

The issue raised under the OECD Guidelines for Multinational Enterprises by the FNV and CNV (Dutch labour unions) about the activities of IHC CALAND as a contractpartner of a large offshore project in Burma has led to the following joint statement.

JOINT STATEMENT BY THE NCP, FNV, CNV and IHC CALAND

The Netherlands National Contact Point (NCP)¹ for the OECD Guidelines for Multinational Enterprises (the Guidelines), FNV, CNV and IHC CALAND have reached an agreement on the issue raised by FNV and CNV about the activities of IHC CALAND as a contractpartner of a large offshore project in Burma and the implementation of the OECD-Guidelines.

According to FNV and CNV the activities of IHC CALAND in Burma would not comply with the General Policies Chapter of the guidelines and would not contribute to the elimination of all forms of compulsory labour as recommended in Chapter IV (Employment and Industrial Relations). FNV and CNV based their submission on the ILO resolution of June 2000 on Burma and authoritative reports of human rights abuses in Burma. From their point of view, companies that have activities in Burma would contribute to keep the junta-regime and its oppressive way to work with forced labour in place. This would not be in line with the labour chapter of the OECD-guidelines². When the issue was raised, IHC CALAND was active as a subcontractor for Premier Oil Myanmar (an affiliate of Premier Oil UK) in an offshore project in the territorial waters of Burma. FNV and CNV asked the Dutch National Contact Point to see whether IHC CALAND's behaviour in this specific instance was in accordance with the Guidelines. By raising this specific instance at the NCP, FNV and CNV intended to establish a constructive dialogue with IHC CALAND.

The National Contact Point first invited both parties individually to clarify their points of view and subsequently organised a tripartite meeting for an open dialogue. Agreement between FNV, CNV and IHC CALAND was reached on the following points:

- The OECD-guidelines are not an instrument of economic sanctions.
- It is for governments to impose an economic sanction on a country or not.
- Companies decide themselves how to implement the OECD-guidelines when they are active in a country.

¹ The NCP is the government body that promotes the effectiveness of the Guidelines, i.e. a set of recommendations by governments to multinational enterprises to operate in socially responsible manner.

² Detailed information of the specific issue raised by the FNV and CNV can be found in the background document.

- Taking into account the contractual obligations of IHC CALAND in the project and the relevant text of the OECD-guidelines, FNV and CNV accept that a withdrawal from the project is not an option for IHC CALAND.
- With regard to the implementation of the guidelines, IHC CALAND could take a more active role and strengthen external communication addressing the human rights situation in Burma.

FNV, CNV and IHC CALAND agreed to meet again, amongst themselves. During this meeting parties looked for activities that would strengthen the external communication of IHC CALAND regarding the human rights situation in Burma. The following next-steps would be explored by IHC CALAND;

- IHC CALAND would ask their main contractor, Premier Oil Myanmar, to participate in common activities to address the human rights issues with the regime of Burma.
- IHC CALAND would look for actions on its own, in case the main contractor does not want to co-operate with IHC CALAND to raise awareness about the political situation in Burma.

IHC CALAND did follow up on this agreement³;

- After being encouraged by the Dutch Minister of Foreign Trade IHC CALAND announced in April 2002 that it would not undertake any new activities in Burma.
- On June 11th, 2003 IHC CALAND and FNV (representing also CNV) visited the Burmese ambassador in London. Reason for the delay in the activities was the fact that in September 2002 the main contractor, Premier Oil, announced that it would sell its subsidiary Premier Oil Myanmar to the Malaysian company Petronas. It would make sense for IHC CALAND to talk with the new main contractor about common activities towards the regime after the sale would have been concluded.
- Due to the lack of progress to conclude the transaction between Premier Oil and Petronas, IHC CALAND decided to visit the Burmese ambassador without the main contractor.
- The contract between Premier Oil and Petronas was concluded on September, 12th 2003. On 7 November 2003 IHC CALAND has written Petronas a letter requesting the company to abide by the OECD-Guidelines. Petronas replied as followed: “On 12th November 2003 the subsidiary of Petronas called PC Myanmar (Hong Kong) (which was named Premier Oil Myanmar before the takeover by Petronas) replied that it would be continuing with the majority of policies established by Premier Oil for their operation in Myanmar and that their human resources strategy and policy regard to the above captioned would reflect this understanding”.
- Parties agreed to inform each other about future action with regard to Burma issues related to this specific instance.

³ More detailed information is given in the background document

- Parties will decide in a year from now on a future meeting to discuss follow up given to this point.

July 2003, parties involved asked the NCP to conclude the specific instance. The NCP took notice of the agreement between the parties involved about the actions taken by IHC CALAND. It also noted that FNV and CNV considered that IHC CALAND's decision not to engage in new activities in Burma as well as the points agreed between them and the company, has brought IHC CALAND sufficiently in line with the recommendations of the OECD-guidelines. The agreement made it possible for the NCP to formulate this joint statement. All parties welcomed the opportunity that the NCP had given for a constructive dialogue.

Background document

Introduction to the specific instance

FNV and CNV have brought the specific instance to the attention of the Netherlands NCP on 23rd of July 2001. In their view the activities of IHC CALAND in Burma are violating the general policies of the OECD-guidelines. FNV and CNV specifically refer to the General Policies Chapter of the Guidelines (chapter 2, § 2) and to the chapter of Employment and Industrial Relations (chapter 4, § 1c).

General policies, chapter 2, § 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;

- Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments.

Employment and Industrial Relations, chapter 4, § 1c:

Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices:
Contribute to the elimination of all forms of forced or compulsory labour.

FNV and CNV had followed the suggestion made by the Minister of Social Affairs and Employment (also on behalf of the Minister of Economic Affairs and the Minister of Foreign Affairs) that the NCP would be the appropriate forum for a joint meeting with IHC CALAND to discuss the consequences of these two specific paragraphs for IHC CALAND's activities in Burma.

Regarding the point "consider the view of other stakeholders", FNV and CNV pointed out that;

- the Burmese government does not comply with its obligations under ILO conventions, including convention 29 on forced labour.
- for that reason the Dutch government has set out a discouragement policy for trade and investment in Burma
- Mrs Aung San Suu Kyi, as the major leader of the democratic opposition in Burma (being a major stakeholder in the view of FNV and CNV) has asked for an economic boycott

All these stakeholders (ILO, Dutch government, Mrs Aung San Suu Kyi) discourage activities in Burma. FNV and CNV believed that, by their activities in Burma IHC CALAND was not meeting the recommendation "to consider the view of these stakeholders" as mentioned in the general policies of the guidelines.

Furthermore, FNV and CNV were of the opinion that IHC did not make an effort to contribute to the elimination of all forms of forced or compulsory labour. The Union's side believed that the best way to make such a contribution would be discontinuing their investment in Burma. The guidelines, however, do not require

this but leave companies many other options. For instance a meeting between IHC CALAND and a representative of the Burmese regime in which IHC CALAND would condemn the human rights abuses by this regime would be in line with the recommendation in chapter 4.

In a tripartite meeting on 19th of March, 2002 IHC CALAND explained its position;

- IHC CALAND is a subcontractor of Mitsubishi who was under the main contract of Premier Oil Myanmar, an affiliate of Premier Oil UK.⁴
- The contract between IHC CALAND and Premier Oil Myanmar was signed in 1998. A breach of contract from the side of IHC CALAND will be followed by a liability suit from the main contractors side.
- All activities in Burma of IHC CALAND are offshore. Tankers transport the by-product of the offshore activities to the shore of Thailand once every three months.
- IHC CALAND takes care that the labour used in their part of the project is no forced labour. An English company selects their personnel and is under the obligation not to hire forced labour.
- FNV and CNV question the involvement of IHC CALAND in the Yetagun-pipeline. IHC CALAND states that it is not involved in the Yetagun-pipeline nor does it use the pipeline.
- IHC CALAND has often publicly enounced its concern about violation of human rights by the Burmese regime.
- The Dutch government has changed its policy on Burma in 2001 into further discouragement of economic activities in Burma.
- The OECD-guidelines have been reviewed in May 2000.

In the tripartite meeting parties agreed that the OECD-guidelines are not an instrument for economic sanctions or boycott. Unions and IHC CALAND agreed bilaterally that they would look for ways to address the situation in Burma and look for possible action that can be taken to implement the OECD-guidelines. They would inform the NCP about the progress in July 2002.

During summer 2002, trade unions and the company agreed on the following:

- IHC CALAND will contact Premier Oil (UK) and see if it can participate in activities planned by Premier Oil to address the abuse of human rights by the Burmese regime
- Possible other activities will be discussed between IHC CALAND and Premier Oil
- Results from the meeting between IHC CALAND and Premier Oil will be reported to FNV and CNV

⁴ The main contractor after September 2003 is Petronas.

After the meeting in March 2002 the following happened:

- In April 2002 IHC CALAND announced, as a result of the discussion it had with the Minister of Foreign Trade, that it would not undertake any new activities in Burma.
- In September 2002 Premier Oil announced that it would sell its subsidiary Premier Oil Myanmar to the Malaysian company Petronas that would then become the main contractor. As a consequence of this announcement it would not be useful for IHC CALAND to talk with Premier Oil, as they would no longer be responsible for the project. At the same time IHC CALAND stated that it could not talk to Petronas until the sale of the subsidiary had been concluded. Eventually, this sale was concluded on 12 September 2003.
- Due to the lack of progress as a result of the time it took to conclude the transaction between Premier Oil and Petronas, IHC CALAND decided to visit the Burmese ambassador in London on its own. This visit took place on June, 11th 2003. A representative of the labour union FNV (representing also CNV) was present at the meeting. In the meeting IHC CALAND expressed its concern about violation of human rights and of the use of forced labour, as several international organisations had established. After this meeting a press release was issued by IHC CALAND on 2 July 2003, the text of which was written in close co-operation with the labour unions. As IHC CALAND and the labour unions agreed on the text, it was decided that it would not be necessary to have a joint press conference, as had been planned earlier.
- On 7 November 2003 IHC CALAND has written Petronas a letter requesting the company to implement the OECD-guidelines, as agreed in July during the meeting with the trade unions. Petronas replied as followed: "On 12th November 2003 the subsidiary of Petronas called PC Myanmar (Hong Kong) (which was named Premier Oil Myanmar before the takeover by Petronas) replied that it would be continuing with the majority of policies established by Premier Oil for their operation in Myanmar and that their human resources strategy and policy regard to the above captioned would reflect this understanding".
- In May 2004 the NCP, trade unions and IHC CALAND had a concluding meeting. Parties will decide in a year from now on a future meeting to discuss follow up given to this point.