

Individual and African Development Bank (AfDB)

06/09/2023

The objective of the initial assessment process under the Procedural Guidance is to determine whether the issues raised in the specific instance merit further examination. If so, the National Contact Point (NCP) will offer or facilitate access to consensual and non-adversarial procedures, such as dialogue, mediation or conciliation (e.g. ‘good offices’) to the relevant parties. As specific instances are not legal cases and NCPs are not judicial bodies, NCPs cannot impose sanctions, directly provide compensation nor compel parties to participate in a conciliation or mediation process.

1.1 Table of contents

- 1.2 Overview of the NCP and its role
- 1.3 Executive Summary
- 1.4 Substance of the submission (facts presented)
- 1.5 The proceedings of the NCP to date
- 1.6. Initial assessment by the NCP
- 1.7 Conclusion

1.2 Overview of the NCP and its role

The OECD Guidelines for Multinational Enterprises (below also called the “Guidelines”) of 2011 are recommendations by governments to their companies, regardless of where they operate. These recommendations focus on several areas such as disclosure, human rights, employment and industrial relations, the environment, the fight against corruption, consumer interests, science and technology, competition and taxation. In addition, the concepts of responsible supply chains and due diligence have been introduced. The various National Contact Points are responsible for monitoring the implementation of these Guidelines. The NCP:s have a dual role in raising awareness and promoting observance of the Guidelines as well as contributing to the resolution of issues that arise relating to the implementation of the OECD Guidelines. The NCP:s can contribute to the resolution of issues raised by different means such as offering good offices, and where applicable, issuing determinations, recommendations, and carrying out follow up. In Sweden, the National Contact Point is chaired by a representative from the Ministry for Foreign Affairs. It has a tripartite structure composed of social partners, implying that unions and employer organisations are also represented.

1.3 Executive Summary

The NCP has received a complaint claiming that the Cameroonian company Système AES mismanaged a privatisation of the company SONEL, which according to the Complainant led to the establishment of AES Sonel to the detriment of former employees. For example, the Complainant is of the opinion that there were racially discriminatory salary practices as well as harassment during the

process. Furthermore, the Complainant claims that the AfDB has a responsibility in the matter since they were supporting the process.

The Complainant calls on:

- The AfDB to i.a. follow up on the matter and to participate in providing remedy.
- The Swedish NCP to follow up with the AfDB regarding the Bank's responsibilities.

According to the assessment by the Swedish NCP, there is no relevant link between the matter and any company or organisation operating from Sweden.

In view of the fact that the Swedish NCP does not appear to be the appropriate party to process the complaint, the NCP has concluded that it will not accept the complaint.

1.4 Substance of the submission (facts presented)

The NCP has received a complaint by Mr. Edouard Teumagnie (hereinafter the Complainant) claiming that the Cameroonian company Système AES mismanaged a privatisation of the company SONEL, which according to the Complainant led to the establishment of AES Sonel to the detriment of former employees regarding e.g. the salaries. Furthermore, the Complainant claims that the AfDB has a responsibility in the matter since they were supporting the process.

The Complainant calls on:

- The AfDB to i.a. follow up on the matter and to participate in providing remedy.
- The Swedish NCP to follow up with the AfDB regarding the Bank's responsibilities.

The Swedish MFA has been in contact with the AfDB which has informed that the matter is duly handled by the ordinary processes set up by the Executive Board of the Bank. The Complainant has received this information and has been referred to the AfDB's Independent Review Mechanism (IRM).

Furthermore, the Complainant has explained that he did choose to address the complaint to the Swedish NCP since Sweden is a member of the AfDB and has published an evaluation report regarding the body, and due to i.a. Sweden's relative geographical proximity, in comparison with another NCP:s.

Recommendations of the 2011 Guidelines targeted by the Complainant:

"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:

A. Enterprises should:

...

6. Support and uphold good corporate governance principles and develop and apply good corporate governance practices, including throughout enterprise groups”

1.5 The proceedings of the NCP to date

Since receipt of the submission, the NCP has carried out the following actions:

Date	Action that occurred
2023-01-27	Submission received by the MFA.
2023-06-12	NCP received complementary information from the Complainant.
2023-09-06	NCP discussed and decided upon the initial assessment (draft).
2023-09-07	NCP shared the draft initial assessment with the Complainant for factual comments.
2023-09-12	The Complainant commented upon the draft.
2023-10-18	The initial assessment, concluding that the NCP should not accept the complaint, was published.

The indicative timeline of finalising the initial assessment within three months was not met, one reason being the time it took to research previous proceedings which were similar to this specific instance.

The NCP finds that there is no risk of impartiality in the handling of this matter.

1.6. Initial assessment by the NCP

In the initial assessment, it is first necessary to assess whether the Swedish NCP is the appropriate party to investigate the complaint and to examine the matter in more detail.

The OECD Guidelines do not define precisely how the competence of the NCP:s is determined in specific instances. It is stated on p. 82 of the Guidelines that a matter will be generally addressed by the NCP of the country in which the matter arises. The events described in the complaint took place in

Cameroon in the process of a privatisation by Système AES, a Cameroonian company, supported by the AfDB. Cameroon is not an adherent to the Guidelines and thus there is no NCP in that country.

Sweden is one of several members in the AfDB, but the AfDB does not have its headquarters in Sweden. The headquarters are located in the Ivory Coast. The Ivory Coast is neither an adherent to the Guidelines, and accordingly there is no NCP in that country.

The fact that Sweden has published an evaluation report on the AfDB (ref. chapter 1.4 above) does not imply that Sweden is home country to the AfDB in accordance with the OECD Guidelines.

As far as the Swedish NCP can judge, the matter involves no other company or organisation operating from Sweden.

According to the assessment by the Swedish NCP, there is no relevant link between the matter and any company or organisation operating from Sweden.

As the Swedish NCP does not appear to be the appropriate party to process the complaint, no further assessment measures have been undertaken. The AfDB has not been requested to give a statement on the matter, as it had to be established first whether the Swedish NCP is the appropriate body to process the complaint.

For information, there have been specific instances that seems related or similar to this complaint, handled by the following NCP:s:

US NCP in 2011 (forwarded by the UK NCP) - case not accepted.

French NCP in 2014 - none of the aspects of the case were admissible.

Swiss NCP in 2023 - case not accepted

The Complainant has informed the Swedish NCP that he disputes the outcomes of the handling in these cases.

1.7.Conclusion

In view of the fact that the Swedish NCP does not appear to be the appropriate party to process the complaint, the NCP has concluded that it will not accept the complaint.

This initial assessment concludes the process concerning this submission.