

Quarterly Case Update

November 2013

Vol.8 Iss.2

of OECD Guidelines cases filed by civil society

Highlights in this Update

New Cases

- 1 Privacy International files complaints against six UK telecommunication companies for collaborating with government surveillance programmes and contributing to violations of the human rights to privacy and freedom of expression, p. 2
- 2 WWF files complaint against SOCO for failing to contribute to sustainable development and to conduct human rights and environmental due diligence for oil exploration in World Heritage Site Virunga National Park in the DRC, p. 2
- 3 Ecuadorian residents file complaints against Corriente Resources and CRCC-Tongguan Investment alleging human rights and environmental impacts related to the Mirador copper mining project in the Ecuadorian Amazon, p. 2
- 4 Crude Accountability and partners file complaints against British Gas Group, Chevron and ENI for environmental, health and human rights violations around the Karachaganak Oil and Gas Condensate Field in Kazakhstan, p. 3

Case Developments

- 5 UK NCP accepts case against ENRC related to DRC mines. ENRC willing to engage in NCP-facilitated mediation, p. 3
- 7 Swedish NCP rejects labour rights cases against Electrolux and Mölnlycke citing progress in dialogue between local management and unions, which the NCP feels is better placed to resolve the conflict, p. 4
- 8 UK NCP accepts case against Gamma, but complainants are still awaiting the initial assessment by the German NCP on the case filed against Trovicor for a similar role in aiding the Bahraini government's alleged human rights abuses, p. 5
- 10 Parties unable to agree on terms for mediation in GCM Phulbari (Bangladesh) coal mine case; UK NCP conducts examination of the allegations in the complaint and prepares final statement, p. 6
- 11 Japanese NCP rejects labour cases against Panasonic without issuing statement or even informing complainants, p. 6
- 12 After initially agreeing to mediation in Cambodian sugar case, ASR withdraws from process due to court cases filed in UK; US NCP concludes case and issues final statement calling on ASR to develop a human rights policy, p. 7
- 13 Norwegian NCP hosts first official meeting between the parties to discuss terms of mediation and selection of mediator in case related to Statkraft's wind power operations on indigenous Saami lands in Sweden, p. 7
- 14 Korean NCP rejects case against POSCO, claiming that it cannot contribute to resolving the dispute, which it considers an 'Indian affair', p. 8
- 16 Complainants officially withdraw case against Michelin, just days before French NCP issues final statement concluding Michelin's impact assessments insufficient but declaring the company not in violation of the Guidelines, p. 10
- 21 Chilean NCP concludes case against Minera Escondida/BHP Biliton with final statement determining that the company did not violate the Guidelines because the alleged violations only affected the interest of the complainant (a small Chilean company) and not the public interest, p. 13
- 22 After successful mediation facilitated by the Norwegian NCP, parties to the Sjovik Western Sahara case publish joint statement, in which Sjovik agrees to conduct additional impact assessments and establish grievance mechanism; Norwegian NCP invites parties to follow-up on the case with reports and a meeting in 2014, emphasizes companies' heightened requirement to conduct through human rights due diligence when operating in/from areas in conflict, p. 14
- 26 After more than 2 years of delays, Argentinian NCP finally resumes work on case against Xstrata (now GlencoreXstrata) for alleged adverse impacts on Argentine glaciers by holding meetings with representatives of both parties, p. 17
- 29 Mediation between parties ends in case against Barrick Gold for human rights abuses at the Porgera Mine in Papua New Guinea; complainants still awaiting mediator's final report and Canadian NCP's final statement, p. 19

Case	Involvement of 6 UK telecom companies in human rights abuses		
Company/ies	Date filed	Current status	Duration (to date)
BT	5 November 2013	Filed	1 month
Verizon Enterprise	5 November 2013	Filed	1 month
Vodafone Cable	5 November 2013	Filed	1 month
Viatel	5 November 2013	Filed	1 month
Level 3	5 November 2013	Filed	1 month
Interoute	5 November 2013	Filed	1 month
Complainants	Privacy International		
National Contact Point(s) concerned	United Kingdom		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), Chapter IV (Human Rights)		

Issue

The complaint alleges that the telecom companies facilitated mass interception of internet and telephone traffic by granting the UK's Government Communications Headquarters (GCHQ) access to their fibre optic networks for the Tempora

surveillance program. Privacy International argues that by collaborating with GCHQ and providing access to the networks, the companies knowingly enabled the mass and indiscriminate collection of data and interception of communications and thus contributed to the

violation of human rights, including the right to privacy and freedom of expression.

Developments/ Outcome

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

Case	Social and environmental violations associated with oil exploration by SOCO in the DRC's Virunga National Park		
Company/ies	Date filed	Current status	Duration (to date)
SOCO Plc	7 October 2013	Filed	2 months
Complainants	WWF International		
National Contact Point(s) concerned	United Kingdom		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), § 5, A14; Chapter IV (Human Rights), § 5; Chapter VI (Environment), § 2a		

Issue

WWF's complaint alleges SOCO's oil exploration activities in Virunga National Park (Virunga) do not contribute to sustainable development. According to the complaint, SOCO has disregarded the DRC's legal commitment to preserve Virunga as a World Heritage Site. Since June 2008, the World Heritage Committee has been clear that oil exploration and exploitation activities in Virunga are incompatible with the park's World Heritage status.

SOCO from any new laws or regulations, even those aimed at strengthening protections for human rights, the environment, health and safety, or other policies relating to the pursuit of sustainable development in Virunga. In addition, it is alleged that SOCO has not provided any evidence that it has conducted appropriate and systematic human rights due diligence and that SOCO has failed to inform the public about the potential environment, health, and safety risks and impacts of its activities.

forces during consultations and as promoters of its project has created a 'heightened risk of intimidation' in which many local residents do not feel safe to express their views or concerns.

WWF requests that the UK NCP facilitate a dialogue with SOCO to discuss how to bring the company's operations into line with the OECD Guidelines. It is WWF's estimation that this will require the immediate cessation of SOCO's current exploratory activities in and around Virunga.

The complaint contends that the company has also negotiated a production sharing contract with the DRC Government that includes a so-called 'stabilization clause', effectively exempting

Lastly, the complaint claims that SOCO's community consultations have not been characterised by meaningful two-way communication, and the company's use of state security

Developments/ Outcome

The case was filed with the UK NCP. The NCP has confirmed receipt and is conducting its initial assessment.

Case	Human rights abuses at Mirador copper mine in Ecuadorian Amazon		
Company/ies	Date filed	Current status	Duration (to date)
Corriente Resources Inc	25 July 2013	Filed	4 months
CRCC-Tongguan Investment (Canada)	25 July 2013	Filed	4 months
Complainants	Residents of the province of Zamora Chinchipe, Ecuador; FIDH; Mining Watch Canada		
National Contact Point(s) concerned	Canada		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), § A10, A11, A12, A14; Chapter IV (Human Rights), § 1, 2, 3 6; Chapter VI (Environment), § 2		

Issue

The complaint alleges a lack of adequate environmental

evaluation and numerous human rights abuses including forced displacement and lack of respect

for Indigenous People's rights related to the Mirador copper mining project in the Ecuadorian

Amazon.

The complaint concerns the operations of Ecuacorriente S.A., an Ecuadorian subsidiary of Corriente Resources and CRCC-Tongguan Investment (Canada) Co., Ltd., which holds the first contract with the Ecuadorian government for the Mirador project. Both companies are Canadian subsidiaries of the Chinese conglomerate CRCC-Tongguan, which acquired Corriente Resources and all of its holdings in Ecuador in 2010.

The complainants allege that local families, both indigenous and *campesino*, are being forcibly displaced to make way for the open-pit copper mine. Moreover, the company's consultation process is alleged to be marred

by a lack of full disclosure and transparency, lack of adequate environmental impact studies, and lack of free, prior and informed consent or consultation of affected people.

The complainants further allege that the company fuelled division among the affected communities and was complicit in violent state repression of protests against large-scale mining in the area. Additionally, it is alleged that the likelihood of acid mine drainage and other environmental impacts of the mine in the highly ecologically sensitive area, coupled with the company's lack of human rights due diligence and implementation of remedial measures, pose a serious threat to the local communities' access to water, land, livelihood, and way of

life.

The complainants call on the Canadian NCP to ensure that the Guidelines are being implemented by recommending that the company respect the rights of communities and nature, as enshrined in the Ecuadorian constitution and other national and international instruments, and ultimately desist from further mining activities in Ecuador.

Developments/Outcome

The NCP has confirmed receipt of the complaint and asked for translations of certain documents into English or French. The complaints provided the NCP with several translations and are currently awaiting the outcome of the NCP's initial assessment.

4

Case	Environmental, health and human rights violations by the KPO oil and gas consortium in Kazakhstan		
Company/ies	Date filed	Current status	Duration (to date)
British Gas Group	6 June 2013	Filed	5 months
Chevron	6 June 2013	Filed	5 months
ENI	6 June 2013	Filed	5 months
Complainants	Crude Accountability, Ecological Society Green Salvation, Zhasil Dala		
National Contact Point(s) concerned	United Kingdom (lead), Italy, United States		
Guidelines Chapter(s) & paragraph(s)	Chapter I (Concepts and Principles), § 2; Chapter II (General Policies), § A2, A5 A7, A11, A12; Chapter III (Disclosure), § 4; Chapter IV (Human Rights), § 1, 2, 3, 5, 6; Chapter VI (Environment), § 1, 2, 4, 5.		

Issue

The complaints concern environmental, health and human rights impacts on residents of the village of Berezovka, located close to the Karachaganak Oil and Gas Condensate Field in Kazakhstan. The complaint alleges that the Karachaganak Petroleum Operating, B.V (KPO) Consortium, comprised of British Gas, ENI, Chevron, Lukoil and Kazmunaigaz, has abused the human rights of the residents of Berezovka by polluting the air, harming the health of the community, and refusing to relocate residents to a safe, clean environment.

The complaint further alleges that KPO has repeatedly violated Kazakhstan's environmental standards by exceeding emissions standards, improperly disposing of toxic waste, and polluting bodies of water. The complainants assert that, given the long history of environmental violations, KPO has not made significant attempts to improve its environmental performance and has failed to implement environmental management systems that are appropriate to the risks of its operations.

The complaint also alleges that the KPO Consortium failed to

disclosure relevant non-financial information to stakeholders, failed to conduct appropriate due diligence, and failed to obey domestic Kazakhstani law with regard to the Sanitary Protection Zone, in which no-one is allowed to live.

Developments/Outcome

The three NCPs have discussed the case and decided that the UK NCP will take the lead in handling all three complaints. The complainants are awaiting the outcome of the NCP's initial assessment.

5

Case	Human rights abuses associated with ENRC mines in the DRC		
Company/ies	Date filed	Current status	Duration (to date)
ENRC	13 May 2013	Pending	6 months
Complainants	Rights and Accountability in Development (RAID)		
National Contact Point(s) concerned	United Kingdom		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), § A1, A2, A3, A11, A12, A13; Chapter IV (Human Rights), § 1, 2, 3		

Issue

The complaint – filed by the law

firm Russell-Cooke LLP acting on behalf of RAID – concerns mining

assets controlled by companies associated with Eurasian Natural

Resources Corporation (ENRC) in the DRC, including the Canadian company Africo Resources. The complaint addresses alleged human rights impacts affecting the impoverished populations of Kisankala and Lenge villages, which are located on two adjacent mining concessions in the province of Katanga.

The complaint alleges that Kisankala village's only clean water system has been in

disrepair for over 10 months following a clash between local security guards and artisanal miners based at Kisankala. Additionally, the complaint addresses underlying problems the communities face, including claims concerning resettlement and compensation, the alleged absence of environmental and social monitoring, particularly for Lenge village, and the alleged misbehaviour of private security guards. The complainants request

that the UK NCP determine whether ENRC's behavior amounts to a violation of the OECD Guidelines.

Developments/ Outcome

In October 2013, the UK NCP completed its initial assessment and declared the case admissible. ENRC denies all the allegations, but has indicated its willingness to enter into mediation under the auspices of the UK NCP.

6

Case	Role of C&A, KiK and Karl Rieker in textile factory fire in Bangladesh		
Company/ies	Date filed	Current status	Duration (to date)
C&A	13 May 2013	Filed	6 months
KiK	13 May 2013	Filed	6 months
Karl Rieker	13 May 2013	Filed	6 months
Complainants	Uwe Kekeritz (German Parliamentarian - Alliance 90/Greens), European Center for Constitutional and Human Rights (ECCHR), Medico International		
National Contact Point(s) concerned	Germany		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), § A10, A11, A12; Chapter IV (Human Rights), § 2, 3, 5		

Issue

The complaint addresses the (partial) responsibility of three German garment retail companies for the Tazreen factory fire in Bangladesh in November 2012 that caused 112 deaths and injured 300. The high number of casualties was exacerbated by poor fire safety and a lack of emergency exits.

The complainants allege that – as customers of the textiles

produced in the Tazreen factory – the German companies are partly responsible for the poor safety and working conditions there. The complainants argue that the German companies are not fulfilling their obligations towards workers within their global supply chain and that the remedial measures taken by the companies after the fire are insufficient. The complainants call on the companies to ensure that their suppliers improve fire protection

and pay compensation to families of the victims and others affected. Furthermore, the complainants call on the companies to pay fair wages, enter into dialogue with trade unions, and conduct due diligence in their supply chains.

Developments/Outcome

The complaints are still awaiting the outcome of the German NCP's initial assessment.

7

Case	Anti-union practices by Electrolux and Mönlycke in Thailand		
Company/ies	Date filed	Current status	Duration
Electrolux	9 April 2013	Rejected, September 2013	5 months
Mönlycke	9 April 2013	Rejected, September 2013	5 months
Complainants	Swedwatch		
National Contact Point(s) concerned	Sweden		
Guidelines Chapter(s) & paragraph(s)	Chapter I (Concepts & Principles), § 2; Chapter II (General Policies), § A5; Chapter IV (Human Rights), § 1; Chapter V (Employment), § 1a, 1e, 3		

Issue

The complaint was filed simultaneously against the Swedish electronics companies Electrolux and Mönlycke for separate incidents of anti-union behaviour. The complaint against Electrolux alleges that a subsidiary engaged in anti-union practices in Thailand following wage negotiations with workers at its Rayong plant in 2012. Following the negotiations, Electrolux Thailand allegedly removed and suspended the chairperson of the local trade union, detained protesting workers against their will, terminated nearly one hundred

employees who participated in demonstrations.

In the Mönlycke case, the complaint concerns action taken by the company at its Thai Factory 1 during wage negotiations with the local trade union in 2011. When the company refused to inform workers on the factory floor about the negotiations, the union arranged to inform the workers and solicit their opinions outside of the factory. In August 2011, Mönlycke management suspended ten workers - all of whom were active in the union and several of whom were responsible for the distribution of

information to the other workers - without explanation.

According to the complaint, the issue was brought to the Thai Industrial Relations Committee (IRC), which concluded that the terminations violated Thai labour law and ordered Mönlycke to reinstate all terminated employees. However, Mönlycke appealed the decision, forcing the workers into protracted conciliation meetings. Though the workers initially resisted accepting compensation rather than the reinstatement ordered by the IRC, as time went by an increasing number of workers were forced to

accept the company's conditions because they could not continue to provide for themselves or their families without income. The case dissolved in January 2013 when the last worker accepted compensation.

Swedwatch requests that Electrolux and Mölnlycke uphold the OECD Guidelines by allowing the suspended and dismissed trade union members to return to work and improving their guidelines and mechanisms for dealing with workers' complaints and negotiation routines, especially in subsidiaries in countries where trade union discrimination is common, as in Thailand. Swedwatch requested the Swedish NCP determine whether the actions of Electrolux and Mölnlycke in Thailand constituted a breach of the OECD

Guidelines on trade union rights.

Developments/Outcome

In response to the allegations, Electrolux issued a public statement dismissing the claims and maintaining that it had not breached the OECD Guidelines.

In September 2013, the Swedish NCP concluded its initial assessment and informed the complainants that it would not formally handle the complaints. The NCP nevertheless agreed to continue to monitor and follow the developments in the cases and requested that the companies provide periodic updates on progress about on-going social dialogues.

In its statement, the NCP explained that on-going dialogue between Electrolux and the trade

unions was the main reason for rejecting the complaint. The NCP believes that the dialogue process should continue and that it is primarily these parties that should find a solution to the conflict. Additionally, the NCP has accepted Mölnlycke's argument that a social dialogue had been initiated between local management and trade union and that the specific conflict had ended after workers and union members accepted settlements.

The complainants are satisfied that – after the complaint had been filed – the social dialogue with the companies led to improvements in the labour conditions at the factories. At the end of November 2013, the NCP will meet with the parties to follow up on the case and discuss progress of the social dialogue.

8

Case	Gamma & Trovicor's role in Bahraini human rights abuses		
Company/ies	Date filed	Current status	Duration (to date)
Trovicor	1 February 2013	Filed	10 months
Gamma International	1 February 2013	Pending	10 months
Complainants	Privacy International, Bahrain Center for Human Rights, Bahrain Watch, European Center for Constitutional and Human Rights (ECCHR), Reporters Without Borders		
National Contact Point(s) concerned	Germany and United Kingdom		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), § A2; Chapter IV (Human Rights), § 1.		

Issue

The complaint presents evidence indicating that Gamma and Trovicor sold intrusive surveillance technology and training to the Bahraini government. By doing so, and by continuing to maintain the technologies, the complainants believe that the two companies are aiding and abetting the Bahraini government in its perpetration of human rights

abuses, including violations of the right to privacy, freedom of expression and freedom of association, as well as arbitrary arrest and torture.

Developments/ Outcome

In June 2013, the UK NCP completed its initial assessment and accepted the complaint against Gamma. The NCP is currently facilitating mediation

between the parties. Gamma has declared that for commercial reasons it is not willing to confirm or deny whether it supplies to Bahrain.

The complainants are still awaiting the German NCP's initial assessment of the case against Trovicor.

9

Case	Abuses of human and indigenous rights by mining agents on South Africa's Wild Coast		
Company/ies	Date filed	Current status	Duration
MRC Ltd.	1 February 2013	Rejected, March 2013	2 months
Complainants	Amadiba Crisis Committee		
National Contact Point(s) concerned	Australia		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), § A2, A3, A5, A6, A7, A8, A10, A12, A13, A14; Chapter III (Disclosure), § 1; Chapter IV (Human Rights), § 3, 4, 6; Chapter VI (Environment), § 1; Chapter VII (Bribery), § 1		

Issue

The Australian venture capital mining company MRC Ltd has ambitions to mine in an environmentally sensitive and pristine stretch of coastline on the Pondoland Wild Coast of South Africa, which has been inhabited for centuries by the amaMpondo Indigenous People. The sacred

ancestral land of the AmaDiba clan, one of the 21 constituent Chiefdoms of the amaMpondo, is host to their revered ancestors.

The South African government provisionally awarded mining rights to the Amadiba's land in 2008 but – after an outcry from the community – revoked them in

2011. The Environmental Impact Assessment revealed that the negative impacts of mining could not be adequately mitigated. Moreover, analysis of economic benefits showed that the profits and other benefits from a 25-year mining venture could only accrue at the cost of the once thriving and much more appropriate

income generation opportunities from a community based eco-tourism venture, which was already providing income opportunities for 400 local residents. Even the effect of the six-year prospecting process on the eco-tourism industry was devastating. Eco-tourism was beginning to recover when the same mining company returned to lodge a fresh prospecting rights application.

Members of the indigenous Amadiba clan allege that MRC Ltd co-opted, intimidated and subverted the members of the clan in order to obtain their consent for the issuing of a mining license on ancestral land. Other issues raised in the complaint include adverse environmental impacts, loss of livelihood, inadequate disclosure of project plans and impact assessments, and bribery.

Developments/ Outcome
After conducting an initial assessment, the Australian NCP rejected the case on the grounds that the complainants expressed unwillingness to enter into mediation with the company and because the mineral exploration rights are currently being considered by the relevant local authorities. The NCP declined to investigate the allegations in the complainant.

10

Case	Human rights violations at GCM's Phulbari coal mine in Bangladesh		
Company/ies	Date filed	Current status	Duration (to date)
GCM Resources plc	19 December 2012	Pending	11 months
Complainants	International Accountability Project, World Development Movement		
National Contact Point(s) concerned	United Kingdom		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), § A2, A7; Chapter III (Disclosure), § 2e; Chapter IV (Human Rights), § 1, 2, 3, 4, 5		

Issue

Communities in the Bangladeshi sub-districts of Phulbari, Birampur, Nababganj and Parbatipur – including villages of indigenous households who are considered to be the oldest inhabitants of the South Asian sub-continent – have been fighting to halt a proposed open-pit coal mine known as the Phulbari Coal Mine Project for over six years. The complaint – filed on behalf of the communities – alleges that GCM Resources plc, the company that has full management responsibility for the mine, has abused the human rights of the communities, failed to properly consult them, and failed to disclose relevant

information.

Developments/ Outcome

After conducting an initial assessment, the UK NCP accepted the complaint for further consideration in June 2013. In its assessment, the NCP stated that its handling of the case would focus on issues regarding violation of the rights of affected communities, the alleged failure by GCM to follow its own self-regulatory standards, and whether the company's review of its plans in the period between September 2011 (when Chapter IV provisions were added to the Guidelines) and December 2012 (when the complaint was filed) included appropriate human

rights due diligence. The complainants are encouraged that the NCP has accepted the case, but are disappointed that it decided to limit its inquiry to current impacts, rather than also examining what they see as inevitable and foreseeable future violations.

The NCP offered to facilitate mediation between the parties. GCM denied the allegations and urged the NCP not to accept the case. The parties could not agree on terms for mediation, so the NCP moved to conduct an examination of the allegations in the complaint and issue a final statement concluding the case.

11

Case	Abuse of migrant Chinese workers at Panasonic plant in Singapore		
Company/ies	Date filed	Current status	Duration
Panasonic Corporation	20 November 2012	Rejected	10 months
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 standard for similarly-employed workers. 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 per 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

As part of its initial assessment,

the Japanese NCP requested additional information from the complainants, which they provided. However, in September

2013, the NCP rejected the case without issuing a public statement or even informing the complainants directly. The

complainants were informed of the NCP's decision through the Japanese embassy in Singapore.

12

Case	Illegal eviction of villagers for ASR's sugar production in Cambodia		
Company/ies	Date filed	Current status	Duration
American Sugar Refining Incorporated	31 October 2012	Concluded, June 2013	8 months
Florida Crystals Corporation	31 October 2012	Concluded, June 2013	8 months
Sugar Cane Growers Cooperative of Florida	31 October 2012	Concluded, June 2013	8 months
Fanjul Corporation	31 October 2012	Concluded, June 2013	8 months
Complainants	Community Legal Education Center of Cambodia (CLEC), EarthRights International (ERI)		
National Contact Point(s) concerned	United States		
Guidelines Chapter(s) & paragraph(s)	n/a		

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

In April 2013, the US NCP concluded its initial assessment, determining the complaint was substantiated and admissible for further examination.

ASR was initially inclined to participate in mediation facilitated by the NCP and the U.S. Federal Mediation and Conciliation Service, but later withdrew from the process because of civil claims filed in the UK High Court against ASR's subsidiary, Tate & Lyle, by the Cambodian communities.

On 13 June 2013, the NCP issued a final statement reiterating that

the complaint was substantiated and relevant, but concluding that the conditions did not exist for the NCP to play a further role in resolving the dispute. The NCP did recommend that ASR develop a human rights policy. The NCP also called on ASR to evaluate the issues raised by the complaint and formulate a strategy for addressing them.

The complainants welcome that for the first time the US NCP included recommendations in a final statement, but believe that the NCP could have provided more guidance regarding the expectations of companies under the OECD Guidelines in similar situations.

13

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	Pending	13 months
Complainants	Jijnjevaerie Saami village		
National Contact Point(s) concerned	Norway (lead) and Sweden		
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 declared that they would collaborate in handling the case and decided that the Norwegian NCP would take the lead. On 14 February 2013, the NCPs finalised the initial assessment and accepted the case. However, a dialogue between the parties had been renewed following the filing of the case, so the NCPs initially decided to defer the case to allow the parties to find a mutually-acceptable solution to the situation without the NCPs' assistance.

In May 2013 an informal meeting between the parties was held at the Swedish NCP to discuss a set of proposals made by the Saami village on how to mitigate the damage from the wind farms.

After the dialogue failed to produce an agreement, the Norwegian NCP resumed its handling of the case and hosted the first official meeting between

the parties in November 2013 to discuss the terms of reference for mediation.

14

Case	POSCO's involvement in human rights and environmental impacts in India and the responsibility of the project's investors for the impacts		
Company/ies	Date filed	Current status	Duration
POSCO	9 October 2012	Rejected, June 2013	8 months
ABP/APG	9 October 2012	Concluded, March 2013	5 months
Norwegian Bank Investment Management (NBIM)	9 October 2012	Concluded, May 2013	7 months
Complainants	Lok Shakti Abhiyan; KTNC Watch; Fair, Green and 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 complaint also addresses the responsibility of the Dutch

pension fund ABP and the Norwegian Government Pension Fund – Global (along with the pension funds' asset managers APG and NBIM) for investing in POSCO. The complaint calls on the pension funds to seek to prevent or mitigate 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. The Dutch NCP, dealing with the case against ABP, accepted the complaint and successfully facilitated several meetings between the parties. In March 2013, a joint final statement was issued in which ABP and APG commit to exercise their leverage bringing POSCO's business practices in line with international standards. The joint statement calls on the three NCPs involved to jointly commission a review and assessment mission to India and to help to facilitate a meaningful stakeholder consultation process.

Following the joint agreement, the Dutch NCP published a statement confirming that the OECD Guidelines apply to minority shareholdings. This sets an important precedent for future cases against financial institutions. The Dutch NCP has offered to assist the Korean NCP in handling its part of the case.

The Norwegian NCP accepted the case and tried to facilitate mediation. However, NBIM refused to engage with the NCP. On 27 May 2013, the Norwegian NCP published its final statement reaffirming the Dutch NCP's assertion that the Guidelines apply to minority shareholders. The NCP further concluded that NBIM was in violation of the OECD Guidelines for refusing to cooperate with the NCP, and for lacking a strategy on how to address human rights risks related to companies in which it invests.

The Korean NCP sent the complaint to POSCO as a response. POSCO denied the allegations, and the NCP requested additional information from the complainants, which they provided. In June 2013 the NCP rejected the complaint as it determined it could not play a role in resolving the dispute, which they consider to be the responsibility of the Indian authorities.

In response to the request of the Dutch parties in their statement, the Dutch NCP explored the possibility of jointly organising a mission to India by the three NCPs involved. However, the Norwegian and South Korean NCPs were unwilling to participate, as they consider the case to be concluded. The parties to the complainant continue to explore other opportunities to set up an independent review and assessment mission to India.

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
Royal Dutch Shell	31 July 2012	Rejected, March 2013	9 months
Royal Bank of Scotland (RBS)	31 July 2012	Rejected, December 2012	6 months
Standard Chartered	31 July 2012	Rejected, January 2013	7 months
Barclays	31 July 2012	Rejected, December 2012	6 months
Complainants	Stroitel 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

Complainants, on behalf of residents living just 1.2 kilometres from the Sakhalin II Prigorodnoye Production Complex (the "Project") – a highly polluting liquefied natural gas ("LNG") plant and oil and gas export terminals on Sakhalin Island, Russia – allege that Shell and three of the largest UK banks have severely harmed community members, endangering their health, jeopardizing their food security and polluting and destroying local environmental resources. Additionally, their homes have been devalued by the Project to the point that they cannot sell them and buy other homes in safer locations. Despite these significant adverse impacts, community members have not been resettled or justly compensated.

According to the complaint, Shell, RBS, Standard Chartered and Barclays have a business relationship with the project operator, Sakhalin Energy Investment Company ("SEIC") and have a financial interest in the Sakhalin II project. Each of them failed to use their influence on SEIC to correct the environmental and human rights abuses associated with the Project.

Developments/Outcome

The UK and Dutch NCPs decided to handle the cases separately, with the UK NCP handling the 3 complaints against the UK banks, and the Dutch NCP handling the complaint against Shell.

The UK NCP rejected each of the complaints against the banks. In each case, the UK NCP reasoned that: a) enterprises are not accountable under the new provisions of the 2011 Guidelines for actions they took before those provisions applied, which according to the UK NCP is September 1, 2011; b) the due diligence provision added in

Chapter 2, paragraph 10 acknowledges that the nature and extent of due diligence will depend on circumstances and does not oblige enterprises proactively to review all their existing business relationships; and c) the UK NCP therefore looks for evidence that an enterprise should have been prompted to apply the provisions in a specific relationship. This evidence might relate to the enterprise's knowledge of an ongoing impact, or to new actions or events that took place after September 1, 2011.

Regarding the complaint against Barclays, the company's response to the complaint indicated that Complainants had named Barclays in reliance on an erroneous report from a Bloomberg database. Complainants did not dispute that the Bloomberg database may have contained an error, of which they were unaware when they submitted the complaint. As a result, the complaint was rejected.

In rejecting the RBS complaint, the UK NCP argued that the necessary business relationship between RBS and SEIC had not been substantiated. Specifically, RBS's response to the complaint indicated that a company it owned jointly with other banks had acquired a Netherlands-based bank in October 2007, which had earlier participated in a syndicate that made loans to Gazprom, a Russian company that became SEIC's controlling shareholder around the same time the syndicate made the loans to Gazprom. These loans were corporate loans, which could have been used in the acquisition of SEIC, as alleged in the complaint. Thus, RBS had acquired these loans, but had not been a party to them, nor had SEIC. Moreover, because the loans were corporate loans, Complainants were unable to

prove that they had been for the purpose of acquiring SEIC, and RBS's response to the UK NCP indicated that it would not disclose information that was confidential, commercially sensitive and/or protected under contract law. The UK NCP noted that the loans, which RBS said had since lapsed, may have been used to acquire SEIC, but found that RBS's link to SEIC was not substantiated because, at the time the loans were made, the Project was operational, and also because the acquisition occurred before RBS inherited the loans.

The NCP rejected the complaint against Standard Chartered because it found that the actions already taken by the bank to monitor and evaluate SEIC were sufficient to meet its obligations under the Guidelines. The complainants strongly disagreed, arguing that the monitoring reports revealed SEIC's failure to implement key recommendations in early reports, but that later reports simply stopped mentioning those issues, inexplicably finding SEIC in compliance with its obligations, despite having never corrected previously identified problems. Under these circumstances, the bank should have done more than rely on the baseless conclusions in these reports.

Overall, although Complainants disagreed with the outcome of the complaints against RBS and Standard Chartered, they appreciated the UK NCP's responsiveness and willingness to consider their point of view. That being said, it took a fair amount of expertise to be able engage in the process, raising a question of accessibility for communities who may not have access to help from sophisticated partners.

In March 2013, the Dutch NCP rejected the complaint against Shell because it felt the issues raised were not material and

substantiated and accepting the case would not likely contribute to the purpose and effectiveness of the Guidelines. Significant to the Dutch NCP's reasoning was its unexplained claim that Shell's history and present tensions with relevant companies and the Russian government made the NCP believe that Shell lacked the ability to exert substantial influence over the situation – despite its 27.5% stake in SEIC. At no point in its initial assessment did the Dutch NCP identify the source of this claim or provide any further substantiating information. The complainants felt that the Dutch NCP failed to apply a fair and predictable standard to all relevant allegations because, while the initial assessment appropriately considered whether the issues raised in the case were material and substantiated, it did not apply

the same standard when considering the extent of Shell's leverage over SEIC.

The complainants also felt the Dutch NCP's initial assessment was flawed and illogical on numerous other fronts, including decisions that touch on issues as important to the Guidelines as sustainable development, human rights and responsibility for negative impacts throughout business relationships. Particularly difficult to understand was the Dutch NCP's suggestion that allegations of human rights violations must first be litigated in domestic or international court before being brought to the NCP.

Finally, in addition to their strong disagreement with the Dutch NCP's reasoning and ultimate decision, the complainants were disappointed with the Dutch

NCP's overall lack of transparency and communication throughout the process. At one point, the complainants requested that the Dutch NCP speak with a partner organization, who they explained had been assisting them throughout the complaint process, and the Dutch NCP refused. Additionally, and in contrast to the complainants' experience with the UK NCP, the Dutch NCP failed to provide any acknowledgement of the complainants' comments on the draft initial assessment or explanation of its failure to address many of these comments in the final initial assessment. For more information and analysis of the NCP's rejection of the case, see Accountability Counsel's report annexed to OECD Watch's submission to the 2013 NCP meeting and on the OECD Watch website.

16

Case	Multiple violations during construction of Michelin tyre factory in India		
Company/ies	Date filed	Current status	Duration
Michelin	10 July 2012	Withdrawn, September 2013	14 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

One year after the complaint was filed, the complainants withdrew the complaint in September 2013, just before the NCP issued its final statement on the case. In its statement, the French NCP recognized that the impact studies conducted by Michelin were insufficient and that the project had had adverse impacts on local stakeholders. However, the NCP did not believe that the company had violated the OECD Guidelines.

According to the complainants, who were severely disappointed with the French NCP, serious deficiencies in the French NCP's procedures and handling of the case led them to withdraw the case. The complainants are calling for institutional reforms of the NCP to improve its performance and meet its international commitments.

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	Concluded, June 2013	1 year
Complainants	Siemenpuu 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 Mekong River Commission for Sustainable Development Secretariat (MRCS) reviewed Pöyry's report to the Laotian government and disputes Pöyry's main finding that any studies on the Xayaburi Dam site can be conducted after construction is already underway.

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 complaint also accuses Pöyry of not contributing to sustainable development and failing to conduct appropriate due diligence. The complainants requested that a process be initiated with the aim of correcting Pöyry's behaviour, mitigating the damage already caused, and preventing further damage. They called 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 solicited comments on the complaint from Pöyry. In a public response, Pöyry rejected all of the complaint's allegations. Pöyry also issued a separate response directly to the NCP, but insisted that this remain confidential and not be shared with the complainants. The NCP accepted the complaint in October 2012 and invited the parties for mediation.

The NCP facilitated a meeting between the parties in December 2012 intended to clarify the positions of both parties. After the meeting Pöyry stated it was not interested in further dialogue with the complainant. The Finnish Ministries of Environment and Foreign Affairs – both of which advise the NCP – issued public statements on the complaint. The ministries affirmed Pöyry's responsibilities in the case and reaffirmed the complainants' argument that the possibility of an adverse impact on human rights exists, but stated that they were

unable to assess the extent to which Pöyry fulfilled its due diligence obligations without additional information from Pöyry.

Both parties responded to the statements of the ministries and the complainants engaged with the NCP to provide additional information and discuss the case further. Given Pöyry's unwillingness to engage in further dialogue, the NCP issued a final statement.

The final statement confirms that consulting and business service companies such as Pöyry are covered by the Guidelines and have a responsibility to conduct due diligence to avoid being linked to adverse social and environmental impacts caused by their clients. However, the NCP determined that Pöyry had not acted in breach of the Guidelines in this case. Finnwatch, an NGO advising the NCP, issued a statement disputing this finding.

The case, which was the first ever handled by the Finnish NCP, raises serious concerns about the NCP's equitability. The NCP gave in to Pöyry's demands for an excessive degree of confidentiality and did not allow the complainants to see or rebut the company's response to the allegations. The NCP based part of its final statement on Pöyry's confidential response, which was never shared with the complainants – a practice that has been deemed unacceptable by other NCPs. Recall that a similar lack of equitability led the UK NCP's Steering Board to overturn its own flawed final statement in the BP BTC case in 2011.

Case	Excellon Resources' involvement in land dispute at La Platosa mine in Mexico		
Company/ies	Date filed	Current status	Duration
Excellon Resources	28 May 2012	Rejected, November 2012	6 months
Complainants	Canadian Labour Congress; MiningWatch Canada; Proyecto de Derechos Económicos Sociales y Culturales, A.C. (ProDESCO); 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 has also failed to take any steps to comply with its contractual obligation to build a water treatment plant, leading 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 complaint was filed simultaneously at the Mexican and Canadian NCPs. In November 2012, the Mexican NCP rejected the case. The NCP found that the issues raised in the complaint were material but not substantiated. The NCP also cited Excellon's unwillingness to participate in any possible NCP-facilitated mediation as a reason for rejecting the case.

The complainants are concerned about the flawed procedures

followed by the NCP, including the unreasonably high threshold for accepting a case and the failure to take into account international laws and standards for employment and labour issues. The complainants feel that the NCP exhibited a clear bias toward the company and are concerned by the lack of cooperation with the Canadian NCP, which appears not to have been involved at all.

In 2011, prior to the filing of the specific instance, the Canadian Office of the Extractive Sector CSR Counsellor received a complaint on the same issue and concluded that the request should directly proceed to structured dialogue. However, Excellon withdrew from this process before dialogue could begin. The complainants present these varying conclusions as evidence that the Mexican NCP has unduly rejected the case, particularly as the Canadian official's detailed investigation included a field visit to the mine site and the surrounding community.

Case	Human rights violations at George Forrest's CMSK mine in the DRC		
Company/ies	Date filed	Current status	Duration
George Forrest International	4 April 2012	Rejected, February 2013	10 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 village on the outskirts of Lubumbashi in the DRC, close to the Luiswishi mine operated by the Compagnie minière du Sud Katanga (CMSK), were 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. In September 2012 the Forrest Group announced that it had sold its shares in CMSK.

The complaint to the Belgian NCP

alleged that the demolitions, which had been undertaken ostensibly to prevent artisanal miners from stealing CMSK minerals, negatively affected long-term residents. CMSK and the Congolese authorities failed to conduct a full inquiry into the incident and did not engage in negotiations with representatives of the affected community in order to reach a settlement. In

April 2012, given the stalemate, the NGOs filed a complaint with the Belgian NCP. They asked the NCP to examine GFIs alleged responsibility for the human rights violations and to use its good offices to bring a satisfactory and fair resolution to the long-running dispute. Despite the fact that the company's employees and bulldozers were involved in the demolitions, GFI denied all responsibility and stated that this was a standard government operation.

Developments/ Outcome

The Belgian NCP rejected the

complaint on the grounds that it would be impossible to reach a determination about the human rights violations that had occurred. Despite rejecting the case, the NCP – in an unusual departure from proscribed procedures - did offer to facilitate mediation between the parties. However, there were no agreed terms of reference for the mediation and the complainants felt that the Belgian NCP, far from being neutral, had limited the scope of the issues and the remedial action to be discussed. The NCP did not share information provided by the

company nor did it give the NGOs access to a report that it had requested from the Belgian consul in Lubumbashi.

The mediation broke down after GFI made clear that it would only be willing to take some limited measures including improvements to the water supply and maternity care in Kawama. Despite the fact that these measures did not address the long-term adverse impacts caused by the demolitions, the Belgian NCP, in its final statement welcomed the company's proposal.

20

Case	Environmental and human rights breaches by Shell in the Niger Delta		
Company/ies	Date filed	Current status	Duration
Royal Dutch Shell	30 December 2011	Withdrawn, June 2013	17 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 was accepted, but was put on hold until a related complaint filed in January 2011 (see case 30 below) was concluded. The complainants were disappointed in the outcome of that case, which convinced them that the Dutch NCP was incapable of contributing to a meaningful resolution to the dispute with Shell. The complainants thus decided to withdraw this case.

21

Case	BHP Billiton's violation of intellectual property rights in Chile		
Company/ies	Date filed	Current status	Duration
BHP Billiton	15 December 2011	Concluded, October 2013	2 years
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 accepted the case, and attempted to set up mediation. Minera/BHP Billiton denied all of the allegations in the complaint and noted that, given the on-going legal proceedings, it had no reason to engage in the NCP-facilitated process. Santander emphasized that the complaint extends beyond the narrow legal issues to broader management practices, particularly related to the supply chain and local SMEs.

The Chilean NCP told the complainants that it is would be difficult to proceed with the case with BHP refusing to engage. The complainants are disappointed

that BHP is not willing to engage and believe that the NCP could and should do more to encourage BHP to engage in mediation or – failing that – take other action to try to solve the dispute.

Despite objections from the complainant, the NCP concluded in its final statement that Minera Escondida/BHP Biliton has not violated the OECD Guidelines on the basis that the company's actions affected only the interest of the complainant and not the public interest.

The complainant disagrees with the NCP's conclusions and is concerned with the NCP's inordinately slow handling of the complaint and unequal treatment of the parties. The complainant has addressed its concerns about the functioning of the NCP with the Chilean government.

22

Case	Sjovik's breaches of human rights in Western Sahara		
Company/ies	Date filed	Current status	Duration
Sjovik AS.	5 December 2011	Concluded, July 2013	19 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 assessment, the NCP accepted the case for further examination in March 2012. Mediation was led by an independent mediator and supported by an external consultant, who provided guidance to the NCP and extra assistance to the complainant in order to balance out the inequality of negotiating power between the parties. After a successful mediation process, the parties published a joint statement concluding the case in June 2013.

In their statement, the parties request that the Norwegian provide guidance to business with regard to respecting human rights while operating in areas of conflict. The parties furthermore agreed that Sjovik would carry out an environmental and social impact assessment for its activities that takes into account the status and vulnerability of Western Sahara and establishes and maintains an internal grievance mechanism that meets the requirements set out in the OECD Guidelines.

In its own final statement, the NCP did not comment on specific allegations raised in the complaint but underscored that there is a heightened requirement for companies to conduct thorough human rights due diligence when operating in or from areas in conflict. The NCP invited both parties to a follow-up meeting in May 2014 and to submit a follow-up report on the implementation of the joint statement beforehand.

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, 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.

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.

In February 2013, the parties submitted a joint 'One Year On' report to the NCP. The report details how the agreements made in the 2012 joint statement were monitored, including through joint field visits to various corn fields.

The case serves as a model for how agreements in Guidelines' cases can be followed up upon. The 'One Year On' report is annexed to OECD Watch's submission to the 2013 NCP meeting and available on the OECD Watch website.

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	24 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 Barrick.

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. The complaint was officially accepted in May 2013, but no further progress has been made.

25

Case	Labour and environmental violations in the USA by United Water		
Company/ies	Date filed	Current status	Duration
United Water	8 June 2011	Part withdrawn, part concluded, Feb 2013	20 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.

FWW decided not to continue the specific instance process but did not wish to withdraw its filing. Given the union and civil society organization's positions, the NCP concluded the specific instance and issued a final statement, which was not made public.

Case	Xstrata's negative impacts on glaciers in Argentina		
Company/ies	Date filed	Current status	Duration (to date)
Xstrata	1 June 2011	Pending	2½ years
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 (recently acquired by Glencore) 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 to glacier environments.

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. Impacts at Filo Colorado can be easily seen in satellite imagery of the area, available publicly on programs such as Google Earth. Xstrata, however, refuses to admit to the presence of any glaciers at either of the project sites. A recent official site visit by the local authority and the National Glacier Institute also affirmed CEDHA's claims. Following the passage of Argentina's National Glacier Protection Act, Xstrata filed an injunction request to the federal courts in Argentina, requesting that the 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.

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 subsequently stalled engagement in the NCP process. The federal court decision was reversed in 2012, placing Xstrata once again in problematic contention with compliance of Argentina's glacier law, which is fundamental to this specific instance.

The Argentine NCP has changed key NCP personnel several times since the opening of the case, which has complicated matters. This has been further complicated by internal delays in maintaining continuity with administrative responsibilities of the NCP.

After more than two years passed with little action from the NCP, in October 2013, the Argentine NCP finally held a meeting with Xstrata representatives (now GlencoreXstrata). The NCP requested a meeting with CEDHA to discuss this evolution. CEDHA travelled to Buenos Aires to meet with the NCP and presented the case information once again to the new NCP members, a repeat of the original meeting in 2011. CEDHA continues to extend its willingness to engage with GlencoreXstrata to address glacier impacts at El Pachón and Filo Colorado projects.

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	2½ years
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 Neshor 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. CRH did not respond to the content of the complaint but did raise questions regarding legal and procedural matters of the complaint procedure. The Irish and Israeli NCPs initially collaborated 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. The case is

now considered blocked. It is notable that CRH is the largest company in Ireland and politically very influential. In an attempt to move the case forward, the complainants sent a letter to the Irish Minister of Jobs, Enterprise and Innovation in February 2013. The letter urges the Minister to engage directly with the NCP to take the case forward. After the letter was sent, the Irish NCP met with the complainants and declared it is determined to 'unblock' the case. The NCP contacted the company again, but CRH again responded with procedural queries.

28

Case	Tax evasion by Glencore and First Quantum Mining in Zambia		
Company/ies	Date filed	Current status	Duration
Glencore International	12 April 2011	Concluded, November 2012	19 months
First Quantum Minerals	12 April 2011	Concluded, November 2012	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 "Arm's 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 Swiss and Canadian NCPs agreed that the Swiss NCP would take the lead in handling the complaint. In October 2011, the Swiss NCP concluded its confidential initial assessment and accepted the complaint.

Both parties accepted the NCP's offer to facilitate mediation. The NCP convened the meeting, which was led by an external mediator, in July 2012. According

to the complainants, the company rejected the allegations without providing any evidence or new facts that would have supported their view.

The NCP issued a final statement in November 2012. The statement proclaims that – following a thorough exchange of information and constructive discussions – the parties 'agreed to disagree' on the issues raised in the complaint. The parties further agreed to seek ways to engage in further dialogue.

Although an agreement with the company was reached through mediation, the complainants are disappointed that the agreement did not go further than an agreement to disagree. They feel that the result shows that there is little value in engaging in a dialogue with the companies on these issues. According to the complainants, the company has not complied with its commitment as part of the agreement to respond to a detailed set of questions regarding its tax payments.

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	2½ years
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, filed by MiningWatch Canada and two local organizations, and supported by RAID and ERI, 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 complainants 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 accepted the case and offered to facilitate mediation at meetings to be held in Australia and to be led by an external mediator. Before the first mediation meeting Barrick engaged in consultations to create a non-judicial project-level grievance process to handle claims from women who had been raped by PJV security guards. Although the issue of rape by security guards addressed in the Guidelines complaint, Barrick did not consult with the complainants or their advisors when establishing the grievance mechanism.

At the time of the first meeting in November 2012, Barrick's complaints procedure for rape victims was in place. Based on information obtained outside the mediation, the complainants were deeply concerned about potential

harm being done by the grievance procedure, particularly as Barrick requested the rape victims sign legal waivers if they accepted an individual remedy package.

Mindful of the Mediation Agreement that had been signed, and following consultation with the mediator, MiningWatch Canada and the two advisors (RAID and ERI) issued a press release in January 2013, which explicitly did not contain confidential information. Nonetheless, Barrick made it a condition of continuation in the mediation process that MiningWatch Canada remove the press release and related documents.

Furthermore, even though ERI had not posted any materials to its web site, and even though ERI and RAID were advisors to all the complainants, Barrick insisted that RAID and ERI be removed from the process. In order to assure continuation of the process for the local complainants, MiningWatch Canada, ERI and RAID withdrew from process after the first face-to-face mediation.

The mediation between the local complainants and Barrick ended in April 2013 after two face to face meetings. The mediator provided the NCP with his final report in June. The NCP has not yet shared this report with the notifiers, but has asked the notifiers and Barrick to provide whatever additional information they would like to provide the NCP. The notifiers did confidentially provide the NCP with two substantial briefs. Barrick's information, if provided, was not shared with the notifiers. The NCP has not yet issued a final report.

Case	Misleading disclosure by Shell on oil spills in Nigeria		
Company/ies	Date filed	Current status	Duration
Royal Dutch Shell	25 January 2011	Concluded, June 2013	2½ years
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 in February 2011. Shell headquarters initially tried to distance itself from the Nigerian operations and referred the NCP to the local subsidiary. However, the NCP insisted that the parent company must take responsibility and exert its influence over subsidiaries to ensure that they are abiding by the Guidelines. Shell headquarters eventually agreed to take part in the mediation. In total, two joint mediated meetings and several bilateral meetings were held. Under pressure from Shell, Milieudefensie agreed to step back from the mediation to facilitate the process.

One of the main stumbling blocks in the negotiations was Shell's demand that the complainants issue guarantees that they would not publicly disclose information related to the pre-2011 oil spills that were to be discussed. The complainants responded that though they did not have any

plans to campaign on the cases and that they were committed to the NCP's confidentiality procedure, they could not guarantee that they would not communicate with the Nigerian communities about the cause of the oil spills. This impasse proved insurmountable for the dialogue.

Throughout the process, the complainants repeatedly expressed serious concern that the Dutch NCP allowed Shell to dictate the parameters for the dialogue, which effectively left unaddressed all past harm done to the people of the Niger Delta as a result of Shell's flawed statements.

Following the unsuccessful mediation attempt, the Dutch NCP issued a final statement in June 2013 finding that Shell's statements on the oil spills were based on flawed investigations and disputed evidence. The NCP furthermore found that Shell's general communication with stakeholders about the percentage of oil spills caused by sabotage was flawed. However, the NCP did not explicitly conclude that Shell's failures constituted a breach of the Guidelines, nor did the NCP evaluate what the impact of Shell's flawed statements on the local communities had been.

Case	Mismanagement of community fund by ArcelorMittal Liberia		
Company/ies	Date filed	Current status	Duration (to date)
ArcelorMittal	24 January 2011	Pending	2½ years
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.

32

Case	Environmental and labour rights breaches at Cameroonian palm oil plantations		
Company/ies	Date filed	Current status	Duration (to date)
Bolloré	7 Dec 2010	Statement issued; mediation pending	3 years
Financière du champ de Mars	7 Dec 2010	Statement issued; mediation pending	3 years
SOCFINAL	7 Dec 2010	Statement issued; mediation pending	3 years
Intercultures	7 Dec 2010	Statement issued; mediation pending	3 years
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, and it has not contributed to local development, thereby violating the contract between SOCAPALM and the government of Cameroon. 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

After having refused to collaborate with the NCP for almost two years, Bolloré finally declared its willingness to use its leverage with SOCAPALM to solve the issues and bring

SOCAPALM's operations in line with the Guidelines. Sherpa and Bolloré accepted the NCP's offer of mediation in February 2013.

The NCP published its final statement in June 2013, concluding that through their business relations with SOCAPALM, all four companies violated the OECD Guidelines. The NCP recommended that the companies find a remedy to the violations, and that they rely on the action plan prepared during the mediation in doing so.

The complainants insisted on obtaining the NCP's final statement before the end of the mediation (planned for August 2013), so that the parties could concentrate on a future action plan, rather than discussing on the alleged violations, and in order to clearly differentiate the procedures of mediation from the one of the final statement. The complainants are pleased that the Statement points out the violations of the companies, reviewing each chapter of the OECD Guidelines.

During mediation the parties agreed that the action plan would cover community dialogue, reduction of environmental

nuisances, public services, local development, workers' rights and conditions of work, transparency, and compensation of local communities for their loss of

resources and lands. The parties agreed that the plan should be adopted before September 2013, and that it will be audited by an independent observer that they

have to determine. The parties are currently looking for an organisation that can assist with implementing the action plan.

33

Case	Cermaq ASA's salmon farming in Canada and Chile		
Company/ies	Date Filed	Current status	Duration
Cermaq ASA	19 May 2009	Concluded, August 2011	2 years
Complainants	ForUM and Friends of the Earth Norway		
National Contact Point(s) concerned	Norway; Canada and Chile also consulted		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), §7; Chapter V (Employment) §1a, 1d, 4; Chapter VI (Environment), §2, 3, 4		

Issue

ForUM and Friends of the Earth Norway filed a complaint against Cermaq ASA for multiple breaches of the Guidelines arising from the fish farming and fish feed operations of the company's subsidiary Mainstream.

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 in the company.

The complaint alleges that Cermaq ASA has not adequately considered the rights of indigenous peoples in Canada and Chile whose access to resources is threatened by the company's salmon breeding.

The groups also contend that Cermaq has carried out unfounded dismissals, attempted to prevent free association of employees in labour unions, discriminated against women and implemented inadequate safety procedures for its employees. Further, they allege Cermaq's activities pose an environmental threat through the spread of salmon lice and disease.

Developments/Outcomes

As part of the initial assessment, the Norwegian NCP, which is taking the lead in handling the case, forwarded the complaint to the Chilean and Canadian NCPs for comment. Both NCPs provided comments.

The complainants provided the Norwegian NCP with additional evidence of the alleged breaches in Spanish, but the NCP concluded it could not process the information due to lack of

translation resources.

In June 2010, the NCP conducted meetings with the parties and subsequently decided to accept the case. The complainants requested that the NCP undertake a fact finding mission or hire an independent expert to investigate the facts, but the NCP considered the most important aspects of the case, especially those concerning the environment, to be already well examined. To ensure efficient use of resources the NCP decided not to initiate further investigations.

A reorganised NCP, with a new independent panel of experts forming the main body met with all parties on 13 April 2011. The meeting was concluded with a renewed offer of good offices to all parties to mediate with the goal achieving a joint statement. Both Cermaq ASA and the complainants provided the NCP with additional requested documentation by 9 May, while mediation by the head of the Norwegian NCP took place between 20 and 29 June.

The joint statement was reached on 1 July and officially signed on 10 August 2011. In the joint statement, Cermaq admits to have taken insufficient account to the precautionary principle in meeting social and environmental challenges. The parent company also takes responsibility for its subsidiaries' activities abroad. Friends of the Earth Norway and ForUM recognize that Cermaq has learned from the fish crisis in Chile and has made positive changes in procedures to prevent fish disease in Chile and in Cermaq's global business. The parties have also agreed upon principles for responsible aquaculture, indigenous peoples rights, human rights, workers' rights and sustainability reporting.

In addition they have agreed that the complaint included claims about Cermaq and its business that have been refuted and that future cooperation and contacts shall be based on mutual trust and clarification of facts.

Following the successful conclusion of the mediation process and the joint statement by the parties, the Norwegian NCP concluded the complaint and made no further examination of the allegations in the complaint. The parties have been invited to meet with the NCP again in April 2012, to give an update on the implementation of the joint statement.

The strong role played by the NCP of the country in which the company is headquartered (i.e. Norway), as well as the direct participation of the company's CEO in the mediated negotiations appear to be crucial factors in the successful outcome achieved.

Approximately one year after the agreement was reached, the complainants commissioned a study to analyse the impact of the case and agreement on local communities and the environment in Chile. The study recognises that Cermaq has stated its ambition to become a leader in corporate responsibility in its sector, but concludes that Cermaq failed to change its operations in Chile accordingly. The study finds that little has been done to improve the conditions of workers, specifically women and subcontracted workers, at production facilities. Moreover, the study maintains that Cermaq has done little to improve communication with trade unions, nor has it convincingly addressed disputes with indigenous communities. There is little

evidence that Cermaq conducted a thorough environmental risk assessment before expanding its operations to other areas. Two years after signing the joint

statement, much remains to be done before the company can call itself a leader in corporate responsibility. The follow-up report is annexed to OECD

Watch's submission to the 2013 NCP meeting and available on the OECD Watch website.

34

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	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 Inflamable 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,

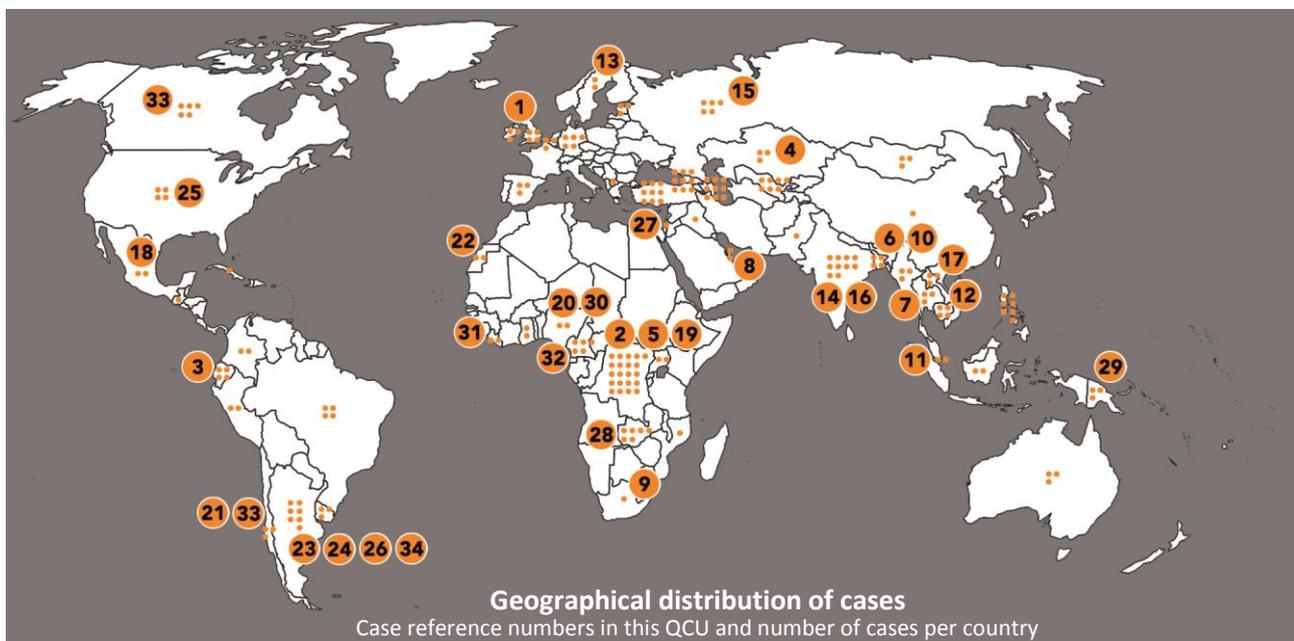
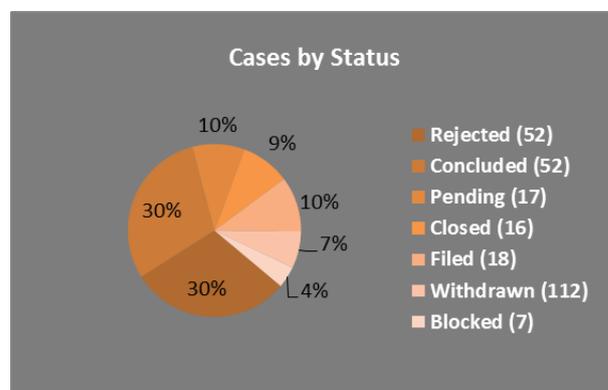
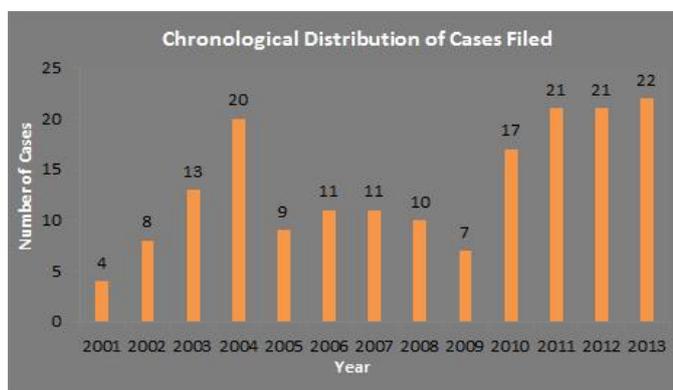
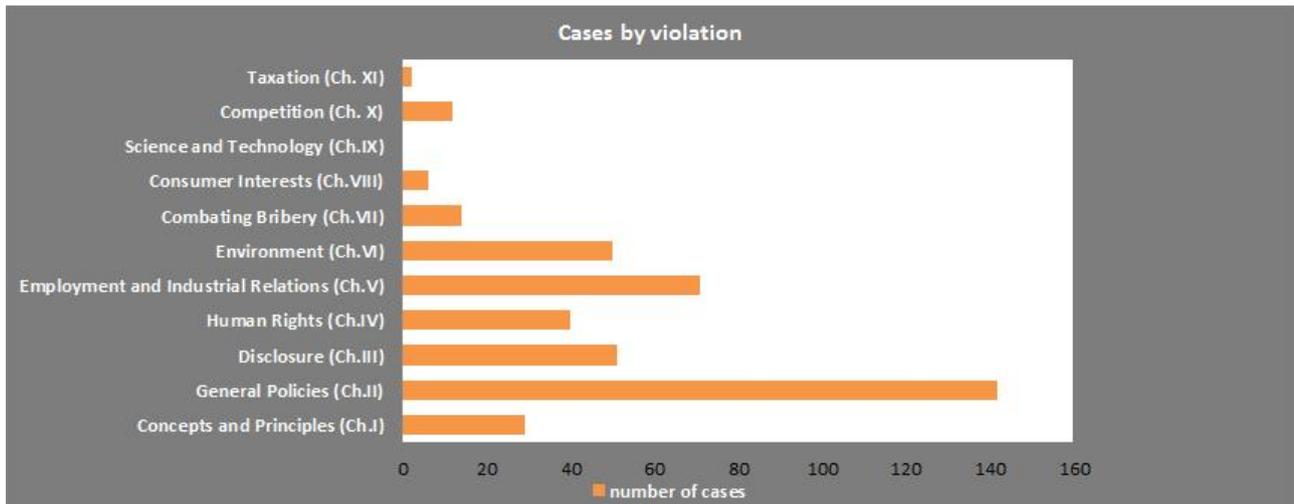
but to date there has been no follow-up by the NCP.

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. No further progress on the case has been made.

As of November 2013, 174 OECD Guidelines cases have been filed by civil society organisations and individuals



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 and Virginia Sandjojo, 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 to it by the complainants, NCPs, and the companies involved in the various cases. 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.