

GOVERNMENT RESPONSE TO THE CONSULTATION ON THE UK NATIONAL CONTACT POINT'S PROMOTION AND IMPLEMENTATION OF THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

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INTRODUCTION

The All Party Parliamentary Group on the Great Lakes Region and Genocide Prevention (APPG) reported¹ in February 2005 on the effectiveness of the application of the OECD Guidelines for Multinational Enterprises² (Guidelines) to the Democratic Republic of Congo.

2. The Government published its response³ in July 2005. The Government committed to consult stakeholders on possible improvements to the UK National Contact Point's (NCP) promotion and implementation of the Guidelines. A consultation document was published⁴ in September 2005.

3. The Government received 10 written responses to the consultation document by the deadline of 6 January 2006. A Joint Working Group (JWG), established under the aegis of the APPG to explore the scope for common ground between businesses and non-governmental organisations (NGOs) on frameworks for business conduct in areas of conflict and weak governance, requested and was granted further time to submit a response and did so on 23 June 2006. A list of stakeholders whom the NCP met and from whom the Government received responses⁵ is at annex 1.

4. The Government is grateful to all stakeholders who took the time and effort to meet the NCP and/or submit written responses to the consultation document. It is particularly grateful to the members of the JWG for their willingness to discuss and make recommendations that commanded broad support from both the businesses and the NGOs involved. The Government believes that the similarities between its own, evolving considerations since the publication of the consultation document and the views expressed by stakeholders reflects an emerging consensus over practical and effective steps that can be taken to improve the promotion and implementation of the Guidelines.

5. This document sets out the Government's response to the stakeholder consultation. It broadly follows the order of the consultation document. The NCP will bring it to the attention of the OECD Investment Committee and other NCPs. The Government will review the effectiveness of the changes set out in this document, in consultation with stakeholders, in a year's time.

6. Commitments by the Government or the NCP are set out in bold text. They are also listed at annex 2.

¹ <http://appggreatlakes.org/content/view/26/35/>

² www.oecd.org/dataoecd/56/36/1922428.pdf

³ www.dti.gov.uk/files/file23463.pdf

⁴ www.dti.gov.uk/files/file23466.pdf

⁵ www.dti.gov.uk/europeandtrade/trade-policy/oecd-multinat-guidelines/Stakeholder%20Consultation/page23717.html

INSTITUTIONAL ARRANGEMENTS

Administrative organisation of the NCP

7. The consultation document did not address the administrative organisation of the NCP, but a number of responses nonetheless suggested changes to the existing arrangements. A common argument was for the need to introduce an element of independence into the NCP's deliberations. The APPG believed that ideally the NCP should be given independent ombudsman status, incorporate some form of stakeholder representation and be subject to appeal to a panel with an independent chair and mutually acceptable representation from business, NGOs and other stakeholders. Christian Aid/Amnesty International/Friends of the Earth recommended reorganising the NCP as an independent office with permanent representation of officials from the Department for International Development (DFID), the Department for Environment, Food and Rural Affairs, the Foreign and Commonwealth Office (FCO) and the Department of Trade and Industry (DTI). It would be subject to appeal to a Parliamentary committee or ombudsman and would report annually to Parliament on its activities. The Corner House/Rights & Accountability in Development (RAID) proposed either an independent ombudsman or the referral of unresolved complaints to an interdepartmental panel with an independent chair. The Trades Union Congress (TUC) believed it probable that there were lessons to be learned from other OECD countries where the NCP was often made up of officials from a number of departments or at the very least where standing cross-department fora existed. The JWG argued that the NCP should be a suitably qualified and senior civil servant, at director level or above. It also proposed that the NCP have the option of bringing in an outside mediator if it were thought useful.

8. The Government agrees that changes to the structure and role of the NCP and its relationship with other branches of Government are desirable. It recognises the importance of senior officials' engagement in the NCP's activities given the complicated and contentious issues that often lie at the heart of specific instances. It also agrees that the involvement of independent experts would contribute significantly to the NCP's ability—and stakeholders' confidence in its ability—to promote and implement the Guidelines. The Government nonetheless believes that reorganising the NCP as an independent body would introduce costs and bureaucracy out of proportion to its role and distance the NCP from the government environment envisaged in the procedural guidance to the Guidelines. The Government is also concerned that the introduction of an appeals procedure could lead to all decisions being referred, thus diminishing the role of the NCP itself. For this reason, the Government does not support the proposal to develop a formal appeals procedure. It nonetheless draws attention to the role of the Steering Board in overseeing the operation of the NCP and considering issues of both general and specific application of the Guidelines where they arise (see below).

9. As set out in the 2006 white paper on international development, alongside which this response is published, the Government will launch a refocused NCP by September 2006 to include officials from DFID and FCO as well as DTI. The NCP will call on expert advice from other Government departments as appropriate.

Its operation will be governed by a memorandum of understanding agreed between the three departments.

10. Where it is appropriate to assist in dealing with issues that arise relating to implementation of the Guidelines in specific instances, the NCP will facilitate and consider funding access to professional conciliation or mediation services.

11. The JWG recommended that a board be established to review the work of the NCP at least once a year and to make improvements as necessary. The board should be composed of senior staff from relevant departments, could also include members from outside the Government.

12. The Government welcomes this recommendation.

13. The Government will establish a Steering Board to oversee the operation of the NCP and receive reports on the implementation of the Guidelines in specific instances and other developments. The Steering Board will be chaired by a Senior Civil Servant in DTI and include representatives of all departments with an interest in the promotion and implementation of the Guidelines. The Steering Board will also include independent members selected for their expertise in issues relevant to the Guidelines. The Government will consult on the appointment of these independent members. The Steering Board will draw up its own terms of reference but will meet for the first time no later than December 2006 and at least quarterly thereafter.

14. The JWG argued that, where mediation fails, a suitable individual other than the NCP should assess the available material, consider arguments and produce a report, on the basis of which the NCP would issue a statement.

15. The Government does not believe that this proposal would add value to the consideration of a specific instance. In particular, it is not clear how the individual concerned would carry out new functions, apply new skills and be in a better a position to seek advice from relevant experts or analyse information than the NCP itself. As the NCP will be able to request expert advice, the Government regards this overall role as integral to the NCP's duties and rejects the proposal.

Contents of the Guidelines

16. The consultation document did not address the contents of the Guidelines themselves, but a number of responses nonetheless suggested that the NCP should draw the attention of the OECD Investment Committee to areas where the Guidelines could be clarified or improved. The Corner House/RAID took this view. BP proposed that the NCP and the OECD give consideration to broadening the specific-instance process to enable external stakeholders to invoke a broader array of corporate-responsibility standards. It believed that, where a specific instance could be brought before more than one NCP in respect of the same multinational enterprise or substantially similar project, the NCP with the greatest overall contacts with the subject matter should lead the dialogue to its conclusion, consulting other NCPs as appropriate.

17. The Government agrees that, where clarifications or improvements are identified, they should be brought to the attention of the OECD Investment Committee.

18. As set out in the 2006 white paper on international development, the Government will work within the OECD to make the Guidelines more effective in promoting responsible business conduct, particularly in countries with weak governance. The Steering Board will consider issues and priorities in the first instance before making recommendations to Ministers as appropriate.

B. INFORMATION AND PROMOTION

Question 1

19. Question 1 in the consultation document asked how else the NCP could raise awareness of the Guidelines through cooperation with the business community, employee organisations, other NGOs and the interested public.

20. The majority of responses agreed that it was desirable to increase awareness of the Guidelines among stakeholders as well as within the Government. The APPG favoured a concerted campaign and believed it particularly useful to consider how the Guidelines might be promoted in nonadhering countries. BP argued that it was already within DTI's authority to solicit a voluntary compliance request from each company registered to do business in the UK and that the NCP could raise awareness in fora convened by other corporate-responsibility standards and initiatives. Christian Aid/Amnesty International/Friends of the Earth recommended that the NCP hold regular public meetings with stakeholders, including NGOs. The Corner House/RAID recommended that the NCP give its website much more prominence, organise joint training sessions for business, contact professional bodies as a means of disseminating information to their members and consider placing adverts in appropriate trade journals.

21. The Government believes that all of these proposals have merit and should be brought together with the undertakings by the NCP set out in the consultation document to:

- revise and update the NCP information booklet published in 2001;
- revise and update the NCP website;
- establish an email notification list for website updates; and
- seek to improve the information provided to prospective investors (inward and outward).

22. The NCP will draw up an awareness-raising strategy for consideration and agreement by the Steering Board and will maintain an ongoing dialogue with stakeholders over its implementation.

23. The Corner House/RAID also suggested that adherence to the Guidelines should be a condition for all companies seeking Government finance for projects, export credits, subsidies and political-risk insurance for both domestic

and multilaterally-backed international projects and that all Government departments should use the Guidelines as the minimum benchmark for responsible corporate behaviour. The TUC was particularly keen to see an increase in work done with FCO and specifically UK Trade & Investment (UKTI) to ensure that overseas posts had a full understanding of the Guidelines and actively promoted them to UK business operating abroad.

24. The Government recalls that the preface to the Guidelines describes them as “voluntary principles and standards for responsible business conduct.” It is often necessary to interpret their meaning in any specific instance, as a consequence of which they are not well suited to blanket statements about their application to access to Government finance. The Guidelines nonetheless are already a factor in the Export Credits Guarantee Department's (ECGD) assessment of requests for cover. If ECGD had concerns, including in relation to a complaint made under the Guidelines, these would feature in discussions with the applicant company, and if doubts remained, ECGD could refuse the request. The Government also anticipates that the Steering Board may consider issues of both general and specific application where they arise. The awareness-raising strategy referred to above will also specifically address officials in UKTI, ECGD and other relevant Government departments as well as companies seeking this kind of support.

C. IMPLEMENTATION IN SPECIFIC INSTANCES

25. The Government reasserts that the role of the NCP, as set out in the procedural guidance, is to “contribute to the resolution of issues that arise relating to implementation of the Guidelines in specific instances. The NCP will offer a forum for discussion and assist the business community, employee organisations and other parties concerned to deal with the issues raised in an efficient and timely manner and in accordance with applicable law.” It also recalls that if the NCP has cause to suspect that an illegal act has taken place, it will report this to the relevant authorities. This is consistent with the provisions of the Civil Service Code. In the past, the NCP has reported such concerns to a number of authorities with these powers, who have conducted investigations of their own.

Standing

26. The consultation document did not address who could make a complaint made under the Guidelines. The APPG, The Corner House/RAID and the JWG nonetheless argued that a broad range of bodies should be able to do so in their own right or on behalf of a party unable to make a complaint itself, according to the public interest. In contrast, BP believed it essential that the NCP be empowered to make some form of determination where a complaint alleged direct impacts on local stakeholders who were not a party to it. In this regard, field visits were a highly effective vehicle for making such a determination.

27. While the Government believes that it is only possible to consider these issues on a case-by-case basis, it agrees that a complaint should not go unaddressed for lack of a directly affected party to make it.

28. The NCP will always undertake an initial assessment of a complaint irrespective of whether it is made by a party directly affected by the issues in question.

Question 2

29. Question 2 in the consultation document asked what should be addressed in initial assessments.

30. The key issue here is what the NCP should take into account in undertaking an initial assessment of a complaint and in deciding whether it justifies consideration as a specific instance. Responses identified three broad themes: the need for transparent and clearly established criteria, the importance of the NCP reaching its conclusion on available information and the role of the NCP in ensuring that the parties to a specific instance understand the purpose of the Guidelines.

31. The APPG argued for initial assessments to be conducted against clearly established criteria. BP argued that there needed to exist sufficient scope for a constructive facilitated dialogue to take place. If a complaint was not so motivated but rather by an ulterior objective or bad faith, it believed that the NCP should consider disqualifying the party for a defined period and notifying other NCPs; this should also apply to other abuses of process. BP also proposed a number of detailed issues to be addressed in undertaking an initial assessment of a complaint. The Confederation of British Industry (CBI) argued that a complaint should provide enough potentially verifiable information to allow the process to continue. The Corner House/RAID argued that initial assessments should be carried out according to clear procedural rules and against a set of transparent criteria and that reasons should be given for either accepting or rejecting each part of a complaint. The JWG argued that a complaint would need to be worthy of consideration as a specific instance, e.g. because there was some *prima facie* prospect that a material breach of the Guidelines had occurred.

32. The JWG argued that past as well as ongoing breaches should be admissible so long as they did not predate the OECD's initial adoption of the Guidelines in 1976. The Government disagrees where a complaint alleges purely historic breach. It regards the prospect of a specific instance whose outcome could only be retrospective as a poor use of NCP resources. However, it agrees that the NCP should be able to consider as a specific instance a complaint of past behaviour whose nature is such that there is a significant prospect of its recurring in the future.

33. The NCP will discuss criteria and timescales for initial assessments with stakeholders before consideration and agreement by the Steering Board. Initial assessments will address allegations of both ongoing breaches of the Guidelines and significant prospects of a recurrence of past breaches. The NCP will seek guidance from the Steering Board if there are novel or contentious issues to consider. The NCP will explain its initial assessment of a complaint to the parties and, if the complaint justifies consideration as a specific instance, ensure that the parties understand the purpose of the process to follow.

34. Rolls-Royce argued that a complainant should be required to demonstrate to the NCP that a dialogue with other parties had at least been attempted to avoid giving the impression that the NCP was the first port of call rather than a last resort.

35. The Government believes that such engagement would be productive and might well lead to a resolution of the issues between the parties without the need to refer them to the NCP. However, it rejects the proposal to make prior dialogue a precondition for deciding whether a complaint justifies consideration as a specific instance.

36. The JWG argued that if a party is dissatisfied with an initial assessment, the NCP should engage an impartial individual to assess the material available and make a report, in light of which the NCP would review its decision.

37. The Government does not believe that the “impartial individual” would be in a better position to analyse information than the NCP itself. The Government regards this role as integral to the NCP’s duties and therefore rejects this proposal.

38. The Corner House/RAID proposed that, once the NCP had decided that a complaint justified consideration as a specific instance, the parties should sign an undertaking whereby they committed, should mediation fail, to a fair and impartial assessment and determination of the complaint.

39. The Government recalls that the Guidelines are not binding on multinational enterprises and does not see how it could compel parties to sign such an undertaking. Nonetheless, its responses to questions 5 and 10 in the consultation document (see below) address what should happen if a party to a specific instance did not meet timescales and whether the NCP should comment on the willingness of the parties to a specific instance to engage constructively.

Question 3

40. Question 3 in the consultation document asked whether initial assessments should be made public or provided only to the parties to a complaint.

41. Responses were almost equally divided on this issue. The CBI and Rolls-Royce noted that damage to reputation can result even from unfounded claims. With ICC United Kingdom (ICC UK), they argued that the specific instance raised and the NCP response should not be made public at the initial-assessment phase. The APPG took the view that publication of initial assessments would add to their credibility. The Corner House/RAID also argued that initial assessments should be published.

42. The Government shares the concern that a respondent to a complaint should not suffer any disadvantage from its identity being made public if the NCP has rejected that complaint following an initial assessment. Equally, as the identities of parties to specific instances are already made public, it sees no disadvantage in doing so as soon as the NCP decides that a complaint justifies consideration as a specific instance.

43. The NCP will make public its initial assessment of a complaint. If it has decided to reject that complaint, it will anonymise the identities of the parties.

Parallel proceedings

44. The consultation document asserted that a parallel legal process, whether criminal or civil, would take precedence over a complaint made under the Guidelines. The CBI and Rolls-Royce supported this position. The JWG, The Corner House/RAID and the TUC argued there should be no such automatic assumption.

45. The Government remains of the view that it would be inappropriate for the Guidelines to prejudice parallel legal proceedings. However, it stresses that where a complaint and legal proceedings do not address the same issues, there is no issue of parallelism and therefore the NCP will not reject a complaint on that basis.

Question 4

46. Question 4 in the consultation document asked whether timescales should be set for every aspect of implementation and, if so, what these timescales should be.

47. There was a clear consensus among responses that setting timescales for each stage of a specific instance would add transparency and certainty to the process. The CBI and Rolls-Royce felt it difficult to offer a precise view on timescales for all aspects of handling a specific instance but believed it not unreasonable to expect the entire process to be completed within one year of its being lodged with the NCP. The APPG came to a similar conclusion: 12-14 months. The JWG proposed a maximum of three months for each of the three stages of initial assessment, mediation and determination, with the possibility of extensions of up to three more months, also making a maximum total of 12. The JWG also asked that detailed procedures for the process following a failure of mediation and leading up to a statement by the NCP be issued in consultation with all stakeholders. The Corner House/RAID also proposed detailed timescales with a deadline for resolution or determination of most complaints of within one year of filing. They suggested that there should be a facility for the NCP to fast-track aspects of a complaint when a specific instance involved a project for which funding was being sought from a Government department or through a multilateral institution to which the UK subscribed capital.

48. The NCP will discuss procedures and timescales for each stage—including post-mediation—of a specific instance with stakeholders before consideration and agreement by the Steering Board. It will target 12 months from receiving a complaint as the deadline for its resolution. The NCP may extend these timescales, in consultation with the parties, where the circumstances warrant.

Question 5

49. Question 5 in the consultation document asked what should happen if a party to a specific instance did not meet these timescales, whether it should be

liable to a summary finding by the NCP and, if not, whether the NCP should issue an interim statement making clear where the responsibility for delay lay and the consequences of any future delay.

50. Overall, responses agreed that there should be some form of sanction for parties that flout or ignore timescales. The APPG did not believe that delay should not prevent a decision being reached if the evidence that was available was convincing. The NCP should nonetheless comment on an unreasonable delay or failure to cooperate in its final statement. BP, the CBI, Rolls-Royce and the TUC argued that delays could lead to the issuing of a summary finding. The Corner House/RAID argued that the NCP should conduct mediation on the basis of the information before it but that summary findings and the noting of uncooperative behaviour were only appropriate as part of a final statement once all avenues to engage a party had been exhausted.

51. In the event that a party unreasonably fails to meet timescales, the NCP reserves the right to draw conclusions on the information available and to comment on the party's engagement in the process in any statement.

Question 6

52. Question 6 in the consultation document asked whether stakeholders would value interim statements, when they should be issued and what should happen if a party to a specific instance objected to the issue of such a statement.

53. Responses were divided on the value of interim statements. It was suggested that they could be useful in making public procedural issues such as changes to timescales. The APPG argued that they should be issued in the event that mediation failed to resolve the differences between parties, detailing areas where agreement had been reached and outstanding areas of dispute. The Corner House/RAID suggested that interim statements could be used for procedural issues in carefully defined circumstances. However, a number of responses also expressed the general concern that interim statements could damage confidentiality and had the potential to impair any ongoing dialogue between the parties. The CBI recognised both the pros and the cons of interim statements and, with BP, argued that they should ideally be issued with the agreement of all parties. Rolls-Royce argued that they should only be issued if all parties agreed. ICC UK had reservations, particularly in the context of confidentiality and sensitive circumstances.

54. The NCP will issue interim statements, limited to procedural issues, only after consultation with—and ideally with the agreement of—the parties.

Question 7

55. Question 7 in the consultation document asked whether there were issues not addressed in past statements that should be in future.

56. Responses from the business community argued that statements already address the majority of issues raised in a specific instance and had no changes to propose. The CBI and Rolls-Royce took this view. By contrast, other

responses respondents took the view that, to be meaningful, statements must include *inter alia* full references to the complaint made and the findings leading to their substantiation or otherwise as well as clear and specific recommendations in respect of each substantiated breach of the Guidelines. The APPG, The Corner House/RAID, the JWG and the TUC took this view.

57. The NCP will ensure that the contents of statements are relevant and appropriate to the specific instance and justify its decisions and any recommendations that it makes.

Question 8

58. Question 8 in the consultation document asked what form of “clear” recommendation would be of most value to parties to a specific instance.

59. Recalling the voluntary nature of the Guidelines, responses from the business community generally took the view that the purpose of recommendations should be to remind parties of the standards of corporate behaviour enshrined in the Guidelines. The CBI argued for care to be taken as the specific-instance process was designed to facilitate resolution of disputes. Other responses argued that recommendations should clearly state the conduct, if any, that was in breach of the Guidelines as well as indicate how businesses should amend their conduct in order to ensure future compliance. The APPG, The Corner House/RAID and the JWG took this view.

60. The NCP will make statements with the intention of providing specific guidance to businesses in respect of their future conduct. They will also highlight good practice where this has been evidenced. Nonetheless, where the NCP concludes on the basis of the information available that a breach of the Guidelines has occurred, statements will say so.

Question 9

61. Question 9 in the consultation document asked whether the NCP should assert an opinion on aspects of a complaint that it considers unfounded, frivolous or vexatious.

62. Responses were unanimous that it was appropriate for the NCP to provide its opinion on aspects of a complaint that it considers to be unfounded, frivolous or vexatious.

63. The NCP will assert an opinion on aspects of a complaint—or on a complaint itself—that it considers to be unfounded, frivolous or vexatious.

Question 10

64. Question 10 in the consultation document asked whether the NCP should comment on the willingness of the parties to a specific instance to engage constructively.

65. Again, all responses expressed the view that it was appropriate for the NCP to express a view on the willingness or otherwise of parties to engage

constructively. The CBI argued that the NCP should discuss its views with the parties concerned before doing so.

66. The NCP will, where appropriate and following discussion with the parties concerned, include in any statement a commentary on the willingness of the parties to engage meaningfully.

Question 11

67. Question 11 in the consultation document asked whether the requirement for parties to a specific instance to maintain confidentiality of the proceedings should be extended to all stages of a complaint.

68. Responses were split between two diametrically opposed views. Some opposed any extension on the grounds that it could be misused and impair the transparency of the process. Christian Aid/Amnesty International/Friends of the Earth and the TUC took this view, the latter except in especially sensitive cases and with the agreement of the parties. The APPG and The Corner House/RAID were not clear what benefit would be derived. Others took the view that confidentiality provisions encouraged a genuine approach to dialogue between the parties. The CBI and ICC UK argued that the confidentiality requirement should be extended throughout all stages of a specific-instance procedure. The CBI also felt that a complainant should not be permitted to use the launch of a specific-instance process or its ongoing facilitation in publicity or campaign materials. BP, the CBI and Rolls-Royce urged consideration to be given to the fact that local legislation might compel the disclosure of information in circumstances where UK law would not.

69. The NCP will not extend confidentiality to all stages of a complaint for the time being but will examine the practices adopted by other NCPs. Any subsequent proposals for change will be discussed in advance with stakeholders before consideration by the Steering Board.

Question 12

70. Question 12 in the consultation document asked what the sanction should be for any party to a complaint breaching the confidentiality requirement at any stage that it applied.

71. Most responses favoured including some form of reprimand—the severity of which should be determined by the seriousness of the breach—in a statement. The CBI and Rolls-Royce agreed and argued that continued breach should result in the NCP suspending the specific-instance process. The JWG also took this view and noted the possibility of legal action where information given on the understanding of its confidentiality was subsequently publicised. The Corner House/RAID found it difficult to see to what sanctions could be applied and questioned the appropriateness of introducing sanctions for breaches of confidentiality while they were denied for breaches of other aspects of the Guidelines. Some responses suggested stronger penalties or even the disqualification of a complainant.

72. The Government agrees that the NCP should address breaches of confidentiality within the context of the specific instance raised. It does not

believe that it is desirable or consistent with the Guidelines to apply sanctions with a broader impact.

73. The NCP will make public the identity of a party that breaches confidentiality. It will also consider the impact of such a breach on the continued viability of a specific instance.

Non-adhering countries

74. The Corner House/RAID argued that the criteria against which the need for an NCP field visit was assessed must be clearly defined and made detailed recommendations from the experience gained as a result of the information-gathering visit conducted by the NCP in the specific instance concerning the Baku-Tbilisi-Ceyhan oil pipeline.

75. The NCP will consider this issue in more detail. Any subsequent proposals for change will be discussed in advance with stakeholders before consideration by the Steering Board.

Information requests

76. The consultation document did not address information requests, but the APPG and the JWG nonetheless argued the NCP should be able make such requests of parties and act as an intermediary for parties to make such requests of each other. The JWG believed that failure to cooperate without good reason could be commented on by the NCP in a statement.

77. The Government agrees the importance of this approach while noting that it is largely already existing practice.

78. The NCP will expect parties to comply with reasonable requests for information relating to a specific instance from each other and from the NCP itself. It will, where appropriate, include in any statement a commentary on the willingness of the parties to do so.

ANNEX 1: STAKEHOLDERS WHOM THE NCP MET AND FROM WHOM THE GOVERNMENT RECEIVED RESPONSES

STAKEHOLDERS WHOM THE NCP MET

Anglo American
Amnesty International
Christian Aid
The Corner House
Friends of the Earth
Human Rights Watch
National Grid
RAID
Society of British Aerospace Companies
Trades Union Congress

STAKEHOLDERS FROM WHOM THE GOVERNMENT RECEIVED RESPONSES

Airbus
APPG
BAE Systems
BP
CBI
Christian Aid/Amnesty International/Friends of the Earth
The Corner House/RAID
ICC UK
JWG
Rolls-Royce
TUC

ANNEX 2: COMMITMENTS BY THE GOVERNMENT OR THE NCP

The Government will launch a refocused NCP by September 2006 to include officials from DFID and FCO as well as DTI. The NCP will call on expert advice from other Government departments as appropriate. Its operation will be governed by a memorandum of understanding agreed between the three departments.

Where it is appropriate to assist in dealing with issues that arise relating to implementation of the Guidelines in specific instances, the NCP will facilitate and consider funding access to professional conciliation or mediation services.

The Government will establish a Steering Board to oversee the operation of the NCP and receive reports on the implementation of the Guidelines in specific instances and other developments. The Steering Board will be chaired by a Senior Civil Servant in DTI and include representatives of all departments with an interest in the promotion and implementation of the Guidelines. The Steering Board will also include independent members selected for their expertise in issues relevant to the Guidelines. The Government will consult stakeholders on the appointment of these independent members. The Steering Board will draw up its own terms of reference but will meet for the first time no later than December 2006 and at least quarterly thereafter.

The Government will work within the OECD to make the Guidelines more effective in promoting responsible business conduct, particularly in countries with weak governance. The Steering Board will consider issues and priorities in the first instance before making recommendations to Ministers as appropriate.

The NCP will draw up an awareness-raising strategy for consideration and agreement by the Steering Board and will maintain an ongoing dialogue with stakeholders over its implementation.

The NCP will always undertake an initial assessment of a complaint irrespective of whether it is made by a party directly affected by the issues in question.

The NCP will discuss criteria and timescales for initial assessments with stakeholders before consideration and agreement by the Steering Board. Initial assessments will address allegations of both ongoing breaches of the Guidelines and significant prospects of a recurrence of past breaches. The NCP will seek guidance from the Steering Board if there are novel or contentious issues to consider. The NCP will explain its initial assessment of a complaint to the parties and, if the complaint justifies consideration as a specific instance, ensure that the parties understand the purpose of the process to follow.

The NCP will make public its initial assessment of a complaint. If it has decided to reject that complaint, it will anonymise the identities of the parties.

The NCP will discuss procedures and timescales for each stage—including post-mediation—of a specific instance with stakeholders before consideration and agreement by the Steering Board. It will target 12 months from receiving a complaint as the deadline for its resolution. The NCP may extend these timescales, in consultation with the parties, where the circumstances warrant.

In the event that a party unreasonably fails to meet timescales, the NCP reserves the right to draw conclusions on the information available and to comment on the party's engagement in the process in any statement.

The NCP will issue interim statements, limited to procedural issues, only after consultation with—and ideally with the agreement of—the parties.

The NCP will ensure that the contents of statements are relevant and appropriate to the specific instance and justify its decisions and any recommendations that it makes.

The NCP will make statements with the intention of providing specific guidance to businesses in respect of their future conduct. They will also highlight good practice where this has been evidenced. Nonetheless, where the NCP concludes on the basis of the information available that a breach of the Guidelines has occurred, statements will say so.

The NCP will assert an opinion on aspects of a complaint—or on a complaint itself—that it considers to be unfounded, frivolous or vexatious.

The NCP will, where appropriate and following discussion with the parties concerned, include in any statement a commentary on the willingness of the parties to engage meaningfully.

The NCP will not extend confidentiality to all stages of a complaint for the time being but will examine the practices adopted by other NCPs. Any subsequent proposals for change will be discussed in advance with stakeholders before consideration by the Steering Board.

The NCP will make public the identity of a party that breaches confidentiality. It will also consider the impact of such a breach on the continued viability of a specific instance.

The NCP will consider the issue of field visits in more detail. Any subsequent proposals for change will be discussed in advance with stakeholders before consideration by the Steering Board.

The NCP will expect parties to comply with reasonable requests for information relating to a specific instance from each other and from the NCP itself. It will, where appropriate, include in any statement a commentary on the willingness of the parties to do so.