

**Initial Assessment by the UK
National Contact Point for the
OECD Guidelines for
Multinational Enterprises**

**COMPLAINT FROM CRUDE
ACCOUNTABILITY AND OTHERS
AGAINST COMPANIES IN THE KPO
CONSORTIUM IN KAZAKHSTAN**

NOVEMBER 2013

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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 to accept for further examination issues raised with regard to households living within the protective zone around the facility and the consortium's obligations to these households under Chapter II paragraphs 2 and 12, and Chapter IV paragraphs 1 and 3.**
- **The NCP has decided the issues raised with regard to the wider impact of the facility on the neighbouring village, and the consortium's responsibilities under Chapter II, paragraphs 5,7,11,13 and 14, Chapter III, paragraph 4, Chapter IV, paragraphs 2,5 and 6 and Chapter VI paragraphs 1,2,4 and 5 are not substantiated in the complaint and so has rejected further examination of these issues.**

Substance of the complaint

1. The complaint is made by a number of environmental organisations about the actions of a consortium operating an oil and gas facility in Kazakhstan, and their alleged impacts on a village community neighbouring the facility. The events reported in the complaint cover a period from the early 2000s to the present, and the allegations made relate to obligations to resettle villagers in view of emissions levels and other environmental impacts of the facility.
2. The complainants identify a UK company as one of the joint largest partners in the consortium, and ask the UK NCP to use its good offices to engage this company in mediation with the objective of securing resettlement of the villagers. The same complainants made complaints to the US NCP and the Italian NCP raising the same concerns and asking the NCPs to use their good offices similarly to engage US and Italian partners in the consortium.
3. The consortium accepted an invitation from the UK NCP to respond to the complaint: it denies the allegations made by the complainants and considers that it is fully meeting its obligations under the Guidelines to the village community.

Guidelines provisions cited

4. The complaint refers to the following provisions of the 2011 Guidelines:

Chapter II General Policies¹

Enterprises should.....

- 2. Respect the internationally recognised human rights of those affected by their activities.*
- 5. Refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to human rights, environmental, health, safety, labour, taxation, financial incentives, or other issues.*
- 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.*
- 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.*
- 13. In addition to addressing adverse impacts in relation to matters covered by the Guidelines, encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of responsible business conduct compatible with the Guidelines.*
- 14. Engage with relevant stakeholders in order to provide meaningful opportunities for their views to be taken into account in relation to planning and decision making for projects of other activities that may significantly impact local communities.*

Chapter III Disclosure

- 4. Enterprises should apply high quality standards for accounting, and financial as well as non-financial disclosure, including environmental and social reporting where they exist. The standards or policies under which information is compiled and published should be reported. An annual audit should be conducted by an independent, competent and qualified auditor in order to provide an external and objective assurance to the board and shareholders that the financial statements fairly represent the financial position and performance of the enterprise in all material aspects.*

¹ Paragraphs 11 and 12 of Chapter II were added to the Guidelines in 2011. They are applied by the UK NCP to actions of enterprises from 1st September 2011 and to ongoing risks and impacts known to the enterprise at 1st September 2011.

Chapter IV Human Rights²

Enterprises should.....

1. *Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.*
2. *Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.*
3. *Seek ways to prevent or 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.*
5. *Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of 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*

Chapter VI Environment, Paragraphs 1,2,4,5

1. *Establish and maintain a system of environmental management appropriate to the enterprise, including*
 - a. *collection and evaluation of adequate and timely information regarding the environmental, health and safety impacts of their activities;*
 - b. *establishment of measurable objectives and, where appropriate, targets for improved environmental performance and resource utilisation, including periodically reviewing the continuing relevance of these objectives; where appropriate, targets should be consistent with relevant national policies and international environmental commitments.*
2. *Taking into account concerns about cost, business confidentiality, and the protection of intellectual property rights:*
 - a. *provide the public and workers with adequate, measurable and verifiable (where applicable) and timely information on the potential*

² Chapter IV provisions were added to the Guidelines in 2011. They are applied by the UK NCP to actions of enterprises from 1st September 2011 and to ongoing risks and impacts known to the enterprise at 1st September 2011.

environment, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance; and

b. engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by the implementation.

4. *Consistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account human health and safety, not use the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent or minimise such damage.*

5. *Maintain contingency plans for preventing, mitigating and controlling serious environmental and health damage from their operations, including accidents and emergencies; and mechanisms for immediate reporting to the competent authorities.*

The Initial Assessment process

5. The Initial Assessment process is to determine whether the issues raised merit further examination. It does not determine whether the company has acted consistently with the Guidelines.

Handling process

6. The UK NCP received the complaint and supporting evidence on 17th June. The U.S. and Italian NCPs received complaints on X and Y respectively. The three NCPs discussed handling of the complaints on 26th June and in subsequent email exchanges. OECD guidance is that where complaints concern the actions of enterprises acting as a consortium or joint venture, a lead NCP should be appointed to co-ordinate handling of the complaint. Taking into account the facts of the complaint, the situation of the parties and the capacity of NCPs to provide good offices should the issues merit this, the NCPs decided that the UK NCP should lead, with the U.S. and Italian NCPs providing support as necessary. The parties were informed of the handling arrangements on 12th July. The UK NCP has discussed the Initial Assessment findings with the U.S. and Italian NCPs.

7. The Initial Assessment has therefore followed UK NCP handling procedures, as follows:

| | |
|---------------------------|--|
| 12 th July | UK NCP advises complainants of UK lead, and forwards complaint details to consortium inviting a response |
| 19 th August | UK NCP receives consortium response |
| 21 st August | UK NCP shares response with complainants |
| 28th October | UK NCP circulates draft Initial Assessment to parties |
| 11 th November | UK NCP receives parties' comments |

UK NCP decision

8. The UK NCP has decided that some issues raised merit further examination. The NCP took into account the following points:

Identity of complainant and its interest in the matter:

9. The NCP is satisfied that the complainants are able to provide information about the complaint and have an interest in the issues raised. The NCP notes that the complainant organisations have campaigned on the issues in the complaint over a number of years.

Whether the issue is material and substantiated:

10. The complainants have provided pictures of conditions in the village; press reports on penalty payments made by the consortium to the Kazakh authorities, information on relevant national and international standards, and official documents relating to the project's Sanitary Protection Zone or SPZ (this is a buffer zone of a size determined by the authorities between an industrial facility and any residential or food production area, to protect against harm caused by emissions etc). They also refer to related investigations from 2006-08 by the International Finance Corporation's Compliance Advisor Ombudsman (CAO), and to the results of health and environmental studies.
11. The complainants say that these documents show that:
 - a) the village lies partly within the SPZ and national law requires resettlement of people living within an SPZ. A reduction in the SPZ in 2003 (which the complainants claim was sought by the consortium) was overturned by the Kazakh courts and the former SPZ restored from 2008;
 - b) over a number of years emissions from the facility into the air have exceeded safe levels, and villagers have noted health impacts which the complainants believe are due to the facility's operations;
 - c) more recently, sinkholes have begun to appear in the village which the complainants believe are due to the facility's operations, and
 - d) the company has not communicated effectively with villagers about the action they should take in the case of an emergency at the facility.
12. Considering all these factors, the complainants say that the village should be resettled and the consortium should have taken action to achieve this.
13. In comments on the draft of this Initial Assessment, the complainants also refer to additional information relating to responsibilities to signpost the boundaries of the SPZ.

14. In its response, the consortium refers to its published Sustainability Reports from 2008 to 2012, to judgments of the Kazakh courts, and to the findings of the CAO investigation.
15. The consortium says these documents show that:
 - a) The consortium has always complied with official decisions on the SPZ and the 2003 reduction in the SPZ was determined pursuant to the applicable requirements under Kazakh law;
 - b) Legal responsibility for resettling households found to be within the (current) SPZ rests with the Kazakh authorities;
 - c) Other villagers are not legally required to be resettled and there is no health risk to them from the facility's emissions to the air. The consortium has not exceeded safe limits for these emissions: its payments to the Kazakh government for exceeding emissions limits refer to forecast levels and not safe levels;
 - d) No link has been established between consortium operations and the appearance of sinkholes, which also occur in other parts of Kazakhstan; however the consortium is monitoring and mapping sinkholes.
 - e) The consortium has made villagers (and others in the area) fully aware of emergency procedures.
16. In comments on the draft of this Initial Assessment, the consortium referred to developments occurring after the complaint was made (relating to further adjustment of the SPZ and changes in local property ownership and use) which it considers mean that there may not ultimately be any person residing within the SPZ. The consortium is gathering information on these developments.
17. The evidence offered about the SPZ does not appear to the NCP to substantiate a specific requirement on the consortium to resettle the village. No evidence is offered to support the allegation that the consortium sought a reduction in the SPZ, and even when the SPZ is set, as currently, at the increased limit, the complainants appear to accept that only two households fall within the SPZ.
18. The complainants' case for general resettlement therefore appears to the NCP to rely on showing that (regardless of the size of the SPZ) issues in respect of actual or potential impacts on the village from the consortium's operations are unresolved without resettlement. The evidence offered appears to the NCP to substantiate historic issues with regard to the adequacy of monitoring arrangements, and more recent issues with regard to establishing the cause of sinkholes and reassuring villagers about the adequacy of emergency planning procedures.
19. In each case, the consortium has identified actions it has taken to address the issue. The NCP notes that:

- a) With regard to the historic issues, the complainants do not offer any evidence that the improved monitoring arrangements currently in place are ineffective or their results inaccurate .
 - b) With regard to emergency planning, the NCP accepts that villagers are concerned about their safety in the event of an emergency, but this appears to be due to a general lack of confidence in the local authorities (and to some extent the consortium) rather than to evidence that the consortium has failed to develop and communicate emergency procedures.
 - c) In respect of sinkholes, the complainants make an indirect link only to the consortium's activities (by reference to sinkholes found in association with similar projects in other countries). The company does not accept that there is a link established between its operations and the sinkholes in the village, but has begun work to map and monitor them. The NCP does not consider that the issue is substantiated with regard to sinkholes.
20. The NCP concludes that the complainants have not substantiated an issue with regard to an obligation on the consortium to address the impacts identified by resettling the village. The NCP notes, however, that this conclusion is based on the consortium continuing to take other action (such as monitoring activities) to prevent or mitigate potential impacts.
21. While the issue of a general resettlement does not appear to be substantiated, the NCP notes that the complaint and response agree that two households in the village are legally entitled to be resettled by the Kazakh authorities, but have not yet been resettled. The UK NCP considers that there is a limited substantiated issue with regard to an obligation on the consortium to assist these households.
22. The issue in respect of these households appears to the NCP to relate to their rights in Kazakh law and also international human rights law, and to the company's obligations under Chapters II and IV of the Guidelines to respect these rights and mitigate impacts to which it is linked by a business relationship (with the Kazakh authorities).
23. The NCP notes the reference by the company to new developments with regard to the affected households: further examination of the complaint will take into account information on these developments as appropriate.

Relevance of applicable law and procedures, including court rulings:

24. The issues appear to the NCP to be relevant to international human rights under the International Covenant on Economic, Social and Cultural Rights (ICESCR) to enjoy the highest attainable standard of physical and mental health (Article 12), and to an adequate standard of

living (Article 11). There is also an issue related to rights under Kazakh law of people living within an SPZ to resettlement, and the consortium refers to a recent court judgment confirming the size of the SPZ and the right to resettlement of some households. International law rights to freedom of movement and choice of residence under the International Covenant on Civil and Political Rights (ICCPR) Rights appear to be relevant in respect of these households.

25. The Kazakh government is responsible under international law for protecting the villagers' human rights, and under domestic law for resettling those living within the SPZ. The consortium is responsible for complying with domestic law, and, under the Guidelines for respecting human rights.

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

26. This complaint raises a similar issue to cases considered by the UK NCP and the Netherlands NCP in 2012 with regard to the right to resettlement of households within a Sanitary Protection Zone (see UK NCP Initial Assessments in complaints from a Russian NGO against UK Bank A, UK Bank B and UK Bank C). The relationship of the companies to the issues was different in these cases, however, and does not affect the UK NCP's decision in this complaint.
27. The NCP notes that in response to a complaint from the same complainants, the CAO considered some of these issues between 2005 and 2008. Mediation began between the parties but broke down, prompting a CAO investigation of the IFC's compliance with its standards. This investigation made some recommendations to the consortium and the CAO's final report in 2009 considered that these had been acted on.

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

28. The NCP's decision is principally based on its findings about whether the issues raised are material and substantiated, rather than on an assessment of the likely outcome of further examination.

Next steps

29. The UK NCP will formally ask the parties whether they are willing to engage in mediation/conciliation with the aim of reaching a settlement. Subject to their response, the UK NCP will liaise with the parties to arrange mediation/conciliation meetings. If these meetings achieve a resolution, the UK NCP will reflect this in a Final Statement without making a determination on whether the consortium acted inconsistently with the Guidelines.

30. If a mediated/conciliated solution is not possible, the UK NCP will conduct a separate examination into the substantiated issues and will reflect the outcome in a Final Statement that will include a determination on whether the consortium acted inconsistently with the Guidelines.

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