

# Quarterly Case Update

OECD Watch

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of OECD Guidelines cases filed by NGOs

## I. Highlights in this Update

### New cases:

- Framtiden i våre hender (Future in Our Hands) files complaint against Intex Resources for environmental violations relating to the construction of a nickel mine and factory in the Philippines.

### Developments:

- Korean NCP rejects complaint against Daewoo International and Korea Gas Corporation on all counts
- Dutch NCP accepts complaint filed by Sheri-Citizens for a Better Environment against Netherlands-based SHV Holdings for environment and human rights violations in Pakistan
- Irish and Dutch NCPs accept complaint against Shell, Statoil and Marathon Oil for violations in Corrib Gas project; Irish NCP takes the lead in handling the specific instance
- Argentine and Dutch NCPs accept complaint against Shell Argentina for environmental and human health violations; Argentine NCP takes the lead
- Skanska withdraws from NCP process in Argentinean gas pipeline case
- Complainants disagree with Australian and Swiss NCP claim that Cerrejón Coal management is now able and active to conduct proper resettlement of affected communities in Colombia.
- Global Witness discovers Afrimex continuing illegal activities despite UK NCP statement that the company breached the OECD Guidelines
- Dutch NCP conducts local fact-finding in Shell Philippines case
- Cases against Alcoa/Votorantim (Brazilian NCP), Toyota Motor Corporation (Japanese NCP) and BAE Systems/Airbus S.A.S./Rolls Royce (UK NCP) inactive for several years now considered "blocked"
- BTC case still awaits Steering Board review in UK; Italian NCP has begun the initial assessment

## II. Overview of pending and recently concluded/rejected cases

<b>Case</b>	<b>Intex Resources' environmental threat in the Philippines</b>	
<b>Company/ies</b>	<b>Status</b>	<b>Date Filed</b>
Intex Resources	Filed	26 January 2009
<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

In 1997, the Philippine Department of Environment and Natural Resources (DENR) issued a prospecting permit to Norwegian mining and exploration company Intex Resources for building a nickel mine and factory in the province of Mindoro. The prospecting agreement overlaps the land of the Mangyan indigenous people and affects in particular the Alangan and Tadyawan tribes, who have

property rights throughout the area but did not all give their consent for the project.

The complaint alleges that Intex Resources will violate the OECD Guidelines if it carries on with its plans to establish a factory in the Mindoro-area in the Philippines. According to Framtiden I våre hender, the factory is a threat to the local water-environment because it is located close to rivers

that provide water to neighbouring villages and agricultural fields.

### Developments/Outcome

The Norwegian NCP forwarded the complaint to Intex Resources, who quickly responded to the concerns of Framtiden i våre hender by means of a public letter in which they defend their operations in the project.

<b>Case</b>	<b>Daewoo &amp; KOGAS' environmental and human rights violations in Burma gas project</b>	
<b>Company/ies</b>	<b>Status</b>	<b>Date Filed</b>
Daewoo International	Rejected	29 October 2008
Korea Gas Corporation (KOGAS)	Rejected	29 October 2008
<b>Complainants</b>	EarthRights International, The Korean House for International Solidarity (KHIS), Korean Confederation of Trade Unions (KCTU), Federations of Korean Trade Unions (FKTU), Citizen's Action Network (CAN), People for Democracy in Burma, Writers for Democracy of Burma, Human Rights Solidarity for New Society, The Association for Migrant Workers' Human Rights, Burma Action Korea	
<b>National Contact Point(s) concerned</b>	South Korea	
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter II, paragraphs 1 and 2, Chapter III paragraph 1, Chapter IV paragraph 1c, chapter V paragraphs 2 and 3	

### Issue

This complaint alleges breaches to the Guidelines by Daewoo International and the Korea Gas Corporation (KOGAS) related to the companies' exploration, development, and operation of the Shwe natural gas project in military-ruled Burma. According to the complaint, human rights abuses such as forced relocation and violations of the right to freedom of expression are linked to the project. The companies have failed to disclose information to local communities about the project, and local people have not participated in any impact assessments, despite ongoing and imminent human rights and environmental impacts.

Offshore exploration has been ongoing since 2004, when Daewoo first discovered commercially viable gas off the coast of Burma's Arakan State. Construction of a transnational, cross-country pipeline is being planned to transport the Shwe gas to China, threatening more severe and widespread human rights abuses, including forced relocation, forced labour and violence perpetrated against local communities by the Burmese Army, which will secure the project.

Daewoo International is the operator of the consortium developing the Shwe Project. The consortium also includes KOGAS, ONGC Videsh and GAIL of India. Daewoo International is also the

company facilitating the pipeline development in an expected partnership with China National Petroleum Corporation (CNPC). Daewoo has been in Burma for this project since 2000.

### Developments/Outcome

At the time of filing, the NCP met at length with the complainants and informally agreed to consider the complaint; however, on 27 November 2008 the Korean NCP rejected the complaint on all counts, expressing opinions uniformly consistent with those of Daewoo International. Moreover, the NCP opined that the general situation in Burma and specifically around the Shwe Project does not merit an investigation or arbitration between the companies

and the complainants, despite the fact that many groups and

communities from within the

proposed pipeline area in Burma believe that it does.



<b>Case</b>	<b>Makro's involvement in human rights and environmental violations in Pakistan</b>	
<b>Company/ies</b>	<b>Status</b>	<b>Date Filed</b>
SHV Holdings, NV	Pending	9 October 2008
<b>Complainants</b>	Shehri-Citizens for a Better Environment	
<b>National Contact Point(s) concerned</b>	Netherlands	
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Preface, Chapter II paragraphs 1, 2, 6; Chapter V ; paragraph 3	

**Issue**

Makro Habib Pakistan Limited (Makro) is a joint venture between SHV Holdings, NV, Netherlands and the House of Habib, Pakistan, that operates a chain of department outlet stores. In the complaint, Pakistan-based Shehri-Citizens for a Better Environment requests that the NCP facilitate a resolution with respect to the company's involvement in the illegal transfer of land, the illegal conversion of land use, human rights violations and environmental degradation. The complainant claims that the ongoing and

proposed future practices of the Makro store in Pakistan do not conform to the company's stated corporate philosophy and commitments to society at large. The complainant alleges the following irregularities:

- Illegal and unauthorized transfer/conversion of land (zoning violation)
- Defiance of Court orders
- Violation of national environmental regulations and compliance procedures
- Environmental degradation
- Human Rights violations

**Developments/Outcome**

After an initial assessment, the Dutch NCP informed the complainants that the specific instance brought by Shehri-CBE concerning SHV Holdings Pakistan subsidiary Makro Habib Limited is admissible and merits further consideration. The Dutch NCP forwarded the complaint to SHV Holdings, who responded to the allegations in a letter, and the NCP has now asked the complainants to respond to the company's letter.



<b>Case</b>	<b>Shell-led consortium's environmental and human rights violations in Ireland</b>	
<b>Company/ies</b>	<b>Status</b>	<b>Date Filed</b>
Royal Dutch Shell	Pending	22 August 2008
Marathon Oil corporation	Pending	22 August 2008
Statoil	Pending	22 August 2008
<b>Complainants</b>	Pobal Chill Chomain Community, Kilcommon, Ballina, Co Mayo, Ireland	
<b>National Contact Point(s) concerned</b>	Ireland (lead), Netherlands; US and Norway also notified	
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter II; Chapter V	

**Issue**

The Corrib gas project comprises a gas processing plant and a pipeline to transport untreated gas from the sea to the processing plant. The Corrib gas field is located in North West County Mayo, in Ireland, and is controlled by a consortium including Shell E&P Ireland (45%), Statoil Exploration Ireland (36.5%) and Marathon International Petroleum Hibernia Limited (18.5%). According to the complaint, the following issues have arisen regarding the Corrib gas project:

- **Safety and Health issues**  
The pipeline would pass houses, bogs and farmland and go through an area prone to landslides. The

Corrib pipeline has the potential to operate under very high pressures with unknown gas compositions. This, coupled with the instability of peat in some areas the pipeline is expected to pass, seriously increases the likelihood of pipe failure. The gas doesn't smell, which is risky considering the potential for pipe failure. Given these issues it appears that the proposed pipeline routes pass too close to populated areas.

- **Environmental issues**  
First, the location of the refinery poses a risk to the only source of potable water for 10,000 people in Erris because the gas processing terminal is based in the Bellanaboy site, a catchment area for a major water supply. Second, the route of

the pipeline would pass through three ecologically sensitive areas and so represents a threat to Broadhaven Bay's wildlife.

- **Human Rights issues**  
The Corrib Gas development has violated many human rights espoused by the European Convention for the protection of Human Rights and Fundamental Freedoms.

There are parallel legal proceedings on issues related to this case in Ireland, but Sherpa has drafted a legal opinion arguing that these parallel proceedings should not influence the NCP's decision to accept and handle the specific instance.

### Developments/Outcome

The Irish NCP informed the complainants that it would take the lead in this case but would

work in cooperation with the Dutch NCP. A statement signed by both NCPs declared that the complaint merits further consideration as a specific instance

and that both parties would be invited to separate meetings by the end of March 2009.



<b>Case</b>	<b>Shell's environmental and human health violations in Argentina</b>	
<b>Company/ies</b>	<b>Status</b>	<b>Date Filed</b>
Royal Dutch Shell	Pending	1 June 2008
<b>Complainants</b>	Citizen Forum of participation for Justice and Human Rights (FOCO - (Argentina), Friends of the Earth Argentina	
<b>National Contact Point(s) concerned</b>	Argentina (lead), Netherlands	
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Preface, Chapter II paragraphs 1, 2, 5; Chapter III paragraphs 1, 2, 4e, 5b; Chapter V, paragraphs 0-8.	

### Issue

The firm Shell Capsa (subsidiary of Royal Dutch Shell) holds many enterprises situated within Argentina (in Buenos Aires and the provinces of Santa Fe and Chaco). The company's primary activities in Argentina are the transportation and distribution, via river, of products derived from oil, the sale of fuels and lubricants designed for aviation, the sale and distribution of chemical products, the sale of liquid petroleum, the commercialization of natural gas and the marine transportation of crude oil.

The complaint alleges that Shell Capsa has ignored the Argentinean government's campaigns and public policies regarding sustainable development and that therefore the company has serially violated domestic law. The complaint

further states that, with its environmental and socially irresponsible attitude, Shell Capsa has also put the health of hundreds of neighbouring residents in danger. The Shell Capsa facilities, inspected and preventively closed by government authorities for failure to comply with national environmental laws, are located in an area where many problems exist. Many of these problems stem from the socio-economic vulnerability of the inhabitants of the area.

Directly affected by the Shell Capsa project is the Villa Inflamable community. Villa Inflamable is a neighbourhood whose inhabitants have been living, for decades (and on a daily basis), with the toxic fumes that are produced by the refining of oil by Shell.

The complainants filed the complaint simultaneously at the Argentine and the Dutch National Contact Points because they believe the violations are a systemic problem in the global operations of the multinational company.

### Developments/Outcome

On 10 September the Argentine and Dutch NCPs issued a joint statement admitting the complaint as a formal specific instance. The two NCPs vowed to collaborate closely in handling the case, with the Argentine NCP taking the lead. The Argentinean NCP emphasised the importance of the confidentiality of the process. The Argentine NCP prepared a list of "considerations" from the complaint and asked the complainants and the company to respond, both of which did so.



<b>Case</b>	<b>Accor Service's bribes to retain business in Argentina</b>	
<b>Company/ies</b>	<b>Status</b>	<b>Date filed</b>
Accor Services	Pending	28 November 2007
<b>Complainants</b>	Wortman Jofre Isola Abogados, National Deputy Hector Recalde	
<b>National Contact Point(s) concerned</b>	Argentina	
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter VI, paragraphs 1,2,3,5,6; Chapter IV, paragraphs 1, 4; Chapter II, paragraphs 5, 6	

### Issue

Accor Service is a French company providing services such as restaurant tickets and food vouchers to businesses and governments. The complaint involves the nature of lunch tickets/vouchers that are currently informally used by employers in Argentina to pay part of employees' salary, but which are

not formally included for calculations of employees' holidays, sick leave and bonuses. The complaint alleges that after a proposal to "formalise" the inclusion of the lunch vouchers in salaries (a measure that would likely reduce employers' demand for the vouchers) was introduced into the national legislature, a representative of Accor Service

approached the deputy sponsoring the proposal in November 2007 with offers of bribes of up to US\$20 million if the deputy agreed to delay the proposal and change it so as to encourage, and even compel, more employers to purchase the vouchers. Recordings of telephone calls and meetings with the Accor representative are used as

evidence in a domestic legal case as well as the OECD Guidelines specific instance.

**Developments/Outcome**

On 27 February 2008, the Argentine NCP informed the complainants that it had accepted

the case as a specific instance. In the mean time, an Argentine court indicted both the Argentine manager of Accor Service and the middle-man who offered the bribes. The NCP forwarded the complaint to Accor and asked the

company if it would engage in an NCP-facilitated mediation process. In May 2008 there was a change of personnel at the Argentine NCP, and the complainants were invited to a meeting with the new NCP personnel. Since then there has been no progress in the case.

 <b>Case</b>	<b>Corruption in Skanska's gas pipeline project, Argentina</b>	
<b>Company/ies</b>	<b>Status</b>	<b>Date filed</b>
Skanska	Pending	September 2007
<b>Complainants</b>	Centre for Research and Prevention of Economic Crime (Centro de Investigación y Prevención de la Criminalidad Económica –CIPCE)	
<b>National Contact Point(s) concerned</b>	Argentina	
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter VI paragraphs 1, 2; Chapter X	

**Issue**

CIPCE alleges that former Skanska directors paid bribes to public servants during the construction of a gas pipeline project both in the northern and southern regions of Argentina.

At the time that the allegations of corruption and bribery were first publicly aired, the Swedish company Skanska was forced into damage control and, in a bid to remedy the situation, publicly stated it had dismissed the directors involved. However, in reality, Skanska bought the silence of the former directors by providing them with severance pay before subsequently reemploying them as informal consultants in various of the company's projects.

Skanska argued that their actions were the only way to obtain a fast

solution and to protect the company from the former directors. However, given the circumstances, the legally correct course of action would have been to dismiss those involved without severance pays. CIPCE states that the way Skanska acted reveals unwillingness to prevent and fight corruption and is therefore contrary to its commitments to the Chapter VI of the OECD Guidelines.

**Developments/Outcome**

The NCP accepted the specific instance on November 26, 2007. Both parties agreed to negotiate in good faith in order to achieve a consensual win – win solution. The key focus of negotiations was the interpretation of chapter VI, paragraph 3 of the Guidelines, which states: "...The enterprise should also foster openness and

dialogue with the public so as to promote its awareness of and co-operation with the fight against bribery and extortion".

CIPCE has requested that the OECD's Investment Committee (IC) clarify the interpretative reach of the clause, but as yet the Argentinean NCP has rejected the request arguing that the IC does not have the ability to interpret the Guidelines.

In the mean time, Skanska has withdrawn from the NCP mediation and accused CIPCE of bad faith and violating the rules of confidentiality. Although CIPCE reaffirmed its will for dialogue and participation in the specific instance at the NCP in December 2008, no further progress on the case has been made.

 <b>Case</b>	<b>S. Korean textile companies' labour abuses in the Philippines</b>	
<b>Company/ies</b>	<b>Status</b>	<b>Date filed</b>
Chongwon Trading Il-Kyoung Co. Ltd.	Rejected Pending	03 September 2007 03 September 2007
<b>Complainants</b>	Workers Assistance Center, Inc. (WAC), Korean House of International Solidarity (KHIS), Korean Confederation of Trade Unions (KCTU), Chongwon Union	
<b>National Contact Point(s) concerned</b>	South Korea	
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter IV, paragraphs 1, 2,3,7; Chapter III, paragraph 4; Chapter I, paragraph 7; Chapter VI, paragraph 0	

**Issue**

The complaint refers to workers' rights problems that began in 2001 when the workers attempted to establish a trade union at the Chongwon Fashion plant in the Philippines. The management

threatened to close down if the union was formed. However, in 2004 the unions won elections at both Chongwon and Phils Jeon (a subsidiary of Il-Kyoung Co.). After that, the companies repeatedly questioned the election results by

filing several court petitions, but lost the case in every instance.

In August 2006, the union president at Phils Jeon was dismissed along with 63 other union members. At the same time,

workers at the Chongwon plant went on a strike because of harassment. In September 2006, the workers at Phils Jeon went on strike although they had been warned by management that they would be dismissed if they did so. The strike was violently dispersed by police and security guards who attacked and beat the mainly women workers, 25 of whom were injured. When the strikes at Chongwon continued even after 71 of the striking workers were dismissed, workers received death threats in June 2007.

In February 2007, the Philippine Department of Labour and Employment suddenly declared that the unions no longer represented the workers. The union believes that the companies offered bribes and brought charges against the mediator of the National Relations Commission for taking bribes.

The management has threatened union leaders on various occasions in an attempt to force them to resign. Furthermore, on 6 August 2007, two women workers sleeping in front of the Phils Jeon factory were attacked by masked men, abducted and then thrown out at a highway close to the Philippine Economic Zone Authority.

#### Developments/Outcome

After assessing the complaint, the Korean NCP notified the complainants that: 1) There is no way to deal with the Chongwon case because the company does not exist any more; and 2) It had undertaken an initial assessment of the Phils Jeon/Il-Kyoung case and accepted it as a specific instance. In November 2007, the NGOs conducted additional field research at the Phils Jeon factory

and submitted this to the NCP in a meeting between the unions, NGOs and NCP. Il-Kyoung agreed to enter into a dialogue with the Phils Jeon union, and the complainants pushed to have this be facilitated by the NCP.

On 4 April 2008 an informal meeting took place between the trade union and Phils Jeon management. The NCP played no role in the meeting. Phils Jeon management and Il-Kyoung stated that they would not enter into a dialogue with the workers because they no longer work for the company. The complainants insist that since their dismissal is in dispute, the workers maintain their union membership and urge the Korean NCP to hold a meeting with all the stakeholders. The Korean NCP has not taken any further action, and has merely repeated the company's argument.



Case	Forced evictions at Cerrejón coal mine in Colombia	
Company/ies	Status	Date filed
BHP Billiton	Pending	26 June 2007
Xstrata	Pending	4 October 2007
Complainants	Corporación Colectivo de Abogados (CCdeA); lawyer Armando Perez; José Julio Perez, president of the Tabaco Relocation Committee	
National Contact Point(s) concerned	Australia (lead), Switzerland, United Kingdom	
Guidelines Chapter(s) & paragraph(s)	Preface, Chapter I, Chapter II, paragraphs 1, 2, 3, 4, Chapter. III, Chapter V, paragraphs 1a, 2 a, 2b	

#### Issue

Cerrejón Coal, one of the largest open-cut coal mines in the world, is co-owned by BHP-Billiton (Australia), Anglo-American (UK) and Xstrata (Switzerland). According to the complaint, Cerrejón has attempted to depopulate an area of the La Guajira peninsula by destroying a 200-year-old township-pueblo, Tabaco, and forcibly expelling the remaining population through a purported expropriation.

Another five communities are suffering from the effects of what is called locally 'estrangulación' (strangulation), actions taken by the company that are designed to make living unviable in the area

and therefore drive the population out. The complainants allege that this has caused suffering and hardship for the former population of Tabaco and of the other five pueblos.

#### Developments/Outcome

On 9 October 2007, the UK NCP organised a meeting in London with local Cerrejón Coal management, the Australian and Swiss NCPs, the companies and the complainants. Since then, emails have been exchanged, but no further mediation has occurred. At that meeting a proposed Third Party Review initiated by Cerrejón Coal was accepted by the NCP as a solution/answer for the complaint. The OECD Guidelines

case was suspended until the Third Party Review published its report in March 2008. In July 2008 the Australian NCP sent a draft final statement to the parties for comments. BHP Billiton and Xstrata claim that local Cerrejón management now has the capacity and the knowledge to conduct proper resettlement process and that there is no need for a third party mediation. Although the resettlement processes is taking place on paper, no mutually agreed negotiation scheme has been agreed with the complainants, nor has the communities' ability to negotiate improved.



<b>Case</b>	<b>Afrimex's mineral trading in the DRC</b>	
<b>Company/ies</b>	<b>Status</b>	<b>Date filed</b>
Afrimex (UK) Ltd.	Concluded	20 February 2007
<b>Complainants</b>	Global Witness	
<b>National Contact Point(s) concerned</b>	United Kingdom	
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter II, paragraphs 1,2,10,11; Chapter IV , paragraphs 1a, 1b, 4b; Chapter VI, paragraphs 2, 6; Chapter X	

**Issue**

In October 2002, a United Nations panel of Experts accused 85 OECD-based companies of violating the Guidelines for their direct or indirect roles in the illegal exploitation of natural resources in the Democratic Republic of Congo (DRC). The Panel alleged that "elite networks" of political and military elites and businesspersons fuelled the conflict in order to retain their control over the country's vast natural resources. Global Witness' complaint alleges that Afrimex's trade in minerals contributed directly to the brutal conflict and large-scale human rights abuses in the Democratic Republic of Congo (DRC).

During the DRC's conflict, the RCD-Goma controlled large parts of the eastern provinces of North and South Kivu, where coltan and cassiterite are mined. The complaint describes how Afrimex traded coltan and cassiterite (tin ore) and made tax payments to the RCD-Goma, an armed rebel group with a well-

documented record of carrying out grave human rights abuses, including massacres of civilians, torture and sexual violence. The complaint also highlights the life-threatening conditions in cassiterite mines and the use of forced labour and child labour.

**Developments/Outcome**

As part of the initial assessment in May 2007, the UK NCP held separate meetings with the parties. In the meeting with Global Witness, the NCP asked a number of detailed questions related to the complaint. Global Witness responded to the questions in the meeting and in a follow-up letter. In September 2007, the UK NCP issued its initial assessment announcing that it would accept the complaint. Global Witness and Afrimex then entered the process of mediation and held several meetings in October and November 2007. These meetings were mediated by the NCP.

Eventually, in January 2008, Afrimex decided to withdraw from

the mediation. The case therefore reverted to an investigation by the NCP. The investigation was concluded in May 2008, and the NCP invited both parties to submit final comments. In August 2008, the NCP issued its final statement, concluding that Afrimex did not comply with Chapter II (General Policies) and Chapter IV (Employment and Industrial Relations) of the Guidelines. The NCP did not uphold the allegations that Afrimex failed to fulfil Chapter VI (Combating Bribery).

Since Global Witness submitted its complaint to the NCP, and throughout the period that the NCP was investigating the case in 2008, Afrimex continued buying minerals from eastern DRC. Furthermore, one of its main suppliers was cited by the UN Group of Experts as trading in minerals produced by the FDLR, one of the main armed groups in eastern DRC."



<b>Case</b>	<b>Shell's Pandacan oil depot in the Philippines</b>	
<b>Company/ies</b>	<b>Status</b>	<b>Date filed</b>
Royal Dutch Shell	Pending	15 May 2006
<b>Complainants</b>	FoE Netherlands (Milieudefensie), Friends of the Earth International, Fenceline Community (Philippines)	
<b>National Contact Point(s) concerned</b>	Netherlands	
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter II, paragraphs 5, 11; Chapter III, paragraph 4e; Chapter V, paragraphs 2a, 2b, 5, 6; Chapter VI	

**Issue**

The complaint accuses Shell of manipulating local authorities in the Philippines. It states that Shell has withheld information from local residents and employees about the environmental, health and safety impacts of its operations. It also alleges that Shell is failing to maintain plans and adopt technologies to mitigate potential hazards at its oil depot.

**Developments/Outcome**

After accepting the case, the Dutch NCP held separate meetings with Shell and the complainants in August and December 2006.

In March 2007, the Philippines' Supreme Court ordered the City of Manila to uphold Ordinance 8027 and close the Pandacan oil depot within six months. The ordinance aims to protect residents from the

health and safety dangers of the dilapidated depot, which is situated in the heart of densely populated Manila. Shell and the other oil companies operating the depot (Chevron and Petron) asked the Court to reconsider the decision, but on 13 February 2008, the First Division of the Supreme Court upheld its original decision and gave the oil companies 90 days to submit a relocation plan.

In November 2007, the newly restructured NCP invited Shell and the Dutch NGOs to a meeting at which it asked Shell to respond in writing to the allegations in the complaint. Shell did so in January 2008, and the NGOs responded

with an additional submission in February 2008.

In mid-2008, the Dutch NCP engaged a local expert, who had been mutually agreed-upon by the parties, to conduct some initial

fact-finding, interviews and assessment of the situation on the ground. Several members of the Dutch NCP themselves also visited the Philippines to discuss the issues with the local expert and the Philippine parties to the complaint.

<b>Case</b>	<b>DLH's purchase of illegal timber from conflict zones</b>	
<b>Company/ies</b>	<b>Status</b>	<b>Date filed</b>
Dalhoff, Larsen & Hornemann (DLH)	Pending	10 March 2006
<b>Complainants</b>	Nepenthes	
<b>National Contact Point(s) concerned</b>	Denmark	
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Preface, point 1; Chapter V, paragraph 1; Chapter II, paragraphs 1,10,2; Chapter IV, paragraph 1; Chapter IX	

**Issue**

Nepenthes' complaint states that Dalhoff, Larsen & Hornemann (DLH) buys timber from countries with a high rate of illegal logging and that some of DLH's suppliers have been convicted of forest crimes. DLH also buys timber from Burma and parts of Africa, where the timber industry is known to be involved in violent conflicts.

According to the complaint, DLH does not verify whether the timber it buys is legal, and the company has been caught buying illegal

timber several times. The complaint states that DLH ignores the risk that their timber purchase causes violent conflicts and violation of human rights.

**Developments/Outcome**

After the Danish government developed a draft position on "sustainable" and "legal" timber in Spring 2007, the NCP began work on the case. In the mean time, Nepenthes (which owns a share in DLH) put forward a proposal for DLH's 2007 general assembly that stated that DLH should conduct

their business in a way that is in accordance with the OECD Guidelines. The general assembly (in which DLH itself owns more than 50% of the shares) voted "no" to Nepenthes' proposal, and instead adopted a proposal put forward by the board of DLH, that stated that DLH will "aim at" conducting business in a way that is in accordance with the OECD Guidelines. Nepenthes has requested that DLH provide information about the quantity and origin of the timber purchased and the certifications.

<b>Case</b>	<b>Alcoa Alumínios' Barra Grande hydroelectric dam in Brazil</b>	
<b>Company/ies</b>	<b>Status</b>	<b>Date filed</b>
Alcoa Alumínios S.A Grupo Votorantim	Blocked Blocked	06 June 2005 06 June 2005
<b>Complainants</b>	Terra de Direitos, Movimento dos Atingidos por Barragens (MAB)	
<b>National Contact Point(s) concerned</b>	Brazil	
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter V, paragraphs 1,3,4; Chapter II, paragraphs 2,5	

**Issue**

The complaint alleges that Alcoa Alumínios S.A. and Companhia Brasileira de Alumínio, both of the Grupo Votorantim, have knowingly utilised a fraudulent environmental impact assessment to construct the Barra Grande hydroelectric plant in the states of Santa Catarina and Rio Grande do Sul.

The companies are majority shareholders in Baesa consortium, the company responsible for the construction.

**Developments/Outcome**

In September 2005, the Brazilian NCP accepted the case and held a meeting with the complainants. The head of the NCP promised to organize more meetings, but admitted that the political situation

in Brazil would make it difficult to resolve the case. The complainants heard from unofficial sources that the NCP planned to close the case due to a lack of evidence about the behaviour of the companies; however, the NGOs maintain they have sufficient evidence. No progress has been made in the last two years, and the case is now considered "blocked" by the Brazilian NCP.

Case	British companies and UK export credit program	
Company/ies	Status	Date filed
BAE Systems	Blocked	01 April 2005
Airbus S.A.S.	Blocked	01 April 2005
Rolls Royce	Blocked	01 April 2005
Complainants	The Corner House	
National Contact Point(s) concerned	United Kingdom	
Guidelines Chapter(s) & paragraph(s)	Chapter VI , paragraph 2	
<b>Issue</b> The Corner House's complaint alleges the companies have violated the Guidelines' bribery provision by refusing to provide details of their agents and their commissions to the UK	Government's Export Credit Guarantee Department.  <b>Developments/Outcome</b> In May 2005, the UK NCP accepted the complaint and forwarded it to the companies for comment.	Airbus has been referred to the French NCP, but other action has been suspended allegedly because the Export Credits Guarantee Department (ECGD) engaged in consultation about payments through agents.

Case	Toyota's anti-trade union practices in the Philippines	
Company/ies	Status	Date filed
Toyota Motor Corporation	Blocked	04 March 2004
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	
<b>Issue</b> The complaint alleges that Toyota Motor Philippines Corporation (TMP) refused to recognise TMPCWA as the sole and exclusive bargaining agent. The complaint states the company is actively trying to hinder the right to association and collective bargaining. The complaint further alleges that TMP refused to organise Certification Elections (CE) as stipulated by law. When CE were eventually held in March 2000, TMP challenged the result (which was favourable to TMPCWA), refused to open negotiations, and launched various	administrative appeals against TMPCWA. On 16 March 2001, the Philippine authorities reaffirmed TMPCWA's legitimacy. On the same day, 227 leaders and members of the organisation (who had participated in the previous month's gathering) were unjustifiably dismissed.  <b>Developments/Outcome</b> In September 2004, the Japanese NCP announced "the matter is still under examination, and the initial assessment has not yet come to an end. We are of the opinion that the case of TMPCWA is still at bar at Court of Appeals."	The Japanese NCP appeared to have changed its attitude after it was criticised in OECD meetings and by an International Solidarity Campaign initiated by IMF in 2006, but in 2007 it returned to its previous position that the matter is still at the stage of the initial assessment. TMPCWA and Support Group have met with Toyota regularly every year outside the NCP forum at Toyota headquarters in Tokyo and Toyota City, but there has been no movement on the issues. The case is now considered "blocked" by the Japanese NCP.



Case	BTC oil pipeline in Azerbaijan, Georgia & Turkey	
Company/ies	Status	Date Filed
B.P. p.l.c	Pending	29 March 2003
Conoco Philips	Pending	29 March 2003
Delta Hess	Pending	29 March 2003
ENI	Pending	29 March 2003
TotalFinaElf	Rejected	29 March 2003
Unocal	Pending	29 March 2003
ING Belgium	Blocked	9 May 2004
Dexia Bank	Blocked	9 May 2004
KBC Bank NV	Blocked	9 May 2004
<b>Complainants</b>	Campagna per la Riforma della Banca Mondiale, FERN, Amis de la Terre, Friends of the Earth US, Milieudéfense, 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 BTC consortium of ten oil companies, led by BP, is accused of seeking tax and law exemptions and undue influencing of governments in construction of a 1,760 kilometre pipeline through Azerbaijan, Georgia and Turkey. The complaint alleges that the BTC consortium sought tax and law exemptions and unduly influenced governments in construction of the pipeline in Georgia and Turkey. The complaint also raised concerns about BP's failure to adequately consult with project-affected communities and failure to operate in a manner contributing to goals of sustainable development.

A second complaint, filed by Proyecto Gato at the Belgian NCP, alleges that the three Belgian banks ING, Dexia, and KBC, in supporting the BTC project financially, are impeding economic, social and environmental progress in the host countries. Proyecto Gato maintains that the banks did not evaluate, or take into account adequate information on the environment, health and security impacts of the pipeline. In addition, the banks did not supervise or control the projects' progress with respect to the implementation of environmental, health and security objectives in order to promote sustainable development.

### Developments/Outcome

Matters moved slowly in this case. Although the case was accepted

by the UK NCP in August 2003, the NCP only visited the affected region in September 2005. Despite promises to respond to the issues raised by NGOs, BP refused to disclose their response to the complainants and broke off the dialogue process in January 2006

On 15 August 2007, the NCP issued a final statement that relied heavily on a undisclosed report by BP, exonerating the company. The complainants appealed to the newly established Steering Board that the NCP's statement was unfair and that it failed to "make any serious attempt to engage critically with the issues". In December 2007, the NCP acknowledged procedural failures and offered to undertake its own review of the procedural aspects of the August 2007 decision. In 2008, the Steering Board conducted the first ever review of the NCP's handling of a specific instance. The Steering Board, whose operations are supposed to be transparent, has yet to decide whether the outcome of the review can be made public prior to a final statement on the case being issued.

Because the lead company in the BTC consortium, BP, is British, the NCPs in the countries where the specific instance was submitted collectively decided in 2004 that the UK would "take the lead" in handling the case. However, despite this understanding, the UK NCP decided unilaterally in 2005

that it would only deal with the UK complainants. This decision was apparently not communicated by the UK to the other NCPs until January 2006. The UK NCP has consistently failed to keep its NCP colleagues informed of its handling of the specific instance. The French NCP has rejected the case against TotalFinaElf, but no further progress on the cases filed against this or the US companies has been made by any of the NCPs involved.

In the ENI case, the Italian NCP finally agreed in January 2008 to conduct an initial assessment of the case against consortium partner 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, the complainants asked the NCP for a clarification. The Italian NCP forwarded the request to the UK NCP and the OECD Investment Committee.

The Belgian NCP has declared the complaints against the Belgian banks eligible, but because BP is the main actor in the BTC project, the UK NCP is taking the lead in the procedure. The Belgian NCP forwarded the cases to the British NCP, thereby closing the case for the Belgian NCP. However, the British NCP unofficially declared that it would not evaluate the role of the Belgian banks.



<b>Case</b>	<b>Anglo American's mining activities in Zambia</b>	
<b>Company/ies</b>	<b>Status</b>	<b>Date filed</b>
Anglo American Plc	Closed	27 February 2002
<b>Complainants</b>	Rights and Accountability in Development (RAID), Afronet, Citizens for a Better Environment (CBE)	
<b>National Contact Point(s) concerned</b>	United Kingdom	
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter II, paragraphs 1, 2; Chapter IX, paragraphs 1,3; Chapter V , paragraphs 0, 2; Chapter III, paragraph 2	

**Issue**

The complaint related to a number of issues arising from the privatisation of the copper industry in Zambia during the period 1995 - 2000. RAID alleged that Anglo American (AACSA, which later became Anglo American plc) influenced the privatisation process in the company's favour. Specifically, it alleged that AACSA was able to purchase the Konkola Deep Mining Project without entering into a competitive tendering process and that the company also obtained right of first refusal over the purchase of facilities at Mfulira (smelter and refinery) and Nkana (mine), thereby denying the opportunity for other enterprises to make an offer. Anglo American plc, after the company's incorporation in London, derived a continuing benefit from these actions.

RAID also alleged that the company sought and received exemptions from Zambian legislation with regard to taxation and environmental controls. This resulted in weakened standards of environmental controls, such as those on emission targets, and affected the health and safety of workers and the population in general. The weakened environmental controls were not disclosed.

Linked to the taxation exemptions, RAID also alleged that the

company secured a number of financial incentives and concessions that were not available to other enterprises.

**Developments/Outcome**

The company responded saying that the RAID complaint was 'without foundation within the terms of the Guidelines'. Anglo American rejected RAID's allegation about favourable treatment stating, "Far from seeking to negotiate fiscal terms that would produce unusually attractive returns, terms were negotiated in a transparent manner between the parties".

In most respects, this complaint – the first the UK NCP received following the 2000 review of the OECD Guidelines – was, in its initial stages, well handled. The NCP acknowledged the complaint promptly, immediately sought and obtained legal advice on its admissibility and within a few weeks had requested DFID Zambia to conduct a fact finding visit. When the company raised objections regarding the UK NCP's competence, the NCP referred the matter to the OECD's Investment Committee for clarification. On receipt of that clarification, the NCP resumed the specific instance process.

Despite the positive start, a protracted dispute with Anglo

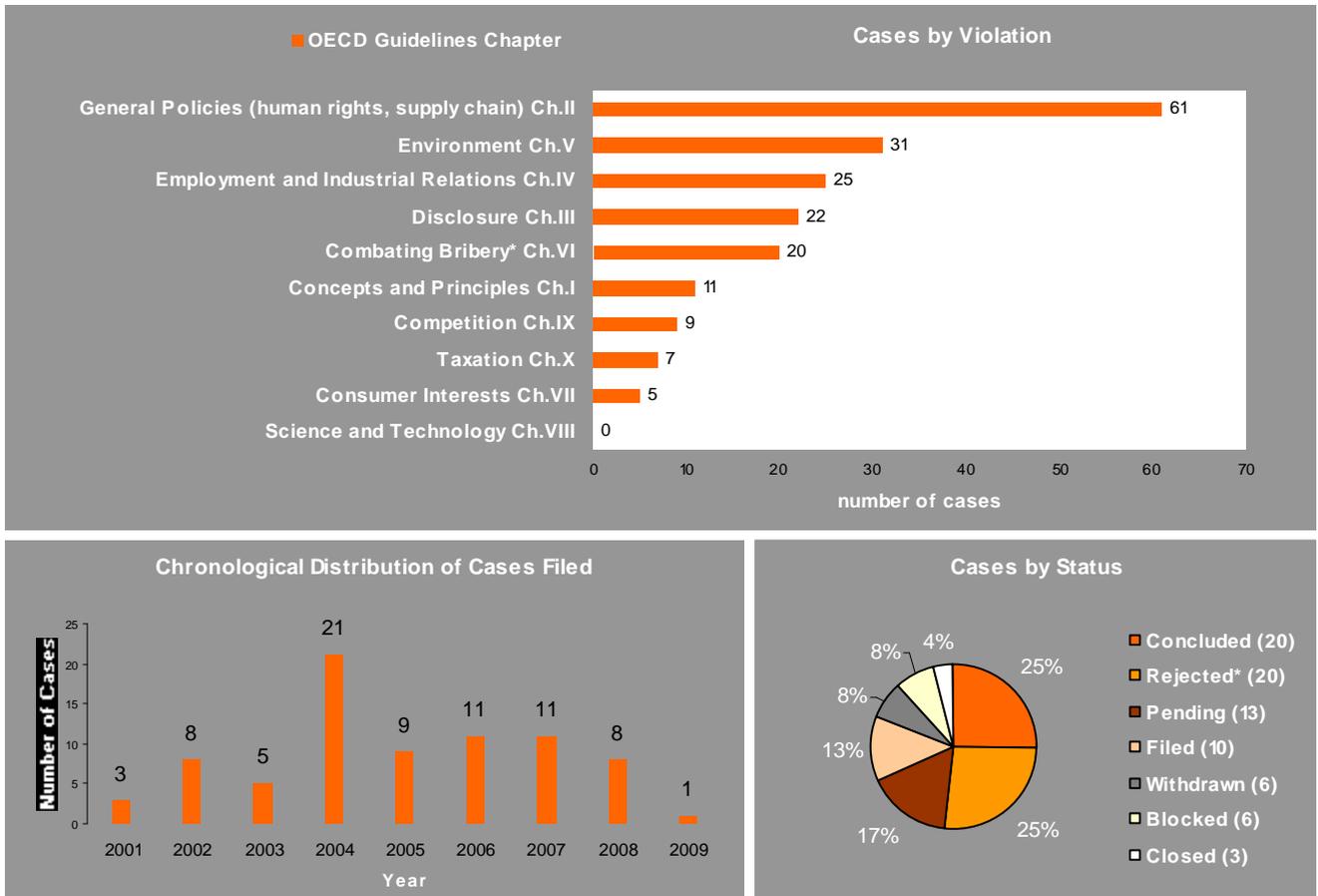
American over jurisdiction led to the NCP's failure to conclude the matter within a reasonable time frame.

A final statement was eventually issued in May 2008, an unprecedented six years after the complaint had been filed. It said, "the NCP does not propose to make any recommendations aimed at achieving compliance for the pragmatic reason that a considerable period of time has passed since the ZCCM privatisation was concluded, during which Anglo American has sold the companies that are the subject of the complaint." The original assessment was instead appended to the final statement.

RAID regrets the fact that the failure to timetable the case effectively meant that the NCP never reached a final determination on the substantive issues raised, despite the wealth of information presented by both parties. However, two important principles were established: firstly, that the 2000 Guidelines could be applied retrospectively and; secondly, the acknowledgement in the final statement that "it is usual practice for the NCP to make determinations of compliance and to issue recommendations in respect of a specific instance on those matters which remain unresolved".

### III. Current case statistics

As of spring 2009, 78 OECD Guidelines cases have been filed by NGOs



\*It should be noted that Transparency International - Germany's complaint against 57 companies should technically be considered 57 separate cases, but has here only been counted as 1 case. Considering it as 57 separate cases would add an additional 56 additional cases to the Bribery Chapter (VI), the year 2007, and the "Rejected" status.

This Quarterly Case Update has been compiled by Joseph Wilde-Ramsing and Virginia Sandjojo, Centre for Research on Multinational Corporations (SOMO). Thanks to the individuals involved in the cases for providing information.

The Quarterly Case Update is produced four times a year and has as its aim to document the views and experiences of NGOs involved in NCP/OECD Guidelines procedures. OECD Watch strives to ensure that the information in this case update is accurate, but ultimately OECD Watch is not responsible for the content. OECD Watch is willing to correct or remove any information that is factually inaccurate. For more specific information about the cases in this update, please visit [www.oecdwatch.org](http://www.oecdwatch.org) or contact the parties involved directly.

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OECD Watch is an international network of civil society organizations promoting corporate accountability. For more information on the network and on this and other Quarterly Case Updates contact the OECD Watch secretariat at:

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