



All Party Parliamentary Group on the Great Lakes Region

13 December 2004

Manfred Schekulin
Chair
Investment Committee
OECD
2 rue Andre-Pascal
75775 Paris Cedex 16

Dear Mr Schekulin,

We are writing to you on behalf of the All Party Parliamentary Group on the Great Lakes region and Genocide Prevention (APPG) concerning the Investment Committee's forthcoming High Level Expert Consultation on Conducting Business with Integrity in Weak Governance Zones. The APPG would like to contribute to the debate.

The APPG was founded by its Chair, Oona King MP, following a visit to Rwanda by the International Development Select Committee in 1998. Today, it comprises 148 MPs and Peers and is the forum in the UK Parliament for discussion and critical analysis of issues affecting the Great Lakes region.

Naturally, the APPG has followed very closely the work of the UN Panel of Experts on the Illegal Exploitation of the Natural Resources and Other Forms of Wealth in the Democratic Republic of the Congo. The APPG is currently finalising a report, which analyses the progress of the DRC cases through the NCP mechanism in the UK and other OECD countries. We intend to make its contents of the report available to the Investment Committee in early 2005.

The report draws on research interviews conducted with those NCPs who have been examining the cases and on the experience of international experts and NGOs. It will make a series of recommendations as to how the process should move forward. Further recommendations will be made for the

OECD Guidelines mechanism as a whole with a view to ensuring that it becomes an effective monitor of corporate conduct in the developing world and in conflict zones in particular.¹ Meanwhile, we are sending your committee the report's interim findings and recommendations and hope they are of interest and assistance.

Yours sincerely

Lord Phillips of Sudbury

Norman Lamb MP

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¹ See Annex 1.



All Party Parliamentary Group on the Great Lakes Region

The OECD Guidelines for Multinational Enterprises and the DRC: Interim Findings

1. Initial Comments on the OECD Draft DRC Study

The *Guidelines* do not specifically address conflict situations, yet over time it has become clear that it is precisely in respect of conflict areas that the Guidelines are most needed. Following the publication of the UN Expert Panel reports it was recognized that further work was needed on this subject. In September 2004, and the APPG understands that the Investment Committee intends to provide companies with a handbook for investment activities in conflict zones and to give NCPs dealing with the Democratic Republic of Congo, background analysis about companies investing or trading in “weak governance zones”.²

The draft study states that corporate responsibility goes beyond the core function of creating value for suppliers of capital. “Businesses are expected to obey the various laws that apply to them and, as a practical matter, have to respond to societal expectations that are not written down in law books”. While the draft provides an excellent economic analysis of the motivation and conduct of many companies and investors in the APPG's experience, there are number of additional factors which should be considered in the report:

1. It focuses exclusively on the mining sector in the Kinshasa government controlled area, which was much less affected by violent conflict than areas under the control of rebel administrations in the Eastern DRC. As a result the report fails to tackle head on the issue of how companies should operate with rebel authorities in war zones where the finance they provide can become a motive for continued conflict.
2. Moreover, although it considers in some depth the issues around revenue transparency, corporate governance and bribery, the report does not address the issue of trading partners and supply chain

² Conducting Business with Integrity in Weak Governance Zones: Issues for Discussion and a Case Study of the Democratic Republic of Congo, 3 Sept 2004

responsibility, which is clearly central to the conflict and natural resource exploitation debate. The fundamental issue which requires clarification is what kind direct or indirect business relationships with protagonists are acceptable when such relationships can so often exacerbate and prolong conflict. Without detailed guidance on this precise point companies will remain in the dark as to how to operate in these difficult business environments.

3. The draft study fails to consider human rights and security issues, which continue to be a problem in the DRC today. A striking omission is any discussion of how companies should respond to demands from rebels or military commanders for tribute or special taxes, which was and in some parts remains a pressing ethical dilemma for companies operating in the DRC.
4. No international human rights or humanitarian law instruments are explicitly mentioned and there is no attempt to explicate the one general human rights provision in the text of the Guidelines. This is despite the fact that the Study recognises that businesses are expected to obey laws that apply to them, including the obligation to respect human rights.³
5. The study tends to exaggerate the difference between what is called 'the pre-reform period' and the current situation for, despite the efforts of the World Bank and others, many of the problems about resource exploitation identified in the UN Panel reports persist.
6. Detailed guidance cannot provide for every eventuality and if the Guidelines are to become an effective mechanism the NCP procedure should be strengthened. The report contains no proposals as to how to improve the NCPs capacity, investigative powers, or the guidance and recommendations NCPs can issue as to the application of the Guidelines in different contexts.

In weak governance zones, the economic strength of Multinational enterprises relative to the weak economic and political structures of the host states means that the behaviour of Multinational enterprises has enormous potential to inflict serious harm on local populations; such harm can involve human rights violations and can contribute to the causes of conflict. Regulation of the behaviour of Multinational enterprises, even through voluntary codes drawing on human rights standards, is an essential first step to stemming the violations and promoting good practice consistent with the host states' international obligations.

Multinational enterprises need guidance on the steps they need to take to avoid practices that violate accepted human rights norms and international humanitarian law. A handbook could assist in this regard, since a proper consideration of such standards is missing from the report itself.

³ Draft Report, para 21

2. Interim Results of an APPG Survey of NCP Views

Most NCPs felt that the OECD Guidelines are still the most effective existing instrument of corporate accountability to tackle the DRC cases. The Guidelines are perceived as a robust framework, which requires better implementation. Nevertheless it was felt that there was a need for specific guidance to companies operating in conflict zones. Some argued that the gap should be filled with additional OECD instrument.

Some NCPs proposed the creation at the international monitoring body, which could provide guidance to companies and work closely with NCPs whilst respecting the requirements of confidentiality set out in the Guidelines.

However, significantly, a few NCPs think that the Guidelines are not an appropriate mechanism for regulating the conduct of companies in conflict zones. In their view an extension of legal regulation, such as anti-bribery laws and environmental laws would be a more effective and logical means of dealing with such cases.

A small minority of NCPs argued that conflict at root is an issue of governance and democracy for which the OECD is not responsible. The OECD Guidelines are not a substitute for weak governance or a failure of government to meet its responsibilities. These NCPs felt that the reach of the Guidelines is overestimated and some international NGOs interpret the role of the Guidelines in promoting human rights too broadly.

The major difficulty identified by most of the NCPs interviewed is their lack of investigatory powers and capacity. This is particularly problematic when obtaining information on companies operating outside the OECD, especially in the developing world. The OECD guidelines state that in relation to complaints concerning companies operating in non-adhering countries *'While it may not always be practicable to obtain access to all pertinent information, or to bring all the parties together, the NCP may still be in a position to pursue enquiries and engage in other fact finding activities.'*⁴ However, on the whole, NCPs tend to rely on the information provided by the complainant and the response of the company in question, since most do not see this as a mandate for obtaining information from the field.

3. Interim Recommendations

Procedure

1. The NCPs should be given greater investigative powers and capacity in the light of the complexity of the cases, especially those concerning corporate activity in non-OECD countries.

⁴ Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises para.20. OECD 2000.

2. OECD governments should ensure that all NCPs are of a sufficient seniority and are provided with adequate staff and funding to examine 'specific instances' and to oversee the implementation of the Guidelines.

Substance

1. To improve the effectiveness of the Guidelines as a tool for companies operating in conflict zones, the human rights provision of the OECD Guidelines requires further elaboration with the assistance of relevant human rights experts. At a minimum the Guidelines should make reference to the UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises.
2. The formal obligations that companies already have under international humanitarian law and human rights law should be set out clearly in the handbook.
3. Urgent clarification is required as to whether the OECD Guidelines apply to 'trade relationships' or only to investment relationships. In other words a company who invested capital in the DRC which benefited a belligerent during the war may be in breach of the Guidelines but one who traded with a warlord across the boarder could escape scrutiny altogether. It would leave an important gap in corporate accountability if the Guidelines were interpreted in this manner and would create an urgent need to develop a trade-related instrument and monitoring mechanism.