

# **A CASE IN FRONT OF THE ITALIAN AND DUTCH NCP**

## **Egbema Voice of Freedom et al vs ENI**

Avv. Giacomo Maria Cremonesi  
cremonesi@studiocaiazza.com

# OECD NCP

- Governments adhering to the Guidelines are required to set up a National Contact Point (NCP)
- NCPs assist enterprises and their stakeholders to take appropriate measures to further the observance of the Guidelines. They provide a mediation and conciliation platform for resolving practical issues that may arise with the implementation of the Guidelines.

# OECD Watch

- **Out of the 250 cases it reviewed for the period 2001–2015, only 20 led to an acknowledgement of wrongdoing (by the NCP or the company), an additional 20 to a change in policy and 3 others to improvement on the ground.**
- 155 For the period 2012–2015, during which only 105 complaints led to 4 acknowledgements of wrongdoing, 6 additionally to policy changes and 1 complaint to change on the ground. None of these cases led to compensation for the victims.

# OECD Watch 2019

- In 2019, 28 complaints filed with National Contact Points (NCP)
- 2019 was the second subsequent year in which the case rejection rate significantly surpassed the already-high historical averages. 36% of NGO/community complaints were rejected outright with no offer of good offices to resolve the dispute.
- Six NGO/community complaints resulted in some form of remedy for the complainants

# ITALIAN NCP OECD WATCH

- Low number of cases over the year (one pending)
- Resource problem
- Respect of timeline is problematic
- We recommend that the Italian NCP commits to carrying out additional investigation when required, as it would be beneficial in helping the NCP determine potential breaches of the Guidelines, while also allowing the NCP to make recommendations more suitable, while relating to the local context and realities, to both parties.

# I. FLOODING IN AGGAH





**Egbema Voice  
of Freedom**

Advocates for Community Alternatives



**CHIMA  
WILLIAMS &  
ASSOCIATES**



**IMPACT ASSESMENT REPORT**

**AGGAH COMMUNITY, RIVERS STATE, NIGERIA  
DECEMBER 2017**

# Summary of the main findings

- 89.7% of households reported that they have had to relocate from their homes
- 90.8% of households described loss of agricultural products
- 100% of households described impacts to the water supply
- 39% of households reported destruction to schools
- 79% of households reported destruction to recreation centers
- 43% of households reported destruction to household buildings

# Main findings

- 66.57% of respondents reported suffering severe physical injuries
- 67.06% of respondents reported suffering severe skin problems
- 60.66% of respondents reported suffering severe diarrhoea
- 62.85% of respondents reported suffering severe vomiting
- 55% of women who responded to the question on menstrual health reported severe problems
- 37% of women who responded to the question on childbirth reported severe problems

# II. THE PROCEDURE IN FRONT OF THE ITALIAN AND DUTCH NCPs

EVF / ENI

# Procedure under NCPs

- First File a Complaint.
- Procedure:
  - Part 1 : Initial Assessment
  - Part 2 : Good offices
  - Part 3 : Conclusion with Final Statement

# COMPAINT FILED TO ITALIAN and DUTCH NCPs

- ☐ Chapter II, General Policies (A1; A2; A11);
- ☐ Chapter IV, Human Rights, 1; 2; 3; 4; 6);
- ☐ Chapter VI, Environment (3; 5).

Filed 15 dec 2017 – end of procedure 8 July  
2019

# Our requests in the Complaint

- **1. Eni should urgently build and maintain an adequate drainage system to end the annual flooding;**
- **2. Together with the Complainants (and possibly the NCP), Eni should jointly investigate and assess the impacts of the Mgbede oil fields on community members' lives, property, livelihoods, and surrounding environment;**
- **3. Eni should meaningfully implement the corporate group-level sustainability policy;**
- **4. Eni should develop contingency plans for preventing, mitigating, and controlling serious environmental and health damage including accidents and emergencies; and mechanisms for immediate reporting to the competent authorities;**
- **5. Eni should provide an effective remedy for Aggah community residents.**

# Procedure under NCPs

Part 1 : Initial Assessment of whether the issues raised merit further examination

As part of the specific instance's procedure<sup>1</sup>, the NCP carried out the initial assessment, to determine whether the issue raised in the specific instance merited further examination, namely whether the issue raised was *bona fide* and relevant to the implementation of the Guidelines on the basis of the criteria set forth in the Guidelines.

# Result of Initial Assessments

- By letter of 26th July 2018 the NCP communicated to the Parties that it had concluded that the **issue raised merited further examination** and that the **Initial Assessment would not have been published since it considered that this approach could facilitated the achievement of an agreement.**
- NOT ALWAYS THE CASE

# EVF vs ENI Part 2

- OFFERED GOOD OFFICES
- APPOINT A SPECIAL MEDIATOR
- ONE IN PERSON MEETING
- TWO ON SITE VISITS BY THE PARTIES WITHOUT THE NCP

# Part 3 Procedure in general

- Part 3 : Conclusion with Final Statement
- Possibilities: a) **a statement when the NCP decides that the issues raised do not merit further consideration;** b) **a report** when the parties have reached agreement on the issues raised. **Information on the content of the agreement will only be included insofar as the parties involved agree thereto;** c) **a statement when no agreement is reached.** This statement should **at a minimum** describe the issues raised, the reasons why the NCP decided that the issues raised merit further examination and the procedures the NCP initiated in assisting the parties. The NCP will make recommendations on the implementation of the Guidelines as appropriate, which should be included in the statement. **Where appropriate,** the statement could also include the reasons that agreement could not be reached

# The Agreement Part 3



- <https://pcnitalia.mise.gov.it/attachments/article/2035928/Report%20CWA-ENI%20case%20-%20NCP%20final.pdf>

III. WHAT THE DIFFERENT  
PARTIES SAY ABOUT THE  
AGREEMENT AND WHAT  
ABOUT THE  
IMPLEMENTATION?

# OECD WATCH Comments on EVF vs ENI CASE

- **Remedy in the form of company commitment to prevent future impacts**
- **The Italian NCP facilitated an important agreement and commitment by Italian oil and gas company Eni to address decades of flooding its subsidiary had caused in Nigeria. After the complaint, Eni began remediation preparation before its operations were stalled by the COVID-19 crisis. The case now provides a good opportunity for the Italian NCP to follow-up to ensure the company ultimately makes good on its commitments and nascent good efforts toward the community.**

# ENI WEBSITE

- During the procedure, Eni provided objective elements – also with the support of photo and video documentation – to demonstrate that NAOC operations and infrastructures have no aggravating impact on the natural flooding of the area.
- .. example of the way Eni provided answer to the concerns of rightsholders and ensured access to the solutions proposed is represented by the conciliation procedure activated via the Italian National Contact Point of the OECD Guidelines to answer at the complaint raised by the NGO (EVF). The procedure was activated with the EFV instance, claiming that NAOC (Eni's subsidiary) was not doing enough to mitigate the impacts of its operations on the effects of the floods on the community. ..

On the implementation:

- Following the signing of the Terms of Settlement, NAOC and Egbema voice of Freedom (EVF) designated their respective contact persons who met several times in order to define the contents of the drainage interventions to be carried out in the community. Once the engineering design completed, NAOC activated the internal procurement procedures to assign the contract for the rebuilding of the culverts. The Italian NCP will be kept informed of the implementation of the agreement.

# OECD SECRETARY GENERAL

- Said it was a “Successful Case”
- ENI S.p.A., ENI International BV, and CWA and ACA Following mediation organised by the NCP of Italy in July 2019, ENI S.p.A, a major Italian oil and gas multinational enterprise, and a group of NGOs in Nigeria, signed a Terms of Settlement. In the agreement, the parties concluded that the company would construct a drainage system that would remedy impacts caused by violent flooding. The violent flooding was allegedly linked to the company’s construction and road infrastructure development, which supported its oil drilling operations in 1970.

# THE IMPLEMENTATION PHASE REALITY vs EXPECTATIONS



# Why a mediation?

- Admissibility
- No request for money
- Possibility to participate for the parties
- Bridge the liability gap in corporate groups

# WHY NOT

- No supervision of implementation phase
- No adequate resources (not even in Court)

**THANK YOU**

**E-mail: [Cremonesi@studiocaiazza.com](mailto:Cremonesi@studiocaiazza.com)**