Irish National Contact Point

OECD Guidelines

for Multinational Enterprises.

Final Statement of the Irish and Netherlands National Contact Points (NCPs) on the notification dated 21st August, 2008 concerning the Corrib Gas project, pursuant to the OECD Guidelines for Multinational Enterprises

Table of contents

Section 1 – Introduction to the OECD Guidelines

The OECD Guidelines for Multinational Enterprises are a set of recommendations of the governments of the 31 OECD member states plus 11 other countries to enterprises operating in and from their territory. They set out voluntary principles and standards to guide companies in their international operations. While implementation of the Guidelines themselves is voluntary, each OECD Member State is, however, obliged to establish a National Contact Point (NCP) to deal with notifications of groups or individuals of alleged violations of the Guidelines by an enterprise in a specific situation. If an NCP, after conducting an initial assessment, decides that the notification merits further consideration, the NCP provides for a platform for discussion on the issues raised, where it can play a mediating role. If parties involved do not reach agreement on the issues raised, the NCP issues a statement, and makes, where appropriate, recommendations on the implementation of the Guidelines.[1]

On 21 August 2008, the Irish and Dutch NCPs were asked to consider an issue in relation to the development of a gas find off the west coast of Ireland - the 'Corrib Gas project'. The complaint related to the environmental, health and safety and human rights aspects of the activities of the developers.

While the Irish NCP has the primary responsibility in relation to this specific instance because of the location of the specific instance, the Dutch NCP was asked to cooperate with the Irish NCP, because Shell's parent company is based in The Netherlands. It was decided that the Irish and Dutch NCP should co-operate in handling the specific instance. Since the Consortium also consists of a US and a Norwegian company, the NCPs of those OECD countries were also informed. The Canadian NCP was informed following Vermilion Energy Trust's acquisition of Marathon's interest in the Consortium.

[1] Also see the Annex to this statement.

The Irish NCP is located in the Department of Enterprise, Trade and Innovation,[2] although the scope of the Guidelines covers several Government Departments and Agencies. The Dutch NCP is an independent entity.

[2] Formerly known as the Department of Enterprise, Trade and Employment.

Section 2 – The specific instance

Notifiers: Pobal Chill Chomain et al.

The lead notifier is Pobal Chill Chomain, a community group in North Mayo, Ireland. The notification is supported by Action from Ireland (AFRI), an Irish NGO, and its French counterpart Sherpa, hereafter together referred to as "the Notifiers".

Enterprise: Shell Exploration and Production Ireland Limited (SEPIL) et al.

The notification was directed against the oil companies promoting the venture (Shell Exploration and Production Ireland Limited (SEPIL), Statoil Exploration Ireland Limited, and Marathon International Petroleum Hibernia Limited) hereafter the Consortium. In July 2009, Vermilion Energy Trust of Canada announced that it had acquired Marathon's 18.5% interest in the Corrib gas project.

Date of Notification: 21 August 2008

Content of the Notification

Pobal Chill Chomain *et al.* alleged that the operations of the Consortium:

1. posed a safety risk to residents due to the proximity of high pressure pipelines in an unstable field;
2. posed a risk to the local drinking water supply and will be discharging chemicals in to air and water;
3. would negatively affect an intricate and ancient drainage system ('bogland');
4. violated the right to private life of local residents due to the presence and actions of Gardai;
5. would negatively affect local capacity building due to effects on tourism and fishing opportunities;
6. were developed while lacking the possibility of public participation in decision making.

The Notifiers alleged that the Consortium violated the following provisions of the Guidelines:

- *Chapter V – Environment, paragraph 2 and 3;*[3]

[3] *Chapter 5*: Enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards, take due account of the need to protect the environment, public health and safety, and generally

- *Chapter II – General Policies, paragraph 2, and 3.*[4]

The Notifiers also sought to determine whether or not there had been compliance with domestic, EU and international legal rules and principles.

References in relation to the Irish Government in the Notification

While the Irish Government was not cited as a party to the NCP procedure, the Notifiers alleged that the Irish authorities violated several EU Directives and International legal instruments. They alluded, in particular, to the referral of Ireland by the Commission to the European Court of Justice (ECJ) in 2007 for failures regarding public participation. In addition, Notifiers alleged that Irish Government failed to transpose Environmental Impact Assessments (EIA) Directives into national legislation, citing Case C215/06 Ireland V Commission concerning the construction of wind farms. The Notifiers drew parallels between the latter case and the Corrib Gas Project in relation to project splitting, alleged failures to carry out Environmental Impact Assessments and other aspects.

Administrative and parallel legal procedures

The notification to the NCPs was preceded by and parallel to administrative procedures for authorisation to the Consortium to (further) develop the Corrib Gas field and to undertake work.[5] Nevertheless, as the notification was largely about the alleged failure of the Consortium to adequately address the concerns of the Notifiers, the NCPs were of the opinion that the NCP procedure could provide for an informal platform for discussion on these concerns between the parties involved.

---

to conduct their activities in a manner contributing to the wider goal of sustainable development. In particular, enterprises should:
2. 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 (…);
3. Assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts (…).

[4] *Chapter 2*: Enterprises should take fully into account established policies in the countries in which they operate, and consider the views of other stakeholders. In this regard, enterprises should: (…)
2. Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments.
3. Encourage local capacity building through close co-operation with the local community, including business interests, as well as developing the enterprise's activities in domestic and foreign markets, consistent with the need for sound commercial practice.

[5] A full description of the administrative procedures for the Corrib Gas Field Development can be found on: http://www.dcenr.gov.ie/Natural/Petroleum+Affairs+Division/Corrib+Gas+Field+Development/Corrib+Gas+Field+Development.htm

Section 3 – Background to the 'Corrib Gas Project' and recent developments

The Corrib Gas Field was discovered in 1996. It is about 70% the size of the existing Kinsale Head gas field off the south coast of Ireland and has an estimated production life of about 15 years. Originally, Enterprise Energy Ireland, a subsidiary to Enterprise Oil, was set to develop the field and had, in 2001, obtained permission by local authorities for a gas processing plant. Shell bought Enterprise Oil in April 2002. Currently, the Corrib Gas Field is being developed by Shell Exploration and Production Ireland Limited (SEPIL), Statoil Exploration (Ireland) Limited and Vermilion Energy Trust.[6] SEPIL, on behalf of the other partners, acts as implementing developer of the Corrib field, while the other two partners- Statoil and Vermilion - are co –investors in the project.

Since 2001, the Consortium, in accordance with relevant Irish legislation, obtained the requisite consents, licences and planning permissions for the various works associated with the development of the Corrib Gas Field[7]. These works included laying a pipeline from the field to landfall, laying a further pipeline from landfall to an onshore processing facility some miles inland, and the construction of the processing facility itself.

The Corrib Gas Field Plan of Development was approved by former Minister for Marine and Natural Resources, Mr. Frank Fahey T.D., in 2002. Minister Fahey also granted Compulsory Acquisition Orders [CAOs] permitting the Consortium to have access to and use of private land in order to allow for installation of the pipeline. The Consortium secured planning permission for the processing facility at Ballinaboy in October 2004, after a previous application had been rejected by An Bórd Pleanála in 2003.

According to the Notifiers, members of the local community expressed significant safety concerns as work progressed. The Notifiers also stated that opposition to the development

[6] On June 24, 2009 Vermilion Energy Trust of Canada announced that it had entered into an agreement to acquire Marathon's 18.5% interest in the Corrib gas project. Vermilion subsequently issued a press release on July 30, 2009 announcing the closing of the transaction.

[7] The consent to lay the pipeline under section 40 of the Gas Act 1946 is currently under legal challenge. This original consent remains valid pending a decision by the High Court to the contrary, but may be moot as the Consortium is currently seeking a new consent following their decision to modify the route of the pipeline.

plans among local residents grew from 2000 when local residents felt they were not adequately consulted and that they had been misled about the safety of the gas pipeline.

The relationship between the Consortium and the local community deteriorated sharply in 2005 when five local landowners refused to allow the Corrib developers to proceed with construction work relating to the onshore section of pipeline at Ballinaboy. As this was judged to be in contravention of the CAOs, the five local men were subsequently found to be in contempt of court and were jailed for 94 days. In response to this development, in September 2005 the Irish Government announced the establishment of a formal mediation process, designed to address concerns in relation to the Corrib project. This was chaired by Peter Cassells, former Secretary General of the Irish Congress of Trade Unions.

In addition, the following month, October 2005, the Irish Government appointed Advantica Ltd., a UK engineering consultancy, to carry out an independent safety review of the onshore section of the gas pipeline to address community concerns in relation to pipeline safety. Their report published in January 2006, contained a number of recommendations, one of which limits the pressure in the onshore pipeline to 144 bar.

In July 2006, Peter Cassells concluded in his report that:
"*Following seven months of intensive discussions with the Rossport 5 and Shell and detailed consultations with the local community, I have with regret concluded that, despite their best efforts, the parties are unable to resolve the differences between them. I have also concluded, given the different positions on the project and the different approaches to mediation, that no agreement is likely in the foreseeable future."*[8]

Mr. Cassels recommended that the route of the onshore section of the Corrib Gas Pipeline be modified "*in the vicinity of Rossport to address community concerns regarding proximity to housing*"[9], and also that "*consent to operate the pipeline should not be granted to Shell until the limitation on the pressure in the pipeline to 144bar has been implemented*".[10]

From his discussions with a wide range of people in the area, Mr Cassells also concluded *"that the majority of people in Rossport, the wider Erris area and County Mayo are in favour*

[8] Introduction to the report by Mr. Peter Cassells
[9] 7.2 of the Recommendations
[10] 7.1 of the Recommendations

of the project'.[11] The Notifiers rejected this finding as based on inadequate consultation and information.

With regard to the recommendation in both the Cassells and Advantica reports on the pressure in the pipeline, the Consortium subsequently confirmed that it would put in place measures to reduce the maximum pressure in the onshore section of the pipeline to 144 bar.

Recent developments

In November 2008, the Minister for Communications, Energy and Natural Resources, Mr. Eamon Ryan T.D., and the Minister for Community, Rural and Gaeltacht Affairs, Mr. Eamon O'Cuiv T.D., jointly announced the establishment of a new Government-backed initiative on the Corrib gas project entitled the 'Community Forum for the Development of North-West Mayo'. The Forum is intended to act as a vehicle to facilitate (a) discussion on economic and social issues pertaining to the North Mayo Erris area, and (b) discussion of issues relating to the Corrib project including matters of local concern in relation to its implementation, including environmental issues, fishing rights, details of consents, policing etc. The Forum was not constituted as a decision-making body. Its overall objective is to ensure that interested parties are accorded the opportunity to directly engage in dialogue, by bringing together local community and interest groups, the Consortium and representatives of its local workforce, Government Ministers concerned and representatives of Government Departments, County Council, locally elected representatives and the Garda Siochana (police). A retired senior civil servant with extensive experience in mediation and conciliation, Mr. Joe Brosnan, was appointed to chair the Forum.

The administrative situation regarding the route of the pipelines continues to evolve; following the recommendations of the mediation process led by Mr. Peter Cassells, the Consortium modified its plans and subsequently submitted new applications for authorisation for development of the Corrib Gas Field. The Consortium selected a new route for the onshore pipeline, following a 14-month selection process, which involved 11 months of public consultation. In April 2008, applications for approval for the preferred route were submitted to An Bórd Pleanála, under the Planning and Development (Strategic Infrastructure) Act 2006, and the Minister for Communications, Energy and Natural

[11] Section 6 of the report by Mr. Peter Cassells

Resources under Section 40 of the Gas Act 1976-2000. These were subsequently withdrawn by the Corrib developers in December 2008, to allow for some minor modifications to be made to the preferred route. In February 2009, the Consortium submitted revised applications for the onshore portion of the pipeline to An Bórd Pleanála, the Department of Communications, Energy and Natural Resources and the Department of Agriculture Fisheries and Food (DAFF), seeking a wider route corridor as well as minor realignments of the preferred route**.**

In November 2009, An Bórd Pleanála asked Shell Ireland to make several safety changes, particularly to 5.6km of the 9km pipeline which it considered would be too close to homes for safety. Shell was given until the end of May 2010 to address the concerns. It would then have to submit a modified environmental impact statement; the altered application will then go to another public hearing before a report would be sent back to An Bórd Pleanala. Should the developer decide to comply with the An Bord Pleanála invitation, a new application to the Minister for Communications, Energy and Natural Resources with respect to permission to construct the pipeline pursuant to Section 40 of the Gas Act, 1976, as amended will be necessary. A new application to the Minister for the Environment, Heritage and Local Government for a Foreshore Licence will also be necessary. Both applications would be subject to a statutory public consultation process

On 4 March 2010, the Irish High Court ruled that two members of the Rossport community were entitled to proceed with their counter-claim against Shell regarding the validity of ministerial consent given eight years ago for the Shell Corrib gas pipeline. As far as the NCPs are aware this decision has not to date been appealed.

Section 4 – Consideration of the notification under the OECD Guidelines

As stated in section 2, the notification to the NCPs was preceded by and parallel to administrative procedures for authorisation to further develop the Corrib Gas field and to undertake work.[12] Nonetheless, on 19 February 2008, the Irish and Dutch NCPs decided that

[12] In addition, a full description of the administrative procedures for the Corrib Gas Field Development can be found on the website of the Irish Department of Communication, Energy and Natural Resources;

the issues raised merited their further consideration within the limitations of the mandate of NCPs. Due to the role of the Irish Government in the situation with regard to considering the Consortium's application for consent to further develop the Corrib Gas project, coordination of the decision on NCP involvement was a lengthier process than originally anticipated.

The NCPs made it clear to the Notifiers that adjudication on whether a private entity or a State has acted in compliance with domestic, EC or international law is beyond the competence of NCPs, and that in relation to parallel legal and administrative proceedings, the NCPs would not to be in a position to comment on those, and therefore would have to act within this limitation.[13]

The NCPs identified the facilitation of the resolution of the dispute as being of utmost importance and accordingly they offered a platform for discussion at which the Notifiers and the Consortium, under the guidance of the NCPs, would have the opportunity to discuss their mutual interests in resolving their differences.

Main issues for consideration by the NCPs

Of the six issues brought in the original notification, two emerged as the main items of contention in the NCP procedure which could be discussed, insofar as they fall within the scope of the OECD Guidelines. These two issues relate to:

1. the location of the Corrib Gas terminal in Ballinaboy, Co Mayo due to health and safety concerns of the local community; and
2. the extent to which the Corrib developers sufficiently engaged in consultations on health and safety impacts with the community in planning the development of the Corrib Gas Field.

---

http://www.dcenr.gov.ie/Natural/Petroleum+Affairs+Division/Corrib+Gas+Field+Development/Corrib+Gas+Field+Development.htm

[13] In their letter of the 19 February 2008, the Irish and Dutch NCPs advised the Complainants that :
" (…) The NCPs are aware of the legal proceedings with the Irish High Court that are also related to the Corrib Gas project. The NCPs, as mentioned above, are not in a position to deal with legal questions and must therefore, act within this limitation. Consequently, in dealing with this specific instance, the NCPs, acting in accordance with the OECD Guidelines, are not constrained in examining all aspects this specific instance. The NCPs are of the opinion that consideration of this specific instance will contribute to the purpose and effectiveness of the Guidelines in their entirety. Accordingly, the issue raised with the NCPs are considered bona fide and relevant to the implementation of the Guidelines (…)"

The NCPs therefore focussed on these two issues in their meetings with the parties. As mentioned already, the NCPs are not competent to investigate compliance with national, EU and other international obligations of either a private or legal entity or the state. The role of the NCPs in this instance was therefore to create a platform for dialogue on issues, which may raise underlying questions of legal interpretation or compliance; the scope of the OECD Guidelines and competence of the NCP would however limit the ability of the NCPs to comment on such issues if the dialogue failed to lead to agreement.

Section 5 – The positions of the parties

Following their decision that the notification merited further consideration, the Irish and the Dutch NCP engaged in consultations with the Notifiers and with representatives of Shell Ireland acting on behalf of the Consortium, in order to assess the options for a mediatory attempt. In this light, the Irish and Dutch NCPs met separately on 21 April, 2009, in Dublin with representatives of the Notifiers and with Shell Ireland respectively.

Relocation of the onshore processing facility

In the preparatory meetings for mediation the NCPs found that parties disagreed strongly on the question of the location of the onshore processing facility. As in the prior mediatory attempt by Mr. Peter Cassells in 2005, neither of the parties was willing to abandon its position.

Notifiers continued to strongly disagree with the current location of the onshore processing facility and the pipeline in Ballinaboy. They insisted "that the local community had repeatedly demonstrated its willingness to compromise on its original demand that the processing facility should be established at sea, proposing instead that it should be located in a more remote onshore area, such as Glinsk."

For their part, the Consortium rejected any proposal to relocate the facility given the state of completion of the construction. They stated that "the current location was chosen after careful consideration of several options and that it thus far received all necessary government authorisation and licences."

The Consortium maintained their position that they would not move the project to another location, and stressed that they had already agreed to revise the pipeline route on the basis of the recommendations made by former mediator Mr. Peter Cassells. The modified pipeline route was now to be located at a minimum distance of 140 metres from the houses in the Rossport area, instead of the originally planned 70 metres. The Consortium stated that "they had submitted their revised application for the onshore pipeline route which had been selected following a 14-month selection process, involving 11 months of public consultation. This application was further revised, seeking a wider route corridor as well as realignments of the preferred route, and resubmitted in February 2009."

Also following the recommendations by Mr. Peter Cassells and Advantica with regard to the pressure of the pipeline itself, the Consortium stated that "a third safety valve would be built in the pipeline which regulates the pressure within the pipes, to address the health and safety concerns of the local community."

Meaningful dialogue with the public

On this issue parties were equally divided and unable to bridge their differences. The Notifiers held that "the Consortium never held a meaningful dialogue with the local community in Rossport, as meetings were not sufficiently publicised, took place in inconvenient locations, and were not sufficiently informative. This was particularly the case in the initial uptake of the planning of the development of the Corrib Gas Field."

For their part, the Consortium stated that "these meetings were organized according the regulations of the Government and had been announced in *inter alia* local newspapers, and that everyone was given the opportunity to ventilate concerns orally and/or in writing." The Consortium also acknowledged that the way in which Shell Ireland presented the project during consultations with the local community in the early stages of its involvement in the project did give the impression that there was little room for modifications to adjust to local concerns, which most likely contributed to a sense of mistrust by parts of the community. The Consortium acknowledged that if these early stages could have been redone, it would have acted differently.

Findings of the NCPs: no apparent options for mediation

The issue of the location of the gas processing plant was the main demand of the Notifiers in this NCP procedure. The NCPs regrettably concluded from their discussions with parties and from studying the documentation in relation to the case that the parties seemed to be irreconcilable in relation to the location of the gas processing plant. Both sides had adopted very fixed positions regarding the relocation of the onshore facility and accordingly the NCPs concluded that a mediatory attempt on the basis of this main demand would not yield any results.

In light of the apparent impasse in relation to both issues, the NCPs wrote to the Notifiers on 24 September 2009, setting out their findings and asking whether the Notifiers saw any merit in continued resort to the good offices of both the Irish and Dutch NCPs, taking account of the limited possibilities under the OECD Guidelines and the fact that the Irish authorities have stated that the Corrib developers obtained all of the necessary statutory permissions.[14] The Notifiers have responded on 9 January 2010, regretting that the mediation efforts of the NCPs had not been successful and requesting the NCPs to issue a final statement in which their notification would be reviewed in the light of the OECD Guidelines.

Section 6 – NCPs' Conclusions

Conclusion with regard to relocation

As no options for the resolution of the dispute appeared available, the NCPs are now required to issue a statement. It should be noted that it is beyond the competence of the NCPs to make statements on the validity of the location or the way it was chosen, which are legal issues, given the voluntary nature of the OECD Guidelines, as mentioned in section 4. As noted in Section 3, the Irish High Court has recently ruled that members of the local community can challenge the administrative authorisation for the development and location of the pipelines by the Irish authorities.

The NCPs noted that according to the Consortium the modified pipeline proposed by the Consortium will be located at a distance from the houses in the Rossport area that goes beyond the standards and practice in other operations in Europe, including the Netherlands.

[14] See footnote 7.

The NCPs also noted that the Notifiers felt they had already compromised by agreeing on an *onshore* processing facility rather than an *offshore* facility, but they strongly disagreed with the location currently opted for, i.e. Rossport and Ballinaboy. The NCPs regret therefore that it appeared impossible to explore conditions with the parties involved on the basis of mutual interests that could lead to the resolution of the dispute on the location of the processing plant.

Conclusion with regard to meaningful dialogue with local communities

The NCPs investigated whether the Consortium engaged in a meaningful dialogue with the public in the development of the Corrib Gas project, as recommended in Chapter V, paragraph 2, of the OECD Guidelines. The Department the Communications, Energy and Natural Resources provided the NCPs with useful information in this regard.

The availability of information about the activities of enterprises and associated environmental impacts is an important vehicle for building confidence with the public. This vehicle is most effective when information is provided in a transparent manner and when it encourages active consultation with stakeholders such as local communities and with the public-at-large so as to promote a climate of long-term trust and understanding on environmental issues of mutual interest.[15] Furthermore, enterprises should consider to exceed the basic requirements with regard to the disclosure of environmental information.[16]

In the case of the Corrib Gas project, the Irish Government authorities as well as Shell itself organised several meetings in the locality while the Consortium set up a local agency where people could go with questions or concerns relating to the Corrib Gas project.[17] Recently, the independent planning authority An Bórd Pleanála has requested further adjustment of the Consortium's application for consent for the revised onshore pipeline route on the basis of local concerns over health and safety aspects.[18]

[15] OECD Guidelines for Multinational Enterprises, Commentary on the Environment, paragraph 35.
[16] OECD Guidelines for Multinational Enterprises, Commentary on Disclosure, paragraph 12
[17] In November-December 2001, a written consultation round was organized and made public in (local) newspapers and a first meeting was organised in Mayo County in that same period. The independent licensing authority An Bórd Pleanála also held public consultations and will continue to do so in the process for granting permission to the Consortium for the onshore part of the pipeline. The Consortium opened a public information office early 2001 in Bangor Erris, which was later moved to Belmullet, which houses five 'community liaison officers' who engage in direct contact with members of the local community.
[18] An Bórd Pleanála website: http://www.pleanala.ie/casenum/GA0004.htm.

As Shell Ireland itself acknowledged, communication with local stakeholders in the early stages of the project was not sufficient, which has led to a situation of mistrust amongst some members of the local community. However, the Consortium has voluntarily followed up on all recommendations made by former mediator Mr. Peter Cassells and engineering consultancy firm Advantica Ltd. while it was already granted permission to lay the onshore pipeline at closer distance than is currently planned. Therefore, it could be stated that in the early stages, dialogue with local stakeholders was not in accordance with the spirit of the OECD Guidelines, but since 2005, the Consortium has improved this and has shown willingness to address health and safety concerns, of which the revised route for the onshore part of the pipeline seems the clearest proof.

Section 7 – Final remarks and recommendations

In the course of this notification procedure the NCPs came across some issues, which it would like to address in general.

1. The contentious issues were not only subject to legal and administrative procedures, they were also subject to earlier unsuccessful mediation attempts. It seemed that parties had fixed their position based on desired outcome, rather than focussing on exploring other possibilities for resolution of the issues. The NCPs take the view that in such circumstances 'good offices' or mediation may not be suitable fashions of dispute resolution.

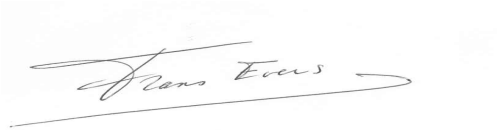
2. On the basis of EU and their national legislation, the governments of the EU Member States have an obligation to put in place legislation to ensure adequate consultation. The issue as to whether an EU government has adequately implemented and applied national and EU legislation is a legal one and can be addressed through judicial system, including the European Court of Justice.

Nonetheless, enterprises have a *responsibility to respect* the rights of those (groups of) people on which their activities have an impact. In order to become aware of potential negative impacts and to appropriately and adequately address such impacts, companies are expected to exercise *due diligence* in the broad sense of the concept, as set out by UN Special

Representative for business and human Rights, professor John Ruggie.[19] Consultation with stakeholders can be part of due diligence, even more so in those situations where government organized consultations are unusual in the development of new projects.

When an enterprise in the EU, e.g. in its exercise of due diligence, is faced with concerns of local stakeholders over their situation and rights, the enterprise has the responsibility to consider, where appropriate, going beyond what is legally required when it comes to holding consultations with the local community. This is precisely what is recommended in chapter V of the OECD Guidelines with regard to health and safety aspects of an enterprise's activities.

Dublin, 30 July 2010.



Dympna Hayes
Irish National Contact Point

Mr F.W.R. Evers
Dutch National Contact Point

[19] *Protect, Respect and Remedy: a Framework for Business and Human Rights*, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, April 2008. Mr. Ruggie summarizes the content of a due diligence process on human rights aspects as follows; "*Considered in that spirit, human rights due diligence comprises four components: a statement of policy articulating the company's commitment to respect human rights; periodic assessments of actual and potential human rights impacts of company activities and relationships; integrating these commitments and assessments into internal control and oversight systems; and tracking as well as reporting performance.*" Keynote Address by SRSG John Ruggie, "*Engaging Business: Addressing Respect for Human Rights*", sponsored by the U.S. Council for International Business, U.S. Chamber of Commerce and International Organization of Employers, Atlanta, 25 February 2010.

Annex I

Further reflections

Following the mediatory attempt in this case, the Irish and Dutch NCPs would recommend as a good practice that in future, NCPs, upon receipt of a notification regarding concerns over adequate stakeholder involvement, ask an enterprise for its fulfilment of its due diligence process and discuss the results with the stakeholder who made the notification. If such a discussion cannot be found to lead to resolution of the dispute, an NCP should draft a final statement in which the alleged circumstances and the action or inaction of the enterprise are viewed in light of the recommendations made in the OECD Guidelines,

OECD Guidelines for Multinational Enterprises

The OECD Guidelines for Multinational Enterprises (MNEs) are a set of recommendations addressed by member countries of the OECD to enterprises. They set out voluntary principles and standards under which companies should implement in their international operations.

They require, inter alia, that enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives and standards, take due account of the need to protect the environment, public health and safety and generally to conduct their activities in a manner contributing to the wider goal of sustainable development.

The Guidelines contain non-binding recommendations by governments to multinational enterprises operating in the adhering countries. They are part of the OECD Declaration on International Investment and Multinational Enterprises. They provide principles and standards of good practice consistent with applicable laws. Observance of the Guidelines by enterprises is voluntary and not legally enforceable (Paragraph 1 of Concepts and Principles). The General Policies (Chapter II) require that enterprises aim to meet certain principles and standards. The commentary notes that the Guidelines are not a substitute for local law and regulation. They represent supplementary principles and standards of behaviour of a non-legal character (paragraph 2 of the Commentary).

Chapter V of the Guidelines deals with the environment. They require, inter alia, that enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives and standards, take due account of the need to protect the environment, public health and safety and generally to conduct their activities in a manner contributing to the wider goal of sustainable development.

Under the Guidelines, each OECD member state is obliged to establish a National Contact Point (NCP) to deal with notifications of alleged violations of the Guidelines by groups or individuals to assess whether the notification is admissible, and, if so, to offer mediation between the parties.

Insofar as the NCP's are concerned, the OECD Council adopted a decision which addresses, inter alia, the role of the NCP's. Their role is to further the effectiveness of the Guidelines and they shall operate in accordance with the core criteria of visibility, accessibility, transparency and accountability (Procedural Guidance, paragraph I). In relation to 'specific instances' (this is the term used in the OECD text to describe a 'notification, however for ease of reference in this statement, the term 'notification' is used throughout), the NCP will offer a forum for discussion and to assist the business community, employee organisations and other parties concerned to deal with the issues raised in an efficient and timely manner and in accordance with applicable law.