

**RAID & ENRC: FINAL STATEMENT  
AFTER EXAMINATION OF  
COMPLAINT**

UK National Contact Point for  
the OECD Guidelines for  
Multinational Enterprises

FEBRUARY 2016

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# Summary

## Findings and recommendations

- **The UK NCP examined a complaint by the NGO Rights and Accountability in Development (RAID) about ENRC's conduct as the owner and business partner of companies holding mining concessions in the Democratic Republic of Congo (DRC). The complaint alleged that ENRC's conduct did not meet voluntary obligations for responsible business conduct set out in the OECD Guidelines for Multinational Enterprises.**
- **Based on the information examined, the UK NCP considers that ENRC has not engaged effectively with two stakeholder communities on the concessions, and has not taken adequate steps to address impacts on the communities that arise from delays in taking forward mining projects.**
- **Because of this, the UK NCP finds that the company has not met obligations under the OECD Guidelines. Specifically, its conduct is inconsistent with provisions in Chapter II that address companies' engagement with host communities: Paragraph 1 (contribution to economic, environmental and social progress), Paragraph 3 (encouraging local capacity building), and Paragraph 14 (engaging with stakeholders).**
- **The UK NCP also finds that the company's conduct has not met obligations under Chapter II about companies' business relationships: Paragraph 12 (preventing adverse impacts of business partners), and Paragraph 13 (encouraging business partners to apply Guidelines standards).**
- **One of the impacts that is not adequately addressed is a threat to the security of community access to safe drinking water. The right to safe water is a human right recognised under Chapter IV of the OECD Guidelines. As well as their general obligation under Chapter II of the Guidelines to address impacts of business partners, companies are specifically obliged under Chapter IV to address human rights impacts with which they are involved, as an element in meeting a more general obligation to respect human rights.**
- **Early in the complaint process, the company acted to restore the water supply, which had been cut off. The NCP considers that this partly met its obligation to address human rights impacts, noting that ENRC is not directly responsible for**

**securing the human right to water. Security risks remained, however, and the NCP is not satisfied that the company has taken adequate steps to address them. Because of this the UK NCP finds that ENRC has not met the obligation to address human rights impacts with which it is involved: part of the general obligation to respect human rights (Chapter II, Paragraph 2 and Chapter IV, Paragraph 1).**

- **The UK NCP recommends that ENRC takes steps:**
  - **to ensure that effective communications channels are in place between ENRC, the concession holding companies, and the stakeholder communities of Kisankala and Lenge. The NCP considers that there should be a publicly available communications strategy, including accessible and effective grievance procedures.**
  - **to inform the communities about standards of conduct expected of staff and security contractors on the site, and ensure that the communities receive timely advice about anticipated changes to the schedule for mining.**
  - **to use its influence to ensure that site security management includes measures that assure continuing unrestricted community access to the water supply provided in 2007-08.**
  - **in consultation with the communities, to consider whether plans to provide or enhance community facilities as part of mining plans can be progressed at an early stage.**
- **The NCP will make a Follow-up Statement in February 2017.**

## **UK NCP Procedure**

- **The OECD Guidelines are voluntary principles for responsible business conduct in areas including employment, human rights and the environment. Each country adhering to the Guidelines is required to maintain a National Contact Point (NCP) to consider complaints under the Guidelines. The UK government maintains the UK NCP to meet this requirement. The NCP is not part of the OECD and has no wider responsibilities for OECD functions.**
- **The UK NCP is staffed by officials in the Department for Business, Innovation and Skills (BIS) and funded by BIS and**

**the Department for International Development (DfID). It operates independently of Ministers, who have no role in UK NCP decision making on complaints.**

- **The UK NCP follows published procedures in handling any complaint, including:**
  - **An initial assessment to decide whether a complaint is accepted for further examination**
  - **An offer of mediation if a complaint is accepted**
  - **A further examination if mediation is refused or fails to produce an agreement between the parties**
  - **A Final Statement reporting the outcome of mediation or further examination.**
- **An Initial Assessment of this complaint was published in October 2013. The parties accepted an offer of mediation, but failed to reach an agreement. The UK NCP began its further examination of the complaint in February 2015.**
- **The UK NCP aims to make a Final Statement within a year of receiving a complaint. This was not achieved in this case and the UK NCP notes that actions by both parties – RAID and ENRC – have affected the ability of the NCP process to deliver a prompt and positive outcome for the communities affected.**

## **Detailed analysis**

### **Details of the parties involved**

#### **The complainants**

1. The lead complainant is Rights and Accountability in Development (RAID). RAID brings the complaint on behalf of the Chiefs of Kisankala and Lenge villages, and their communities.
2. During the initial stages of the complaint, RAID introduced Action Contre l'Impunite pour les Droits de l'Homme (ACIDH), a Congolese NGO, as a co-complainant.

3. RAID's Director was a member of the UK NCP Steering Board when the complaint was made. Her appointment ended in September 2013. RAID's legal advisor is currently a member of the Steering Board. Steering Board Members do not play a part in the NCP's decisions on complaints and are expected to take no part in discussion or procedural review of a complaint in which they have an interest.

### The company

4. ENRC was a UK based public company when the complaint process began, but it was public knowledge (and referred to by RAID) that it could soon be the subject of a takeover. Over the period June-October 2013, ENRC became a subsidiary of Eurasian Resources Group (ERG), a private company based in Luxembourg. Following this takeover, ENRC de-listed from the London and Kazakh stock exchanges and re-registered as a private company.
5. The complaint refers to actions of subsidiaries of ENRC based in the Democratic Republic of Congo (DRC). The UK NCP details at Paragraph 40 below its understanding of relationships between ENRC and its related companies.

## UK NCP process

### Initial Assessment

6. The UK NCP received the complaint on 3<sup>rd</sup> May 2013 and published its Initial Assessment on 2<sup>nd</sup> October 2013. The Initial Assessment can be found at: <https://www.gov.uk/government/publications/uk-ncp-initial-assessment-complaint-from-rights-and-accountability-in-development-raid-against-eurasian-natural-resources-corporation-enrc>
7. The complaint raised an urgent issue about a clean water supply to Kisankala village. While the Initial Assessment was in progress, and without prejudice to its position on the issue, ENRC acted to address this and arranged for the clean water supply to be restored.
8. The Initial Assessment accepted for further examination issues relating to the future security of the clean water supply, the wider security arrangements for mining sites, and communications with the villages of Kisankala and Lenge. Other issues raised in the complaint (relating to resettlement and environmental monitoring) were not accepted for further examination.
9. The UK NCP considered that the issues accepted related to the following obligations under the OECD 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:*

*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.*
- 3. Encourage local capacity building through close co-operation with the local community, including business interests, as well as developing the enterprise's activities in domestic and foreign markets, consistent with the need for sound commercial practice.*
- 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 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:*

- 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.*
10. Chapter II, Paragraph 12 and Chapter IV Paragraph 1 are new obligations added to the Guidelines in 2011. The UK NCP considers that these obligations apply to actions of enterprises from 1<sup>st</sup> September 2011, and to outstanding impacts known to enterprises at that date.

## **Mediation**

11. Both parties accepted in principle the NCP's offer of mediation made in October 2013. Parties corresponded in November/December 2013 about pre-conditions for mediation. As part of this, at ENRC's request, the UK NCP invited Africo Resources to participate in mediation; however, Africo declined the offer.
12. Issues raised by both parties contributed to a significant delay in getting to the point of a first meeting with the mediator, but it eventually took place on 7<sup>th</sup> May 2014. Parties then arranged to meet again on 25<sup>th</sup> July 2014. After this second meeting, the mediator reported to the UK NCP that measures agreed between the parties would be written up into a draft agreement, with the company taking responsibility for producing a first draft. The UK NCP was copied into subsequent exchanges between the parties and it eventually became clear that an agreement was unlikely. In the final week of January 2015, having notified the parties of its intentions, the UK NCP took a decision that mediation had failed. The UK NCP then wrote to the parties on 6<sup>th</sup> February 2015 to inform them that it would begin a further examination of the complaint.

## Further examination - UK NCP analysis

### Information reviewed in further examination

13. Following the mediation meeting on 25<sup>th</sup> July, both ENRC and RAID copied to the NCP some details of their proposals for an agreement. As these details were shared with both parties and disclosed to the UK NCP, the NCP considered whether they could be used as the basis for findings. The UK NCP concluded, however, that it does not serve the purpose and effectiveness of the Guidelines to base findings on details of mediation proposals. The UK NCP has used the details disclosed as background information to its further examination and its observations about the parties' conduct of the complaint.
14. The UK NCP does not take part in mediation meetings and does not retain details of confidential mediation discussions<sup>1</sup>

### Complainants

15. RAID offered partner sources to corroborate accounts of its visits to the villages, and provided an updated account of conditions there based on a visit in April 2015 by its partner ACIDH. RAID also offered some information

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<sup>1</sup> Except as provided for in Paragraph 4.4.2 of UK NCP procedures: "*The NCP appointed mediator will provide the NCP with updates on the mediation process. These updates will be prepared taking into account the confidentiality applying to the mediation discussions, and will be held in the NCP's records.*"



relating to DRC law and arrangements between ENRC and its subsidiary companies.

### **Company**

16. The UK NCP asked for further information referred to in ENRC's response to the complaint. ENRC was unwilling to share additional information with RAID without additional assurances that it would remain confidential. RAID was not prepared to offer any additional assurances of confidentiality, and the UK NCP process does not require any assurances beyond the obligation on both parties not to share further or make public information shared with them under the complaint process (which RAID said it would observe).
17. The UK NCP Steering Board has previously recommended that the UK NCP should not base findings on information that has not been shared with parties in a complaint. Because of this, the UK NCP could not accept an offer from ENRC to share some information with the UK NCP only.

### **Other**

18. The UK NCP consulted open sources for information on relevant international standards (including IFC performance standards and UN conventions and reports on human rights), as well as information publicly available about the companies.
19. The UK NCP has not approached the ENRC subsidiary companies referred to in the complaint during its further examination.

### **Information sharing**

20. All the information reviewed by the NCP has been shared with the parties in the complaint. Information is shared on the understanding that while the complaint is under consideration it should not be shared further or made public. After the process is complete, parties are free to discuss it but should not share information provided by another party without its permission.

### **Limitations of information review**

21. The UK NCP operates within boundaries set by the OECD Guidelines, including the voluntary nature of the Guidelines and the requirement on NCPs to operate transparently.
22. The UK NCP is not a statutory body and has no legal or investigative powers requiring any party to provide information to it, nor any special status permitting it to obtain confidential information. The UK NCP expects, in any case, to share information it obtains with the parties. The UK NCP has some

ability to share sensitive information on a conditional basis. Its ability to do this depends on parties' own transparency or confidentiality obligations, however, and also on the level of good faith with which parties approach the process. Where there is little trust between parties, as in this case, it is unlikely that sensitive information will be shared.

23. In this case, the mistrust between the parties led each to seek to discredit or challenge information provided by the other. For example, in the early stages each party produced information about an exchange with the Chief of Kisankala: RAID produced a letter from the Chief stating that he had authorised RAID to act for him in the complaint, and ENRC produced details of a meeting with the Chief in which he had stated that he had not given any such authorisation<sup>2</sup>. The UK NCP was not able to identify independent local sources, and this has limited the range of information on which it could base findings.
24. The UK NCP has made findings where it believes that the information available supports them.

### **NCP fact finding**

25. On the basis of the information provided, the UK NCP has reached the following understanding of the facts relating to the relationships, operations and impacts:
26. The complaint refers to two villages, Lenge and Kisankala, which lie on two neighbouring mining concessions in the DRC:

#### **Lenge**

27. Lenge lies on a concession for which the DRC company Comide (Congolaise des Mines et de Developpement) owns a number of minerals mining licences (copper and cobalt are the main mineral resources). Comide was (75%) owned by Camrose Resources.
28. ENRC acquired an interest (50.5%) in Camrose in August 2010 and Camrose used a wholly owned subsidiary of ENRC (CCC) as a contractor to begin open pit mining on the concession. In December 2012, ENRC bought the remaining shares in Camrose and Comide became a wholly owned subsidiary of ENRC. In addition to the open pit mine, there has been artisanal mining in the area. There is no mining in the immediate vicinity of Lenge, however, and the village is not mentioned in the Competent Person's Report prepared for ENRC at the time of the 2012 acquisition.

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<sup>2</sup> The NCP found that RAID met the Initial Assessment test of having an interest in the issues raised. .

## Kisankala

29. Kisankala lies on a concession for which the DRC company Swanmines was awarded an exploitation permit by the Ministry of Mines in 2001. Artisanal miners employed to work the concession came to Kisankala in significant numbers from 2004.
30. Africo Resources, a Canadian company, agreed to acquire a 75% interest in Swanmines over a 4 year period from 2004 (the other 25% being held by the state owned Gecamines, which holds the concession). Africo/Swanmines commissioned exploratory stage environmental and social studies, including resettlement planning for Kisankala. These were reviewed by the International Finance Corporation (IFC), which identified additional work required to move on to the development stage of mining. In 2007-08, Africo installed a clean water supply system in Kisankala.
31. Camrose Resources acquired a majority shareholding in Africo in 2009. In the same year, Africo reported that in view of global economic conditions it had decided to reduce its costs and withdraw its expatriate staff from the DRC.
32. Artisanal miners subsequently tried to work the concession illegally, leading to confrontations with Africo/Swanmines' security contractors. RAID and Amnesty International visited the site in August 2009. In October 2009, Amnesty advised Africo of villagers' reports that the clean water supply had been cut off following an incident and Africo responded in the same month noting that the supply had been restored. In December 2009, Amnesty also reported its findings to the IFC. The NCP understands that the IFC replied in February 2010 and noted that it was no longer funding the project.
33. ENRC's 2010 acquisition of Camrose gave it a 32.17% interest in Africo, and this was increased to 63.7% by the December 2012 buyout. The Competent Person's report prepared for the buyout included information about Kisankala, but did not formally report on the Africo concession because the necessary due diligence information was already made available by Africo under its obligations as a publicly listed company in Canada.
34. Management reports published by Africo record that large numbers of artisanal miners returned to Kisankala in July 2012, but that a subsequent security review in October 2012 found that artisanal miners had left and the site was quiet and secure. Africo noted that security control was key to the successful development of the site.
35. RAID visited Kisankala (and Lenge) again in March 2013, with an independent human rights consultant formerly employed by Amnesty International. Villagers reported that the clean water supply had been cut off from July 2012. RAID reported this by telephone to a representative at Africo's office in Lumumbashi. RAID found the response unsatisfactory and so brought the complaint to the UK NCP in May 2013. As the NCP notes at

Paragraph 7 above, ENRC arranged for the water supply to be restored from July 2013.

36. Management reports published by Africo in 2013-15 record further incidences of artisanal miners “invading” the Africo concession. They refer to operations to remove large numbers of miners in 2013 and the second half of 2014. Reports indicate that there has been no significant progress in taking forward mining, but that a joint development with Comide is under consideration.
37. A consultant working with RAID and ACIDH accompanied them on a visit to Kisankala (and Lenge) in March 2014, and reports that the water was then available for a limited number of hours and that users paid a weekly sum to cover maintenance.
38. ACIDH made a further visit to Kisankala (and Lenge) in April 2015. Villagers reported that the clean water supply had been cut off again between October 2014 and March 2015. ACIDH reported that at the time of the visit the supply was available for a limited number of hours each day.
39. In comments on the draft of this Final Statement, ENRC disputes all these reports. ENRC notes in particular that no charges have ever been levied for use of water. ENRC also notes that it has been informed by Africo’s management that water is available 24 hours a day, seven days a week.

### **Business relationships of the companies**

40. ENRC had no involvement prior to August 2010. From 2010 to 2012, ENRC became a majority shareholder in Camrose and, through Camrose, held interests in Africo, Swanmines and Comide. Following the December 2012 buyout, ENRC’s 2012 Annual Report records the following holdings in the companies:
  - a) 100% of Camrose Resources, a BVI registered holding company;
  - b) 63.7% of Africo Resources, a Canadian registered holding company;
  - c) 47.8% of Swanmines, a DRC registered mineral exploration company;
  - d) 100% of Comide, a DRC registered mining company

The NCP understands that this remains the position (public reports are not available after 2013, as ENRC de-listed from the London stock exchange in January 2014 and re-registered as a private company).

### **Security arrangements of the companies**

41. At the time the clean water supply was first provided in 2008, Africo employed a local security contractor whose staff were stationed adjacent to Kisankala.
42. In its initial response to the complaint, ENRC noted that whilst Africo entered into its own contracts for security provision, Africo and Comide had a contractual agreement for Comide to manage Africo’s site security company

on Africo's behalf. ENRC further noted that ENRC's own in house security team had day to day supervision of the security company contracted by Comide and filed weekly reports.

43. Africo's management reports record, and ENRC has confirmed, that Africo independently decided to appoint a new security operator in September 2014. ENRC reports that as a result ENRC/Comide no longer has access to the Africo/Swanmines concession without an appointment.
44. The UK NCP understands that none of the companies' security personnel carries a firearm, and that operations to remove artisanal miners are carried out by the DRC state authorities (the Mining Police).

### Obligations of ENRC under the Guidelines

45. OECD Guidelines obligations generally apply to actions enterprises take or control directly. There is also a general obligation on enterprises to encourage their business partners to apply Guidelines standards (Chapter II Paragraph 14).
46. From 2011, certain more specific obligations were added with regard to actions enterprises can influence indirectly as a business partner. Enterprises are obliged to address impacts that they are linked to by a business relationship (Chapter II Paragraph 12), and specifically to seek to address human rights impacts that they are linked to by a business relationship (Chapter IV Paragraph 2). The general obligation to respect human rights (Chapter II, Paragraph 2) was also, from 2011, defined as including the obligation to address impacts with which an enterprise is – directly or indirectly – involved (Chapter IV Paragraph 1).
47. For the purposes of this complaint, the UK NCP regards ENRC as the business partner of the concession holding companies from August 2010 to December 2012 (although it notes that there is relatively little information in the complaint about activities of Camrose and Comide in this period). The UK NCP notes that ENRC's controlling interest in Camrose would give it significant leverage over companies controlled by Camrose.
48. From December 2012 onwards, ENRC wholly owned Camrose and Comide, and can be regarded as directly controlling the actions of these companies. Whilst ENRC did not wholly own Africo/Swanmines, it acquired a controlling interest in Africo, and positions on Africo's Board, making it a business partner with significant leverage over decision-making and day to day operations, although it is not clear that ENRC directly controlled actions of the companies.
49. The UK NCP notes, however, that Africo continues to have obligations under the OECD Guidelines in its own right, as a multinational enterprise based in an OECD member country (Canada). Africo is listed in Canada and the 36.3%

shares that are not owned by ENRC are publicly held. The UK NCP has not made any findings with regard to actions of Africo<sup>3</sup> and comments on these actions only in as far as it affects the role of ENRC.

## UK NCP Conclusions

### Obligations to contribute to development and to encourage capacity building (Chapter II, Paragraphs 1 and 3)

50. The obligation under Paragraph 1 is to “*contribute to economic, environmental and social progress with a view to achieving sustainable development.*” The obligation under Paragraph 3 is to *encourage local capacity building through close co-operation with the local community, including business interests, as well as developing the enterprise’s activities in domestic and foreign markets, consistent with the need for sound commercial practice.*”
51. The OECD Guidelines commentary on these obligations is that: *There should not be any contradiction between the activity of multinational enterprises (MNEs) and sustainable development, and the Guidelines are meant to foster complementarities in this regard. Indeed, links among economic, social and environmental progress are a key means for furthering the goal of sustainable development.....The Guidelines also acknowledge and encourage the contribution that MNEs can make to local capacity building as a result of their activities in local communities.* The UK NCP interprets this to mean that there is no positive obligation on companies to invest in or take forward particular projects that develop an area, but there is an obligation to take account of the compatibility of business decisions with sustainable development and see that they do not unduly delay or hinder it.
52. In this case, it appears that the plans originally developed for environmental and social aspects of the Africo/Swanmines project were detailed and based on consultation with the Kisankala community, although more work was required to bring them into lines with international standards. It appears that the Kisankala community generally welcomed the development and plans for resettlement.
53. If resettlement had proceeded, it appears likely that the adverse impacts now affecting the community could have been avoided: whilst RAID and ENRC disagree about the reason for disruption to the clean water supply, both cite the presence of artisanal miners on the concession as the precipitating factor. It appears to the NCP that artisanal miners continue to try to mine the site because it is not being developed by the concession holder, and other employment opportunities are limited.

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<sup>3</sup> During its Initial Assessment of the complaint against ENRC, the UK NCP informed the Canadian NCP, as the home NCP of Africo, about Africo’s involvement. The Canadian NCP confirmed that no complaint had been made against Africo.

54. ENRC's investment in August 2010 and its further acquisition in December 2012 do not appear to have advanced the mining projects. Management reports by Africo indicate that development of its mining plans is stalled pending discussions with Comide about a joint development. Information reviewed by the UK NCP suggests that the minority partner in Swanmines (Gecamines) would like to see development proceed.
55. Mining projects are generally long-term ventures. As ENRC has noted, resettlement of Kisankala should only take place as appropriate and necessary to the stage of development the project has reached. International standards (including the OECD Guidelines) oblige companies to consider environmental and social aspects of projects throughout their life cycle, however, and the UK NCP considers that this includes a period when development is intentionally delayed or suspended. Sustainable development involves taking account of and managing the impacts of a suspension on affected communities.
56. The UK NCP has not been offered any information to suggest that the communities on the concessions have been kept informed about the delay and the potential for changes to the companies' plans. Similarly, the UK NCP has seen no information to suggest that ENRC has assessed or taken account of the effect of delay on the communities. Because of this, the UK NCP finds that ENRC has not met its obligations to contribute to development and encourage capacity building.

#### **Obligations relating to business relationships (Chapter II, Paragraphs 12-13)**

57. The obligation under Paragraph 12 is to *“seek to prevent or mitigate an adverse impact...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.* The obligation under Paragraph 13 is to *“encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of responsible business conduct compatible with the Guidelines.”*
58. The complaint referred to a range of impacts, including some alleged environmental impacts that the UK NCP did not accept were substantiated. The impacts accepted for further examination were the impacts on the communities of incidents between company security contractors and artisanal miners. In particular, the UK NCP noted the uncertainty created about the reliable availability of the clean water supply to Kisankala. As previously noted, these impacts appear to arise from the long delay in taking forward plans for mining, and from a failure by ENRC and its subsidiaries and partners to communicate with communities about these.
59. The UK NCP considers that the security problems on both the Comide and Africo concessions would have been well known to ENRC as it completed its

due diligence prior to its December 2012 buyout of Camrose. Through Camrose, ENRC became a significant shareholder in Africo from 2010, and in July 2011 two senior representatives of ENRC were appointed to Africo's Board. RAID and ENRC agree that the water supply was disrupted following a July 2012 riot by artisanal miners, and this incident was reported in Africo's management analysis for the period.

60. Similarly, senior representatives of ENRC took up positions in Comide, and the Competent Person's Report prepared for ENRC on the Comide concession reported on security issues.
61. RAID and an independent human rights consultant contracted by RAID also note that the problem with the Kisankala water supply was reported to a named officer of Africo in March 2013. The supply was still cut off when the complaint was made in May 2013, and in its response to the complaint, ENRC said that RAID's report had not reached it. The UK NCP considers that if ENRC did not know about the impact, it should have known. As noted at Paragraph 42 above, by ENRC's own report its security team had day to day supervision of site security arrangements at this time.
62. Once the complaint was made, the UK NCP acknowledges that ENRC was prepared to act ahead of its Initial Assessment to restore the water supply, and it was then operational from July 2013.
63. The threat to the security of the supply remains, however, and the UK NCP understands that the water supply may be a focus for security operations because of its central location on the concession and because water could be used to wash illegally mined minerals. In its response to the complaint, ENRC identified that security provision for Africo was managed by Comide, and the UK NCP concludes that this would put it directly within ENRC's control. It should therefore have been possible to identify additional measures to provide assurances to the community about the future availability of the supply.
64. More recently, in late 2014 Africo has appointed a new security contractor. ENRC reported that as a consequence it cannot access the Africo concession unless an appointment is made, but did not offer any information about how it would meet its continuing obligations in this new situation. Africo's 2015 "Annual Information Form" notes that "*From time to time large scale or intermittent illegal mining activity may continue on the property.*"
65. ENRC was not willing to share additional information about its security arrangements, because of concerns about confidentiality if these were shared with RAID. The UK NCP accepts that there can be good reasons for not sharing details of security operations, but notes that where transparency is not possible, it is necessary to find other ways of providing assurances to communities who have a need and a right to know. The UK NCP has not been offered any information to show that ENRC has taken any other action to address the ongoing risks to communities from security operations, or to encourage its business partners to apply Guidelines standards in addressing them.



66. The UK NCP considers that ENRC is not fully meeting its obligations to address impacts of its business relationships and encourage business partners to apply Guidelines standards. In particular, the UK NCP considers that ENRC should take measures – directly or through exercising leverage with Africo - to assure the availability and accessibility of the water supply.

**Obligation to engage with stakeholders (Chapter II, paragraph 14)**

67. The obligation under the Guidelines is to “*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.*”
68. The most immediate obligation of ENRC on acquiring its interests in Africo and Comide was to assure itself that communications channels were in place to:
- a) keep stakeholder communities informed about how and when plans affecting them were expected to develop, and
  - b) provide an effective mechanism for the communities to raise concerns or grievances, including raising them with ENRC.
69. On the basis of the information offered to it, the UK NCP does not consider that these two way communication channels are in place. RAID provided information about attempts by the communities and by RAID to raise issues with the companies. ENRC has referred to some conversations with community representatives, but has not responded to the UK NCP’s request for supporting information to verify the arrangements that are in place. The UK NCP does not consider that ENRC’s reasonable concerns about confidentiality can extend to not sharing information that would need to be available to stakeholders.
70. The UK NCP notes that establishing good two way communications with Lenge should be a priority, in order to identify and address any risks of adverse effects from Comide’s activities. Although the Competent Person’s report for ENRC on the Comide concession did not mention Lenge, it did note that there were four riots by artisanal miners between 2007 and 2011 on the Comide concession, and ENRC has acknowledged that Lenge is a stakeholder community on the concession. Information in the complaint suggested that large numbers of artisanal miners had been based in Lenge prior to ENRC’s involvement, had made some payments to the village for permission to stay and dig there, and had subsequently been removed in Comide security operations.
71. The UK NCP finds that ENRC has not met the obligation under Chapter II, Paragraph 14.

## **Obligations to respect human rights (Chapter II, Paragraph 2 and Chapter IV, Paragraph 1)**

72. The UK NCP has concluded above that ENRC had an obligation to address impacts on the community arising from the delay in developing the site and the associated security problems (including security of the safe water supply in Kisankala). Under Chapter IV of the Guidelines, there is a more specific obligation to address human rights impacts, as an element of a company's general obligation to respect human rights. The UK NCP has therefore considered whether the impacts are human rights impacts.
73. Access to a safe water supply is regarded by UN, and recognised by the UK Government, to be part of the human right to an adequate standard of living (under the International Covenant on Economic, Social and Cultural Rights).
74. In its Initial Assessment of the complaint, the UK NCP noted that none of the information provided suggested that ENRC and its subsidiaries or partners had compromised an existing safe water supply. The existing water supply to Kisankala did not meet international standards for a number of reasons, including earlier artisanal mining. The safe water supply provided by Africo Resources improved the existing situation rather than restoring a supply disrupted by the company's activities. The NCP's further examination has found nothing to contradict this initial view.
75. The UK NCP notes, however, that human rights law recognises the concept of progression. As it applies formally to the duties of States to protect human rights, this means that once services and facilities have been improved, the positive change must be maintained and slippages or retrogression must be avoided. The UK NCP considers that there is a corresponding effect on the business obligation to respect human rights. Where a business contributes to improving the situation, it is then obliged to consider its impact on the improved situation. In this case, the improvement pre-dated ENRC's involvement, and also pre-dated the addition of the detailed human rights obligations in the 2011 update to the OECD Guidelines.
76. The reports from RAID's 2014 visit that users were being asked to pay for maintenance of the water supply are disputed by ENRC. The UK NCP has not independently verified the reports and so does not make any conclusion about whether a charge is made.<sup>4</sup>
77. The UK NCP considered whether the information reviewed suggested impacts on any human rights of the communities other than the right to water. In

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<sup>4</sup> The UK NCP notes that in the case that any charge is made by a company for water provision, even where provision is via an informal arrangement, this tends to increase its obligations in regard to human rights of the people using the water supply. See the UN Special Rapporteur's consideration of private provision of water services at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/148/31/PDF/G1014831.pdf?OpenElement>

regard to security incidents that happened after ENRC acquired an interest, ENRC disputes that the key incident described by RAID took place. Neither party has offered the UK NCP information to corroborate its account. During the further examination, RAID has referred to further incidents in which local authorities detained artisanal miners. Africo management updates also refer to security operations to remove artisanal miners. It does not appear to the UK NCP that any specific abuses linked to the companies are identified.

78. The UK NCP concludes that the impact on reliable access to safe water is a human rights impact. As noted at Paragraph 66 above, the UK NCP does not consider that ENRC has fully met its obligation to address this impact. The UK NCP therefore finds that ENRC has not fully met its obligations under Chapter II Paragraph 2 and Chapter IV Paragraph 1.

## **Engagement and good faith of parties**

79. The UK NCP considers that overall ENRC's engagement with the NCP process has been limited. In particular, the UK NCP considers that the company could have provided more information to assist the UK NCP's further examination. The UK NCP considers that actions of RAID were also sometimes unhelpful to the progress the case, however; contributing to delays and to the persistent hostility and mistrust that characterised parties' dealings with each other and, to some extent, with the NCP.
80. The UK NCP notes that while its remit in further examination extends to the company's actions only, its procedures generally require good faith engagement from both parties to deliver an effective outcome.

## **Examples of company good practice**

81. As noted, ENRC was prepared to address the immediate issue of the water supply, and to enter mediation with regard to the issues accepted by the NCP. The company made proposals to address the issues, although these did not ultimately lead to an agreement with RAID. ENRC notified the UK NCP in December 2014 that it considered that RAID had not acted in good faith in regard to the mediation stage of the complaint.

## **Recommendations to the company and follow-up**

82. The NCP recommends that the company takes steps to:
- ensure that effective communications channels are in place between ENRC, the concession holding companies, and the stakeholder

communities of Kisankala and Lenge, including accessible and effective procedures for the communities to raise grievances.

- inform the communities about standards of conduct expected of staff and security contractors on the site, and ensure that the communities receive timely advice about anticipated changes to the schedule for mining.
- use its influence with Africo/ Swanmines to ensure that site security management includes measures that assure continuing and unrestricted community access to the water supply provided in 2007-08.
- in consultation with the communities, consider whether plans to provide or enhance community facilities as part of mining plans can be progressed at an early stage.

83. Where it makes recommendations, the UK NCP requests an update on implementation from parties after a specified interval and makes a follow-up statement based on parties' updates. The NCP will write to the parties in February 2017 to request an update.

**FEBRUARY 2016**

**UK NATIONAL CONTACT POINT FOR THE OECD GUIDELINES FOR  
MULTINATIONAL ENTERPRISES**

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