

**Initial Assessment By The UK
National Contact Point For
The OECD Guidelines For
Multinational Enterprises**

**COMPLAINT FROM LAWYERS FOR
PALESTINIAN HUMAN RIGHTS
(LPHR) AGAINST G4S**

MAY 2014

Contents

Contents	2
Summary of the UK NCP decision	3
Substance of the complaint.....	3
Guidelines provisions cited	4
The Initial Assessment process	4
Handling of the complaint.....	5
UK NCP handling process	5
UK NCP decision	5
Identity of the complainants and their interest in the matter.....	6
Whether the issue is material and substantiated	6
Relevance of applicable law and procedures, including court rulings	8
How similar issues have been, or are being, treated in other domestic of international proceedings:	9
Whether the consideration of the specific issue would contribute to the purpose and effectiveness of the Guidelines	9
Next steps	9

Summary of the UK NCP decision

- **The UK National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises (the Guidelines) has decided to accept for further examination the issues with regard to the company's obligations under Chapter II Paragraph 2, and Chapter IV Paragraphs 1 and 3. The NCP has not accepted for further examination the issues with regard to Chapter IV Paragraphs 2 and 5.**
- **Accepting issues for further examination does not mean that the NCP considers that the company has acted inconsistently with the Guidelines.**

Substance of the complaint

1. The complaint is made by Lawyers for Palestinian Human Rights (LPHR) an organisation of UK lawyers working to protect and promote Palestinian human rights.
2. The complainant identifies G4S, a UK company that provides security equipment and services. G4S has a controlling interest in Israeli subsidiaries which have contracts with the Government of Israel to supply and maintain security equipment. The complaint identifies certain facilities and operations in which it says the equipment is used, and says that these facilities and operations are in breach of or associated with breaches of international human rights laws and principles.
3. The complaint asks that the company provides information about where and how its equipment is used and what due diligence checks have been conducted in providing it. The complaint also asks the company to stop servicing the equipment, to remove it, to agree to an independent audit of these actions, and to agree to identify ways to compensate people who have suffered adverse impacts.
4. The company accepted an invitation from the UK NCP to respond to the complaint, and denies the allegations made by the complainant.
5. The company says that its activities in maintaining, and in some cases installing, equipment in some of the locations and facilities mentioned do not contribute to any human rights abuse. Its activities are kept under review at a senior level and informed by advice from independent experts. In respect of its wider activities, the company notes that it has developed a detailed human rights policy, including a policy of annual re-assessment of those areas of its business judged to be higher risk.
6. The company identifies other activities of the complainant, which it says show a political motivation for the complaint. The company says

that it is not appropriate to use the NCP process to address these issues.

Guidelines provisions cited

7. The complainant refers 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...

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

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.*

2. *Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.*

3. *Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.*

5. *Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of risks of adverse human rights impacts.*

8. 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

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

Handling of the complaint

10. OECD procedural guidance to NCPs is that generally issues are dealt with by the NCP of the country in which the issues have arisen. The UK NCP notes that issues in this complaint arise in Israel and the Occupied Palestinian Territories. Israel, as an OECD member adheres to the Guidelines. The UK NCP informed the Israeli NCP about the complaint and arguments made by the complainants that the complaint should be considered by the UK NCP as the home country for the company and the complainants. The Israeli NCP did not object to the UK NCP's proposal to handle the complaint, but asked to be informed about its progress. .
11. With parties' consent, the UK NCP shared information in the complaint and response with the Israeli NCP. The Israeli NCP also submitted some information on other legal and NCP proceedings it considered relevant to the issues raised and also asked the UK NCP to note the wider political context of the complaint. The company raised some similar points that the NCP has noted at Paragraphs 35. and 37. below.
12. Information submitted by the Israeli NCP was shared with the parties.

UK NCP handling process

13.

27.11.13	UK NCP receives complaint
06.01.14	UK NCP confirms UK handling
08.01.14	UK NCP invites company's response
16.01.14	UK NCP meets company to explain complaint process
17.02.14	UK NCP receives company's response
19.02.14	UK NCP shares response with complainant
03.03.14	UK NCP receives further submission from complainant
13.03.14	UK NCP receives further response from company
23.04.14	UK NCP shares draft Initial Assessment with both parties
08.05.14	UK NCP receives comments from both parties

14. All the documents provided in the complaint and response were shared with both parties.
15. The NCP offered each party a meeting to explain the process. The company met the NCP on 16th January, and a note of this meeting was shared with the complainants. The complainant did not take up the offer of a meeting.

UK NCP decision

16. The UK NCP has decided to accept for further examination on the issues relating to the company's obligations under Chapter II, Paragraph 2 and Chapter IV, Paragraphs 1 and 3. The UK NCP took

the following points into account when considering whether the complainants' concerns merited further consideration:

Identity of the complainants and their interest in the matter

17. The complainant has an established campaign to promote the human rights of Palestinians living under occupation. The UK NCP notes that the complaint appears to be made on behalf of this community generally rather than on behalf of a specific individual or group.
18. The NCP is satisfied that the complainant is able to provide information about the impacts the complaint refers to and the international law context, but notes that the complainant does not appear able to provide details of the actions of the company (and to some extent look to the NCP process to remedy this deficit).

Whether the issue is material and substantiated

19. In support of its claims, the complainant organisation offers findings of international bodies relating to the human rights impacts it identifies, including an opinion of the International Court of Justice and reports of United Nations Committees on human rights and children's rights. The complainant also offers a wide range of NGO reports on impacts, and around 30 accounts of individuals relating specifically to their treatment at the locations and facilities identified (including some named individuals and others, including children, whose names are withheld).
20. With regard specifically to the activities of the company, the complainant refers principally to the company's own statements in annual and CSR reports.
21. In support of its response, the company offers details about the services provided as well as details of its human rights policies. The company also refers to a number of legal judgments and other findings of bodies including OECD National Contact Points in cases which the company considers raise similar issues.
22. The complainant refers to the company's provision and servicing of equipment in three areas:
 - a) the separation barrier constructed in the West Bank area,
 - b) the Erez crossing between Israel and the Gaza Strip,
 - c) Israeli Prison Service facilities in various locations.
23. The complainant offers information that contracts to provide (c) were signed in 2007. It does not offer information about when contracts to provide (a) and (b) were signed (but notes elsewhere in the complaint that construction of the separation barrier began before the company acquired its subsidiary, and is ongoing). The complainant says that the

company stated in 2011 that it intended, subject to contractual obligations, to explore ending services provided under (a), and that it further stated in 2012 that these contracts would end by 2015. For commercial confidentiality and legal reasons, the company does not comment on its contracts except to outline the nature of the equipment and services provided.

24. The information provided in the complaint and response appears to the NCP to show that there are established international law concerns relating to the three areas referred to by the complainants, and that the government of Israel is engaging with relevant UN bodies about these. With regard to Prison Service facilities, the information suggests that the detention of children is a particular focus.
25. The company says that it services and maintains baggage scanners and metal detectors provided to checkpoints in the separation barrier, and installs and maintains security systems including closed circuit television, access control and public address systems provided in prison service facilities. The information provided by the complainant does not appear to the NCP to suggest that the equipment itself is used to commit abuses, or to identify specific or increased risks arising from the equipment and services as opposed to the facilities and locations in which they are provided.
26. The company states that it has developed its detailed human rights policy since 2011.
27. Before 2011, enterprises had a general obligation, under Chapter II, Paragraph 2 of the Guidelines, to respect the human rights of those affected by their activities. More detailed human rights provisions added in Chapter IV of the Guidelines in 2011 are referred to as elaborating this general obligation. They contemplate a number of different relationships that an enterprise may have to human rights impacts: it may be generally involved with them (Paragraph 1), cause or contribute to them (Paragraph 2), or be linked to them by a business relationship (Paragraph 3). In each case, the provisions oblige enterprises to address the impacts. Paragraph 5. also places a general obligation on enterprises to carry out appropriate human rights due diligence. All these paragraphs are cited by the complainants.
28. Based on the information set out in Paragraphs (19-26) above, the company's actions from 2011 appear to the NCP to have been to continue maintaining and servicing equipment under pre-existing contracts, and to review and seek advice from an academic legal specialist on some of these contracts as part of the wider development of a detailed human rights policy.
29. As set out in Paragraph 25. above, the information does not establish that the equipment itself is used to commit abuses, or that the servicing and maintenance of the equipment makes a substantial contribution to

their being committed. The NCP therefore does not consider that the complainant has substantiated an issue with regard to the company's obligations under Paragraph 2. to avoid causing or contributing to a human rights impact.

30. Similarly, the NCP does not consider that the complainant has substantiated an issue with regard to the company's due diligence obligations under Chapter IV, Paragraph 5. The NCP notes that the due diligence obligation applies across the range of a company's activities. Information provided by the company (and some of its public statements referred to in the complaint) demonstrate that it has undertaken due diligence across the range of its activities, and that within this it has reviewed its subsidiaries' activities, is aware of particular risks and has identified measures to address them. The NCP also takes account of the context of existing contracts.. The NCP notes that should the complaint proceed to further examination of issues accepted at Paragraph 31. and 32. below, the NCP's Final Statement may refer further to specific aspects of the company's due diligence.
31. The NCP does consider that the information provided in the reports and accounts referred to at Paragraph 19 above substantiates an issue with regard to the company's obligations under the other Chapter IV provisions cited by the complainant. With regard to the Paragraph 3 provision, the NCP notes that the issue it considers is substantiated refers to the business relationship under the contracts referred to specifically, and not to a relationship with the State of Israel in general.
32. The NCP accepts that the information also substantiates an issue with regard to the obligation under Chapter II, Paragraph 2, but notes the general character of this obligation prior to 2011.

Relevance of applicable law and procedures, including court rulings

33. The complaint refers to international law on human rights under the International Convention on Civil and Political Rights (right to life, right to a fair trial), international conventions on torture and war and the UN Convention on the Rights of the Child.
34. The company refers to judgments in the UK, French and US courts in which courts have found that companies are not responsible for actions of the Government of the State of Israel. The NCP notes the laws and rulings referred to, but does not believe that they affect the voluntary standards of the Guidelines and the NCP complaints process. As stated in other relevant parts of this Assessment, the NCP does not make findings about actions of governments.

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

35. The company refers to a number of published assessments of NCPs (including the UK NCP) that reject complaints that are similar in raising issues that relate to actions of governments. The company also refers to cases in which NCPs have rejected complaints where there is no prospect of a mediated resolution.
36. The UK NCP notes these cases. The OECD has not suggested to NCPs that their findings in complaints should establish precedents, unless these have been the subject of referrals to the relevant OECD committees, however. The UK NCP considers each individual complaint on its individual merits, and where issues that merit further examination cannot be resolved through mediation, the UK NCP seeks to make a determination on whether a company acted consistently with the Guidelines.

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

37. The UK NCP notes concerns raised by the company that actions of the Israeli state rather than the company are the object of the complaint.
38. The Preface to the Guidelines describes them as *“recommendations addressed by governments to multinational enterprises*. The focus of this complaint is the business relationship of a multinational with an adhering government. The Guidelines commentary on provisions relating to business relationships clearly states that these include relationships with State entities. The UK NCP does not believe, however, that these provisions are intended to encourage or empower NCPs to make findings about the actions of governments themselves. The UK NCP affirms that it does not examine the actions of any party other than the company identified in a complaint, and does not consider it would be within its remit to do this. The NCP will include any relevant advice from the OECD on this point in its Final Statement in this complaint.
39. For the avoidance of doubt, the NCP also re-iterates its opening statement that accepting issues for further examination does not mean the NCP considers that the company has acted inconsistently with the Guidelines.

Next steps

40. The UK NCP will formally ask the parties whether they are willing to engage in mediation/conciliation with the aim of reaching a settlement. Subject to their response, the UK NCP will liaise with the parties to

arrange mediation/conciliation meetings. If these meetings achieve a resolution, the UK NCP will reflect this in a Final Statement without making a determination on whether the company acted inconsistently with the Guidelines. If a mediated/conciliated solution is not possible, the UK NCP will conduct a separate examination into the substantiated issues and will reflect the outcome in a Final Statement that will include a determination on whether the company acted inconsistently with the Guidelines.

22 May 2014

UK National Contact Point for the OECD Guidelines for Multinational Enterprises

**Steven Murdoch
Danish Chopra
Liz Napier
Sammy Harvey**