

Quarterly Case Update

OECD Watch

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of OECD Guidelines cases filed by NGOs

Highlights in this Update

New cases

- 1 Canadian and Mexican NGOs and trade unions file complaint at Canadian and Mexican NCPs against Excellon Resources for allegedly breaching provisions on disclosure, human rights, employment and the environment at the La Platosa poly-metallic (silver, lead and zinc) mine in Mexico. (p.2)
- 2 ACIDH and partners file complaint at Belgium NCP for human rights violations at Compagnie Minière de Sud Katanga mine in the DRC. (p.2)
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1

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

Issue

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

In 2008, La Sierrita agreed to lease a portion of their land to Excellon Resources for the development of the company's La Platosa poly-metallic (silver, lead and zinc) mine. The

complaint alleges Excellon Resources has breached the land rental contract with La Sierrita. The complainants allege that Excellon Resources failed to obtain consent before engaging in exploration activities on land outside the area designated in the contract and building a water treatment plant that has led to reduced potable water supplies and contamination of La Sierrita.

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

association and collective bargaining of workers at the La Platosa mine. The complaint accuses Excellon Resources of engaging in worker intimidation and actively supporting a "rogue" union to strategically undermine the unionization efforts of the SNTMMSSRM. The complainants contend the company has aggressively misled investors about the local labour dispute as well.

Developments/Outcome

Complainants are awaiting confirmation of receipt of the complaint by the NCPs.

2

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

Issue

The residents of Kawama and Lukuni-Gare, two villages on the outskirts of Lubumbashi in the DRC, close to the Luiswishi mine operated by the Compagnie minière du Sud Katanga (CMSK), are seeking compensation after their homes were unlawfully demolished by the Compagnie Minière de Sud Katanga in November 2009. The complaint to the Belgian NCP alleges that the demolitions, which were undertaken to prevent artisanal miners stealing minerals from the mine from using the villages as a base, negatively affected the villagers. 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.

For the past two years, CMSK and the Congolese authorities have failed to conduct a full inquiry into the incident and have not engaged in negotiations with representatives of the affected community in order to reach a settlement. The complainants believe that given the stalemate, it is time for the Belgian NCP to investigate GFI's responsibility for the human rights violations and to use its good offices to bring a satisfactory and fair resolution to this long-running dispute. The complainants furthermore ask the NCP to ensure that GFI brings its

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

Developments/Outcome

The NCP has acknowledged receipt of the complaint but it is still in the initial assessment phase. The complainants are concerned that mediation should start as soon as possible given the length of time that has already elapsed since the violations have taken place.

3

Case	Human rights and environmental violations Centerra Gold's mining operations in Mongolia		
Company/ies	Date filed	Current status	Duration (to date)
Centerra Gold Inc	15 March 2012	Filed	3 months
Complainants	MiningWatch Canada, United Mongolian Movement of Rivers and Lakes (UMMRL), Oyu Tolgoi Watch, Southwest Research and Information Center (SRIC), Rights and Accountability in Development (RAID)		
National Contact Point(s) concerned	Canada		
Guidelines Chapter(s) & paragraph(s)	Chapter I (Concepts and Principles), §2; Chapter II (General Policies), §5,10, 11; Chapter IV (Human Rights), §1; Chapter VI (Environment), §1, 2a, 4		

Issue

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

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

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

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

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

Developments/Outcome

Centerra Gold has responded to the complaint, and the NCP is in the process of making its initial assessment.

4

Case	Environmental and human rights breaches by Shell in the Niger Delta		
Company/ies	Date filed	Current status	Duration (to date)
Royal Dutch Shell	30 December 2011	Filed	6 months
Complainants	Amnesty International, Friends of the Earth International and Friends of the Earth Netherlands		
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 & Friends of the Earth International filed a complaint against Royal Dutch Shell for allegedly breaching several OECD Guidelines, including the Human Rights and Environment provisions. The complainants are concerned by the practices and communications of Shell with regard to its in Ogoniland in the Niger Delta. According to the complainants, Shell is in breach of the OECD Guidelines because of the severe pollution it has caused, the company's slow and inadequate response to oil spills, and insufficient control and maintenance of oil infrastructure. The complaint also alleges that the information provided by Shell with regard to these matters is incorrect, misleading and unsubstantiated.

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

Oil production in the Niger Delta Area ran from the end of the 1950s until 1993. The UNEP report maintains that even though no oil production has

taken place in the region since, the oil field facilities have not been decommissioned. Oil pipelines carrying oil from other parts of the country still pass through Ogoniland but are not being adequately maintained.

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

Developments/Outcome

The case has been accepted as a specific instance and is currently pending.

5

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

Issue

The complaint alleges Minera Escondida, owned and operated by BHP Billiton, has engaged in intellectual property rights violations. Marcos Santander López, owner-manager of Escapes Santander, a Chilean small enterprise, has patented various safety devices for trucks used in mining operations. According to the complainant, Minera Escondida has not compensated Escapes Santander for the use of these designs in violation of a January 2009 agreement between the two

companies. The complaint alleges Minera Escondida has incorporated Escapes Santander-owned safety designs into its equipment and the company's Standard Operating Procedure 2.18, as well as requiring these designs as a condition of service by its contractors.

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. The complaint contends Minera Escondida is violating Chilean Industrial Property Law 19,039 and Intellectual Property Law 17,336, and criminal charges have been filed in this regard.

Developments/Outcome

The complaint was accepted on 29 February 2012. The NCP is in the process of seeking a response from Minera Escondida and arranging a meeting between the parties.

6

Case	Sjovik's breaches of human rights in Western Sahara		
Company/ies	Date filed	Current status	Duration (to date)
Sjovik AS.	5 December 2011	Pending	6 months
Complainants	The Norwegian Support Committee for Western Sahara (NSCWS)		
National Contact Point(s) concerned	Norway		
Guidelines Chapter(s) & paragraph(s)	Chapter IV (Human Rights)		

Issue

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

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

Saharawi people in case of the exploitation of natural resources.

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

Developments/Outcome

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

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

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

7

Case	Statoil's contribution to climate change through Canadian oil sands production		
Company/ies	Date filed	Current status	Duration
Statoil ASA	28 November 2011	Rejected, 13 March 2012	4 months
Complainants	Norwegian Climate Network and Concerned Scientists Norway		
National Contact Point(s) concerned	Norway (lead), Canada		
Guidelines Chapter(s) & paragraph(s)	Chapter VI (Environment), §1		

Issue

The complaint against Statoil ASA filed by Norwegian Climate Network and Concerned Scientists Norway alleges that Statoil ASA breached the

Environment chapter of the OECD Guidelines by investing in the oil sands of Alberta and thereby contributing to Canada's violation of international obligations to reduce greenhouse

gas (GHG) emissions in the period from 2008 to 2012. The complaint maintains that Canada's oil sands must remain unexploited if the world is to have a chance of stabilizing the

climate.

According to the complaint, as state-owned company Statoil has a particular responsibility to withdraw from extractions that undermine other Norwegian climate obligations. The complainants insist the company should withdraw from all oil sands production in Canada based on its incompatibility with the sustainability provisions of the Guidelines.

Developments/Outcome

After receiving the complaint, the NCP forwarded it to the company and requested a response. Statoil confirmed its activities in Canada and maintained that the NCP is

not mandated to assess whether countries like Canada honour their legal obligations, but is tasked to assess whether the OECD Guidelines are respected. Furthermore, Statoil argued that the complaint mostly concerns Canada’s GHG emissions and alleged breach of international agreements.

After an initial review period of approximately three months, the NCP issued an initial assessment rejecting the case. The NCP underscored that in this particular case the complaint is directed more towards Canada’s policy of allowing oil sands development than it is towards the manner in which Statoil has operated in the

context of this policy.

The NCP also found that the complaint did not concern the issue of whether Statoil’s activities may be in breach of by the OECD Guidelines. The NCP maintains that the complainants failed to show on what basis it is the responsibility of Statoil to ensure that Canada meets its targets and how this particular company has specifically contributed to and is responsible for Canada’s level of GHG emissions.

Despite rejecting the case, the NCP did call attention to the risks that oil sands operations present to the climate and environment.



Case	Health risks related to leaded gasoline additives produced by Innospec, Xstrata and TetraBOOST		
Company/ies	Date filed	Current status	Duration
Xstrata PLC (UK)	27 August 2011	Withdrawn, 17 Feb. 2012	8 months
Innospec (US)	27 August 2011	Concluded, 1 February 2012	4 months
TetraBOOST Ltd. (UK)	23 December 2011	Rejected, 14 May 2012	5 months
Complainants	The LEAD Group		
National Contact Point(s) concerned	US (lead on Innospec), UK (lead on Xstrata, TetraBOOST), Switzerland, Australia		
Guidelines Chapter(s) & paragraph(s)	Chapter VI (Environment), §3, 7, 8		

Issue

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

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

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

An additional complaint against

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

Developments/Outcome

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

The NCPs agreed to collaborate in handling the various cases. The US NCP took the lead in handling the case against Innospec. After conducting an initial assessment, the US NCP accepted the case for further consideration. The NCP offered to host a mediated dialogue aimed at reaching a settlement. The LEAD Group was prepared to engage in the

mediation, but Innospec refused, claiming that the complaint was inaccurate and that it did not believe The LEAD Group would engage in good faith dialogue. Seeing no possibility to move forward with mediation, the US NCP decided to conclude the case in February 2012 with a final statement without making an analysis or determination as to whether Innospec had breached the Guidelines.

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

Both Xstrata and The LEAD Group accepted the UK NCP’s offer to host conciliation/mediation with the aim of reaching a settlement. A meeting between the parties was held on 17 February 2012 in London. The LEAD Group attended the session via phone conference and

invited UK-based NGO RAID to physically attend the meeting on behalf of The LEAD Group. The mediation session resulted in an agreement between the parties and the withdrawal of the complaint against Xstrata.

The UK NCP also conducted an initial assessment of the complaint against TetraBOOST. After facilitating email exchange between the parties, the NCP rejected the case in May 2012 arguing that accepting the case

would not contribute to the purposes of the Guidelines because TetraBOOST is a small company without much influence in the global market. The NCP further argues that because TetraBOOST's core (and only) business involves the distribution of TEL, asking the company to change its behaviour would mean that the company would cease to exist, and thus the complaint is not eligible. The complainants strongly disagree with the NCP's logic in rejecting the case. The

fact that a multinational enterprise is 'small' should not exempt it from adhering to the Guidelines, nor should a company whose core business violates the Guidelines be exempted simply because observing the Guidelines would result in the company going out of business. The complainants are worried that the UK NCP's decision could set a dangerous precedent for other OECD Guidelines cases.

9

Case	Hazardous conditions at NCA refugee camps for the Roma in Kosovo		
Company/ies	Date filed	Current status	Duration
Norwegian Church Aid	22 June 2011	Rejected, 27 September 2011	3 months
Complainants	Dianne Post, representing 129 Roma refugees		
National Contact Point(s) concerned	Norway		
Guidelines Chapter(s) & paragraph(s)	Chapter IV (Human Rights), Chapter VI (Environment)		

Issue

The complaint against Norwegian Church Aid (NCA) was filed by American attorney Dianne Post representing 129 Roma refugees. The complaint alleges NCA violated provisions of the OECD Guidelines' General Policies, Human Rights and Environment chapters. According to the complainants, the violations took place after the 1999 NATO bombing of Kosovo. Roma who did not flee Kosovo were placed in camps for internally displaced persons. The camps were allegedly located on land contaminated with lead or land which was used as a toxic waste dump site. As a result, the inhabitants of the camps experienced severe health problems.

Although NCA did not itself set up the camps, it managed one

camp in the region on behalf of the United Nations Interim Administration Mission in Kosovo and later on behalf of the local government. According to the complainants, exposure to lead poisoning as well as the lack of basic hygiene food resulted had a significant negative impact on the health of the inhabitants of the camps. Since NCA managed the camp, the complainants hold NCA responsible for the negative health impacts.

Developments/Outcome

The Norwegian NCP forwarded the complaint to NCA, who argued that it merely acted as camp manager and was not responsible for the poor location and set-up of the camps. NCA further responded that it had unsuccessfully advocated for appropriate relocation sites for the Roma, for medical treatment

and for sufficient land and income-generating opportunities which would enable all families to be relocated and the camps permanently closed.

Despite the complainants' arguments that NCA should be considered a multinational enterprise (MNE) since it receives nearly half of its income from public funds and operates internationally, the Norwegian NCP concluded that NCA cannot be considered an MNE as understood under the OECD Guidelines, and received support for this assessment at the OECD Annual NCP Meeting 27 June 2011. The NCP thus declared the case inadmissible as a specific instance. As a result, the NCP did not consider the substance of the claim nor whether the OECD Guidelines had been breached.

10

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

Issue

The complaint, filed by a group of Argentine and Dutch NGOs, alleges that Nidera has abused the human rights of temporary workers at its corn seed processing operations in Argentina. Based largely on official reports by Argentine government departments, the

complaint details the poor living and working condition at the seed plants and how workers were kept in the dark about the sub-standard conditions during the recruitment process.

The complainants call on Nidera to develop and implement an effective company-wide human

rights policy and commitment including concrete human rights due diligence procedures. Such procedures are necessary for identifying, preventing and mitigating actual and potential adverse human rights impacts throughout its global operations, in particular regarding hiring and employment processes of

temporary workers in detasseling operations.

Developments/Outcome

The NCP conducted an initial assessment and accepted the case for further consideration. After a series of meetings enabled by the NCP in which the parties discussed the issues in the

complaint, an agreement was reached. As part of the agreement, Nidera strengthened its human rights policy, formalised human rights due diligence procedures for temporary rural workers, and allowed the NGOs to monitor its Argentine corn seed operations through field visits. A final

statement issued by the Dutch NCP on 5 March 2012 confirmed the positive outcome of the dialogue between the parties. Both parties thanked the Dutch NCP for providing an environment that enabled constructive dialogue and discussion.

11

Case	Environmental pollution at Barrick's gold mines in Argentina		
Company/ies	Date filed	Current status	Duration (to date)
Barrick Gold Corporation	9 June 2011	Pending	12 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. As a result, the responsible Minister within the Argentine government, called the complainants to a meeting on 2 August 2011.

At the meeting, the NCP asked FOCO whether there was a need to expand the complaint as a result of the update of the Guidelines (FOCO responded in the negative). The NCP also requested additional document of the alleged violations and

more detail regarding parallel legal proceedings against the company.

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

On 2 November 2011, the Minister asked the complainants to specify whether the complaint is primarily directed against the parent company, against its Argentine subsidiaries, or both.

In December 2011 FOCO clarified its complaint against Barrick Exploraciones Argentinas S.A. and Exploraciones Mineras S.A. and submitted additional information. FOCO again requested the NCP to finalize the initial assessment.

12

Case	Labour and environmental violations in the USA by United Water		
Company/ies	Date filed	Current status	Duration (to date)
United Water	8 June 2011	Part withdrawn, part filed	12 months
Complainants	Utility Workers Union of America (UWUA), Food & Water Watch (FWW)		
National Contact Point(s) concerned	United States, France		
Guidelines Chapter(s) & paragraph(s)	Chapter I, §2; Chapter V (Employment), §1b, 8; Chapter VI (Environment), §1a, 2		

Issue

United Water is an American water utility and a wholly-owned

subsidiary of French MNE Suez Environment. The complaint

alleges environmental and labour violations by United Water.

During 2010, the United States National Labor Relations Board (NLRB) issued five separate complaints charging that United Water has engaged in unfair labour practices during negotiations with the UWUA in Pennsylvania, New Jersey, and Delaware. The complaints charge that management has engaged in bad faith negotiations and has retaliated against workers for their union activities by withholding scheduled bonus payments.

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

Furthermore, in December 2010, a federal grand jury issued a criminal indictment charging that

United Water intentionally manipulated E. coli bacteria monitoring tests at a wastewater treatment plant in Gary, Indiana, between 2003 and 2008. The company has pleaded not guilty.

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

Developments/Outcome

The US NCP held a meeting with the company to get its position

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

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

13

Case	Xstrata’s negative impacts on glaciers in Argentina		
Company/ies	Date filed	Current status	Duration (to date)
Xstrata	1 June 2011	Pending	12 months
Complainants	The Center for Human Rights and Environment (CEDHA), supported by Fundación Ciudadanos Independientes and Asamblea El Algarrobo		
National Contact Point(s) concerned	Argentina (lead), Australia		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), §1,6,7; Chapter III (Disclosure), §1,2,4,5; Chapter VI (Environment) , §1 3,4,5,6,8		

Issue

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

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

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

Protection Act be declared unconstitutional.

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

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

Developments/Outcome

After consulting with the Argentine NCP, the Australian NCP decided, based on the location of the actors involved, the place of operations, and the language of operations, that it

would be best to engage the Argentine NCP in the Specific Instance, but clarified that it would keep engaged and continue to offer its good offices. After conducting an initial assessment that involved meetings with both CEDHA and Xstrata Copper Argentina, the Argentine NCP decided to accept the case.

The parties were scheduled to meet to discuss logistics, timeframe and expected outcomes, including the proposal by CEDHA to work collaboratively on drafting a Protocol for Mining Activity in Glacier Territory. This idea moved forward until Xstrata Copper’s legal team obtained victory in federal courts regarding the temporary suspension of parts of the National Glacier Act. Xstrata has subsequently stalled their engagement in the NCP process. Progress now depends on Xstrata’s willingness to keep to the agreed engagement and the NCP’s insistence on the parties to keep to commitments

Case	Human rights violations at UCM's Wishbone Hill coal mine		
Company/ies	Date filed	Current status	Duration (to date)
Usibelli Coal Mine J-Power	5 May 2011 5 May 2011	Pending Pending	13 months 13 months
Complainants	Chickaloon Village Traditional Council (CVTC)		
National Contact Point(s) concerned	United States, Japan		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), §1,2,5 ; Chapter III (Disclosure), §1,2,4,5 ; Chapter VI (Environment), §2,3		

Issue

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

Specifically, the complainant contends that UCM has failed to

contribute to sustainable development, violated the human rights of Chickaloon Tribal members, sought and accepted exemptions not contemplated in the statutory or regulatory framework, has failed to properly consult and disclose information to Tribal members, and has failed to prepare an appropriate environmental impact assessment for its Wishbone Hill activities. According to the complainant, UCM's exploration activities were environmentally destructive, socially disruptive and undertaken without any Tribal consultation. The company has failed to provide the community with accurate information on the effects of its (proposed) activities on the survival of a culturally important salmon species and has ignored CVTC's considerable efforts to restore the salmon, decimated by previous coal mining. CVTC's further alleges that UCM's environmental impact assessment is based on incomplete and false information about mammal (particularly moose), salmon and bird species and habitats and that it failed to

adequately address the Tribe's concerns about water and health problems their religious and spiritual rights, their life-ways, ceremonies and spiritual relation to their ancestral lands.

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

Developments/Outcome

The US NCP acknowledged receipt of the complaint and confirmed that it will take the lead in handling the case. The complainants provided the NCP with additional allegations concerning the mining permit based on old data, and a factual update. The NCP is currently preparing a final statement that will be shared with both parties prior to publication.

Case	CRH's construction activities in the Occupied Palestine Territories		
Company/ies	Date filed	Current status	Duration (to date)
CRH plc.	3 May 2011	Pending	13 months
Complainant	Ireland Palestine Solidarity campaign		
National Contact Point(s) concerned	Ireland (lead), Israel		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), §1,2,3,6,11		

Issue

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

The complaint contends that CRH, through its jointly-owned subsidiary 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 are collaborating on the case, and an initial assessment is expected soon.

Case	Tax evasion by Glencore and First Quantum Mining in Zambia		
Company/ies	Date filed	Current status	Duration (to date)
Glencore International First Quantum Minerals	12 April 2011 12 April 2011	Filed Filed	14 months 14 months
Complainants	Sherpa, Berne Declaration, Centre for Trade Policy and Development, L'Entraide Missionnaire, Mining Watch Canada		
National Contact Point(s) concerned	Switzerland, Canada		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), §1,5,6; Chapter XI (Taxation)		

Issue

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

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

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

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

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

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

Developments/Outcome

The NCPs have not yet published an initial assessment on the admissibility of the complaint.

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	15 months
Complainants	MiningWatch Canada, Akali Tange Association, Porgera SML Landowners Association		
National Contact Point(s) concerned	Canada		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), §1,2,5,6,7,8,11 ; Chapter III (Disclosure), §1,5 ; Chapter VI (Environment), §1a,2a,4		

Issue

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

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

the mine site, including killings and beatings of local Ipili men and beatings and rapes, including gang rape, of Ipili women. Additionally, the living conditions of people within the PJV mines Special Mine Lease Area are incompatible with human health and safety standards and the OECD Guidelines provision on sustainable development. Moreover, in 2009 troops from the PNG Defense Force forcefully evicted local landowners near the

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

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

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

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

Developments/Outcome

The NCP has held informal meetings with both the notifiers and the company, and both parties have agreed to engage in mediation on the issue. The parties are now in the process of choosing a mediator.

Case	Misleading disclosure by Shell on oil spills in Nigeria		
Company/ies	Date filed	Current status	Duration (to date)
Royal Dutch Shell	25 January 2011	Pending	16 months
Complainants	Amnesty International, Friends of the Earth International, Friends of the Earth Netherlands		
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 Friends of the Earth allege that Royal Dutch Shell has breached the OECD Guidelines by making false, misleading and incomplete statements about incidents of sabotage to its operations in the Niger Delta and the sources of pollution in the region.

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 mention of relevant

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

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

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

Developments/Outcome

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

Case	Mismanagement of community fund by ArcelorMittal Liberia		
Company/ies	Date filed	Current status	Duration (to date)
ArcelorMittal	24 January 2011	Pending	16 months
Complainants	Friends of the Earth Europe (FoEE), Sustainable Development Institute (SDI)/Friends of the Earth 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 the Luxembourgian NCP. However, the Dutch NCP did offer to assist the Luxembourgian NCP with the procedural and the mediation aspects of the process.

The Luxembourgian NCP has accepted the complaint and contacted the parties to see whether they are willing to engage in conciliation/mediation.

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 12-week audit of the fund.

On 8 June 2012 the parties held a first meeting to discuss terms and procedures for the mediation.

Case	Environmental and labour rights breaches at Cameroonian palm oil plantations		
Company/ies	Date filed	Current status	Duration (to date)
Bolloré	7 December 2010	Pending	16 months
Financière du champ de Mars	7 December 2010	Pending	16 months
SOCFINAL	7 December 2010	Pending	16 months
Intercultures	7 December 2010	Pending	16 months
Complainants	Association Sherpa, Centre pour l'Environnement et le Développement (CED), Fondation Camerounaise d'Actions Rationalisées et de Formation sur l'Environnement (FOCARFE), MISEREOR		
National Contact Point(s) concerned	Belgium, France, Luxembourg		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), §1, 2, 3, 4, 6, 7, 10; Chapter III (Disclosure, §2, 3, 4, 5; Chapter V (Employment), §1a, 2, 4b, 5, 8; Chapter VI (Environment), §1, 2, 3, 6d, 7, 8		

Issue

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

The complainants also allege that SOCAPALM's treatment of plantation workers constitutes a breach of the Guidelines. They claim that precarious work is rampant, and freedom of association is limited. Additionally, the housing facilities are deplorable, and dividends promised to employees when SOCAPALM was privatised in 2000 were never paid. The complaint also claims that SOCAPALM has breached the Guidelines' disclosure chapter by failing to properly disclose relevant information about the company and potential environmental risks.

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

Developments/Outcome

After conducting an initial assessment, the French NCP has declared the case admissible as a specific instance.

Case	Child labour in the Uzbek cotton trade		
Company/ies	Date filed	Current status	Duration (to date)
Otto Stadtlander GmbH	25 October 2010	Concluded, 16 December 2011	14 months
Paul Reinhart AG	25 October 2010	Concluded, 9 March 2012	16 months
ECOM Agroindus-trial Corp Ltd.	25 October 2010	Concluded, 22 December 2011	14 months
Devcot S.A.	25 October 2010	Pending	19 months
ICT Cotton	12 December 2010	Concluded, 11 July 2011	8 months
Cargill Cotton	12 December 2010	Concluded, 11 July 2011	8 months
Louis Dreyfus	23 December 2010	Concluded, 29 February 2012	14 months
Complainants	European Center for Constitutional and Human Rights (ECCHR), Association Sherpa, Uzbek-German Forum for Human Rights (UGF)		
National Contact Point(s) concerned	France, Germany, Switzerland, United Kingdom		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), §1, 2, 10; Chapter V (Employment), §1b, 1c		

Issue

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

The use of child labour in the cotton harvest in Uzbekistan is a recognized problem. During the harvest season, schoolchildren are taken from classes and forced to pick cotton under poor labour conditions. The complainants claim that the money earned

through the cotton trade flows directly into the Uzbek state treasury, leaving the families of the affected children with very little profit from their hard work. The complainants argue that if companies have built up intensive trade relations with state-owned enterprises of the Uzbek regime they should be aware of the problem of child labour in Uzbekistan and can thus be held accountable for their role in supporting and maintaining the system of forced child labour.

Developments/Outcome

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

Despite receiving the complaints two months later than the other NCPs, the UK NCP was the first

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

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

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

responsibility for conditions in their supply chains.

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

The NCP also facilitated a mediated dialogue in the Louis Dreyfus case. During the mediation the company acknowledged the problems in the Uzbek cotton trade and that cotton traders have a responsibility in the issue. The parties agreed that if the

consultations between cotton traders and the Uzbek government fail to improve the situation, ECCHR and Louis Dreyfus will meet again for a dialogue on how to find a solution.

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

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Case	Concerns around BHP Billiton's Mozal bypass in Mozambique		
Company/ies	Date filed	Current status	Duration (to date)
BHP Billiton	1 October 2010	Pending	19 months
Complainants	Justiça Ambiental (JA!), Livaningo, Liga Moçambicana dos Direitos Humanos, Centro Terra Viva, Kulima and Centro de Integridade Pública		
National Contact Point(s) concerned	United Kingdom (lead), Australia		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), §2, 5; Chapter III (Disclosure), §1; Chapter VI (Environment), §1, 2		

Issue

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

However, the complainants are concerned with the environmental implications and serious impacts on human health the bypass would involve. The complainants made several

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

Developments/Outcome

Both the Australian and UK NCPs have acknowledged receipt of the complaint and agreed that the UK NCP will take the lead in handling the complaint.

In February 2011, the UK NCP accepted the complaint. However, after consultation with the parties, the NCP decided to

suspend the specific instance to first allow for mediation by the Compliance Advisor Ombudsman (CAO) of the World Bank's International Financial Corporation (IFC).

After several meeting and attempts to reach an agreement between the parties facilitated by the CAO, the case was closed without an agreement.

As a result, the UK NCP has re-initiated the process under the OECD Guidelines specific instance mechanism. At the same time a procedure by the European Investment Bank (EIB) is on-going.

Case	Intex Resources' nickel mine in the Philippines		
Company/ies	Date Filed	Current status	Duration
Intex Resources	26 January 2009	Concluded, 28 November 2011	3 years
Complainants	Framtiden i våre hender (Future in Our Hands)		
National Contact Point(s) concerned	Norway		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies); Chapter VI (Environment), §0-8 ; Chapter VII (Bribery)		

Issue

The complaint against Norway-based Intex Resources alleges that the company's planned nickel mine and factory in the Mindoro Province of the Philippines will violate the human and environmental rights of Indigenous Peoples.

The complaint contends the company's prospecting agreement overlaps with the Mangyan Indigenous Peoples' land, particularly the Alangan and Tadyawan tribal lands. The tribes have property rights in the area, but were not consulted on the project. In addition, the complaint alleges the factory threatens vital water resources because of its proximity to rivers that provide water to neighbouring villages and agricultural fields.

Developments/Outcomes

The Norwegian NCP forwarded the complaint to Intex Resources, and the company quickly responded with a public letter defending its operations. In March 2009, the NCP asked the complainants to comment on the company's response, and invited the parties to meet in the summer of 2009.

In related developments outside the NCP process, hunger strikes and protests by activists led to the withdrawal of the Environmental Compliance Certificate issued by the Philippine Government in October 2009. In addition, the Norwegian ambassador to the Philippines and the embassy secretary visited the Mindoro province and held meetings with groups supporting and opposing the project in December 2009. A

report of their visit was sent to the parties for comments.

In March 2010, the NCP concluded its initial assessment and officially accepted the case. In order to better determine the facts on the ground, the NCP hired independent experts to further investigate the case. The experts visited Mindoro in January 2011 and established a factual basis for the case. In a publicly available report, the experts concluded that while Intex is operating in line with national legislation, the company is "not compliant" with the Guidelines with regard to a number of issues, including community and stakeholder engagement, environmental impact assessments, and disclosure and transparency.

After mediation was declined by the company, the NCP issued a final statement in which it concluded that Intex had failed to undertake a systematic assessment of the affected indigenous groups and had not properly consulted the affected groups.

The NCP found no evidence indicating that Intex was involved in bribery or corruption, but recommended that the company establish a solid managerial system to manage such risks, particularly since the operations were in a country figuring at the lower part of international corruption indexes.

The NCP also concluded that Intex's Environmental Impact Assessment (EIA) provided insufficient insight into and disclosure of its detailed management and monitoring

plans.

The NCP's statement recognizes the importance and relevance of obtaining the free, prior and informed consent (FPIC) of affected Indigenous Peoples to the OECD Guidelines' provision on 'stakeholder engagement' and takes a broad and inclusive approach to consultation. Although Intex had acquired the FPIC of two affected Indigenous groups, the NCP questions whether the process of obtaining FPIC was adequate, given the fact that the company did not translate crucial information into local Indigenous languages that the company obtained the groups' FPIC before the EIA, which contains vital information regarding the potential negative effects of the project for people and the environment, was completed. The NCP also recommends Intex to identify primary and secondary indigenous groups potentially affected by the MNP and consult all indigenous peoples affected by the mine and associated infrastructure.

The statement also reaffirms that companies should conduct due diligence throughout all stages of a project, including the initial planning phase.

The NCP's statement contains several recommendations for how Intex can better bring itself in line with the Guidelines. The recommendations address issues such as community engagement, disclosure and transparency, and the company's operational-level grievance mechanism.

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

Issue

FOCO and Friends of the Earth 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

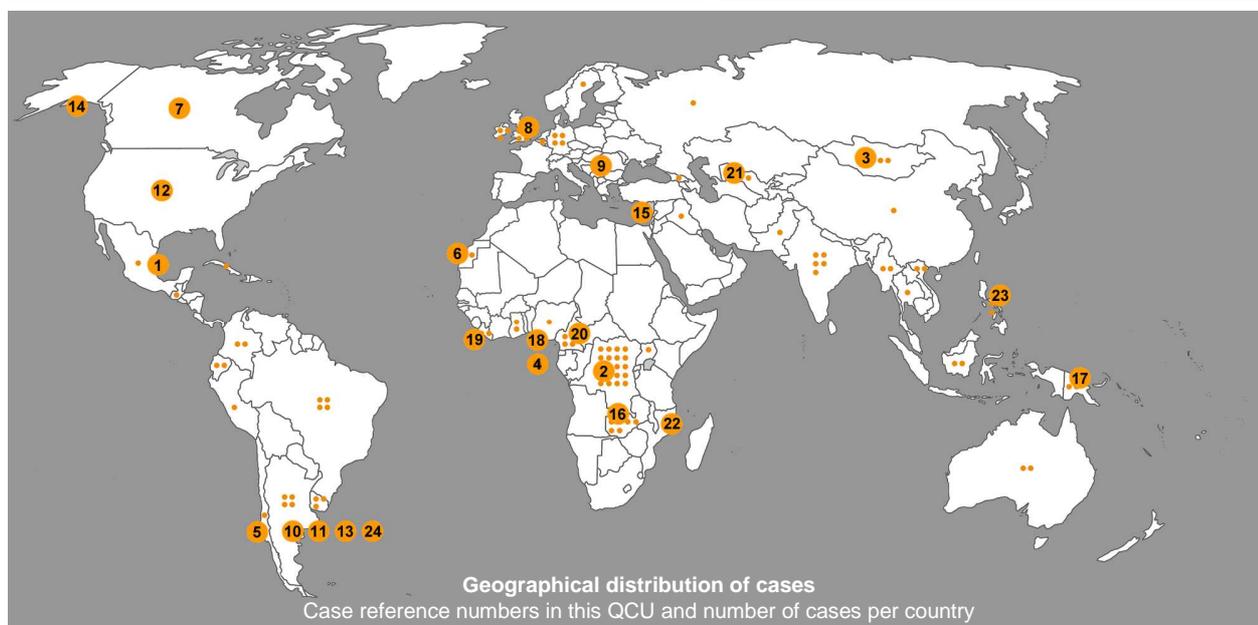
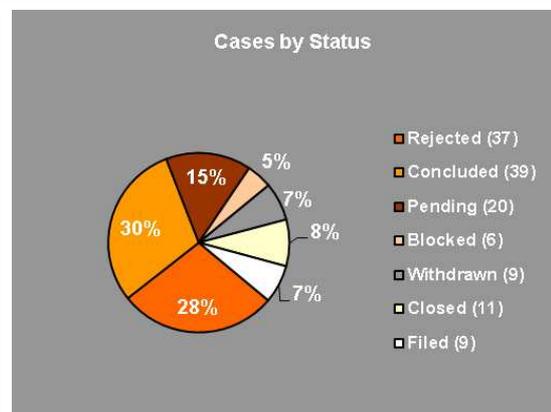
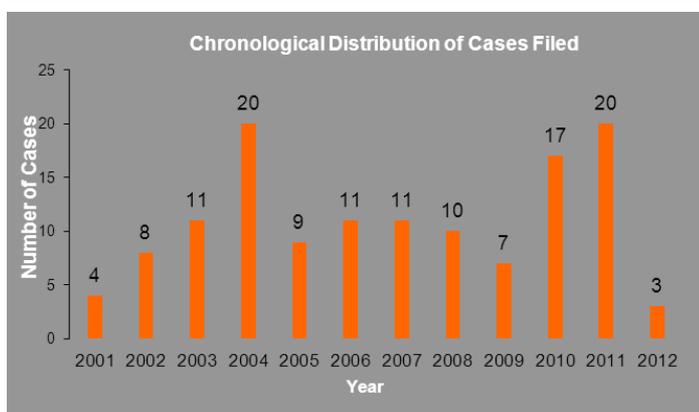
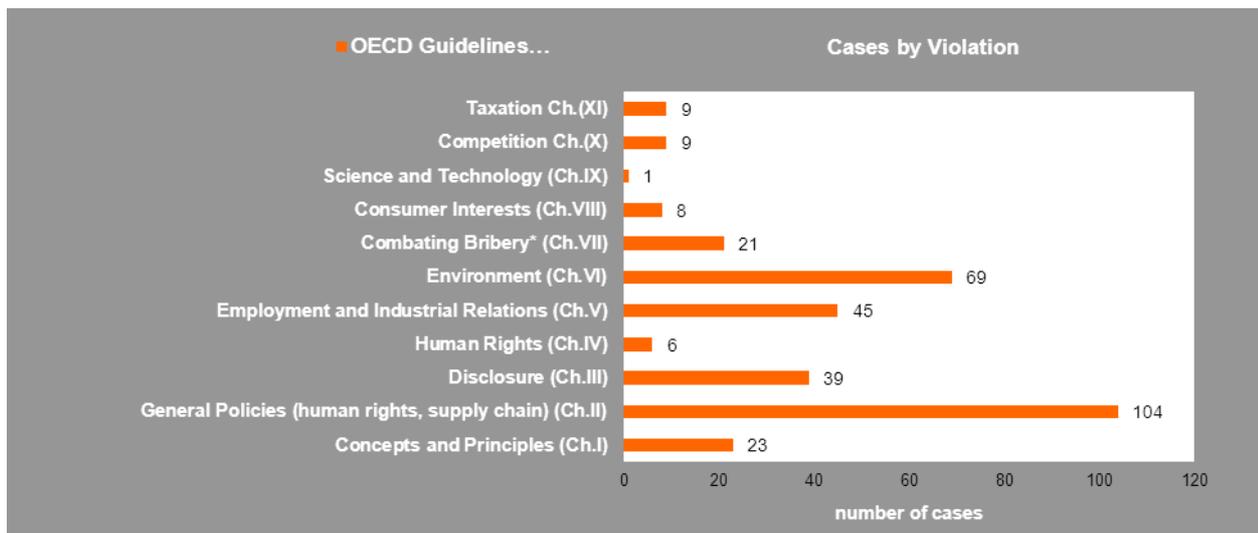
company refused to cooperate. However, the case remains pending and the company refuses to respond to the complaint until the court case against Shell Capsa is closed. The complainants are urgently requesting that the Argentinian and Dutch NCPs move forward on the case.

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. The NCP is set to close the case soon.

Current case statistics

As of June 2012, 131 OECD Guidelines cases have been filed by NGOs



OECD Watch is an international network of civil society organizations promoting corporate accountability. The Quarterly Case Update aims to document the views and experiences of NGOs involved in NCP/OECD Guidelines procedures.

This Quarterly Case Update has been compiled and edited by Joseph Wilde-Ramsing 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 by NGOs. The publication of this Quarterly Case Update has been made possible through funding from the Dutch Ministry of Foreign Affairs.

For more information on these and all OECD Guidelines cases filed by NGOs, visit www.oecdwatch.org/cases or contact the OECD Watch secretariat at Sarphatistraat 30, 1018 GL Amsterdam, The Netherlands, info@oecdwatch.org, www.oecdwatch.org, +31 20 639 1291.