



U.S. National Contact Point
for the
OECD Guidelines for
Multinational Enterprises on
Responsible Business Conduct

FINAL STATEMENT

Specific Instance between
André Amisi Rushingwa, Delvaux Bwisibo Mukunda, and
Raymond Minani Muganira,
and
Strategos Group LLC
Regarding Events in the Democratic Republic of the
Congo

August 8, 2024
Bureau of Economic and Business Affairs
U.S. Department of State
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Overview of the NCP and Its Role

The OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (the Guidelines)¹ are voluntary, non-binding recommendations for responsible business conduct in a global context. The governments that adhere to the Guidelines, of which there are currently 51, recommend observance of the Guidelines to multinational enterprises operating in and from their territories.

Adhering governments are also obligated to set up a National Contact Point for Responsible Business Conduct (NCP). The responsibilities of NCPs include contributing to the resolution of issues that may arise in relation to the implementation of the Guidelines in specific instances. Generally, such issues are dealt with by the NCP of the country in which the issues have arisen. The U.S. NCP handles such issues consistent with procedures described in the U.S. NCP Guide.² Further background on the specific instance process and the procedures and policies of the U.S. NCP can be found at the website of the U.S. NCP.³

Executive Summary

This Final Statement concludes the Specific Instance submitted to the NCPs of the United States and Colombia on April 10, 2023, by André Amisi Rushingwa, Delvaux Bwisibo Mukunda, and Raymond Minani Muganira (collectively, the submitters). The Specific Instance alleged conduct inconsistent with the Guidelines on the part

¹ Available at [OECD Guidelines for Multinational Enterprises on Responsible Business Conduct](#). This is the current version of the Guidelines, adopted in June 2023. A previous version of the Guidelines, adopted in 2011, was applicable when this complaint was submitted. Accordingly, this statement quotes the 2011 version rather than the 2023 version for certain points where they differ, including the title of Chapter VII.

² [“A Guide to the U.S. National Contact Point for the OECD Guidelines for Multinational Enterprises.”](#)

³ [U.S. National Contact Point for the OECD Guidelines for Multinational Enterprises](#).

of Strategos Group LLC (Strategos), a Delaware-incorporated international holding company, with respect to events in the Democratic Republic of the Congo (DRC).

Because the NCPs of the United States and Colombia have been unable to establish communications with Strategos, this statement, which the NCP of Colombia joins, concludes this Specific Instance and makes recommendations to Strategos.

Substance of the Specific Instance

On April 10, 2023, the submitters submitted a Specific Instance to the U.S. and Colombian NCPs alleging conduct by Strategos inconsistent with Chapters I (Concepts and Principles), II (General Policies), IV (Human Rights), V (Employment and Industrial Relations), and VII (Combatting Bribery, Bribe Solicitation and Extortion) of the Guidelines.⁴

The factual background of this case is set out in more detail in a 2023 Final Statement of the U.S. NCP, in a case from the same three submitters, addressing Gramercy Funds Management LLC (Gramercy).⁵ In brief, the submitters were among several thousand (5,489, according to the current submission) employees who were allegedly dismissed without compensation in 1997 by Société Minière et Industrielle du Kivu (SOMINKI). SOMINKI was then a mining company with operations in the North Kivu, South Kivu, and Maniema provinces in the eastern part of the country that was then the Republic of Zaïre, and is now the DRC. The

⁴ Since Strategos has not responded to attempts by the U.S. and Colombian NCPs to contact it, Strategos has not reviewed or corrected the information about it in this statement, which is derived from the submission and public sources.

⁵ U.S. NCP, [Final Statement, Specific Instance between André Amisi Rushingwa, Delvaux Bwisibo Mukunda, Raymond Minani Muganira, and Gramercy Funds Management LLC Regarding Events in the Democratic Republic of the Congo](#) (Aug. 29, 2023).

dismissals coincided with SOMINKI's dissolution and its succession by a new company, Société Aurifère du Kivu et du Maniema (SAKIMA). At the time of its dissolution, SOMINKI was jointly owned by two entities. A Canadian company, Banro Corporation (Banro), owned 72 percent of SOMINKI, and the Government of Zaïre owned the remaining 28%. There is no evidence that Banro or its successor company (Banro Corporation Ltd., a Cayman Islands company incorporated in 2018) or the government of either Zaïre or the DRC gave any compensation to the former SOMINKI workers for their 1997 dismissals, although documents cited in the U.S. NCP's Gramercy Final Statement indicate that Banro asserted during subsequent decades, including in an SEC filing and to the Canadian NCP, that it would take certain steps in this regard.

In January 2023, Banro's successor company sold the shares of its subsidiaries that held all the DRC mining assets to an unrelated company. As an indication that Strategos was the principal acquirer, the submitters provided copies of documents sent to mine employees, dated November 2, 2022, and March 1, 2023, announcing Strategos' acquisition of majority ownership of Banro's DRC mining assets.

Strategos' only apparent connections to the United States are that it is incorporated in Delaware and that it maintains a mailing address there. Strategos also reports a physical office address in Bogota, Colombia, and operations in the DRC. The submitters provided a January 2023 filing by Strategos in a U.S. federal district court, in a case unrelated to the DRC, indicating that mail to Strategos' Delaware address is collected by its registered agent in that state, Apex Resident Agent Services LLC, which forwards the mail to Strategos officials in Colombia.

In the Guidelines, participating governments make recommendations to “enterprises operating in or from their territories.”⁶ Elaborating on this, the Procedures attached to the OECD Guidelines state, “NCPs may receive specific instances regarding issues taking place in their country or alternatively regarding issues concerning enterprises established in their country.”⁷ Strategos’ incorporation in Delaware (in light of this language from the Procedures) and its office in Colombia appear to make it an “enterprise operating in or from” both the United States and Colombia for the purpose of this case.

Normally in such a Specific Instance submitted to multiple NCPs, the NCPs of Colombia and the United States would first coordinate with each other, “with the goal of determining the lead and supporting NCPs and adopting coordination arrangements.”⁸ The U.S. and Colombian NCPs did coordinate, but never determined lead and supporting NCPs, because of the lack of communication with Strategos as described below.

The central allegation of the complaint is that Strategos “failed to conduct . . . due diligence to identify and address Banro’s perpetration of serious workers’ rights violations” and other alleged shortcomings, in connection to non-payment of the former SOMINKI workers. The submitters assert that, by virtue of purchasing the former assets of SOMINKI, Strategos has responsibilities to the former SOMINKI employees. They request that Strategos should ensure that the former SOMINKI employees receive a remedy for the harm done to them.

⁶ OECD, [Declaration on International Investment and Multinational Enterprises](#), para. I; *OECD Guidelines*, *supra* note 1, Ch. I, para. 3, p.12; *see also id.*, Preface, para. 4, p.10 (“countries” rather than “territories”).

⁷ *OECD Guidelines*, *supra* note 1, Commentaries on the Implementation Procedures, para. 29, p.69.

⁸ *Id.*

While the complaint focuses on the non-payment of the submitters and other former SOMINKI employees, it makes a number of other allegations with no detail or support, including that Strategos was “complicit in . . . extortion” and that Banro or its officials engaged in “[t]ax evasion, embezzlement, and sale at derisory prices of company assets.” These additional claims do not warrant further discussion here because they are vague and unsupported, as well as unrelated to the submitters’ main point.

After contacting the submitters, the NCPs of the United States and Colombia attempted to reach out to Strategos several times. The U.S. NCP sent a letter by post to the company’s mailing address in Delaware, the Colombian NCP visited the company’s Bogota office address, and the U.S. NCP sent messages to an email address on the company website as well as to company officials’ email addresses provided by the U.S. Embassy in Kinshasa. None of these efforts received a response from Strategos. (After sending the letter by mail, the U.S. NCP did hear from an attorney in Bogota, with the same law firm that signed Strategos’ above-noted U.S. court filing, who said he was contacting us on behalf of an unnamed friend who represents Strategos. We asked this attorney to ask Strategos to contact us, but the company did not.)

Previous NCP Submissions

This situation is the subject of two previous Specific Instances. The first, submitted against Banro in 2016, was handled by the Canadian NCP, which issued a Final Statement on May 25, 2017, and a follow-up statement on March 21, 2019. The follow-up statement noted, *inter alia*, that Banro no longer had

meaningful economic ties to Canada after its 2018 bankruptcy and change of domicile to the Cayman Islands.⁹

The second, submitted to the U.S. NCP against Gramercy in 2021, was handled by the U.S. NCP, which issued a Final Statement on August 29, 2023. This Final Statement noted that Gramercy had divested all of its interest in the DRC mines in January 2023 and apparently had no leverage over their new owner.¹⁰ This third case is addressed to the new owner.

Initial Assessment

The initial assessment does not determine whether or not a company has acted consistently with the Guidelines, but rather is a process to determine whether the issues raised merit further examination. In its initial assessment, the U.S. NCP determined that the issues raised by the submitters do not merit further examination under the Guidelines and thus decided not to accept the Specific Instance. The U.S. NCP made this decision based on the Guidelines and considering the OECD's guidance on initial assessments.¹¹ In particular, according to the Commentary on Implementation Procedures, an initial assessment involves determining "whether the issue is *bona fide* and relevant to the implementation of the Guidelines," taking into account the following criteria.¹²

⁹ Canadian NCP, [Final Statement, Banro Corporation and a Group of Former Employees](#) (May 25, 2017); Canadian NCP, [Follow Up Statement, Banro Corporation and Group of Former Employees](#) (March 21, 2019).

¹⁰ U.S. NCP, Gramercy Final Statement, *supra* note 55.

¹¹ OECD, [Guide for National \[Contact\] Points on the Initial Assessment of Specific Instances](#) (2019).

¹² These initial assessment criteria are from the 2011 version of the OECD Guidelines, Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises (2011 version), para. 25. The 2023 version of the Guidelines revised the criteria; see Commentaries on the Implementation Procedures (2023 version), para. 33. We apply the 2011 criteria here, in part because the U.S. NCP procedures, on our website, still quote that version.

a. The identity of the party concerned and its interest in the matter.

The U.S. NCP is satisfied that Messrs. Amisi Rushingwa, Bwisibo Mukunda, and Minani Muganira have provided sufficient information regarding their interest in the issues raised. They state that they are former employees of SOMINKI. For their previous case before the U.S. NCP, they provided documentation of their employment and that of numerous other individuals who had apparently signed agreements to be represented by the submitters. Normally, we would ask the submitters to re-file that documentation as confirmation and to give Strategos an opportunity to review it. But for the purposes of this unusual Initial Assessment where Strategos has not responded, we can rely on their previous submission in another case on the same topic.

b. Whether the issue is material and substantiated.

The fundamental issue in this Specific Instance, alleged non-payment of severance pay to several thousand workers during a reorganization, is sufficiently substantiated in that the submitters have provided information indicating that their allegations are at least plausible, which is sufficient to satisfy the “not . . . unnecessarily onerous” standard required for this prong of an initial assessment.¹³

Regarding whether this issue is “material”, it could raise issues relevant to the Guidelines. It is noteworthy, however, that the allegation concerns events from 1997, when the OECD Guidelines did not include one of the

¹³ OECD Initial Assessment Guide, *supra* note 11 11, p.7.

substantive chapters relied on by the submitters, the human rights chapter. Because, as discussed below, our inability to establish communication with Strategos makes this question moot, for present purposes the U.S. NCP will set aside the potential issue of which version or versions of the Guidelines is applicable to this complaint.

c. Whether there seems to be a link between the enterprise’s activities and the issue raised in the specific instance.

Strategos appears to be directly linked, through a business relationship, to the issues raised. The business relationship is its January 2023 acquisition of Banro’s DRC mining assets.

d. The relevance of applicable law and procedures, including court rulings.

Aside from the previous Specific Instances, which are concluded, we are not aware of any parallel proceedings on this issue, so this factor is not relevant.

e. How similar issues have been, or are being, treated in other domestic or international proceedings.

In handling a predecessor of this Specific Instance, the Canadian NCP concluded that “the question of the liquidation of the SOMINKI merits further examination, including the question of the payment of the final accounts of the ex-employees.”¹⁴ In its follow-up statement, however, the Canadian NCP concluded that “the NCP is disappointed with the lack of cooperation demonstrated by [Banro] during this follow up process, as

¹⁴ Canadian NCP, Banro Final Statement, *supra* note 99, “The NCP’s Initial Assessment and Conclusions.”

cooperation demonstrated by [Banro] during this follow up process, as reflected in the lack of response to the NCP's requests and/or the repeatedly missed deadlines, despite efforts from the NCP.”¹⁵ Based on these conclusions, the previous NCP proceeding would not weigh against further action.

f. Whether the consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines.

Offering mediation would not contribute to the purposes and effectiveness of the Guidelines because our inability to establish communications with the company would make an offer of mediation pointless, and in fact we have not heard from any officers or agents to whom we could offer mediation. That said, the U.S. NCP makes recommendations to Strategos in this statement, invites engagement from Strategos after the publication of this statement, and remains open to offering mediation should Strategos engage.

For the reasons stated above, the U.S. NCP determined in its initial assessment that it should not accept the Specific Instance but makes recommendations to Strategos.

In this case, there will be no Initial Assessment document separate from this Final Statement, even though the U.S. NCP's procedures and some previous practice suggest that there may be two separate documents. This Final Statement fills the role of both documents – it describes the initial assessment, in addition to concluding the Specific Instance.

¹⁵ Canadian NCP, Banro Follow-Up Statement, *supra* note 99, para. 18.

Resolution

Because the U.S. and Colombian NCPs have been unable to contact the company, we are not able to facilitate dialogue between the Parties to this Specific Instance. Therefore, the U.S. NCP, joined by the Colombian NCP, concludes the Specific Instance and makes the following recommendations to Strategos. Finally, the U.S. and Colombian NCPs each remain available to assist the parties and would do so on a joint request from them.

Recommendations

The U.S. NCP recommends that Strategos, with DRC authorities as appropriate:

- 1)** Engage with the submitters on the issues raised in their complaint.
- 2)** Review the Canadian NCP's recommendations to Banro in its May 2017 Final Statement and its March 2019 follow-up statement. As appropriate, implement the actions recommended to Banro.
- 3)** Take care to act consistently with the Guidelines, including their recommendations that enterprises should:
 - a.** "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."¹⁶
 - b.** "Engage meaningfully with relevant stakeholders or their legitimate representatives as part of carrying out due diligence and in order to provide opportunities for their views to be taken into account with

¹⁶ *OECD Guidelines, supra* note 1, Ch. IV, para. 1, p.25.

respect to activities that may significantly impact them related to matters covered by the *Guidelines*.”¹⁷ and

- c. “Respect the right of workers to have trade unions and representative organisations of their own choosing recognised for the purpose of collective bargaining, and engage in constructive negotiations, either individually or through employers' associations, with such representatives with a view to reaching agreements on terms and conditions of employment.”¹⁸

With regard to (b), bear in mind that the Commentary describes such engagement as:

“engagement with stakeholders that is two-way, conducted in good faith by the participants on both sides and responsive to stakeholders’ views. To ensure stakeholder engagement is meaningful and effective, it is important to ensure that it is timely, accessible, appropriate and safe for stakeholders, and to identify and remove potential barriers to engaging with stakeholders in positions of vulnerability or marginalisation.”¹⁹

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¹⁷ *Id.*, Ch. II, para. A.16, p.15.

¹⁸ *Id.*, Ch. V, para. 1 b, p.28.

¹⁹ *Id.*, Ch. II, Commentary, para. 28., p. 20