

# Quarterly Case Update

Summer 2007

Case  
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OECD Watch

of OECD Guidelines cases filed by NGOs

## I. Highlights

### New cases:

- Transparency International Germany vs. 57 German companies in UN Oil for Food Scandal (NCP Germany)
- Germanwatch vs. Volkswagen regarding climate change impacts (NCP Germany)
- CGTP vs. Grupo Atlas Cumbres regarding labour rights violations in Peru (NCP Chile)

### Developments:

- UK NCP holds meetings with parties in initial assessment of Global Witness vs. Afrimex case
- Situation escalates in CCC vs G-Star case as a restraining order is issued against Indian labour organisations and Dutch NGOs are subpoenaed by Indian court; G-Star refuses to enter NCP-mediated dialogue
- Australian NCP rejects ANZ Bank case claiming lack of an investment nexus
- Philippine Supreme Court decision puts Shell Philippines case on hold
- Danish NCP finally plans dialogue meeting in Nepenthes vs. DLH case
- UK NCP offers to reopen dialogue in BP case

## II. Overview of pending and recently concluded/rejected cases

Case	German companies' involvement in UN Oil for Food Scandal in Iraq
Company/ies	Status
57 German companies including B. Braun, DaimlerChrysler, and Siemens (for the full list of companies see <a href="http://www.transparency.de">www.transparency.de</a> )	Filed
Complainants	Transparency International Germany
Date filed	06 June 2007
NCP(s) concerned	National Contact Point Germany
Guidelines Chapter(s) & paragraph(s)	Chapter VI (Combating Bribery), paragraphs 1, 2, 4, 5

### Issue

In October 2005 the Independent Inquiry Committee (IIC) into United Nations' Oil for Food Programme reported that 2,253 companies had

paid a total of \$1.8 billion in 'kickbacks' – illicit or disguised payments – to the Iraqi government to obtain contracts to

supply food, medicines and other humanitarian goods to Iraq. At least 57 of those companies that allegedly participated in the

extensive manipulation of the Oil for Food Programme are incorporated in Germany. The complaint is based on the substantial evidence presented in the Committee's so-called 'Volcker Report'.

Legal investigations are continuing in Germany into the kickbacks – totalling \$11.9 million – allegedly paid by German companies according to the Volcker Report.

Many cases are still being pursued, some have settled out of court and a few cases have been dismissed. Despite these aspects, TI-G submits that the alleged breaches of the OECD Guidelines by such a large number of companies may not be ignored, if the credibility of the Guidelines is not to be compromised. In view of its responsibility to promote adherence to the Guidelines, the NCP must make an effort to ensure

that in future measures and mechanisms are in place in the companies concerned, so that a recurrence of the alleged breaches of the Guidelines may be avoided.

**Developments/Outcome**  
Transparency International Germany is awaiting a response from the German NCP.

<b>Case</b>	<b>Volkswagen's climate change impacts</b>
<b>Company/ies</b>	<b>Status</b>
Volkswagen AG	Filed
<b>Complainants</b>	Germanwatch
<b>Date filed</b>	7 May 2007
<b>NCP(s) concerned</b>	National Contact Point Chile
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Preface, para.1; Chapter II (General Policies), para. 2; Chapter IV (Employment and Industrial Relations), paras. 1a, 2a, 2b and 8.

**Issue**

Mainly due to the climate damaging product range and business strategy, Germanwatch accuses VW of violating the Guidelines in 15 concrete cases. These deficits in the performance can be grouped as followed:

First, given the problem of climate change and the two-degree-limit for global temperature rise, a company like VW must formulate and regularly evaluate detailed climate protection goals for single products as well as for the whole product range – Volkswagen is not doing this so far.

Second, VW does not regard sufficiently dangers for the climate emerging from their products. Otherwise, they would have to forecast and evaluate the actual

emissions of their products over their full life cycle and address this in the management and decision making process.

Third, VW has achieved less progress in complying with the self-commitment (ACEA Agreement) the company agreed on with the European Commission in 1998. Facing the existent and published strategy as well as the current product range, it is doubtful that VW achieves the self-commitment until 2008.

Fourth, VW massively advertises vehicles with high fuel consumption, while at the same time users are not informed about the climate relevance of cars in a transparent way.

Fifth, VW has directly and indirectly (through association memberships) been involved in the distribution of wrong information about climate change or planned policy measures.

Finally, VW has directly and indirectly been active in lobbying against climate policy frameworks of different governments regarding legislation approaches to limit the consumption of new passenger cars.

Germanwatch's complaint is the first that highlights the relevance of the climate change issue in the OECD Guidelines.

**Developments/Outcome**  
The German NCP notified the complainants of receipt of the complaint and has forwarded the complaint to Volkswagen.

<b>Case</b>	<b>Banco del Trabajo's labour rights violation in Peru</b>
<b>Company/ies</b>	<b>Status</b>
Grupo Atlas Cumbres (Chile)	Pending
<b>Complainants</b>	Confederación General de Trabajadores del Perú (CGTP), Federación de Trabajadores Bancarios de Chile, Programa Laboral de Desarrollo (PLADES), Centro de Estudios Nacionales de Desarrollo Alternativo (CENDA)
<b>Date filed</b>	26 April 2007
<b>NCP(s) concerned</b>	National Contact Point Chile
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Preface, para.1; Chapter II (General Policies), para. 2; Chapter IV (Employment and Industrial Relations), paras. 1a, 2a, 2b and 8.

### Issue

G.C.T.P.'s complaint accuses Banco del Trabajo of labour and human rights violations in Peru. Specifically, Banco del Trabajo's anti-union practices have infringed on the rights of labour leaders from SUDEBANTRA (Sindicato Unitario de Empleados of the Banco del Trabajo) and SUTRABANTRA (Sindicato Unificado de Trabajadores del Banco del

Trabajo) to collectively negotiate improvements in working conditions. The complaint also accuses the company of requiring workers to achieve unattainable levels of production.

G.C.T.P. has also submitted a complaint to the International Labour Organization (ILO) against the Government of Peru on 6 February 2007.

The Atlas Cumbres Group (Chilean life insurance company) owns Banco del Trabajo.

### Developments/Outcome

The Chilean NCP notified the complainants that it has accepted the complaint as a specific instance and is handling the case.



<b>Case</b>	<b>Afrimex's mineral trading in the DRC</b>
<b>Company/ies</b>	<b>Status</b>
Afrimex (UK) Ltd.	Filed
<b>Complainants</b>	Global Witness
<b>Date filed</b>	20 February 2007
<b>NCP(s) concerned</b>	National Contact Point UK
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter II (General Policies), para 1,2,10,11; Chapter IV (Employment and Industrial Relations), para 1a,1b,4b; Chapter VI (Combating Bribery), para 2,6; Chapter X (Taxation)

### Issue

In October 2002, a United Nations panel of Experts accused 85 OECD-based companies of violating the Guidelines for their direct or indirect roles in the illegal exploitation of natural resources in the Democratic Republic of Congo (DRC). The Panel alleged that "elite networks" of political and military elites and businesspersons fueled the conflict in order to retain their control over the country's vast natural resources.

Global Witness' complaint alleges that Afrimex's trade in minerals contributed directly to the brutal conflict and large-scale human rights

abuses in the Democratic Republic of Congo (DRC).

During the DRC's conflict, the RCD-Goma controlled large parts of the eastern provinces of North and South Kivu, where coltan and cassiterite are mined. The complaint describes how Afrimex traded coltan and cassiterite (tin ore) and made tax payments to the RCD-Goma, an armed rebel group with a well-documented record of carrying out grave human rights abuses, including massacres of civilians, torture and sexual violence. The complaint also highlights the life-threatening conditions in cassiterite

mines and the use of forced labour and child labour.

### Developments/Outcome

The UK NCP is conducting an initial assessment. In May 2007, the NCP held separate meetings with the parties. In their meeting with Global Witness, the NCP asked a number of detailed questions related to the complaint. Global Witness responded to the questions in the meeting and in a follow-up letter and is now awaiting the NCP's initial assessment of whether it will further investigate the case.



<b>Case</b>	<b>G-Star's Indian suppliers' labour rights violations</b>
<b>Company/ies</b>	<b>Status</b>
G Star International BV	Pending
<b>Complainants</b>	Schone Kleren Kampagne (CCC), India Committee of the Netherlands (ICN), Civil Initiatives for Development and Peace (CIVIDEP), Clean Clothes Campaign International Secretariat, Garment and Textile Workers Union (GATWU)
<b>Date filed</b>	13 October 2006
<b>NCP(s) concerned</b>	National Contact Point Netherlands
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter I (Concepts and Principles), para 7,8; Chapter II (General Policies), para 2,7,8,10; Chapter IV (Employment and Industrial Relations), para 1,2,4,7

### Issue

The complaint states that G Star's Indian suppliers, Fibres and Fabrics International (FFI) and Jeans Knit Pvt. Ltd. (JKPL), have violated labour rights, including freedom of association, the right to collective bargaining, payment of a living wage, discrimination in employment, working hours, overtime work, occupational health and safety, punishment, abuse, harassment, and lack of legally binding employment relations.

NGOs have requested the Dutch NCP mediate a dialogue with G-Star and its Indian suppliers in order to develop a remediation plan to address the labour rights violations. The complainants would also like to see FFI and JKPL engage in a dialogue with local NGOs and labour support organisations about the remediation plan.

FFI also produces for Ann Taylor, Armani, Gap, Guess, Mexx and RaRe.

### Developments/Outcome

In November 2006, the NCP held separate, informal meetings with G-Star and an external persons familiar with the case. The following month, the NCP accepted the complaint. By accepting the case, it would appear the NCP has agreed an "investment nexus" exists given the parties' direct and well-established relationship.

In February 2007, the NCP held separate, informal meetings with the complainants and G-Star.

Also in February, a civil judge in Bangalore reinforced the restraining order on five Indian labour organisations, first issued in July 2006. The restraining order is a heavy blow to the fundamental right to freedom of speech and freedom of association in India.

The NCP has tried to bring the parties together for a mediation process; however, G-Star has thus far refused to enter into the NCP process in which all parties would

have to agree on the outcome. Although no formal mediation could be started, the NCP nonetheless organised and informal meeting between the parties in June 2007.

After the escalation of the situation in India, where an Indian court has subpoenaed the Dutch NGOs for criminal charges, it was suggested at the June meeting that a more prominent role for the Dutch government was required, and the intervention of the Dutch ambassador to India would be requested. Given G-Star's reluctance to enter into a mediation process, it remains unclear what the Dutch NCP's role will be.

The complainants are frustrated with the protracted way in which the case is proceeding; some of their proposals for how to take the process forward have never been answered. They also feel that the NCP is allowing itself to be drawn by the company into playing a weaker role in the procedure.

 <b>Case</b>	<b>ANZ's support of unsustainable logging in PNG</b>
<b>Company/ies</b>	<b>Status</b>
ANZ Bank	Rejected
<b>Complainants</b>	Australian Conservation Foundation (ACF), Human Rights Council of Australia, Environmental Law Centre, PNG Eco-Forestry Forum, Centre for Environmental Law and Community Rights (CELCOR)
<b>Date filed</b>	24 August 2006
<b>NCP(s) concerned</b>	National Contact Point Australia
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter II (General Policies), para 1,2,10; Chapter V (Environment), para 1

### Issue

The complaint concerns ANZ Bank's financial support of logging companies engaged in human rights abuses and environmental destruction in Papua New Guinea (PNG).

Specifically, ANZ is "actively facilitating and supporting" the PNG operations of Malaysian logging giant Rimbunan Hijau, a company whose operations involve "serious human rights abuses, environmentally devastating logging practices and repeated, serious illegal conduct".

After filing the complaint in August 2006, ACF submitted supplementary evidence to NCP regarding the existence of an investment nexus between ANZ and Rimbunan Hijau in September 2006.

In October 2006, the NCP rejected the complaint, claiming that ANZ's loans and guarantees do not

constitute an "investment nexus" between the bank and the logging company. Also, the NCP stated it was unable to ascertain whether

ANZ's degree of influence is sufficient to trigger the supply chain provision in the Guidelines.

ACF responded by stating its disappointment in the NCP's highly restrictive interpretation of the "investment nexus". According to ACF, the Australian NCP excluded consideration of the complaint despite an undisputed debt financing link between ANZ Bank and the logging company. In addition, the rejection appears to be inconsistent with other complaints in which debt financing relationships have triggered the Guidelines' complaint procedure.

### Developments/Outcome

<b>Case</b>	<b>Shell's Pandacan oil depot in the Philippines</b>
<b>Company/ies</b>	<b>Status</b>
Royal Dutch Shell	Pending
<b>Complainants</b>	FoE Netherlands (Milieudedefensie), Friends of the Earth International, Fenceline Community (Philippines)
<b>Date filed</b>	15 May 2006
<b>NCP(s) concerned</b>	National Contact Point Netherlands
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter II (General Policies), para 5,11; Chapter III (Disclosure), para 4e ; Chapter V (Environment), para 2a,2b,5,6; Chapter VI (Combating Bribery)

#### Issue

The complaint accuses Shell of manipulating local authorities in the Philippines. It states that Shell has withheld information from local residents and employees about the environmental, health and safety impacts of its operations. It also alleges that Shell is failing to maintain plans and adopt technologies to mitigate potential hazards at its oil depot.

#### Developments/Outcome

After accepting the case, the Dutch NCP held separate meetings with Shell and the complainants in August and December 2006.

In March 2007, the Philippines' Supreme Court ordered the City of Manila to uphold Ordinance 8027 and close the Pandacan oil depot within six months. The ordinance aims to protect residents from the health and safety dangers of the

dilapidated depot, which is situated in the heart of densely populated Manila.

It is unclear how the Supreme Court's ruling will affect the complaint, and the Dutch NCP is currently considering how to proceed with the case and a fact-finding mission that was being planned in consultation with both parties.

<b>Case</b>	<b>Chemical storage, human health impacts in Brazil</b>
<b>Company/ies</b>	<b>Status</b>
Royal Dutch Shell Exxon Mobil	Pending Pending
<b>Complainants</b>	FoE Netherlands (Milieudedefensie), Friends of the Earth International, Coletivo Alternativa Verde (CAVE), SIPETROL-SP
<b>Date filed</b>	15 May 2006
<b>NCP(s) concerned</b>	National Contact Point Brazil, National Contact Point Netherlands
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter II (General Policies), para 5; Chapter V (Environment), para 1,3,4

#### Issue

The complaint states that Shell and Exxon have refused to comply with the Brazilian Government's January 2005 demand to stop the practice of storing chemicals at and below their facilities. The Government also called on the companies to help workers and local residents with health complaints arising from

the high concentrations of chemicals and heavy metals in their blood. The complainants charge the companies have demonstrated little concern for their own employees and local residents.

#### Developments/Outcome

In June 2006, the Brazilian NCP

acknowledged in writing its acceptance of the complaint. The Dutch NCP also wrote to the Brazilian NCP with suggestions on how it would handle the case and stated it would closely follow the case.

There has been no further progress in the case

<b>Case</b>	<b>Ratiopharm's unethical marketing in Germany, et. al.</b>
<b>Company/ies</b>	<b>Status</b>
Ratiopharm Ratiopharm	Blocked Rejected
<b>Complainants</b>	Transparency International - Germany
<b>Date filed</b>	20 April 2006, July 2006
<b>NCP(s) concerned</b>	National Contact Point Germany
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter VI (Combating Bribery); Chapter III (Disclosure); Chapter VII (Consumer Interests); Chapter XI (Competition)

**Issue**

Ratiopharm, a pharmaceuticals company and major producer of generic drugs, has allegedly

engaged in unethical marketing practices, including bribing doctors and pharmacists in Belgium,

Canada, Spain, Estonia and Germany.

**Developments/Outcome**

In June 2006, the German NCP rejected the complaint citing the lack of transnational investment. Specifically, the NCP stated the complaint only dealt with alleged misbehaviour in Germany.

In July 2006, Transparency International Germany resubmitted a revised and expanded complaint. In December 2006, the German NCP rejected the second complaint against Ratiopharm. In the first case, the NCP cited the lack of transnational investment. For the second submission, the NCP argued that the complaint would had to be dealt with by the NCP of the country where the alleged misbehaviour occurred, i.e. Belgium, Canada, Estonia, and Spain.

TI and the NCP met informally in March 2007. Again, the NCP

insisted it could not accept the Ratiopharm case and refused to forward it to the relevant NCPs. The NCP claimed its “hands were tied”.

TI maintains that the alleged misbehaviour emanates from Ratiopharm’s German headquarters to other countries. Therefore, the German NCP should take the lead in handling the complaint. In addition, the NCP’s refusal to forward the case to the other relevant NCPs inspires little faith in the NCP’s offer to assist informally.



<b>Case</b>	<b>Orion pulp mill project in Uruguay</b>
<b>Company/ies</b>	<b>Status</b>
Oy Metsä-Botnia	Concluded
Finnvera	Rejected
Nordea	Pending
<b>Complainants</b>	Fundación Centro de Derechos Humanos y Ambiente (CEDHA)
<b>Date filed</b>	18 April 2006
<b>NCP(s) concerned</b>	NCP Finland, NCP Sweden, NCP Norway
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter VI (Combating Bribery); Chapter III (Disclosure); Chapter VII (Consumer Interests); Chapter XI (Competition)

**Issue**

CEDHA’s complaint alleges that Botnia’s Orion pulp mill project will impact local communities’ economic livelihoods and human rights. The complainants maintain the project is plagued with environmental problems, including the company’s failure to collect and provide reliable information about the project’s real and foreseeable impacts. The complaint also states the project is straining regional diplomatic relations between Argentina and Uruguay.

Finnvera, the Finnish Export Credit Agency, is supporting Botnia’s Orion pulp mill project. Nordea is a Swedish-Norwegian financial institution that is set to provide Botnia with a multi-million dollar package to finance the project.

**Developments/Outcome**

At the June 2006 annual meeting of NCPs, the Finnish NCP invited CEDHA to a meeting to discuss the Botnia and Finnvera cases in August 2006. The case against Nordea was filed with the Swedish NCP.

In August, the Finnish NCP informed CEDHA via email that the complaints against Botnia, Finnvera and Nordea will be discussed during the August 30 meeting in Helsinki. However, the Finnish NCP did not confirm it has accepted the Finnvera and Botnia cases.

In November, the Swedish NCP, with support from the Norwegian NCP, accepted the complaint against Nordea.

In October 2006, the Finnish NCP rejected the Finnvera complaint citing the fact that it is not a

multinational enterprise and therefore the Guidelines are not applicable.

In a December 2006 statement, the Finnish NCP concluded that the evidence presented did not prove Botnia has failed to comply with the Guidelines.

In response, CEDHA lodged two complaints with the OECD’s Investment Committee and Finland’s Parliamentary Ombudsman concerning the Finnish NCP’s decision to reject the complaint in January 2007.

In February 2007, the Finnish NCP refused to review its decision.

The Nordea case is pending with the Swedish NCP. CEDHA is currently preparing an information request for Nordea that will be facilitated by the NCP.

<b>Case</b>	<b>DLH's purchase of illegal timber from conflict zones</b>
<b>Company/ies</b>	<b>Status</b>
Dalhoff, Larsen & Hornemann (DLH)	Pending
<b>Complainants</b>	Nepenthes
<b>Date filed</b>	10 March 2006
<b>NCP(s) concerned</b>	National Contact Point Denmark
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Preface, point 1; Chapter V (Environment), para 1; Chapter II (General Policies), para 1,10,2; Chapter IV (Employment and Industrial Relations), para 1; Chapter IX (Competition)

#### Issue

Nepenthes' complaint states that Dalhoff, Larsen & Hornemann (DLH) buys timber from countries with a high rate of illegal logging, and some of DLH's suppliers have been convicted of forest crimes. DLH also buys timber from Burma and parts of Africa, where the timber industry is known to be involved in violent conflicts.

According to the complaint, DLH does not verify whether the timber it buys is legal and the company has been caught buying illegal timber several times. With regards to the purchase of timber from conflict zones the complaint states that DLH ignores the risk that the timber purchase causes violent

conflicts and violation of human rights.

#### Developments/Outcome

The NCP has accepted the case and is at the moment planning a dialogue meeting between the parties.

<b>Case</b>	<b>Alcoa Alumínios' Barra Grande hydroelectric dam in Brazil</b>
<b>Company/ies</b>	<b>Status</b>
Alcoa Alumínios S.A Grupo Votorantim	Pending Pending
<b>Complainants</b>	Terra de Direitos, Movimento dos Atingidos por Barragens (MAB)
<b>Date filed</b>	06 June 2005
<b>NCP(s) concerned</b>	National Contact Point Brazil
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter V (Environment), para 1,3,4; Chapter II (General Policies), para 2,5

#### Issue

The complaint alleges that Alcoa Alumínios S.A. and Companhia Brasileira de Alumínio, which are part of the Grupo Votorantim, have knowingly utilized a fraudulent environmental impact assessment to construct the Barra Grande hydroelectric plant in the states of Santa Catarina and Rio Grande do Sul. The companies are majority shareholders in Baesa consortium responsible for the construction.

#### Developments/Outcome

In September 2005, the Brazilian NCP accepted the case and held a meeting with complainants. The head of the NCP promised to organize more meetings, but admitted that the current political situation in Brazil would make it difficult to resolve the case.

The complainants have heard from unofficial sources that the NCP plans to close the case do to a lack

of evidence about the behaviour of the companies; however, the NGOs maintain they have sufficient evidence.

The NGOs continue to monitor fulfilment of the conditions agreed by the venture partners (BAESA), environmentalists and the Movement of Affected by Dams (MAB).

<b>Case</b>	<b>British companies and UK export credit program</b>
<b>Company/ies</b>	<b>Status</b>
BAE Systems Airbus S.A.S. Rolls Royce	Pending Pending Pending
<b>Complainants</b>	The Corner House
<b>Date filed</b>	01 April 2005
<b>NCP(s) concerned</b>	National Contact Point UK
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter VI (Combating Bribery), para 2

### Issue

The Corner House's complaint alleges the companies have violated the Guidelines' bribery provision, because they refuse to

provide details of their agents and their commissions to the UK Government's Export Credit Guarantee Department.

### Developments/Outcome

In May 2005, the UK NCP accepted the complaint and forwarded it to the companies for comment. In May 2007, the complainant reported that the UK NCP has taken no further action.

Case	UK companies and illegal resource exploitation in DRC
<b>Company/ies</b>	<b>Status</b>
Oryx National Resources	Concluded
Avient Air	Pending
Dairo Air Services	Pending
Tremalt Ltd	Withdrawn
Alex Stewart (Assayers) Limited	Withdrawn
Ridgepoint International Developments Ltd	Withdrawn
<b>Complainants</b>	Rights and Accountability in Development (RAID)
<b>Date filed</b>	28 June 2004
<b>NCP(s) concerned</b>	National Contact Point UK
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter IX (Competition), para 1; Chapter III (Disclosure), para 3,4; Chapter VI (Combating Bribery), para 1,5; Chapter V (Environment), para 6; Chapter II (General Policies), para 2,11

### Issue

In October 2002, a United Nations Panel of Experts accused 85 OECD-based companies of violating the Guidelines for their direct or indirect roles in the illegal exploitation of natural resources in the Democratic Republic of Congo (DRC). The Panel alleged that "elite networks" of political and military elites and businesspersons fuelled the conflict in order to retain their control over the country's vast natural resources.

### Developments/Outcome

*Alex Stewart (Assayers) Ltd:* The UK NCP claimed the case was resolved by the UN Panel and could not be reopened. Due to the NCP's inaction, RAID withdrew the complaint.

*Avient:* RAID, having been accepted as a complainant, was locked out of the process. In September 2004, the UK NCP issued a weak statement, which accepted Avient's contention that it was working within a contractual arrangement with the officially recognized governments in the area.

The NCP's recommendations merely highlight the existence of a few provisions of the Guidelines, but did not declare breaches or offer specific actions a company is

expected to take to remedy the breaches.

Following a September 2006 expose in the UK's Sunday Times, RAID called on the UK NCP to re-open the case. RAID has gathered extensive documentation to show that Avient was engaged in mercenary operations in the DRC, including bombing missions. The case is now pending.

*Das Air:* The complaint was accepted in July 2004; however, RAID was prohibited from taking part in the negotiation process for one year. RAID was allowed to participate in the proceedings in May 2005.

DAS Air moved to close the case in December 2005. However, based on material from an official Uganda Judicial Commission of Inquiry, RAID was able to provide evidence that DAS Air had made regular flights into the DRC from the military airport in Entebbe.

The NCP is currently undertaking an assessment of information provided by RAID and the company. Once this case is concluded the UK Government is committed to issuing a statement to Parliament on its handling of the UN Panel cases.

*Oryx:* In July 2004, the UK NCP accepted the complaint; however, RAID was prohibited from taking part in the negotiation process for one year while the NCP engaged in extensive discussions with Oryx. Most of the complaint was rejected on the grounds that a UN Panel had resolved the issue.

The NCP insisted RAID resubmit its complaint in April 2005. RAID was allowed to participate in the proceedings in April 2005, but under very restrictive and summary procedures. RAID was able to comment on the NCP's draft statement, which was the only area in which the UK NCP followed the Guidelines' complaint procedures. The majority of issues raised in the complaint were disallowed by the NCP on grounds that they had been "resolved" by Panel. The final statement was highly unsatisfactory and did not incorporate any of RAID's recommendations.

*Ridgepoint:* The UK NCP claimed the case was resolved by the UN Panel and could not be reopened. Due to the NCP's inaction, RAID withdrew the complaint.

*Tremalt:* The UK NCP claimed the case was resolved by the UN Panel and could not be reopened. Due to the NCP's inaction, RAID withdrew the complaint.

Case	Bayer's cotton seed production in India
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<b>Company/ies</b>	<b>Status</b>
Bayer	Pending
<b>Complainants</b>	Germanwatch, Coalition Against Bayer Dangers (CBG), Global March Against Child Labour
<b>Date filed</b>	11 October 2004
<b>NCP(s) concerned</b>	National Contact Point Germany
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter IV (Employment and Industrial Relations), para 1; Chapter II (General Policies), para 10

### Issue

Bayer suppliers in India are alleged to have violated the OECD Guidelines chapter on employment and industrial relations by using child labour.

The case is based on a 2003 study entitled "Child Labour and Transnational Seed Companies in Hybrid Cottonseed Production" and a follow up study from 2004. The study found that cottonseed farms, largely in South India, employ children in large numbers, predominantly girls between 6 and 14 years of age. Many of them work in bonded labour and are forced to stay with their employers for several years, their work serving as payment for servicing loans at usurious interest. Because large quantities of pesticides are in constant use, their health conditions are negatively affected all the time. Procurement prices paid for cotton seeds are so low that farmers employ children, who are paid less money, because otherwise they would not make any at all. The study found that around 2,000 children were working for suppliers of Proagro, a subsidiary of the German company Bayer AG. Bayer has failed to address these concerns, which form the basis of the complaint.

### Developments/Outcome

On October 26, 2004, Bayer responded to the NGO complaint in

a letter to the NCP. Bayer stated that it does enough to deal with the issue of child labour and that the complaint is unfounded. In December 2004, the NGOs responded to Bayer's comments in another letter to the NCP, and in a January 2005 letter to the NCP, Bayer reacted to the NGOs' second letter.

After having received comprehensive comments by both parties, the German NCP invited all parties involved to a meeting. However, Bayer objected to the participation of one of the NGO participants, and refused the offer. Nevertheless, Bayer has told the NCP and the public that it has already taken constructive and concrete steps to solve the problems raised. Instead of a joint meeting, the NCP held separate meetings. First there was a meeting between Bayer and the NCP in which the company explained its plan on how to face the problem. The company's presentation and the minutes of the meeting were communicated to the NGOs. Afterwards, the NCP held a subsequent meeting with the NGOs. The NGOs were concerned about the omission of some comments made during their meeting in the meeting minutes issued by the NCP, but after some arguing with the NCP, finally their points were taken up in a new

version of the minutes. In general it was felt that having separate meetings with the complainant and the company can compromise the NCP's (supposed) independent/objective nature because it puts the NCP into the role of having to present the view and arguments of the company to the NGOs.

In December 2005, the complainants sent a letter to Bayer with questions regarding the company's action plan. Bayer promised a response by January, but failed to do so, and in May, 2006, the NGOs resent the letter, this time through the NCP. In the mean time, independent research revealed that there were still 450-500 children working in the fields in the 2005/06 season producing for ProAgro/Bayer, meaning that there was a reduction in the number of children, but that the problem remains. In late 2006 and early 2007, there were more (separate) meetings at the NCP. The complainants presented the first results of the independent research, which indicates structural problems in Bayer's implementation of the action plan (e.g. Bayer is now partly producing in another state where the action plan is not implemented). The final results of the independent research will be published in June 2007.

<b>Case</b>	<b>Toyota's anti-trade union practices in the Philippines</b>
<b>Company/ies</b>	<b>Status</b>
Toyota Motor Corporation	Pending
<b>Complainants</b>	Protest Toyota Campaign (PTC), Toyota Motor Philippines Corporation Workers' Association (TMPCWA)
<b>Date filed</b>	04 March 2004
<b>NCP(s) concerned</b>	National Contact Point Japan
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter IV (Employment and Industrial Relations), para 1,6,7,8; Chapter II (General Policies), para 2

### Issue

The complaint alleges that Toyota Motor Philippines Corporation (TCMP) refuses to recognize the existence of the TMPCWA, an independent trade union. The complaint states the company is actively trying to hinder the right to association and collective bargaining. According to the complaint, 223 unionists were fired illegally.

Registered in 1999 with the Philippine Labour Ministry, TMPCWA was confronted from the outset by the existence of a "company" union (controlled by the management) and by the management's intransigence.

Toyota has refused to organize the elections provided for by law. When these were eventually held in March 2000, it challenged the results (which were favourable to TMPCWA), refused to open negotiations, and launched various

administrative appeals against the labour organization.

Under pressure from Toyota, the Labour Ministry remained passive and procrastinated. When it organized a new meeting for "clarification" on in February 2001, the workers organized a peaceful protest gathering.

On 16 March 2001, the Philippine authorities reaffirmed TMPCWA's legitimacy. On the same day, 227 leaders and members of the organization (who had participated in the previous month's demonstrations) were dismissed without warning and 64 others suspended.

#### Developments/Outcome

In December 2004, the NCP responded stating it will not take any action on the case until a related case in a Philippine Court of Appeals was resolved.

In December 2004, the complainants wrote to the NCP expressing their disappointment with its (non)handling of the complaint.

In February 2005, the Protest Toyota Campaign met with the NCP. The NCP maintained that it will not take any action or work toward resolution in Japan until the court case in the Philippines is finalized.

The Japanese NCP seems to have changed its attitude after it was criticized in OECD meetings and by an International Solidarity Campaign started in 2006.

TMPCWA and support groups for TMPCWA have met with Toyota regularly every year outside the NCP forum at Toyota headquarters in Tokyo and Toyota City, but there has been no movement on the issues.

<b>Case</b>	<b>BTC oil pipeline in Azerbaijan, Georgia &amp; Turkey</b>
<b>Company/ies</b>	<b>Status</b>
BP p.l.c	Pending
<b>Complainants</b>	Campagna per la Riforma della Banca Mondiale (CRBM), FERN, Friends of the Earth France (FOE France), Friends of the Earth United States of America (FOE US), FoE Netherlands (Milieudefensie), PLATFORM, urgewald e.V. (urgewald), World Economy, Ecology & Development (Weed), Germanwatch, Friends of the Earth Germany (BUND), Friends of the Earth England, Wales and Northern Ireland (FOE EWNI), The Corner House
<b>Date filed</b>	29 March 2003
<b>NCP(s) concerned</b>	NCPs UK, France, Germany, Italy, USA
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter I (Concepts and Principles), para 7; Chapter II (General Policies), para 5; Chapter V (Environment), para 1,2,4; Chapter III (Disclosure), para 1

#### Issue

The Baku-Tbilisi-Ceyhan (BTC) oil pipeline (now completed) spans 1,760 kilometres from the Azerbaijan capital of Baku, through Tbilisi Georgia, ending in the Mediterranean city of Ceyhan, Turkey.

The BTC consortium of oil companies, led by BP, is accused of seeking tax and law exemptions and undue influencing of governments in construction of Pipeline in Georgia and Turkey. Specifically, the complainants argued that the consortium had: 1) exerted undue influence on the regulatory framework for the

project; 2) sought or accepted exemptions related to social, labour, tax and environmental laws; 3) pressured the Georgian environment minister to approve the Environmental Impact Assessment; and 4) undermined the host government's ability to mitigate serious threats to the environment, human health and safety by, among other actions, negotiating agreements that free the pipeline project from any environmental, public health or other laws that the three host countries might adopt in the future. The complaint also raised concerns about BP's failure to adequately

consult with project-affected communities and failure to operate in a manner contributing to goals of sustainable development.

#### Developments/Outcome

The UK NCP accepted the complaint in August 2003. One month later, on 22 September 2003, BP made public a "Deed Poll" (formally entitled "Human Rights Undertaking") in which the company committed to not challenging future human rights laws so long as the company did not deem them "rent-seeking".

In March 2004, BP responded to the complaint, stating it thought the project complied with the Guidelines.

In October 2004, NGOs sent a letter to the NCP, expressing concern about the UK Export Credit Guarantee Department's (ECGD) statement that the BTC project complied with the OECD Guidelines and its decision to support the project.

NGOs also lodge a complaint with the Investment Committee over the ECGD prejudicing the case. The Committee responded by stating that "the good offices of the Chair and Bureau members of the Investment Committee remain available to the UK NCP and The Corner House to assist in resolution of matters left pending".

The UK NCP thereafter offered to facilitate a dialogue between the parties. Despite the length of time that ensued, the NCP failed to follow agreed procedures and produce an initial assessment of the complaint.

In September 2005, the UK NCP visited the region. The NCP organized this trip in close collaboration with both the complainants and BP to ensure all parties were satisfied with the terms of reference.

After the trip, a dialogue meeting took place. Despite promises to respond to the issues raised by NGOs, BP refused to disclose their response to the complainants. In January 2006, BP broke off the dialogue process.

The NCP has stated the UK will consider forwarding a series of recommendations made by the complainants to the OECD's Investment Committee. NGOs have requested the Investment Committee issue guidance on the legitimate scope of "stabilisation clauses" in investment agreements. NGOs are also seeking a clarification on what constitutes an acceptable level of consultation with stakeholders.

The UK NCP has stated that it will prepare a document "outlining areas (including those identified by

the BTC complainants) of the Guidelines that might be clarified or improved".

In a separate development, the NCP released a draft statement on the BTC complaint following a Freedom of Information Act request by The Corner House in October 2006. The draft statement exonerates BP. It relies heavily on a BP report which "was not copied to the complainants" at the request of the company. According to the NCP, the BP report responds "to each of the complaints raised by the villagers who spoke to the NCP along the pipeline route during his field visit [in 2006]". However, the draft statement also records that the villagers had provided evidence that BP had not visited them to investigate their concerns since the NCP's visit. The UK NCP's reliance on BP's undisclosed and uncontested report is of significant concern.

Following comments from the Complainants on the draft statement, the NCP has offered to reopen the dialogue.

### III. Current case statistics

#### Current Status of the 63 OECD Guidelines cases filed by NGOs

#### No. Cases

Filed	The NGO has sent the complaint to the NCP	3
Pending	The NCP has confirmed that it is admissible and the specific instance procedure is under way	23
Concluded	The NCP has reached a decision and issued a statement or the case was settled outside the NCP forum	14
Closed	The NCP has started the case but dropped it before issuing a statement	2
Rejected	The NCP has formally rejected the case (declared it inadmissible)	13
Withdrawn	The complainants have decided to close the case	5
Blocked	The NCP is not clear about the status of the case (no formal rejection, but no intention of accepting it as a specific instance)	3

#### Chapter of the OECD Guidelines

#### No. Cases

Chapter I	Concepts and Principles	9
Chapter II	General Policies (incl. Human rights and the supply chain)	53
Chapter III	Disclosure	17
Chapter IV	Employment and Industrial Relations	21
Chapter V	Environment	28
Chapter VI	Combating Bribery	14
Chapter VII	Consumer Interests	3
Chapter VIII	Science and Technology	0
Chapter IX	Competition	8
Chapter X	Taxation	5

\* It should be noted that Transparency International - Germany's complaint against 57 companies should technically be considered 57 separate cases, but has here only been counted as 1 case. Considering it as 57 separate cases would add an additional 56 cases to the "Filed" category in the Current Status Table and 56 additional cases to the Bribery Chapter (VI).

Compiled by Joseph Wilde-Ramsing, Centre for Research on Multinational Corporations (SOMO). Thanks to Colleen Freeman for editing and review and to those involved in individual cases for providing updates.

OECD Watch is an international network of civil society organizations promoting corporate accountability. For more information on the network and on this and other Quarterly Case Updates, send an e-mail to [info@oecdwatch.org](mailto:info@oecdwatch.org) or visit [www.oecdwatch.org](http://www.oecdwatch.org).

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