

# U.S. National Contact Point for the OECD Guidelines for Multinational Enterprises



## Final Statement

Specific Instance between the Center for Environment and Development (CED) with Network to Fight against Hunger (RELUFA) and Herakles Farms' affiliate SG Sustainable Oils Cameroon (SGSOC) in Cameroon

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**Executive Summary:** This Final Statement concludes the Specific Instance submitted on June 13, 2013 by the Center for Environment and Development (CED) with the Network to Fight against Hunger (RELUFA) with regards to the alleged conduct of and Herakles Farms’ affiliate SG Sustainable Oils Cameroon (SGSOC) in Cameroon (hereafter referred to as “SGSOC”). After reviewing the Specific Instance and consulting the parties, the U.S. NCP offered mediation to assist the parties in undertaking a dialogue to seek a mutually agreeable resolution. The offer of mediation was accepted by all parties. Mediation sessions facilitated by the U.S. Federal Mediation Conciliation Service (FMCS) started in 2014 with separate telephonic sessions culminating in final joint sessions held on June 16-17, 2015. The mediation successfully concluded with a mutually agreed upon resolution signed by all parties. This concludes the first mediation conducted by the office of the U.S. NCP that reached a mutually agreed resolution by all parties.

**Substance of the Specific Instance:** On June 13, 2013, CED and RELUFA, both national level non-governmental organizations advocating for community rights and improved policy around the exploitation of natural resources in Cameroon, submitted a Specific Instance to the United States National Contact Point (U.S. NCP) for the OECD Guidelines for Multinational Enterprises (the Guidelines) alleging conduct inconsistent with the Chapter VI “Combatting Bribery” provisions of the OECD Guidelines in connection with SGSOCs’ operations in Cameroon. SGSOC is an affiliate of Herakles, a New York-based agriculture company with operations in Ghana and Cameroon. The events reported in the Specific Instance cover a period from 2009 to 2013. The Specific Instance points out various reports alleging intimidation and bribery of community leaders, government officials, and local citizens by SGSOC officials to gain land for their operations. CED/RELUFA maintained that the company should address those allegations either by publicly denying them or by investigating them, and requested that SGSOC create policies and procedures to regularly consult with the community members and members of civil society. The company responded to the Specific Instance by denying the allegations conveyed by CED/RELUFA and stating that it considers its conduct to be fully consistent with the international Guidelines.

**Initial Assessment and Mediation:** On October 22, 2013, per its procedures, the U.S. NCP issued an Initial Assessment to the parties to identify that the issues raised in the Specific Instance merited further examination under the Guidelines, and offered its confidential mediation services to assist the parties in seeking a

mutually agreeable resolution to the issues raised. On June 16<sup>th</sup>-17<sup>th</sup>, 2015<sup>1</sup>, the final joint mediation sessions were conducted with RELUFA/CED and SGSOC representatives participating in Yaounde, Cameroon with FMCS mediators participating via video teleconference from Washington, DC. A local mediator was hired to assist with mediation and participated in-person in Yaounde, under the coordination of FMCS. The Office of the U.S. NCP observed the mediation. The NCP applauds all parties for participating in the mediation in good faith resulting in a successful conclusion of the process.

**Conclusion:** Per the written agreement signed by all parties (see Annex 2), SGSOC agreed to receive a written request from CED/RELUFA within one month of the signing of the agreement regarding the investigation of any past cases of alleged corruption, and to investigate credible cases. SGSOC will give a written response back to CED/RELUFA within three months of receipt of the written request. SGSOC will act with the intention of showing their good faith in opposing and taking action against any acts of corruption. There was no agreement on how it will be decided which cases from the submitted list are investigated. The parties agree to meet again after the first report of investigation is sent to the CED/RELUFA by SGSOC. Meetings can continue after that by mutual agreement.

One year after publication of this statement, the U.S. NCP requests each party submit a follow-up report to the NCP identifying the status of the agreement and any impacts.

If needed and helpful, parties may request that the NCP follow-up or monitor the implementation of the agreement or the recommendations made in this Final Statement.

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U.S. National Contact Point for the OECD Guidelines for Multinational Enterprises

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<sup>1</sup> Due to the unique circumstances of this mediation, including technological limitations, the timeline from offering to conducting the mediation took longer than desired and is not indicative of other U.S. NCP mediation timelines. The office of the U.S. NCP thanks the parties for remaining engaged and committed throughout the process.

## **Annex 1: Details of U.S. NCP Specific Instance Process**

### **I. Context and Background on the U.S. NCP**

The OECD Guidelines for Multinational Enterprises<sup>2</sup> (MNEs) are voluntary recommendations for companies regarding responsible business conduct in a global context. The Guidelines are addressed to MNEs operating in or from the territories of governments adhering to the OECD's Declaration on International Investment and Multinational Enterprises, of which the Guidelines form one part. Adhering governments have committed to encouraging their MNEs to promote and implement the Guidelines in their global operations and appointing a national contact point (NCP) to assist parties in seeking a mutually satisfactory resolution to issues that may arise under the Guidelines.

As a part of its function, the U.S. NCP addresses issues relating to implementation of the Guidelines, raised in the form of a Specific Instance, with regards to the business conduct of an MNE operating or headquartered in the United States. The office of the U.S. NCP handles such instances in accordance with its procedures<sup>3</sup> which are based on Guidelines.

The U.S. NCP's primary function is to assist affected parties, when appropriate, in their efforts to reach a mutually satisfactory resolution and its role is to offer mediation to facilitate the resolution of the matter and, where appropriate, make recommendations as to how the enterprise might make its business practices more consistent with the Guidelines. The U.S. NCP does not make a determination as to whether a party is acting consistently with the Guidelines, and the U.S. NCP does not have legal authority to adjudicate disputes submitted under this process.

Acceptance of the Specific Instance is in no way an acknowledgement of or determination on the merits of the claims presented, but merely an offer to facilitate neutral, third-party mediation or conciliation to assist the parties in voluntarily, confidentially, and in good faith, reaching a cooperative resolution of their concerns. In mediation, the parties are responsible for arriving at their own solution, and the process is designed to create an environment for cooperative problem solving between the parties. Entering into such mediation or conciliation

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<sup>2</sup> <http://mneguidelines.oecd.org/text>

<sup>3</sup> <http://www.state.gov/e/eb/oeed/usncp/specificinstance/index.htm>

in no way implies that the parties will reach agreement. (*See, e.g.*, the Procedural Guidance for NCPs under the Guidelines, section I.C.3)

## **I. Conducting The Initial Assessment**

Per the Guidelines procedures, upon receiving a Specific Instance, the U.S. NCP conducts an Initial Assessment with all parties. The Initial Assessment does not determine whether the company has acted consistently with the Guidelines, but rather is a process to determine whether the issues raised are bona fide and merit further examination. Per the Guidelines procedures, the Initial Assessment is conducted based on:

- Identity of the party and its interest in the matter
- Whether the issue is material and substantiated
- Likely link between the enterprise's activities and the issue raised
- Relevance of applicable law and procedures, including court rulings
- Treatment of similar issues in other domestic or international proceedings
- Contribution of the specific issue to the purposes and effectiveness of the Guidelines

Under U.S. NCP procedures, acceptance of the Specific Instance – including a finding that the issues raised by CED/RELUFA were bona fide – does not indicate the NCP considered SGSOC to have acted inconsistently with the Guidelines, but rather that the NCP considers it appropriate to facilitate a discussion between the parties of the issues raised. For SGSOC's part, a decision to participate in this process does not imply any prima facie admission of conduct inconsistent with the Guidelines. Mediation or conciliation is a voluntary step, providing an opportunity for a neutral third-party to assist parties to reach their own resolution of concerns. In mediation, the parties are responsible for arriving at their own solution, and the process is designed to create an environment for cooperative problem-solving between the parties. The parties are in control of the outcome of an agreement. Participation is voluntary and no parties would be compelled to violate the law or waive their rights under the law during the NCP process. If the parties can reach an agreement through mediation or other means, the U.S. NCP would consider requests by the parties to follow up on implementation.

The U.S. NCP contributes to the resolution of issues that arise relating to implementation of the Guidelines raised in Specific Instances in a manner that is

impartial, predictable, equitable and compatible with the principles and standards of the Guidelines. The U.S. NCP works to facilitate dispute resolution in a confidential, efficient, and timely manner with an aim toward a forward-looking, good-faith resolution and in accordance with applicable law.

The U.S. NCP believed all parties in this Specific Instance could benefit from a mediation process, under the auspices of its good offices that could create the conditions for a positive exchange of perspectives, a beneficial examination of the core issues arising under the Guidelines, and potentially a mutually agreeable solution.

## **II. Outcome of the Initial Assessment**

Following the review of the information provided by the parties, the U.S. NCP issued an Initial Assessment on October 22, 2013 to the parties that the issues raised by merited further examination under the Guidelines, and offered its good offices to assist the parties in undertaking a dialogue to seek a mutually agreeable resolution. The U.S. NCP took the following points into account when considering whether CED/RELUFA's concerns merited further consideration:

### *a. Identity of the party and its interest in the matter*

The Center for Environment and Development (CED) and the Network to Fight Against Hunger (RELUFA) are both national level non-governmental organizations advocating for community rights and improved policy around the exploitation of national resources in Cameroon.

SGSOC is an agriculture company that identifies and implements solutions to important food security concerns in Africa. The company has had operations in Ghana since 2008 and in Cameroon since 2009. SGSOC has been operating in Cameroon since 2009 and intends to develop 19,843 hectare oil palm plantation and refinery in South West Region of Cameroon.

CED/RELUFA asked the U.S. NCP to use its good offices to mediate the issues between the two parties. CED/RELUFA requested the company cease negotiating more land by using intimidation and bribery targeting chief and influential decision makers in the community, release a public statement on what has happened regarding the allegations of bribery and corruption, and to develop clear procedures for stakeholder engagement with the local communities and members of civil society. The U.S. NCP was satisfied that CED/RELUFA were

able to provide information about the Specific Instance and have an interest in the issues raised.

*b. Whether the issue is material and substantiated*

CED/RELUFA provided information in the form of reports, statements, newspaper articles, pictures, and maps indicating the use of corruption, bribery, and intimidation of community leaders to acquire land through cash gifts, promises of employment, and other means.

CED/RELUFA claimed that the submitted documents suggest that:

- SGSOC has violated Cameroonian anti-corruption laws, the U.S. Foreign Corrupt Practices Act, and Chapter VI “Combatting Bribery” of the OECD Guidelines for Multinational Enterprises which states “Enterprises should not, directly or indirectly, offer, promise, give, or demand a bribe or other undue advantage to obtain or retain business or other improper advantage”
- The company has not worked in good faith with local communities to consult them based on international Free, Prior, and Informed Consent standards
- SGSOC’ employees bribed, intimidated, and used corrupt measures to acquire land

In response, SGSOC shared that the company has always operated legally within the Republic of Cameroon and abides by all applicable laws that govern good business practices and anti-corruption in Cameroon. Additionally, SGSOC noted that it has a “zero tolerance” policy on bribery and corruption to which all employees, contractors, and sub-contractors have signed on.

According to SGSOC, it has adopted Free, Prior, and Informed Consent (FPIC) procedures as a basic way to involve communities in producing participatory land-use maps that allow for easy identification and subsequent demarcation of land for the Company and the communities. Communities that do not wish to partner with SGSOC are entitled to deny the project access to their lands without threat of repudiation or consequence. For example, SGSOC says that 11 Bassosi villages were excluded from the SGSOC project because those communities objected.

The company claims its documentation shows that it has appropriately worked with members of the communities and has not used bribery, has a strong policy of recruitment and selection of its employees, and has fully complied with the Government of Cameroon's land regulations.

*c. Link between SGSOC's activities and issues raised*

The Specific Instance raised by CED/RELUFA asserted that SGSOC was negotiating to acquire as much land as possible from the Government of Cameroon and local communities but that, the local communities are not informed about the size of land they were giving to SGSOC, and the land allocation process. The SGSOC project potentially affects the livelihood of the local population and economic opportunities offered by forest resources.

*d. Relevance of applicable law and procedures, including court rulings*

At the time the Initial Assessment was drafted, the U.S. NCP is not aware of applicable law and procedures, including court rulings related to this case.

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

The U.S. NCP is not aware of similar proceedings.

*f. Whether the consideration of the Specific Instance would contribute to the purposes and effectiveness of the Guidelines*

The U.S. NCP considers that its mediation services could play a positive role in assisting the parties in facilitating a dialogue on the issue raised in the Specific Instance and reaching a mutually acceptable solution. Consistent with the criteria in the U.S. NCP procedures for Specific Instances (as established in the Guidelines themselves), the NCP determined in the course of its Initial Assessment that the matters raised were bona fide and relevant to the implementation of the Guidelines.

### **III. Role of the Interagency Working Group**

Per procedures, the U.S. NCP has also consulted and received input from its U.S. government interagency working group throughout this process. The location

specified in the Specific Instance, Cameroon, does not have a National Contact Point.

#### **IV. Mediation**

In order to introduce each party to the FMCS and its conflict resolution services, the U.S. NCP offered to host a one hour information session separately with each party during which representatives can raise any questions or concerns about the mediation process as well as get to know the mediators. The U.S. NCP made clear that participation in this information session did not mean either party accepted the U.S. NCP's offer of mediation; rather it was simply an opportunity to better inform each party about the mediation process. All parties participated in separate information session tele-conferences prior to agreeing to mediation.

## **Annex 2**

### **Mediated Agreement between SGSOC (Company), CED, and RELUFA (NGOs)** **with** **FMCS under the NCP Mediation Plan/Logistics, Yaoundé, Cameron,** **As of June 17, 2015:**

The Company agrees to receive a written request from the NGOs within one month of the signing of the agreement regarding the investigation of any past cases of alleged corruption, and to investigate credible cases. The Company will give a written response back to the NGO's within three months of receipt of the written request. The Company will act with the intention of showing their good faith in opposing and taking action against any acts of corruption. There is no agreement on how it will be decided which cases from the submitted list are investigated.

The parties agree to meet again after the first report of investigation is sent to the NGOs by the company. Meetings can continue after that by mutual agreement.