

Final Statement: A Complaint against a UK based company by former employees of a company based in Democratic Republic of Congo

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Final Statement

Summary of the UK NCP Handling Process

1. The Initial Assessment concluded that some of the issues raised in the complaint warranted further examination and offered mediation to the parties. A draft of the Initial Assessment was shared with both parties for review. The Respondent raised concerns, in response to the Initial Assessment, that the UK NCP had requested specific information from the Respondent and stated that the UK NCP had discouraged it from providing a full response to the complaint which would have enabled them to refute all of the issues more fully. Notwithstanding this additional information, the UK NCP decided that the matter should still proceed to mediation and offered the parties mediation prior to the publication of the Initial Assessment, in a departure from its usual process, due to these circumstances.
2. The parties entered mediation on 22 June 2022. The scope of the mediation offered only covered Chapter II (General Policies) paragraph A10 of the Guidelines, and within the scope of Chapter II paragraph 10A, the Respondent's responsibilities under Chapter V (Employment and Industrial Relations) paragraph 1(b). The UK NCP decided that Chapter V paragraph 4(b), again within the scope of Chapter II paragraph A10, should also be included in the scope of mediation despite it not being referenced in the complaint. The UK NCP considered this paragraph to be relevant to issues raised relating to minimum wage.
3. Within the Terms of Reference for mediation, the parties agreed that in the case of a successful mediation outcome the UK NCP would produce a short, anonymised statement, which would be published on gov.uk. The statement will outline the case without naming the parties. Given the agreement to anonymise the parties in the event of a successful mediation outcome, the UK NCP decided to make an exception to pause publication of the Initial Assessment until the final conclusion of the mediation process.
4. Due to a successful mediation outcome on 21 June 2023 and both parties agreeing to anonymity, the NCP has decided to publish only the Final Statement which includes detail of the complaint as set out in paragraph 5.1 of the UK NCP Procedures.
5. On 26 November 2023, the Complainants requested to be named in the Final Statement in a change in position. The UK NCP asked the Complainants to submit further information regarding this request. However, the Complainants did not provide adequate information supporting their reasoning to be named and the UK NCP concluded that naming the Complainants in the Final Statement would breach the Terms of Reference for mediation. The Complainants accepted that the Final Statement would be anonymised and the UK NCP continued with its approach to only publish an anonymous Final Statement.

6. A more detailed outline of the actions undertaken by the UK NCP throughout this complaint is set out in Annex 1.

The substance of the complaint

7. Company A supplies the Respondent with a natural resource used in its products. The Complainants alleged that Company A had not upheld responsible business practices. They made a wide range of allegations against Company A including, but not limited to, Company A's alleged:
 - Irregular corporate status in DRC
 - Violations of human rights
 - Environmental damage
 - Violations of DRC's labour laws
 - Violations of workers' rights
 - Repressive measures against its workers and the right of workers to engage in constructive negotiations with a view of reaching agreements on terms and conditions of employment
8. The Complainants claimed that, by virtue of its business relationship with Company A, the Respondent had breached its obligations under the Guidelines. The Complainants cited the following chapters and paragraphs of the Guidelines (see Annex 2):
 - Chapter II (General Policies) paragraphs A 1, 2, 10, 15
 - Chapter IV (Human Rights) paragraphs 1, 2, 5
 - Chapter V (Employment and Industrial Relations) paragraph 1(b)
 - Chapter VI (Environment) paragraphs 1, 3, 4, 6, 8
 - Chapter VII (Combating Bribery, Bribe Solicitation and Extortion) paragraphs 5, 7
9. It was not alleged that the Respondent had any involvement in any underlying issues, rather it was alleged that they had not met the OECD Guidelines' expectations in relation to carrying out risk based due diligence on suppliers.
10. In the Respondent's initial information provided to the UK NCP, they disputed the allegations and detailed their relationship with Company A, confirming that Company A is one of their suppliers, but that they do not own any shares in Company A and their ability to influence management decisions does not go beyond the normal scope of a customer-supplier relationship. In the additional information provided by them, they stated that following an internal investigation conducted by senior level staff, which included Company A providing numerous documents including governmental audits, payroll data and court rulings, they saw "no evidence of any breaches of human rights in its business, including as part of these allegations".

11. After initial consideration, the UK NCP rejected the majority of allegations and decided that only those in relation to the Respondent's due diligence with regard to wage and trade union issues of the supplier merited assessment. At the same time, the UK NCP suggested to the parties that they enter into a confidential mediation with a view to resolving the complaint.

Mediation Outcome

12. The Respondent and the Complainants engaged in mediation starting on 22 June 2022, prior to the publication of the Initial Assessment, for reasons set out in the first section of this statement. As mentioned above, mediation only covered Chapter II paragraph A10 and, within the scope of Chapter II paragraph A10 only, the Respondent's responsibilities under Chapter V paragraph 1(b) and 4(b). Dr Karl Mackie served as the NCP appointed mediator.

13. As set out in paragraph 4.2 of the UK NCP procedures, mediation was undertaken by an independent mediator. The UK NCP was not present during mediation and did not have oversight of discussions during mediation.

14. On 22 June 2023, the UK NCP was informed that mediation had concluded and that the parties had reached an agreement. A joint statement was shared by the parties to the UK NCP on 4 August 2023 (see Annex 3).

Conclusion and next steps

15. The conclusions reached by the UK NCP in this statement are based on the information provided by the parties.

16. As the parties have reached a mediated outcome, the UK NCP will not offer any further examination of the issues raised in the complaint.

17. This statement concludes the process and closes the complaint.

Annexes

Annex 1

The UK NCP Handling Process

9 August 2021	The UK NCP receives the complaint from the Complainants
10 September 2021	The UK NCP speaks to the Complainants, and asks them to provide more substance and make their complaint clearer

14 September 2021	The UK NCP receives more information from the Complainants
16 September 2021	The UK NCP informs the Respondent that they have received a complaint regarding non-observance of the Guidelines
30 September 2021	The UK NCP speaks with the Respondent and informs them of the complaints process
26 November 2021	The UK NCP sends a letter to the Respondent inviting them to make a submission responding to the UK NCP's questions which were raised in the letter
24 December 2021	The Respondent makes a formal submission to the UK NCP
7 January 2022	The Complainants submit further information in response to the Respondent's submission to the UK NCP
21 January 2022	The Complainants submit more evidence to the UK NCP
16 February 2022	The Respondent makes another submission
4 March 2022	Draft Initial Assessment was shared with parties for factual commentary.
18 March 2022	The Respondent shared factual commentary with the UK NCP
12 April 2022	Finalised Initial Assessment was shared with the parties and mediation is offered by the UK NCP
13 April 2022	The Complainants agree to the UK NCP's offer of mediation
22 April 2022	The Respondent agrees to the UK NCP's offer of mediation
22 June 2022	The Respondent and the Complainants entered mediation.
21 June 2023	Mediation concludes with a successful outcome.
18 October 2023	The UK NCP redrafts the Initial Assessment to include the Final Statement and shares the combined statement and the factual commentary grid with parties for comment.
31 October 2023	The Respondent raises concern regarding structure of the combined statement and the content, stating it was contrary to what was agreed in the Mediation Terms of Reference.
24 November 2023	The UK NCP decides to publish only a Final Statement and informs the parties of this decision
26 November 2023	The Complainants request to be named in the Final Statement in a change in position
27 December 2023	The UK NCP decides that naming the Complainants would breach the Mediation Terms of Reference
29 December 2023	The UK NCP drafts the Final Statement and shares it with the parties.
12 January 2024	Both parties submit factual commentary grid to the UK NCP with their response.

7 February 2024	The UK NCP incorporate factual comments and shared the finalised Final Statement with parties.
3 May 2024	The UK NCP publishes the Final Statement.

Annex 2

The Complainants refer to the following provisions of the Guidelines:

I Concepts and Principles

1. The *Guidelines* are recommendations jointly addressed by governments to multinational enterprises. They provide principles and standards of good practice consistent with applicable laws and internationally recognised standards. Observance of the *Guidelines* by enterprises is voluntary and not legally forceable. Nevertheless, some matters covered by the *Guidelines* may also be regulated by national law or international commitments.

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:

A. Enterprises should:

1. Contribute to economic, environmental and social progress with a view to achieving sustainable development.

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

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.

15. Abstain from any improper involvement in local political activities.

IV. Human Rights

States have the duty to protect human rights. Enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:

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.

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.

V. Employment and Industrial Relations

Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices and applicable international standards:

1b. Respect the rights of workers employed by the multinational enterprise to have trade unions and representative organisations of their own choosing recognised for the purpose of collective bargaining, and engage in constructive negotiations, either individually or through employers' associations, with such representatives with a view to reaching agreements on terms and conditions of employment.

VI Environment:

Enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards, take due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development. In particular, enterprises should:

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;

c) regular monitoring and verification of progress toward environmental, health, and safety objectives or targets.

3. Assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle with a view to avoiding or, when unavoidable, mitigating them. Where these proposed activities may have significant environmental, health, or safety impacts, and where they are subject to a decision of a competent authority, prepare an appropriate environmental impact assessment.

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.

6. Continually seek to improve corporate environmental performance, at the level of the enterprise and, where appropriate, of its supply chain, by encouraging such activities as:

b) development and provision of products or services that have no undue environmental impacts; are safe in their intended use; reduce greenhouse gas emissions; are efficient in their consumption of energy and natural resources; can be reused, recycled, or disposed of safely;

8. Contribute to the development of environmentally meaningful and economically efficient public policy, for example, by means of partnerships or initiatives that will enhance environmental awareness and protection.

VII. Combating Bribery, Bribe Solicitation and Extortion

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. Enterprises should also resist the solicitation of bribes and extortion. In particular, enterprises should:

5. Enhance the transparency of their activities in the fight against bribery, bribe solicitation and extortion. Measures could include making public commitments against bribery, bribe solicitation and extortion, and disclosing the management systems and the internal controls, ethics and compliance programmes or measures adopted by enterprises in order to honour these commitments. Enterprises should also foster openness and dialogue with the public so as to promote its awareness of and cooperation with the fight against bribery, bribe solicitation and extortion.

7. Not make illegal contributions to candidates for public office or to political parties or to other political organisations. Political contributions should fully comply with public disclosure requirements and should be reported to senior management.

The UK NCP accepted the following provisions of the Guidelines. Chapter V paragraph 1(b) and 4(b) were only accepted within the scope of Chapter II A10. The UK NCP decided that Chapter V paragraph 4(b) should be included in mediation despite it not being referenced in the complaint.

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:

A. Enterprises should:

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.

V. Employment and Industrial Relations

Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices and applicable international standards:

1b. Respect the rights of workers employed by the multinational enterprise to have trade unions and representative organisations of their own choosing recognised for the purpose of collective bargaining, and engage in constructive negotiations, either individually or through employers' associations, with such representatives with a view to reaching agreements on terms and conditions of employment.

4b. When multinational enterprises operate in developing countries, where comparable employers may not exist, provide the best possible wages, benefits and conditions of work, within the framework of government policies. These should be related to the economic position of the enterprise, but should be at least adequate to satisfy the basic needs of the workers and their families.

Annex 3

STATEMENT FROM PARTIES: OECD MEDIATION OUTCOME

In August 2021, the UK NCP received a complaint regarding a UK registered company. The Complaint concerned the relationship between the company and a supplier in Democratic Republic of Congo and was brought by a small number of former employees of the supplier. It was not alleged that the UK company had any involvement in any underlying issues, rather it was alleged that they had not met the OECD Guidelines' expectations in relation to carrying out risk based due diligence on suppliers.

After initial consideration, the UK NCP rejected the majority of the allegations and decided that only those in relation to the UK company's due diligence with regard to wage and trade union issues at the supplier merited assessment. At the same time, the UK NCP suggested to the parties that they enter into a confidential mediation with a view to resolving the complaint. The parties accepted that offer and the mediation began in June 2022. After a series of discussions as part of the mediation process, the complaint was resolved via mediation in July 2023 to the satisfaction of all parties. The UK NCP is satisfied with this conclusion to the complaint and the complaint will not be pursued any further.