

Quarterly Case Update

OECD Watch

Autumn 2009

Vol.4 Iss.3

of OECD Guidelines cases filed by NGOs

I. Highlights in this Update

New case:

- Wake Up and Fights for Your Rights, Madudu Group, supported by FIAN, lodges complaint against Neumann Kaffee Gruppe with the German NCP regarding forced evictions in Uganda; see p.2.

Developments:

- CIPCE awaits Argentine NCP final statement in Skanska case; see p.2.
- Vedanta Resources refuses to cooperate in specific instance procedure in India mining case; UK NCP prepares final statement; see p.3-4
- Dutch NCP prepares to close Makro/SHV Holdings case claiming lack of an investment nexus given that SHV has divested from Makro in Pakistan; see p.4-5.
- Shell Argentina refuses to participate in specific instance procedure; Argentine NCP proposes roundtable meeting among parties outside the NCP/specific instance; complainants agree; see p.5-6.
- Australian NCP issues final statement in Cerrejón Coal case against BHP-Billiton, Anglo-American, and Xstrata; agreement reached with one local community; issues at 5 other communities remain unresolved; see p.7
- Dutch NCP closes Shell Pandacan (Philippines) case without a mediated resolution; detailed final statement upholds claim that Shell violated OECD Guidelines' clause on disclosure of non-financial information, dismisses two other claims; see p.9
- UK NCP Steering Board set to release *final* final statement in BTC case; see p.11

Comprehensive case statistics: back flap (p.12)

II. Overview of pending and recently concluded/rejected cases

Case	Corruption in Skanska's gas pipeline project in Argentina		
Company/ies	Status	Date filed	Duration (to date)
Neumann Kaffee Gruppe	Filed	15 June 2009	3.5 months
Complainants	"Wake Up and Fight for Your Rights, Madudu Group" supported by FIAN		
National Contact Point(s) concerned	Germany		
Guidelines Chapter(s) & paragraph(s)	Chapter II, paragraph 1, 2, 7		

Issue

The complaint alleges that in August 2001 the Ugandan army forcefully evicted more than 2,000 people from their land to give way for a coffee plantation of the Neumann Kaffee Gruppe (NKG). All property of the people had been destroyed. People had to flee into the nearby forest. No houses or other means of accommodation had been provided and no compensation has been provided.

According to the complaint, while NKG continues to produce coffee for export on the land, the majority of the evictees have settled at the boarder of the plantation. They suffer from food shortages, lack of drinking water, lack of money to pay school fees, lack access to adequate health care. They have approached NKG several times to ask for support in their struggle for compensation, but the company refuses to talk

with them. The company has also tried to hinder a legal case filed by the evictees against NKG and the Ugandan Government in 2002. That case remains pending, and no substantial progress has been made.

Developments/Outcome

After receiving the complaint, the German NCP approached the company with the issues.

Case	Corruption in Skanska's gas pipeline project in Argentina		
Company/ies	Status	Date filed	Duration (to date)
Skanska	Pending	20 May 2009	4 months
Skanska	Pending	September 2007	24 months
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 the Argentinean NCP

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. In May 2009 the NGO presented additional information in a new case against Skanska for alleged violation of Chapter VI of the Guidelines (combating bribery).

Given Skanska's refusal to participate in mediation, CIPCE requested that the NCP move to draft a final statement and close the case. It has now been more than one year since Skanska withdrew from the mediation and the case remains pending without a final statement from the NCP.

Case	Cermaq ASA's salmon farming in Canada and Chili		
Company/ies	Status	Date Filed	Duration (to date)
Cermaq ASA	Filed	19 May 2009	4.5 months
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, headquartered in Norway, is one of the world's largest fish farming and fish feed companies. It is engaged in the breeding and distribution of salmon and trout in Norway, Scotland, 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, which has decided to forward the complaint to the Chilean and Canadian NCPs for comments before deciding whether to handle the case or not.

Case	Intex Resources' environmental threat in the Philippines		
Company/ies	Status	Date Filed	Duration (to date)
Intex Resources	Filed	26 January 2009	8 months
Complainants	Framtiden i våre hender (Future in Our Hands)		
National Contact Point(s) concerned	Norway		
Guidelines Chapter(s) & paragraph(s)	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 has not yet been made.

Case	Vedanta's environmental and human rights violations in India		
Company/ies	Status	Date Filed	Duration (to date)
Vedanta resources plc	Pending	19 December 2008	9.5 months
Complainants	Survival International		
National Contact Point(s) concerned	United Kingdom		
Guidelines Chapter(s) & paragraph(s)	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, India, 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 conducted an initial assessment and accepted the

complaint as a specific instance. The NCP contacted Vedanta about the complaint, but Vedanta turned down the invitation to mediation. The NCP conducted an investigation, and is expected to make a final statement in September 2009. Vedanta has not engaged with the investigation process, failing to submit any evidence whatsoever to the NCP during this stage.



Case	Daewoo & KOGAS' environmental and HR violations in Burma gas project		
Company/ies	Status	Date Filed	Duration (to date)
Daewoo International Korea Gas Corporation (KOGAS)	Rejected on 27 Nov 2008 Rejected on 27 Nov 2008	29 October 2008 29 October 2008	1 month 1 month
Complainants	EarthRights International, KHIS, KCTU, FKTU, 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		
National Contact Point(s) concerned	South Korea		
Guidelines Chapter(s) & paragraph(s)	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.



Case	Makro's involvement in human rights and environmental violations in Pakistan		
Company/ies	Status	Date Filed	Duration (to date)
SHV Holdings, NV	Pending	09 October 2008	12 months
Complainant	Shehri-Citizens for a Better Environment (Shehri-CBE)		
National Contact Point(s) concerned	Netherlands		
Guidelines Chapter(s) & paragraph(s)	Preface; Chapter II, paragraphs 1, 2, 6; Chapter V, paragraph 3		

Issue

Makro Habib Pakistan Limited (Makro) was a joint venture between the Dutch SHV Holdings NV and Pakistani House of Habib that operated a chain of department outlet stores. Shehri-

CBE (based in Pakistan) alleged that the company was involved in illegal transferring of land, illegal land use conversion, human rights abuses and environmental degradation.

Developments/Outcome

The Dutch NCP conducted an initial assessment and accepted the case as a specific instance in December 2008. The NCP forwarded the complaint to SHV Holding and met with the enterprise in February 2009. SHV

Holding denied the allegations and informed the NCP about its divestment from the joint venture as of December 2008. After the NCP learned that a local court had already dismissed a similar complaint and that the environmental issues were already addressed, the complainants were asked for a clarification, which they provided in June 2009. According to the complainants, the case was

dismissed unlawfully. An appeal to the Pakistani Supreme Court of Justice resulted in the high court agreeing to review the case, for which a final court hearing and closing arguments are set to take place at the end of September 2009. The complainants acknowledged that the environmental issues in the complaint were addressed by Makro before it filed the notification with the Dutch NCP,

but nevertheless requested that the NCP determine whether the OECD Guidelines had been violated. The NCP's position is that, given that SHV Holdings has divested from Makro Habib Pakistan Ltd, it can no longer pursue future-oriented mediation in the specific instance and is preparing to close the case and issue a final statement.

Case	Shell-led consortium's environmental and human rights violations in Ireland		
Company/ies	Status	Date Filed	Duration (to date)
Royal Dutch Shell	Pending	22 August 2008	13 months
Marathon Oil corporation	Pending	22 August 2008	13 months
Statoil	Pending	22 August 2008	13 months
Complainant	Pobal Chill Chomain Community, Kilcommon, Ballina, Co Mayo, Ireland		
National Contact Point(s) concerned	Ireland (lead), Netherlands; US and Norway also notified		
Guidelines Chapter(s) & paragraph(s)	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	Duration (to date)
Royal Dutch Shell	Pending	01 June 2008	16 months
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. Progress on the case has been slow because of parallel legal proceedings.

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.

Shell has refused to participate in the specific instance or even recognize the NCP as the appropriate body for addressing the concerns raised in the complaint. In this light, in May 2009 the NCP indicated that it may have to close the case, but offered the parties the possibility of participating in a roundtable meeting outside the official specific instance procedure. The complainants responded to the NCP's proposal in May 2009 and indicated that they would be open to such a meeting, but there has since been no word from the NCP.

Case	South Korean textile companies' labour abuses in the Philippines		
Company/ies	Status	Date filed	Duration (to date)
Chongwon Trading Il-Kyoung Co. Ltd.	Rejected	7 October 2007	3 September 2007
	Pending		3 September 2007
Complainants	Workers Assistance Center, Inc. (WAC), Korean House of International Solidarity (KHIS), Korean Confederation of Trade Unions (KCTU), Chongwon Union		
National Contact Point(s) concerned	South Korea		
Guidelines Chapter(s) & paragraph(s)	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 should maintain their union membership.

The NCP has since organised two meetings with the complainants, but only after the complainants themselves requested the meetings. No meeting among all parties has been organised by

the NCP, despite the complainants request that the NCP do so. In April 2009, the complainants requested a progress report on the Il-Kyoung Co. case from the NCP. The NCP responded that it would take no further action on the case until parallel legal proceedings (a recently-initiated case between Phils Jeon and its employees) in the Philippines were concluded.



Case	Forced evictions at Cerrejón coal mine in Colombia		
Company/ies	Status	Date filed	Duration (to date)
BHP Billiton	Concluded on 12 June 2009	26 June 2007	24 months
Xstrata	Concluded on 12 June 2009	04 October 2007	20 months
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.

According to the complaint, 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. The companies announced that an independent social review had been established by Cerrejón to provide an independent assessment of their social engagement. As the independent review was to

address similar issues to those raised in the complaint the NCP proposed suspending the Guidelines case until the independent review published its report in March 2008.

The independent review's report was released in February 2008 and made numerous recommendations on steps Cerrejón should take to improve its relationships with the local community and to resolve the underlying issues. Cerrejón accepted most of its recommendations.

In July 2008 the Australian NCP (ANCP) sent a draft final statement to the parties for comments. BHP Billiton and Xstrata claimed that local Cerrejón management had the capacity and the knowledge to conduct proper resettlement process and that there was no need for a third party mediation. However, the complainants' view was that, although the resettlement process is taking place (on paper), no mutually agreed negotiation and engagement process has been agreed with the communities, nor has the communities' ability to negotiate improved.

A positive outcome of the case was the December 2008 agreement reached between Cerrejón Coal and the township of Tobaco, which included contributions to indemnities of US\$1.8 million and a further US\$

1.3 million for sustainable projects. A similar agreement has not been reached for the other five affected communities.

The complainants requested that the NCPs conduct fact-finding in Colombia either in person or through the respective embassies. Unfortunately the Swiss NCP responded that they did 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. The NCP made it clear that it did not have funding to undertake work on the ground in Colombia nor did it believe this to be part of an NCP's mandate. This seems to be at odds with the approaches of the UK, Dutch and Argentine 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 NCP held additional meetings in Australia with BHP and the Australian-based complainant. The NCP, the companies and the complainants were in agreement that the issues relating to the Tabaco community had been satisfactorily resolved. However, negotiations on possible resettlements for the other five communities were ongoing. Both the ANCP and the

complainants expressed concern with the lack of progress with the ongoing negotiations and the complainants sought the appointment of a facilitator for the resettlement process, which the companies rejected. Ultimately, as a compromise proposed by the ANCP, the companies did agree to an external process to monitor the negotiations and report on progress. Social Capital Group

(from Peru) was appointed to this role. Cerrejón also appointed a new Social Responsibility Manager, who had previously been BHP's Group Manager for Community Relations.

On 12 June 2009 the ANCP closed the case and issued a final statement. The ANCP acknowledged the complainants' concerns about closing the specific instance before a binding

written agreement was in place between the five communities and Cerrejón, but did not believe that it could add further value at that stage. The final statement acknowledges this and the ANCP offered to make itself available, if required, as an avenue for further discussions in the event that outstanding issues remain unresolved.



Case	Afrimex's mineral trading in the DRC		
Company/ies	Status	Date filed	Duration (to date)
Afrimex (UK) Ltd.	Concluded on 28 August 2008	20 February 2007	18 months
Complainants	Global Witness		
National Contact Point(s) concerned	United Kingdom		
Guidelines Chapter(s) & paragraph(s)	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.

Case	Shell's Pandacan oil depot in the Philippines		
Company/ies	Status	Date filed	Duration (to date)
Royal Dutch Shell	Concluded on 31 August 2009	15 May 2006	39 months
Complainants	FoE Netherlands (Milieudefensie), Friends of the Earth International, Fenceline Community (Philippines)		
National Contact Point(s) concerned	Netherlands		
Guidelines Chapter(s) & paragraph(s)	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 promptly conducting an initial assessment and accepting the case, the Dutch NCP engaged in extensive communication, including numerous meetings, phone calls, letters and e-mails, with both parties throughout the process. Developments in parallel proceedings at the Philippine Supreme Court initially delayed the specific instance procedure, but the NCP eventually decided that its handling of the case would not prejudice the local legal proceedings and decided to move forward on the case. In mid-2008 the 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 NCP

and a member of the NCP secretariat 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 two independent Dutch health, safety and environmental experts to conduct 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, the issue of relocation of the depot being at the core of the impasse. Unable to get the parties together for mediation, the NCP closed the case and issued a final statement in August 2009, more than three years after the complaint was filed. In its statement, the NCP dismissed two of the complainants' allegations (although it could not fully investigate or verify one of them) and upheld one claim, noting that Shell had failed to comply with the OECD Guidelines' clause on disclosure of non-financial information, including environmental reporting, in its interaction with local communities and stakeholders. The NCP's statement includes a number of recommendations to Shell for

improved implementation of the Guidelines in its operations.

The complainants blame the NCP's failure to reach a mediated solution on Shell's obstinacy and obstruction of the specific instance process. As an example, they cite Shell's unreasonably high confidentiality requirements during the procedure - a situation that the NCP itself, in its final statement, found "regrettable" and counterproductive, but was powerless to do anything against. The complainants believe that while the NCP genuinely did its best to come to a mediated solution, its hands were tied as it lacked the authority to force a large company like Shell to even come to the negotiation table. The Guidelines' voluntary nature and the absence of consequences attached to inobservance of the Guidelines mean that the NCP is unable to compel companies to take the OECD Guidelines seriously.

The case casts an ominous light on the current functioning of the OECD Guidelines' specific instance mechanism and underscores the urgency of strengthening and upgrading the Guidelines in a potential 2010 review. In this regard, the Dutch NCP's "Further reflections" at the end of its final statement provide some constructive guidance.

Case	DLH's purchase of illegal timber from conflict zones		
Company/ies	Status	Date filed	Duration (to date)
Dalhoff, Larsen & Hornemann (DLH)	Pending	10 March 2006	43 months
Complainants	Nepenthes		
National Contact Point(s) concerned	Denmark		
Guidelines Chapter(s) & paragraph(s)	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 NCP met once with each of the parties and once with both parties present. In spring 2009

Nepenthes and DLH informed the NCP of their view on how the case ought to progress. Since then Nepenthes has been waiting for the NCP to assemble and decide on the future progress in this case, but there has thus far been no decision. Nepenthes asked for a progress update in August 2009.

Case	Alcoa Alumínios' Barra Grande hydroelectric dam in Brazil		
Company/ies	Status	Date filed	Duration (to date)
Alcoa Alumínios S.A	Blocked	06 June 2005	51 months
Grupo Votorantim	Blocked	06 June 2005	51 months
Complainants	Terra de Direitos, Movimento dos Atingidos por Barragens (MAB)		
National Contact Point(s) concerned	Brazil		
Guidelines Chapter(s) & paragraph(s)	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.

Case	Toyota's anti-trade union practices in the Philippines		
Company/ies	Status	Date filed	Duration (to date)
Toyota Motor Corporation	Blocked	04 March 2004	67 months
Complainants	Toyota Motor Philippines Corporation Workers' Association (TMPCWA), Support Group for TMPCWA in Japan		
National Contact Point(s) concerned	Japan		
Guidelines Chapter(s) & paragraph(s)	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.



Case	BTC oil pipeline in Azerbaijan, Georgia & Turkey		
Company/ies	Status	Date Filed	Duration (to date)
B.P. p.l.c	Pending	29 March 2003	78 months
Conoco Philips	Pending	29 March 2003	78 months
Delta Hess	Pending	29 March 2003	78 months
ENI	Pending	29 March 2003	78 months
TotalFinaElf	Rejected in 2006	29 March 2003	36 months
Unocal	Pending	29 March 2003	78 months
ING Belgium	Blocked	9 May 2004	64 months
Dexia Bank	Blocked	9 May 2004	64 months
KBC Bank NV	Blocked	9 May 2004	64 months
Complainants	Campagna per la Riforma della Banca Mondiale, FERN, Amis de la Terre, Friends of the Earth US, Milieudedefensie, PLATFORM, Urgewald e.V., WEED, Germanwatch, BUND, Friends of the Earth England, Wales and Northern Ireland, The Corner House, Proyecto Gato		
National Contact Point(s) concerned	United Kingdom, Italy, France, Germany, United States, Belgium		
Guidelines Chapter(s) & paragraph(s)	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 contribute to the 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 conduct adequate due diligence 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 and social 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. The Steering Board of the UK NCP has provided two reactions to the "lessons learned" paper that the complainants submitted. The NCP is now composing a draft final statement.

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

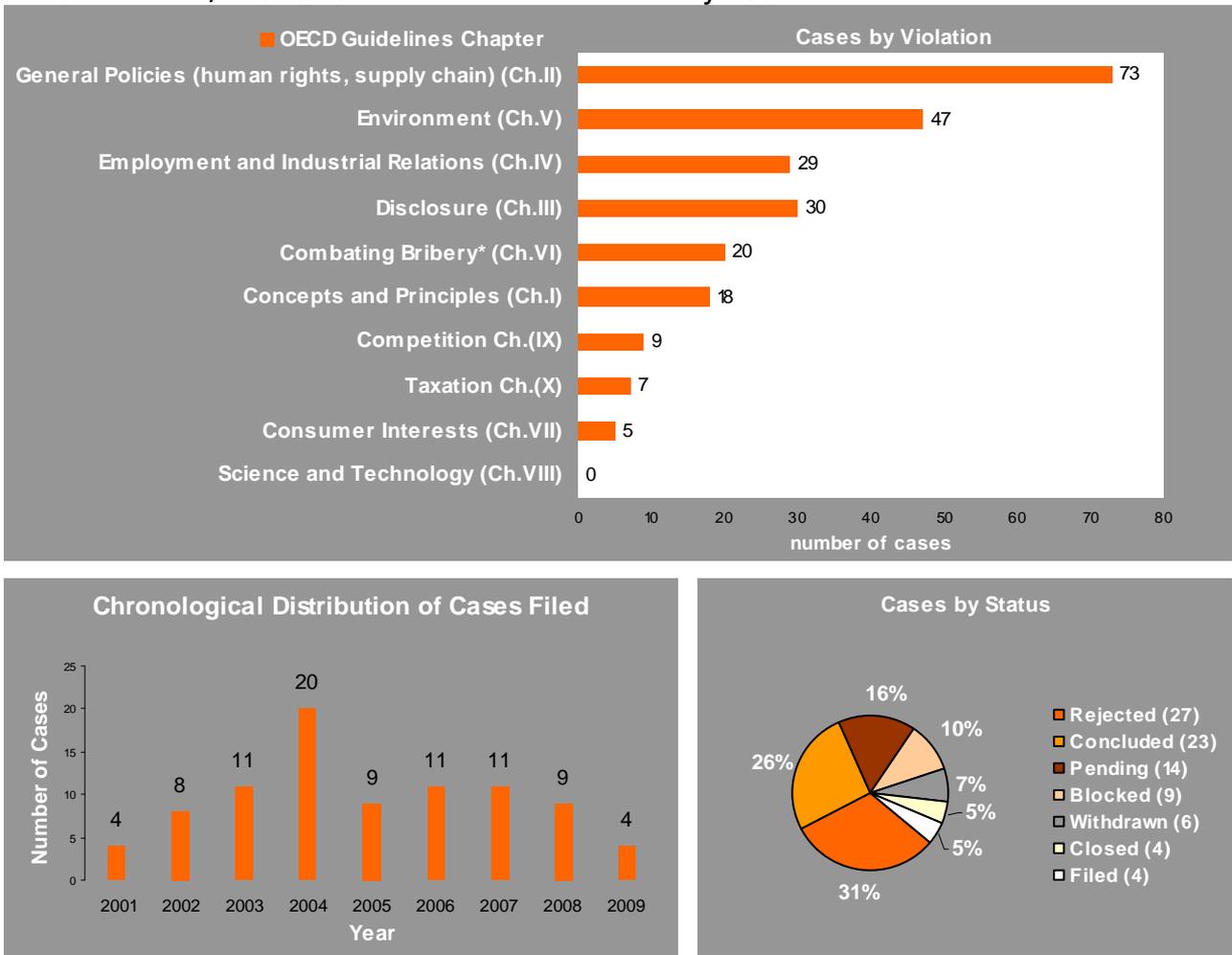
understanding, the UK NCP decided unilaterally in 2005 that it would only deal with the UK complainants. This decision was apparently not communicated by the UK to the other NCPs until January 2006. The UK NCP consistently failed to keep its NCP colleagues informed of its handling of the specific instance. 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.

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 October 2009, 87 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 cases to the Bribery Chapter (VI), the year 2007, and the "Rejected" status.

This Quarterly Case Update has been compiled by Joseph Wilde-Ramsing and Virginia Sandjojo, Centre for Research on Multinational Corporations (SOMO).

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 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 / www.oecdwatch.org, +31 20 639 1291