

**Initial assessment by the UK
National Contact Point for the
OECD guidelines for
multinational enterprises**

**COMPLAINT FROM WWF
INTERNATIONAL AGAINST SOCO
INTERNATIONAL PLC**

FEBRUARY 2014

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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 that issues raised merit further examination: these issues relate to the company's obligations¹ under Chapter II, Paragraph 14, Chapter IV, Paragraph 5 and Chapter VI, chapeau and Paragraph 2. The NCP has not accepted for further examination the issue relating to the company's obligations under Chapter II, Paragraph 5.**
- **Accepting issues for further examination *does not* mean that the NCP considers the company has acted inconsistently with the Guidelines.**

Substance of the complaint

1. The complaint is made by WWF International (WWF), an international NGO working to safeguard wildlife and the environment and promote sustainable development. It concerns (actual and potential) impacts of oil exploration in an area of the Virunga National Park in the Democratic Republic of the Congo (DRC).
2. WWF say that a UK company, SOCO International plc (SOCO), is conducting oil exploration activities in an area of the National Park that is included in a land concession awarded to the company by the DRC government. The complainants say that oil exploration is prohibited in the National Park under international agreements and DRC law, and that the company's activities risk adverse impacts on the local environment and on local communities. The complainants ask the UK NCP to facilitate a dialogue with the company. If resolution through dialogue is not possible, the complainants ask the NCP to make recommendations to the company about its compliance with the Guidelines.
3. SOCO responded to the complaint, and denies the allegations made by the complainants, although it welcomes constructive engagement with WWF. The company says that its current activities in the National Park are limited to environmental and social studies, social programmes and scientific studies, including a seismic survey on behalf of the DRC government, rather than oil exploration. The company says that these activities carry no significant risks of adverse impacts to the local area or communities, comply with applicable laws and standards and relate to the DRC Government's national interest to gain an understanding of its natural resources in this region. SOCO notes that WWF has an established campaign against its activities in the DRC, and considers

¹ The OECD Guidelines are voluntary principles and standards for responsible business conduct, expressed as obligations enterprises owe to people affected by their activities.

that WWF's principal objective in making the complaint is to promote its campaign.

Guidelines provisions cited

4. The complainants refer to the following provisions 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...

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.*

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 or other activities that may significantly impact local communities.*

Chapter 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:

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.*

Chapter 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:

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 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 their implementation.*

5. Provisions in Chapter IV were added when the Guidelines were updated in 2011. They are applied by the UK NCP to actions of enterprises from 1st September 2011 and to unresolved risks or impacts known to the enterprise at 1st September 2011.

The Initial Assessment process

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

Handling process

7.

7 th October 2013	NCP receives complaint
14 th October 2013	NCP shares complaint with company and invites response.
1 st November 2013	NCP meets company
6 th November 2013	NCP meets complainants
12 th November 2013	NCP receives company's response
27 th November 2013	NCP shares response with complainants
17 th January 2014	NCP issues draft assessment to parties
24 th January 2014	NCP receives complainants' comments
31 st January 2014	NCP receives company's comments

8. The NCP agreed to a request from the company not to share with the complainants two documents provided in support of its response: one document to which commercial confidentiality considerations applied confidential, and another that identified individuals. All other documents provided in the response were shared with the complainants, and all documents provided in support of the complaint were shared with the company.
9. Both parties took up the NCP's offer of a meeting to explain the process (meeting dates are in the table above). Each meeting was minuted by the NCP and the minutes shared with the other party.

UK NCP decision

10. The UK NCP has decided to accept some issues for further examination. The UK NCP took the following points into account:

Identity of the complainants and their interest in the matter

11. The NCP is satisfied that the complainant has an interest in the issues raised and is able to provide information about them. The complainant NGO is well known for its conservation activity and campaigning.
12. The complainants note that their local operations in the DRC are supported by a long-term working relationship with the Institut Congolais pour la Conservation de la Nature (ICCN). The NCP understands that ICCN is also the body authorised to grant exemptions for scientific research to the general prohibition on activities in the National Park, and that it granted an exemption to SOCO for its current activities. ICCN is also recorded as having been represented at consultation meetings referred to in the complaint.
13. Information provided in support of the complaint includes information from sources in the National Park area of the DRC. The NCP notes, however, that the complaint is not brought on behalf of a specific local community, but refers to the wider interests of the international community in World Heritage sites. The NCP notes that it is unlikely that further examination will include participation by local communities.

Whether the issue is material and substantiated

14. In support of their claims, the complainants offer documents showing relevant provisions of DRC laws, an extract from the company's contract with the government and its exploration permit, statements and letters from UNESCO, the UK government, other companies operating in the DRC and civil society organisations.
15. The complainants also offer a copy of the company's environmental impact assessment for its activities (known as the Plan d'Attenuation et Rehabilitation or PAR). They note that this was obtained from "confidential sources" as the company has not made it available despite direct requests from the complainants. The company notes that the DRC government rather than the company holds the title to the PAR (and that it informed the complainants of this). The company does not comment on the authenticity of the version provided by the complainants.
16. In support of its response, the company also provides documents relating to its contracts and agreements with the DRC, as well as information about its engagement with local communities and wider international stakeholders (for example, UNESCO), and about the complainants' wider campaign.
17. Some supporting documents provided by both parties provided were in French. The UK NCP has obtained translations of key passages cited

in the complaint and response. The complainants also provided some documents in translations made by another NGO: these translations are not disputed or validated by the company.

18. Based on the information provided in the complaint and response, the NCP considers there are substantiated issues with regards to the company's responsibilities under the Guidelines as follows:

Chapter II – General Policies

19. The complainants' allegation that SOCO has not met its obligation under Chapter II, Paragraph 5 (to refrain from seeking or accepting exemptions not contemplated in law and relating to environmental or human rights issues) is based on a stabilisation clause in its Production Sharing Contract (PSC) approved by the DRC government in 2010. They note that stabilisation clauses – which effectively exempt a company from laws and regulations made after the date of its contract - have been criticised by the IFC and the UN Special Representative on Business and Human Rights as having the potential to adversely affect development of national legislation to enhance human rights and environmental protections.
20. The NCP does not accept that the PSC stabilisation clause in itself substantiates an issue about the company's obligations under Chapter II, Paragraph 5, and accepts that SOCO has elsewhere committed to environmental and social standards above the requirements of existing laws (including the OECD Guidelines themselves).
21. The complainants' allegation under Chapter II, Paragraph A14 is based on accounts of specific consultation meetings provided to the complainants by individuals on the understanding that they would not be named, and a statement by local NGOs alleging that a DRC military officer associated with SOCO's activities intimidated named individuals opposed to oil exploration.
22. The NCP does not consider that the information provided by unnamed sources substantiates the related allegations. The NCP considers that the NGO statement does not relate directly to stakeholder engagement activities, but has considered it as part of its assessment below of the company's Chapter IV obligations.
23. The NCP considers that there is a limited issue meriting further examination with regard to informing stakeholders about the PAR (either by obtaining consent to release the PAR itself or by providing other information about its content). In other regards, the NCP considers that SOCO has shown that it is engaging with and providing information to both local stakeholders affected by its activities (whose impacts are not significant at this point), and the wider stakeholder community with an interest in the National Park (for example UNESCO).

Chapter IV – Human Rights

24. The complainants' allegation that the company has not met its obligation under Chapter IV, Paragraph 5 (to conduct human rights due diligence appropriate to its size, the nature and context of its operations and the severity of risks) appears to be based on SOCO's not publicly disclosing a relevant due diligence process, and on their own assessment of potential human rights risks associated with the anticipation of natural resource development in an area with a recent history of conflict. The NCP notes that these risks are not characterised as immediate or specific to SOCO's activities: they relate to the wider issue of oil exploration in a region with a recent history of conflict.
25. SOCO's response indicates that it has not developed specific human rights due diligence, but considers that social assessment provisions included in its PAR are an appropriate level of due diligence for its current early stage activities. The NCP notes that the Guidelines apply across the range of a company's activities, and the guidance on human rights due diligence accepts that this can be included within broader risk management systems.
26. The NGO statements referred to at Paragraph 21. above appear to the NCP to show that there may be specific risks relating to the military presence in the area in which the company is active, however. The statements do not substantiate any link between SOCO's activities and any human rights impact, and the NCP notes that the company has publicly committed to investigating incidents it has been made aware of. The NCP does consider that the NGO statements substantiate an issue with regard to the level of due diligence appropriate to the context of SOCO's operations.
27. Both parties (and the NCP) note the advice in the UN Guiding Principles that human rights due diligence should occur at an early stage and develop alongside a company's activities.

Chapter VI – Environment

28. WWF's allegations refer to the general obligation under the "chapeau" of Chapter VI for enterprises to have regard to relevant international standards and conduct their activities in a manner contributing to sustainable development, and also to specific obligations under Chapter VI, Paragraph 2 to provide timely information to the public and engage in adequate communication with affected communities.
29. Allegations in relation to the chapeau are based on DRC's legal prohibition against activities associated with oil exploration in the National Park, as well as on views expressed by UNESCO, the UK government about oil exploration in the National Park. In its response, SOCO also refers to the DRC Government's legitimate right to manage and protect its energy resources. Taken together, the information in the

complaint and response appear to the NCP to raise important questions about how the company should interpret its obligation to contribute to sustainable development, and for this reason the NCP concludes the issue under the chapeau merits further examination.

30. Allegations with regard to Paragraph 2 obligations are based on the complainants' interpretation of the PAR copy they obtained, on SOCO's non-disclosure of the PAR (which the complainants say limits the information available to local communities), and to the information about local consultations discussed by the NCP at Paragraphs 21.-22. above.
31. The NCP notes at Paragraph 23. a limited issue regarding stakeholder access to information contained in the PAR. The NCP considers that the same limited issue applies with regard to the Chapter VI, Paragraph 2 provisions.

Relevance of applicable law and procedures, including court rulings

32. The complaint refers to (existing and planned) domestic legislation of the DRC, and to international law on environmental and human rights issues. There do not appear to the NCP to be any related court rulings.

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

33. The UK NCP is not aware of any related proceedings.

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

34. The NCP's decision is based on its finding that there are material and substantiated issues meriting further examination.
35. The aims of the Guidelines (as set out in their Preface) are to "*ensure that the operations of [multinational] enterprises are in harmony with government policies, to strengthen the basis of mutual confidence between enterprises and the societies in which they operate, to help improve the foreign investment climate and to enhance the contribution to sustainable development made by multinational enterprises.*"

Next steps

36. The UK NCP will formally ask the parties whether they are willing to engage in mediation/conciliation on the issues accepted for further examination with the aim of reaching an agreement.

37. Subject to their response, the UK NCP will liaise with the parties to agree a mediator and terms of reference, and subsequently to arrange mediation/conciliation meetings. If these meetings achieve an agreement, the UK NCP will record this (including any details of the agreement that the parties agree may be published) in a Final Statement.
38. If a mediated/conciliated solution is not possible, the UK NCP will make a further examination into the substantiated issues to reach a determination on whether the company's actions are consistent with the Guidelines, and will record its findings in a Final Statement.

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