

Quarterly Case Update

Highlights in this Update

New cases

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- 2 Jijnjevaerie Saami village members file complaint against Statkraft related to a wind farm being planned on their traditional lands in northern Sweden; Swedish and Norwegian NCPs confirm they will handle the case jointly (p.2).
- 3 Cambodian and US NGOs file complaint against American Sugar Refining (ASR) and parent companies related to illegal evictions and human rights abuses at sugar plantations in Cambodia (p.3).
- 4 A coalition of NGOs files complaint against South Korean steel conglomerate POSCO and Norwegian & Dutch pension funds for human rights and environmental concerns associated with POSCO's gigantic steel operation in India (p.3).
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- 7 International coalition of 14 NGOs files complaint against Finnish Pöyry Group for its involvement in adverse social and environmental impacts from the Xayaburi hydroelectric dam in Laos. Finnish NCP accepts case (p.5).
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Case developments

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- 28 In its final statement the French NCP determines that, in principle, sourcing of goods produced using child labour is a violation of the Guidelines, but that Devcot was not engaged in such sourcing of cotton from Uzbekistan (p.17).
- 29 UK NCP concludes BHP Billiton Mozal smelter case, determining that the company did not violate the Guidelines. The NCP encouraged the company to improve its stakeholder engagement and disclosure policies and practices (p.18).

1

Case	Abuse of migrant Chinese workers at Panasonic plant in Singapore		
Company/ies	Date filed	Current status	Duration (to date)
Panasonic Corporation	20 November 2012	Filed	1 week
Complainants	Humanitarian Organisation for Migration Economics (HOME)		
National Contact Point(s) concerned	Japan		
Guidelines Chapter(s) & paragraph(s)	Chapter IV (Human Rights), § 1, 2, 3, 4, 5, 6; Chapter V (Employment), § 1d & 1e		

Issue

The complaint alleges that the wages paid to Chinese migrant workers at a Panasonic plant in Singapore are barely enough to meet their own basic needs and are below Singapore's national standard of an employee in a similar occupation. Additionally, because of remittances necessary to support families in China and high recruitment debts, workers are pressured to accept excessive overtime of up to 150 hours a month.

According to the complaint, the high recruitment fees that bind

workers to huge debts for long periods of time are a violation of Singapore's Employment Agencies Act and the ILO's Private Employment Agencies Convention, which Japan has ratified. These debts cause many workers to stay in exploitative work situations and make them highly vulnerable to situations of forced labour since they fear losing their jobs.

The complaint further alleges that Panasonic has failed to conduct due diligence in ensuring the employment agencies it hires

abide by ethical recruitment practices.

Although media pressure in August 2012 forced Panasonic to slightly increase wages, return the migrant workers' passports and make contracts available in Chinese, the complaint claims that these measures have had a limited impact on the workers' rights and well-being.

Developments/Outcome

The complainants are awaiting confirmation of receipt from the NCP.

2

Case	Statkraft's wind power operations in breach of indigenous rights in Sweden		
Company/ies	Date filed	Current status	Duration (to date)
Statkraft SCA AB	29 October 2012	Filed	1 month
Complainants	Jijnjevaerie Saami village		
National Contact Point(s) concerned	Sweden and Norway		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), § 1, 2, 14; Chapter IV (Human Rights), § 1, 2, 5; Chapter VI (Environment), § 2a, 2b.		

Issue

Statkraft is currently in the process of building a 360-turbine wind establishment in the municipality of Jämtland, Sweden, all to be located on the traditional lands of the indigenous reindeer herding collective of Jijnjevaerie Saami village. Much of these lands are sensitive migration routes and winter herding pastures. If the project goes ahead as planned, it will severely restrict the community's possibility to pursue reindeer husbandry, which is the basis of the community's economic and cultural survival. This would force Jijnjevaerie

village members to abandon their herding practices and would forcefully dislocate them from the environment that provides them with their cultural identity.

The complaint alleges that Statkraft has failed to meaningfully engage with the Saami village and that the consultations that have taken place have been flawed. The complaint further alleges that Statkraft has failed to take adequate steps to prevent adverse impacts from the farm.

Jijnjevaerie Saami village demand is that Statkraft engage in

meaningful consultations with Jijnjevaerie Saami village on any and all developments affecting them and take all appropriate steps to prevent adverse impacts on the environment and their reindeer herding practices.

Developments/Outcome

The Swedish and Norwegian NCPs have declared that they will collaborate in handling the case and are currently undertaking an initial assessment, which they aim to have completed by February 2013. As part of the initial assessment, the Norwegian NCP has contacted Statkraft for a response to the complaint.

Case	Illegal eviction of villagers for ASR's sugar production in Cambodia		
Company/ies	Date filed	Current status	Duration (to date)
American Sugar Refining Incorporated	31 October 2012	Filed	1 month
Florida Crystals Corporation	31 October 2012	Filed	1 month
Sugar Cane Growers Cooperative of Florida	31 October 2012	Filed	1 month
Fanjul Corporation	31 October 2012	Filed	1 month
Complainants	Community Legal Education Center of Cambodia (CLEC), EarthRights International (ERI)		
National Contact Point(s) concerned	United States		
Guidelines Chapter(s) & paragraph(s)	-		

Issue

American Sugar Refining (ASR), the world's largest sugar cane refiner and best known for producing Domino Sugar, holds an exclusive contract to buy all the sugar produced at a sugar plantation and factory in Sre Ambel District, Koh Kong Province, Cambodia, where

villagers were illegally evicted from their land without fair or adequate compensation. The villagers are now facing impoverishment, malnutrition, and other social deprivations. The complaint alleges that ASR's parent companies Florida Crystals Corporation, Sugar Cane Growers Cooperative of Florida

and Fanjul Corporation are also responsible for the illegal eviction and subsequent deprivation of the villagers.

Developments/Outcome

The complainants are awaiting the US NCP's initial assessment.

Case	POSCO's involvement in human rights and environmental impact in India		
Company/ies	Date filed	Current status	Duration (to date)
POSCO	9 October 2012	Filed	2 months
ABP	9 October 2012	Filed	2 months
Government Pension Fund - Global	9 October 2012	Filed	2 months
Complainants	Lok Shakti Abhiyan, KTNC Watch, Fair Green Global Alliance, Forum for Environment and Development (ForUM)		
National Contact Point(s) concerned	South Korea, Netherlands, Norway		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), §A10, A11, A14; Chapter IV (Human Rights), §1, 2, 5; Chapter VI (Environment), §2a, 3		

Issue

The complaint, filed by Lok Shakti Abhiyan and supporting coalitions in S. Korea, Netherlands, and Norway, concerns POSCO's failure to seek to prevent human rights abuses and carry out comprehensive human rights and environmental studies for its proposed iron mine, steel plant and associated infrastructure in the State of Odisha, India.

The complaint alleges POSCO's efforts to construct a 12 million-ton per annum integrated steel plant, captive power plant, captive port and other related infrastructure in the

Jagatsinghpur District will lead to the physical and economic displacement of more than 20,000 people, including individuals who have special legal protections under the Scheduled Tribes or Other Traditional Forest Dwellers (Recognition of Forest Rights) Act. The complainants maintain POSCO has not engaged in meaningful stakeholder consultation with all affected communities to identify the full scope and severity of human rights, social and environmental impacts. The complainants fear that POSCO's failure to conduct due diligence will mean the company will be incapable of preventing or

mitigating significant adverse impacts on thousands of people and the environment.

The complainants also call on the Dutch pension fund ABP and the Norwegian Government Pension Fund - Global to seek to prevent or mitigate the real and potential adverse impacts directly linked to their operations through their financial relationships with POSCO.

Developments/Outcome

The complaint was filed simultaneously at the Korean, Dutch and Norwegian NCPs.

Case	Involvement of Shell and UK banks in adverse human rights and environmental impacts of the Sakhalin II oil and gas project in Russia		
Company/ies	Date filed	Current status	Duration (to date)
Royal Dutch Shell	31 July 2012	Filed	4 months
Royal Bank of Scotland	31 July 2012	Filed	4 months
Standard Chartered	31 July 2012	Filed	4 months
Barclay's	31 July 2012	Filed	4 months
Complainants	Non-Commercial Gardening Association and Sakhalin Environment Watch		
National Contact Point(s) concerned	Netherlands and the United Kingdom		
Guidelines Chapter(s) & paragraph(s)	Chapter I (Concepts and Principles), §2, 3, 8; Chapter II (General Policies), chapeau and §A1, A2, A6, A7, A12, A13; Chapter III (Disclosure), §1; Chapter IV (Human Rights) §1, 3; Chapter VI (Environment), chapeau and §1, 2		

Issue

Residents living adjacent to a highly polluting liquefied natural gas (LNG) plant and oil and gas export terminals on Sakhalin Island, Russia, allege that Royal Dutch Shell and three of the largest UK banks have severely harmed the adjacent community, endangering their health, jeopardizing their food security, and polluting and destroying local environmental resources. The construction and operation

of the Sakhalin II Prigorodnoye Complex has caused pollution and physical damage to the Stroitel Association's dachas and to their cultivated lands, resulting in their effective displacement.

Project-affected dacha owners have not been resettled or justly compensated by the project operator, Russian Sakhalin Energy Investment Company (SEIC). Shell, RBS, Standard Chartered and Barclays have a business

relationship with SEIC and have a financial interest in the Sakhalin II project. According to complaint, Shell and the UK banks have thus far failed to use their influence on SEIC to correct the environmental and human rights abuses associated with the project.

Developments/Outcome

The Dutch NCP has confirmed receipt of the complaint and is conducting the initial assessment jointly with the UK NCP.

Case	Multiple violations during construction of Michelin tyre factory in India		
Company/ies	Date filed	Current status	Duration (to date)
Michelin	10 July 2012	Filed	4 months
Complainants	CCFD-Terre Solidaire, Tamil Nadu Land Rights Federation, Thervoy Sangam, Association Sherpa, CGT		
National Contact Point(s) concerned	France		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General policies) §A2, A5, 10, 11, 12 and 14, Chapter IV (Human Rights), §1, 2, 3, 5 and 6, Chapter V (Employment) § 1e, 2c, 5 and 8, Chapter VI (Environment) § 1a-c, 2a- b and 3, Chapter VII (Bribery) §2 and 4, Chapter XI (Taxation) §1		

Issue

In November 2009, the French company Michelin acquired lands near the Thervoy village from the Tamil Nadu Government and started building the largest tyre factory in India. The complaint alleges that the land was sold to Michelin by local authorities without any prior consultation with the local villagers, a mainly Dalit community who has been living there for over two hundred years. Furthermore, a village near the site is inhabited by indigenous people of Irula ethnicity. The villagers were not consulted nor was their right of free, prior and informed consent respected. Moreover, civil

movements objecting to the factory have been severely repressed.

The development of the area around the village has caused the destruction of 450 hectare-collective forest that hosted agricultural and pastoral activities, thus depriving the local people of their main means of livelihood. Eighteen other villages are also directly impacted by the construction of the infrastructure associated with the factors. The complainants furthermore allege that the factory is likely to cause water pollution and have a negative impact on local peoples' health.

Despite numerous requests by CCFD-Terre Solidaires that Michelin suspend construction on the factory until appropriate impact studies and consultations with affected stakeholders are conducted, Michelin has carried on the work in the name of the project economic benefit. The complainants now turn to the French NCP to intervene to ensure that Michelin changes its behaviour in accordance with the OECD Guidelines.

Developments/Outcome

The complainants are awaiting confirmation of receipt by the French NCP.

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Case	Pöyry Group's involvement in adverse social and environmental impacts from the Xayaburi hydroelectric dam in Laos		
Company/ies	Date filed	Current status	Duration (to date)
Pöyry Group	11 June 2012	Pending	5 months
Complainants	Siempu Foundation, Friends of the Earth Finland, Finnish Asiatic Society, International Rivers, Community Resource Center, Vietnam Rivers Network, Berne Declaration, Buddhist Association for Environmental Development (BAED) Working for Development, Environment and Peace, Towards Ecological Recovery and Regional Alliance, NGO Forum on Cambodia, Mekong Energy and Ecology Network, Focus on the Global South, the Corner House, Center for Water Resources Conservation and Development		
National Contact Point(s) concerned	Finland		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), §1, 11, 12, 13; Chapter IV (Human Rights), §2, 3; Chapter VI (Environment), §4, 6, 6b, 6c and 8		

Issue

An international coalition of 14 civil society organisations alleges that the services provided by the Pöyry Group to the government of Lao PDR as a part of the preparations for construction of the Xayaburi hydroelectric dam are in breach of the Guidelines. The construction of the dam is controversial because it would have severe environmental and social impacts along the entire Lower Mekong Basin. Impacts include displacement of villagers and a loss of fertile land, income, livelihoods and food security due to alterations of one of the world's most productive freshwater fisheries.

Neighbouring Mekong countries, scientists, experts and NGOs have called for the deferment of construction until additional research on the dam's impacts has been conducted. Despite

these protests, the government of Lao PDR is justifying proceeding with the project without additional research based on the advice of the Pöyry Group, a Finland-based consulting firm it hired for technical advice. Though it acknowledges numerous technical shortcomings and the need for additional research, Pöyry has advised Lao PDR to proceed with construction.

The complaint alleges that the services provided by Pöyry undermine the co-operative regional process regarding the use of Mekong trans-boundary water resources. The complainants also accuse Pöyry of failing to contribute to sustainable development and failing to conduct appropriate due diligence. The complainants request that a process be initiated with the aim of

correcting Pöyry's behaviour, mitigating the damage already caused, and preventing further damage. They call on Pöyry to engage in dialogue with relevant stakeholders and, where applicable, compensate those adversely impacted.

Developments/Outcome

As part of the initial assessment, the Finnish NCP forwarded the complaint to Pöyry and requested a response. In a public response to the complaint posted on the Business and Human Rights Resource Center's website, Pöyry rejected all allegations. Pöyry also issued a response directly to the NCP, but insisted that this remain confidential and not be shared with the complainants. In October 2012, the NCP accepted the complaint and is attempting to bring the parties together for mediation.

8

Case	Excellon Resources' involvement in land dispute at La Platosa mine in Mexico		
Company/ies	Date filed	Current status	Duration (to date)
Excellon Resources	28 May 2012	Filed	6 months
Complainants	Canadian Labour Congress; MiningWatch Canada; Proyecto de Derechos Económicos Sociales y Culturales, A.C. (ProDESC); Sindicato Nacional de Trabajadores Mineros, Metalúrgicos, Siderúrgicos y Similares de la República Mexicana (SNTMMSSRM); United Steelworkers		
National Contact Point(s) concerned	Canada, Mexico		
Guidelines Chapter(s) & paragraph(s)	Chapter III (Disclosure), §1 and 2g; Chapter IV (Human Rights), §1, 2 and 6; Chapter V (Employment), §1a, 1b, 2b, 4c, and 8; Chapter VI (Environment), §2a, 2b, and 5.		

Issue

A group of communal landowners from the Ejido "La Sierrita de Galeana" (La Sierrita) and several Canadian and Mexican civil society organisations allege that Excellon Resources has breached OECD Guidelines provisions on disclosure, human rights, employment and environment.

In 2008, La Sierrita agreed to lease a portion of their land to Excellon Resources for the development of the company's La Platosa poly-metallic (silver, lead and zinc) mine. The complaint alleges Excellon Resources has breached the land rental contract with La Sierrita. The complainants allege that Excellon Resources failed to obtain consent before engaging

in exploration activities on land outside the area designated in the contract and building a water treatment plant that has led to reduced potable water supplies and contamination of La Sierrita.

The complainants furthermore contend that the company sought to stop workers from joining a local affiliate of the mining union, thereby violating

the right to freedom of association and collective bargaining of workers at the La Platosa mine. The complaint accuses Excellon Resources of engaging in worker intimidation

and actively supporting a "rogue" union to strategically undermine the unionization efforts of the SNTMMSSRM. The complainants contend the company has aggressively misled

investors about the local labour dispute as well.

Developments/Outcome
The complainants are awaiting the NCPs' initial assessment.

9

Case	Human rights violations at George Forrest's CMSK mine in the DRC		
Company/ies	Date filed	Current status	Duration (to date)
George Forrest International	4 April 2012	Pending	7 months
Complainants	Action Contre l'Impunité pour les Droits Humains (ACIDH), Rights and Accountability in Development (RAID), La Fédération internationale des ligues des droits de l'homme (FIDH), Ligue des droits de l'Homme, Ligue des Electeurs and Groupe Lotus		
National Contact Point(s) concerned	Belgium		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), §2, 5, 11, 12; Chapter IV (Human Rights), §2, 4, 6		

Issue

The residents of Kawama and Lukuni-Gare, two villages on the outskirts of Lubumbashi in the DRC, close to the Luiswishi mine operated by the Compagnie minière du Sud Katanga (CMSK), are seeking compensation after their homes were unlawfully demolished by the CMSK in November 2009. CMSK is a joint venture between the Entreprise Générale Malta Forrest (EGMF) and the state-owned mining company, La Générale des carrières et des mines (Gecamines). EGMF, a subsidiary of George Forrest International (GFI), has a 60% shareholding in the Luiswishi mine.

The complaint to the Belgian

NCP alleges that the demolitions, which were undertaken to prevent artisanal miners stealing minerals from the mine from using the villages as a base, negatively affected the villagers. For the past two years, CMSK and the Congolese authorities have failed to conduct a full inquiry into the incident and have not engaged in negotiations with representatives of the affected community in order to reach a settlement. The complainants believe that given the stalemate, it is time for the Belgian NCP to investigate GFI's responsibility for the human rights violations and to use its good offices to bring a satisfactory and fair resolution to this long-running dispute. The complaints furthermore ask the

NCP to ensure that GFI bring its security arrangements for the Luiswishi mine into line with international human rights standards and emphasise that the company has a responsibility to ensure that mine police and security guards deployed to protect the mine are trained and follow the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

Developments/Outcome
The Belgian NCP initiated mediation, but not under the specific instance procedures of the OECD Guidelines. Three meetings were held between September and November 2012.

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Case	Human rights and environmental violations at Centerra Gold's mining operations in Mongolia		
Company/ies	Date filed	Current status	Duration (to date)
Centerra Gold Inc	15 March 2012	Filed	8 months
Complainants	MiningWatch Canada, United Mongolian Movement of Rivers and Lakes (UMMRL), Oyu Tolgoi Watch, Southwest Research and Information Center (SRIC), Rights and Accountability in Development (RAID)		
National Contact Point(s) concerned	Canada		
Guidelines Chapter(s) & paragraph(s)	Chapter I (Concepts and Principles), §2; Chapter II (General Policies), §5,10, 11; Chapter IV (Human Rights), §1; Chapter VI (Environment), §1, 2a, 4		

Issue

The complaint, filed by a consortium of Canadian and Mongolian NGOs, alleges that Centerra Gold has violated Mongolian law and the human rights and environment provisions of the OECD Guidelines at its gold mining operations at the Boroo Mine and its Gatsuurt gold deposit in Selenge Province, Mongolia.

According to the complaint, Centerra's proposed mine is situated in a forested area where mineral exploration and mining

operations are prohibited. The law protecting the forests and rivers was passed in July 2009, and in 2010 the Mongolian Cabinet issued a list of licences to be revoked, among them Centerra Gold's licences for the Gatsuurt project.

Despite formal notifications that the company's license might be revoked and that it should halt its activities until a formal decision had been taken, the company has continued extensive forest-clearing and disruption of the Gatsuurt River by mine-related

operations. Local herders complain that the forest-clearing and use of explosives have released arsenic and other heavy metals into the Gatsuurt River, which is now too contaminated to safely drink. Livestock have developed lesions and local people suffer from skin disorders that they attribute to the company's activities.

Developments/Outcome
Centerra Gold has responded to the complaint, and the NCP is in the process of making its initial assessment. On 4 September

2012, the Canadian NCP circulated a draft initial statement for comment. The complainant

had concerns about some of the NCP's interpretations of the Guidelines. Final comments on

the draft have been submitted and additional information supplied.

11

Case	Health issues & discrimination on cruise ships in India		
Company/ies	Date filed	Current status	Duration (to date)
Carnival plc	16 January 2012	Rejected, 30 August 2012	8 months
Complainants	Ms Z		
National Contact Point(s) concerned	United Kingdom		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), § 2, 6, 7; Chapter V (Employment), § 1d, 4a		

Issue

Ms. Z filed a complaint against Carnival plc, owner of several cruise ships in India referencing the 2000 version of the OECD Guidelines. Ms. Z has worked on Carnival plc's cruise ships in the period November 1999- August 2008 and claims that she contracted diabetes and other health related conditions as a result of negligent medical treatment by the company.

She furthermore alleges that Carnival plc failed to provide an effective operation-level grievance mechanism for those potentially impacted by the company's operations, where there is no effective judicial or non-judicial mechanism available. She furthermore claims to be discriminated against on the basis of her national extraction.

Developments/Outcome

Carnival plc denied all allegations and argues that it does not consider the OECD Guidelines complaint mechanism the appropriate medium for bringing a personal injury claim. The company argues that there is no evidence for a causal link between Ms. Z's health related issues and the medical treatment she received.

Ms. Z refuted Carnival's argumentation, but accepts that the complaint under the OECD Guidelines is not the proper forum for a personal injury claim. Additionally, she argues that any legal action against Carnival is difficult for a resident in India.

On 30 August 2012 the NCP decided to reject the complaint on the grounds that the allegations made in the complaint

have not been supported by sufficient evidence and therefore have not been substantiated.

On 2 September 2012 the complainant has made an application to the Review Committee of the NCP for review whether procedural errors were made by the NCP. The application centered around the issue whether the NCP in making an Initial Assessment ought to have taken account of information from an authoritative source not submitted by a party, but available to the government. In its assessment the Review Committee does not consider the NCP bound to take account of information not submitted by a party and is furthermore of the opinion that the additional information not considered by the NCP would not have had any bearing on the decision made

12

Case	Environmental and human rights breaches by Shell in the Niger Delta		
Company/ies	Date filed	Current status	Duration (to date)
Royal Dutch Shell	30 December 2011	Pending	11 months
Complainants	Amnesty International, Friends of the Earth International (FoEI)		
National Contact Point(s) concerned	Netherlands, United Kingdom		
Guidelines Chapter(s) & paragraph(s)	Chapter III (Disclosure), Chapter IV (Human Rights), Chapter VI (Environment) and Chapter VIII (Consumer Interests).		

Issue

Amnesty International & FoEI allege that Royal Dutch Shell has breached human rights and environmental provisions of the Guidelines at its oil operations in Nigeria. The complainants are concerned by the practices and communications of Shell with regard to its in Ogoniland in the Niger Delta. According to the complainants, Shell is in breach of the OECD Guidelines because of the severe pollution it has caused, the company's slow and inadequate response to oil spills, and insufficient control and maintenance of oil infrastructure. The complaint also alleges that the information provided by Shell with regard to these matters is incorrect, misleading and unsubstantiated.

The complainants have documented the impact of the oil industry on the environment and human rights in the Niger Delta over many years and also base their complaint on a report recently conducted by the United Nations Environment Programme (UNEP) at the request of the Nigerian Government to determine the environmental and health impacts of oil contamination in Ogoniland. Over slightly more than a year the UNEP researchers examined many locations, surveyed kilometres of pipeline, reviewed medical records and engaged people at local community meetings.

Oil production in the Niger Delta Area ran from the end of the

1950s until 1993. The UNEP report maintains that even though no oil production has taken place in the region since, the oil field facilities have not been decommissioned. Oil pipelines carrying oil from other parts of the country still pass through Ogoniland but are not being adequately maintained.

Consequently, the infrastructure deteriorated due to exposure to natural forces, which caused severe environmental pollution in the Niger Delta area. In addition, the UNEP report documents how Shell failed to adequately clean up oil spills and related contamination, failed to take appropriate action after problems had been identified, and failed to provide for

adequate remediation.

Developments/Outcome
The case has been accepted as a

specific instance and is currently pending.

13

Case	BHP Billiton's violation of intellectual property rights in Chile		
Company/ies	Date filed	Current status	Duration (to date)
BHP Billiton	15 December 2011	Pending	11 months
Complainants	Escapes Santander		
National Contact Point(s) concerned	Chile		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Principles), §3, 6, 10; Chapter IX (Science and Technology), §2		

Issue

This case involves a complaint filed by Escapes Santander (Santander), a small Chilean company active in the country's northern mining zone, against Minera Escondida Limitada (Minera), a subsidiary of Australia-based mining giant BHP Billiton.

Santander alleges that Minera /BHP Billiton has violated its intellectual property rights related to the design of safety equipment for light trucks used in mining operations. Despite the fact that Santander's designs are patented under Chilean law, Minera/BHP Billiton is employing Santander's design without paying compensation. Santander

is also pursuing legal recourse in Chile.

Minera/BHP Billiton has fired back by requesting that Santander's patents be nullified. In addition to the intellectual property rights issue, the complaint also accuses the company of not operating in accordance with sound commercial practice, of failing to uphold and apply good corporate governance practices, and of failing to encourage business partners to apply principles of corporate conduct compatible with the Guidelines.

Though not an NGO case, this case is notable (and is therefore included in this update) because

it is one of the few cases filed against a multinational enterprise by another company (in this case a local small/medium-sized enterprise).

Developments/Outcome

The Chilean NCP has accepted the case, and is in the process of setting up mediation. Minera/BHP Billiton has denied all of the allegations in the complaint and noted that, given the on-going legal proceedings, it has no reason to engage in the NCP-facilitated process. Santander emphasizes that the complaint extends beyond the narrow legal issues to broader management practices, particularly related to the supply chain and local SMEs.

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Case	Sjovik's breaches of human rights in Western Sahara		
Company/ies	Date filed	Current status	Duration (to date)
Sjovik AS.	5 December 2011	Pending	11 months
Complainants	The Norwegian Support Committee for Western Sahara (NSCWS)		
National Contact Point(s) concerned	Norway		
Guidelines Chapter(s) & paragraph(s)	Chapter IV (Human Rights)		

Issue

The NSCWS complaint accuses Sjovik AS of undermining the Sahrawi people's right to self-determination and thereby breaching the Human Rights chapter of the OECD Guidelines.

NSCWS alleges that two of Sjovik's African subsidiaries breached the OECD Guidelines by operating, leasing/operating a fish vessel and a fish processing plant in the Non-Self-Governing Territory of Western Sahara. The company is accused of failing to respect the right to self-determination of the Saharawi people, and failing to consult the

Saharawi people in case of the exploitation of natural resources.

NSCWS urges the company to withdraw from West Sahara and to recognize the status of Western Sahara as a Non-Self-Governing Territory, in which the inhabitants of the territory have the right to self-determination over their natural resources.

Developments/Outcome

After receiving the complaint, the Norwegian NCP forwarded it to and had a meeting with the company, who argued that it possesses the necessary fishing licenses to justify its activities.

Sjovik furthermore argued that its activities also contribute to employment and development of the region and that it has several agreements with the Sahrawi people related to fishing quotas and delivery to Sahrawi factories.

After an initial review period of approximately three months, the NCP issued an initial assessment accepting the case for further examination and announcing its intention to invite the parties to a meeting to discuss whether mediation is needed in order to resolve the allegations in the complaint.

Case	Health risks related to leaded gasoline additives produced by Innospec, Xstrata and TetraBOOST		
Company/ies	Date filed	Current status	Duration
Xstrata PLC (UK)	27 August 2011	Withdrawn, 17 Feb. 2012	6 months
Innospec (US)	27 August 2011	Concluded, 1 February 2012	5 months
TetraBOOST Ltd. (UK)	23 December 2011	Rejected, 14 May 2012	5 months
Complainants	The LEAD Group		
National Contact Point(s) concerned	US (lead on Innospec), UK (lead on Xstrata, TetraBOOST), Switzerland, Australia		
Guidelines Chapter(s) & paragraph(s)	Chapter VI (Environment), §3, 7, 8		

Issue

The LEAD Group's complaint alleges that Innospec Inc, Xstrata and TetraBOOST Ltd. have violated the Environment Chapter of the OECD Guidelines related to the production and distribution of an additive for leaded gasoline.

According to the company's website, Innospec is the world's only manufacturer and distributor of the environmentally-harmful additive Tetra Ethyl Lead (TEL) for leaded gasoline, which is possibly sold in Afghanistan, Algeria, Burma, Iraq, North Korea and Yemen. Xstrata owns the Australian mine and the UK refinery that produces and processes the lead for Innospec's TEL production.

In the complaint, The LEAD Group requests that Innospec cease its production and distribution of TEL for MOGAS motor vehicle fuel (but not for aviation fuel) by the end of 2011. They also request that Xstrata stop supplying lead to Innospec for TEL for MOGAS if the company does not cease its TEL production.

An additional complaint against the UK-based company TetraBOOST alleges that TetraBOOST distributes a fuel additive made from Innospec's TEL in several European countries. The LEAD Group claims that the distribution of TetraBOOST's product is equally harmful to people and the environment and requests TetraBOOST terminate the distribution of products containing TEL.

Developments/Outcome

The complaints against Xstrata

PLC and Innospec were filed on 27 August 2011 at the Australian, Swiss, UK and US NCPs with a supplemental submission filed on 25 October 2011 at the request of the US NCP. The additional complaint against TetraBOOST was filed with the UK NCP on 23 December 2011.

The NCPs agreed to collaborate in handling the various cases. The US NCP took the lead in handling the case against Innospec. After conducting an initial assessment, the US NCP accepted the case for further consideration. The NCP offered to host a mediated dialogue aimed at reaching a settlement. The LEAD Group was prepared to engage in the mediation, but Innospec refused, claiming that the complaint was inaccurate and that it did not believe The LEAD Group would engage in good faith dialogue. Seeing no possibility to move forward with mediation, the US NCP decided to conclude the case in February 2012 with a final statement without making an analysis or determination as to whether Innospec had breached the Guidelines.

The UK NCP took the lead in handling the complaint against Xstrata because Xstrata is UK-incorporated and the alleged breaches took place in the UK. After an initial assessment, the NCP accepted the case for further consideration. Since the complaint was filed before the 2011 Guidelines entered into force, the UK NCP declared it would assess the case based on the 2000 Guidelines.

Both Xstrata and The LEAD Group accepted the UK NCP's offer to host conciliation/mediation with the aim of reaching a settlement. A meeting

between the parties was held on 17 February 2012 in London. The LEAD Group attended the session via phone conference and invited UK-based NGO RAID to physically attend the meeting on behalf of The LEAD Group. The mediation session resulted in an agreement between the parties and the withdrawal of the complaint against Xstrata. The UK NCP issued a final statement describing the process and noting that an agreement had been reached.

The UK NCP also conducted an initial assessment of the complaint against TetraBOOST. After facilitating email exchanges between the parties, the NCP rejected the case in May 2012 arguing that accepting the case would not contribute to the purposes of the Guidelines because TetraBOOST is a small company without much influence in the global market. The NCP further argues that because TetraBOOST's core (and only) business involves the distribution of TEL, asking the company to change its behaviour would mean that the company would cease to exist, and thus the complaint is not eligible. The complainants strongly disagree with the NCP's logic in rejecting the case. The fact that a multinational enterprise is 'small' should not exempt it from adhering to the Guidelines, nor should a company whose core business violates the Guidelines be exempted simply because observing the Guidelines would result in the company going out of business. The complainants are worried that the UK NCP's decision could set a dangerous precedent for other OECD Guidelines cases.

Case	AES's employment practices and racial discrimination in Cameroon		
Company/ies	Date filed	Current status	Duration
AES Corporation	27 August 2011	Rejected, 13 September 2012	12 months
Complainants	Edouard Teumagnie (AES Sonel employee)		
National Contact Point(s) concerned	United States (lead), United Kingdom		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), §6; Chapter III (Disclosure), §4d; Chapter V (Employment), §1e		

Issue

AES Sonel employee Edouard Teumagnie alleged he suffered racial discrimination between July 2001 and August 2002. Mr Teumagnie was employed by Sonel, Cameroon's national utility company, when US-based AES took over the company. According to the complaint, AES replaced number of Cameroonian management staff with expatriate staff that received salaries 25 times higher than local staff members. The complainant alleges this wage difference was a result of racial discrimination.

Developments/Outcome

The complaint was originally filed at the UK NCP, but was quickly transferred to the US NCP because AES Sonel's parent company, the AES Corporation, is

based in the US.

During initial assessment phase the US NCP required the complainant to provide English language translations for several French supporting documents. The complainant submitted the translations in January 2012 along with additional citations of alleged breaches of the General Policies and Disclosure chapters.

The US NCP engaged the US embassy in Cameroon to conduct local interviews and confirm certain factual circumstances. Following a phone call between the NCP and AES, the company submitted its formal response in June 2012 rejecting the allegations and explaining that the salary differences are based on standard company

procedures.

More than one year after filing, the US NCP completed its initial assessment and decided to reject the case. The NCP maintains that the complainant provided insufficient substantiation for a possible race-related basis for the salary differences. Moreover, the NCP is of the opinion that differentiated wage scale policies for expatriate and local employees are common practice among MNEs and are not inconsistent with the Guidelines. The NCP did not address the alleged breaches of the General Policies and Disclosure chapters. On-going parallel proceedings in Cameroon were not a factor in the NCP's decision to reject the complaint.

Case	Human rights abuses of temporary workers at Nidera's corn seed operations in Argentina		
Company/ies	Date filed	Current status	Duration
Nidera	26 June 2011	Concluded, 5 March 2012	8 months
Complainants	The Center for Human Rights and Environment (CEDHA), INCASUR, Oxfam Novib, and the Centre for Research on Multinational Corporations (SOMO)		
National Contact Point(s) concerned	Netherlands		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), Chapter V (Employment)		

Issue

The complaint, filed by a group of Argentine and Dutch NGOs, alleges that Nidera has abused the human rights of temporary workers at its corn seed processing operations in Argentina. Based largely on official reports by Argentine government departments, the complaint details the poor living and working condition at the seed plants and how workers were kept in the dark about the sub-standard conditions during the recruitment process.

The complainants call on Nidera to develop and implement an effective company-wide human rights policy and commitment including concrete human rights due diligence procedures. Such procedures are necessary for identifying, preventing and mitigating actual and potential adverse human rights impacts

throughout its global operations, in particular regarding hiring and employment processes of temporary workers in detasseling operations.

Developments/Outcome

The NCP conducted an initial assessment and accepted the case for further consideration. After a series of meetings enabled by the NCP in which the parties discussed the issues in the complaint, an agreement was reached. As part of the agreement, Nidera strengthened its human rights policy, formalised human rights due diligence procedures for temporary rural workers, and allowed the NGOs to monitor its Argentine corn seed operations through field visits. A final statement issued by the Dutch NCP on 5 March 2012 confirmed the positive outcome of the

dialogue between the parties. Both parties thanked the Dutch NCP for providing an environment that enabled constructive dialogue and discussion.

As was foreseen in the agreement that concluded the case, the complainants were allowed to monitor the implementation of the agreement during the 2011-2 summer corn detasseling season. The complainants visited fields and campsites, interviewed workers, and documented working and environmental conditions photographically. In their report, the complainants confirmed that Nidera had complied with all of the conditions of the agreement. Workers' health and safety conditions were satisfactory, and workers themselves reported

their contentment with the improved conditions.

Additionally, Nidera complied with its commitment to implement an operational-level

grievance mechanism and produced its first-ever corporate responsibility report in line with the GRI's G3.1 Guidelines. The company and complainants are preparing a joint '1-year on'

report back to the Dutch NCP on the implementation of the agreement.

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Case	Environmental pollution at Barrick Gold's mines in Argentina		
Company/ies	Date filed	Current status	Duration (to date)
Barrick Gold Corporation	9 June 2011	Pending	17 months
Complainants	Citizen Participation Forum for Justice and Human Rights (FOCO), Asociación Ecologista Inti Chuteh, Asamblea Popular por el Agua, Asamblea Permanente por los Derechos Humanos de La Matanza; Bienaventurados los Pobres, Conciencia Solidaria al Cuidado del Medio Ambiente, el Equilibrio ecológico y los derechos humanos Asociación Civil, National Deputy Victoria Donda, National Deputy Miguel Bonasso; the Frente Cívico por la Vida, Nora Cortiñas, Organización de Naciones y Pueblos Indígenas en Argentina and the Inter-American Platform for Human Rights, Democracy and Development		
National Contact Point(s) concerned	Argentina		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), Chapter III (Disclosure), Chapter VI (Environment)		

Issue

The complaint alleges that Barrick has violated Guidelines' provisions on disclosure, environment and general policies at the company's Veladero and Pascua Lama gold mines in the Argentine San Juan province.

The complainants allege that Barrick has systematically polluted groundwater, air, soil and glaciers and has caused a loss of biodiversity around the mines. The complainants also highlight the company's negative impact on the local population's health and the deteriorating regional economy resulting from the destruction of natural landscapes and restrictions on access to land and water resources. Moreover, the complainants allege that Barrick has violated the right to information, has been improperly involved in local political decision making, and has used violence against social and environmental organisations. The complainants call on Barrick to actively engage and consult affected

communities, to conduct an interdisciplinary environmental analysis, and to initiate medical studies to investigate negative impacts on the local people's health.

Developments/Outcome

After not hearing back from the NCP more than a month after filing the complaint, on 22 July 2011 FOCO submitted a written request for information on the status of the complaint. The NCP invited the complainants to a meeting on 2 August 2011, at which time the NCP requested additional documentation of the alleged violations and more detail regarding parallel legal proceedings against the company.

On 6 October 2011, FOCO provided the NCP with the additional information and requested that the NCP move quickly to finalise the initial assessment and forward the complaint to the company. On 2 November 2011, the Minister

asked the complainants to specify whether the complaint is primarily directed against the parent company, against its Argentine subsidiaries, or both.

In December 2011, FOCO clarified its complaint against Barrick Exploraciones Argentinas S.A. and Exploraciones Mineras S.A and submitted additional information. More administrative delays from the NCP ensued, partly due to multiple changes in NCP personnel. Following repeated requests by the complainants, the NCP finally invited the complainants to an 'informal' meeting on 10 August 2012, at which time they confirmed that the case had been officially accepted as a specific instance – more than one year after the complaint had been submitted. Currently, the complainants are awaiting further progress on the case as the Argentine NCP undergoes another personnel change.

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Case	Labour and environmental violations in the USA by United Water		
Company/ies	Date filed	Current status	Duration (to date)
United Water	8 June 2011	Part withdrawn, part filed	17 months
Complainants	Utility Workers Union of America (UWUA), Food & Water Watch (FWW)		
National Contact Point(s) concerned	United States, France		
Guidelines Chapter(s) & paragraph(s)	Chapter I, §2; Chapter V (Employment), §1b, 8; Chapter VI (Environment), §1a, 2		

Issue

United Water is an American water utility and a wholly-owned subsidiary of French MNE Suez Environment. The complaint

alleges environmental and labour violations by United Water.

During 2010, the United States National Labor Relations Board

(NLRB) issued five separate complaints charging that United Water has engaged in unfair labour practices during negotiations with the UWUA in

Pennsylvania, New Jersey, and Delaware. The complaints charge that management has engaged in bad faith negotiations and has retaliated against workers for their union activities by withholding scheduled bonus payments.

One of the complaints – issued by the NLRB in Pennsylvania in October – charges that United Water President Robert Iacullo engaged in illegal conduct by distributing correspondence to employees undermining the union’s status as the workers’ bargaining representative.

Furthermore, in December 2010, a federal grand jury issued a criminal indictment charging that United Water intentionally manipulated E. coli bacteria monitoring tests at a wastewater treatment plant in Gary, Indiana,

between 2003 and 2008. The company has pleaded not guilty.

The indictment alleges that United Water manipulated the monitoring results as part of a scheme to reduce its costs for purchasing chlorine, which is used as a disinfectant before the plant discharges treated sewage into a public waterway near Chicago. United Water’s president has publicly dismissed the seriousness of the charges, claiming the indictment involves disagreement about operating and monitoring methods.” In August 2011, the federal court denied United Water’s motion to dismiss the indictment.

Developments/Outcome

The US NCP held a meeting with the company to get its position on the issues raised in the complaint. The complainants also

provided additional information as requested by the NCP. Given that United Water is a subsidiary of the French Suez Environment, UWUA requested that the French NCP get involved and engage the company’s French management. French NCP declined to do so.

In February 2012, UWUA and United Water resolved the NLRB complaints that formed the basis of the Guidelines case. UWUA also resolved its collective bargaining disputes with the company in six locations, on very favorable terms for workers. According to UWUA, this success was as a direct result of the comprehensive campaign against the company. As a result of the settlement, UWUA withdrew its complaint with the NCP. The FWW case remains in the initial assessment phase at the NCP, more than 17 months after filing.



Case	Xstrata’s negative impacts on glaciers in Argentina		
Company/ies	Date filed	Current status	Duration (to date)
Xstrata	1 June 2011	Pending	17 months
Complainants	The Center for Human Rights and Environment (CEDHA), supported by Fundación Ciudadanos Independientes and Asamblea El Algarrobo		
National Contact Point(s) concerned	Argentina (lead), Australia		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), §1,6,7; Chapter III (Disclosure), §1,2,4,5; Chapter VI (Environment) , §1 3,4,5,6,8		

Issue

The complaint, filed by the Argentine environmental and human rights organization CEDHA, alleges that Australia-based Xstrata Copper is impacting glaciers and permafrost in two of its operations in Argentina, *El Pachón* and *Filo Colorado*.

The complaint, filed at the Australian NCP, is based on two recent CEDHA reports that reveal extensive environmental impacts by the *El Pachón* and *Filo Colorado* projects.

According to the complaint, a map produced by the consulting firm URS for Xstrata Copper reveals the presence of over 200 rock glaciers and 20% permafrost in El Pachón’s vicinity. Xstrata, however, refuses to admit to the presence of any glaciers at either of the project sites. Moreover, Xstrata has filed an injunction request to the federal courts in Argentina, requesting that a recent National Glacier Protection Act be declared unconstitutional.

The complainants allege that if the *El Pachón* project moves forward as planned in 2013, the pit area will destroy rock glaciers and permafrost. Projected waste pile sites also include rock glaciers and permafrost zones.

The complaint also points to the poor scientific quality of Xstrata’s impact assessment as well as Xstrata’s unwillingness to engage in a solution to its glacier impact problem. CEDHA requests that the case be dealt with by the Australian NCP, in lieu of the Argentine, and that the Australian NCP use its good offices to ensure that Xstrata repairs damages to glaciers and avoids all future damage.

Developments/Outcome

After consulting with the Argentine NCP, the Australian NCP decided, based on the location of the actors involved, the place of operations, and the language of operations, that it would be best to engage the Argentine NCP in the Specific Instance, but clarified that it would keep engaged and continue to offer its good offices.

After conducting an initial assessment that involved meetings with both CEDHA and Xstrata Copper Argentina, the Argentine NCP decided to accept the case.

Since then, the case has suffered innumerable delays, largely due to Xstrata’s ambivalence as to whether it would engage in NCP-facilitated mediation. More than a year has passed with no visible advancements on the proposed areas of discussion.

The parties were scheduled to meet to discuss logistics, timeframe and expected outcomes, including CEDHA’s proposal to work collaboratively on drafting a Protocol for Mining Activity in Glacier Territory. This idea moved forward until Xstrata’s legal team obtained victory in federal courts regarding the temporary suspension of parts of the National Glacier Act. Xstrata has subsequently stalled their engagement in the NCP process. That court decision was recently reversed, placing Xstrata once again, in problematic contention with compliance of

Argentina's glacier law, which is fundamental to this specific instance. Progress now depends on Xstrata's willingness to keep to the agreed engagement and the NCPs insistence on the parties keeping their commitments.

Unfortunately, the Argentine NCP has changed key NCP

personnel several times since the opening of the case. This has been further complicated by internal delays in maintaining continuity with administrative responsibilities of the NCP. More than a year has passed since the presentation of the case and no substantive progress has been made on early commitments to collaborate on a friendly

settlement. As no movement seemed to take place, CEDHA has presented a proposed chronogram of process with corresponding products, which has yet to be responded to by Xstrata or NCP.

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Case	Human rights violations at UCM's Wishbone Hill coal mine		
Company/ies	Date filed	Current status	Duration
Usibelli Coal Mine J-Power	5 May 2011 5 May 2011	Rejected, 18 July 2012 Rejected, 18 July 2012	14 months 14 months
Complainants	Chickaloon Village Traditional Council (CVTC)		
National Contact Point(s) concerned	United States, Japan		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), §1,2,5 ; Chapter III (Disclosure), §1,2,4,5 ; Chapter VI (Environment), §2,3		

Issue

The Chickaloon Village Traditional Council (CVTC) alleges that Alaska-based Usibelli Coal Mine (UCM) and Tokyo-based J-Power have violated the OECD Guidelines with relation to the exploration permit and other activities related to the Wishbone Hill coal mine in Alaska, USA. In 1997, UCM purchased coal mining leases for 8,000 acres near Wishbone Hill, within Chickaloon ancestral lands. The complainants allege that in 2010, pursuant to prior exploration and mining permits based upon 20-year-old stale, inaccurate environmental and cultural data, UCM built a coal hauling and exploration road to the mine site less than 100 yards from the Chickaloon Tribal school, drilled up to 20 exploratory drill holes and excavated three trenches. The Wishbone Hill mine is expected to reach full production in 2012, and J-Power, a Japanese electric utility, is "the most likely purchaser" of coal from the mine.

Specifically, the complainant contends that UCM has failed to contribute to sustainable development, violated the human rights of Chickaloon Tribal members, sought and accepted exemptions not contemplated in the statutory or regulatory framework, has failed to properly consult and disclose information

to Tribal members, and has failed to prepare an appropriate environmental impact assessment for its Wishbone Hill activities. According to the complainant, UCM's exploration activities were environmentally destructive, socially disruptive and undertaken without any Tribal consultation. The company has failed to provide the community with accurate information on the effects of its (proposed) activities on the survival of a culturally important salmon species and has ignored CVTC's considerable efforts to restore the salmon, decimated by previous coal mining. CVTC's further alleges that UCM's environmental impact assessment is based on incomplete and false information about mammal (particularly moose), salmon and bird species and habitats and that it failed to adequately address the Tribe's concerns about water and health problems their religious and spiritual rights, their life-ways, ceremonies and spiritual relation to their ancestral lands.

In addition, the complainants allege that J-Power has failed to encourage its supplier UCM to apply principles of corporate conduct compatible with the Guidelines, nor has it disclosed information on social and environmental risks with regard to its supplier UCM, thereby

placing it in violation of Chapters II and III of the Guidelines.

Developments/Outcome

The US and Japanese NCPs collaborated on the initial assessment, with the US NCP contacting the US-based complainants and UCM, and the Japanese NCP contacting J-Power. It took the NCPs over one year to complete the initial assessment, finally issuing a statement signed by both NCPs in July 2012. Though the NCPs acknowledged the relevance of the issues raised by the complainants, they rejected the case against UCM on the grounds that the company has only domestic (US) operations and is thus not a multinational enterprise. The NCPs claimed that this means that the Guidelines "do not pertain" to UCM. The NCPs did not mention the Guidelines' stipulation that "The Guidelines represent good practice for all companies". The NCPs also rejected the case against J-Power, claiming that the business relationship between the two companies is "not strong enough to require the application of the Guidelines". The NCPs do not explain exactly what sort of relationship would be "strong enough" to require the application of the Guidelines.

Case	CRH's construction activities in the Occupied Palestine Territories		
Company/ies	Date filed	Current status	Duration (to date)
CRH plc.	3 May 2011	Blocked	18 months
Complainant	Ireland Palestine Solidarity campaign		
National Contact Point(s) concerned	Ireland (lead), Israel		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), §1,2,3,6,11		

Issue

The Ireland-Palestine Solidarity Campaign alleges that the Irish building materials company CRH has violated the OECD Guidelines in its operations in the Occupied Palestine Territories.

The complaint contends that CRH, through its jointly-owned subsidiary Neshar Cement Enterprises, has violated OECD Guidelines provisions related to sustainable development and respect for human rights.

Through its subsidiary, CRH supplies cement for the Separation Wall, which restricts

the movement of the Palestinian people, destroys property, trees and agricultural land and cuts off access to water in the West Bank and East Jerusalem. The Wall cuts communities and families off from each other, separates people from vital services such as health care and educational facilities, and hinders Palestinian access to employment. CRH also provides cement used for building illegal settlements in the West Bank.

Developments/Outcome

As part of its initial assessment, the Irish NCP contacted the company for a response. OECD

Watch understands that CRH did not respond to the content of the complaint but did raise questions regarding legal and procedural matters of the complaint procedure. OECD Watch understands that the Irish and Israeli NCPs are collaborating on the case, but an inordinate amount of time has passed, and the NCPs have still not even issued any formal initial assessment. The NCPs seem paralysed and unable or unwilling to move forward on the case. OECD Watch now considers the case blocked, noting that CRH is the largest company in Ireland and politically very influential.

Case	Tax evasion by Glencore and First Quantum Mining in Zambia		
Company/ies	Date filed	Current status	Duration (to date)
Glencore International	12 April 2011	Filed	19 months
First Quantum Minerals	12 April 2011	Filed	19 months
Complainants	Sherpa, Berne Declaration, Centre for Trade Policy and Development, L'Entraide Missionnaire, Mining Watch Canada		
National Contact Point(s) concerned	Switzerland, Canada		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), §1,5,6; Chapter XI (Taxation)		

Issue

The complaint against Glencore International AG and First Quantum Mining Ltd. alleges that the company's Zambian subsidiary Mopani Copper Mines Plc. has manipulated its financial accounts in order to evade taxation. Together, Glencore and First Quantum directly or indirectly own 90% of the shares in Mopani Copper Mines.

Mopani is the largest mining corporation operating in Zambia and one of the country's largest producers of copper and cobalt. Mopani Copper Mines operates within a highly attractive fiscal environment, with a royalty tax

rate of 0.6%, a corporate tax rate limited to 25%, exemptions on customs duties, and a stability clause valid for 20 years (starting in 2000). Despite these numerous fiscal incentives and the assumed profitability of its mining operations, Mopani Copper Mines reports no profits, thereby considerably reducing its tax obligations.

A 2009 audit conducted by international accountants at the request of the Zambian authorities concluded that Mopani employs various techniques in order to avoid paying taxes in Zambia. These techniques include

overestimation of operating costs, underestimation of production volumes, transfer pricing manipulation and breach of the "Arms Length" principle.

The complainants argue that the tax evading practices of Mopani place parent companies Glencore International and First Quantum Mining in breach of the OECD Guidelines provisions on Taxation and General Policies.

Developments/Outcome

The NCPs have not yet published an initial assessment on the admissibility of the complaint, but a meeting between the parties has taken place.

Case	Human rights abuses at Barrick Gold's Porgera Mine in Papua New Guinea		
Company/ies	Date filed	Current status	Duration (to date)
Barrick Gold Corporation	1 March 2011	Pending	20 months
Complainants	MiningWatch Canada, Akali Tange Association, Porgera SML Landowners Association		
National Contact Point(s) concerned	Canada		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), §1,2,5,6,7,8,11 ; Chapter III (Disclosure), §1,5 ; Chapter VI (Environment), §1a,2a,4		

Issue

The complaint alleges that Canadian mining company Barrick Gold Corporation has violated the OECD Guidelines at its operations at the Porgera Joint Venture (PJV) gold mine in the Porgera valley, a remote region Enga Province in the highlands of Papua New Guinea (PNG). Barrick has co-owned (95%) and operated the mine since 2006. The other 5% is owned by Mineral Resources Enga (MRE).

The notifiers contend that Barrick/PJV has violated sustainable development and environmental provisions of the Guidelines and abused the human rights of the local community in a number ways. Over the past two decades, there have been consistent and widespread allegations of human rights abuses committed by PJV security personnel in and around

the mine site, including killings and beatings of local Ipili men and beatings and rapes, including gang rape, of Ipili women. Additionally, the living conditions of people within the PJV mines Special Mine Lease Area are incompatible with human health and safety standards and the OECD Guidelines provision on sustainable development.

Moreover, in 2009 troops from the PNG Defense Force forcefully evicted local landowners near the

Porgera gold mine by burning down houses to allegedly restore law and order in the district. There has never been an investigation of these gross violations of human rights but the troops remain housed at the mine site and supplied with food and fuel by the mine.

In addition, the PJV mine yearly disposes of approximately 6.05 million tons of tailings and 12.5

million tons of suspended sediment from erodible waste dumps into the downstream Porgera, Lagaip and Strickland river systems, thereby polluting the river and endangering public health and safety of communities along the shores in violation of Chapter V of the Guidelines.

The notifiers further allege that Barrick/PJV has violated the OECD Guidelines with regard to good governance, promoting employee awareness of and compliance with company policies, and disclosure of information.

Developments/Outcome

The NCP has held informal meetings with both parties, and both have agreed to engage in mediation on the issue. A mediator has been agreed to by all parties, and formal mediation will commence in 2012.

Case	Misleading disclosure by Shell on oil spills in Nigeria		
Company/ies	Date filed	Current status	Duration (to date)
Royal Dutch Shell	25 January 2011	Pending	22 months
Complainants	Amnesty International, Friends of the Earth (FoE) International, FoE NL		
National Contact Point(s) concerned	Netherlands		
Guidelines Chapter(s) & paragraph(s)	Chapter III (Disclosure), §1,2, 4e; Chapter VI (Environment), §2, 3; Chapter VIII (Consumer Interests), §4		

Issue

Amnesty International and FoE allege that Royal Dutch Shell has breached the OECD Guidelines by making false, misleading and incomplete statements about incidents of sabotage to its operations and the sources of pollution in the Niger Delta.

Specifically, the complainants are concerned by Shell's repeated claims about the high proportion of oil spills in the Niger Delta that are due to sabotage committed by criminal gangs. According to the complainants, the company provides misleading information and omits mentioning relevant facts about the causes of oil

spills. Additionally, they claim that Shell bases its communications on biased and unverified information, thus failing to provide reliable and relevant information to external stakeholders.

The complainants are concerned that Shell's use of inaccurate and misleading figures on sabotage has serious negative consequences for the communities of the Niger Delta. For example, when spills are classified as the result of sabotage, Shell has no liability or responsibility to pay compensation for damage done to people or their livelihoods. In

addition, the complainants claim that Shell uses these figures to deflect criticism of its own environmental and human rights impact in the Niger Delta, misleading key stakeholders including consumers and investors.

Developments/Outcome

Based on its initial assessment of the complaint, the Dutch NCP accepted the case as a specific instance in February 2011. The NCP is discussing terms of reference for mediation with both parties. So far, the NCP has met with the complainants twice to initiate the mediation process.

Case	Mismanagement of community fund by ArcelorMittal Liberia		
Company/ies	Date filed	Current status	Duration (to date)
ArcelorMittal	24 January 2011	Pending	22 months
Complainants	Friends of the Earth Europe (FoEE), Sustainable Development Institute (SDI)/FoE Liberia		
National Contact Point(s) concerned	Luxembourg (lead), Netherlands		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), §1, 7, 11; Chapter VII (Bribery), §5		

Issue

FoEE and Liberia-based SDI allege that ArcelorMittal has breached the OECD Guidelines with regard to its management of the County Social Development Fund (CSDF).

According to the 25-year concession to develop the iron ore deposits that was negotiated in 2005, ArcelorMittal is obliged to provide approximately US\$ 73 million over the 25-year span of the Mineral Development Agreement to support socio-economic development in Liberia via the CSDF. The benefits of this fund should go to the Nimba, Bong, and Grand Bassa counties, with specifically 20% of each county's allocation to be spent annually on communities classified as directly affected by ArcelorMittal's operations.

The widespread allegations of misappropriation and misuse of the CSDF lead the complainants to conclude that the CSDF is failing to address the needs of communities impacted by the operations of ArcelorMittal. Moreover, the complainants argue that ArcelorMittal is not properly informing neighbouring communities about its operations and the possible impacts on these communities. Additionally, the complainants have concerns about the use of 100 pick-up trucks that were donated by ArcelorMittal to the Liberian government in 2008. Although the trucks were allegedly intended to support agricultural activities, the complainants found them to be mostly in the hands of Liberian government officials.

Developments/Outcome

The complaint was filed with the Dutch NCP, but because

ArcelorMittal is headquartered in Luxembourg, the Dutch NCP, after consulting with the complainants, forwarded the complaint to Luxembourg's NCP. However, the Dutch NCP did offer to assist Luxembourg's NCP with the procedural and the mediation aspects of the process.

After accepting the complaint, Luxembourg's NCP invited the parties to an initial joint meeting on 8 June 2012 to discuss terms and procedures for the mediation. Mediation is now in process.

In a related development, in March 2012 the Government of Liberia announced that it was "gravely concerned" about the alleged mismanagement of the CSDF and that it would begin an independent and comprehensive audit of the fund.

Case	Environmental and labour rights breaches at Cameroonian palm oil plantations		
Company/ies	Date filed	Current status	Duration (to date)
Bolloré	7 December 2010	Pending	23 months
Financière du champ de Mars	7 December 2010	Pending	23 months
SOCFINAL	7 December 2010	Pending	23 months
Intercultures	7 December 2010	Pending	23 months
Complainants	Association Sherpa, Centre pour l'Environnement et le Développement (CED), Fondation Camerounaise d'Actions Rationalisées et de Formation sur l'Environnement (FOCARFE), MISEREOR		
National Contact Point(s) concerned	Belgium, France, Luxembourg		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), §1, 2, 3, 4, 6, 7, 10; Chapter III (Disclosure), §2, 3, 4, 5; Chapter V (Employment), §1a, 2, 4b, 5, 8; Chapter VI (Environment), §1, 2, 3, 6d, 7, 8		

Issue

Sherpa, CED, FOCARFE and MISEREOR allege that the Société Camerounaise de Palmeraies's (SOCAPALM), a Cameroonian producer of palm oil, has negatively impacted the traditional livelihoods of local communities and plantation workers. The expansion of SOCAPALM's operations has allegedly diminished the size of local communities and the availability of public services and natural resources. Water and air pollution are not adequately treated, causing problems for both the communities and the

environment. Moreover, local villagers have reported physical abuse by SOCAPALM's security agent Africa Security.

The complainants also allege that SOCAPALM's treatment of plantation workers constitutes a breach of the Guidelines. They claim that precarious work is rampant, and freedom of association is limited. Additionally, the housing facilities are deplorable, and dividends promised to employees when SOCAPALM was privatised in 2000 were never paid. The complaint also claims that

SOCAPALM has breached the Guidelines' disclosure chapter by failing to properly disclose relevant information about the company and potential environmental risks.

The French, Belgian and Luxembourgian holding companies Bolloré, Financière du champ de Mars, SOCFINAL and Intercultures exert joint control over SOCAPALM's operations in Cameroon through complex financial investments. The complainants allege that these companies have breached the OECD Guidelines by failing to

take action to prevent SOCAPALM's negative impact on the environment, local communities, and workers.

Developments/Outcome
After conducting an initial assessment, the French NCP

declared the cases against all four companies admissible.

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Case	Child labour in the Uzbek cotton trade		
Company/ies	Date filed	Current status	Duration (to date)
Otto Stadtländer GmbH	25 October 2010	Concluded, 16 December 2011	14 months
Paul Reinhart AG	25 October 2010	Concluded, 9 March 2012	16 months
ECOM Agroindustrial Corp Ltd.	25 October 2010	Concluded, 22 December 2011	14 months
Devcot S.A.	25 October 2010	Concluded, 21 September 2012	23 months
ICT Cotton	12 December 2010	Concluded, 11 July 2011	8 months
Cargill Cotton	12 December 2010	Concluded, 11 July 2011	8 months
Louis Dreyfus	23 December 2010	Concluded, 29 February 2012	14 months
Complainants	European Center for Constitutional and Human Rights (ECCHR), Association Sherpa, Uzbek-German Forum for Human Rights (UGF)		
National Contact Point(s) concerned	France, Germany, Switzerland, United Kingdom		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), §1, 2, 10; Chapter V (Employment), §1b, 1c		

Issue

ECCHR, Sherpa, and UGF filed a joint complaint against 7 cotton dealers from France, Germany, Switzerland and the United Kingdom for knowingly profiting from (forced) child labour in the Uzbek cotton industry.

The use of child labour in the cotton harvest in Uzbekistan is a recognized problem. During the harvest season, schoolchildren are taken from classes and forced to pick cotton under poor labour conditions. The complainants claim that the money earned through the cotton trade flows directly into the Uzbek state treasury, leaving the families of the affected children with very little profit from their hard work. The complainants argue that if companies have built up intensive trade relations with state-owned enterprises of the Uzbek regime they should be aware of the problem of child labour in Uzbekistan and can thus be held accountable for their role in supporting and maintaining the system of forced child labour.

Developments/Outcome

The complaints against Otto Stadtländer, Paul Reinhart, ECOM and Devcot were filed simultaneously at the French, German and Swiss NCPs in October 2010. In early December 2010, additional complaints against Cargill Cotton and ICT Cotton were filed at the UK NCP, and on the 23rd of December a complaint was filed against Louis Dreyfus at the Swiss NCP.

Despite receiving the complaints two months later than the other NCPs, the UK NCP was the first to act and the first to facilitate a settlement. In its initial

assessment, the UK NCP concluded that the presence or lack of an investment nexus is not an appropriate criterion for determining whether a complaint deserves further consideration and subsequently accepted the two complaints in February 2011.

The UK NCP then proceeded to facilitate an agreement between ECCHR, Cargill Cotton UK and ICT Cotton UK on a number of concrete measures to be undertaken by the companies in order to improve the human rights situation in Uzbekistan. The parties also agreed to stay in close contact, including regularly informing each other about progress and meeting again in one year's time for a thorough evaluation of the progress made. This meeting will be facilitated by the UK NCP.

The Swiss NCP also accepted the three complaints against Swiss companies ECOM, Paul Reinhart and Louis Dreyfuss in March 2011. In line with the UK NCP's decision, the Swiss NCP acknowledged the companies' responsibility for conditions in their supply chains.

Although ECOM initially denied any violation of the Guidelines, after the Swiss NCP had facilitated informal meetings between the parties and then accepted the complaint, the company accepted the NCP's offer to facilitate a dialogue between the parties. Mediation was successful, and in the final agreement ECOM acknowledged its responsibility for the (child) labour situation in Uzbekistan. ECOM promised to take steps to eradicate and prevent child labour in its supply chain. The

parties also agreed to continue to exchange information on the situation in Uzbekistan. ECCHR will evaluate the steps undertaken by ECOM on a regular basis.

The NCP also facilitated a mediated dialogue in the Louis Dreyfus case. During the mediation the company acknowledged the problems in the Uzbek cotton trade and that cotton traders have a responsibility in the issue. The parties agreed that if the consultations between cotton traders and the Uzbek government fail to improve the situation, ECCHR and Louis Dreyfus will meet again for a dialogue on how to find a solution.

The case against Otto Stadtländer was handled by the German NCP. The company maintained that it received its cotton from third parties and not directly from the Uzbek cotton selling agencies, as was alleged by ECCHR. Moreover, Uzbek cotton represents only a relatively small proportion of the total turnover of the company. Nevertheless, the company agreed to an NCP-mediated dialogue with ECCHR that ended successfully with an agreement in December 2011. The company agreed to take measures to avoid forced child labour and to report back to the NCP on the action it had taken within one year. The agreement gained further significance when the German government subsequently took a strong position against child labour in the Uzbek cotton harvest.

In September 2012, the French NCP issued a final statement in the Devcot case. The NCP held that the trade in goods produced from forced child labor constitutes a flagrant violation of the OECD Guidelines, but stated that Devcot was not involved in the purchase of such goods

because Devcot has not purchased any Uzbek cotton in the last few years. Additionally, the NCP noted Devcot's commitment not to resume its trade in Uzbekistan until child labour has ended. The NCP also reminded the company of its responsibility for its supply chain

and invited Devcot to carry out due diligence and to encourage its business partners to implement the OECD Guidelines. ECCHR and SHERPA welcome this decision as a new step towards increased supply chain responsibility.

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Case	Concerns around BHP Billiton's Mozal bypass in Mozambique		
Company/ies	Date filed	Current status	Duration (to date)
BHP Billiton	18 October 2010	Concluded, 13 September 2012	23 months
Complainants	Justiça Ambiental (JA!), Livaningo, Liga Moçambicana dos Direitos Humanos, Centro Terra Viva, Kulima and Centro de Integridade Pública		
National Contact Point(s) concerned	United Kingdom (lead), Australia		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), §2, 5; Chapter III (Disclosure), §1, 2 ; Chapter VI (Environment), §1a, 1b, 2		

Issue

JA! and a coalition of Mozambican NGOs filed a complaint against BHP Billiton regarding its intention to operate its Mozal aluminium smelter under a bypass authorised by the Mozambican Ministry for Environmental Coordination. The bypass would allow the smelter to operate without exhaust filters for a period of 6 months. The company claims the bypass is necessary to upgrade the facility in order to comply with legally required standards.

However, the complainants are concerned with the environmental implications and serious impacts on human health the bypass would involve. The complainants made several unsuccessful attempts to resolve the issue directly with the company. With the OECD Guidelines complaint the

complainants hope to open an avenue for mediation and discussing the issue with the company. The bypass was supposed to go into effect on 1 November 2010, but a local court case has put it on hold.

Developments/Outcome

The Australian and UK NCPs agreed that the UK NCP would take the lead in handling the complaint. In February 2011, the UK NCP accepted the complaint. However, after consultation with the parties, the NCP decided to suspend the specific instance to first allow for mediation by the Compliance Advisor Ombudsman (CAO) of the World Bank's International Financial Corporation (IFC). After several meetings and attempts to reach an agreement between the parties facilitated by the CAO, the case there was closed without an agreement.

As a result, the UK NCP re-initiated its own process in November 2011 and offered mediation to the parties. After JA! declined the offer for mediation the UK NCP announced it would proceed with making an examination of the allegations.

In September 2012, the UK NCP concluded the case with a final statement determining that BHP Billiton had not breached the 2000 version of the OECD Guidelines. However, the NCP encouraged both BHP Billiton and Mozal SARL to improve procedures for engagement with local communities and be more forthcoming in disclosing information related to the smelter's impacts on the environment and the health and safety of adjacent communities.

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Case	Shell's environmental and human health violations in Argentina		
Company/ies	Date Filed	Current status	Duration (to date)
Royal Dutch Shell	1 June 2008	Pending	4.5 years
Complainants	Citizen Forum of participation for Justice and Human Rights (FOCO) , Friends of the Earth (FoE) Argentina		
National Contact Point(s) concerned	Argentina (lead), Netherlands		
Guidelines Chapter(s) & paragraph(s)	Preface; Chapter II (General Policies), §1, 2, 5; Chapter III (Disclosure), §1, 2, 4e, 5b; Chapter VI (Environment), §0-8.		

Issue

FOCO and FoE Argentina filed a complaint against Royal Dutch Shell's Argentine subsidiary, Shell Capsa, for violating domestic law and ignoring the Argentinean government's sustainable development campaigns and policies. The complaint alleges the irresponsible actions at the company's oil refinery in the Dock Sud industrial area have put the health and safety of

neighbouring residents in danger.

The affected community, called Villa Inflamable, is home to about 1,300 families who live in extreme poverty and lack access to basic sanitation, clean water and other essential utilities. Many of these problems stem from the socio-economic vulnerability of the inhabitants of the area. For decades, they have been living

with the toxic fumes produced by Shell Capsa's oil refinery. The complaint notes that the refinery was closed for seven days in August 2007 after Argentina's national environmental authority found multiple violations to national environmental law.

Developments/Outcome

The case was filed simultaneously with the Argentine and the Dutch NCPs because the complainants

believed the violations were a systemic problem in the global operations of Shell.

Despite the existence of parallel legal proceedings, in September 2008 the Argentine and Dutch NCPs accepted the case (with the former taking the lead). The Argentine NCP prepared a list of "considerations" from the complaint and asked the parties to respond; both complied. In addition, in April 2009, three members of the NCP visited Villa Inflammable to interview residents and see the conditions.

However, Shell Capsa refused to participate in the process or even recognize the NCP as the appropriate body for addressing the concerns raised in the complaint. Subsequently, 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 specific instance process. The complainants indicated that they would be open to such a meeting, but to date there has been no follow-up by the NCP.

In November 2009 the Argentine NCP announced it would close the case by publishing a report that describes its findings on the case, including the fact that the company refused to cooperate. However, the case remains pending and the company refuses to respond to the complaint until the court case against Shell Capsa is closed. The complainants are urgently requesting that the Argentinian

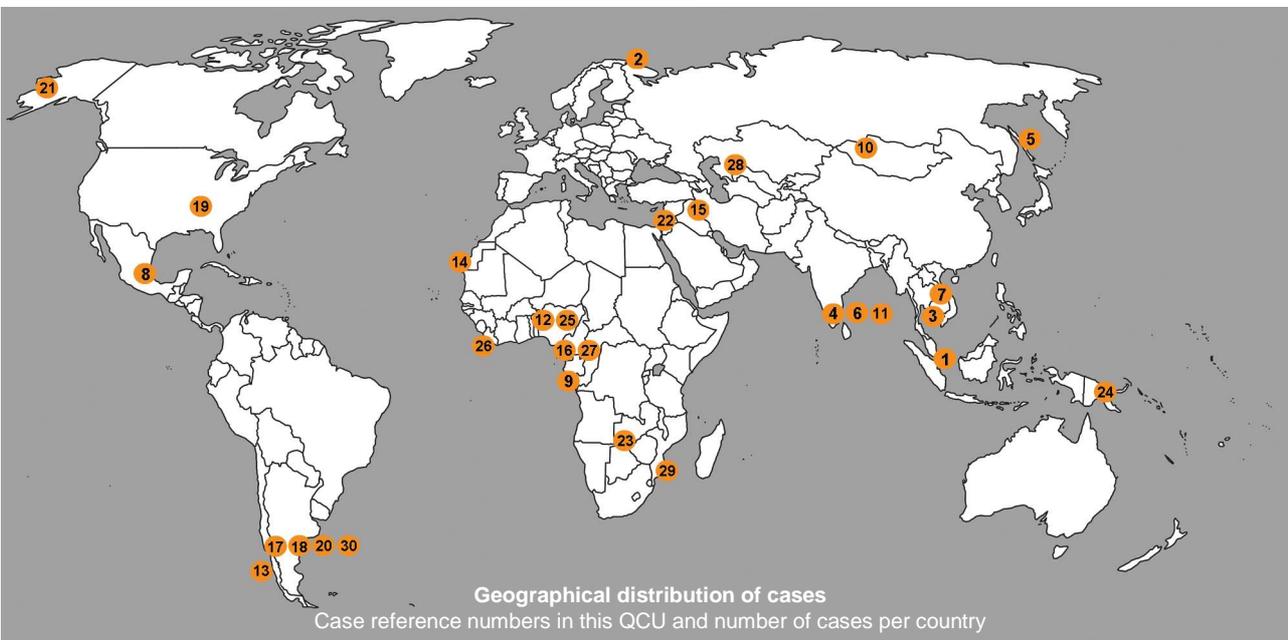
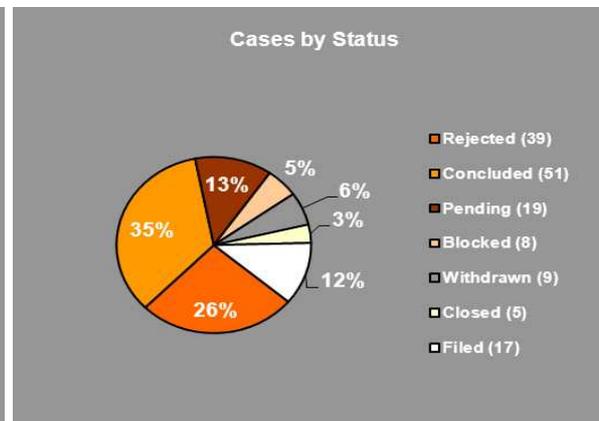
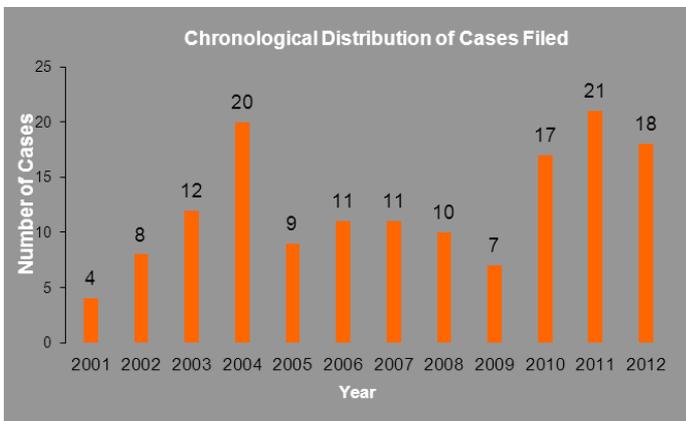
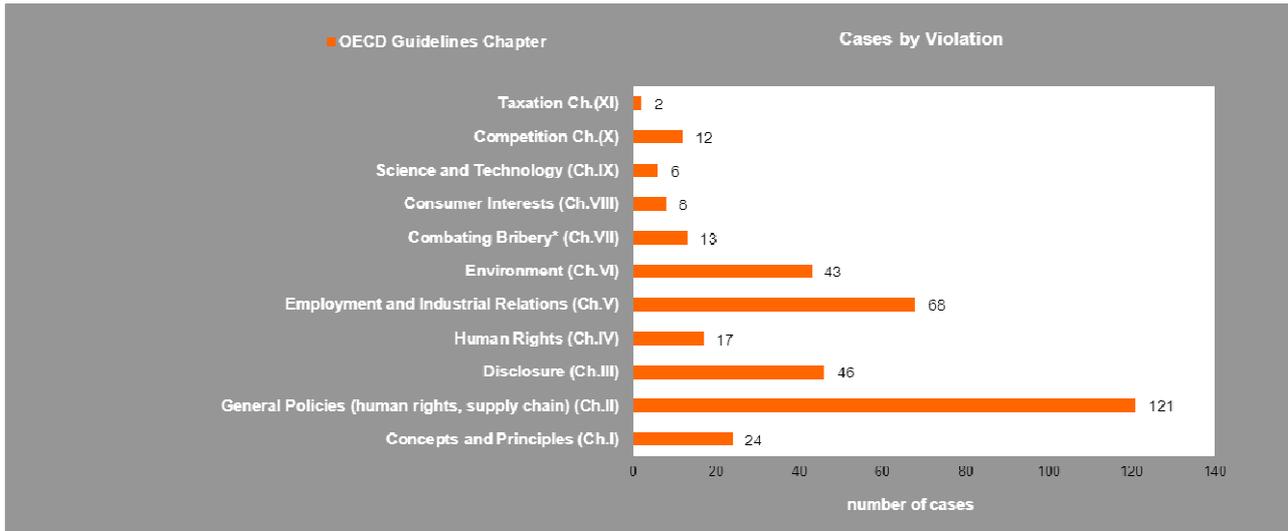
and Dutch NCPs move forward on the case.

After years of paralysis, the Argentine NCP still has not issued a final statement on the case, FOCO has therefore made an urgent request for the finalization of the case to be expedited, asking the NCP to fulfil its obligations under the OECD Guidelines' Procedural Guidance.

In June 2012, the NCP again requested that Shell inform the NCP about the actions it has taken in relation to the allegations in the complaint and the progress in the parallel court case. The NCP is set to close the case soon.



As of November 2012, 148 OECD Guidelines cases have been filed by NGOs



OECD Watch is an international network of civil society organizations promoting corporate accountability. The Quarterly Case Update aims to document the views and experiences of NGOs involved in NCP/OECD Guidelines procedures. This Quarterly Case Update has been compiled and edited by Joseph Wilde-Ramsing, Virginia Sandjojo and Karlijn Kuijpers, Centre for Research on Multinational Corporations (SOMO). OECD Watch strives to ensure that the information in this case update is accurate, but does not independently verify the information provided by NGOs. The publication of this Quarterly Case Update has been made possible through funding from the Dutch Ministry of Foreign Affairs. For more information on these and all OECD Guidelines cases filed by NGOs, visit www.oecdwatch.org/cases or contact the OECD Watch secretariat at Sarphatistraat 30, 1018 GL Amsterdam, The Netherlands, info@oecdwatch.org, www.oecdwatch.org, +31 20 639 1291.