

UK NCP Initial Assessment

**AMERICANS FOR DEMOCRACY &
HUMAN RIGHTS IN BAHRAIN AND
FORMULA ONE WORLD
CHAMPIONSHIP LIMITED, ISSUES
FOR FURTHER EXAMINATION**

OCTOBER 2014

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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) accepts that the issues merit further examination in relation to the obligations detailed in Chapter II, Paragraphs 7, 10, 13 and 14 and Chapter IV, Paragraphs 4 and 5. These can broadly be characterised as obligations to do appropriate due diligence and stakeholder engagement.**
- **These issues are accepted in relation to Formula One World Championship Limited and Formula One Management Limited. The NCP will not pursue these issues in relation to the other companies named in the complaint (Delta 3 UK Limited and Beta D3 Limited) on the basis that these companies are not operational companies.**
- **The UK NCP rejects that the issues merit further examination (against any of the companies) in relation to the obligations detailed in Chapter II, Paragraphs 11 and 12, and Chapter IV, Paragraphs 2,3 and 6. These can broadly be characterised as obligations to avoid or address adverse impacts. The UK NCP also rejects that the issues merit further examination in relation to the broad obligations in Chapter II, Paragraph 2 and Chapter IV, Paragraph 1 except in so far as these can be seen as including the due diligence issues already accepted.**
- **Accepting that some issues merit further examination does not mean that the NCP considers that the companies have acted inconsistently with the Guidelines.**
- **The Initial Assessment is the NCP's finding about the information parties offer: the NCP cannot require any party to provide information.**

Substance of the complaint

1. The complaint is made by Americans for Democracy and Human Rights in Bahrain, a civil society organisation based in the United States that lobbies for democratic reform in Bahrain.
2. The complainants identify four related companies they say are involved in managing Formula One motor racing Grand Prix: Formula One World Championship Limited (FOWC), Formula One Management Limited (FOM), Delta 3 (UK) Limited and Beta D3 Limited. The complainants say that holding Grand Prix events in Bahrain in 2012, 2013 and 2014 has helped to present an international image of Bahrain at odds with a reality of ongoing human rights abuses. They also allege

that the events have given rise to new human rights abuses, because of the response of security forces to protests associated with the events. The complainants say that consequently the companies are in breach of human rights obligations and other general obligations under the OECD Guidelines.

3. The complainants ask the UK NCP to investigate the issues raised and use its good offices to resolve them. They ask the companies to disclose and discuss their due diligence in advance of any future events, and also note that in the complainants' view it is not currently consistent with OECD Guidelines standards to hold a Bahrain Grand Prix.
4. FOWC responded to the complaint: it clarifies that it responds also for FOM as its agent and business manager, and advises that the other companies named are not operational companies. FOWC says that the companies deny the allegations, noting, amongst other points, that the companies are contractually obliged to propose the Bahrain Grand Prix for inclusion in the race calendar, that UK government policy supports business engagement with Bahrain, and that feedback from Bahraini and international stakeholders indicates mixed views, with some - including some representing human rights interests - supporting the event.
5. FOWC describes the companies' general ethics policies and due diligence processes. It notes that they are not willing to provide additional information because the NCP has explained that it does not have powers to enforce confidentiality, and the companies consider that the complainants may disclose commercially sensitive information if it is provided. The companies note that any points of the complaint not addressed in their response should not be taken to be accepted.
6. The companies allege that the complainants seek to use the NCP process for campaigning aims, and question their mandate in bringing the complaint. The companies do not consider that mediation is appropriate or necessary with regard to the issues raised, but assure the NCP that they will continue to monitor human rights developments in Bahrain and to improve their policies and processes.

Guidelines provisions cited

7. The complainants refer to the following provisions of the Guidelines:

Chapter II General Policies

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 internationally recognised human rights of those affected by their activities.*
7. *Develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate.*
10. *Carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts as described in paragraphs 11 and 12, and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation.*
11. *Avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur.*
12. *Seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship.*
13. *In addition to addressing adverse impacts in relation to matters covered by the Guidelines, encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of responsible business conduct compatible with the Guidelines.*
14. *Engage with relevant stakeholders in order to provide meaningful opportunities for their views to be taken into account in relation to planning and decision making for projects or other activities that may significantly impact local communities.*

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 human rights impacts with which they are involved.*
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.*

8. 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 1st September 2011 and to unresolved risks or impacts known to the enterprise at 1st September 2011.

The Initial Assessment process

9. The Initial Assessment process is to determine whether the issues raised merit further examination. It does not determine whether a company has acted consistently with the Guidelines.

Handling process

10.

11.06.2014	UK NCP receives complaint.
03.07.2014	UK NCP forwards complaint to companies inviting a response.
24.07.2014	UK NCP meeting with company representatives.
03.09.2014	UK NCP receives companies' response and shares with complainants.
10.09.2014	UK NCP receives further submission from the complainants.
17.09.2014	UK NCP shares draft assessment with parties
01.10.2014	UK NCP receives complainant comments
06.10.2014	UK NCP receives company comments

11. The complainant submitted an earlier complaint against an expanded set of companies in March 2014. The earlier complaint was withdrawn by the complainant after an initial discussion with the NCP, and the complainant subsequently submitted this complaint.
12. The companies named in this complaint are: FOWC, FOM, Delta 3 (UK) Limited and Beta D3 Limited. In its response, Formula One World Championship Limited has advised that it is the appropriate company

to address the complaint. The NCP understands that FOWC responds on behalf of itself and FOM. The other two companies named are not operational companies and do not have a role in addressing the issues raised.

13. The NCP offered each party a meeting to explain the process. FOM took up the offer and its representatives met the NCP on 24th July. The process was explained to the complainant's representative in the initial discussion referred to in Paragraph 11 above.
14. All information provided in the complaint and response was shared with the parties (including a note of the NCP's meeting with the companies).
15. The company's response was received late in the process. Where information is received late, the NCP may decide to assess on the basis of the information already received and (if appropriate) accept issues in order to allow a more detailed consideration of the information. In this case, the response was not lengthy or complex and the NCP has been able to consider it.
16. The complainants also made a further submission late in the process (in reply to the companies' response). The NCP reviewed this to see if it changed the view reached on the basis of the complaint and response and concluded that it did not and there was therefore no need to delay the assessment and give the companies a further opportunity to respond.

UK NCP decision

17. The UK NCP accepts as meriting further examination issues relating to FOWC's and FOM's management systems, due diligence, human rights policy and communications with stakeholders and business partners (Issues under Chapter II, Paragraphs 7, 10, 13 and 14 and Chapter IV, Paragraphs 4 and 5). The UK NCP rejects the issues relating to the companies' obligations to avoid and address impacts (Issues under Chapter II, Paragraphs 11-12 and Chapter IV, Paragraphs 2-3 and 6). The UK NCP rejects that issues merit further examination in respect of the broad obligations to respect human rights in Chapter II, Paragraph 2 and Chapter IV, Paragraph 1, except in so far as these broad obligations can be seen as including due diligence obligations (see Paragraph 41. of the commentary on the Guidelines which describes identifying human rights impacts as part of the general obligation).
18. 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

19. The complaint establishes the complainants' interest in the issues they raise about human rights in Bahrain: they show an established track record of campaigning on these issues. The complainants show that they can provide information about these issues.
20. The complainants do not claim to have any information about the companies' activities and policies apart from the companies' public statements. They have requested additional information in earlier correspondence with the companies, and part of their stated aim in the complaint is to obtain additional information from the companies.

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

21. The information the complainants offer about the human rights situation in Bahrain includes: the report of the Bahrain Commission of Independent Inquiry (BICI) appointed by the Government of Bahrain following the unrest in Bahrain in 2011, subsequent reports by UN bodies and officials and by international and Bahraini civil society organisations, and reports and other media coverage of protests.
22. The information the complainants offer about the companies' position includes: letters from the Federation Internationale de l'Automobile (FIA, the sport's governing body), letters from Formula One teams and sponsors, and reports of statements by the CEO of Formula One World Championship Limited.
23. The complainants' further submission on 10th September does not include any additional information about the facts. It offers assurances about the complainants' good faith in reply to concerns raised by the companies.
24. The UK NCP considers that the complainants have shown that there have been human rights abuses in Bahrain. BICI's report records abuses during the unrest in Bahrain in February/March 2011, and concludes that there were systematic abuses by some government agencies. The Government of Bahrain has accepted the report and its recommendations. In the context of the BICI's findings, the UK NCP considers it is reasonable to accept that abuses are likely to have taken place in the context of subsequent protests as the complainants allege. It is clear from the media reports provided that the Grand Prix event has become a focus for protests.
25. The complainants claim that holding the Bahrain event links the companies to abuses of protestors. The UK NCP understands this to be on the basis that the event generates money and prestige for the government and that it is a focus for anti-government protests that government agencies act to suppress.

26. The UK NCP does not consider that the information in the complaint links the companies to any abuses, however. The Bahrain event promoter that is the companies' business partner is a partly State Owned Enterprise (SOE), but neither the complainants nor the BICI suggest it took part in abuses by state agencies during the 2011 unrest. References in the BICI report are limited to the announcement on 21st February that the 2011 Grand Prix would not take place (Paragraph 293), and to a note that employees of the promoter are among the victims of abuses (Paragraph 1187).
27. The post-2011 abuses the complainants refer to took place in the context of protests against the Grand Prix, but not in the immediate context of policing the event. The complainants do not offer any information about the role of the companies or the promoter in event security arrangements.
28. In the UK NCP's opinion, the fact that the companies promote a high profile event that attracts protests does not itself link them to alleged abuses of protestors (or suspected protestors). As no other information is offered, the UK NCP rejects the issues raised relating to the companies' obligations to avoid or address impacts.
29. The UK NCP also finds no substantiated issue in relation to the companies' obligation to co-operate with remediation processes. This obligation applies to impacts that a company identifies it causes or contributes to. No such impacts appear to be established in the complaint, and the complainants do not identify a remedy process with which the companies have failed to co-operate.
30. The information provided by the complainants does appear to the NCP to establish that from 2012 onwards new and enhanced risks have been associated with the Bahrain event. Effectively, the event has become politicised, with a new risk that it may be used as a focus for actions by both opponents and agencies of the government. The NCP considers that the new risk warrants updated or ongoing due diligence by the companies, and clear communication of their policy and approach, regardless of whether they are linked to impacts that have occurred to date.
31. The information the companies offer includes a description of their general ethics policies and due diligence processes, information about the decision-making process for their event calendar and about their contract with the Bahrain event promoter, and information about exchanges with interested parties following the postponement of the 2011 Grand Prix and subsequently (they include a letter from the Chairman of the Bahrain Commission of Independent Inquiry to the race promoter as an example).

32. The information provided by the companies about due diligence processes lacks the detail that would lead the NCP to conclude the new risks have been addressed. It suggests that the companies' due diligence processes focus on the award and renewal of promoter contracts, and does not appear to show that the companies have ongoing processes to adapt to changing circumstances over what will generally be a long contract period.
33. With regard to the effectiveness of the companies' communications, information in the complaint suggests that the companies have not responded to the complainants' previous enquiries. Replies that the complainants received from the companies' business partners do not refer to any policies or guidance from the companies. The complainants also point to reported statements of the companies' CEO that appear not to recognise human rights obligations on the companies. The companies note, and the NCP accepts, that the tone and context of such remarks needs to be appreciated, but there is an absence of counterbalancing communications from the companies.
34. The companies indicate that they consulted a range of stakeholders in Bahrain but provide few details. The information provided indicates that senior officers of the companies do have a relationship with the Government of Bahrain (outside of the companies' relationship with the promoter), but the nature of this is unclear. The companies do not provide any details of a human rights policy.
35. The companies note that they have provided only limited information because of concerns about confidentiality, and that it should not be assumed that they accept any points of the complaint not addressed in their response. The NCP makes no such assumption, but does consider that the information in the complaint and response substantiates issues for further examination with regard to the companies' due diligence and communications. Accepting these issues allows further information to be provided: either by the companies in confidential mediation, or in a further examination by the UK NCP which can include consultation with independent third parties referred to in the complaint and response or identified by the UK NCP.

How similar issues are being treated in other domestic or international proceedings

36. The UK NCP notes that FOWC and FOM accept that the Guidelines apply to them as multinationals exploiting the commercial rights to the Formula One World Championship. The companies explain their role as the promoters as being distinct from that of the FIA as the sport's governing body, but have provided some information about actions taken by the FIA (and actions taken by FIA and FOWC jointly). FIA does not appear to the UK NCP to be generally regarded as a

multinational enterprise, and the UK NCP does not consider its remit extends to commenting on the actions of FIA.

Next steps

37. The UK NCP will formally ask the parties whether they are willing to engage in mediation with the aim of reaching agreement about the issues accepted for further examination. If a mediated solution is not possible, the UK NCP will conduct a separate examination into the accepted issues and make a determination on whether the company's conduct is consistent with the Guidelines.
38. The NCP will reflect the agreement reached or the determination made in a Final Statement published on its website and placed in the Parliamentary libraries.

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UK National Contact Point for the OECD Guidelines for Multinational Enterprises

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