

# Quarterly Case Update

 ECD Watch

November 2011

Vol.6 Iss.3

of OECD Guidelines cases filed by NGOs

## Highlights in this Update

### Case developments:

- 1 Dutch NCP accepts case filed by CEDHA et al. against Nidera for alleged human rights abuses at the company's corn seed operations in Argentina. The parties agree to enter into discussions to reach an agreement. (p.2)
- 2 Argentine NCP holds a meeting with the complainants and requests additional information in case alleging disclosure and environmental violations at Barrick Gold's operations in Argentina (p.2)
- 3 Complainants still awaiting outcome of US NCP's initial assessment in case against United Water (subsidiary of the Suez Environment) alleging labour and environmental violations in the company's US operations (p.3)
- 4 Australian and Argentine NCPs decide to accept the case against Xstrata Copper filed by CEDHA for alleged impacts of mining projects on glaciers in Argentina. The Argentine NCP will lead the handling of the case (p.3)
- 5 Complainants still awaiting outcome of US NCP's initial assessment in case against US-based Usibelli Coal Mine and Japan-based J-Power alleging human rights violations in operations at Alaska's Wishbone Hill coal mine (p.4)
- 6 As part of its initial assessment, Irish NCP contacts CRH in case alleging human rights and sustainable development violations at the company's operations in the Occupied Palestine Territories. A response from the company is expected, but has not yet been received (p.4)
- 8 In Barrick Gold Papua New Guinea case, Canadian NCP holds informal meetings with both the complainants and the company, and both parties agree to engage in mediation on the issue. (p.5)
- 9 Dutch NCP meets with both parties to discuss the structure of mediation in case against Shell regarding the company's operations in Nigeria. (p.6)
- 10 Luxembourgian NCP accepts ArcelorMittal Liberia case and offers its good offices to assist in resolving the dispute (p.6)
- 11 French NCP accepts case against SOCAPALM for alleged environmental and labour rights breaches at the company's Cameroonian palm oil plantations (p.7)
- 12 All complaints in the Uzbekistan child labour case have been accepted. The UK NCP has already facilitated a joint agreement between the complainants and the UK companies (Cargill Cotton and ICT Cotton). Mediation is on-going in Germany and Switzerland, and is expected to begin soon in France. (p.7)
- 13 US NCP rejects case against Dole regarding labour rights violations and anti-union practices in the Philippines" (p.8)
- 14 UK NCP re-initiates BHP Billiton Mozambique Mozal bypass case after Compliance Advisor Ombudsman of the World Bank's IFC for a fail to resolve the issue (p.9)
- 18 Norwegian NCP accepts complaint against Cermaq in salmon farming case and initiates mediated negotiations between the parties (p.11)
- 19 Norwegian NCP prepares final statement in Intex Philippine nickel mining case after expert concludes that Intex is "not compliant" with multiple sections of the Guidelines. The NCP offers to translate final statement into local languages (p.12)
- 20 After 2 years of paralysis in Shell Capsa Argentina case, complainants urgently request that the Argentinian and Dutch NCPs issue a final statment (p.13)
- 22 UK NCP issues "Follow-Up Statement" in BP BTC pipeline case. NCP welcomes some of the actions undertaken by BP to address the recommendations in the NCP's final statement, but also expresses concern that some of the recommendations have not been sufficiently addressed (p.14).

## Overview of pending and recently concluded/rejected cases

1

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

### 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 human rights policy and

commitment that includes concrete human rights due diligence procedures.

### Developments/Outcome

After an initial assessment, the Dutch NCP accepted the case in August 2011. The parties agreed to enter into discussions aimed at reaching an agreement.

2

<b>Case</b>	<b>Environmental pollution at Barrick's gold mines in Argentina</b>		
<b>Company/ies</b>	<b>Date filed</b>	<b>Current status</b>	<b>Duration</b>
Barrick Gold Corporation	9 June 2011	Filed	5½ months
<b>Complainants</b>	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		
<b>National Contact Point(s) concerned</b>	Argentina		
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter II, Chapter III, Chapter V		

### Issue

The complaint alleges that Barrick Gold Corporation has violated the OECD Guidelines with regard to provisions on disclosure, environment and general policies at the company's Veladero and Pascua Lama gold mines in the Argentinean province of San Juan.

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 against both.

Case	Labour and environmental violations in the USA by United Water		
Company/ies	Date filed	Current status	Duration
United Water	8 June 2011	Filed	5½ months
Complainants	Utility Workers Union of America (UWUA), Food & Water Watch		
National Contact Point(s) concerned	United States, France		
Guidelines Chapter(s) & paragraph(s)	Chapter I, paragraph 2; Chapter V, paragraphs 1b and 8; Chapter VI, paragraphs 1a and 2		

### Issue

United Water is a US American water utility and a wholly-owned subsidiary of French multinational Suez Environment. The complaint against United Water focuses on both labour and environmental issues.

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 also retaliated against workers because of 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 in the case.

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 complainants are still awaiting the results of the NCP's initial assessment.

Case	Xstrata's negative impacts on glaciers in Argentina		
Company/ies	Date filed	Current status	Duration
Xstrata	1 June 2011	Pending	5½ 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, paragraphs 1, 6, & 7; Chapter III, paragraphs 1, 2, 4, & 5; Chapter V, paragraphs 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 will now meet to discuss logistics, timeframe and expected outcomes.

5

<b>Case</b>	<b>Human rights violations at UCM's Wishbone Hill Coal mine</b>		
<b>Company/ies</b>	<b>Date filed</b>	<b>Current status</b>	<b>Duration</b>
Usibelli Coal Mine J-Power	5 May 2011 5 May 2011	Filed Filed	6½ months 6½ months
<b>Complainants</b>	Chickaloon Village Traditional Council (CVTC)		
<b>National Contact Point(s) concerned</b>	United States, Japan		
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter II, paragraph 1,2,5 ; Chapter III, paragraph 1,2,4,5 ; Chapter V, paragraph 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 has acknowledged receipt of the complaint and confirmed that it will take the lead in handling the case. The complainants have provided the NCP with additional allegations concerning the mining permit based on old data, and a factual update. The complainants are still awaiting the outcome of the NCP's initial assessment.

6

<b>Case</b>	<b>CRH's involvement in construction activities in the Occupied Palestine Territories</b>		
<b>Company/ies</b>	<b>Date filed</b>	<b>Current status</b>	<b>Duration</b>
CRH plc.	3 May 2011	Filed	6½ months
<b>Complainant</b>	Ireland Palestine Solidarity campaign		
<b>National Contact Point(s) concerned</b>	Ireland, Israel		
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter II, paragraphs 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 has contacted the company for a response. A response is expected, but has not yet been received.

Case	Tax evasion by Glencore and First Quantum Mining in Zambia		
Company/ies	Date filed	Current status	Duration
Glencore International	12 April 2011	Filed	7 months
First Quantum minerals	12 April 2011	Filed	7 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, paragraphs 1,5,6; Chapter X		

### 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 on taxation (Chapter X) and General Policies (Chapter II).

### Developments/Outcome

The complainants are awaiting the results of the NCP's initial assessment.

Case	Human rights abuses at Barrick Gold's Porgera JV Mine in Papua New Guinea		
Company/ies	Date filed	Current status	Duration
Barrick Gold Corporation	1 March 2011	Pending	8½ months
Complainants	MiningWatch Canada, Akali Tange Association, Porgera SML Landowners Association		
National Contact Point(s) concerned	Canada		
Guidelines Chapter(s) & paragraph(s)	Chapter II, paragraphs 1,2,5,6,7,8,11 ; Chapter III, paragraphs 1,5 ; Chapter V, paragraphs 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.

Case	Misleading disclosure by Shell on oil spills in Nigeria		
Company/ies	Date filed	Current status	Duration
Royal Dutch Shell	25 January 2011	Pending	10 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, paragraphs 1,2, 4e; Chapter V, paragraphs 2, 3; Chapter VII, paragraph 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
ArcelorMittal	24 January 2011	Pending	10 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, paragraphs 1, 7, 11; Chapter VI, paragraph 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.

Case	Environmental and labour rights breaches at Cameroonian palm oil plantations		
Company/ies	Date filed	Current status	Duration
Bolloré	7 December 2010	Pending	11½ months
Financière du champ de Mars	7 December 2010	Pending	11½ months
SOCFINAL	7 December 2010	Pending	11½ months
Intercultures	7 December 2010	Pending	11½ 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, paragraphs 1, 2, 3, 4, 6, 7, 10; Chapter III, paragraphs 2, 3, 4, 5; Chapter IV, paragraphs 1a, 2, 4b, 5, 8; Chapter V, paragraphs 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
Otto Stadtlander GmbH	25 October 2010	Pending	13 months
Paul Reinhart AG	25 October 2010	Pending	13 months
ECOM Agroindus-trial Corp Ltd.	25 October 2010	Pending	13 months
Devcot S.A.	25 October 2010	Pending	13 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	Pending	11 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, paragraphs 1, 2, 10; Chapter IV, paragraphs 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.

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 will discuss the possibility for the companies to influence business partners and the supply chain during the mediation process.

In Germany, a mediation proceeding is currently taking place. In France, mediation is expected to begin shortly.

13

<b>Case</b>	<b>Dole's management in the Philippines violates workers' rights to freedom of association</b>		
<b>Company/ies</b>	<b>Date filed</b>	<b>Current status</b>	<b>Duration</b>
Dole Food Company, Inc.; Dole Philippines, Inc.	12 October 2010	Rejected, 4 February 2011	4 months
<b>Complainants</b>	International Labor Rights Forum; Amado Kadena-NAFLU-KMU		
<b>National Contact Point(s) concerned</b>	United States		
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter II, paragraph 1; Chapter IV, 2b, 2c, 3, 8		

**Issue**

The complaint alleges that Dole Philippines, Inc., a wholly owned subsidiary of Dole Foods Company, Inc., was engaged in systematic violations of its workers' rights to freedom of association beginning in 2006 and continuing through 2010. From 2001 until 2005, the local union representing Dole Philippines' 4,700 rank-and-file employees, AK-NAFLU-KMU, enjoyed growing support among the workers and a collaborative relationship with Dole management.

However, beginning in 2005 AK-NAFLU-KMU leaders faced an increasingly resistant management that implemented policies to undermine its leadership, including unfair labor practices against union leaders as well as the on-going singling out of strong union supporters for punishment. Also, though AK-NAFLU-KMU won another election victory in 2008 and agreed to new contract terms with Dole, the union alleged that the company continued to work with a splinter group of former union leaders, who were working closely with the Armed Forces of the Philippines, in a public campaign to undermine AK-NAFLU-KMU. In February 2010, after a hastily organized and unsanctioned union assembly called by the URDole/Gales Group during which the participants claimed to have impeached the AK-NAFLU-KMU leadership, Dole Philippines management allegedly illegally

extended recognition to the URDole/Gales Group as representatives of the workers.

In March 2010 and again in June 2010, the Philippine Department of Labor ordered Dole Philippines to comply with Philippine law and return recognition to AK-NAFLU-KMU. Dole Philippines management refused.

The union requested that the US NCP assist with election monitoring to ensure free and fair elections, facilitate mediation between the parties in order to address issue of free and fair union elections, and issue a public written statement regarding Dole's compliance with the OECD Guidelines and recommendations for Dole's obligations under the OECD Guidelines.

**Developments/outcome**

In October 2010, the US NCP began the process of making an initial assessment on the case. On December 15, 2010, Dole Foods responded to the complaint denying any wrongdoing and arguing that the complaint constitutes an internal union dispute between competing union factions. The company refused to agree to allow outside, independent election monitoring during the certification election campaign period on the grounds that the Philippine Government's election monitoring was sufficient.

The company also did not agree to mediate any of the pending unfair labor practice claims. However, Dole Foods did agree to the union's request for a determination by the US NCP on the company's compliance with the OECD Guidelines.

In a letter to ILRF on February 4, 2011, which was two weeks before the scheduled union certification elections, the US NCP issued an "Initial Determination", in which it declined to offer its good offices.

In the decision, the NCP accepted Dole Foods' characterization of the dispute as being an intra-union matter, and since Dole Foods had promised to abide by the results of the February 2010 elections, the election should resolve the intra-union dispute. However, the NCP did not raise or address the union's allegations that Dole Foods was actively supporting efforts to unseat the union in the February 2010 elections.

The US NCP denied the request to monitor the elections stating, "In our view, the Procedural Guidance does not support the active intervention of an NCP in the legitimate governmental activities of a sovereign country".

Finally, despite willingness by both the complainant and company management to seek a determination by the NCP on the company's compliance with the Guidelines, the NCP refused to make such a determination.

Case	Concerns around BHP Billiton's Mozal bypass in Mozambique		
Company/ies	Date filed	Current status	Duration
BHP Billiton	1 October 2010	Pending	13½ 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, paragraphs 2, 5; Chapter III, paragraph 1; Chapter V, paragraphs 1, 2		

### Issue

Justiça Ambiental and a coalition of Mozambican NGOs filed a complaint against BHP Billiton regarding its intention to operate its Mozal aluminum 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 ongoing.

Case	Water and sustainability issues at a planned mine in Mongolia		
Company/ies	Date filed	Current status	Duration
Rio Tinto International Holdings Ltd. Ivanhoe Mines Ltd.	1 April 2010	Rejected, 14 January 2011	9½ months
	1 April 2010	Rejected, 14 January 2011	9½ months
Complainants	Oyu Tolgoi (OT) Watch, Center for Citizens' Alliance, Center for Human Rights and Development, Steps without Border, Drastic Change Movement and National Soyombo Movement.		
National Contact Point(s) concerned	Canada, United States, United Kingdom, Australia		
Guidelines Chapter(s) & paragraph(s)	Chapter II, paragraph 1; Chapter V, paragraph 3		

### Issue

The complaint against Canada-based Ivanhoe Mines and UK-based Rio Tinto concerns the companies' plans to exploit the Oyu Tolgoi open-pit, gold and copper mine in the South Gobi Region of Mongolia.

The complaint refers to alleged breaches of Chapter II, Article (1) which calls on enterprises to "Contribute to economic, social and environmental progress with a view to achieving sustainable development"; and Chapter V, Article (3) of the OECD Guidelines which calls on companies to "Assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle" (our emphasis).

The complaint was filed with the UK and Canadian NCPs. An additional complaint was submitted to the US NCP because Ivanhoe Mines is listed on the New York and NASDAQ Stock Exchanges.

### Developments/Outcome

With the agreement of OT Watch, on 15 April 2010 the Canadian NCP took overall lead of the complaint. During the lengthy (9 months) initial assessment, the Canadian NCP forwarded the complaint to Ivanhoe Mines and Rio Tinto, both of which responded in writing. On 14 January 2011, the Canadian NCP concluded its initial assessment on the complaint, and on 25 February 2011, OT Watch responded to the initial assessment.

OT Watch has serious concerns regarding the fairness of the procedure followed by the Canadian NCP to arrive at the initial assessment of 14 January 2011 and the content of the initial assessment.

Regarding procedural unfairness, OT Watch considers that the Canadian NCP did not allow the parties to comment on the initial assessment, and that the NCP did not make it sufficiently clear at the start of the complaint process that, as part of the initial assessment, the NCP was undertaking an in-depth examination of the allegations contained in the complaint in order to ascertain whether the complaint was material and thus relevant to the implementation of the Guidelines. As a result of this alleged lack of clarity, OT Watch did not submit all the

documentation that it could have submitted, nor made additional arguments in support of its complaint that it could have made, had OT Watch known that the Canadian NCP was examining the complaint with the aim of making a determination as to whether Ivanhoe Mines had acted consistently with the Guidelines.

Regarding unfairness of the content of the assessment, OT Watch believes that the initial assessment heavily relied on information provided by Ivanhoe Mines and that the Canadian NCP selectively disregarded other sources of information. A letter dated 10 March 2011 from the International Finance Corporation (IFC) of the World Bank to OT Watch acknowledged that "An Environmental and

Social Impact Assessment (ESIA) meeting full international standards is currently being prepared by Oyu Tolgoi and its consultants and will be disclosed as part of the public consultation process in due course. The Senior Lenders to Oyu Tolgoi are working with the company to ensure that the water and human rights related issues that you [OT Watch] raise are fully addressed in both a local and regional context". The IFC's letter shows that the existing impact assessments on the Oyu Tolgoi project did not meet relevant international standards and that all, or at least some, of the issues raised by OT Watch have not yet been addressed and thus should have merited further consideration under the Guidelines.

The complainants also believe that the NCP misinterpreted the Guidelines and reached a contradictory conclusion that: a) the case should be closed because "It is not practical or realistic to expect these extensive and complex matters that involve many parties and entities to be adequately addressed or resolved by dialogue between NGOs and companies on a case-by-case basis"; and b) encouraged further dialogue because "the successful resolution of issues necessitates the adoption on both sides of a willingness to communicate and to work together". Implicit in the Canadian NCP's decision to close the case would appear to be a misinterpretation of the relevance of the Guidelines to sustainable development.

<b>Case</b>	<b>Human rights issues at Goldcorp's gold mine in Guatemala</b>		
<b>Company/ies</b>	<b>Date filed</b>	<b>Current status</b>	<b>Duration (to date)</b>
Goldcorp Inc.	9 December 2009	Concluded , 3 May 2011	18 months
<b>Complainants</b>	Coalition for the Defence of San Miguel Ixtahuacán (FREDEMI); The Center for International Environmental Law (CIEL)		
<b>National Contact Point(s) concerned</b>	Canada		
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter II		

**Issue**

The complaint, filed by a group of local Guatemalan communities against Canada-based Goldcorp Inc., which operates the Marlin gold mine, alleges that the company has failed to respect the human rights of the local population.

The complaint alleges four separate violations. First, Goldcorp's land acquisition violated communal property rights and the right to free, prior, and informed consent. Second, toxic contamination from the mine and the depletion of fresh drinking water violates their right to health, and similarly, overconsumption of water violates their right to water. Third, the use of explosives for blasting and heavy equipment has caused structural damage to many houses and violates the locals' right to property. Finally, retaliation against anti-mine protesters violates their right to life and security of person.

The notifiers made it clear that they did not want to engage in a dialogue with Goldcorp and

specifically asked the Canadian NCP to examine the facts of the case and determine whether breaches of the Guidelines have occurred.

**Developments/Outcome**

After carrying out an initial assessment, the Canadian NCP declared the case admissible in March 2010 and offered to host meetings between the parties. The notifiers replied they did not feel conditions existed for an open and constructive dialogue with Goldcorp, noting that agreeing to such a meeting would create further tensions and division within the community.

Instead, the notifiers reiterated their request that the NCP conduct a thorough examination of the facts, including a visit to the affected area, and issue a final statement with recommendations to ensure implementation of the Guidelines.

Given that Goldcorp was prepared to participate in a mediated dialogue, the NCP made a second attempt to organize a meeting between the parties "without any

confidentiality requirements", but the notifiers again declined for the previously stated reasons.

The NCP responded that "dialogue between the company and the notifiers is essential to the resolution of any disputes" and decided to conclude the case without resolution on 3 May 2011. In its final statement, the NCP outlines the steps that it took to try to get the parties together but makes no assessment on the validity of the allegations in the complaint or recommendations on how to improve the implementation of the Guidelines.

The notifiers are highly dissatisfied with the final statement and the NCP's handling of the case and believe that the NCP has "fundamentally misunderstood its own mandate and the situation on the ground". The notifiers further conclude that the process "has not been worthwhile for any of the parties involved". Regarding their refusal to enter dialogue with the company, the complainants noted, "If it were true that the mandate of the NCP is limited to facilitating dialogue, then it

would follow that agreeing to dialogue would be one of the conditions for submitting a specific instance or a factor in

determining whether a complaint warrants further examination. However, neither the OECD Procedural Guidance nor the

Canadian NCP's Terms of Reference require it".

17

<b>Case</b>	<b>Forced evictions at NKG's coffee plantation in Uganda</b>		
<b>Company/ies</b>	<b>Date filed</b>	<b>Current status</b>	<b>Duration (to date)</b>
Neumann Kaffee Gruppe (NKG)	15 June 2009	Concluded, 30 March 2011	21 months
<b>Complainants</b>	"Wake Up and Fight for Your Rights, Madudu Group" supported by FIAN		
<b>National Contact Point(s) concerned</b>	Germany		
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter II, paragraphs 1, 2, 7		

**Issue**

The complaint alleges that the Ugandan army forcefully evicted more than 2,000 people from their land to make way for a Neumann Kaffee Gruppe (NKG) coffee plantation.

According to the complaint, the residents' land has been destroyed, forcing them to flee into the nearby forest, and no homes or other means of accommodation or compensation have been provided.

The complaint alleges NKG continues to produce coffee for export while the majority of the evictees have settled at the boarder of the plantation. They suffer from food shortages, lack of drinking water, inadequate health care, and a lack of money for school fees.

The evictees have asked NKG several times to support their

struggle for compensation, but the company refuses to engage. The complainants also contend the company has tried to hinder a 2002 lawsuit filed by the evictees against NKG and the Ugandan government.

**Developments/Outcomes**

After conducting an initial assessment, the German NCP declared the case admissible in August 2009 and was successful in getting the parties together for a mediated discussion on 8 December 2010. The NCP also engaged other relevant government agencies and the German embassy in Kampala to provide input for the discussion.

On 30 March 2011, the NCP concluded the case and issued a final statement, in which it determined that the company was not in breach of the Guidelines. The NCP concluded

that the company could not have known that the land it acquired was controversial. Furthermore, the NCP concluded that NKG had already taken measures to rectify the problems and praised the company's philanthropic activities. The NCP also called on the complainants to stop their "public attacks" on NKG.

The complainants felt the NCP's conclusion of the case was premature and not justified given that, in their view, a satisfactory resolution of the case had not been achieved. They also felt that the NCP's statement is biased toward the company, which they perceive to be a result of a potential conflict of interest due to the NCP's location. The complainants also rejected what they called the NCP's "attempts to stifle public criticism of the eviction and its consequences."

18

<b>Case</b>	<b>Cermaq ASA's salmon farming in Canada and Chile</b>		
<b>Company/ies</b>	<b>Date Filed</b>	<b>Current status</b>	<b>Duration (to date)</b>
Cermaq ASA	19 May 2009	Concluded, 10 August 2011	27 months
<b>Complainants</b>	ForUM and Friends of the Earth Norway		
<b>National Contact Point(s) concerned</b>	Norway; Canada and Chile also consulted		
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter II, paragraph 7; Chapter IV paragraphs 1a, d, 4; Chapter V, paragraphs 2, 3, 4		

**Issue**

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

Cermaq ASA, headquartered in Norway, is one of the world's largest fish farming and fish feed companies. It is engaged in the breeding and distribution of salmon and trout in Norway, Scotland, Canada, and Chile. The Norwegian government is the majority shareholder in the

company.

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

The groups also contend that Cermaq has carried out unfounded dismissals, attempted to prevent free association of employees in labour unions, discriminated against women and implemented inadequate safety procedures for its employees.

Further, they allege Cermaq's activities pose an environmental threat through the spread of salmon lice and disease.

**Developments/Outcomes**

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

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

the information due to lack of translation resources.

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

A reorganised NCP, with a new independent panel of experts forming the main body met with all parties on 13 April 2011. The meeting was concluded with a renewed offer of good offices to all parties to mediate with the

goal achieving a joint statement. Both Cermaq ASA and the complainants provided the NCP with additional requested documentation by 9 May, while mediation by the head of the Norwegian NCP took place between 20 and 29 June.

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

principles for responsible aquaculture, indigenous peoples rights, human rights, workers' rights and sustainability reporting. In addition they have agreed that the complaint included claims about Cermaq and its business that have been refuted and that future cooperation and contacts shall be based on mutual trust and clarification of facts.

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

19

<b>Case</b>	<b>Intex Resources' nickel mine in the Philippines</b>		
<b>Company/ies</b>	<b>Date Filed</b>	<b>Current status</b>	<b>Duration (to date)</b>
Intex Resources	26 January 2009	Pending	2¾ years
<b>Complainants</b>	Framtiden i våre hender (Future in Our Hands)		
<b>National Contact Point(s) concerned</b>	Norway		
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter II ; Chapter V, paragraphs 0-8 ; Chapter VI		

**Issue**

Framtiden i våre hender filed a complaint against Norway-based Intex Resources alleging the company's planned nickel mine and factory in the Mindoro Province of the Philippines will violate indigenous peoples' human and environmental rights.

The complaint contends the company's prospecting agreement overlaps with the Mangyan indigenous people's land, particularly the Alangan and Tadyawan tribes' land. The tribes have property rights in the area, but have not been consulted. 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/Outcome**

The Norwegian NCP forwarded the complaint to Intex Resources, and the company quickly responded in 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.

The NCP accepted the complaint in March 2010 and decided to hire independent experts to further investigate the case. The appointed 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, disclosure and transparency.

The NCP is currently drafting its final statement, which is expected to be released end of November. The NCP will provide funding for translation of the final statement to Tagalog and local dialects.

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	3½ 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, paragraphs 1, 2, 5; Chapter III, paragraphs 1, 2, 4e, 5b; Chapter V, paragraphs 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 has 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 two 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 fulfill its obligations under the OECD Guidelines' Procedural Guidance.

Case	Toyota's anti-trade union practices in the Philippines		
Company/ies	Date filed	Current status	Duration (to date)
Toyota Motor Corporation	4 March 2004	Blocked	7¾ years
Complainants	Toyota Motor Philippines Corporation Workers' Association (TMPCWA), Support Group for TMPCWA in Japan		
National Contact Point(s) concerned	Japan		
Guidelines Chapter(s) & paragraph(s)	Chapter IV , paragraphs 1, 6, 7, 8; Chapter II, paragraph 2		

**Issue**

TMPCWA filed a complaint against Toyota Motor Philippines Corporation (TMP) for labour rights violations. The complaint alleges TMP refused to recognize TMPCWA as the sole and exclusive bargaining agent, and the company has actively tried to hinder workers' right to association and collective bargaining.

In addition, TMP refused to organize "Certification Elections", as required by law.

When elections were eventually held in March 2000, TMP challenged the favourable results for TMPCWA.

In March 2001, Philippine authorities reaffirmed TMPCWA's legitimacy. On the same day, 227 leaders and members (who had participated in the previous month's gathering) were unjustifiably dismissed.

**Developments/Outcome**

In September 2004, six months after the case was filed, the Japanese NCP announced it was

still conducting an initial assessment and that in its opinion the case of TMPCWA is still at bar at Court of Appeals. The NCP again stated it was still conducting an initial assessment in 2007 after facing criticism in OECD meetings and by an International Solidarity Campaign.

Meanwhile, TMPCWA and supporting groups have met with Toyota regularly every year at Toyota's headquarters in Tokyo and Toyota City. In September 2009 a ILO High Level Mission

was sent to the Philippines to do fact-finding at TMP.

Although the complainants consider the case “blocked”, in October 2009 they received informal word the Japanese NCP

was planning to (re)start the initial assessment on the case. The complainants sent a letter urging the NCP to start this assessment without further delay.

In March 2010, the Japanese NCP released its initial assessment and accepted the case, but no further progress has been made. In August 2010, TMP dismissed four TMPCWA leaders.

22

Case	BTC oil pipeline in Azerbaijan, Georgia & Turkey		
Company/ies	Date Filed	Current status	Duration (to date)
BP plc (lead company)	29 March 2003	Concluded, 22 February 2011	8 years
Conoco Philips (consortium partner)	29 March 2003	Pending	8 years
Delta Hess (consortium partner)	29 March 2003	Pending	8 years
ENI (consortium partner)	29 March 2003	Pending (on hold)	8 years
TotalFinaElf (consortium partner)	29 March 2003	Rejected in 2006	3 years
Unocal (consortium partner)	29 March 2003	Pending	8 years
ING Belgium (financier)	9 May 2004	Blocked	7 years
Dexia Bank (financier)	9 May 2004	Blocked	7 years
KBC Bank NV (financier)	9 May 2004	Blocked	7 years
<b>Complainants</b>	Campagna per la Riforma della Banca Mondiale, FERN, Amis de la Terre, Friends of the Earth US, Milieudedefensie, PLATFORM, Urgewald e.V., WEED, Germanwatch, BUND, Friends of the Earth England, Wales and Northern Ireland, The Corner House, Proyecto Gato		
<b>National Contact Point(s) concerned</b>	United Kingdom, Italy, France, Germany, United States, Belgium		
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter I, paragraph 7; Chapter II, paragraph 5; Chapter V, paragraphs 1,2,4; Chapter III, paragraph 1		

**Issue**

The 1,760 kilometre-long Baku-Tbilisi-Ceyhan (BTC) oil pipeline runs from the offshore oil fields in the Caspian Sea near Baku in Azerbaijan, through Georgia’s national park and close to the town of Tbilisi, finishing south of Ceyhan on the southern shores of Turkey on the Mediterranean at a tanker terminal, where the oil is loaded on to supertankers that transport the oil to Western Europe. The pipeline was constructed by a consortium of oil companies, led by British oil multinational, BP.

The complaint, filled simultaneously with the UK, Germany, Italy, and US NCPs, alleged that BP and consortium partners breached the Guidelines by seeking tax and law exemptions and exerting undue influence on governments to accept a legal regime that was detrimental to human rights and the environment. The complaint also raised concerns about BP’s failure to adequately consult with project-affected communities and failure to contribute to the goals of sustainable development.

A second complaint, filed by Proyecto Gato at the Belgian NCP, alleged that the Belgian banks ING, Dexia, and KBC, in supporting the BTC project financially, impeded economic, social, and environmental progress in the host countries.

According to the complaint, the banks did not conduct adequate due diligence on the environment, health, and security impacts of the pipeline. In addition, the banks allegedly did not supervise or control the projects’ progress with respect to the implementation of environmental and social objectives in order to promote sustainable development.

**Developments/Outcome**

Although the case was accepted by the UK NCP in August 2003, BP only responded in detail in March 2004, denying that the project violated the Guidelines.

The discrepancy in factual information that the NCP received from the parties, particularly with regard to the impacts on local people, prompted the NCP to visit the region of the pipeline in the three countries from August-September 2005. The NCP’s October 2005 report on the trip indicated that several villagers made specific complaints about intimidation by Turkish state authorities.

A dialogue session was held between the parties in October 2005. However, in January 2006, BP broke off the dialogue process. The company also refused to disclose to the complainants its written response to the issues raised by the

villagers during the NCP’s field visit. Nevertheless, in August 2007, the NCP issued a final statement that relied heavily on BP’s undisclosed response to the field visit. The final statement exonerated the company.

After the UK NCP issued its flawed final statement, the complainants appealed to the UK NCP’s Steering Board, arguing that the NCP’s statement was unfair and that it failed to “make any serious attempts to engage critically with the issues.” In December 2007, the NCP acknowledged the procedural failures and withdrew its final statement.

In July 2008, the Steering Board conducted the first ever review of the NCP’s handling of a specific instance. A summary of the Review Committee’s findings were made public in September 2008. Following the Steering Board’s review, BP agreed to share its previously undisclosed response with the complainants. However, the company still refused to disclose the report to the complainant’s main partner in Turkey and the issue was only resolved after the arranged mediation between the parties.

On 9 March 2010, the UK NCP issued a revised final statement on the case. The NCP ruled that, in relation to the complaint on consultation, BP was in breach of

the Guidelines. The NCP stated that BP had failed to investigate and respond to complaints from local people of intimidation by state security forces in Turkey guarding the pipeline and thus determined that, on this point, BP's activities were "not in accordance" with the Guidelines. The NCP determined that BP had not breached the Guidelines on the other issues in the complaint. Importantly, the NCP's statement implies that multinationals must take into account the human rights context in which they operate if they are to be considered in adherence with the Guidelines.

The ruling potentially places BP in breach of its contracts with international financial institutions that backed the project with taxpayers' money in 2004. Although the OECD Guidelines are voluntary, BP gave a legally-binding commitment to these institutions that the BTC project would comply with them.

In October 2011, the UK NCP issued a Follow-Up Statement reflecting the progress updates from the parties and the conclusion of the NCP on the implementation of the recommendations outlined in its Revised Final Statement.

One of the main recommendations in the Revised Final Statement was that the company should address the potential weakness in its procedures to respond to allegations of intimidation or breaches of the Voluntary Principles.

In the Follow-Up statement, the UK NCP welcomed the steps taken by the company to identify ways to strengthen its procedures and considers that, if implemented, these steps could reduce the risk of future breaches of the Guidelines. Nevertheless, the NCP remains concerned about the fact that the report from the company does not address the issue of intimidation in north-eastern Turkey. Also the NCP remains concerned about the lack of improvements to the grievance management process especially with regard to the credibility of information received outside the formal procedure and the issue of impartiality

Handling of the cases against the non-British consortium partners

There were also procedural problems related to the handling of the cases against BP's non-British consortium partners. Because BP was the lead company in the BTC consortium, the various NCPs decided in 2004 that the UK NCP would "take the lead" in handling the case. Despite this understanding, the UK NCP decided unilaterally in 2005 that it would only deal with the case against BP. The UK NCP consistently failed to keep its colleagues in other countries informed of its handling of the case. Interestingly, the confusion associated with this case prompted the Investment Committee to agree upon a formal procedure for dealing with multi-country cases in June 2008.

In Italy, the Italian NCP finally agreed in January 2008 to conduct an initial assessment of the case against ENI. The NCP

hosted a meeting between the parties, and ENI agreed to submit a written response to some of the issues raised in the complaint. After an exchange of views and a disagreement about the interpretation of the Guidelines with regard to stabilization clauses in investment agreements, the complainants asked the NCP to seek clarification from the Investment Committee. The NCP did not do so for several years, but in January 2011 it informed the complainants that the issue was being addressed in the context of the update of the OECD Guidelines.

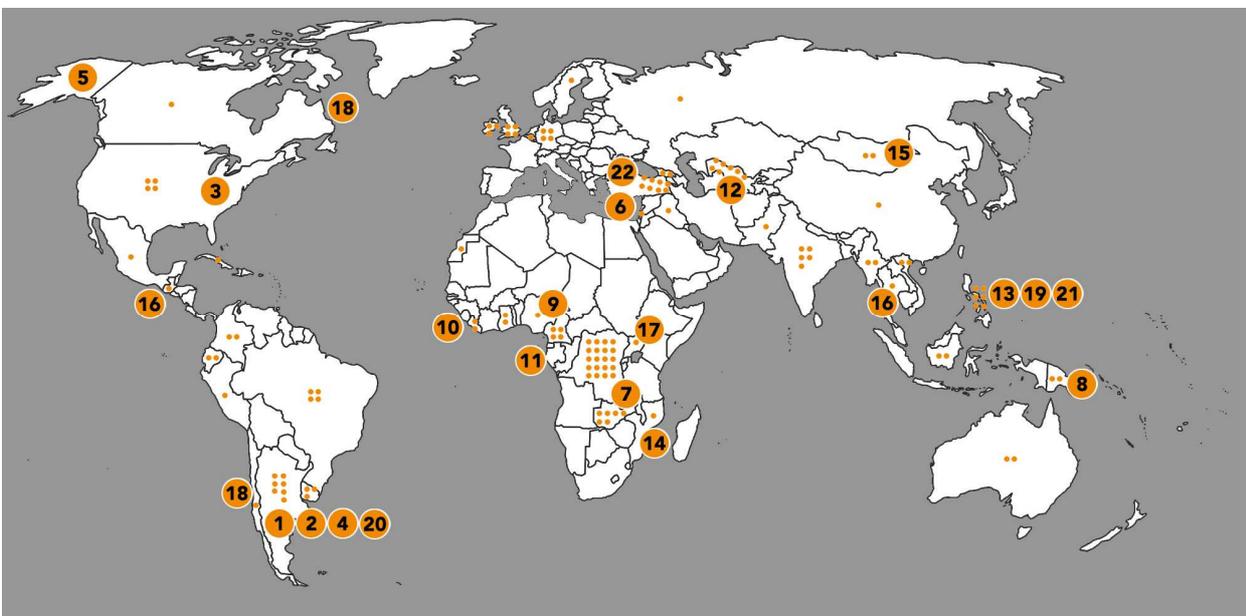
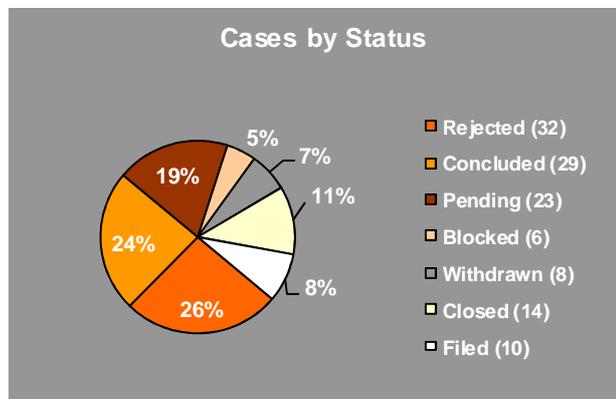
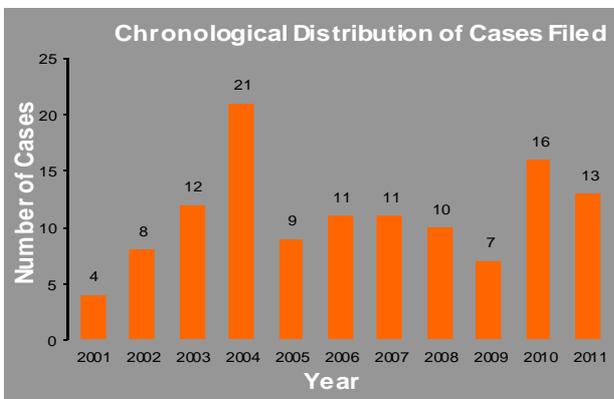
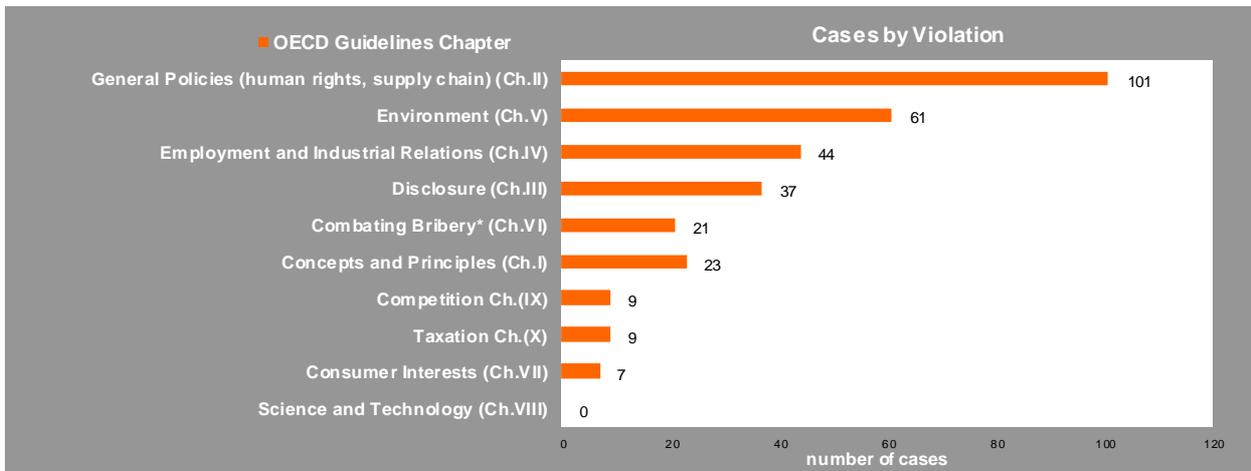
Also in January 2011, the Italian NCP made it clear that the ENI case was on hold and that the NCP would automatically adopt the final statement made by the UK NCP in the BP case. Now that that statement has been issued, the complainants in Italy expect that the Italian NCP will officially adopt the UK NCP's statement and make specific recommendations on ENI's compliance with the Guidelines.

In 2006, the French NCP rejected the case against TotalFinaElf, but no further progress on the cases against the other consortium partners, including those in the US.

The Belgian NCP declared the complainants against the Belgian banks eligible, but transferred them to the UK NCP, thereby closing the case in Belgium. However, the UK NCP unofficially declared that it would not evaluate the role of the Belgian banks, and the cases are considered blocked.

# Current case statistics

As of November 2011, 122 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 by Joseph Wilde-Ramsing, Virginia Sandjojo and Nawal Mustafa, 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](http://www.oecdwatch.org/cases) or contact the OECD Watch secretariat at Sarphatistraat 30, 1018 GL Amsterdam, The Netherlands, [info@oecdwatch.org](mailto:info@oecdwatch.org), [www.oecdwatch.org](http://www.oecdwatch.org), +31 20 639 1291.