

Quarterly Case Update

June 2014

Vol.9 Iss.1

of OECD Guidelines cases filed by civil society

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1

Case	Andritz' contribution to environmental and human rights impacts of the Xayaburi dam in Laos		
Company/ies	Date filed	Current status	Duration (to date)
Andritz AG	9 April 2014	Filed	3 Months
Complainants	Center for Social Research and Development, The Community Resources Center, EarthRights International, ECA Watch Austria, The Fisheries Action Coalition Team of Cambodia, International Rivers, The Law and Policy of Sustainable Development Research Center, The Northeast Community Network of 7 Provinces of the Mekong River Basin, Samreth Law Group		
National Contact Point(s) concerned	Austria		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies) § A1, A2, A10, A11; Chapter IV (Human Rights) § 2, 4, 5, 6; Chapter VI (Environment) § 3		

Issue

Austrian engineering giant Andritz supplies key operating technology to the Government of Laos for the Xayaburi dam.

The dam could have serious environmental and human rights impacts for hundreds of thousands of people in Laos, Thailand, Cambodia, and Vietnam. It is the first of 11 planned hydropower projects on the still undammed Lower Mekong River.

The Xayaburi dam is expected to impede fish migration, adversely affect Thai and Cambodian riverine fishing communities, and cause the extinction of species

found only in the Mekong River such as the Mekong giant catfish.

The dam will also likely block the flow of nutrient-rich sediment to Vietnam's ecologically fragile Mekong Delta, which supports a thriving rice farming industry.

Fishery and environmental experts have concluded that the Xayaburi dam and other mainstream Mekong dams risk driving many already-impooverished families along the river into poverty and malnutrition.

As the holder of a \$300 million contract to supply custom-built parts that will power the dam,

Andritz is considered to be contributing to the adverse impacts resulting from the project. The company also has significant leverage to improve the design of the project.

The complaint asks Andritz to conduct impact assessments and to work with the project developer and the Government of Laos to prevent and mitigate impacts, adopt policies to prevent harm in future projects, and help provide an effective remedy for populations affected by the Xayaburi dam.

Developments/Outcome

The Austrian NCP confirmed receipt on 10 April 2014.

2

Case	Multiple human rights, environment, and disclosure violations at China Gold Resources' Gyama Copper-Polymetallic Mine in Central Tibet		
Company/ies	Date filed	Current status	Duration (to date)
China Gold International Resources Corp. Ltd.	28 January 2014	Filed	5 Months
Complainants	Canada Tibet Committee (CTC)		
National Contact Point(s) concerned	Canada		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies) § A.1, A2, A10, A11, A14, B1; Chapter III (Disclosure) § 1, 2f, 2g, 3b, 3c, 5; Chapter IV (Human rights) § 1, 2, 3, 5, 6; Chapter V (Employment and Industrial Relations) § 1e, 5; Chapter VI (Environment) § Preamble, 1a, 2a, 4, 5		

Issue

On 29 March 2013, Chinese state media reported that 83 miners were buried after a major landslide hit part of the Gyama Copper Polymetallic Mine located in the Pulang Valley in Siphug Village of Tashi Gang Town in Central Tibet (Tibet Autonomous Region). There were no survivors. The workers were reportedly asleep in their tents when they were buried by a mass of mud, rocks, and debris that was three kilometres wide and thirty metres deep.

The camp where the workers were buried belongs to Tibet Huatailong Mining Development Ltd., a wholly-owned subsidiary of

China Gold International Resources.

Although the Chinese government has stated that the landslide was a natural disaster, CTC alleges that there is documented evidence that it was in fact a manmade disaster and that the company had ignored previous warnings and local protests.

In addition, the complaint describes numerous other disputes with local stakeholders that remain unresolved and are indicative of a range of continuing violations of the Guidelines.

The complaint was filed by CTC

because members of affected communities are unable to bring forward public complaints for reasons of personal security.

Developments/Outcome

After confirming receipt on 28 January, CTC did not hear from the NCP until 17 April. The NCP informed CTC that China Gold is unwilling to engage and that it is preparing the initial assessment. Though the initial assessment has not yet been issued, the Canadian NCP appears – in both this and the Corriente/CTCC case below – to be inappropriately conflating the initial assessment phase of the specific instance process with the mediation phase.

3

Case	Tax avoidance and disclosure violations by Alliance Boots		
Company/ies	Date filed	Current status	Duration (to date)
Alliance Boots	28 November 2013	Rejected, 19 May 2014	6 Months
Complainants	War on Want, Change to Win		
National Contact Point(s) concerned	United Kingdom		
Guidelines Chapter(s) & paragraph(s)	Chapter III (Disclosure) § 1, 2; Chapter XI (Taxation) § 1, 2		

Issue

War on Want and Change to Win's complaint against Alliance Boots alleges that the company has violated the Guidelines' disclosure and taxation provisions.

The complaint contends that from 2009 to 2013, Alliance Boots' Executive Chairman Stefano Pessina engaged in a series of transactions with insider-controlled entities trading in the company's debt, which may have significantly enriched those connected with the entities at the expense of the company and taxpayers.

The complaint also alleges that Alliance Boots failed to disclose important information that would allow the public and stakeholders

to gauge the fairness and transparency of the terms of the transactions, the appropriateness of the handling of potentially significant conflicts of interest, and the adequacy of its corporate governance policies.

Further, Alliance Boots has allegedly not acted in accordance with the spirit of UK taxation laws by shifting profits to offshore tax havens using complex financial instruments, shell financial companies in Luxembourg, and payments from one party to another to finance the purchase of company debt in a circular manner.

The complainants seek mediation to bring concrete reforms of the company's governance, tax, and disclosure procedures so they are

aligned with the Guidelines.

Developments/Outcome

After receiving the complaint, the UK NCP felt it would be more appropriate for the Swiss NCP to handle the case. The UK NCP tried to transfer it to the Swiss NCP, but the Swiss NCP was of the opinion that the issues had arisen in the UK and should therefore be handled by the UK NCP. The UK NCP then conducted an initial assessment on its own. On 11 May 2014, the UK NCP provided the parties with a draft initial assessment for comment and clarification. One week later, on 19 May 2014, the NCP rejected complaint, claiming the allegations were unsubstantiated.

4

Case	Human rights impacts of G4S's security services in Israel and the Occupied Palestinian Territory		
Company/ies	Date filed	Current status	Duration (to date)
G4S plc	27 November 2013	Pending	7 Months
Complainants	Lawyers for Palestinian Human Rights (LPHR)		
National Contact Point(s) concerned	United Kingdom, Israel		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies) § 2 Chapter IV (Human rights) § 1, 2, 3, 5		

Issue

G4S and its Israeli subsidiaries provide, install, and maintain equipment that is used in military checkpoints in the Separation Barrier.

The complaint alleges serious human rights abuses, including the detention and imprisonment of children in Israeli prison facilities, during which many allege being subject to torture and/or cruel and degrading treatment.

LPHR requests that G4S provide information about where and how

its equipment is used and what due diligence checks have been conducted in providing it. The complaint also asks G4S to stop servicing the equipment, remove it, agree to an independent audit of these actions, and agree to identify ways to compensate the people who have suffered adverse impacts.

LPHR is represented by the London-based law firm Leigh Day.

Developments/ Outcome

On 22 May 2014, the NCP accepted the case; however, it rejected allegations relating to

G4S's obligations to avoid causing or contributing to adverse human rights impacts and to conduct human rights due diligence. The NCP argued that G4S's equipment has not been used to commit abuses, and it accepted that the company has undertaken human rights due diligence.

However, the NCP stated that its final statement may refer to aspects of the company's due diligence.

Case	Complicity in human rights violations in Bahrain		
Company/ies	Date filed	Current status	Duration
Dae Kwang Chemical Corporation	26 November 2013	Rejected, May 2014	6 Months
Complainants	Bahrain Watch, Americans for Democracy and Human Rights in Bahrain (ADHRB)		
National Contact Point(s) concerned	Korea		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies) § A2; Chapter IV (Human rights) § 3		

Issue

Bahrain Watch and ADHRB's complaint concerns an impending large shipment of tear gas to the Government of the Kingdom of Bahrain.

According to the complainants, the shipment raises grave concerns about the potential complicity of Dae Kwang in human rights violations because several recent reports state that the government has systematically deployed tear gas against civilian populations in an excessive and inappropriate manner.

The complaint alleges that the use of tear gas by the Bahraini government has resulted in ongoing multiple violations of internationally recognised human rights, including the right to life; the right to be free from torture and other inhuman, degrading or cruel treatment or punishment; and the right to freedom of expression and assembly.

The complaint also alleges that Dae Kwang has been a significant supplier of tear gas to Bahrain since 2011 and that previous

exports are likely to have been used in human rights violations and suppressing pro-democracy protests.

They request that Dae Kwang stop supplying tear gas to Bahrain in order to avoid causing or contributing to future human rights violations.

Developments/Outcome

The complainants only received one communication on 31 December 2013, when the NCP forwarded Dae Kwang's response. They replied on 9 January 2014, but received no further response.

The NCP's initial assessment rejecting the case was received on 22 May 2014. The NCP argued that Dae Kwang is not a multinational enterprise so the Guidelines do not apply. The NCP did not give the complainants an opportunity to comment on a draft initial assessment.

The complainants view the NCP's logic in rejecting the complaint as seriously flawed, and a misrepresentation of the text of the Guidelines. The NCP's

statement claims that "The OECD Guidelines *require* that multinational enterprises should be 'companies existing in multiple countries that are mutually connected through ownership or stakes in the company'." But saying that the Guidelines "require" this to be the case is a misrepresentation. What the Guidelines actually say is that MNEs are "usually" companies in multiple countries – that "usually" implies that other constructions are possible. In fact, the text of the Guidelines specifically emphasizes that no fixed definition of 'multinational enterprise' is required for the purposes of the Guidelines. Thus, the Korean NCP's insistence that a strict definition of MNE be met is erroneous. In the end, no matter what the interpretation, the fact is that if the Korean NCP were genuinely committed to the effective implementation of the OECD Guidelines, it could have at least accepted the complaint and try to get the parties together to seek a solution rather than rejecting the case outright at the initial assessment phase.

Case	HR violations resulting from failure to resolve earthquake insurance claims and inadequate/incomplete repairs to earthquake-damaged homes		
Company/ies	Date filed	Current status	Duration (to date)
Earthquake Commission	11 November 2013	Rejected, February 2014	3 Months
Southern Response Earthquake Services	11 November 2013	Rejected, February 2014	3 Months
IAG New Zealand Ltd.	11 November 2013	Filed	8 Months
Tower Insurance Ltd.	11 November 2013	Filed	8 Months
Vero Insurance New Zealand Ltd.	11 November 2013	Filed	8 Months
Fletcher Construction Co. Ltd.	11 November 2013	Filed	8 Months
Complainants	Wider Earthquake Community Action Network (WeCAN)		
National Contact Point(s) concerned	New Zealand		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies) § A2, A6, A10, A11, A12, A13, A14; Chapter IV (Human Rights) § 1, 2, 3, 4, 5, 6		

Issue

In September 2010, four major earthquakes and an estimated 13,000 aftershocks devastated the Canterbury region, which includes New Zealand's second largest city, Christchurch. The earthquakes resulted in 185 deaths and injured 11,432 people.

Multiple complainants have

alleged that the Earthquake Commission, Southern Response, IAG New Zealand, Tower Insurance, and Vero Insurance's failure to resolve insurance claims more than three years after the earthquakes has violated their rights to health and adequate housing in accordance with the International Covenant on Economic, Social, and Cultural

Rights.

Multiple complainants have also alleged that Fletcher Construction has not started repairs, not completed repairs, or has inadequately repaired earthquake-damaged homes and has thus violated their rights to health and adequate housing as well.

Developments/Outcome

The NCP rejected the complaint against the Earthquake Commission by arguing it is not a multinational enterprise or for-profit entity (using an interpretation/reasoning different than the Korean NCP in the Dae

Kwang case above). The NCP also rejected the Southern Response case by arguing it only competes in NZ's domestic market (yet another interpretation of 'MNE'). WeCAN challenged the NCP's decision in a 24 March submission.

The NCP has requested more information about the other cases, which it has acknowledged are subject to the Guidelines. WeCAN is currently compiling the requested evidence.

7

Case	Involvement of 6 UK telecom companies in human rights abuses related to mass and indiscriminate interception of communications		
Company/ies	Date filed	Current status	Duration (to date)
BT	5 November 2013	Filed	8 Months
Verizon Enterprise	5 November 2013	Filed	8 Months
Vodafone Cable	5 November 2013	Filed	8 Months
Viatel	5 November 2013	Filed	8 Months
Level 3	5 November 2013	Filed	8 Months
Interoute	5 November 2013	Filed	8 Months
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

As of 9 May 2014, the complainants are awaiting publication of the NCP's initial assessment.

8

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
SOCO International plc	7 October 2013	Concluded, June 2014	8 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, 2b		

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 Site status.

The complaint also alleges that SOCO negotiated a production sharing contract (PSC) with the DRC government that includes a "full freezing" stabilization clause that effectively exempts it 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, WWF alleges that SOCO has not provided any evidence that it has conducted appropriate and systematic human rights due diligence and that it has failed to inform the public about the potential environment, health, and safety risks and impacts of its activities. Lastly, the complaint alleges that SOCO's community consultations have not been characterised by meaningful two-way communication, and the its use of state security 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 estimates that to bring SOCO's operations into line with the Guidelines, it will require the immediate cessation of its activities in and around Virunga.

Developments/Outcome

The UK NCP accepted the majority of the complaint in February 2014, rejecting only the allegation that SOCO had sought or accepted a legal exemption by accepting the company's claim that it did not intend for the stabilisation clause to be applicable to anything beyond the "fiscal regime".

The UK NCP hired an external mediator to mediate between the parties. On 11 June 2014, the mediation resulted in an

agreement and joint statement by the parties. As part of the statement, SOCO agreed “not to undertake or commission any exploratory or other drilling within Virunga National Park unless UNESCO and the DRC government agree that such activities are not incompatible with its World Heritage status”. SOCO agreed to cease its

operations in approximately 30 days.

SOCO also committed never again to jeopardize the value of any other World Heritage Sites anywhere in the world and to undertake environmental impact assessments and human rights due diligence that complies with “international norms and

standards and industry best practice, including appropriate levels of community consultation and engagement on the basis of publicly available document”.

The WWF-SOCO agreement represents the first time a company has agreed to halt operations during NCP-facilitated mediation.

9

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	11 Months
CRCC-Tongguan Investment (Canada)	25 July 2013	Filed	11 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), § Chapeau, A10, A11, A12, A14; Chapter IV (Human Rights), § 1, 2, 6; Chapter VI (Environment), § Chapeau, 2a, 2b		

Issue

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 complaint alleges multiple violations, including a lack of adequate environmental evaluation and numerous human rights abuses such as forced displacement and lack of respect for Indigenous People's rights. Local families, both indigenous and campesino, are allegedly being forcibly displaced to make way for the open-pit copper mine.

The consultation process is alleged to have been marred by a

lack of full disclosure and transparency, lack of adequate environmental impact studies, and lack of free, prior and informed consent of or consultation with affected communities.

The company has allegedly fuelled division among the affected communities and is complicit in violent state repression of protests against large-scale mining in the area.

The complainants further contend 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, poses a serious threat to the local communities' access to water, land, livelihood, and way of life.

The complainants call on the 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 confirmed receipt on 25 July 2013 and requested translations of certain documents, which were provided.

On 4 April, the NCP said it had received additional information from the company that caused the prolonged delay in publishing its initial assessment. Though the initial assessment has not yet been issued, the Canadian NCP appears – in both this and the China Gold case above – to be inappropriately conflating the initial assessment phase of the specific instance process with the mediation phase.

10

Case	BT's facilitation of US drone strikes in Yemen by providing communications infrastructure and services		
Company/ies	Date filed	Current status	Duration
BT Group plc.	15 July 2013	Rejected, October 2013	3 Months
Complainants	Reprieve		
National Contact Point(s) concerned	United Kingdom		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies) § 2; Chapter IV (Human rights) § 2, 3, 5, 6		

Issue

Reprieve alleges that BT has contributed to gross human rights violations by providing key communications infrastructure from a US military base in the UK to Camp Lemonnier in Djibouti,

which is the covert centre from which armed US drones carry out lethal missions over Yemen.

The complaint alleges BT has not shown what human rights due diligence it carried out before

entering into the contract with the US government and has not sought to prevent or mitigate human rights abuses.

Reprieve filed the complaint on behalf of a number of affected individuals who have lost relatives

in drone strikes or continue to be impacted.

Reprieve requests the NCP to investigate BT's possible contribution to the gross violations of international law and human rights that the use of drones in non-war zones entails.

Developments/Outcome

The UK NCP rejected the complaint by arguing that Reprieve had not substantiated a link between BT's communication services and the impact of the US' drone operations. BT argued its services were of a general character and that it is not

a party to information about their exact uses.

The NCP also accepted BT's evidence, which the NCP said showed a general level of due diligence has been conducted.

Reprieve maintains that BT's assertions were taken at face value without any substantiating evidence, and that a greater onus was placed on them to substantiate the complaint.

According to Reprieve, the NCP should have asked BT whether it carried out any risk-based due diligence and whether it had

mitigated, avoided, or prevented any adverse human rights impacts.

Reprieve notes that civil society should not be relied upon to provide precise links between corporate activities and human rights abuses, especially when a company refuses all cooperation and disclosure.

On 15 May 2014, Reprieve's request for judicial review by the UK Treasury Solicitor's Department was denied. Reprieve was told their only recourse is to use the procedures provided by the NCP.

11

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	Pending	1 Year, 1 Month
Chevron	6 June 2013	Pending	1 Year, 1 Month
ENI	6 June 2013	Pending	1 Year, 1 Month
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, A13, A14; Chapter III (Disclosure), § 4; Chapter IV (Human Rights), § 1, 2, 3, 5, 6; Chapter VI (Environment), § 1a, 1b, 2a, 2b, 4, 5.		

Issue

The complaints concern the Karachaganak Oil and Gas Condensate Field's environmental, health and human rights impacts on residents of Berezovka village in Kazakhstan. They allege 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.

They further allege 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 complainants also allege that KPO has failed to disclose 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 UK NCP's December 2013 initial assessment narrowed the scope of mediation to those families that are located in the Sanitary Protection Zone with a focus on finding a mediated

solution with regard to their relocation to a safe and environmentally clean location.

The NCP rejected the complainants' request to examine relocating Berezovka village because the consortium's obligation to do so had not been substantiated. The NCP also concluded that a link between the KPO's operations and the sinkholes in the village had not been established.

A procedural issue to note is the NCP recommended the complainants bring in a UK partner since meetings will take place in London.

The UK NCP engaged a professional mediator, and mediation was set to begin in June 2014.

Case	Human rights abuses associated with ENRC mines in the DRC		
Company/ies	Date filed	Current status	Duration (to date)
Eurasian Natural Resources Corporation (ENRC)	13 May 2013	Pending	1 Year, 2 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 ENRC in the DRC, including the Canadian company Africo Resources.

The complaint alleges 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. Specifically, 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. In addition, 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.

Developments/Outcome

The UK NCP accepted the case in

October 2013, but it refused to examine resettling Kisankala village and environmental and social monitoring in Lenge village, arguing there was "insufficient evidence".

ENRC has denied all the allegations, but has indicated its willingness to enter into mediation.

The UK NCP engaged a professional mediator, and mediation was set to begin in May 2014.

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	1 Year, 2 Months
KiK	13 May 2013	Pending	1 Year, 2 Months
Karl Rieker	13 May 2013	Pending	1 Year, 2 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, Brazil		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), § A10, A11, A12; Chapter IV (Human Rights), § 2, 3, 5		

Issue

The complaint concerns the (partial) responsibility of three German garment retail companies for the Tazreen factory fire in Bangladesh in November 2012, which 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 companies are partly responsible for the poor safety and working conditions that exist.

They argue that the 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 German NCP accepted the complaints against Karl Rieker and KiK and forwarded the C&A case to the Brazilian NCP. The Brazilian NCP still has not issued an initial assessment.

In May 2013, Karl Rieker and KiK submitted responses to the Business and Human Rights Resource Centre. C&A declined to respond, citing the confidentiality requirements of the specific instance process.

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 its Thai subsidiary engaged in anti-union practices following wage negotiations with workers at its Rayong plant in 2012. After the negotiations, Electrolux allegedly removed and suspended the chairperson of the local trade union, detained protesting workers against their will, and fired nearly one hundred employees who participated in demonstrations.

In the Mönlycke case, the complaint concerns action taken by the company in 2011 at its Thai Factory 1 during wage negotiations with the local trade union. 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 10 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. The case dissolved in January 2013 when the last worker accepted compensation.

Swedwatch requested that Electrolux and Mönlycke uphold the Guidelines by allowing the suspended and dismissed trade union members to return to work and by improving their guidelines and mechanisms for dealing with workers' complaints and negotiation routines, especially in subsidiaries in countries where trade union discrimination is common such as Thailand.

Swedwatch requests that the NCP determine whether the actions of Electrolux and Mönlycke in Thailand constituted a breach of the Guidelines on trade union rights.

Developments/Outcome

In response to the allegations, Electrolux publicly dismissed the

claims and said it had not breached the Guidelines.

In September 2013, the NCP rejected both complaints. The NCP said that the on-going dialogue between Electrolux and the trade unions was the main reason for its rejection and that the parties should find a solution in this process.

The NCP also accepted Mönlycke's argument that a social dialogue had been initiated between local management and trade unions and that the specific conflict had ended after workers and union members accepted settlements.

Swedwatch said that after the complaints were filed, the social dialogue with the companies led to improvements in the labour conditions at the factories.

In November 2013, the NCP hosted a follow-up meeting with Swedwatch, Electrolux, and Mönlycke. The NCP reiterated its decision not to formally take on the cases because both companies had taken action to improve the situation. The NCP also said it would monitor developments.

In June 2014, Swedwatch noted that a report by the Swedish union, IF Metall, states that the Electrolux plant still does not have any union representatives because the workers are afraid to organise.

Case	Gamma & Trovicor's role in Bahraini human rights abuses		
Company/ies	Date filed	Current status	Duration (to date)
Gamma International	1 February 2013	Pending	1 Year, 5 Months
Trovicor GmbH	1 February 2013	Concluded, May 2014	1 Year, 4 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 alleges that Gamma and Trovicor are selling intrusive surveillance technology

and training to the Bahraini government where this technology is allegedly used to target human rights activists.

By doing so, and by continuing to maintain the technologies, Gamma and Trovicor are alleged to be 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 November 2013, the German NCP offered to mediate a discussion about Trovicor’s management system, but it would not consider the company’s role in human rights abuses in Bahrain. The NCP argued that the allegations were not substantiated.

The complainants disputed the NCP’s decision and argued that they had provided sufficient evidence about Trovicor’s business relationship with the Bahraini government.

After the NCP refused to change its stance, the complainants refused mediation on 30 January 2014. The NCP issued its final statement “terminating” the case on 21 May 2014.

The Gamma case was accepted by the UK NCP on 24 June 2013 even though the NCP found that direct evidence about the company’s supply of surveillance technology and training had not been provided by the complainants.

While the UK NCP appointed an external mediator, the process had several flaws. The parties did not have an agreed agenda before they met, and information about who would represent the company was not provided.

Gamma was represented by an external lawyer who was not authorised to take decisions and did not have knowledge of the relevant technical issues. The complainants were prepared to discuss the substance of their complaint while the Gamma representative only wanted to agree to additional dates for mediation.

After one meeting, the process entailed written statements by the parties to come to an agreement.

Given the costs involved for complainants to attend mediation, the parties note that the NCP should ensure mediation is conducted effectively.

As of June 2014, the NCP is preparing the final statement.

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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	1 Year, 6 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 seven 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 in their local languages.

The number of people that would be displaced should the project proceed is contested. At the lowest end of the spectrum, GCM states that it would displace 49,487 people. However, an Expert Committee formed by the government of Bangladesh to assess the project concluded that it threatens the water sources of 220,000 people, with unknown

displacement impacts over time. According to GCM, the project would displace 2,328 indigenous peoples. However, Bangladesh’s National Indigenous Union, Jatiya Adivasi Parishad, estimates it would displace and/or impoverish 50,000 indigenous people. GCM also states that their project would acquire 14,660 acres of land, 80% of which is fertile and productive agricultural land. Although 80% of the affected households currently have land-based livelihoods, GCM’s draft Resettlement Plan clearly states there will be no land-for-land compensation and “most households will become landless”.

The UN Special Rapporteur on the Rights of Indigenous People, James Anaya, has twice commented in the UN record on GCM’s failure to seek or secure the free, prior, and informed consent (FPIC) of indigenous people who would be affected by the project. This is an ongoing violation of the right to FPIC that now spans more than seven years. GCM cannot avoid these forced evictions if its project is implemented. This means that violations of the human rights of

tens of thousands of people are, indeed, inevitable if GCM’s project is implemented.

Developments/Outcome

The UK accepted the complaint in June 2013. However, the NCP said the allegations that GCM had failed to disclose information about risks and failed to prevent or mitigate human rights impacts were “not substantiated” because the complainants had not shown that the impacts were happening or occurring on or after 1 September 2011 when the revised Guidelines’ took effect. Instead, the NCP accepted GCM Resources’ claim that it will avoid and mitigate the impacts of relocating the estimated 54,000 people should the project proceed.

The NCP has only allowed examination of issues regarding violation of the rights of affected communities that have been shown to be inevitable, 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 NCP's refusal to consider potential human rights impacts has outraged the complainants, particularly in light of the fact that seven of the United Nation's Special Rapporteurs took coordinated action in February of 2012 to issue a joint UN press release calling for an immediate halt to GCM's proposed project on the grounds that it threatens the fundamental human rights of tens of thousands of people, including the rights to food, water, adequate housing, freedom from extreme poverty

and the rights of indigenous people.

In addition, Miloon Kothari, the former UN Special Rapporteur on the Right to Adequate Housing and author of the UN Principle and Guidelines on Development-based Evictions and Displacement wrote to the UK NCP to on 19 October 2013 to notify it that the massive displacement that GCM intends to carry out constitutes "forced evictions," as defined in international law, and as such is a violation of human rights in itself.

When the NCP offered to facilitate mediation between the parties, GCM denied the

allegations and urged the NCP not to accept the case. As the parties could not agree on terms for mediation, the NCP moved to conduct an examination of the allegations in the complaint and issue a final statement. The NCP has presented the parties with a draft final statement, but is delaying publication of the statement because one of the parties has requested that the UK NCP's Steering Board review the NCP's handling of the case. Publication of the NCP's final statement will be delayed until the Steering Board's review is complete.

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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	1 Year, 8 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 building a 360-turbine wind farm in the municipality of Jämtland, Sweden on the traditional lands of the indigenous reindeer-herding collective of Jijnjevaerie Saami village. Much of these lands serve as migration routes and winter herding pastures.

If the project proceeds as planned, it will severely restrict the community's ability to pursue reindeer husbandry, which is the basis of their economic and cultural survival. The project will force Jijnjevaerie Saami village members to abandon their herding practices and 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 Jijnjevaerie Saami village and that the consultations, which have taken place have been flawed. The complaint further alleges that Statkraft has failed to take adequate steps to prevent adverse impacts from the wind farm.

Jijnjevaerie Saami village has demanded that Statkraft engage in meaningful consultations on all developments affecting them and that all appropriate steps to prevent adverse impacts on the environment and their reindeer herding practices be taken.

Developments/Outcome

On 14 February 2013, the Swedish and Norwegian NCPs finalised their initial assessment and accepted the case with Norway taking the lead.

After the complaint was filed, the parties renewed their dialogue. The NCPs decided to defer the case to allow the parties to find a mutually acceptable solution.

In May 2013, an informal meeting between the parties was held with the Swedish NCP to discuss a set of proposals made by the Jijnjevaerie Saami village on how to mitigate the damage from the wind farm. After the dialogue failed to produce an agreement, the Norwegian NCP resumed its lead role in handling the case.

It hosted the first official meeting between the parties in November 2013 to discuss the terms of reference for mediation.

As of June 2014, the NCP has appointed a moderator who is facilitating mediation.

Case	Sjøvik breaches of human rights in Western Sahara		
Company/ies	Date filed	Current status	Duration
Sjøvik AS	5 December 2011	Concluded, July 2013	1 Year, 7 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 Sjøvik of undermining the Sahrawi people's right to self-determination and thereby the Guidelines' Human Rights chapter.

NSCWS alleges that two of Sjøvik's African subsidiaries have breached the Guidelines by leasing and operating a fish vessel and a fish processing plant in the Non-Self-Governing Territory of Western Sahara.

The complainants accuse Sjøvik of failing to respect the right to self-determination of the Saharawi people and failing to consult with them about its exploitation of natural resources.

NSCWS urges the company to withdraw from Western Sahara and to recognise the status of the region as a Non-Self-Governing Territory in accordance with Article 73 of the UN Charter, in which the inhabitants of the territory have the right to self-determination over their natural resources.

Developments/Outcome

After receiving the complaint, the NCP met with Sjøvik, which argued that it possesses the

necessary fishing licenses to justify its activities. The company also argued that its activities contribute to employment and development in the region and that it has several agreements with the Sahrawi people relating to fishing quotas and delivery to Sahrawi factories.

The NCP accepted the case 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.

In June 2013, the parties published a joint statement that underlined the parties' very diverging opinions. Specifically, NSCWS urged the fishing company to respect international law, while Sjøvik stressed it did not wish to take a position on the status of the Non-Self-Governing Territory of Western Sahara in relation to Article 73 of the UN Charter.

Despite their diverging positions, the parties agreed upon a recommendation to the Norwegian government and steps

Sjøvik would take in Norway, including carrying out risk and environmental and social impact assessments for its operations overall. Sjøvik's due diligence reports were to take into account the status and vulnerability of Western Sahara. The company also agreed to establish and maintain an internal grievance mechanism that meets the requirements set out in the OECD Guidelines.

The NCP's final statement did not comment on the specific allegations, but it 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, including submitting a follow-up report on the implementation of the joint statement beforehand.

The parties met in May 2014, but Sjøvik is refusing to disclose the due diligence it agreed to conduct, claiming it has no obligation to do so. NSCWS therefore have no way of knowing if the agreement they signed has been honoured by Sjøvik.

Case	Environmental pollution at Barrick Gold's mines in Argentina		
Company/ies	Date filed	Current status	Duration (to date)
Barrick Exploraciones Argentinas S.A.	9 June 2011	Blocked	3 Years, 1 Month
Exploraciones Mineras S.A	9 June 2011	Blocked	3 Years, 1 Month
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 Gold Corporation 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 complaint alleges 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 case alleges 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 with affected communities, conduct an interdisciplinary environmental analysis, and initiate medical studies to investigate negative impacts on the local people's health.

Developments/Outcome

After not hearing back from the NCP for more than a month, FOCO wrote to the NCP on 22 July 2011 requesting information about the status of their case.

On 2 August 2011, the NCP met with the complainants and requested additional documentation of the alleged violations and more details regarding the parallel legal proceedings against Barrick.

On 6 October 2011, FOCO provided additional information and asked the NCP to move quickly to finalise the initial assessment and forward the complaint to the company.

On 2 November 2011, the NCP asked the complainants to specify whether the complaint is primarily

directed against the parent company, against Barrick's Argentine subsidiaries, or both.

In December 2011, FOCO clarified its complaint is against Barrick Exploraciones Argentinas S.A. and Exploraciones Mineras S.A. and submitted additional information.

More administrative delays ensued, partly due to multiple changes in the NCP's personnel.

Following repeated requests by the complainants, the NCP finally invited the complainants to an "informal" meeting on 10 August 2012.

As of April 2014, no further action has been taken by the NCP since it accepted the case in May 2013.

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Case	Xstrata's negative impacts on glaciers in Argentina		
Company/ies	Date filed	Current status	Duration (to date)
GlencoreXstrata	1 June 2011	Blocked	3 Years, 1 Month
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

CEDHA has alleged that Australia based Xstrata Copper (now GlencoreXstrata) is affecting glaciers and permafrost in two of its operations in Argentina, the El Pachón and Filo Colorado projects.

The complaint, filed at the Australian NCP, is based on two CEDHA reports that revealed 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 revealed 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 that is available publicly on programs such as Google Earth. A recent official site visit by the local authority and the National Glacier Institute also affirmed CEDHA's claims.

Xstrata, however, has refused to admit to the presence of any glaciers at either of the project

sites.

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 the company's unwillingness to engage in a solution.

CEDHA requests that the case be dealt with by the Australian NCP, in lieu of the Argentine NCP, and that the Australian NCP use its good offices to ensure that Xstrata repairs damage 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. The Australian NCP said it would stay involved and continue to offer its good offices.

After conducting an initial assessment that involved meetings with both CEDHA and Xstrata Copper, the Argentine NCP accepted the case on 25 October 2011.

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 contravention of Argentina's glacier law, which is fundamental to this case.

The Argentine NCP has changed key NCP personnel several times since accepting the case, complicating matters. This has been exacerbated 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 GlencoreXstrata representatives. The NCP then requested a meeting with CEDHA, at which time it presented the case information to the new NCP

members (a repeat of the original meeting in 2011).

In a September 2013 letter, CEDHA urged the company once again to address glacier impacts at its El Pachón and Filo Colorado projects.

As of May 2014, no progress has been made on the case.

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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	3 Years, 2 Months
Complainants	Ireland Palestine Solidarity campaign (IPSC)		
National Contact Point(s) concerned	Ireland		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), §1, 2, 3, 6, 11		

Issue

The Ireland-Palestine Solidarity Campaign's complaint alleges that CRH, through its jointly owned subsidiary Neshor Cement Enterprises, has violated provisions related to sustainable development and respect for human rights. CRH is the largest company in Ireland and politically very influential.

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 also 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 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 it did raise questions regarding legal and procedural matters of the specific instance procedure. The Irish and Israeli NCPs also initially collaborated on the case.

In February 2013, IPSC sent a letter to the Irish Minister of Jobs, Enterprise, and Innovation in an

attempt to move the case forward. The letter urged the Minister to engage directly with the NCP to take the case forward.

After the letter was sent, the Irish NCP met with IPSC and declared its determination to "unblock" the case. The NCP contacted the company, but CRH again responded with procedural queries.

IPSC followed up in January 2014 expressing extreme dismay with the NCP's lack of communication and action on the case. IPSC has requested that the NCP make a determination as to whether CRH have violated the Guidelines and issue a final statement with recommendations to the company to end the activities that are in breach.

22

Case	Human rights abuses at Barrick Gold's Porgera Mine in Papua New Guinea		
Company/ies	Date filed	Current status	Duration
Barrick Gold Corporation	1 March 2011	Concluded, January 2014	2 Years, 11 Months
Complainants	Akali Tange Association, Porgera SML Landowners Association, MiningWatch Canada		
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 Guidelines at its operations at the Porgera Joint Venture (PJV) gold mine in the Porgera valley, a remote region in the 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 complainants assert that the living conditions of people within the PJV mine's Special Mine Lease Area are incompatible with human health and safety standards and the 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 are supplied with food and fuel by the mine.

In addition, the complaint states the PJV mine disposes approximately 6.05 million tons of tailings and 12.5 million tons of suspended sediment from erodible waste dumps annually into the downstream Porgera, Lagaip, and Strickland river systems, thereby polluting the river and endangering public health and safety of communities along the shores.

The complainants further allege that Barrick/PJV has violated the 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 was raised 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—Rights and Accountability in Development (RAID) and EarthRights International (ERI)—issued a press release in January 2013, explicitly excluding confidential information. Nonetheless, removal of the press release and related documents was a condition that Barrick placed on their continuation in the mediation process.

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

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 Canadian NCP published a final statement on 14 January 2014.

23

Case	Mismanagement of community fund by ArcelorMittal Liberia		
Company/ies	Date filed	Current status	Duration
ArcelorMittal	24 January 2011	Concluded, September 2013	2 Years, 8 Months
Complainants	Friends of the Earth Europe (FoEE), Sustainable Development Institute (SDI)/FoE Liberia		
National Contact Point(s) concerned	Luxembourg (lead), Netherlands		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), § 1, 7, 11; Chapter VII (Bribery), § 5		

Issue

FoEE and Liberia-based SDI allege that ArcelorMittal has breached the OECD Guidelines with regard to its management of the County Social Development Fund (CSDF). According to the 25-year concession to develop the iron ore deposits that was negotiated in 2005, ArcelorMittal is obliged to provide approximately US\$73 million over the 25-year span of the Mineral Development Agreement to support socio-economic development in Liberia via the CSDF. The benefits of this fund should go to the Nimba, Bong, and Grand Bassa counties, and 20% of each county's allocation should be spent annually on

communities classified as directly affected by ArcelorMittal's operations.

The widespread allegations of misappropriation and misuse of CSDF funds led the complainants to conclude that the CSDF was failing to address the needs of communities impacted by the operations of ArcelorMittal.

The complainants also allege that ArcelorMittal has not properly informed neighbouring communities about its operations and the possible impacts on these communities.

In addition, the complaint raises 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 case was originally filed with the Dutch NCP, but after consulting with the complainants, it was forwarded to the Luxembourg NCP because ArcelorMittal is headquartered in Luxembourg. However, the Dutch NCP offered to assist the Luxembourg NCP with the procedural and the mediation aspects of the process.

In a related March 2012 development, the Liberian government announced that it was “gravely concerned” about the alleged mismanagement of the CSDF, and that it would begin a comprehensive audit of the fund.

With regard to ArcelorMittal’s pick-up truck donation, the NCP concluded that this issue was “out of the mandate of the NCP to judge whether ArcelorMittal had acted in compliance with domestic and international laws”.

The parties agreed that mediation would focus on the CSDF, and that an expert mediator would assist with drafting a proposal for improving the fund.

Two fact-finding missions took place. During the first, the NCP was accompanied by the

mediator, an SDI representative, a Luxembourg foreign office diplomat and an ArcelorMittal representative. After meeting with stakeholders and visiting a number of projects, the mediation team concluded that the “high expectations of the communities combined with the low completion level of the projects had increased local distrust in the Government”.

The mediator conducted a second fact-finding mission to explore how to set up a mechanism akin to a social fund, which other foreign companies that are facing similar issues to ArcelorMittal could potentially utilise.

The parties met multiple times throughout the process, including in June and July 2012 and again in March 2013. The final proposal for improving the CSDF that was

proposed by the NCP and supported by both parties was communicated to the Liberian government in September 2013, at which time the Luxembourg NCP closed the case.

The NCP also encouraged ArcelorMittal “to sustain management control systems that ensure that its operations anywhere in the world are in harmony with the OECD Guidelines”.

According to the complainants, ArcelorMittal and their support of the NCP’s proposal to reform the CSDF was instrumental in the successful conclusion of this case.

The Luxembourg NCP is not monitoring implementation of the proposal.

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Case	Environmental and labour rights breaches at Cameroonian palm oil plantations		
Company/ies	Date filed	Current status	Duration
Bolloré	7 December 2010	Concluded, June 2013	2 Years, 6 Months
Financière du Champ de Mars SA	7 December 2010	Concluded, June 2013	2 Years, 6 Months
SOCFINAL	7 December 2010	Concluded, June 2013	2 Years, 6 Months
Intercultures	7 December 2010	Concluded, June 2013	2 Years, 6 Months
Complainants	Association Sherpa, Centre pour l’Environnement et le Développement, Fondation Camerounaise d’Actions Rationalisées et de Formation sur l’Environnement, 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 affected 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 the company has not contributed to local development, thereby violating its contract with the Government of Cameroon.

The complaint alleges that water and air pollution are not adequately treated, causing problems for both the communities and the environment.

Local villagers also have reported physical abuse by SOCAPALM’s security agent Africa Security.

The complainants also allege that SOCAPALM’s treatment of plantation workers constituted 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 contends 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 Guidelines by failing to take action to prevent SOCAPALM’s negative impact on the environment, local communities, and workers.

Developments/Outcome

The French NCP declared all four cases admissible.

After refusing to cooperate for almost two years, Bolloré indicated a willingness 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's June 2013 final statement concluded that through their business relations with SOCAPALM, all four holding companies violated the Guidelines.

The NCP found that SOCAPALM had breached certain Guidelines relating to general policies, employment and industrial relations, and the environment. The NCP said the companies were not respecting recommendations on information disclosure.

The NCP recommended that the companies find a remedy to the

violations, and that they rely on the action plan prepared during the mediation to do so. The action plan covers a range of issues, including 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.

A procedural issue to note is the complainants insisted on obtaining the NCP's final statement before the end of the mediation, so they could concentrate on the action plan rather than discussing the alleged violations. This approach aimed

to clearly differentiate mediation from the process of agreeing to a final statement.

The complainants were pleased that the NCP's statement pointed out the violations, including reviewing each chapter of the Guidelines in relation to these.

In March 2014, the NCP announced in a follow-up statement that the action plan was adopted in September 2013 and that an independent organisation has been selected to monitor its implementation. The NCP's follow-up statement also notes that it will be informed annually about the action plan's implementation.

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Case	Shell's environmental and human health violations in Argentina		
Company/ies	Date filed	Current status	Duration (to date)
Shell Capsa	1 June 2008	Blocked	6 Years, 1 Month
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 that 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 are 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" and asked the parties to respond; both complied.

In April 2009, three members of the NCP visited Villa Inflamable to interview residents and to 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

In May 2009, the NCP indicated that it may 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.

In November 2009, the Argentine NCP announced it would close the case and publish its findings, including the fact that the company refused to cooperate.

However, the case remained pending and Shell Capsa refused to respond to the complaint until the court case against it is closed.

In June 2012, the NCP again requested that Shell Capsa provide information about the actions it has taken in relation to the allegations and an update on the parallel court case.

The complainants have repeatedly asked the NCP to make a determination on the allegations and issue a final statement.

As of April 2014, no action has been taken in this regard.

Case	Korean textile companies' labour abuses in the Philippines		
Company/ies	Date filed	Current status	Duration
Il-Kyoung Co. Ltd. Chongwon Trading	3 September 2007 3 September 2007	Closed Rejected	6 Years, 10 Months Duration unknown
Complainant	Workers Assistance Center, Inc.		
National Contact Point(s) concerned	Korea		
Guidelines Chapter(s) & paragraph(s)	Chapter I (Concepts and Principles), § 7; Chapter II (General Policies), § 2; Chapter IV (Employment and Industrial Relations), § 1A, 7; Chapter VI (Combating Bribery), Chapeau		

Issue

In 2007, several groups filed complaints against Chongwon Trading and Il-Kyoung Co. Ltd. for labour rights violations in the Philippines.

In 2001, after workers attempted to establish a union, management threatened to close Chongwon's fashion plant.

In 2004, after the unions won elections at the Chongwon's plant and Il-Kyoung's Phils Jeon plant, the companies filed several unsuccessful court petitions challenging the results.

In August 2006, the union president at Phils Jeon was dismissed along with 63 other members. The following month, workers at Phils Jeon and Chongwon went on strike despite management's warnings. The strike at Phils Jeon was violently dispersed by police and security guards who attacked and injured mainly 25 female workers. At Chongwon, 71 striking workers were dismissed and workers received death threats.

In February 2007, the Philippine Department of Labour and Employment suddenly declared

the unions no longer represented the workers. The unions accused the mediator for the National Relations Commission of taking bribes from the companies.

The complaint also notes that in August 2007, two female workers who were sleeping in front of the Phils Jeon factory were attacked by masked men, abducted and then thrown out at a highway close to the Philippine Economic Zone Authority.

Developments/Outcome

The Korean NCP rejected the Chongwon case because the company no longer existed. However, the NCP did accept the Il-Kyoung/Phils Jeon case.

In November 2007, the complainants submitted additional field research at a meeting with the NCP. Il-Kyoung agreed to enter into a dialogue with the union. The complainants pushed to have the dialogue facilitated by the NCP.

In April 2008, an informal meeting took place between the union and Phils Jeon management (the NCP played no role). In that meeting, Phils Jeon management and Il-Kyoung stated they would

not enter into a dialogue with the workers because they no longer work for the company. The complainants insisted that since the workers' dismissal is part of the dispute, they should maintain their union membership.

The NCP organised two meetings with the complainants at their request. However, no meetings with all the parties was ever organised by the NCP despite the complainants' request.

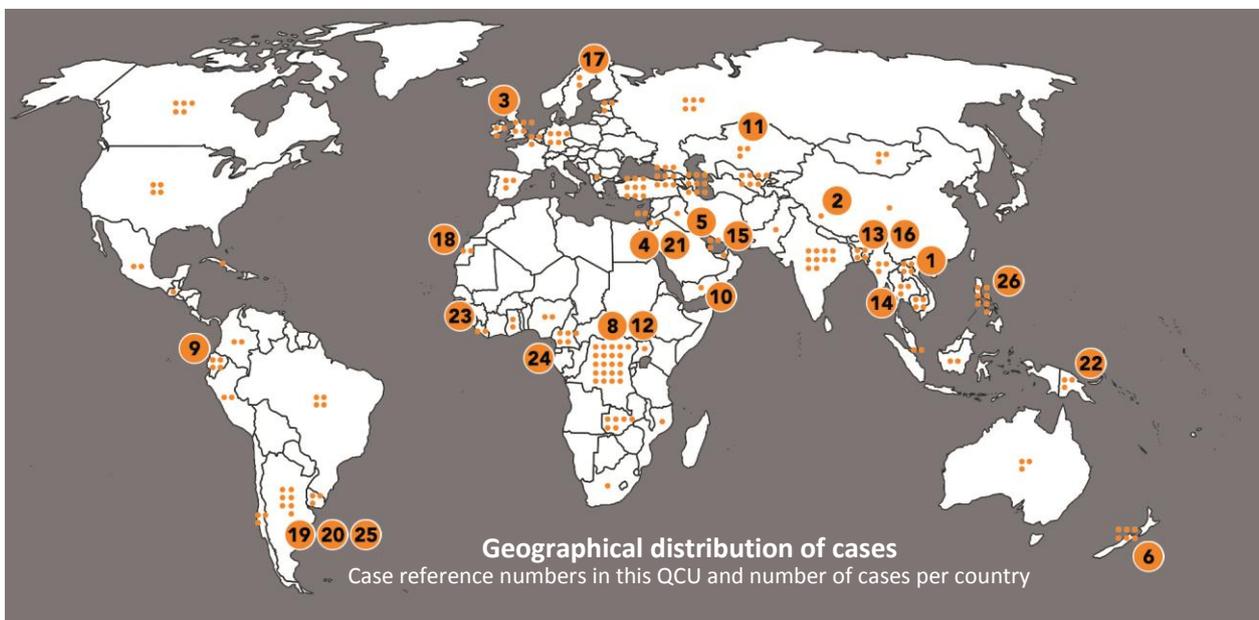
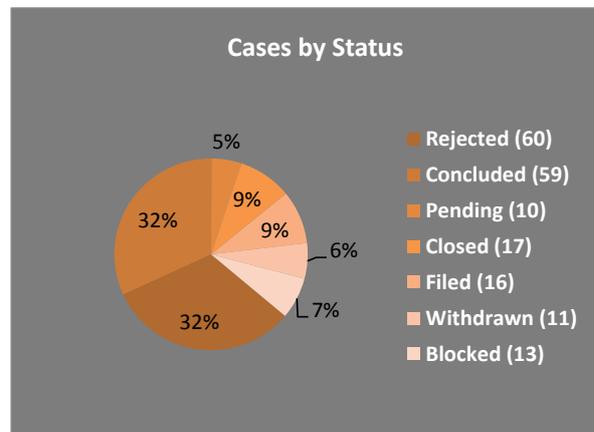
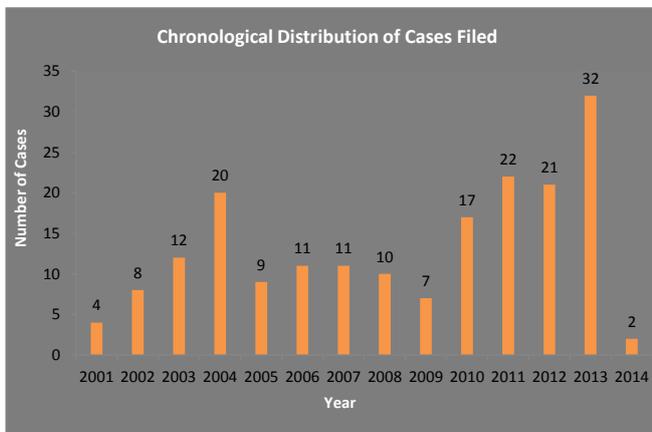
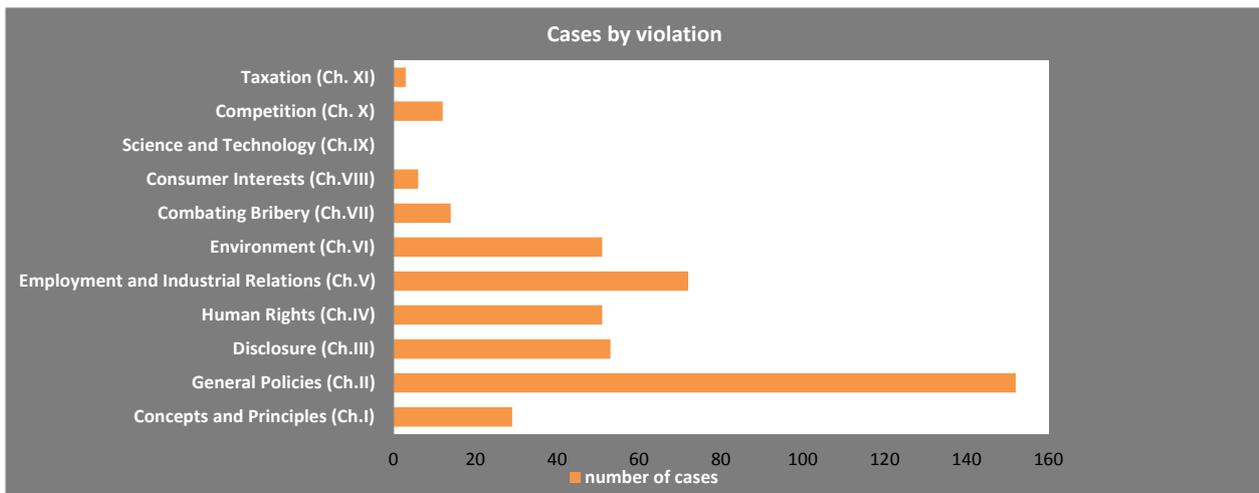
In April 2009, after the complainants requested a progress report, the NCP responded that it would take no further action on the case until the parallel legal proceedings (a case between Phils Jeon and its employees) in the Philippines had concluded.

The NCP agreed to meet with the complainants in April 2011, but again reiterated its position that it will not proceed on the case.

In 2014, OECD Watch learned that the NCP had closed the case without publishing a final statement or even officially informing the complainants.



As of June 2014, 183 OECD Guidelines cases have been filed by civil society organisations, 2 cases by individuals and 1 by a small business.



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 Colleen Freeman, 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 civil society, 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.