human rights impacts and due diligence are handled in the course of a business relationship.

26. The NCP considers that the nature of the business relationship held by Company A and B with the Bahraini authorities is substantially different to that of HPG. With regards to business relationships, the Guidelines define leverage to exist ‘where the enterprise has the ability to effect change in the wrongful practices of the entity that causes the harm’. In the UK NCP’s view Company A and B are not sufficiently linked to the party causing the alleged harm, for the Guidelines to apply

Relevance of applicable law and procedures, including court rulings

27. The complaint includes references to the standards of international law, including the International Covenant on Civil and Political Rights (ICCPR) to which Bahrain is a party and, the European Convention on Human Rights.

28. The complainant also refers to the United Nations Guiding Principles for Business and Human Rights (UNGPs) including UNGP 17 and UNGP 18. These refer to the due diligence companies should carry out when assessing actual and potential human rights impacts and

effective engagement with stakeholders, including drawing on independent external human rights expertise.

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

29. The NCP notes that it previously handled a specific instance complaint Americans for Democracy and Human Rights in Bahrain (ADHRB) and Formula One World Championship Limited and Others (FOWC). This also related to human rights issues in Bahrain. The material facts of that case are different to this complaint and therefore any direct comparisons are inappropriate. However, in considering this initial assessment, the NCP has sought to ensure that it has been consistent with the approach taken in the previous case.

Whether the consideration of the specific issue would contribute to the purpose and effectiveness of the guidelines

30. The NCP's decision is principally based on its considerations about whether the issues raised are material and substantiated, rather than on an assessment of the likely outcome of further examination. The NCP does note that the parties currently disagree to the extent that HPG should or could carry out human rights due diligence in respect to its business relationship with the Bahraini authorities, or what this may mean for adverse human rights impacts in Bahrain.

31. The NCP notes that HPG is a small company. The Guidelines indicate that actions should be proportionate to a company's size, the nature and context of its operations, as well as the severity of the risks related to adverse human rights impacts. The NCP considers that further examination of the complaint in relation to HPG would contribute to a better understanding between the parties of how the Guidelines apply to the circumstances of this case.

Next steps

32. The NCP will formally ask BIRD and HPG whether they are willing to engage in a mediation/conciliation process, with the aim of agreeing how the issues identified can be successfully addressed. Subject to their response, the NCP will liaise with the parties to arrange mediation/conciliation meetings. If these meetings lead to a resolution, the NCP will reflect this in a Final Statement without making a determination on whether HPG acted inconsistently with the Guidelines.

33. If a mediated solution is not possible, the NCP will conduct a separate examination into the issues. The findings will then be presented in a Final Statement.

34. As the allegations in relation to Companies A and B have been rejected, the NCP considers this part of the complaint to be concluded.

November 2018

UK National Contact Point for the OECD Guidelines for Multinational Enterprises