

# Quarterly Case Update

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 OECD Watch

of OECD Guidelines cases filed by NGOs

## I. Highlights in this Update

### New cases:

- Skanska withdraws from NCP process in Argentinean gas pipeline case; CIPCE files new case
- ForUM and Friends of the Earth Norway file complaint against Cermaq ASA for unsustainable production, bad employment conditions and human rights violations in Canada and Chile.
- Survival International files complaint against Vedanta Resources for prospective environmental and human rights violations from the construction of a bauxite mine in India; UK NCP accepts case as a specific instance

### Developments:

- Norwegian NCP set to decide on the status of Future in Our Hands' complaint against Intex Resources for environmental violations relating to the construction of a nickel mine and factory in the Philippines.
- Korean NCP rejects complaint against Daewoo International and Korea Gas Corporation
- Letters and information exchanged by both parties in Makro/SHV Holdings case at Dutch NCP
- Irish and Dutch NCPs host talks to resolve the complaint against Shell, Statoil and Marathon Oil for violations in the Corrib Gas project in Ireland.
- Argentine NCP holds meetings and makes fact-finding visit to community where alleged violations took place in Shell Argentina case; case being held up due to parallel legal procedures
- Australian and Swiss NCPs move to close case against Cerrejón Coal; complainants object to the closure as the issues remain unresolved
- Complainants in Afrimex case request that the UK government put forward Afrimex and its directors to the UN Sanctions Committee based on UK NCP's final statement
- Attempt at mediation fails in Shell Philippines case; Dutch NCP moves to close case by drafting final statement
- Cases against Alcoa/Votorantim (Brazilian NCP), Toyota Motor Corporation (Japanese NCP) and BAE Systems/Airbus S.A.S./Rolls Royce (UK NCP) inactive for several years now considered "blocked"
- BTC case has been reviewed by Steering Board review in UK; Italian NCP has begun the initial assessment

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

Case	Corruption in Skanska's gas pipeline project in Argentina	
Company/ies	Status	Date filed
Skanska	Pending	20 May 2009
Skanska	Pending	September 2007
Complainants	Centre for Research and Prevention of Economic Crime (Centro de Investigación y Prevención de la Criminalidad Económica –CIPCE)	
National Contact Point(s) concerned	Argentina	
Guidelines Chapter(s) & paragraph(s)	Chapter VI, paragraphs 1, 2, 3; Chapter X	

### Issue

CIPCE alleges that directors of the Swedish company Skanska paid bribes to public servants during the construction of a gas pipeline project in the northern and southern regions of Argentina. At the time that the allegations of corruption and bribery were first publicised, 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.

Skanska argued that their actions were the only way to obtain a fast solution and to protect the company from the former

directors. CIPCE argues that, given the circumstances, the legally correct course of action would have been to dismiss those involved without severance pay and that the way Skanska acted reveals its unwillingness to prevent and fight corruption.

### Developments/Outcome

The NCP accepted the specific instance on 26 November 2007. Both parties agreed to negotiate in good faith in order to achieve a consensual win-win solution. The key focus of negotiations was 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 OECD's Investment Committee clarify the

interpretative reach of the clause, but as yet the Argentinean NCP has rejected the request arguing that the IC does not have the ability to interpret the Guidelines.

In September 2008, Skanska withdrew from the NCP mediation and accused CIPCE of bad faith and violating the rules of confidentiality. Given Skanska's refusal to participate in mediation, CIPCE requested that the NCP move to draft a final statement and close the case, which the Argentine NCP has not done. CIPCE maintains that it remains open to dialogue and participation in the specific instance at the NCP, and in May 2009 the NGO presented additional information in a new case against Skanska for alleged violation of Chapter VI (combating bribery).

Case	Cermaq ASA's salmon farming in Canada and Chile	
Company/ies	Status	Date Filed
Cermaq ASA	Filed	19 May 2009
Complainants	ForUM and Friends of the Earth Norway	
National Contact Point(s) concerned	Norway	
Guidelines Chapter(s) & paragraph(s)	Chapter II, paragraph 7; Chapter IV paragraph 1a, d, 4; Chapter V, paragraph 2, 3, 4	

### Issue

Cermaq ASA, a Norwegian fish farming and fish feed company, also engages in the breeding and distribution of salmon and trout. The company owns and operates hatcheries and fresh water sites in Canada and Chile. The Norwegian government is the majority shareholder of the company.

The complaint alleges that Cermaq ASA breaches the OECD Guidelines on sustainability, employment conditions and human rights, particularly through the activities of the company's

fish farming subsidiary Mainstream.

The complainants maintain that the company has breached the OECD Guidelines' general policies by not taking adequate consideration of the rights of indigenous peoples in Canada and Chile whose access to resources is threatened by Cermaq's salmon breeding activities. The complainants further maintain Cermaq has breached the OECD Guidelines employment provisions through unfounded dismissals, attempts

to prevent free association of employees in labour unions, discrimination against women and inadequate safety procedures for its employees. Cermaq's activities allegedly also pose an environmental threat through the spread of salmon lice and disease originating from its fish farms.

### Developments/Outcome

The case was filed at the Norwegian NCP, and the complainants are waiting for a response.

<b>Case</b>	<b>Intex Resources' environmental threat in the Philippines</b>	
<b>Company/ies</b>	<b>Status</b>	<b>Date Filed</b>
Intex Resources	Filed	26 January 2009
<b>Complainants</b>	Framtiden i våre hender (Future in Our Hands)	
<b>National Contact Point(s) concerned</b>	Norway	
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter II ; Chapter V, paragraphs 0-8 ; Chapter VI	

**Issue**

In 1997, the Philippine Department of Environment and Natural Resources issued a prospecting permit to Norwegian mining and exploration company Intex Resources for building a nickel mine and factory in the province of Mindoro. The prospecting agreement overlaps the land of the Mangyan indigenous people and affects in particular the Alangan and Tadyawan tribes, who have property rights throughout the

area but did not fully give their consent for the project. The complaint alleges that Intex Resources will violate the OECD Guidelines if it carries out its plans to establish the factory. The factory would be a threat to the local water environment because of its proximity to rivers that provide water to neighbouring villages and agricultural fields.

**Developments/Outcome**

The Norwegian NCP forwarded the complaint to Intex Resources,

who quickly responded to complainants' concerns by means of a public letter in which they defended their operations in the project. In March 2009 the NCP asked the complainants to comment on the company's response. The NCP subsequently invited the complainants to a meeting with the company. The decision whether the NCP will handle the case or not is to be made after the meeting.

<b>Case</b>	<b>Vedanta's environmental and human rights violations in India</b>	
<b>Company/ies</b>	<b>Status</b>	<b>Date Filed</b>
Vedanta resources plc	Pending	19 December 2008
<b>Complainants</b>	Survival International	
<b>National Contact Point(s) concerned</b>	United Kingdom	
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter II, paragraphs 2 and 7; Chapter V, paragraph 2b	

**Issue**

British mining company Vedanta Resources has built a one-million ton aluminium refinery and plans to mine bauxite on Niyam Dongar mountain to feed the refinery. This mountain is a sacred mountain for the Dongria Kondh tribe, one of the most isolated tribes in India, and its culture, identity and livelihood are inextricably bound to the mountain.

The complaint alleges that neighbouring tribes have already felt the impact of Vedanta's presence. Some of them claim that they have been forcibly evicted to make way for the aluminium refinery. Others may

still have to vacate their homes as the plant expands and feeder roads, air strips and toxic waste ponds are built. The Dongria Kondh tribe has not been consulted in the construction process, and the complaint claims that the construction of the mine will severely endanger the rights of these indigenous people. Moreover, there are fears that local streams and arable land would be polluted by air-borne particulates from the mine, the road and the conveyor belts to carry ore to the refinery. Survival International believes that serious disturbances will be averted and justice for the Dongria Kondh achieved only if Vedanta adheres to international human rights

standards and engages with the communities most directly affected by its proposals. Vedanta has allegedly failed to consider the "potential implications" of its activities for the Dongria Kondh because it refuses to accept that there are any.

**Developments/Outcome**

The UK NCP has conducted an initial assessment and accepted the complaint as a specific instance. The UK NCP contacted Vedanta about the complaint, but Vedanta turned down the invitation to mediation. The NCP is set to begin an investigation

<b>Case</b>	<b>Daewoo &amp; KOGAS' environmental and HR violations in Burma gas project</b>	
<b>Company/ies</b>	<b>Status</b>	<b>Date Filed</b>
Daewoo International	Rejected	29 October 2008
Korea Gas Corporation (KOGAS)	Rejected	29 October 2008
<b>Complainants</b>	EarthRights International, KHIS, KCTU, FKU, 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>National Contact Point(s) concerned</b>	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

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

### Developments/Outcome

At the time of filing, the NCP met at length with the complainants and informally agreed to consider the complaint; however, on 27 November 2008, just 4 weeks after filing, the Korean NCP rejected the complaint on all counts. The NCP opined that the general situation in Burma and specifically around the Shwe Project does not merit an investigation or arbitration between the companies and the complainants, despite the fact that many groups and

communities from within the proposed pipeline area in Burma believe that it does. The complainants are concerned about the NCP's conflict of interest given its location in the Korean Ministry of Knowledge Economy. Furthermore, the complainants are disappointed that the NCP did not clarify how the company's performance on EIAs and stakeholder consultation is in line with the Guidelines. The Korean NCP's summary dismissal of the case seems to contrast with other NCPs' handling of Burma-related cases in which recommendations for appropriate corporate conduct were issued.



<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	Pending	09 October 2008
<b>Complainants</b>	Shehri-Citizens for a Better Environment (Shehri-CBE)	
<b>National Contact Point(s) concerned</b>	Netherlands	
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Preface; Chapter II, paragraphs 1, 2, 6; Chapter V, paragraph 3	

### Issue

Makro Habib Pakistan Limited (Makro) was a joint venture between SHV Holdings NV, Netherlands and House of Habib, Pakistan, that operated a chain of department outlet stores. The Pakistan-based complainant requests that the NCP facilitates a resolution with respect to the company's alleged involvement in the illegal transfer of land, the illegal conversion of land use, human rights violations and environmental degradation. The complainant claims that the ongoing and proposed future practices of Makro stores in

Pakistan do not conform to the company's stated corporate philosophy and commitments to society at large. The complaint alleges the following irregularities:

- Illegal and unauthorized transfer/ conversion of land
- Defiance of Court orders
- Violation of national environmental regulations and compliance procedures
- Environmental degradation
- Human Rights violations

### Developments/Outcome

After an initial assessment, the Dutch NCP informed the complainants that the specific

instance brought by Shehri-CBE concerning SHV Holdings Pakistan subsidiary Makro Habib Limited is admissible and merits further consideration. The NCP forwarded the complaint to SHV Holdings, who provided additional information on its involvement. After the NCP learned that a local court had already dismissed a similar complaint before it was filed as a specific instance, the complainants were asked for a clarification. In May 2009 Shehri-CBE sent the clarification of its position to the NCP.



<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	Pending	22 August 2008
Marathon Oil corporation	Pending	22 August 2008
Statoil	Pending	22 August 2008
<b>Complainants</b>	Pobal Chill Chomain Community, Kilcommon, Ballina, Co Mayo, Ireland	
<b>National Contact Point(s) concerned</b>	Ireland (lead), Netherlands; 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, 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 project:

- **Safety and Health issues**  
The pipeline would pass too close to populated areas and go through an area prone to landslides. The potential operation under very high pressures with unknown gas compositions, coupled with the instability of peat in some areas the pipeline is expected to pass does seriously increase the likelihood of pipe failure.
- **Environmental issues**  
The location of the refinery poses a risk to the only source of potable water for 10,000 people in the region. Moreover, the route of the pipeline would pass through three ecologically

sensitive areas and thus represents a threat to wildlife.

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

Although there are parallel legal proceedings on issues related to this case in Ireland, complainants argue that this should not influence the NCP's decision to accept and handle the specific instance.

**Developments/Outcome**

The Irish NCP, in cooperation with the Dutch NCP, declared that the case is admissible as a specific instance. The Norwegian NCP offered its assistance to the Irish NCP but has not formally responded to the submission filed in Norway. No reaction has been received by the US NCP.

Planned talks with both parties by the Dutch and Irish NCPs were deferred while direct discussions between Shell and the complainants were being facilitated by the Irish government. When the talks collapsed early April 2009, the NCP took up its mediation role again and engaged in separate discussions with companies and the complainants.



Case		Shell's environmental and human health violations in Argentina	
Company/ies	Status	Date Filed	
Royal Dutch Shell	Pending	01 June 2008	
Complainants	Citizen Forum of participation for Justice and Human Rights (FOCO - (Argentina), Friends of the Earth Argentina		
National Contact Point(s) concerned	Argentina (lead), Netherlands		
Guidelines Chapter(s) & paragraph(s)	Preface; Chapter II, paragraphs 1, 2, 5; Chapter III, paragraphs 1, 2, 4e, 5b; Chapter V, paragraphs 0-8.		

**Issue**

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, distribution and sale of products derived from crude oil, the sale of fuels and lubricants designed for aviation, the sale and distribution of chemical products and the commercialization of natural gas.

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 environmentally 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 company.

**Developments/Outcome**

On 10 September 2008 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. The Argentinean NCP emphasised the importance of the confidentiality of the process.

The Argentine NCP prepared a list of "considerations" from the complaint and asked the complainants and the company to respond, both of which did so.

In April 2009, three members of the NCP visited Villa Inflamable to interview residents and see the conditions for itself. To the dismay of the complainants, no further progress on the case has been made because of parallel legal proceedings.

<b>Case</b>	<b>Accor Service's bribes to retain business in Argentina</b>	
<b>Company/ies</b>	<b>Status</b>	<b>Date filed</b>
Accor Services	Concluded	28 November 2007
<b>Complainants</b>	Wortman Jofre Isola Abogados, National Deputy Hector Recalde	
<b>National Contact Point(s) concerned</b>	Argentina	
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	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. Recordings of

telephone calls and meetings with the Accor representative were used as evidence 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 an Argentine manager of Accor Service and the middle-man who offered the bribes. The NCP forwarded the complaint to Accor and invited the company to engage in an NCP-facilitated mediation process. The company did so, and the case was successfully concluded with a negotiated agreement in March 2009. Part of the agreement was that Accor would make a financial contribution to an Argentinean NGO for support of its transparency and anti-corruption program. Accor chose to support the NGO Poder Ciudadano,

which is the Argentine chapter of Transparency International. The amount of the contribution has not been made public, but it was far from the complainants' request that the amount be equivalent to 5% of the bribe offered.

The NCP agreement further obliged the company to seek new employment possibilities for its workers, provide an extra allowance for the workers who were affected by the change in the law, and publish the outcome of the procedures in local newspapers.

Accor has complied with the terms of the agreement but has complained that the complainants have inappropriately publicised the case. The complainants reaffirmed their right to speak publicly about the case after its conclusion and had opposed a stipulation in the final statement that would have infringed on this right.

<b>Case</b>	<b>South 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
<b>Complainants</b>	Workers Assistance Center, Inc. (WAC), Korean House of International Solidarity (KHIS), Korean Confederation of Trade Unions (KCTU), Chongwon Union	
<b>National Contact Point(s) concerned</b>	South 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 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. However, in 2004 the unions won elections at both Chongwon and Phils Jeon (a subsidiary of Il-Kyoung Co.). After that, the companies repeatedly questioned the election results by filing several court petitions,

but 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 harassment. In September 2006, the workers at Phils Jeon went on strike despite the management warning they would be dismissed if they did so. The strike was violently dispersed by police and security guards who attacked and

beat the mainly female 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 had suddenly declared that the unions no longer represented the workers. The union believes that the companies offered bribes and 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**

After assessing the complaint, the Korean NCP notified the complainants that: 1) There is no

way to deal with the Chongwon case because the company does not exist any more; and 2) It had undertaken an initial assessment of the Phils Jeon/Il-Kyoung case and 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 the NCP. Il-Kyoung agreed to enter into a dialogue with the Phils Jeon union, and the complainants pushed 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 stakeholders. The Korean NCP has not taken any further action, and has merely repeated the company's argument.



Case	Forced evictions at Cerrejón coal mine in Colombia	
Company/ies	Status	Date filed
BHP Billiton	Pending	26 June 2007
Xstrata	Pending	04 October 2007
Complainants	Corporación Colectivo de Abogados (CCdeA); lawyer Armando Perez; José Julio Perez, president of the Tabaco Relocation Committee; Arbeitsgruppe Schweiz Kolumbien	
National Contact Point(s) concerned	Australia (lead), Switzerland, United Kingdom	
Guidelines Chapter(s) & paragraph(s)	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-pit 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 the township of 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. At that meeting a proposed Third Party Review initiated by Cerrejón Coal was accepted by the NCP as a solution/answer for the complaint. The OECD Guidelines case was suspended until the Third Party Review published its report in March 2008. In July 2008 the Australian NCP sent a draft final statement to the parties for comments. BHP Billiton and Xstrata claim that local Cerrejón management now has the capacity and the knowledge to conduct proper resettlement process and that there is no need for a third party mediation. However, although the resettlement processes is taking place on paper, no mutually agreed negotiation scheme has been agreed with the complainants, nor has the communities' ability to negotiate improved.

In December 2008, agreement was reached between Cerrejón Coal and the township of Tobaco to address the town's concerns. A similar agreement has not been

reached for the other five affected communities.

The complainants requested that the NCPs conduct fact-finding on the ground in Colombia either in person or through the respective embassies, but the Swiss NCP responded that the NCP does not have the human or financial resources to carry out local fact-finding or mediation, and that doing so would be a violation of national sovereignty. This seems to be at odds with the approaches of the UK and Dutch NCPs. The Swiss NCP further argued that local embassies cannot carry out the duties of the NCPs. The Swiss NCP mentioned that this may change after the upcoming review of the Guidelines and Procedural Guidance.

The Australian NCP held additional meetings in Australia with BHP and one of the complainants, but was unable to resolve the still-pending issues. The NCP is now moving to close the case, but the complainants object to the closure as the complaints of the five 'strangulated' communities have not been resolved.



<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>National Contact Point(s) concerned</b>	United Kingdom	
<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 fuelled 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 DRC.

During the DRC's conflict, 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, controlled large parts of the eastern provinces of North and South Kivu, where many metals and minerals are mined. The complaint describes how Afrimex traded coltan and cassiterite (tin ore) and made tax payments to the RCD-Goma. 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 the 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 accept the complaint. Global Witness and Afrimex then entered the process of mediation and held several NCP-mediated meetings in October and November 2007.

Eventually, in January 2008, Afrimex decided to withdraw from the mediation, and the NCP began an investigation into the facts. The investigation was concluded in May 2008, and the NCP invited both parties to submit final comments. 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).

Throughout the period that the NCP was investigating the case in 2007 and 2008, Afrimex continued buying minerals from eastern DRC. Furthermore, one of the company's main suppliers was cited by the UN Group of Experts as trading in minerals produced by the FDLR, one of the main armed groups in eastern DRC. It is not clear if Afrimex is continuing its activities as the company has not provided information to the NCP on how, or even if, it implements the recommendations in the NCP's final statement.

The complainants have asked the UK government to put forward Afrimex and its directors to the UN Sanctions Committee, but this has not yet been done. The Afrimex case highlights the problem as to what should happen when a company has been found to have breached the Guidelines, but no follow up steps are taken to monitor its adherence to the final statement and recommendations. Even though the UK NCP's final statement was clear, it has not triggered any further action by the British government.



<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>National Contact Point(s) concerned</b>	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 withholding information from local residents and employees about the environmental, health and safety impacts of its Pandacan oil depot, which is situated in the heart of densely populated Manila. The complaint also alleges that Shell's plans and procedures to mitigate potential

hazards at its oil depot were insufficient and that Shell was improperly involved in local political activities.

**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. 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.

After the delay due to these parallel proceedings, in mid-2008 the Dutch NCP engaged a local expert, who had been mutually agreed-upon by the parties, to conduct initial fact-finding, interviews and assessment of the situation in Manila. Two members of the Dutch NCP visited Manila in November 2008 to discuss the issues with the local expert and the Philippine parties to the complaint. The NCP members also brought in to independent Dutch HSE experts who conducted the HSE research at the Shell part of the oil depot.

In early 2009 the NCP attempted to bring the international and local parties together for mediation meetings in Manila, but the NCP was unsuccessful in getting the parties to agree on the terms and topics of the mediation. In May 2009 the NCP moved to close the case by drafting a final statement and giving all parties five days to comment. The final version is expected in June 2009, more than three years after the case was filed.

Case	DLH's purchase of illegal timber from conflict zones	
Company/ies	Status	Date filed
Dalhoff, Larsen & Hornemann (DLH)	Pending	10 March 2006
<b>Complainants</b>	Nepenthes	
<b>National Contact Point(s) concerned</b>	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 that 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 annual shareholder meeting that stated that DLH should conduct their business in a way that is in accordance with the OECD Guidelines. The shareholders

(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 stating that DLH will "aim at" conducting business in a way that is in accordance with the OECD Guidelines. Nepenthes has requested that DLH provide information about the quantity and origin of the timber purchased and the certifications, but the company refused. The Danish NCP has not moved the case forward.

Case	Alcoa Alumínios' Barra Grande hydroelectric dam in Brazil	
Company/ies	Status	Date filed
Alcoa Alumínios S.A	Blocked	06 June 2005
Grupo Votorantim	Blocked	06 June 2005
<b>Complainants</b>	Terra de Direitos, Movimento dos Atingidos por Barragens (MAB)	
<b>National Contact Point(s) concerned</b>	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, both of the Grupo Votorantim, have knowingly utilised 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 planned to close the case due to a lack of evidence about the behaviour of the companies; however, the NGOs maintain they have sufficient evidence. No progress has been made since, and the complainants consider the case "blocked". They hope that the recent appointment of a new head of the NCP will handle the case more effectively than his predecessors.

<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	Blocked	04 March 2004
<b>Complainants</b>	Toyota Motor Philippines Corporation Workers' Association (TMPCWA), Support Group for TMPCWA in Japan	
<b>National Contact Point(s) concerned</b>	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 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. 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 announced "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 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 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. The complainants consider the case "blocked" by the Japanese NCP.

<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
Conoco Philips	Pending	29 March 2003
Delta Hess	Pending	29 March 2003
ENI	Pending	29 March 2003
TotalFinaElf	Rejected	29 March 2003
Unocal	Pending	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, FERN, Amis de la Terre, Friends of the Earth US, Milieudefensie, PLATFORM, Urgewald e.V., WEED, Germanwatch, BUND, Friends of the Earth England, Wales and Northern Ireland, The Corner House, Proyecto Gato	
<b>National Contact Point(s) concerned</b>	United Kingdom, Italy, France, Germany, United States, 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 BTC consortium of ten oil companies, led by BP, is accused of seeking tax and law exemptions and undue influencing of governments in construction of a 1,760 kilometre pipeline through Azerbaijan, Georgia and Turkey. The complaint alleges that the BTC consortium sought tax and law exemptions and unduly influenced 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 the Belgian banks ING, Dexia, and KBC, in supporting the BTC project financially, 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 allegedly 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

Matters moved slowly in this case. Although the case was accepted by the UK NCP in August 2003, the NCP only visited the affected region in September 2005. Despite promises to respond to the issues raised by NGOs, BP refused to disclose their response to the complainants and broke off the dialogue process in January 2006

On 15 August 2007, the NCP issued a final statement that relied heavily on a undisclosed report by BP, exonerating the company. The complainants appealed to the newly established Steering Board 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. In 2008, the Steering Board conducted the first ever review of the NCP's handling of a specific instance. A summary of the Review Committee's findings were made public in September 2008. On 26 February 2009, the complainants submitted a paper on "General Lessons" that could be learned from the NCP's handling of the Complaint.

Because the lead company in the BTC consortium, BP, is British, the NCPs in the countries where the specific instance was submitted collectively decided in 2004 that the UK would "take the lead" in handling the case. However, despite this understanding, the UK NCP decided unilaterally in 2005 that it would only deal with the UK complainants. This decision was apparently not communicated by the UK to the other NCPs until January 2006. The UK NCP consistently failed to keep its NCP colleagues informed of its handling of the specific instance. The French NCP rejected the case against TotalFinaElf, but no further progress on the cases filed against this or the US companies has been made by any of the NCPs involved.

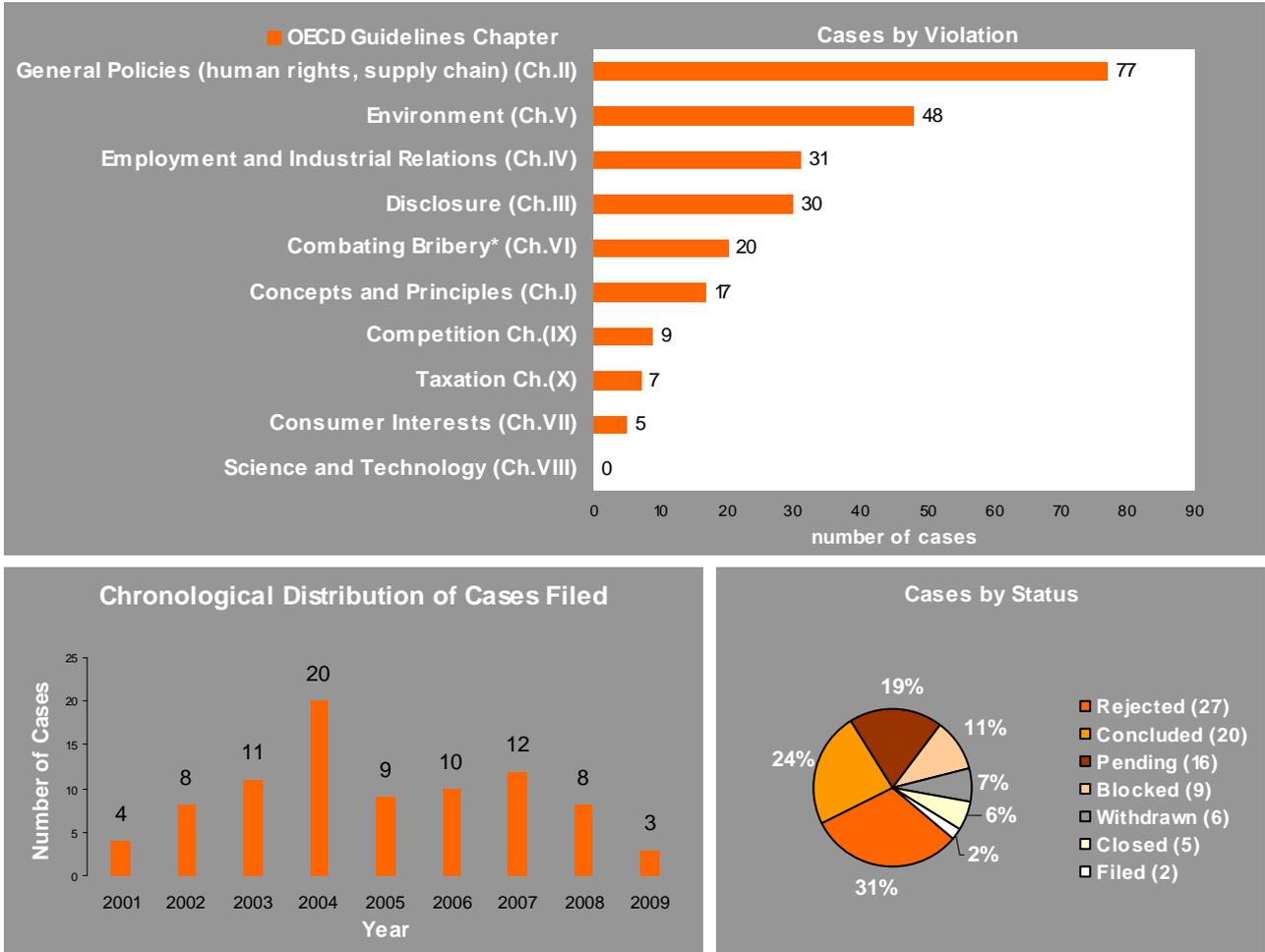
In the ENI case, the Italian NCP finally agreed in January 2008 to conduct an initial assessment of the case against consortium

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. It is still unclear whether the Italian NCP forwarded the request to the UK NCP and the OECD Investment Committee for an opinion.

The Belgian NCP declared the complaints against the Belgian banks 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 and the cases remain in limbo.

### III. Current case statistics

As of summer 2009, 85 OECD Guidelines cases have been filed by NGOs



\*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 additional

This Quarterly Case Update has been compiled by Joseph Wilde-Ramsing and Virginia Sandjojo, Centre for Research on Multinational Corporations (SOMO). Thanks to Violeta Asenova and 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/OECD Guidelines 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.

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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:

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