

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

**COMPLAINT FROM AN NGO
AGAINST A UK COMPANY**

OCTOBER 2016

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Summary of the UK NCP decision

- The complainants say that a UK company supplied munitions to the Saudi Arabian government. They claim that the company has not addressed human rights impacts resulting from the use of its products in a domestic security operation in Saudi Arabia, and does not appear to have policies and processes in place to consider human rights impacts of these supplies.
- In response, the company says that its supply complied with UK export licensing requirements, and that it believes these requirements provide the appropriate safeguards.
- The UK NCP's decision at Initial Assessment is to reject further examination of the complaint. The UK NCP considers that the complainants have not substantiated their claims and that it does not serve the purpose and effectiveness of the Guidelines to consider the complaint further.
- This decision is made on the basis of the information both parties offered. It also takes into account established UK government export licensing procedures.

OECD MNE Guidelines provisions cited

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*
- 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.*
- 4. Have a policy commitment to respect human rights.*

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

[6. *Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.*]

Substance of the complaint

1. The complaint is made by two civil society organisations that campaign for human rights in Persian Gulf countries. The lead complainant is based in the United States and its co-complainant in Germany.
2. The complainants refer to a UK defence equipment company that supplied munitions to the government of Saudi Arabia. The complainants say that the munitions appear to have been used by Saudi security forces in a domestic security operation that violated human rights in a village in the Eastern Province region of Saudi Arabia. The complainants say that by failing to address these impacts of its supply, the company failed to meet its (voluntary) obligations under Chapter IV of the OECD Guidelines to address human rights impacts of its operations and business relationships.
3. The complainants also refer to international concerns about the human rights record of the government of Saudi Arabia. They say that in the face of these concerns, the supply of munitions shows a failure by the company to meet Chapter IV obligations to have a policy commitment to respect human rights and to undertake appropriate human rights due diligence.
4. The complainants ask the company to co-operate in remediation processes relating to the impacts of its supplies. If the company will not comply, they ask the NCP to recommend that the company stops supplying munitions to Saudi Arabia, or to neighbouring countries that may re-export them to Saudi Arabia.

Response

5. The company named as selling the munitions responded on behalf of itself and its parent company, which is also UK based and was also referred to by the complainants.
6. The UK company says that products referred to in the complaint were covered by a valid UK government export licence, and that it complies fully with the requirements of the UK export licensing process and understands that this process includes an assessment by the UK government of human rights risks. The company says that there are

commercial and confidentiality risks to it from engaging further in the complaint process, including risks to the safety of its staff.

Summary of Initial Assessment process

7. 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 process

8.

06.06.2016	UK NCP receives complaint
28.06.2016	UK NCP shares complaint with company and confirms handling to complainant
28.07.2016	UK NCP receives response
02.08.2016	UK NCP shares response with complainant
23.09.2016	UK NCP issues draft Initial Assessment
14.10.2016	UK NCP issues finalised Initial Assessment

9. All documents provided in the complaint and response were shared with both parties.
10. The NCP offered each party a meeting to explain the process. Neither party took up the offer to meet. The NCP spoke to a representative of the company by telephone on 28th June and 26th July to clarify details of the process.

UK NCP decision

11. The UK NCP has decided to reject the complaint. 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

12. The complainants are based outside the UK and outside the country referred to in the complaint (Saudi Arabia). However both complainants have an established interest in human rights issues in Arab Gulf States and are able to provide information about them. The complainants do not claim to have an interest in the company or specialist knowledge of the defence equipment industry.
13. The complaint is made on the basis of information provided by people in the community affected by the security incident referred to. The

complainants consider these people to be in a vulnerable situation and so do not consider they will be able to participate directly in the complaint process.

Whether the issue is material and substantiated and there seems to be a link to the company's activities

14. The complainants claim that the company's munitions were used in a raid in April 2015 on a village in the Eastern Province. They offer an account of this raid illustrated by a number of photographs, including photographs of spent munitions bearing the company's name. The account and photographs are described by the complainants as coming from primary sources who wish to remain anonymous because of concerns about reprisals.
15. The complainants say that they wrote to the parent company in August 2015, January 2016 and February 2016. They provide copies of these letters, which refer to the April 2015 raid and seek a meeting. The complainants say that none of the letters received a reply.
16. The complainants do not have any other information about the alleged supply. They suggest that the supply could have been made to Saudi Arabia or alternatively to another member state of the Gulf Co-operation Council that then re-exported them to Saudi Arabia¹.
17. The complainants also offer media reports of the April 2015 raid², and other incidents taking place between 2011 and 2016. They also refer to information about the company obtained from its website, and to reports and comments by international and state authorities (including the UN, the US State Department, and the UK FCO) about the human rights record of the government of Saudi Arabia.
18. The company does not comment on the April 2015 incident. It does not dispute that it supplied munitions to Saudi Arabia, and offers reference details of an export licence granted in January 2013 which it believes covers products referred to in the complaint. The company notes that it understands a human rights assessment is made by the UK government in deciding whether to grant an export licence.
19. The company notes that it does not want to engage further with the complaint process because it is concerned that information about its staff may not remain confidential, putting their personal safety at risk.

¹ The complainants say that the company will need to consider this risk of re-export in order to meet its Guidelines obligations.

² None of these refers to the company.

20. Because the complainants' source is anonymous, claims about the human rights impacts of the April 2015 raid and about the use of the company's products in that raid cannot be verified. The UK NCP considers that the complainants have not substantiated their claims that the company failed to address impacts. This conclusion should not be taken to mean that the UK NCP considers the anonymous source unreliable. It simply means that the UK NCP cannot make any further examination and finding on the basis of the information available.
21. The "specific instance" involving the company that is the pretext for the complaint is not substantiated. In line with its usual approach, the UK NCP makes a separate appraisal below of policy and due diligence claims raised by the complainants. The UK NCP makes a related observation about the purpose and effectiveness of the Guidelines (see Paragraphs [33-35 below]).
22. Discounting the unsubstantiated incident, the only link between the company and the issues raised is the company's own statement that it made a supply to Saudi Arabia.
23. The NCP considers that the complainants have substantiated a claim that there are human rights risks in such supplies, and that the company has not previously disclosed any information about how its policies and processes address these risks. In its response, the company does disclose its approach and also offers a partial explanation for its reluctance to engage with the complainants to date: it is concerned about staff safety.
24. The due diligence obligation under the Guidelines is for due diligence *appropriate to [the company's] size, the nature and context of operations and the severity of the risks of adverse human rights impacts*. As disclosed in the response, the company's approach is to rely on the UK government export licensing procedure, which includes a human rights risk assessment. The UK NCP considers that this approach is appropriate and so does not substantiate an issue about the company's policies and processes. The UK NCP's decision takes account of a related point about the purpose and effectiveness of the Guidelines (see Paragraphs [28-32] below).

Relevance of applicable law and procedures, including court rulings

25. 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) and international conventions on torture and war.
26. The company refers to UK laws on exports and the export licensing regime. The UK NCP notes that export licence applications in the UK are assessed against the published Consolidated EU and National

Arms Export Licensing Criteria, as updated in 2014. The assessment is based on eight criteria, which in summary include: the UK's international obligations, human rights, regional stability, UK national security, risk of diversion to undesirable end-uses, conflict in the receiving country, receiving country's behaviour toward the international community and compatibility with the sustainable development of the receiving country.

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

27. Both parties in the complaint raise points about whether or not the OECD Guidelines for Multinational Enterprises apply to an enterprise that has no established base of operations outside the UK. The UK NCP notes the observation in Chapter I of the Guidelines that *A precise definition of multinational enterprises is not required for the purposes of the Guidelines*. The OECD has previously applied the Guidelines widely to companies and other commercial ventures that have international impacts. The UK NCP considers that the Guidelines still apply to the company.

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

28. The Preface to the Guidelines states: *The OECD Guidelines for Multinational Enterprises (the Guidelines) are recommendations addressed by governments to multinational enterprises. The Guidelines aim to ensure that the operations of these enterprises are in harmony with government policies, to strengthen the basis of mutual confidence between enterprises and the societies in which they operate, to help improve the foreign investment climate and to enhance the contribution to sustainable development made by multinational enterprises.*
29. The UK NCP considers that it does not serve the purpose and effectiveness of the Guidelines to examine a supply for which a human rights assessment was made by the UK government as part of export licensing controls.
30. Products are generally subject to export licensing because they carry special risks that governments are better placed than businesses to assess and that merit statutory controls on their supply. In the case of the UK, the licensing process includes a human rights assessment and the export licensing authority can (and does) draw on information and expertise from other government sources to make that assessment.
31. The NCP considers that it brings the Guidelines into disrepute if they are seen to be used by the UK government to require a business to account for a human rights assessment made by the UK government. It

also potentially undermines confidence in the export licensing regime, which is a serious matter because of the potential consequences if businesses lose confidence in it.

32. For transparency, the UK NCP records that it is based in the same UK government department as the UK export licensing organisation. However, the UK NCP considers that the points noted above are also relevant for NCPs with other institutional arrangements. Governments adhere to the Guidelines and regardless of its institutional arrangements each NCP fulfils its responsibilities under the Guidelines on behalf of its adhering government.
33. The UK NCP also wants to make an observation regarding another issue raised in this complaint, and also relevant to other NCP complaints:
34. This complaint is made on the pretext of a specific incident and link to the company, but also includes general allegations about a supply to a government accused of human rights abuses. The company named will be one of numerous companies in Guidelines adhering countries that has a business relationship with that government.
35. The UK NCP has found the claims in relation to the specific incident are not substantiated. It has made a separate assessment of more general allegations because the information provided by both parties enables it to do so, and will continue to apply this approach of treating each case on its merits. However, it is arguable that it does not serve the purpose and effectiveness of the Guidelines - or the interests of fairness – to oblige a particular enterprise to account for activities that other enterprises also undertake on the pretext of a specific link that cannot be verified. The UK NCP notes that the NCP complaint process is properly known as the “Specific Instance” process: it is designed to address individual cases in which an interested party considers that a particular company is not meeting its Guidelines obligations.

Next steps

36. As the complaint has been rejected, this Initial Assessment concludes the process under the Guidelines in regard to this complaint.

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