

Follow up to the Revised Final Statement by the UK National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises (the Guidelines)

Specific Instance: Baku-Tbilisi-Ceyhan (BTC) Pipeline

1. This Follow Up Statement reflects both parties' responses, and the UK NCP's conclusions thereon, on the progress made in the implementation of the recommendation contained in the Revised Final Statement dated 22 February 2011¹ on the complaint from Corner House et al (the Complainants) in relation to the BTC Pipeline under the Guidelines. The BTC Pipeline is managed by BP Exploration (Caspian Sea) Limited (the Company), a subsidiary of BP PLC, on behalf of the shareholders in the BTC Pipeline Company. The publication of this statement concludes this Specific Instance.

BACKGROUND

OECD Guidelines for Multinational Enterprises

2. The Guidelines comprise a set of voluntary principles and standards for responsible business conduct, in a variety of areas including disclosure, employment and industrial relations, environment, combating bribery, consumer interests, science and technology, competition, and taxation.
3. The Guidelines are not legally binding. However, OECD governments and a number of non OECD members 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.
4. 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.

Follow up to Final Statements by the UK NCP

5. The UK NCP's 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>.

¹ <http://www.bis.gov.uk/assets/biscore/business-sectors/docs/r/11-766-revised-final-statement-ncp-btc.pdf>. The BTC Pipeline Specific Instance was one of the first complaints raised with the UK NCP in 2003 and resulted in a Final Statement in 2007. Following a procedural review by the UK NCP Steering Board this original Final Statement was withdrawn. A Revised Final Statement was published after the Complainants were given the opportunity to read and comment on a previously confidential BP report, and the Company has been given the opportunity to respond to the complainants' comments.

6. In accordance with paragraph 6.1 of the complaint procedure, where the Final Statement includes recommendations to the company, it will also specify a date by which both parties are asked to provide the UK NCP with a substantiated update on the company's progress towards implementing these recommendations. The UK NCP will then prepare a Follow Up Statement reflecting the parties' response and, where appropriate, the NCP's conclusions thereon.

RECOMMENDATION TO THE COMPANY

7. In the Revised Final Statement dated 22 February 2011 on the complaint from the Complainants against the Company, the UK NCP made the following recommendation in order to assist the Company in bringing its practices into line with the Guidelines:

“that the company consider and report on ways that it could strengthen procedures to identify and respond to reports of alleged intimidation by local pipeline security and other alleged breaches of the Voluntary Principles [on Security and Human Rights].”

RESPONSE FROM THE PARTIES

8. The UK NCP received an update dated 3 June 2011 from the Company, noting that, while it did not accept the UK NCP's finding that its activities in north-eastern Turkey were not in accordance with the Guidelines, it was in the process of considering ways that it could strengthen its procedures as recommended and was preparing a report that would be provided when complete. The Company also noted that it was anticipated that the report would be complete within around a month.
9. The UK NCP received an update dated 7 June 2011 from the Complainants, noting that they had undertaken a two-day field visit from 31 May to 1 June 2011 to the region of north-eastern Turkey during which they had interviewed local villagers, officials and the Complainants' local partner. The Complainants reported the following findings from their field visit:
 - a) All of the villagers and officials interviewed attested that no-one from the Company had visited them since the Revised Final Statement was published on 9 March 2011²;
 - b) All of the villagers interviewed were reluctant to discuss past allegations of intimidation, but the complainants' local partner stated that past intimidation had had a long-term 'chilling effect' and that many villagers privately continued to voice concerns. The Complainants also

² The Revised Final Statement was finalised on 22 February 2011 and embargoed for 2 weeks in line with the UK NCP procedure to allow either party to request a procedural review. No such request was received and the Revised Final Statement was published on 9 March 2011.

noted that there was a disputed report of one villager having left the region because of intimidation;

- c) All of the villagers and officials interviewed welcomed the Complainants' proposal that a local grievance and monitoring process should be established relating to how complaints are dealt with and issues of intimidation;
- d) All of the villagers interviewed felt that confidentiality must be ensured if any grievance mechanism relating to intimidation was to have their confidence. The Complainants also stated their view that village leaders do not always enjoy the full confidence of all villagers.

10. The Complainants requested the opportunity to comment on the company's report when provided and, in relation to the company's progress towards implementing the UK NCP recommendation.

11. The UK NCP received the Company's report on 8 July 2011 (the Report). The Report reiterated that the Company did not accept the UK NCP's finding that its activities in north-eastern Turkey were not in accordance with the Guidelines, but noted, in the covering letter that accompanied the Report, that the Company agreed to follow the UK NCP's recommendation. In relation to the company's progress towards implementing this recommendation, the Report stated that the Company had considered the recommendation, had identified ways in which the Company felt that their existing procedures could be altered to maximise their effectiveness, and set out which steps the Company proposed to take to strengthen its procedures in line with the recommendation.

12. In terms of considering the recommendation, the Report stated that the Company had considered: measures put in place to identify and respond to concerns and complaints raised during construction of the BTC pipeline in Turkey; procedures put in place and developed during the subsequent operations phase of the pipeline, and; mechanisms to promote respect for human rights in the provision of security in Turkey, and support the company's ability to identify and respond to any alleged human rights violations. The Report also stated that it had been prepared with input from and review by a specialist on the Voluntary Principles on Security and Human Rights employed by the Company. The Report stated that it was also reviewed by members of the independent Social and Resettlement Action Plan Review Panel (SRAP), who had been auditing the social performance of the BTC project on behalf of lenders since the beginning of construction. The Report noted the following general findings:

- a) The procedures in place 'are sound and have worked in practice'. While the Turkish contractor is responsible for liaising with local security forces and holds the contract with private security providers, the Company carries out assurance of that process through multiple layers of consultation and monitoring. There are multiple channels for raising complaints of intimidation and other breaches of the Voluntary

Principles, both formal and informal, and complaints can be made anonymously. No reports of harassment, intimidation or other problems with the local security forces have been made through any of these multiple channels.

- b) The procedures for identifying potential problems on security and human rights are proactive, responsive and flexible, seeking to identify and address potential social tension early on, to avoid the potential for protest, community unrest and conflict that would lead to a security response and increased risk of harm to people. Risk assessments are regularly reviewed to ensure there is adequate focus on the Voluntary Principles, supported by regular meetings between the company and local security forces and by the Turkish contractor's community relations team (coordinating with both public and private security) to identify sources of potential social tension. As the BTC Pipeline project has moved from the construction to operations phase these risk assessments have refocused from tensions arising from the compensation programme to tensions arising from restrictions on land use and right of way.
- c) The procedures for recording and responding to reports of intimidation or other breaches of the Voluntary Principles include:
 - 1. the use of a single grievance log;
 - 2. ensuring that locally recorded grievances are monitored on a daily basis
 - 3. a monthly report to the Company on grievance resolution, and;
 - 4. quarterly reports to external auditors on the overall progress of the grievance mechanism.

These procedures have already been strengthened, prior to the publication of the Revised Final Statement, to ensure that the grievance management system accurately reflected the reality on the ground. These steps to strengthen the procedures followed a previous review by SRAP, which noted that there was scope for improvement in the correct identification and recording of grievances. There had also been previous investigations by local NGOs into grievances that were not recorded in the grievance log.

- 13. The report also identified a number of ways that the company could strengthen their procedures by the following steps:
 - a) Providing periodic training or workshops to ensure personnel understand the Voluntary Principles and can apply them in a real event.
 - b) Reviewing and refining the human rights response procedure and testing it through a table-top exercise.
 - c) Sharing information with the Turkish contractor and local security forces on the implementation of the Voluntary Principles and by the company engaging in the training of private security.

- d) Using BP's Voluntary Principles evaluation framework to assess performance.
 - e) Ensuring, through the company's oversight and assurance role, that there is a continued close co-ordination between the Turkish contractor's social and security teams and to provide additional training to those teams on the Voluntary Principles, and;
 - f) Ensuring that continuous dialogue and consultation mechanisms are in place and implemented effectively by the Turkish contractor with all local communities and national stakeholders on operational issues, such that these groups' concerns and feedback received are managed within agreed standards.
14. The Report noted that the first five steps for strengthening the Company's procedures (a to e) would be implemented in future. In relation to the sixth step (f), the Report made no commitment to new work but did note that 'systematic and well organised monitoring of the pipeline will continue on a day-to-day basis' by the Company.
15. The UK NCP received the Complainants' commentary on the Report on 18 July 2011, which included the following factual comments on the Report:
- a) The Report omitted any reference to either the concerns of villagers in north-eastern Turkey identified during the 2005 field-visit or, the shortfalls in effective and timely consultations identified in the Revised Final Statement.
 - b) In considering the UK NCP's recommendation the Company had omitted to seek the views of villagers in north-eastern Turkey. In relation to this omission the Complainants also noted that, while the Report refers to ongoing monitoring by community investment programme partners, these programmes were no longer engaged in any of the villages that the Complainants visited during their July 2011 field-visit.
 - c) The Report omitted any reference to the special circumstances of north-east Turkey as identified in the Revised Final Statement, such as the description of this region as being "characterised by a significant Kurdish population and ethnic tensions" and "a heightened risk of intimidation". The Complainants also noted that the Report omitted any reference to freedom of speech issues in Turkey as a whole. Although the Report repeats praise by SRAP for a leaflet distributed to villagers near the pipeline, explaining the role of the local security forces that "very effectively places the pipeline in the context of the development of Turkey and speaks of it as a national project"; it fails to note that previous campaigns against similarly-described 'national projects' have in the past resulted in the instigation of criminal proceedings, particularly against ethnic minority campaigners. The Complainants also noted that Article 301 of the Turkish penal code makes it an

offence to 'denigrate the Turkish nation and security forces amongst other state bodies'.

16. The UK NCP received further factual comments on this Follow Up Statement on 15 September 2011 and 4 October 2011. The Company in its comments requested that the Follow Up Statement reflect the following points:
- a) That the Company is involved in ongoing consultations and dialogue with communities along the pipeline. The Company cited a number of examples, including the Turkish contractor holding 31 community meetings from January to August 2011 in villages in north-eastern Turkey, including the villages where the UK NCP originally heard complaints of intimidation during the 2005 field-visit;
 - b) That non-judicial grievance mechanisms are already in place as these were one of the key requirements of one of its lenders, the International Finance Corporation;
 - c) That this lender has accepted the Company's consultation and grievance management system as exemplary following the various audits that it has undertaken;
 - d) That the Company does not accept that informal complaints were not addressed as part of the grievance mechanism established for the BTC pipeline.

CONCLUSIONS

17. The purpose of the Follow Up Statement is not to examine again the allegations made against a company under the Guidelines but to evaluate the progress made by the company in implementing the UK NCP's recommendation contained in the Revised Final Statement. This evaluation is based solely on the parties' responses.
18. The purpose of the conclusions and recommendation of the UK NCP, set out in paragraphs 59 to 63 of the Revised Final Statement, was to encourage the Company to address a potential weakness in their procedures to respond to allegations of intimidation or breaches of the Voluntary Principles. As noted in the opening summary (p. 2) of the Revised Final Statement, "[w]hile the UK NCP considers that the BTC framework was established in accordance with the Guidelines, there were potential weaknesses in the local implementation of this framework regarding consultation and monitoring. These potential weaknesses arose from the [C]ompany's distinction between complaints raised through the formal grievance and monitoring channels from complaints raised by other means. In one particular region, these potential weaknesses seemed to have contributed to shortfalls in effective and timely consultations with local communities".
19. In light of the Report and the Complainants' findings and commentary on the Report, the UK NCP welcomes the steps taken by the Company

to identify ways to strengthen its procedures and considers that, if implemented, these steps could reduce the risk of future breaches of the Guidelines. The UK NCP also welcomes the Company's recognition of the importance of tailoring its procedures to the evolving situation on the ground, proactively managing the underlying social tensions and providing for anonymous reporting of grievances. The latter provision is important, as the Company previously felt unable to investigate the specific complaints of intimidation raised anonymously with the UK NCP during the 2005 field visit.

20. However, the UK NCP remains concerned that the Report makes no reference to the additional risk of intimidation in north-eastern Turkey. This contrasts with repeated references in the Report to the lack of any grievances relating to intimidation, harassment or human rights abuses by local pipeline security. While both parties agree that there have been no further complaints of intimidation by local security forces, the UK NCP notes the Complainants' findings that their local partner in north-eastern Turkey has heard villagers express concerns in private and that victimisation of those raising complaints remains a concern deterring the making of formal complaints in this region. The Company disputes these findings, and contends that none of the lenders to the BTC project and the SRAP panel, amongst others, have received any information which supports the existence of such concerns or alleged victimisation. While not taking a view on the Complainants' findings or commentary on the Report, the UK NCP considers that early identification of potential issues of social tension should logically address the additional risks of intimidation in regions characterised by ethnic tensions.
21. The UK NCP is also concerned that the Report is unclear whether previous improvements to the grievance management process addressed problems in logging or assessing the credibility of information that was received outside of the formal procedure - comprehensively, partially or at all. This contrasts with repeated references in the Report to the systematic monitoring, progressing and reporting on grievances that are assessed as credible and logged. While the Company believes that its previous procedures worked in practice, the UK NCP notes that both SRAP auditing on behalf of the project lenders and local NGOs monitoring on behalf of the Company had previously identified scope for improvement in the correct identification and recording of grievances. As noted above at paragraph 12(c), the Company states that steps have already been taken to make such improvements. These improvements are important, as changes in the logging and assessing of grievances may help address the potential weakness identified in the Revised Final Statement (i.e. the Company's distinction between information received from within and from outside of the formal monitoring and grievance processes).
22. Given the above concerns, the UK NCP encourages the Company to implement all of the identified ways of strengthening the Company's procedures. The UK NCP also encourages the Company to ensure that the detailed design and implementation of these steps specifically

addresses the potential weakness identified in the Revised Final Statement.

23. With specific reference to strengthening the Company's procedures by ensuring effective mechanisms for continuous dialogue and consultation with affected communities (as above, paragraph 13(f)), the UK NCP encourages the Company to assume responsibility for ensuring that consultations take place with villages in north-eastern Turkey and are effective. The UK NCP notes the Company's position that it is already working with the Turkish contractor to ensure that such consultations take place. The UK NCP considers that effective consultations provide one of the best methods of assessing the performance of the procedures currently in place, including non-judicial grievance mechanisms, and informing the programme of implementation which puts in place the identified steps to strengthen these procedures. This is the approach recommended by the UN Guiding Principles for Business and Human Rights³ (UN Guiding Principles).
24. The UN Guiding Principles state that non-judicial grievance mechanisms should involve, amongst other things, "consulting the stakeholder groups for whose use they are intended on their design and performance" (UN Guiding Principle 31(h)) and that "Stakeholders for whose use a mechanism is intended must trust it if they are to use it" (commentary to UN Guiding Principle 31). The UK NCP notes the Company's position that the non-judicial mechanisms established in relation to the BTC pipeline are consistent with the UN Guiding Principles.

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UK National Contact Point for the OECD Guidelines for Multinational Enterprises

³ <http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf>