

**Initial Assessment by the UK  
National Contact Point for the  
OECD Guidelines for  
Multinational Enterprises**

**COMPLAINT FROM A UK NGO  
(REPRIEVE) AGAINST A UK  
TELECOMMUNICATIONS  
COMPANY (BRITISH  
TELECOMMUNICATIONS PLC)**

**OCTOBER 2013**

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## Summary of the UK NCP decision

- **The UK National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises (the Guidelines) has decided to reject the complaint on the grounds that the allegations are not material and substantiated in regard to the company's obligations under the Guidelines.**
- **Parties in a complaint are not usually named in the initial assessment unless the complaint is accepted; however, in this case, the complainants – Reprieve – made public their submission of the complaint, and the NCP has accepted a request from the company – British Telecommunications plc (BT) to name parties in the assessment.**

## Substance of the complaint

1. The complaint is made by Reprieve, a UK civil society organisation campaigning for civil and prisoners' rights. It concerns a telecommunications service provided to a United States military communications base in the UK. The complainants allege that this telecommunications service is used to enable communications between the UK base and another US military base in the Republic of Djibouti. The complainants further allege that this service is used to support operations by unmanned aircraft (drones) from the US base in Djibouti. The alleged breach of the Guidelines relates to the impacts of these operations on the human rights of individuals and communities in the Republic of Yemen.
2. The complainants identify BT as the UK telecommunications company providing the service and ask the NCP to use its good offices to engage the company in mediation with the objective of the company ceasing to provide the service or varying the contract to exclude use of the service to support drone operations.
3. BT accepted an invitation from the UK NCP to respond to the complaint: it does not accept the link made by the complainants between its services and the impacts referred to. The company considers that it fully meets its obligations under the Guidelines in respect of the issues raised.

## Guidelines provisions cited

4. The complainant refers to the following provisions of the Guidelines:  
Chapter II

Paragraph 2 *[Enterprises should...] Respect the internationally recognised human rights of those affected by their activities.*

## Chapter IV

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

Paragraph 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.*

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

Paragraph 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*

5. Provisions in Chapter IV were added when the Guidelines were updated in 2011. They are applied by the UK NCP to actions of enterprises from 1<sup>st</sup> September 2011 and to unresolved risks or impacts known to the enterprise at 1<sup>st</sup> September 2011.

## The Initial Assessment process

6. 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

- 7.

|                              |  |
|------------------------------|--|
| 15 <sup>th</sup> July 2013   | NCP receives complaint                                   |
| 22 <sup>nd</sup> July 2013   | NCP asks complainants for clarifications of some details |
| 24 <sup>th</sup> July 2013   | NCP shares complaint with company and invites response.  |
| 29 <sup>th</sup> July 2013   | NCP receives clarifications and shares with company      |
| 20 <sup>th</sup> August 2013 | NCP receives company's response                          |
| 21 <sup>st</sup> August 2013 | NCP shares response with complainants                    |

8. All documents submitted were shared with both parties. The NCP offered an initial meeting to each party to explain the complaints process: neither party took up the offer.

## **UK NCP decision**

9. 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**

10. The NCP is satisfied that the complainants are a respected NGO with an established interest in the issue of drone operations and that they are able to provide information about the impact of these operations on citizens of the Yemen. The complainants identify named individuals they represent, but in response to an enquiry from the NCP, have said that these individuals would not be able to participate in any mediation under the NCP process.
11. The complainants say that they cannot provide details about the nature of the services being provided by the UK company (as the company has not responded to their request for these details).

### **Whether the issue is material and substantiated**

12. In support of their claims, the complainants offer documents relating to the company's provision of the service, studies and reports on drone operations in general, accounts from citizens of drone strikes in Yemen, and correspondence with the company about the issue.
13. The evidence shows, and the company accepts, that the company has a contract with a US defence agency to provide a service that supports communications between the UK base and a base in Djibouti (from which the complainants say drone operations into Yemen are launched). The evidence does not show a specific link between the communications service provided and the impacts of drone operations. The company describes it as a standard circuit provided for general communications purposes, and (because it is of this general character) is not party to information about its exact uses.
14. The claimants have not identified a specific link between the provision of the telecommunications service and the human rights impacts on Yemeni citizens complained of. The complainants' assertion that the service is likely to be used to support drone strikes appears to be based on the fact that it is provided to a US government agency and links to a base from which drones operate.

15. The Guidelines do oblige companies to employ due diligence appropriate to the nature of their goods and services, their business partners and the environments in which they operate. They also oblige companies to respect human rights whether or not these rights are protected by the relevant government, and to respond where they identify that their actions may contribute to or be linked to adverse impacts (including human rights impacts).
16. The NCP finds that the complainants have not substantiated a link between the company's actions and the issues raised sufficient to give it any obligation under the Guidelines beyond a general level of due diligence, however. The company has provided reports as evidence that it meets this general due diligence requirement.
17. The NCP does not consider that there is a specific issue meriting further examination in relation to the company's obligations under the Guidelines.

#### **Relevance of applicable law and procedures, including court rulings**

18. The complaint refers to states' obligations under 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.
19. The company refers to the judge's remarks in a recent Judicial Review brought by the complainants against the UK Foreign Secretary. The case itself does not appear to be relevant to the question of the company's responsibilities in the complaint.

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

20. The UK NCP notes some similarities between this complaint and complaints made recently to the UK NCP and the German NCP about supplies of ICT equipment for specialised use in electronic surveillance to countries alleged to have used it for the purposes of internal repression. Each individual complaint is considered on its individual merits, and in each case, the NCP concerned has needed to consider the evidence with regard to the nature of the link between the specific impact alleged and the supply made.

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

21. The NCP's decision is based on its finding that the issues are not material and substantiated rather than on its assessment of the likely outcome of any further consideration of the complaint.

## **Next steps**

22. As the complaint has been rejected, this Initial Assessment concludes the complaint process under the Guidelines.

**October 2013**

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

**Steven Murdoch  
Danish Chopra  
Liz Napier**

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