

**FINAL STATEMENT BY THE UK  
NATIONAL CONTACT POINT FOR  
THE OECD GUIDELINES FOR  
MULTINATIONAL ENTERPRISES**

Complaint from Justiça  
Ambiental et al. against BHP  
Billiton PLC (on Mozal SARL) in  
Mozambique

**SEPTEMBER 2012**

## Contents

|  |    |
|--|----|
| Summary of the conclusions .....                   | 3  |
| Background .....                                   | 3  |
| Details of the parties involved .....              | 4  |
| Complaint from Justiça Ambiental.....              | 5  |
| Response from BHP Billiton.....                    | 8  |
| UK NCP process .....                               | 9  |
| Outcome of the mediation in Mozambique.....        | 11 |
| UK NCP analysis.....                               | 11 |
| Conclusions.....                                   | 24 |
| Examples of good company practice .....            | 26 |
| Recommendations to the company and follow up ..... | 26 |

## Summary of the conclusions

- The UK National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises (the Guidelines) examined the allegations contained in the complaint from Justiça Ambiental. The UK NCP concluded that BHP Billiton PLC did not breach Chapters II(2), III(1), III(2), V(1)(a), V(1)(b) and V(2) of the 2000 version of the Guidelines, in respect of Mozal SARL's bypass of two fume treatment centres of its aluminium smelter in Maputo (Mozambique).
- However, the UK NCP encourages both BHP Billiton PLC and Mozal SARL to build upon their existing procedures for engagement with local communities and be forthcoming in disclosing to interested parties (particularly the affected communities and their representatives) information on projects that may have an impact on the environment and the health and safety of the communities affected by the smelter.
- This Final Statement concludes the complaint process under the Guidelines.

## Background

### OECD Guidelines for Multinational Enterprises

1. The Guidelines comprise a set of voluntary principles and standards for responsible business conduct, in a variety of areas including human rights, disclosure, employment and industrial relations, environment, combating bribery, consumer interests, science and technology, competition, and taxation.
2. The Guidelines are not legally binding. However, OECD governments and a number of non-OECD governments are committed to encouraging multinational enterprises operating in or from their territories to observe the Guidelines wherever they operate, while taking into account the particular circumstances of each host country.
3. The Guidelines are implemented in adhering countries by NCPs which are charged with raising awareness of the Guidelines amongst businesses and civil society. NCPs are also responsible for dealing with complaints that the Guidelines have been breached by multinational enterprises operating in or from their territories.

### UK NCP complaint procedure

4. The UK NCP complaint process is broadly divided into the following key stages:
  - a) Initial Assessment - This consists of a desk-based analysis of the complaint, the company's response and any additional information

provided by the parties. The UK NCP will use this information to decide whether further consideration of a complaint is warranted;

- b) Conciliation/mediation OR examination - If a case is accepted, the UK NCP will offer conciliation/mediation to both parties with the aim of reaching a settlement agreeable to both. Should conciliation/mediation fail to achieve a resolution or should the parties decline the offer then the UK NCP will examine the complaint in order to assess whether it is justified;
  - c) Final Statement – If a mediated settlement has been reached, the UK NCP will publish a Final Statement with details of the agreement. If conciliation/mediation is refused or fails to achieve an agreement, the UK NCP will examine the complaint and prepare and publish a Final Statement containing a clear statement as to whether or not the Guidelines have been breached and, if appropriate, recommendations to the company to assist it in bringing its conduct into line with the Guidelines;
  - d) Follow up – Where the Final Statement includes such recommendations, it will specify a date by which both parties are asked to update the UK NCP on the company’s progress towards meeting these recommendations. The UK NCP will then publish a further statement reflecting the parties’ responses and, where appropriate, the NCP’s conclusions on those responses.
5. The complaint process, together with the UK NCP’s Initial Assessments, Final Statements and Follow Up Statements, is published on the UK NCP’s website:  
<http://www.bis.gov.uk/nationalcontactpoint>

## Details of the parties involved

### The complainant

6. Justiça Ambiental (JA) brought the complaint against BHP Billiton PLC (in respect of the operations of Mozal SARL in Mozambique) on behalf of a coalition of institutions consisting of itself and Centro Terra Viva, Livaningo, Liga Moçambicana dos Direitos Humanos, Centro de Integridade Pública, and Kulima. JA is an NGO based in Maputo (Mozambique) and its mission is *“to engender a culture of civil action in Mozambique through both our actions to protect the environment, and our active engagement in developmental decisions pertaining to issues of environmental justice, both here in Mozambique and throughout the rest of the world”*.

### The company

7. BHP Billiton PLC (BHPB) is a UK registered mining company listed in the FTSE 100. The complaint referred to the activities of Mozal SARL

(Mozal) which operates an aluminium smelter near Maputo (Mozambique). According to BHPB's website<sup>1</sup>, Mozal is a joint venture between BHPB (47.1%); Mitsubishi Corporation (25%); the Industrial Development Corporation of South Africa Limited (24%); and the Government of Mozambique (3.9%). The project has also received funding from lenders including the International Financial Corporation<sup>2</sup>, the European Investment Bank<sup>3</sup>, and the UK-based Commonwealth Development Corporation<sup>4</sup>. Neither JA nor BHPB disputed BHPB's lead in responding on behalf of Mozal to the complaint under the Guidelines.

## Complaint from Justiça Ambiental

8. The concerns raised by JA relate to Mozal's operations in Mozambique and were specifically related by JA to Chapters II(2), II(5), III(1), III(2), V(1)(a), V(1)(b) and V(2) of the 2000 version of the Guidelines<sup>5</sup> which state that:

*II(2). [Enterprises should] Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments.*

[...]

*II(5). [Enterprises should] Refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to environmental, health, safety, labour, taxation, financial incentives, or other issues.*

[...]

*III(1). Enterprises should ensure that timely, regular, reliable and relevant information is disclosed regarding their activities, structure, financial situation and performance. This information should be disclosed for the enterprise as a whole and, where appropriate, along business lines or geographic areas. Disclosure policies of enterprises should be tailored to the nature, size and location of the enterprise, with due regard taken of costs, business confidentiality and other competitive concerns.*

---

<sup>1</sup> See "assets" under <http://www.bhpbilliton.com/home/businesses/aluminium/Pages/default.aspx> (accessed on 29 February 2012).

<sup>2</sup> See [www.ifc.org](http://www.ifc.org) – search "Mozal" under the section projects (accessed on 29 February 2012).

<sup>3</sup> See <http://www.eib.org/projects/loans/1996/19962181.htm> and <http://www.eib.org/projects/loans/2000/20000361.htm> (accessed on 29 February 2012).

<sup>4</sup> See p. 76 of <http://www.cdcgroup.com/uploads/cdcannualreport1999.pdf> (accessed on 29 February 2012).

<sup>5</sup> OECD, *OECD Guidelines for Multinational Enterprises*, 2000 – available at <http://www.oecd.org/dataoecd/56/36/1922428.pdf> (accessed on 29 February 2012).

*III(2). Enterprises should apply high quality standards for disclosure, accounting and audit. Enterprises are also encouraged to apply high quality standards for non-financial information including environmental and social reporting where they exist. The standards or policies under which both financial and non-financial information are compiled and published should be reported.*

*[...]*

*V(1). [Enterprises should] Establish and maintain a system of environmental management appropriate to the enterprise, including:*

*a) collection and evaluation of adequate and timely information regarding the environmental, health, and safety impacts of their activities;*

*b) establishment of measurable objectives and, where appropriate, targets for improved environmental performance, including periodically reviewing the continuing relevance of these objectives.*

*V(2). [Enterprises should,] Taking into account concerns about cost, business confidentiality, and the protection of intellectual property rights:*

*a) provide the public and employees with adequate and timely information on the potential environment, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance; and*

*b) engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation.*

9. JA made the complaint on 18<sup>th</sup> October 2010, making the following allegations in respect of Mozal:
- a) That Mozal was planning to bypass for 6 months the fume and gas treatment centres of its aluminium smelter (near Maputo – Mozambique) in order to complete an upgrade of these treatment centres. This upgrade was needed to ensure that the smelter's environmental emissions complied with required standards. JA alleged that, while the bypass was in place, the smelter's exhaust fumes would be released into the air with likely negative effects on the environment and on the health and safety of the communities up to 40-100 km from the smelter;
  - b) That Mozal presented different contradictory reasons for the need for the work. Either they used inappropriate material or they neglected to make adequate provision in their 2001 Environmental

Impact Assessment on the operation of the smelter to address the natural lifetime of these treatment centres;

- c) That the Environmental Management Plan (EMP) produced by Mozal, and a study (unaccredited in the version viewed by JA but attributed to researchers at the Eduardo Mondlane University in Maputo) on the environmental impact of the proposed bypass of the treatment centres, were an inadequate basis upon which to elect to bypass the treatment centres. In particular, JA alleged that the EMP did not sufficiently evaluate alternatives to bypassing the treatment centres;
- d) That Mozal refused to disclose to JA the special authorisation, issued on the basis of the two documents referred to in paragraph 9(c) by Mozambique's Ministry for Coordination of Environmental Affairs (MICOA) which granted Mozal permission to bypass the treatment centres. JA also alleged that Mozal refused to disclose its annual environmental performance reports to JA without prior agreement from JA to keep this information confidential. As JA did not comply with this request, it did not have access to the reports. JA further alleged that, due to the obscure procedure of MICOA's special authorisation, JA could not be sure whether the authorisation was submitted in accordance with Mozambique's law. JA suggested that, if Mozal had already carried out some short-term bypass operations, then these operations might not have had MICOA's special authorisation and thus might have breached Mozambique's law (namely, the Regulamento Sobre os Padrões de Qualidade Ambiental e de emissão de efluentes (Decreto 2 Junho 2004 n.18/2004));
- e) That the three consultation meetings organised by Mozal took place after the company received the special authorisation from the MICOA. JA also alleged that the meetings were not sufficiently informative, left little room for questions from the attendees, and were held in English with extremely poor translation into the local languages;
- f) That Mozal did not issue the same health warning to the affected communities as Hillside Aluminium's (a subsidiary of BHPB in South Africa) smelter did in October 2004 when it bypassed the treatment centres for 72 hours;
- g) That Mozal's actions described above breached Mozambique's 2004 Constitution, interpreted in the light of the United Nations (UN) Universal Declaration of Human Rights, and the African Charter on Human and People's Rights, and also breached the latter Charter.

## Response from BHP Billiton

10. BHPB wrote to the UK NCP on 17 November 2010, denying these allegations. In particular, BHPB claimed:
  - a) That Mozal urgently needed to repair its two fume treatment centres. BHPB estimated that this work would require a bypass of the treatment centres for 137 days starting late November 2010. BHPB later confirmed in its letter of 4 January 2011 that work on the two fume treatment centres started respectively on 17 November 2010 and 2 December 2010. BHPB also explained that, on the basis of two separate independent structural integrity studies, the problem with the treatment centres was structural and due to unanticipated corrosion over the operating life of the equipment. Therefore, the company argued that it needed to repair the treatment centres to eliminate the risk of catastrophic failure and minimise increasing safety risks to its employees, and further improve its environmental performance. BHPB also explained that the MICOA conducted a separate environmental audit on 24 November 2009 and confirmed the structural issues with the treatment centres;
  - b) That Mozal did consider the effect of the bypass on community health and the environment, but concluded that there would be no significant acute or cumulative impact. The company further explained that this conclusion was supported by independent consultants and independent peer review, and that the impact of the bypass on people and the environment would be regularly monitored by SGS, an independent inspection, verification and certification organisation before and during the bypass. BHPB later confirmed in its letter of 4 January 2011 that the initial results of SGS' monitoring process after the start of the bypass showed that air concentrations for all the controlled pollutants were well within the prescribed standards and that as of that date, there had been no discernible impact on air concentrations of the controlled pollutants resulting from the bypass;
  - c) That Mozal did examine a range of alternative options to the bypass and analysed the impact of each these options in the EMP submitted to the MICOA. In particular, it considered: 1) a total shutdown of the facility; 2) a partial shutdown of the facility; 3) sequential repairs of the two treatment centres; and 4) simultaneous repair of the two treatment centres. Mozal concluded that option 4 was the best option based on the lowest overall community, environmental and financial impact;
  - d) That, on 26 May 2010, the MICOA formally authorised Mozal's project. According to BHPB, this authorisation followed a four-month process which included the completion of a parallel study on

the impact of the project on health, environment and community by the authorisation committee;

- e) That Mozal had conducted a range of consultation meetings with interested and affected parties since April 2010, and that attendees were given an opportunity to discuss their concerns. BHPB explained that these meetings would continue as the project progressed. BHPB further clarified that documentation related to the bypass project (including the EMP) was available to the public at MICOA's library and copies had been collected by interested parties. BHPB stated that it would continue to engage with stakeholders on the progress of the project, including through meetings and by establishing a helpline to listen to concerns from the affected communities. BHPB later confirmed in its letter of 4 January 2011 that two further stakeholder events, open to all relevant NGOs, took place on 1 and 22 December 2010 and another event was planned for 12 January 2011. According to BHPB, Mozal also met with local NGOs on 15 December 2010 to discuss their key concerns over the project and a process of conciliation going forward. An information sharing arrangement was also agreed at the meeting. It was agreed that Mozal and the local NGOs would meet again in January 2011 to clarify further key concerns.
- f) That the different warnings issued by Mozal and Hillside Aluminium were due to the different kinds of repairs to be made on the treatment centres of the two aluminium smelters. In the case of Hillside Aluminium, the repairs only affected one treatment centre and were less complex than those required for both of Mozal's treatment centres.

## **UK NCP process**

- 11. The UK NCP received JA's complaint (and its supporting annexes) against BHPB on 18 October 2010.
- 12. JA filed similar complaints with the Australian NCP; the Compliance Advisor Ombudsman (CAO), which is the complaint mechanism of the International Financial Corporation part of the World Bank Group; and the European Investment Bank Complaints Office (EIBCO). In October 2010, the Australian NCP and the UK NCP agreed that the UK NCP would take the lead in the complaint process under the Guidelines, and that the UK NCP would keep the Australian NCP updated on the progress of the complaint. The UK NCP remained in regular contact with the CAO and the EIBCO.
- 13. The UK NCP understands from JA that two separate parallel proceedings also took place in Mozambique:

- (a) an application of 14 September 2010 for judicial review in Mozambique of MICOA's decision to grant a special authorisation to Mozal to build the bypass; and
  - (b) a petition of 28 September 2010 to Mozambique's Parliament requesting the immediate cancellation of MICOA's special authorisation to Mozal to build the bypass.
14. On 17 November 2010, BHPB submitted a preliminary response to the allegations contained in JA's complaint under the Guidelines.
  15. BHPB met with the UK NCP on 24 November 2010 to discuss the complaint process under the Guidelines. JA did not meet with the UK NCP but remained in e-mail contact throughout the process.
  16. In its letter of 4 January 2011, BHPB advised the UK NCP that the judicial review proceedings referred to in paragraph 13(a) concluded with the dismissal of JA's application to suspend and cancel the bypass authorisation, and that consideration of the petition referred to in paragraph 13(b) concluded that the special authorisation was legal and that no Parliamentary intervention was justifiable.
  17. On 2 February 2011, the UK NCP finalised the Initial Assessment<sup>6</sup> on the complaint from JA and decided to accept for further consideration the alleged breach by BHPB of Chapters II(2) (excluding the alleged breach of domestic law), III(1), III(2), V(1)(a), V(1)(b) and V(2) of the 2000 version of the Guidelines. The alleged breach of Chapter II(5) was not accepted for further consideration.
  18. Between 2 February and 28 November 2011, in accordance with paragraph 4.4 of the UK NCP's published complaint procedure<sup>7</sup>, the UK NCP suspended the complaint process in order to take into account the parties' decision to undergo conciliation/mediation outside of the UK NCP's process (namely as part of the CAO's complaint mechanism<sup>8</sup>). While the case was suspended, the UK NCP requested (and the parties submitted) regular updates on the progress of the conciliation/mediation process in Mozambique. The UK NCP used these progress updates to carry out regular reviews, of its decision to suspend the case.
  19. On 28 November 2011, the UK NCP, after taking into account that the parties had not reached an agreement on all the issues raised in JA's complaint, offered conciliation/mediation to the parties. BHPB accepted

---

<sup>6</sup> <http://www.bis.gov.uk/assets/biscore/business-sectors/docs/i/11-687-initial-assessment-ncp-bhp-billiton.pdf> (accessed on 29 February 2012).

<sup>7</sup> UK NCP, *UK NCP's procedures for dealing with complaints brought under the OECD Guidelines for Multinational Enterprises*, p. 10 – available at <http://www.bis.gov.uk/assets/biscore/business-sectors/docs/u/11-1092-uk-ncp-procedures-for-complaints-oecd.pdf> (accessed on 29 February 2012).

<sup>8</sup> See [http://www.cao-ombudsman.org/cases/case\\_detail.aspx?id=159](http://www.cao-ombudsman.org/cases/case_detail.aspx?id=159) (accessed on 29 February 2012).

the offer but JA declined it. Therefore, on 16 December 2011, the UK NCP informed the parties that it would undertake an examination of JA's allegations, and prepare a Final Statement reflecting its conclusions thereon. The UK NCP also invited the parties to submit, by 31 January 2012, any additional documents that they considered the UK NCP should examine in relation to JA's complaint. On 31 January 2012, BHPB submitted additional documents.

20. All information received by the UK NCP on the allegations contained in JA's complaint has been shared with both parties.

## Outcome of the mediation in Mozambique

21. In December 2011, the CAO published a report on the outcome of the mediation process in Mozambique<sup>9</sup>.
22. The report stated, at page 3, that *“Although the parties worked toward a final agreement on all the issues, an agreement was not reached in the end and the coalition requested that the complaint be referred to CAO Compliance [...] As a result of the mediation process, Mozal agreed to disclose information with the coalition about the bypass program”*. The report further states at page 4 that: *“Despite the fact that the initial dialogue process did not end in a final agreement, the bridges built between Mozal and the Coalition open the potential for future dialogue between them. Furthermore, the fact that Mozal was willing to share information on any of their internal processes indicates that should future disputes arise, there is potential for communities and civil society representatives to engage with them in a meaningful way about discussing the potential impacts of programmatic activities”*.

## UK NCP analysis

23. The UK NCP's analysis of JA's allegations addresses the following areas:
  - A) The parts of the complaint that have not been examined by the UK NCP;
  - B) Whether Mozal acted in accordance with Chapter V(1)(a) and(b) of the Guidelines (regarding the establishment and maintenance of an appropriate environmental management system), in its actions relating to the bypass of two “fume treatment centres” (FTCs) of Mozal's aluminium smelter in Maputo, while the FTCs were being upgraded.

---

<sup>9</sup> CAO, *Ombudsman Conclusion Report*, December 2011, available under the “View Documents” section of [http://www.cao-ombudsman.org/cases/case\\_detail.aspx?id=159](http://www.cao-ombudsman.org/cases/case_detail.aspx?id=159) (accessed on 29 February 2012).

- C) Whether Mozal disclosed adequate and timely information related to the bypass, in accordance with Chapter III(1) and (2), of the Guidelines;
- D) Whether Mozal engaged in adequate and timely consultation with the local communities affected by the bypass, in accordance with Chapter V(2) of the Guidelines; and
- E) whether Mozal respected the human rights of the local communities affected by the bypass, consistent with Mozambique’s international obligations and commitments under the African Charter on Human and People’s Rights, in accordance with Chapter II(2) of the Guidelines.

Each of these areas will be addressed in turn.

### A. Parts of the complaint not examined by the UK NCP

24. The UK NCP notes from the CAO’s report on the mediation process in Mozambique<sup>10</sup> and from the additional evidence submitted by BHPB on 31 January 2012: that Mozal began work on two FTCs of its aluminium smelter respectively on 17 November 2010 and on 2 December 2010; and that Mozal completed the upgrade of these two FTCs respectively on 17 March 2011 and on 29 March 2011. Therefore, the UK NCP considers that the part of JA’s allegation under paragraph 9(a) above, *“that Mozal is planning to bypass for 6 months the fume and gas treatment centres of its aluminium smelter”*, had been superseded by events in Mozambique, and does not need examining. The remainder of the allegations contained within paragraph 9(a) above have been considered.
25. As stated in the Initial Assessment of 2 February 2011<sup>11</sup>, the UK NCP has not accepted the alleged breach of Chapter II(5) for consideration on the basis that JA did not submit any evidence to substantiate the alleged attempt by Mozal to seek (or accept) an exemption not contemplated in Mozambique’s law. Consequently, the UK NCP has not examined aspects of the allegations under paragraphs 9(d), and the allegations in 9(g), above, on whether Mozal acted in accordance with Mozambique’s domestic law (namely: Mozambique’s 2004 Constitution, interpreted in the light of the UN Universal Declaration of Human Rights; MICOA’s special authorisation procedure; and the Regulamento Sobre os Padrões de Qualidade Ambiental e de emissão de efluentes (Decreto 2 Junho 2004 n.18/2004)). The UK NCP notes that the Guidelines cannot override local law and regulation<sup>12</sup> and that,

<sup>10</sup> CAO, *Ombudsman Conclusion Report*, December 2011, p. 1 - available under the “View Documents” section of [http://www.cao-ombudsman.org/cases/case\\_detail.aspx?id=159](http://www.cao-ombudsman.org/cases/case_detail.aspx?id=159) (accessed on 29 February 2012).

<sup>11</sup> UK NCP, *Initial Assessment on the complaint from Justiça Ambiental against BHP Billiton PLC on Mozal SARL (Mozambique)*, 2 February 2011, paragraphs 8 and 9 – available at <http://www.bis.gov.uk/assets/biscore/business-sectors/docs/11-687-initial-assessment-ncp-bhp-billiton.pdf> (accessed on 29 February 2012).

<sup>12</sup> OECD, *OECD Guidelines for Multinational Enterprises*, 2000, paragraph 2, p. 39 – available at <http://www.oecd.org/dataoecd/56/36/1922428.pdf> (accessed on 29 February 2012).

26. As outlined in paragraphs 9(f) and 10(f) above, the parties disputed the different health warnings given by Mozal and Hillside Aluminium when these two companies (both largely controlled by BHPB) had to bypass their treatment centres. The UK NCP considers that, in order to reach a conclusion on this allegation, the UK NCP would have had to examine Hillside Aluminium's decision to bypass its treatment centres, and also whether there was actually any difference in the types of repairs required by Hillside Aluminium and by Mozal's smelters. The UK NCP considers that such an examination would have been outside of the scope of JA's complaint (which was about Mozal) and would have shed little light on whether Mozal acted consistently with the Guidelines when bypassing two of its FTCs. Therefore, the UK NCP has not examined the allegation under paragraph 9(f) above.

**B. Whether Mozal acted in accordance with Chapter V(1)(a) and(b) of the Guidelines (regarding the establishment and maintenance of an appropriate environmental management system), in its actions relating to the bypass of two “fume treatment centres” (FTCs) of Mozal's aluminium smelter in Maputo**

27. In the complaint of 18 October 2010, JA alleged (paragraph 9(a) above), that, while the bypass was in place, the smelter's exhaust fumes would be released into the air with likely negative effects on the environment and on the health and safety of the communities within up to a 40-100 Km radius of the smelter. JA also alleged, on the basis of air samples it collected between July and August 2010 (before work on the FTCs started), that air quality in three sites in Maputo was already poor and, by implication, would be made worse by the bypass, compared to World Health Organisation (WHO) standards.
28. JA also referred (Annex 8 of the complaint) to an independent study (titled “Forecast of dispersion and deposition of pollutants to the environment expected during the rehabilitation of the fumes and gas treatment centres”) attributed to researchers at the Eduardo Mondlane University in Maputo. According to JA's notes on this study, the study concluded that *“there will not be a significant increase in airborne concentrations of substances emitted by Mozal and considered in this study [namely, the following five pollutants, dangerous to the environment and human health: hydrogen fluoride (HF); microscopic particles of aerodynamic diameter less than 10 micrometres (PM10); sulphur dioxide (SO2); nitrogen dioxide (NO2); tropospheric ozone (O3)]”* and recommended that *“At the moment there is no way to determine the extent to which the contribution of emissions from Mozal will affect the national standards of environmental quality because the government has no record data on environmental quality in areas*

*potentially affected by Mozal's emissions*". JA alleged that this study was full of "controversies and voids" and was based on data provided by Mozal, therefore the study's conclusions and recommendations could not be relied upon. In addition, JA alleged (paragraph 9(c)) that the EMP did not sufficiently evaluate alternatives to the bypass.

29. BHPB claimed on 17 November 2010 that Mozal examined a range of alternative options to the bypass and explained the rationale behind these options in the EMP submitted to the MICOA. On 31 January 2012, BHPB submitted a summary of the analysis of three of the four scenarios contained in the EMP:

- 1) simultaneous repair of the two FTCs;
- 2) partial shutdown of the facility and importation of anodes during the rebuild;
- 3) sequential repairs of the two FTCs.

According to BHPB's summary, Mozal used the following criteria for determining the overall impact of each scenario: environmental impact; occupational impact; social impact; financial impact; and duration of the bypass. According to BHPB's summary, Mozal ultimately opted for scenario (1), the simultaneous repair of the two FTCs, because it had an overall impact "moderate to high" as opposed to the "high" impact registered by the other two scenarios.

30. The UK NCP has not seen (and could not compel BHPB or Mozal to disclose) Mozal's submissions to MICOA in connection with the special authorisation. However, the UK NCP observes that MICOA's special authorisation to conduct the bypass, seen by the UK NCP, was granted to Mozal on 26 May 2010. According to both JA (p. 3 of the complaint) and BHPB (letter dated 4 January 2011), this authorisation was based upon the EMP produced by Mozal and the study attributed to researchers at the Eduardo Mondlane University in Maputo, both of which were subsequently displayed by MICOA and viewed by JA. On 4 January 2011 BHPB informed the UK NCP that the Administrative Court of Mozambique had confirmed that MICOA's special authorisation was supported by a credible study. The UK NCP sees no reason to question the validity of the study, or the EMP (and the evaluation of alternatives contained therein), particularly given the finding by the Administrative Court of Mozambique.

31. The UK NCP has also considered other actions taken by BHPB relating to the environmental management of the bypass of the FTCs. BHPB claimed on 17 November 2010 (before the work on the FTCs was completed), that there would be no significant acute or cumulative impact on community health and environment. On 4 January 2011, BHPB also claimed that the initial results of the monitoring process, after the start of the bypass, showed that air concentrations for all the controlled pollutants were well within the prescribed standards. The UK

NCP saw the following evidence in support of BHPB's statements. For example:

- a) In the presentation given by Mozal to interested parties on 5 April 2010 ("Mozal's Interested Parties Meeting"), Mozal described the impacts of the bypass as: *"Small quantities of white powder might be observed in surrounding area [...] Very low impact to the health and environment. We are monitoring this in the surrounding area and has [sic] found a very low concentration of fluorides. (Below the legal limits)".* In the presentation to stakeholders used between May and November 2010, BHPB described its goal of "zero harm" during the upgrade of the FTCs. BHPB defined "zero harm" as: *"Managing and controlling environmental aspects to ensure that no harm comes to people and/or the environment"* based on the following standards: *"World Health Organisation (WHO) as primary sources [...] Consider sensitive individuals (the elderly and children)".* In an internal message for employees, dated 25 August 2010, Mozal stated that: *"This project will be measured in accordance with the standards of the World Bank, the World Health Organisation as well as ISO 14001<sup>13</sup>. This will assist in ensuring that the environmental and personal exposure will be of the lowest magnitude, while allowing the Company to continue to operate normally [...] Part of Mozal's monitoring (in normal and bypass mode) is to measure the emissions and ambient concentrations on a regular basis against World Bank and World Health Organization standards. These international standards consider the cumulative effects over a 75 exposure year period. We target to meet or exceed these international standards".* Mozal confirmed this information again in a subsequent internal message for employees dated 2 November 2010.
- b) A study ("An assessment of the impacts of the Mozal fume treatment centre (FTC) rebuild") conducted by SE Solutions, an environmental management consultancy, dated 10 November 2010, concluded that: *"In this report an assessment has been presented on whether emissions during the proposed bypass will invoke a risk of harm to human and health and/or the environment. The approach has been to quantify the emissions mass, model the resultant ambient concentrations that could prevail and to compare these predicted ambient concentrations to internationally accepted health based standards/limits. The assessment indicates that while the bypass emissions are an anomaly, it is unlikely that they will result in harm to human health or the environment. None of the predicted ground level concentrations are seen to exceed defined ambient air quality limits for any of the averaging periods and realistic worst case emissions have been used to assess the implications of the*

---

<sup>13</sup> A set of requirements for an environmental management system, prepared by the International Organization for Standardization – available at [http://www.iso.org/iso/iso\\_catalogue/catalogue\\_tc/catalogue\\_detail.htm?csnumber=31807](http://www.iso.org/iso/iso_catalogue/catalogue_tc/catalogue_detail.htm?csnumber=31807) (accessed on 29 February 2012).

*emissions under a bypass scenario [...] Much of the above has been based of course on predicted outcomes. For this reason this report contains a detailed set of management and mitigation actions that have been, and will continue to be implemented during the course of the rebuild programme”.*

- c) A report (“Peer review of the air quality assessment for the Mozal fume treatment centre (FTC) rebuild”) by PAE Holmes, an Australia-based air quality consultancy, dated 12 November 2010, concluded that: *“In general, the assessment [by SE Solutions above] has allowed for a significant buffer to account for model uncertainty by overestimating emissions. It is therefore our conclusions that if the emissions modelled are not exceeded in reality during bypass, there is only a negligible risk to human health and health and biodiversity of ecosystems with the FTC bypass”.*
  - d) The ongoing monitoring of the smelter’s emissions by the testing and certification consultancy SGS, while the bypass was in place, indicated that, on average, these emissions remained within internationally accepted standards.
32. BHPB’s claims also appear to be supported by a further study seen by the UK NCP (“The fume treatment centre (FTC) rebuild at Mozal – Environmental close-out report”) by SE Solutions, dated 14 October 2011 (after the FTCs’ upgrade was completed) which concluded that *“Measured ambient air quality concentrations were slightly higher than predicted (but still well below human health thresholds)”*; and identified the following positive outcomes *“The key outcome of the assessment was the fact that measured ambient air quality concentrations during the bypass showed no evidence of possible adverse health risks to communities surrounding the smelter”.*
33. In light of the above, notwithstanding the understandable concerns of the local communities in respect of the bypass, the UK NCP considers that BHPB has acted in accordance with Chapter V(1)(a) and (b) of the Guidelines and has established and maintained a system of environmental management appropriate to the enterprise in relation to the bypass of the two fume treatment centres. The evidence supports that BHPB collected and evaluated adequate and timely information, in accordance with Chapter V(1)(a), obtaining reports from the Eduardo Mondlane University in Maputo, South Africa’s Council for Scientific and Industrial Research (CSIR), and the consultancies SE Solutions, PAE Holmes and SGS. BHPB has also provided evidence showing that measurable objectives, using international standards, were set (in accordance with Chapter V(1)(b)) and that the impact of the bypass was monitored for its duration.

34. The UK NCP notes that JA has made repeated requests to Mozal to undertake a further independent assessment of the air quality around the smelter, based on JA's concerns about the reliability of all of the above reports. Based on the evidence seen by the UK NCP, the UK NCP has no reason to doubt the reliability of the reports from South Africa's CSIR, and the consultancies SE Solutions, PAE Holmes and SGS. For the reasons stated in paragraph 30 the UK NCP sees no reason to question the validity of the study from the Eduardo Mondlane University or the EMP which formed the basis of MICOA's special authorisation for the bypass.

**C. Whether Mozal disclosed adequate and timely information, including MICOA's special authorisation, related to the bypass, in accordance with Chapter III(1) and (2) of the Guidelines**

35. In its complaint, JA submitted (see paragraphs 9(b), and 9(d) above):
- a) That Mozal presented different contradictory reasons for the bypass. Either Mozal used inappropriate material or it neglected to make adequate provision in its 2001 Environmental Impact Assessment on the smelter to address the natural lifetime of these treatment centres;
  - b) That Mozal refused to disclose MICOA's special authorisation to bypass the FTCs;
  - c) That Mozal refused to disclose its annual environmental performance reports to JA without prior agreement from JA to keep this information confidential (as JA did not comply with this request, it did not have access to the reports).
36. The UK NCP's examination of each of the above allegations is set out below.

*Allegations under paragraph 35(a)*

37. In examining the documents submitted by the parties, the UK NCP finds that there is little doubt that the main cause for the bypass was to address serious structural problems with the FTCs. In particular, the UK NCP has considered the following documents.
- a) In a public presentation on 5 April 2010 (titled "Mozal's Interested Parties Meeting"), seen by the UK NCP, BHPB and Mozal explained that the bypass was required because *"The equipment has come to the end of life and needs to be replaced. The structural integrity is in question for the equipment. The equipment needs to be upgraded to meet the current requirement of the process. Several other smelters in the world undertook projects to replace and upgrade parts of the FTC's [sic]".* The same points were made by BHPB in a public presentation (titled "NGO engagement session") on 15 December 2010.

- b) In a media statement of July 2010, seen by the UK NCP, Mozal stated that: *“The decision to upgrade the quality of our infrastructure and improve the structural integrity of the FTC’s will further improve our standing as a benchmark operation on environmental standards”*.
- c) In an internal message of 25 August 2010 for employees, seen by the UK NCP, Mozal stated that: *“Currently the FTC has serious structural problems which, if untreated, could lead to a “catastrophic collapse”. The steel sheets in the FTC’s [sic] should be eight millimetres thick. Engineering inspections have shown that in places, at the base of the structure, the steel has corroded to a thickness of just one millimetre. As a result, we are faced with no option but to rebuild the FTC’s [sic]”*.
- d) JA itself stated in the complaint of 18 October 2010 that *“The only common point between the versions [given by Mozal to explain the bypass] is a structural problem that could cause the collapse of the treatment due to the corrosion of a 8mm thick steel by 1mm”*.
- e) As reflected in paragraph 10(a) above, on 17 November 2010, BHPB claimed that Mozal urgently needed to repair two of its FTCs following two separate independent structural integrity studies. The UK NCP did not see these studies but, according to BHPB, the problem with the FTCs was structural and due to unanticipated corrosion over the operating life of the equipment. BHPB also explained that the MICOA conducted a separate environmental audit (not seen by the UK NCP) on 24 November 2009 and confirmed the structural issues with the treatment centres.
- f) In an internal message of 1 December 2010 for employees, seen by the UK NCP, Mozal stated that: *“MOZAL needs to urgently repair the Fume Treatment Centres (FTCs) through a project that requires a bypass of 137 days. The repairs are structural in nature and are the result of unanticipated corrosion over the operating life of the equipment”*.
38. The UK NCP observed that the IFC’s September 2000 “Draft Executive Summary” of the “Environmental Impact Assessment”<sup>14</sup> on the expansion of Mozal’s smelter, seen by the UK NCP, did not raise the issue of the FTCs’ corrosion. However, Mozal’s 2002 “Environmental and social performance annual monitoring report” (AMR)<sup>15</sup>, seen by the UK NCP, stated that *“The Gas Treatment Centre (GTC) and Fume Treatment Centre (FTC) are the principal mechanisms of air pollution control on the smelter”* (p. 25) and that *“In September 2001, corrosion was noted on the cooling tower of the Fume Treatment Centre of the Bake Furnace. As a result the cooling tower had to be repaired and*

<sup>14</sup> Available under [www.ifc.org](http://www.ifc.org) – search “Mozal” under the section projects (accessed on 29 February 2012).

<sup>15</sup> Available under [www.ifc.org](http://www.ifc.org) – search “Mozal” under the section projects (accessed on 29 February 2012).

*during that time the FTC was run on by-pass during which time there was no scrubbing of fluoride emissions”* (pp. 9 and 122).

39. Having considered the above, the UK NCP concludes that BHPB and Mozal did not give contradictory reasons for the bypass of the FTCs. The UK NCP did not see the 2001 Environmental Impact Assessment referred to by JA in the complaint and therefore it cannot comment on whether the issue of corrosion was also raised in that report. However it notes that Mozal did raise and address the problem of the FTCs’ corrosion in the 2002 AMR submitted to the IFC.
40. In its complaint, JA referred to a specific example of allegedly contradictory information provided by Mozal, namely that the impact of the bypass was estimated at 5-10 Km instead of 40-100 Km from the site. The UK NCP has considered this issue and notes that:
  - a) JA referred (Annex 8 of the complaint) to an independent study (titled “Forecast of dispersion and deposition of pollutants to the environment expected during the rehabilitation of the fumes and gas treatment centres”) allegedly undertaken by researchers at the Eduardo Mondlane University in Maputo. The UK NCP did not see this study but, according to notes on this study, the study concluded that *“For the gases HF, SO<sub>2</sub>, NO<sub>2</sub>, the areas that receive higher amounts of these substances are limited to the maximum radius of 40 Km around the enclosure Mozal”* and that *“High quantities of PM<sub>10</sub> and O<sub>3</sub>, from Mozal activities may be recorded at sites located beyond the 100 Km from the premises of the factory”*.
  - b) In the presentation (titled “Mozal’s Interested Parties Meeting”) of 5 April 2010, seen by the UK NCP, Mozal and BHPB stated that *“We predict that areas located up to 300m from the source (FTC’s [sic]) possibly can be affected by coke dust exposure”*. The subsequent presentations by BHPB, seen by the UK NCP and listed below, addressed air emissions for an area up to approximately 5 Km around the smelter: “FTC Rebuild – Living Up to Our Promise of Zero Harm” (of May-November 2010); “Initial Monitoring Feedback: FTC Bypass conducted by SGS and Mozal” (of 1 December 2010); “Monitoring Feedback” (of 22 December 2010); “Stakeholder Engagement: Session 3 Monitoring feedback” (of 12 January 2011); “Interested Parties Meeting” (of 22 February 2011); “Stakeholder session 5<sup>th</sup> Feedback FTC Project Monitoring” (of 17 March 2011); “FTC Project Update” (of 15 April 2011); “Reunião de encerramento com as partes interessadas Projecto de reabilitação e melhoramento dos CTF’s” (of 9 June 2011).
  - c) Two studies seen by the UK NCP (titled “An assessment of the impacts of the Mozal fume treatment centre (FTC) rebuild” and “An assessment of impacts on air quality as a result of the proposed fume treatment centre (FTC) rebuild at Mozal”) conducted by SE Solutions, dated 14 August 2010 and 10 November 2010

respectively, addressed air emissions for an area of 40 Km around the smelter.

41. While the above studies and presentations listed above focus on the impact within areas of different sizes around the smelter, the UK NCP does not consider that this in itself means that the information provided was contradictory in nature.

*Allegations under paragraph 35(b)*

42. JA alleged that Mozal refused to disclose MICOA's special authorisation to bypass the FTCs. The UK NCP can confirm that BHPB and Mozal has now disclosed this document to JA (and to the UK NCP).
43. The UK NCP also notes JA's statement in the complaint that, after various requests to Mozal and the MICOA, it was able to view (but not take copies of) the two documents on which the special authorisation was based, namely: the EMP produced by Mozal; and a study allegedly undertaken by researchers at the Eduardo Mondlane University in Maputo, on the environmental impact of the proposed bypass.

*Allegations under paragraph 35(c)*

44. JA alleged that Mozal refused to disclose its annual environmental performance reports to JA without prior agreement from JA to keep this information confidential. As JA did not comply with this request, it did not have access to the reports. As a result of this, JA claimed in the complaint that it was unable to obtain any data on Mozal's emissions of smoke and gas.
45. On 17 November 2010, BHPB claimed that various documents related to the bypass were available at MICOA's library and that several copies of these documents had been collected by interested parties. According to BHPB, the documents available at MICOA's library included: the EMP for the bypass; dispersion modelling assessment; proposal for having the bypass monitored by SGS; summary of the monitoring plan for the bypass; media fact sheet; and a presentation on the rebuilt filters.
46. The UK NCP could access Mozal's AMR for 2002 (which is published by the IFC). However, the UK NCP notes that the AMRs for the period 2003-2010 were not publicly available.

47. The UK NCP has also considered the CAO's Conclusion Report of the mediation process in Mozambique<sup>16</sup> which stated that: "*While they [Mozal] were not in a position to disclose Annual Monitoring Reports (AMRs) in their entirety, Mozal agreed to seek consent from its lenders and shareholders to disclose those portions that pertained to social and environmental monitoring*". The UK NCP understands that, during the CAO's mediation process, Mozal disclosed to JA information on the smelter's air emissions. The UK NCP has seen a copy of the data on Mozal's air emissions for the period 2005-2011 that Mozal provided to JA.
48. In light of the above, the UK NCP concludes that Mozal did not disclose its AMRs for the period 2003-2010. However, it considers that this decision was consistent with Chapter III(1) of the Guidelines which, while recommending enterprises disclose information, states that due regard should be taken, amongst other issues, of business confidentiality. In this case, the UK NCP understands that Mozal would have disclosed the requested documents had JA agreed to keep the information confidential.

*Conclusion re breach of Chapter III(1) and (2)*

49. The UK NCP concludes that there has been no breach of Chapters III(1), relating to disclosure of timely, regular, reliable and relevant information regarding their activities and III(2), relating to the use of high quality standards for disclosure, accounting and audit. In reaching this conclusion the UK NCP has had regard to its findings in respect of the allegations outlined above, the disclosure of information by Mozal in presentations and communications prior to the complaint, the availability of certain documents for viewing at the MICOA library (which JA viewed) and the use of international standards, independent consultancies and peer review processes in preparing its environmental assessments and reports.
50. While noting JA's concerns about the delays in getting access to the EMP and the study by the Eduardo Mondlane University in Maputo, the UK NCP considers MICOA's procedures to make these documents available to the public to be outside the scope of this complaint, and observes that the Guidelines cannot override local law and regulation.<sup>17</sup>

---

<sup>16</sup> CAO, *Ombudsman Conclusion Report*, December 2011, p. 3 - available under the "View Documents" section of [http://www.cao-ombudsman.org/cases/case\\_detail.aspx?id=159](http://www.cao-ombudsman.org/cases/case_detail.aspx?id=159) (accessed on 29 February 2012).

<sup>17</sup> OECD, *OECD Guidelines for Multinational Enterprises*, 2000, paragraph 2, p. 39 – available at <http://www.oecd.org/dataoecd/56/36/1922428.pdf> (accessed on 29 February 2012).

#### **D. Whether Mozal adequately and timely consulted the local communities affected by the bypass, in accordance with Chapter V(2) of the Guidelines**

51. JA alleged that the three consultation meetings organised by Mozal took place after the company received the special authorisation from the MICOA. JA also alleged that the meetings were not sufficiently informative, left little room for questions from the attendees, and were held in English with extremely poor translation into the local languages. On 20 January 2011, JA also claimed that, as far as civil society was concerned, the consultation process only began in April 2010, and that the EMP and the study from the Eduardo Mondlane University in Maputo were only disclosed to JA on 2 August 2010.
52. On 17 November 2010, BHPB claimed that it had conducted a range of meetings and engagements with interested and affected parties since April 2010, and that attendees were given an opportunity to discuss their concerns.
53. The UK NCP saw a copy of a presentation from BHPB and Mozal to stakeholders dated 5 April 2010. This presentation included an announcement that Mozal was going to have to repair two FTCs over the following 6 months and set out the general reasons for this work. The presentation informed stakeholders that Mozal had requested a special authorisation from the MICOA, and gave stakeholders internet, email and telephone contacts to submit further comments. The UK NCP has also seen MICOA's special authorisation for the bypass which was granted on 26 May 2010. Therefore, the first engagement with the local communities took place before Mozal received MICOA's special authorisation to bypass the FTCs, and before work on the FTCs started (and the bypass applied) between 17 November 2010 and 29 March 2011.
54. The UK NCP saw copies of subsequent presentations by BHPB to the local communities dated May-November 2010, 1 December 2010, 15 December 2010, 22 December 2010, 12 January 2011, 17 February 2011, 22 February 2011, 17 March 2011, 15 April 2011, 9 June 2011, and 3 November 2011. All of these presentations were in English, except the presentation dated 9 June 2011 which was in Portuguese. The presentations generally contained updates on the progress of the repairs to the FTCs and on the monitoring of the air emissions while the bypass was in place.
55. In addition, the UK NCP saw Mozal's media statement on the need for the bypass, dated July 2010, and a number of internal messages for Mozal's employees on the progress of the repairs dated 25 August 2010, 27 October 2010, 2 November 2010, 16 November 2010, 1 December 2010, and 20 January 2011.

56. Furthermore, according to BHPB's chronology of events on the repair of the FTCs, submitted on 31 January 2012, a number of additional meetings with civil society organisations took place before work on the FTCs started (and the bypass was applied), for example:
- a) 22 July 2010 – according to BHPB, this meeting gave attendees the opportunity to ask questions about the upgrade project to Mozal and SE Solutions' representatives and included a tour of the FTCs.
  - b) 29 July 2010 – according to BHPB, this meeting gave attendees the opportunity to ask questions to various representatives including from Mozal, SE Solutions, MICOA and scientists of the Eduardo Mondlane University in Maputo.
57. In light of the above, the UK NCP concludes that BHPB did engage in adequate and timely consultation with the local communities affected by the bypass. The rationale for this conclusion is that:
- a) at least one stakeholder meeting took place (and stakeholders were given contact details to submit further comments if they wished to) before Mozal received MICOA's special authorisation to bypass the FTCs; and
  - b) a high level of engagement with both local communities and Mozal's own employees took place before work on the FTCs started and the bypass was applied. This engagement commenced prior to JA's complaint, and continued during the bypass, and after it was completed. The fact that English was used as the main language in most of the engagement meetings with organised civil society was of particular concern to the UK NCP. However, the UK NCP took into account that, according to JA, a translation service was available during the meetings. Although JA alleged that the translation provided was of poor quality, the UK NCP did not see any evidence supporting this allegation, and so has no reason to question the adequacy of the translation.
58. While noting JA's concerns about the delays in getting access to the EMP and the study by the Eduardo Mondlane University in Maputo, the UK NCP considers MICOA's procedures to make these documents available to the public to be outside the scope of this Specific Instance, and observes that the Guidelines cannot override local law and regulation<sup>18</sup>.

---

<sup>18</sup> OECD, *OECD Guidelines for Multinational Enterprises*, 2000, paragraph 2, p. 39 – available at <http://www.oecd.org/dataoecd/56/36/1922428.pdf> (accessed on 29 February 2012).

**E. Whether Mozal respected the human rights of the local communities affected by the bypass, consistent with Mozambique’s international obligations and commitments under the African Charter on Human and Peoples’ Rights, in accordance with Chapter II(2) of the Guidelines.**

59. Chapter II(2) of the Guidelines recommends that multinationals should respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments. JA alleged that Mozal’s actions in relation to the bypass were not consistent with Article 16 of the African Charter on Human and Peoples’ Rights<sup>19</sup> (the Charter). Article 16 of the Charter states that:

*“1. Every individual shall have the right to enjoy the best attainable state of physical and mental health.*

*2. State Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.”*

60. The UK NCP notes that the Republic of Mozambique is a member of the African Union which includes, amongst its objectives, the promotion and protection of human and peoples’ rights in accordance with the African Charter on Human and Peoples’ Rights<sup>20</sup>.
61. In light of the conclusions reached in relation to the other alleged breaches of the Guidelines, the UK NCP finds that BHPB acted consistently with Chapter II(2) of the Guidelines. The UK NCP draws particular attention to its findings regarding the appropriateness of the environmental management approach adopted by BHPB. The UK NCP observes that it has no reason to question Mozambique’s observation of its international commitments, in particular those contained in the African Charter.

## **Conclusions**

62. On the basis of the analysis of the evidence outlined above, the UK NCP finds:
- a) That, for the reasons set out in section B above, BHPB acted in accordance with Chapter V(1)(a) and (b) of the Guidelines, and established and maintained an environmental management system appropriate to the enterprise, in its actions relating to the bypass of the two fume treatment centres of Mozal’s aluminium smelter in Maputo. The UK NCP has no reason to question the validity of the

---

<sup>19</sup> Available at [http://www.achpr.org/english/\\_info/charter\\_en.html](http://www.achpr.org/english/_info/charter_en.html) (accessed on 29 February 2012).

<sup>20</sup> African Union, *Constitutive Act of the African Union*, Article 3(h) – available at [http://www.au.int/en/sites/default/files/ConstitutiveAct\\_0.pdf](http://www.au.int/en/sites/default/files/ConstitutiveAct_0.pdf) (accessed on 29 February 2012).

study from the Eduardo Mondlane University or the EMP and the evaluation of alternatives contained therein, which formed the basis of MICOA's special authorisation for the bypass.

- b) That, for the reasons set out in C above, BHPB and Mozal did not breach the disclosure obligations in Chapter III(1) and (2) of the Guidelines. In relation to JA's specific allegations, the UK NCP finds:
- i. That BHPB and Mozal did not give contradictory reasons for the bypass of the FTCs. The UK NCP did not see the 2001 Environmental Impact Assessment referred to by JA in the complaint and therefore it could not comment on whether the issue of corrosion was raised also in that report. However it notes that Mozal did raise and address the problem of FTCs' corrosion in the 2002 AMR submitted to the IFC.
  - ii. That Mozal's disclosure obligations under Chapter III of the Guidelines do not extend to the special authorisation granted to Mozal by MICOA to build the bypass. The NCP notes (see paragraph 13, above) that the issue of whether this authorisation was correctly granted has subsequently been considered by both the Administrative Court and Parliament of Mozambique, and that the authorisation remained in place. The UK NCP also notes that the company has now provided a copy of this authorisation to JA and the UK NCP.
  - iii. That Mozal's requirement that disclosure of the AMRs be conditional on JA's agreement to keep the AMRs confidential was consistent with Chapter III(1) of the Guidelines which, while recommending enterprises disclose information, states that due regard should be taken, amongst other issues, of business confidentiality.
- c) That for the reasons set out in D, above, BHPB did engage in adequate and timely consultation with the local communities affected by the bypass, in accordance with Chapter V(2) of the Guidelines.
- d) That, for the reasons set out in E, above, BHPB and Mozal acted in accordance with Chapter II(2) of the Guidelines.

63. The above conclusions notwithstanding, the UK NCP encourages both BHPB and Mozal to build upon their existing procedures for engagement with local communities and be forthcoming, in disclosing to interested parties (particularly the affected communities and their representatives) information on projects that may have an impact on the environment and the health and safety of the communities affected by the smelter.

## Examples of good company practice

64. The UK NCP notes that BHPB's web portal includes a section on "sustainability", and that the company has also committed to operate responsibly by investing in community programs, supporting employees who are supporting local communities, and understanding and managing the company's human rights impact.
65. The UK NCP also notes that BHPB regularly reports on its corporate social responsibility policies. The latest report ("Our future"<sup>21</sup>) confirmed the company's commitment to engage proactively with the communities affected by the company's activities.

## Recommendations to the company and follow up

66. Where appropriate, the UK NCP may make specific recommendations to a company so that its conduct may be brought into line with the Guidelines going forward. The UK NCP does not consider it appropriate to make specific recommendations to BHPB and Mozal in this Specific Instance, as no breach of the Guidelines has occurred.
67. This Final Statement concludes the complaint process under the Guidelines.

**13 September 2012**

**UK National Contact Point for the OECD Guidelines for Multinational Enterprises**

**Steven Murdoch  
Danish Chopra  
Liz Napier**

---

<sup>21</sup> See page 44 of <http://www.bhpbilliton.com/home/aboutus/sustainability/reports/Documents/2011/BHPBillitonSustainabilityReport%202011.pdf> (accessed on 29 February 2012).

© Crown copyright 2012

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/> or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or e-mail: [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

This publication is available on our website at [www.bis.gov.uk/nationalcontactpoint](http://www.bis.gov.uk/nationalcontactpoint)

Any enquiries regarding this publication should be sent to:

UK National Contact Point for the OECD Guidelines for Multinational Enterprises  
Department for Business, Innovation and Skills  
3.1 Victoria Street  
1 Victoria Street  
London SW1H 0ET  
Tel: 0044 (0)20 7215 5756

If you require this publication in an alternative format, email

[uk.ncp@bis.gsi.gov.uk](mailto:uk.ncp@bis.gsi.gov.uk), or call 0044 (0)20 7215 5756.

**URN 12/1204**