

# Quarterly Case Update

OECD Watch

Autumn 2008

Vol.3 Iss.3

of OECD Guidelines cases filed by NGOs

## I. Highlights in this Update

### New cases:

- EarthRights International files complaint against Daewoo International and Korea Gas Corporation for environmental and human rights violations in Burmese natural gas project
- Sheri-Citizens for a Better Environment files complaint against Netherlands-based SHV Holdings for environment and human rights violations in Pakistan
- Irish community lodges complaint against Shell, Statoil and Marathon Oil for violations in Corrib Gas project
- FOCO and FoE Argentina file complaint against Shell Argentina for environmental and human health violations
- CIPCE files complaint against Skanska regarding corruption in Argentinean gas pipeline project
- Swiss Xstrata added to BHP Billiton Cerrejón Coal case in Colombia (NCP Australia)

### Developments:

- UK NCP finds Afrimex breached guidelines in transporting DRC minerals
- UK NCP upholds RAID's complaint against Das Air
- Belgian NCP rejects third Ratiopharm case
- Banco del Trabajo sold to Scotiabank (Canada) in labour rights case in Peru; NCP Chile closes case
- Dutch NCP conducts fact-finding research and prepares mission in Shell Philippines case
- Brazilian NCP rejects Shell/Exxon case citing parallel legal proceedings
- Brazilian NCP inactive on Alcoa/Votorantim case
- Toyota Philippines case in fourth year of initial assessment phase at Japanese NCP
- BTC case awaits Steering Board review in UK; Italian NCP finally begins initial assessment
- UK NCP closes Anglo American Zambia case

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

<b>Case</b>	<b>Daewoo &amp; KOGAS' environmental and human rights violations in Burma gas project</b>	
<b>Company/ies</b>	<b>Status</b>	<b>Date Filed</b>
Daewoo International	Filed	29 October 2008
Korea Gas Corporation (KOGAS)	Filed	29 October 2008
<b>Complainants</b>	EarthRights International, The Korean House for International Solidarity (KHIS), Korean Confederation of Trade Unions (KCTU), Federations of Korean Trade Unions (FKTU), Citizen's Action Network (CAN), People for Democracy in Burma, Writers for Democracy of Burma, Human Rights Solidarity for New Society, The Association for Migrant Workers' Human Rights, Burma Action Korea	
<b>NCP(s) concerned</b>	National Contact Point South Korea	
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter II, paragraphs 1 and 2, Chapter III paragraph 1, Chapter IV paragraph 1c, chapter V paragraphs 2 and 3	

### Issue

This complaint alleges breaches to the Guidelines by Daewoo International and the Korea Gas Corporation (KOGAS) related to the companies' exploration, development, and operation of the Shwe natural gas project in military-ruled Burma. According to the complaint, human rights abuses such as forced relocation and violations of the right to freedom of expression are linked to the project. The companies have failed to disclose information to local communities about the project and local people have not participated in any impact assessments, despite ongoing and

imminent human rights and environmental impacts.

Offshore exploration has been ongoing since 2004, when Daewoo first discovered commercially viable gas off the coast of Burma's Arakan State. Construction of a transnational, cross-country pipeline is being planned to transport the Shwe gas to China, threatening more severe and widespread human rights abuses, included forced relocation, forced labour and violence perpetrated against local communities by the Burmese Army, which will secure the project.

Daewoo International is the operator of the consortium developing the Shwe Project. The consortium also includes KOGAS, ONGC Videsh and GAIL of India. Daewoo international is also the company facilitating the pipeline development in an expected partnership with China National Petroleum Corporation (CNPC). Daewoo has been in Burma for this project since 2000.

### Developments/Outcome

At the time of filing, the NCP met at length with the complainants and informally agreed to consider the complaint.

<b>Case</b>	<b>Makro's involvement in human rights and environmental violations in Pakistan</b>	
<b>Company/ies</b>	<b>Status</b>	<b>Date Filed</b>
SHV Holdings, NV	Filed	9 October 2008
<b>Complainants</b>	Shehri-Citizens for a Better Environment, Pakistan	
<b>NCP(s) concerned</b>	National Contact Point Netherlands	
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Preface, Chapter II paragraphs 1, 2, 6; Chapter V ; paragraph 3	

### Issue

Pakistan-based Shehri-Citizens for a Better Environment requests that the Dutch National Contact Point ascertain whether Makro Habib Pakistan Limited (MAKRO), a joint venture between SHV Holdings, NV, Netherlands and the House of Habib, Pakistan, is adhering to the OECD Guidelines for Multinational Enterprises. Shehri-Citizens for a Better Environment requests the NCP facilitates a resolution with

respect to the company's involvement (while opening their departmental store outlet) in the illegal transfer of land, the illegal conversion of land use, human rights violations and environmental degradation.

The NGO claims that the ongoing and proposed future practices of the MAKRO store in Pakistan do not conform to the company's

stated corporate philosophy and commitments to society at large. The NGO states that a Charge Sheet can be developed, covering the following irregularities:

- Illegal and unauthorized transfer/conversion of land (zoning violation)
- Defiance of Court orders

- Violation of national environmental regulations and compliance procedures
- Environmental degradation
- Human Rights violations

- Depriving children from a low income community of their only playground

#### Developments/Outcome

The Dutch NCP responded that it had received the complaint and would undertake an initial assessment.



<b>Case</b>	<b>Shell-led consortium's environmental and human rights violations in Ireland</b>	
<b>Company/ies</b>	<b>Status</b>	<b>Date Filed</b>
Royal Dutch Shell	Filed	22 August 2008
Marathon Oil corporation	Filed	22 August 2008
Statoil	Filed	22 August 2008
<b>Complainants</b>	Pobal Chill Chomain Community, Kilcommon, Ballina, Co Mayo, Ireland	
<b>NCP(s) concerned</b>	Irish and Dutch NCPs ; US and Norway also notified	
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter II; Chapter V	

#### Issue

The Corrib gas project comprises a gas processing plant and a pipeline to transport untreated gas from the sea to the processing plant. The Corrib gas field is located in North West County Mayo, in Ireland, and is controlled by a consortium including Shell E&P Ireland (45%), Statoil Exploration Ireland (36.5%) and Marathon International Petroleum Hibernia Limited (18.5%). According to the complaint, the following issues have arisen regarding the Corrib gas project:

- *Safety and Health issues*

The Corrib pipeline is a proposed onshore scheme designed to bring raw, untreated, volatile gas inland from the seabed. The pipeline

would pass houses, bogs and farmland and go through an area prone to landslides. The Corrib pipeline is not a normal pipeline and has the potential to operate under very high pressures with unknown gas compositions. This, coupled with the instability of peat in some areas the pipeline is expected to pass, seriously increases the likelihood of pipe failure. The gas doesn't smell which is risky considering the potential for pipe failure. Given these issues it appears that the proposed pipeline routes pass too close to populated areas.

- *Environmental issues*

First, the location of the refinery poses a risk to the only source of potable water for 10,000 people in

Erris because the gas processing terminal is based in the Bellanaboy site, a catchment area for a major water supply. Second, the route of the pipeline would pass through three ecologically sensitive areas and so represents a threat to Broadhaven Bay's wildlife.

- *Human Rights issues*

The Corrib Gas development has violated many human rights espoused by the European Convention for the protection of Human Rights and Fundamental Freedoms.

#### Developments/Outcome

The complainants are awaiting a response from the NCPs on the admissibility of the complaint.



<b>Case</b>	<b>Shell's environmental and human health violations in Argentina</b>	
<b>Company/ies</b>	<b>Status</b>	<b>Date Filed</b>
Royal Dutch Shell	Pending	1 June 2008
<b>Complainants</b>	Citizen Forum of participation for Justice and Human Rights (FOCO - (Argentina), Friends of the Earth Argentina	
<b>NCP(s) concerned</b>	National Contact Point Argentina, National Contact Point Netherlands	
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Preface, Chapter II paragraphs 1, 2, 5; Chapter III paragraphs 1, 2, 4e, 5b; Chapter V, paragraphs 0-8.	

#### Issue

The firm Shell Capsa (subsidiary of Royal Dutch Shell) holds many enterprises situated within Argentina (in Buenos Aires and the provinces of Santa Fe and Chaco). The company's primary activities in Argentina are the transportation and distribution, via river, of products derived from oil, the sale of fuels and lubricants designed for aviation, the sale and distribution of chemical products, the sale of liquid petroleum, the

commercialization of natural gas and the marine transportation of crude oil.

The complaint alleges that Shell Capsa has ignored the Argentinean government's campaigns and public policies regarding sustainable development and that therefore the company has serially violated domestic law. The complaint further states that, with its environmental and socially

irresponsible attitude, Shell Capsa has also put the health of hundreds of neighbouring residents in danger. The Shell Capsa facilities, inspected and preventively closed by government authorities for failure to comply with national environmental laws, are located in an area where many problems exist. Many of these problems stem from the socio-economic vulnerability of the inhabitants of the area.

Directly affected by the Shell Capsa project is the Villa Inflamable community. Villa Inflamable is a neighbourhood whose inhabitants have been living, for decades (and on a daily basis), with the toxic fumes that are produced by the refining of oil by Shell.

The complainants filed the complaint simultaneously at the Argentine and the Dutch National Contact Points because they believe the violations are a systemic problem in the global operations of the multinational company.

#### Developments/Outcome

On 10 September the Argentine and Dutch NCPs issued a joint statement admitting the complaint as a formal specific instance. The two NCPs vowed to collaborate closely in handling the case, with the Argentine NCP taking the lead.

### Case **Ratiopharm's unethical marketing in Germany, Belgium et al**

Company/ies	Status	Date Filed
Ratiopharm	Rejected	24 January 2008
Ratiopharm	Rejected	18 July 2006
Ratiopharm	Rejected	20 April 2006
Complainants	Transparency International–German Chapter (TI-G); Groupe de recherche pour une stratégie économique alternative (GRESEA)	
NCP(s) concerned	National Contact Point Germany, National Contact Point Belgium	
Guidelines Chapter(s) & paragraph(s)	Chapter II; Chapter VI; Chapter III; Chapter VII; Chapter XI	

#### Issue

The case deals with Ratiopharm, a German pharmaceuticals company and major producer of generic drugs that has allegedly engaged in unethical marketing practices in Germany, Canada, Spain, Estonia, and Belgium. These practices, which include offering illicit rebates to pharmacists, contradict standard governmental health care policies. Three OECD complaints were filed, two in Germany and the most recent one in Belgium.

countries where the alleged misbehaviour occurred, i.e. Belgium, Canada, Estonia, and Spain. TI-G 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-G maintains that the alleged misbehaviour emanates from Ratiopharm's German headquarters to other countries and that the German NCP should therefore 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 German NCP's offer to assist informally.

complainants to an informal preliminary meeting. At the NCP's request, the complainants provided supplemental information including testimonies from Belgian pharmacists and the state of national regulation in the sector. However, on 4 July 2008, the Belgian NCP rejected the complaint, claiming that the alleged violations are commonplace in the generic drugs sector and thus not specific to this company. The NCP further argued that the law does not define the meaning of 'normal rebates', but did state that that the sheer 'magnitude of the rebates do raise questions regarding the price-setting of refundable generic drugs and the reimbursement system as a whole.' The complainants believe that the case should be the starting point of a wider public debate on the issue.

#### Developments/Outcome

The first case by TI-G was rejected on the basis of a lack of transnational investment. In December 2006, the German NCP rejected the second complaint against Ratiopharm, arguing that the complaint would have to be dealt with by the NCPs of the

A third case was filed by GRESEA and TI-G in January 2008 at the Belgian NCP. On 29 February 2008, the NCP invited the

### Case **Accor Service's bribes to retain business in Argentina**

Company/ies	Status	Date filed
Accor Services	Pending	28 November 2007
Complainants	Wortman Jofre Isola Abogados, National Deputy Hector Recalde	
NCP(s) concerned	National Contact Point Argentina	
Guidelines Chapter(s) & paragraph(s)	Chapter VI, paragraphs 1,2,3,5,6; Chapter IV, paragraphs 1, 4; Chapter II, paragraphs 5, 6	

#### Issue

Accor Service is a French company providing services such as restaurant tickets and food vouchers to businesses and governments. The complaint involves the nature of lunch tickets/vouchers that are currently informally used by employers in Argentina to pay part of

employees' salary, but which are not formally included for calculations of employees' holidays, sick leave and bonuses. The complaint alleges that after a proposal to "formalise" the inclusion of the lunch vouchers in salaries (a measure that would likely reduce employers' demand

for the vouchers) was introduced into the national legislature, a representative of Accor Service approached the deputy sponsoring the proposal in November 2007 with offers of bribes of up to US\$ 20 million if the deputy agreed to delay the proposal and change it so as to encourage, and even compel,

more employers to purchase the vouchers. The deputy, who is also the complainant in this case, recorded the telephone calls and meetings with the Accor representative in which the representative offered the bribes, and is using the recordings as evidence both in a domestic legal case as well as the OECD Guidelines specific instance.

#### Developments/Outcome

On 27 February 2008, the Argentine NCP informed the complainants that it had accepted the case as a specific instance. In the mean time, an Argentine court indicted both the Argentine manager of Accor Service and the middle-man who offered the bribes.

The NCP forwarded the complaint to Accor, and asked the company if it would engage in an NCP-facilitated mediation process. In May 2008 there was a change of personnel at the Argentine NCP, and the complainants were invited to a meeting with the new NCP personnel.

<b>Case</b>	<b>Corruption in Skanska's gas pipeline project, Argentina</b>	
<b>Company/ies</b>	<b>Status</b>	<b>Date filed</b>
Skanska	Pending	September 2007
<b>Complainants</b>	Centre for Research and Prevention of Economic Crime (Centro de Investigación y Prevención de la Criminalidad Económica –CIPCE)	
<b>NCP(s) concerned</b>	NCP Argentina	
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter VI paragraphs 1, 2; Chapter X	

#### Issue

CIPCE has brought a case before the Argentinean NCP regarding bribes paid by former Skanska directors to public servants during the construction of a gas pipeline project both in the northern and southern regions of Argentina.

At the time that the allegations of corruption and bribery were first publicly aired, the Swedish company Skanska was forced into damage control and, in a bid to remedy the situation, publicly stated it had dismissed the directors involved. However, in reality, Skanska bought the silence of the former directors by providing them with severance pay before subsequently reemploying them as informal consultants in various of the company's projects.

At the Argentinean NCP, Skanska explained that their actions were the only way to obtain a fast solution and to protect the company from the former directors. However, given the circumstances, the legally correct course of action would have been to dismiss those involved without severance pays.

CIPCE states that the way Skanska acted reveals unwillingness to prevent and fight corruption and is therefore contrary to its commitments to the Chapter VI of the OECD Guidelines.

#### Developments/Outcome

The NCP accepted the specific instance on November 26, 2007. Both parties involved agreed to negotiate in good faith in order to achieve a win – win solution. The negotiations

are continuing in search of an agreement that reflects the consensus of the parties.

Currently the key focus of negotiations is in the interpretation of chapter VI, paragraph 3 of the Guidelines, which states: "...The enterprise should also foster openness and dialogue with the public so as to promote its awareness of and co-operation with the fight against bribery and extortion".

CIPCE has requested that the Investment Committee clarify the interpretative reach of the clause, but as yet the Argentinean NCP has rejected the request arguing that the committee does not have the ability to interpret the Guidelines.

<b>Case</b>	<b>Korean textile companies' labour abuses in the Philippines</b>	
<b>Company/ies</b>	<b>Status</b>	<b>Date filed</b>
Chongwon Trading Il-Kyoung Co. Ltd.	Rejected	03 September 2007
	Pending	03 September 2007
<b>Complainants</b>	Workers Assistance Center, Inc. (WAC), Korean House of International Solidarity (KHIS), Korean Confederation of Trade Unions (KCTU), Chongwon Union	
<b>NCP(s) concerned</b>	National Contact Point Korea	
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter IV, paragraphs 1, 2,3,7; Chapter III, paragraph 4; Chapter I, paragraph 7; Chapter VI, paragraph 0	

#### Issue

The complaint refers to workers' rights problems that began in 2001 when the workers attempted to establish a trade union at the

Chongwon Fashion plant in the Philippines. The management threatened to close down if the union was formed. Consequently, the union lost the election.

However, new elections at both Chongwon and Phils Jeon (a subsidiary of Il-Kyoung Co.) were held in 2004 which both unions won. Since then, the companies

have repeatedly questioned the election results by filing several court petitions, but have lost the case in every instance. In August 2006, the union president at Phils Jeon was dismissed along with 63 other union members. At the same time, workers at the Chongwon plant went on a strike because of harassments. In September 2006, the workers at Phils Jeon went on strike although they had been warned by management that they would be dismissed. The strike was violently dispersed by police and security guards who attacked and beat the mainly women workers, 25 of whom were injured. When the strikes at Chongwon continued even after 71 of the striking workers were dismissed, workers received death threats in June 2007. In February 2007, the Philippine Department of Labour and Employment (DOLE) suddenly declared that the unions no longer represented the workers. The

union believes that the companies offered bribes and has also brought charges against the mediator of the National Relations Commission for taking bribes.

The management has threatened union leaders on various occasions in an attempt to force them to resign. Furthermore, on 6 August 2007, two women workers sleeping in front of the Phils Jeon factory were attacked by masked men, abducted and then thrown out at a highway close to the Philippine Economic Zone Authority.

#### Developments/Outcome

The Korean NCP acknowledged receipt of the complaint and notified the complainants that: 1) There is no way to deal with the Chongwon case because the company does not exist any more; 2) It has undertaken an initial assessment of the Phils Jeon/Il-Kyoung case and has accepted it as a specific instance.

In November 2007, the NGOs conducted additional field research at the Phils Jeon factory and submitted this to the NCP in a meeting between the unions, NGOs and NCP. Il-Kyoung agreed to enter into a dialogue with the Phils Jeon union, and the complainants are pushing to have this be facilitated by the NCP. On 4 April 2008 an informal meeting took place between the trade union and Phils Jeon management. The NCP played no role in the meeting. Phils Jeon management and Il-Kyoung stated that they would not enter into a dialogue with the workers because they no longer work for the company. The complainants insist that since their dismissal is in dispute, the workers maintain their union membership and urge the Korean NCP to hold a meeting with all the stakeholders. The Korean NCP has not taken any action so far, and has merely repeated the company's argument.



<b>Case</b>	<b>Forced evictions at Cerrejón coal mine in Colombia</b>	
<b>Company/ies</b>	<b>Status</b>	<b>Date filed</b>
BHP Billiton Xstrata	Pending Pending	26 June 2007 4 October 2007
<b>Complainants</b>	Corporación Colectivo de Abogados (CCdeA); lawyer Armando Perez; José Julio Perez, president of the Tabaco Relocation Committee	
<b>NCP(s) concerned</b>	NCP Australia (lead), NCP Switzerland, NCP UK	
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Preface, Chapter I, Chapter II, paragraphs 1, 2, 3, 4, Chapter. III, Chapter V, paragraphs 1a, 2 a, 2b	

#### Issue

Cerrejón Coal, one of the largest open-cut coal mines in the world, is co-owned by BHP-Billiton (Australia), Anglo-American (UK) and Xstrata (Switzerland). According to the complaint, Cerrejón has attempted to depopulate an area of the La Guajira peninsula by destroying a 200-year-old township-pueblo, Tabaco, and forcibly expelling the remaining population through a purported expropriation. Another five communities are suffering from the effects of what

is called locally 'estrangulación' (strangulation), actions taken by the company that are designed to make living unviable in the area and therefore drive the population out. The complainants allege that this has caused suffering and hardship for the former population of Tabaco and of the other five pueblos.

#### Developments/Outcome

On 9 October 2007, the UK NCP organised a meeting in London with local Cerrejón Coal management, the Australian and

Swiss NCPs, the companies and the complainants. Since then, emails have been exchanged, but no further mediation has occurred. In the mean time, Cerrejón initiated an independent social review about past and future politics, blocking the OECD process. Cerrejón's review was completed in March, and in July 2008 the Australian NCP sent a draft final statement to the parties for comments.

<b>Case</b>	<b>Banco del Trabajo's labour rights violation in Peru</b>	
<b>Company/ies</b>	<b>Status</b>	<b>Date filed</b>
Grupo Atlas Cumbres (Chile)	Closed	26 April 2007
<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>NCP(s) concerned</b>	National Contact Point Chile	
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Preface, paragraph 1; Chapter II paragraph 2; Chapter IV , paragraphs. 1a, 2a, 2b, 8.	

#### Issue

CGTP.'s complaint accuses Banco del Trabajo, owned by Chilean life insurance company The Atlas Cumbres Group, of labour and human rights violations in Peru. Specifically, Banco del Trabajo's anti-union practices have infringed on the rights of labour leaders to collectively negotiate improvements in working conditions. The complaint also accuses the company of requiring workers to achieve unattainable levels of production.

In February 2007 CGTP also submitted a complaint to the International Labour Organization (ILO) against the Government of Peru.

#### Developments/Outcome

The Chilean NCP notified the complainants that it had accepted the complaint as a specific instance. However, after informing the company about the complaint, the NCP informed the complainants that the company

had refused to engage in the NCP procedure. On 20 May 2008, Grupo Atlas Cumbres sold Banco del Trabajo to Scotiabank Perú, a subsidiary of The Scotiabank Group (Canada). The change of owner opens a possibility to resolve the conflict by negotiations with Scotiabank Peru. If the issues cannot be resolved directly with the company, the complainants will consider re-filing the case with the Canadian NCP.

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

#### 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

As part of the initial assessment, in May 2007, the UK 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. In September 2007, the UK NCP issued its initial assessment announcing that it

would consider Global Witness's complaint. Global Witness and Afrimex then entered the process of mediation and held several meetings in October and November 2007. These meetings were mediated by the NCP.

Eventually, in January 2008, Afrimex decided to withdraw from the mediation. The case therefore reverted to an investigation by the NCP. The investigation was concluded in May 2008, and the NCP invited both parties to submit final statements. In August 2008, the NCP issued its final statement, concluding that Afrimex did not comply with Chapter II (General Policies) and Chapter IV (Employment and Industrial Relations) of the Guidelines. The NCP did not uphold the allegations that Afrimex failed to fulfil Chapter VI (Combating Bribery).



Case		G-Star's Indian suppliers' labour rights violations	
Company/ies	Status	Date filed	
G Star International BV	Withdrawn	13 October 2006	
Complainants	Clean Clothes Campaign Netherlands (SKK), India Committee of the Netherlands (ICN), Civil Initiatives for Development and Peace (CIVIDEP), Clean Clothes Campaign International Secretariat, Garment and Textile Workers Union (GATWU)		
NCP(s) concerned	National Contact Point Netherlands		
Guidelines Chapter(s) & paragraph(s)	Chapter I, paragraphs 7, 8; Chapter II, paragraphs 2,7,8,10; Chapter IV, paragraphs 1, 2, 4, 7		

**Issue**

The complaint stated 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. The NGOs requested that 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 also encouraged FFI and JKPL to engage in a dialogue with local NGOs and labour support organisations about the remediation plan. At the time of filing, FFI/JKPL were also producing for Ann Taylor, Armani, Gap, Guess, Mexx and RaRe.

**Developments/Outcome**

In November 2006 the NCP accepted the complaint after a number of informal meetings with the parties involved.. The NCP thereby agreed that an "investment nexus" exist given the parties' direct and well-established relationship.

The NCP tried to bring the parties together for a mediation process. However, G-Star practically 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 an informal meeting between the parties in June 2007. After the escalation of the situation in India, where an

Indian court charged the Dutch NGOs and their internet providers with criminal defamation, it was suggested that a more prominent role for the Dutch government was required.

In December 2007, G-Star unexpectedly announced that it would sever relations with FFI, at which time CCC and ICN expressed their concerns that 'cutting and running' is not the solution of the problems at FFI/JKPL and urged G-Star to develop and implement a responsible exit strategy. In February 2007, the NCP held further separate, informal meetings with the complainants and G-Star. Also in February 2007, a civil judge in Bangalore reinforced a restraining order on five Indian labour organisations that was first issued in July 2006. The restraining order was a heavy blow to the fundamental right to freedom of speech and freedom of association in India.

Subsequently, upon request of the Dutch Minister for Economic Affairs, former Prime Minister Ruud Lubbers was involved as mediator. In January 2008, Mr Lubbers brokered an agreement between the parties. This agreement is to pave the way for a sustainable mechanism to solve possible future labour conflicts at FFI/JKPL. An important outcome of the mediation is that, with the consent of all parties, an ombudsman will be installed who will follow up on complaints from FFI/JKPL employees and labour rights organisations. After some deliberation, all parties concerned agreed upon Dr. Justice V.S. Malimath, former Chief Justice of Karnataka and Kerala High Courts and ex-member of the Indian

National Human Rights Commission, to take the role of ombudsman. A "Committee of Custodians" will serve as a sounding board for the ombudsman and safeguard that all parties adhere to the agreement. The Committee will include Mr Lubbers, Mr Ashok Khosla, an Indian national who has previously worked for the Indian government and the United Nations, as well as Mr. A.P. Venkateswaran, former ambassador for India in China and Russia. The ombudsman will aim for solutions that are acceptable to all parties. When dealing with complaints confidentiality is crucial. The ombudsperson will regularly report on the processing of complaints.

G-Star has repaired its relations with FFI/JKPL. CCC and ICN have put an end to their public campaigning against G-Star and its supplier FFI/JKPL. Another crucial element of the Lubbers-brokered agreement is the withdrawal of all court cases undertaken by FFI/JKPL against Indian and Dutch parties. So far, FFI/JKPL has withdrawn the case against CCC, ICN and their internet providers, and the cases against Indian organisations and individuals are supposed to be withdrawn very soon.

The Dutch NCP did not play a role in reaching this agreement. When Mr Lubbers got involved, the NCP announced that the mediation by Lubbers made the NCP procedure redundant. CCC and ICN did not agree with this point of view, and have expressed reservations against the position of the NCP.

The main arguments put forward by CCC and ICN are the following:



- The NCP was asked to assess compliance with the OECD Guidelines in a specific instance; by ending the procedure in this way, this has not been done.
- The complaint by CCC and ICN addressed the role of the Dutch buyer G-Star, while the mediation by Mr Lubbers focused on the conflict that had arisen between the garment producer FFI and CCC and ICN. This is a fundamental difference.
- The complaint filed by ICN and CCC concerned a clear period in time (September 2005 to October 2006), whereas Mr

- Lubbers only started his mediation in December 2007;
- Central to the complaint filed by CCC and ICN is the question of G-Star's supply chain responsibility. The NCP could and should have offered a setting to address G-Star concerning this matter.
  - All parties concerned, including CCC, ICN, G-Star and the NCP itself, have invested a great deal of time and energy in the procedure. It is most unsatisfactory to end the procedure without an answer to the main question (whether or

not the OECD Guidelines were complied with).

Despite these arguments, CCC and ICN accepted the closure of the NCP procedure the light of the agreement reached on 28 January. The NCP is preparing to publish a final statement concerning the procedural aspects of how the complaint was handled. The statement will not deal with the content of the complaint. Upon request, CCC and ICN provided input to the statement.

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

#### 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. Shell and the other oil companies operating the depot (Chevron and Petron) asked the Court to reconsider the decision, but on 13 February 2008, the First Division of the Supreme Court upheld its original decision

and gave the oil companies 90 days to submit a relocation plan.

In November 2007, the newly restructured NCP invited Shell and the Dutch NGOs to a meeting at which it asked Shell to respond in writing to the allegations in the complaint. Shell did so in January 2008, and the NGOs responded with an additional submission in February 2008.

The Dutch NCP is currently planning a fact-finding mission to the Philippines in consultation with both parties.

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

#### Issue

In January 2005, the government called on Royal Dutch Shell and Exxon Mobil to stop the practice of storing chemicals at and below their facilities in Brazil and 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 conducted an initial assessment and accepted the complaint as a


specific instance. The Dutch NCP also wrote to the Brazilian NCP and “offered its assistance in the handling of the instance” by providing suggestions on how it would handle the case and declaring it would closely follow the case. The Brazilian NCP forwarded the complaint to the two companies involved and requested a response. In its 16 October 2006 response, Exxon claimed that it was a minor partner in the Brazilian consortium accused of the violations and that Shell, as the lead partner and “facility operator”, should be responsible for responding to the allegations in the complaint. The NCP

accepted this argument and thus dismissed the case against Exxon.

In its turn, Shell responded to the complaint stating that the alleged violations were already being considered by domestic legal bodies and thus should not be considered under the NCP/OECD Guidelines process. In early 2007 the NCP accepted Shell’s argument and decided not to “interfere” in the legal proceedings by further examining the issues. The NCP then requested that the complainants make specific proposals for areas that could be negotiated with the Shell that were not covered by any

parallel legal proceeding. On 7 April 2007 the complainants provided suggestions, but Shell refused to agree to mediation, again claiming that the issues were under judicial review.

The NCP concluded that negotiations would no longer be possible or effective, since one party did not want to enter into a mediation process because of parallel legal proceedings, and thus decided to terminate the specific instance in the NCP framework. On 20 March 2008 the NCP produced a final statement.

 <b>Case</b>	<b>Botnia’s Orion pulp mill project in Uruguay</b>	
<b>Company/ies</b>	<b>Status</b>	<b>Date Filed</b>
Nordea	Concluded	28 June 2006
Finnvera	Rejected	8 June 2006
Oy Metsä-Botnia	Concluded	18 April 2006
<b>Complainants</b>	Fundación Centro de Derechos Humanos y Ambiente (CEDHA)	
<b>NCP(s) concerned</b>	NCP Finland, NCP Sweden, NCP Norway	
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter VI ; Chapter III; Chapter VII ; Chapter XI	

**Issue**

CEDHA’s complaint alleges that Botnia’s Orion pulp mill project will impact local communities’ economic livelihoods and human rights. The complainants maintain that 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 that 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. The Nordea complaint alleges that the bank violated the Guidelines in two respects: first, through its partial financing of the Orion paper mill, and second, by refusing to provide information about its dealings with Botnia. Apart from providing \$300,000 of its own funds towards the pulp mill, Nordea also helped arrange

finance from other banks and financial intermediaries.

The Botnia and Finnvera cases were filed with the Finnish NCP, while the Nordea case was submitted to the Swedish and Norwegian NCPs.

**Developments/Outcome**

The Finnish NCP invited CEDHA to a meeting on 30 August 2006 in Helsinki to discuss all three complaints. In November 2006, 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 that the company is not a multinational enterprise and the Guidelines are therefore not applicable.

In a December 2006 statement, the Finnish NCP concluded that the evidence presented did not prove that Botnia had 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.

In January 2008, the Swedish NCP responding for both Norway and Sweden, concluded the Nordea case by stating that the NCP found no “indications to support the complaints made about Nordea having violated the OECD Guidelines in its part-financing of Botnia’s pulp mill in Uruguay.” The Swedish NCP made efforts to gather information by maintaining contact with the parties throughout the process and facilitating dialogue meetings and information exchanges, but its conclusion was also largely grounded on the IFC’s decision to finance the Botnia project.

Key in the statement is the firm stance taken by the Swedish and Norwegian NCPs declaring “the Guidelines can and should be applied to the financial sector as well as to other multinational enterprises... [including], where practicable, business partners, including their suppliers and

subcontractors, [and] to apply principles of corporate conduct compatible with the Guidelines.” However, on the issue of transparency and access to information, a key focus point of CEDHA’s complaint, the NCPs did not take a strong stance, but

encouraged “Nordea and other actors in the financial sector to practice as much transparency and freedom of information as possible,” and that, “it is essential that companies be sensitive to the public’s increasing demand for information.”

Another interesting aspect of the NCP’s statement is the affirmation that NCPs should treat other CSR norms as applicable to companies if those norms are in the “spirit” of the OECD Guidelines.

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

**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. The complaint states that DLH ignores

the risk that their timber purchase causes violent conflicts and violation of human rights.

**Developments/Outcome**

After the Danish government developed a draft position on “sustainable” and “legal” timber in Spring 2007, the NCP began work on the case.

In the mean time, Nepenthes (which owns a share in DLH) put forward a proposal for DLH’s 2007 general assembly that stated that DLH should conduct their business in a way that is in accordance with the OECD Guidelines. The general

assembly (in which DLH itself owns more than 50% of the shares) voted “no” to Nepenthes’ proposal, and instead adopted a proposal put forward by the board of DLH, that stated that DLH will “aim at” conducting business in a way that is in accordance with the OECD Guidelines. The Danish NCP is planning a meeting (possibly including DLH) at which Nepenthes expects the proposal to be discussed. Nepenthes has requested that DLH provide information about the quantity and origin of the timber purchased and the certifications.

<b>Case</b>	<b>Alcoa Alumínios’ Barra Grande hydroelectric dam in Brazil</b>	
<b>Company/ies</b>	<b>Status</b>	<b>Date filed</b>
Alcoa Alumínios S.A	Pending	06 June 2005
Grupo Votorantim	Pending	06 June 2005
<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 , paragraphs 1,3,4; Chapter II , paragraphs 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, the company responsible for the construction.

**Developments/Outcome**

In September 2005, the Brazilian NCP accepted the case and held a meeting with the complainants. The head of the NCP promised to organize more meetings, but admitted that the political situation in Brazil would make it difficult to resolve the case. The complainants heard from unofficial sources that the NCP planed to close the case due to a lack of evidence about the behaviour of the companies; however, the NGOs maintain they have sufficient evidence. Despite the lack of progress and lack of communication from the NCP on the case, the NGOs continue to

monitor the fulfilment of the conditions agreed by the venture partners (BAESA), environmentalists and the MAB.

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

**Issue**  
The Corner House's complaint alleges the companies have violated the Guidelines' bribery provision, by refusing 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.

Airbus has been referred to the French NCP but other action has been suspended allegedly because the Export Credits Guarantee Department (ECGD) engaged in consultation about payments through agents.

<b>Case</b>	<b>UK companies and illegal resource exploitation in DRC</b>	
<b>Company/ies</b>	<b>Status</b>	<b>Date filed</b>
Dairo Air Services (DAS Air)	Concluded	28 June 2004
<b>Complainants</b>	Rights and Accountability in Development (RAID)	
<b>NCP(s) concerned</b>	National Contact Point UK	
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter IX , paragraph 1; Chapter III, paragraphs 3,4; Chapter VI, paragraphs 1, 5; Chapter V , paragraph 6; Chapter II, paragraphs 2, 11	

**Issue**  
The complaint alleged that DAS Air, one of the largest air transport companies operating in the Great Lakes Region:

- Participated in the transportation of the metal coltan from Goma in the Democratic Republic of the Congo (DRC) and its onward transportation from Kigali in Rwanda and Entebbe in Uganda. The coltan, originating in the eastern DRC, was exploited in an illicit trade condemned by the UN Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo for its financing of occupying forces and rebel militias.
- Flew into a conflict zone in support of the Ugandan military in an area controlled by the Republic of Uganda, found guilty by the ICJ (International Court of Justice or International Commission of Jurists?) of belligerent occupation and the violation of international human rights law.

- Operated civilian aircraft in a conflict zone, in contravention of international conventions governing civil aviation.

**Developments/Outcome**  
DAS Air denied the allegations in the complaint and strongly objected to the allegations that it contributed to the ongoing conflict in the DRC and to human rights' abuses. The company firmly denied that it had ever knowingly transported coltan sourced from DRC, explaining it believed the coltan it flew out of Kigali originated in Kigali. RAID provided detailed flight logs and other evidence gathered by the Porter Commission – a Ugandan judicial commission set up to investigate illegal exploitation in the DRC – to support its case.

At the meeting that took place in November 2006 with representatives of the Joint Working Group, the Minister Ian McCartney pledged that all the UN Panel cases would be concluded within six months after which a statement would be made to parliament. But there have since been long delays in bringing the case to a conclusion.

However, RAID was appreciative of the efforts that the NCP took to seek the advice of the International Civil Aviation Authority and the British Freight Forwarders Association.

In October 2007, a year after the European Community (EC) had imposed a ban on its aircraft, DAS Air Limited was forced into administration. The NCP continued to liaise with the administrators in its efforts to conclude the case.

In July 2008, a strongly worded final statement was issued. For the first time in any specific instance, the NCP concluded that DAS Air breached the human rights provision by flying into a conflict zone in contravention of international civil aviation regulations. DAS Air was also found to have failed to undertake due diligence with regard to its supply chain: its contention that it did not know the source of the minerals it was transporting was rejected given its 'intimate understanding of the situation and the conflict.'

The NCP did not make a determination in relation to events that occurred before the year

2000, but it took past behaviour into account in its final assessment of DAS Air's activities. There is

concern that this treatment of past conduct is inconsistent with the retrospective application of the

2000 Guidelines established in the Anglo American case.

<b>Case</b>	<b>Toyota's anti-trade union practices in the Philippines</b>	
<b>Company/ies</b>	<b>Status</b>	<b>Date filed</b>
Toyota Motor Corporation	Filed	04 March 2004
<b>Complainants</b>	Toyota Motor Philippines Corporation Workers' Association (TMPCWA), Support Group for TMPCWA in Japan	
<b>NCP(s) concerned</b>	National Contact Point Japan	
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter IV , paragraphs 1, 6, 7, 8; Chapter II, paragraph 2	

#### Issue

The complaint alleges that Toyota Motor Philippines Corporation (TMP) refused to recognise TMPCWA, which was registered in 1998 with the Philippine Department of Labour and Employment (DOLE), as the sole and exclusive bargaining agent. The complaint states the company is actively trying to hinder the right to association and collective bargaining.

The complaint further alleges that TMP refused to organise Certification Elections (CE) as stipulated by law. When CE were eventually held in March 2000, TMP challenged the result (which was favourable to TMPCWA), refused to open negotiations, and launched various administrative appeals against TMPCWA.

Under pressure from Toyota, DOLE remained passive and procrastinated. When DOLE organised an unusual "clarification hearing" in February 2001, the workers organised 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 organisation (who had participated in the previous month's gathering) were unjustifiably dismissed.

#### Developments/Outcome

In September 2004, the Japanese NCP said "the matter is still under examination, and the initial assessment has not yet come to an end. We are of the opinion that the case of TMPCWA is still at bar at Court of Appeals." The complainants wrote to the NCP expressing their disappointment

with its (non)handling of the complaint.

In February 2005, Support Group met with the NCP, and the NCP said that it would not specify any time limit for an initial assessment.

The Japanese NCP appeared to have changed its attitude after it was criticised in OECD meetings and by an International Solidarity Campaign initiated by IMF in 2006, but in 2007 it returned to its previous position that "The matter is still under examination and at the stage of the initial assessment."

TMPCWA and Support Group 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>	<b>Date Filed</b>
B.P. p.l.c	Pending	29 March 2003
ENI	Pending	29 March 2003
TotalFinaElf	Blocked	29 March 2003
ING Belgium	Blocked	9 May 2004
Dexia Bank	Blocked	9 May 2004
KBC Bank NV	Blocked	9 May 2004
<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 (Milieudéfensie), 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, Proyecto Gato	
<b>Date filed</b>	29 March 2003	
<b>NCP(s) concerned</b>	NCPs UK, Italy, France, Germany, USA, Belgium	
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter I, paragraph 7; Chapter II, paragraph 5; Chapter V , paragraphs 1,2,4; Chapter III, paragraph 1	

#### Issue

The Baku-T'bilisi-Ceyhan (BTC) oil pipeline (now completed) spans 1,760 kilometres from the Azerbaijan capital of Baku, through

T'bilisi, Georgia, ending in the Mediterranean city of Ceyhan, Turkey. The complaint, filed simultaneously at the UK, France, Germany, Italy, and USA NCPs,

alleges that the BP-led BTC consortium of oil companies sought tax and law exemptions and undue influencing of governments in construction of the

pipeline in Georgia and Turkey. 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.

A second complaint, filed by Proyecto Gato at the Belgian NCP, alleges that ING, Dexia and KBC, in supporting the BTC project, are impeding economic, social and environmental progress in the host countries. Proyecto Gato maintains that the banks did not evaluate, or take into account, adequate information on the environment, health and security impacts of the pipeline. In addition, the banks did not supervise or control the projects' progress with respect to the implementation of environmental, health and security objectives in order to promote sustainable development.

#### **Developments/Outcome**

The UK NCP accepted the complaint in August 2003. 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 lodged 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 organised this trip in close collaboration with both parties to ensure all parties were satisfied with the terms of reference. 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 UK NCP 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 (FOIA) request by The Corner House in October 2006. The draft statement exonerated BP. It relied 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]".

On 15 August 2007, the NCP issued a final statement, which, despite protests from the complainants following the release of the draft statement under FOIA, still relied heavily on BP's undisclosed report to exonerate the company. The complainants wrote to the NCP on 12 September 2007 seeking an appeal before the newly established Steering Board. The

complainants argued that the NCP's statement was unfair and that it failed to "make any serious attempt to engage critically with the issues".

In December 2007, the NCP acknowledged procedural failures and offered to undertake its own review of the procedural aspects of the August 2007 decision. The statement was removed from the NCP's website.

In 2008, the Steering Board conducted the first ever review of the NCP's handling of a specific instance. The Steering Board whose operations are supposed to be transparent has yet to decide whether the outcome of the review can be made public prior to a final statement on the case being issued.

In the ENI case, after a nearly five-year delay, the Italian NCP finally, in January 2008, agreed to conduct an initial assessment of the case against consortium partner ENI. The NCP hosted a meeting between the parties, and ENI agreed to submit a written response to some of the issues raised in the complaint. After an exchange of views and a disagreement about the interpretation of the Guidelines, the complainants asked the NCP for a clarification. The Italian NCP forwarded the request to the UK NCP and the OECD Investment Committee.

In the Belgian banks cases, the Belgian NCP has declared the complaint eligible, but because BP is the main actor in the BTC project, the UK NCP is taking the lead in the procedure. The Belgian NCP forwarded the cases to the British NCP, thereby closing the case for the Belgian NCP. However, the British NCP unofficially declared that it would not evaluate the role of the Belgian banks.



<b>Case</b>	<b>Anglo American's mining activities in Zambia</b>	
<b>Company/ies</b>	<b>Status</b>	<b>Date filed</b>
Anglo American Plc	Closed	27 February 2002
<b>Complainants</b>	Rights and Accountability in Development (RAID), Afronet, Citizens for a Better Environment (CBE)	
<b>NCP(s) concerned</b>	National Contact Point United Kingdom	
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter II, paragraphs 1, 2; Chapter IX, paragraphs 1,3; Chapter V , paragraphs 0, 2; Chapter III, paragraph 2	

**Issue**

The complaint related to a number of issues arising from the privatisation of the copper industry in Zambia during the period 1995 - 2000. RAID alleged that Anglo American (AACSA which later became Anglo American plc) influenced the privatisation process in the company's favour. Specifically, it alleged that AACSA was able to purchase the Konkola Deep Mining Project without entering into a competitive tendering process and that the company also obtained right of first refusal over the purchase of facilities at Mufulira (smelter and refinery) and Nkana (mine), thereby denying the opportunity for other enterprises to make an offer. Anglo American plc, after the company's incorporation in London, derived a continuing benefit from these actions.

RAID also alleged that the company sought and received exemptions from Zambian legislation in regards to taxation and environmental controls. This resulted in weakened standards of environmental controls, such as those on emission targets, and effected the health and safety of workers and the population in general. The weakened environmental controls were not disclosed.

Linked to the taxation exemptions, RAID also alleged that the company secured a number of financial incentives and concessions that were not available to other enterprises.

**Developments/Outcome**

The Company responded saying that the RAID complaint was 'without foundation within the terms of the Guidelines'. Anglo American rejected RAID's allegation about favourable treatment stating 'Far from seeking to negotiate fiscal terms that would produce unusually attractive returns, terms were negotiated in a transparent manner between the parties'.

In most respects, this complaint – the first the UK NCP received following the 2000 review of the OECD Guidelines – was, in its initial stages, well handled. The NCP acknowledged the complaint promptly, immediately sought and obtained legal advice on its admissibility and within a few weeks had requested DFID Zambia to conduct a fact finding visit. When the company raised objections regarding the UK NCP's competence, the NCP referred the matter to the OECD's Investment Committee for clarification. On receipt of that clarification, the NCP resumed the specific instance process.

Yet the failure to conclude the matter within a reasonable time frame was ultimately due to the protracted dispute with Anglo American over jurisdiction.

A final statement was eventually issued in May 2008, an unprecedented six years after the complaint had been filed. It said, 'the NCP does not propose to make any recommendations aimed at achieving compliance for the pragmatic reason that a considerable period of time has passed since the ZCCM privatisation was concluded, during which Anglo American has sold the companies that are the subject of the complaint.' The original assessment was instead appended to the final statement.

RAID regrets the fact that the failure to timetable the case effectively meant that the NCP never reached a final determination on the substantive issues raised, despite the wealth of information presented by both parties. However, two important principles were established: firstly, that the 2000 Guidelines could be applied retrospectively and; secondly, the acknowledgement in the final statement that 'it is usual practice for the NCP to make determinations of compliance and to issue recommendations in respect of a specific instance on those matters which remain unresolved'.

### III. Current case statistics

Current Status of the 77 OECD Guidelines cases filed by NGOs		No. Cases
Filed	The NGO has sent the complaint to the NCP	9
Pending	The NCP has confirmed that it is admissible and the specific instance procedure is under way	13
Concluded	The NCP has reached a decision and issued a statement or the case was settled outside the NCP forum	20
Closed	The NCP has started the case but dropped it before issuing a statement	3
Rejected	The NCP has formally rejected the case (declared it inadmissible)	20
Withdrawn	The complainants have decided to close the case	6
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)	6

Chapter of the OECD Guidelines	No. Cases	
Chapter I	Concepts and Principles	11
Chapter II	General Policies (incl. Human rights and the supply chain)	60
Chapter III	Disclosure	22
Chapter IV	Employment and Industrial Relations	25
Chapter V	Environment	30
Chapter VI	Combating Bribery	19
Chapter VII	Consumer Interests	5
Chapter VIII	Science and Technology	0
Chapter IX	Competition	9
Chapter X	Taxation	7

\* 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 "Rejected" category in the Current Status Table and 56 additional cases to the Bribery Chapter (VI).



This Quarterly Case Update has been compiled by Joseph Wilde-Ramsing and Fabia Pryor, Centre for Research on Multinational Corporations (SOMO). Thanks to the individuals involved in the cases for providing information.

The Quarterly Case Update is produced four times a year and has as its aim to document the views and experiences of NGOs involved in NCP procedures. OECD Watch strives to ensure that the information in this case update is accurate, but ultimately OECD Watch is not responsible for the content. OECD Watch is willing to correct or remove any information that is factually inaccurate. For more specific information about the cases in this update, please visit [www.oecdwatch.org](http://www.oecdwatch.org) or contact the parties involved directly.

The publication of this Quarterly Case Update has been made possible through funding from the Dutch Ministry of Foreign Affairs and Oxfam Novib (Netherlands).

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 contact the OECD Watch secretariat at: **SOMO - The Centre for Research on Multinational Corporations**, Sarphatistraat 30, 1018 GL Amsterdam, The Netherlands, [info@oecdwatch.org](mailto:info@oecdwatch.org) / [www.oecdwatch.org](http://www.oecdwatch.org), +31 20 639 1291