

**UK NATIONAL CONTACT POINT
FOR THE OECD GUIDELINES FOR
MULTINATIONAL ENTERPRISES**

Follow up Statement after
recommendations in complaint
from IAP/WDM against GCM
Resources

SEPTEMBER 2015

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Background

OECD Guidelines and UK NCP

1. The OECD Guidelines are voluntary principles for responsible business conduct in areas including employment, human rights and the environment. Each country adhering to the Guidelines is required to maintain a National Contact Point (NCP) to consider complaints under the Guidelines. The UK government maintains the UK NCP to meet this requirement. The NCP is not part of the OECD and has no wider responsibilities for OECD functions.
2. The UK NCP is staffed by officials in the Department for Business, Innovation and Skills (BIS) and funded by BIS and the Department for International Development (DfID). It operates independently of Ministers, who have no role in UK NCP decision making on complaints. A Steering Board including members from business, trade unions and civil society has general oversight of the NCP.

Follow up to Final Statements by the UK NCP

3. A Follow up Statement is published where a Final Statement includes recommendations, or where an agreement between parties provides for it. The UK NCP approaches parties at a specified date to request an update: the Follow up Statement is then based on their responses, and the parties have an opportunity to comment on the statement in draft before its publication. Conclusions of the NCP in the Follow Up statement are based only on what is apparent from the parties' responses: they do not represent any further examination of or finding on the issues by the UK NCP.

More details of the NCP's process and statements are at <https://www.gov.uk/uk-national-contact-point-for-the-organisation-for-economic-co-operation-and-development-oecd-guidelines-for-multinational-enterprises>

UK NCP Final Statement recommendations

4. The UK NCP's Final Statement on the complaint from IAP and WDM against GCM Resources can be found at: <https://www.gov.uk/government/publications/uk-ncp-final-statement-complaint-from-iap-and-wdm-against-gcm-resources-plc-in-bangladesh>
5. The Final Statement included the following recommendations to GCM Resources:

Subject to any decision from the Government of Bangladesh on the project's future, the UK NCP recommends that GCM continues to update its plans in line with current international best practice standards, and in particular to pursue and publish the Human Rights Impact Assessment it has advised the NCP it will include in this. The NCP also recommends that GCM develops its communications plans on the basis of a full assessment of risks, including the risks of limiting local engagement, and continues to identify appropriate ways to re-engage with affected communities, increase the information available to them, and take account of their views.

6. At GCM's request, the UK NCP also provided retrospective advice to clarify how it considered the company should have responded to issues arising earlier in the project's development and central to the UK NCP's findings in the complaint:

GCM also asked the UK NCP for guidance on how its past conduct could have fully met the obligation under Chapter II Paragraph 7 to "develop and apply self-regulatory practices and management systems that foster a relationship of confidence and mutual trust." Specifically, the company asked the NCP to identify how its actions between 2006 and 2012 could have been more consistent with this Guidelines provision, given the unavoidable constraints on its access to the Phulbari area. The NCP considers that the company should have done three things. Firstly and most importantly it should have ensured that communication channels it had developed (including online written information and relationships with NGOs and other organisations operating in the area) remained open so that people potentially affected by the mine could access up to date information and receive answers to questions about the project's status, the company's current activities and its intentions. Secondly, it should have re-appraised its earlier communications plans to see whether these had contributed to community impressions that it exercised undue influence. Thirdly, it should have appraised the new risks to communities arising from political opposition to the project and updated its plans to address these.

Response from the parties

7. The UK NCP wrote to the parties on 28th May 2015 to request an update. A response from the complainants was received on 18th June from Global Justice Now (formerly World Development Movement). A response from GCM Resources was received on 3rd July. With the NCP's agreement, the company included in its response information about activities undertaken prior to the Final Statement as well as new or ongoing activities (in response to the UK NCP's "retrospective recommendation" referred to in Paragraph 6 above).

8. Both parties also commented on a draft of this Follow-up Statement.
9. Both parties' responses noted that there had been no further official decision of the Government of Bangladesh on the project's future.

Company

10. GCM Resources confirms that a Human Rights Impact Assessment (HRIA) will be completed in due course as part of an updated Environmental and Social Impact Assessment. The company notes that it employed Environmental Resources Management (ERM) Australia Pty Ltd to prepare a gap analysis of its existing ESIA. GCM then began updating the ESIA in light of the gap analysis: this is a lengthy process and is still in progress. On completion, the revised ESIA will replace the current version on the project's website (<http://www.phulbaricoal.com>)
11. GCM reports that since October 2012 it has undertaken 74 community meetings, meeting around 2,500 people including community and political leaders, business community members, NGOs, youth groups, farmers and members of the indigenous community. Meetings have been held throughout the area potentially affected by the project, communicating in Bangla and allowing those attending to raise questions and concerns.
12. The company notes that as part of this programme, a series of meetings with community groups took place on 25th November 2014 at the company's local office in Phulbari. These were followed on 26th November by a larger meeting in Phulbari town at which senior representatives of the company met around 300 community and business members. The company refers the NCP to media reports of community support for the project at these meetings.
13. In the afternoon of the 26th November, around 30 people, including members of the Committee to Protect Oil, Gas and Ports, attacked the company's offices and employees. GCM says that this action was referred to the police whose investigation led to a criminal case being submitted to the Dinajpur District Court. 10 people have been accused by the prosecutor.
14. GCM rejects any suggestion that the community considers it to have exercised undue influence during its earlier project planning. The company says that it reassessed its communications strategy following events in August 2006 and has continued to reassess it periodically to take account of changing circumstances. The reassessment in 2012, combined with support from the Government of Bangladesh, led to a major re-engagement that involved setting up a team of local people across the project area as Community Liaison Assistants (CLAs). The

company considers the CLAs effective and reports that they work in the project area in considerable numbers without any security concerns.

15. GCM notes that it also engaged as an onlooker/facilitator with local government representatives in order to gauge community concerns, and its planning also takes account of the regional political landscape. GCM considers that that local resistance against the project is largely confined to a few agitators within the Phulbari Municipality who are politically motivated, assisted by a Dhaka-based group who are opposed to foreign companies in general.

Complainants

16. The complainants say that they have seen no evidence that GCM has updated its plans or pursued the Human Rights Impact Assessment (HRIA) it said would be included in the updated plans. They consider it would be impossible in any case for the company to comply with the NCP's recommendation because it has already violated relevant standards. The complainants say that they do not consider that the company should pursue an HRIA because doing so will itself have adverse human rights impacts.
17. The complainants say that there were two days of local protests against the GCM CEO's visit to Phulbari in November 2014, with protestors calling strikes, blockading roads and occupying the company's local offices. The complainants refer the UK NCP to media reports of these protests which state that GCM has pursued legal action against around 150 of the people involved, including the elected mayor of Phulbari.
18. The complainants note reported comments of the Secretary of the Government of Bangladesh's Energy and Mineral Resources Division is reported in December 2014 that GCM does not have a valid contract with the Government of Bangladesh and should not stay in Bangladesh. The complainants also drew to the attention of the UK NCP while this Follow-Up Statement was being finalised, reported comments of the State Minister for Power, Energy and Mineral Resources that the Government of Bangladesh was not interested to extract coal in the North Bengal region by open pit mining.

UK NCP Conclusions

19. The UK NCP notes that both parties' reports refer to GCM holding meetings in Phulbari in November 2014. There are significant differences in their accounts, however (see the company's account at Paragraph 12 above and the complainants' account at Paragraph 17 above). The follow up process does not include any new investigation

by the UK NCP of disputed events. The UK NCP can only note that meetings took place on these dates as part of a company engagement programme.

20. The main conclusion that the UK NCP draws from parties' updates is that there has been no significant development in GCM's mining project and neither party has changed its view about whether it can be developed in line with OECD standards.
21. Activities noted in the company's report are generally those that began before the NCP's Final Statement: it has continued its programme of engagement, but has not yet been able to complete its updated ESIA.
22. The comments in Paragraph 71 of the UK NCP Final Statement of November 2014 therefore remain relevant:

In the absence of firm information about the timing of a decision by the Government of Bangladesh on the project, the NCP cannot conclude that GCM's actions in the period do not demonstrate a level of human rights due diligence appropriate to the "nature and context of operations". The NCP notes, however, that, according to recent Annual Reports, the company expects to start work on the mine quickly once it obtains Government permission. The NCP considers that to continue meeting its Guidelines obligations, GCM will need to complete its updating of its plans, including making and publishing the HRIA it has committed to, before it begins work to acquire land for and develop the mine.

23. International standards (including the OECD Guidelines) oblige companies to consider and manage environmental and social aspects of a project throughout its life cycle. The UK NCP therefore said – and confirms again here - that GCM has an obligation to continue addressing these aspects and engaging with community stakeholders.
24. The UK NCP regrets that work to update the company's plans is not yet advanced to a point where an updated ESIA and an HRIA can be completed and published. The context of operations remains, however, one in which development of the project is suspended and uncertain. As the UK NCP's Final Statement reflected, the UK NCP had no basis for finding GCM's actions inadequate or inappropriate to this "*nature and context of operations*". The UK NCP did find, and GCM acknowledged, that the company will need to have completed an updated ESIA and an HRIA before it takes the project forward.
25. The arrangements that GCM reports are in place for community consultation and liaison provide a means to communicate expected next steps. The UK NCP encourages GCM to continue making full use of these communications channels to keep communities informed.
26. The UK NCP encourages the company to consider making public information about work in progress on its plans as appropriate to the

nature and context of operations and, if possible, information about the point (in time or in the project's development) at which it anticipates updated plans being available.

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UK National Contact Point for the OECD Guidelines for Multinational Enterprises

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