

# Quarterly **Case Update**

## I. Highlights in this Update

### **New cases:**


- Community groups in Guatemala file complaint against Goldcorp Inc with the Canadian NCP, alleging human rights abuses at the company's Marlin gold mine; see p.2.
- Coalition of Thai and Philippine unions and NGOs lodge complaint at the Swiss NCP against Triumph for labour rights violations at garment factories in Thailand and the Philippines; see p.2.
- Greenpeace Germany lodges complaint against Vattenfall AB and its German subsidiaries for violating German environmental policies and consumer protection and applying double standards with regard to renewable energy and climate change; see p.3.

### **Developments:**

- Argentine NCP publishes final statement in Skanska corruption case after company refuses to enter mediation; see p.3.
- Norwegian NCP continues initial assessment of complaints filed against Cermaq and Intex Resources; see p.4-5.
- UK NCP issues final statement upholding Survival International's allegations that Vedanta Resources has not complied with the OECD Guidelines; both parties provide 3-months-on follow up reports on implementation of the recommendations in the final statement; see p.5.
- Dutch NCP prepares to close the case against Makro/SHV Holdings with a final statement; see p.6.
- Mediation appears impossible in Shell Ireland Corrib Gas pipeline case; complainants request that the Irish and Dutch NCPs close the case with a final statement; see p.6-7.
- Shell Philippines starts independent risk assessment of Pandacan Manila oil depot following OECD Guidelines case, but complainants still have concerns; see p.8-9.
- Complainants receive informal word that the Japanese NCP may (re)start an initial assessment on the case against the Toyota Motor Company, see p.9-10.

**Comprehensive case statistics: back flap (p.12)**

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

	<b>Case</b>	<b>Human rights at Goldcorp's gold mine in Guatemala</b>		
	<b>Company/ies</b>	<b>Status</b>	<b>Date filed</b>	<b>Duration (to date)</b>
	Goldcorp Inc	Filed	9 December 2009	1 month
	<b>Complainants</b>	Coalition for the Defense 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

Vancouver-based Goldcorp Inc. has operated the Marlin gold mine since 2006, when it acquired Glamis Gold. Development of the mine was partly financed through a loan from the World Bank's International Finance Corporation.

The complainants, who comprise a number of local communities, allege that Goldcorp has failed to respect the human rights of the local population. Specifically, Goldcorp's land acquisition is alleged to violate communal property rights and the right to free, prior, and informed consent.


Furthermore, the complainants allege that structural damage to houses from Goldcorp's use of explosives and heavy equipment violates the locals' right to property, that water contamination from Goldcorp's mining activities violates their right to health, that Goldcorp's overconsumption of water for its operations violates their right to water, and that Goldcorp's retaliation against anti-mine protesters violates their right to life and security of person.

The complaint details the communities' concerns over toxic contamination and depletion of fresh drinking water, health

impacts on local citizens such as skin rashes and ailments similar to those found at Goldcorp's San Martin mine in Honduras, and structural damage to houses near the mine from blasting and the use of heavy transport trucks. A recent investigation conducted by mining specialists and geologists found that shock waves are the most likely cause of the structural damage to many houses in San Miguel Ixtahuacán.

### Developments/Outcome

The Canadian NCP has acknowledged receipt of the complaint and is undertaking an initial assessment.

	<b>Case</b>	<b>Labour rights at Triumph garment factories in Thailand and the Philippines</b>		
	<b>Company/ies</b>	<b>Status</b>	<b>Date filed</b>	<b>Duration (to date)</b>
	Triumph International	Filed	3 December 2009	1 month
	<b>Complainants</b>	BPMTI-Independent, Defend Job Philippines, Thai Labour Campaign, Triumph International Thailand Labour Union		
	<b>National Contact Point(s) concerned</b>	Switzerland		
	<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter II, paragraph 9; Chapter IV, paragraphs 1a, 2a-c, 3; Chapter VII, paragraph 4		

### Issue

Triumph International is a Swiss-based producer of undergarments. The complaint alleges that in August 2009, nearly 2,000 workers at a Triumph factory in Thailand were suddenly retrenched, cutting the factory's workforce in half. In the same month, two Triumph factories in the Philippines were closed, resulting in the loss of 1,663 jobs. In all three factories, the majority of the workers who were laid off were union members, including many union leaders.

The complainants, who comprise a coalition of labour unions, NGOs and labour support groups, allege that factory management has repeatedly demonstrated anti-union behaviour and that the massive layoffs are management's retaliation in a long conflict with the unions.

The complainants claim that by not consulting the unions with regard to the layoffs and failing to negotiate a social plan for the workers, Triumph acted contrary to the OECD Guidelines.

The local unions' attempts to contact top management at the headquarters in Switzerland, including an invitation for direct talks with Triumph CEO Markus Spiesshofer, were denied.

### Developments/Outcome

The Swiss NCP acknowledged receipt of the complaint, forwarded the complaint to the company, and is conducting an initial assessment. As part of the assessment, the NCP is discussing issues of confidentiality with all parties.

<b>Case</b>	<b>Environmental and disclosure issues at Vattenfall in Germany</b>		
<b>Company/ies</b>	<b>Status</b>	<b>Date filed</b>	<b>Duration (to date)</b>
Vattenfall AB	Filed	29 October 2009	3 months
<b>Complainants</b>	Greenpeace Germany		
<b>National Contact Point(s) concerned</b>	Germany		
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter II, paragraph 1, 5, 11; Chapter V, paragraphs 2a, 5, 6a, 8; Chapter VII, paragraph 4		

#### Issue

Vattenfall AB is a Swedish electricity generation company owned by the Swedish government. The German companies Vattenfall Europe AG, Vattenfall Europe Generation AG & Co. KG and Kernkraftwerk Krümmel GmbH & Co. oHG are subsidiaries of Vattenfall AB.

The complaint alleges that Vattenfall's Hamburg-Moorburg coal-fired power plant, currently under construction, violates the OECD Guidelines with regard to national environmental policies and consumer protection. Greenpeace alleges that Vattenfall is engaging in unreasonable lobbying and is undermining German environmental law by filing a complaint with the World Bank's arbitration tribunal ICSID in which

Vattenfall is demanding €1.4 billion in compensation from the German government because of the environmental standards imposed on Moorburg. Greenpeace has calculated that Moorburg emissions will exceed levels necessary for sustainable development by more than five times.

The complaint further alleges that while Vattenfall claims in its "Climate Manifesto" that it is committed to climate protection issues, the company generates the highest levels of CO<sub>2</sub> emissions per kilowatt-hour of any power company in Germany. According to Greenpeace, the Moorburg plant is expected to use up nearly 10% of the German energy industry's CO<sub>2</sub> budget in its projected 40 years of operation while generating only a

scant 2% of the total amount of electricity produced.

Furthermore, the complaint accuses Vattenfall of applying double standards. While in Sweden Vattenfall is particularly committed to renewable energy sources, in Germany the company concentrates on generating coal energy, which is environmentally harmful.

Finally, the complaint denounces Vattenfall's misleading policy of disclosure during various malfunctions and accidents at the Krümmel nuclear power plant.

#### Developments/Outcome

The German NCP acknowledged receipt of the complaint and, as part of its initial assessment, forwarded the complaint to the company for an initial reaction.

<b>Case</b>	<b>Forced evictions at NKG coffee plantation in Uganda</b>		
<b>Company/ies</b>	<b>Status</b>	<b>Date filed</b>	<b>Duration (to date)</b>
Neumann Kaffee Gruppe (NKG)	Filed	15 June 2009	8 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, paragraph 1, 2, 7		

#### Issue

The complaint alleges that in August 2001 the Ugandan army forcefully evicted more than 2,000 people from their land to make way for a coffee plantation of the Neumann Kaffee Gruppe (NKG). The local residents' land was destroyed and they had to flee into the nearby forest. No houses or other means of accommodation or compensation was provided.

According to the complaint, while NKG continues to produce coffee for export on the land, the majority of the evictees have settled at the border of the plantation. They suffer from food shortages and a lack of access to drinking water, adequate health care, and money for school fees. They have approached NKG several times to ask for support in their struggle for compensation, but the company refuses to talk with them. The company has also tried to hinder a legal case filed

by the evictees against NKG and the Ugandan Government in 2002. That case remains pending, and no substantial progress has been made.

#### Developments/Outcome

The German NCP acknowledged receipt of the complaint and forwarded it to the company for a response. There is of yet no publicly-available information on the outcome of the initial assessment.

<b>Case</b>	<b>Corruption in Skanska's gas pipeline project in Argentina</b>		
<b>Company/ies</b>	<b>Status</b>	<b>Date filed</b>	<b>Duration</b>
Skanska	Concluded in November 2009	20 May 2009	7 months
Skanska	Concluded in November 2009	September 2007	27 months
<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, 3; Chapter X		

### Issue

CIPCE alleges that directors of the Swedish company Skanska paid bribes to public servants during the construction of a gas pipeline project in the northern and southern regions of Argentina. When the allegations of corruption and bribery were first publicised, Skanska 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 quick solution and to protect the company from the former directors. CIPCE argues that, given the circumstances, the correct course of action would

have been to dismiss those involved without severance pay and that Skanska's behaviour reveals its unwillingness to prevent and fight corruption and is thus in violation of the OECD Guidelines.

### Developments/Outcome

The NCP accepted the case as a specific instance on 26 November 2007. Skanska responded to the allegations in the complaint, and both parties agreed to negotiate in good faith in order to achieve a mutually-acceptable 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 requested that the OECD's Investment Committee clarify the

interpretative reach of the clause, but the Argentinean NCP rejected the request arguing that the IC does not have the ability to interpret the Guidelines.

In September 2008, Skanska withdrew from the NCP mediation and accused CIPCE of bad faith and violating the rules of confidentiality. In May 2009 the NGO presented additional information in a new case against Skanska for alleged violation of Chapter VI of the Guidelines (combating bribery).

Given Skanska's refusal to participate in mediation, CIPCE requested that the NCP move to draft a final statement and close the case. On 20 November 2009 the Argentinean NCP issued a final statement closing both cases without making an evaluation of the validity of the allegations.



Case	Cermaq ASA's salmon farming in Canada and Chile		
Company/ies	Status	Date Filed	Duration (to date)
Cermaq ASA	Filed	19 May 2009	8 months
Complainants	ForUM and Friends of the Earth Norway		
National Contact Point(s) concerned	Norway; Canada and Chile also consulted		
Guidelines Chapter(s) & paragraph(s)	Chapter II, paragraph 7; Chapter IV paragraph 1a, d, 4; Chapter V, paragraph 2, 3, 4		

### Issue

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 of the company.

The complainants maintain that Cermaq ASA, particularly through its fish-farming subsidiary Mainstream, has breached the OECD Guidelines' general policies by not taking adequate consideration of the rights of indigenous peoples in Canada and Chile whose access to resources is threatened by

Cermaq's salmon breeding activities. The complainants further maintain that Cermaq has breached the OECD Guidelines' employment provisions through unfounded dismissals, attempts to prevent free association of employees in labour unions, discrimination against women and inadequate safety procedures for its employees. Cermaq's activities allegedly also pose an environmental threat through the spread of salmon lice and disease originating from its fish farms.

### Developments/Outcome

As part of the initial assessment, the Norwegian NCP forwarded the complaint to the Chilean and Canadian NCPs for comment. The Norwegian NCP has received replies from both the Canadian and Chilean NCPs and is currently considering its further treatment of the case. The NCPs have decided that the Norwegian NCP will take the lead in handling the case. The complainants provided the Norwegian NCP with additional evidence of the alleged breaches in Spanish, but the NCP declared that it cannot process the additional information due to lack of resources for translation.



Case	Intex Resources' nickel mine in the Philippines		
Company/ies	Status	Date Filed	Duration (to date)
Intex Resources	Filed	26 January 2009	12 months
Complainants	Framtiden i våre hender (Future in Our Hands)		
National Contact Point(s) concerned	Norway		
Guidelines Chapter(s) & paragraph(s)	Chapter II ; Chapter V, paragraphs 0-8 ; Chapter VI		

### Issue

In 1997, the Philippine Department of Environment and Natural Resources 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 with the land of the Mangyan indigenous people and affects in particular the Alangan and Tadyawan tribes, who have property rights throughout the area but were not properly consulted for the project.

The complaint alleges that Intex Resources will violate the OECD Guidelines if it carries out its plans to establish the factory. The factory would be a threat to the local water environment 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, who quickly responded to complainants' concerns by means of a public letter in which they defended their operations in the project. In March 2009 the NCP asked the complainants to

comment on the company's response. The NCP subsequently invited the complainants to a meeting with the company in the summer of 2009.

However, the decision whether the NCP will handle the case or not has still not been made. A planned visit from the Norwegian ambassador in the Philippines to the Mindoro province in December 2009 was expected to further advance the handling of the case. In the meantime, hunger strikes and protests by activists to put a hold to the mining operations continue.



Case	Vedanta's environmental and human rights violations in India		
Company/ies	Status	Date Filed	Duration
Vedanta resources plc	Concluded	25 September 2009	19 December 2008
Complainants	Survival International		
National Contact Point(s) concerned	United Kingdom		
Guidelines Chapter(s) & paragraph(s)	Chapter II, paragraphs 2 and 7; Chapter V, paragraph 2b		

### Issue

British mining company Vedanta Resources has built a one million-ton aluminium refinery and plans to mine bauxite on Niyam Dongar mountain in Orissa, India, to feed the refinery. This mountain is a sacred mountain for the Dongria Kondh tribe, one of the most isolated tribes in India, and its culture, identity and livelihood are inextricably bound to the mountain.

The complaint alleges that neighbouring tribes have already felt the impact of Vedanta's presence. Some of them claim that they have been forcibly evicted to make way for the aluminium refinery. Others may still have to vacate their homes as the plant expands and feeder roads, air strips and toxic waste ponds are built. The Dongria Kondh tribe has not been consulted in the construction process, and the complaint claims that the construction of the mine will severely endanger the rights of these indigenous people. Moreover, there are fears that local streams and

arable land would be polluted by air-borne particulates from the mine, the road and the conveyor belts to carry ore to the refinery. Survival International believes that serious disturbances will be averted and justice for the Dongria Kondh achieved only if Vedanta adheres to international human rights standards and engages with the communities most directly affected by its proposals. Vedanta has allegedly failed to consider the "potential implications" of its activities for the Dongria Kondh because it refuses to accept that there are any.

### Developments/Outcome

The UK NCP contacted Vedanta about the complaint, and the company responded that it refutes all of the allegations. However, Vedanta declined the NCPs offer for mediation and refused to engage with the NCP process or submit any evidence to the NCP to substantiate its claims.

After conducting an investigation, the NCP published

a final statement in September 2009 upholding the complainants' allegations that Vedanta acted in violation of the OECD Guidelines. Vedanta responded to the NCP's conclusions by stating "Vedanta refutes the conclusions [of the report] and has complied in all respects with Indian regulations including consultations with the local community".

In its final statement, the NCP also made recommendations to Vedanta to bring its business practices in line with the OECD Guidelines and requested that both parties provide a 3-months-on update on the implementation of recommendations. Both parties did so, and the NCP is currently summarising the reports for publication on its website. Survival International has already published its report, claiming that Vedanta has completely ignored the NCP's recommendations and deliberately frustrated Survival's follow-up trip by hiring locals to threaten and intimidate Survival employees and their guides.

<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>	<b>Duration (to date)</b>
SHV Holdings, NV	Pending	9 October 2008	15 months
<b>Complainant</b>	Shehri-Citizens for a Better Environment (Shehri-CBE)		
<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 was a joint venture between the Dutch SHV Holdings NV and Pakistani House of Habib that operated a chain of department outlet stores. Pakistan-based Shehri-CBE alleged that the company was involved in illegal transferring of land, illegal land use conversion, human rights abuses and environmental degradation.

#### Developments/Outcome

After an initial assessment, the Dutch NCP accepted the case as a specific instance in November 2008. The NCP forwarded the complaint to SHV and met with the enterprise in February 2009. SHV denied the allegations and informed the NCP about its

divestment from the Makro-Habib joint venture as of December 2008. After the NCP learned that a local court had already dismissed a similar complaint and that the environmental issues were already addressed, the complainants were asked for a clarification, which they provided in June 2009. According to the complainants, the case was dismissed unlawfully. An appeal to the Pakistani Supreme Court of Justice resulted in the high court agreeing to review the case. In December 2009 the Supreme Court ruled in the complainant's favour and ordered Makro-Habib to relocate.

The complainants acknowledged that the environmental issues in the complaint were resolved by Makro before it filed the notification with the Dutch NCP, but nevertheless requested that the NCP determine whether the OECD Guidelines had been violated. The NCP's position was that, if that SHV had divested from Makro Habib Pakistan Ltd, it could no longer pursue future-oriented mediation in the specific instance.

Although SHV claims it has divested of Pakistan, the complainants allege that the Makro brand name is still being used. The Dutch NCP discussed this issue with SHV and will address it in the final statement, which is about to be finalised.

<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>	<b>Duration (to date)</b>
Royal Dutch Shell	Pending	22 August 2008	17 months
Marathon Oil	Pending	22 August 2008	17 months
Statoil	Pending	22 August 2008	17 months
<b>Complainant</b>	Pobal Chill Chomain Community, Kilcommon, Ballina, Co Mayo, Ireland		
<b>National Contact Point(s) concerned</b>	Ireland (lead), the Netherlands; United States 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, Ireland, and is controlled by a consortium consisting of Shell E&P Ireland (45%), Statoil Exploration Ireland (36.5%) and Vermilion (18.5%), which bought out Marathon Oil's share in 2009. According to the complaint, the following issues have arisen regarding the project:

- **Safety and Health issues**

The pipeline would pass too close to populated areas and go through an area prone to landslides. The potential operation under very high pressures with unknown gas compositions, coupled with the instability of peat in some areas

the pipeline is expected to pass does seriously increase the likelihood of pipe failure.

- **Environmental issues**

The location of the refinery poses a risk to the only source of potable water for 10,000 people in the region. Moreover, the route of the pipeline would pass through three ecologically sensitive areas and thus represents a threat to wildlife.

- **Human Rights issues**

The Corrib Gas development would allegedly violate many human rights espoused by the European Convention for the protection of Human Rights and Fundamental Freedoms.

#### Developments/Outcome

The Irish NCP, in cooperation with the Dutch NCP, conducted an initial assessment and jointly

declared the case admissible as a specific instance.

Talks with both parties and the Dutch and Irish NCPs were deferred while direct discussions between Shell and the complainants were being facilitated by the Irish government. When the talks collapsed early April 2009, the NCP took up its mediation role again and engaged in separate discussions with companies and the complainants. The Irish and Dutch NCPs wrote to the parties summarising their findings in September 2009, and asked the parties to provide their reactions to the findings before the end of November.

In their findings, the NCPs estimated that mediation in the case would be extremely difficult given the irreconcilable positions

of the parties on the main issue - relocation of the planned processing plant. Shell E&P has refused to discuss the relocation, claiming that it received all

necessary government permits for the plant. In mid-January 2010, the complainants wrote a letter to the Irish NCP agreeing with the NCPs' assessment that

mediation appeared impossible and requesting that the NCP close the procedure with a final statement.



<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>	<b>Duration (to date)</b>
Royal Dutch Shell	Pending	01 June 2008	18 months
<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**

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, distribution and sale of products derived from 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 environmentally 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 company.

**Developments/Outcome**

On 10 September 2008 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.

Although there are parallel legal proceedings, the NCPs did not saw merit in handling the case. The parallel proceedings, have, however, slowed progress in the case. 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. In April 2009, three members of the NCP visited Villa Inflamable to interview residents and see the conditions for itself.

Shell has refused to participate in the specific instance or even recognize the NCP as the appropriate body for addressing the concerns raised in the complaint. In this light, 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 official specific instance procedure. The complainants responded to the NCP's proposal in May 2009 and indicated that they would be open to such a meeting, but there has since been no word from the NCP.



<b>Case</b>	<b>South Korean textile companies' labour abuses in the Philippines</b>		
<b>Company/ies</b>	<b>Status</b>	<b>Date filed</b>	<b>Duration (to date)</b>
Chongwon Trading	Rejected	7 October 2007	3 September 2007
Il-Kyoung Co. Ltd.	Pending		3 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 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. Yet, in 2004 the unions won elections at both Chongwon and Phils Jeon (a subsidiary of Il-Kyoung Co.). 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 despite the management warnings. The strike was violently dispersed by police and security guards who attacked and injured 25 mainly female workers. When the strikes at Chongwon continued even after 71 of the striking workers were dismissed, workers received death threats.

In February 2007, the Philippine Department of Labour and Employment had 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 the Chongwon case has been rejected because the company ceased to exist. The NCP 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 the 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 should maintain their union membership.

Upon request of the complainants, the NCP has since organised two meetings with the complainants. No meeting among all parties has been organised by the NCP, despite the complainants' request that the NCP do so.

In April 2009, the complainants requested a progress report on the Il-Kyoung Co. case from the NCP. The NCP responded that it would take no further action on the case until parallel legal proceedings (a recently-initiated case between Phils Jeon and its employees) in the Philippines were concluded. No further progress has been made.



Case	Shell's Pandacan oil depot in the Philippines		
Company/ies	Status	Date filed	Duration (to date)
Royal Dutch Shell	Concluded on 31 August 2009	15 May 2006	39 months
Complainants	FoE Netherlands (Milieudefensie), Friends of the Earth International, Fenceline Community (Philippines)		
National Contact Point(s) concerned	The Netherlands		
Guidelines Chapter(s) & paragraph(s)	Chapter II, paragraphs 5, 11; Chapter III, paragraph 4e; Chapter V, paragraphs 2a, 2b, 5, 6; Chapter VI		

**Issue**

The complaint accuses Shell of withholding information from local residents and employees about the environmental, health and safety impacts of its Pandacan oil depot, which is situated in the heart of densely-populated Manila. The complaint also alleges that Shell's plans and procedures to mitigate potential hazards at its oil depot were insufficient and that Shell was improperly involved in local political activities.

**Developments/Outcome**

After promptly conducting an initial assessment and accepting the case, the Dutch NCP engaged in extensive communication, including numerous meetings, phone calls, letters and e-mails, with both parties throughout the process.

Developments in parallel proceedings at the Philippine Supreme Court initially delayed the specific instance procedure, but the NCP eventually decided that its handling of the case would not prejudice the local legal proceedings and decided to move forward on the case. In mid-2008 the NCP engaged a local expert, who had been mutually agreed-upon by the parties, to conduct initial fact-finding, interviews and assessment of the situation in Manila. Two members of the NCP and a member of the NCP secretariat visited Manila in November 2008 to discuss the issues with the local expert and the Philippine parties to the complaint. The NCP members also brought in two independent Dutch health, safety and environmental experts to conduct

research at the Shell part of the oil depot.

In early 2009 the NCP attempted to bring the international and local parties together for mediation meetings in Manila, but the NCP was unsuccessful in getting the parties to agree on the terms and topics of the mediation, the issue of relocation of the depot being at the core of the impasse. Unable to get the parties together for mediation, the NCP closed the case and issued a final statement in August 2009, more than three years after the complaint was filed. In its statement, the NCP dismissed two of the complainants' allegations (although it could not fully investigate or verify one of them) and upheld one claim, noting that Shell had failed to comply with the OECD Guidelines' clause on disclosure

of non-financial information, including environmental reporting, in its interaction with local communities and stakeholders. The NCP's statement includes a number of recommendations to Shell for improved implementation of the Guidelines in its operations.

The complainants blame the NCP's failure to reach a mediated solution on Shell's obstinacy and obstruction of the specific instance process. As an example, they cite Shell's unreasonably high confidentiality requirements during the procedure - a situation that the NCP itself, in its final statement, found "regrettable" and counterproductive, but was powerless to do anything against.

The complainants believe that while the NCP genuinely did its best to come to a mediated solution, its hands were tied as it lacked the authority to force a large company like Shell to even come to the negotiation table. The Guidelines' voluntary nature and the absence of consequences attached to inobservance of the Guidelines mean that the NCP is unable to compel companies to take the OECD Guidelines seriously.

The case casts an ominous light on the current functioning of the OECD Guidelines' specific instance mechanism and underscores the urgency of strengthening and upgrading the Guidelines in a 2010 review. In

this regard, the Dutch NCP's "Further reflections" at the end of its final statement provide some constructive guidance.

One result of the case is that Shell Philippines has initiated an independent risk assessment of the Pandacan depot and invited some local residents and stakeholders to participate. However, a large group of local citizens and community leaders have questions and concerns about the independence of the initiative. The citizens' questions were posed directly to Shell Philippines, but the company has declined to respond.

<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>	<b>Duration (to date)</b>
Dalhoff, Larsen & Hornemann (DLH)	Pending	10 March 2006	46 months
<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 annual shareholder meeting that stated that DLH should conduct their business in a way that is in accordance with the OECD Guidelines. The shareholders (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 stating 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, but the company refused.

The NCP met once with each of the parties and once with both parties present. In spring 2009 Nepenthes and DLH informed the NCP of their view on how the case ought to progress. Since then Nepenthes has been waiting for the NCP to assemble and decide on the future progress in this case, but there has thus far been no decision. Nepenthes asked for a progress update in August 2009 but no response has been received as yet.

<b>Case</b>	<b>Toyota's anti-trade union practices in the Philippines</b>		
<b>Company/ies</b>	<b>Status</b>	<b>Date filed</b>	<b>Duration (to date)</b>
Toyota Motor Corporation	Blocked	04 March 2004	70 months
<b>Complainants</b>	Toyota Motor Philippines Corporation Workers' Association (TMPCWA), Support Group for TMPCWA in Japan		
<b>National Contact Point(s) concerned</b>	Japan		
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter IV, paragraphs 1, 6, 7, 8; Chapter II, paragraph 2		

#### Issue

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.

#### Developments/Outcome

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.

Although the complainants had already considered the case "blocked", they received informal word in October 2009 that the Japanese NCP was planning to (re)start the initial assessment on the case, and the complainants sent a letter urging the NCP to start this assessment without further delay.



Case	BTC oil pipeline in Azerbaijan, Georgia & Turkey		
Company/ies	Status	Date Filed	Duration (to date)
B.P. p.l.c	Pending	29 March 2003	81 months
Conoco Philips	Pending	29 March 2003	81 months
Delta Hess	Pending	29 March 2003	81 months
ENI	Pending	29 March 2003	81 months
TotalFinaElf	Rejected in 2006	29 March 2003	36 months
Unocal	Pending	29 March 2003	81 months
ING Belgium	Blocked	9 May 2004	67 months
Dexia Bank	Blocked	9 May 2004	67 months
KBC Bank NV	Blocked	9 May 2004	67 months
<b>Complainants</b>	Campagna per la Riforma della Banca Mondiale, FERN, Amis de la Terre, Friends of the Earth US, Milieudefensie, 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 contribute to the goals of sustainable development.

A second complaint, filed by Proyecto Gato at the Belgian NCP, alleges that the 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 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

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. A summary of the Review Committee's findings were made public in September 2008. On 26 February 2009, the complainants submitted a paper on "General Lessons" that could be learned from the NCP's handling of the Complaint. The Steering Board of the UK NCP has provided two reactions to the "lessons learned" paper that the complainants submitted. The NCP is composing a draft final statement.

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 consistently failed to keep its NCP colleagues informed of its handling of the specific instance. The French NCP rejected the case against TotalFinaElf, but no further progress on the cases

filed against this or the US companies has been made.

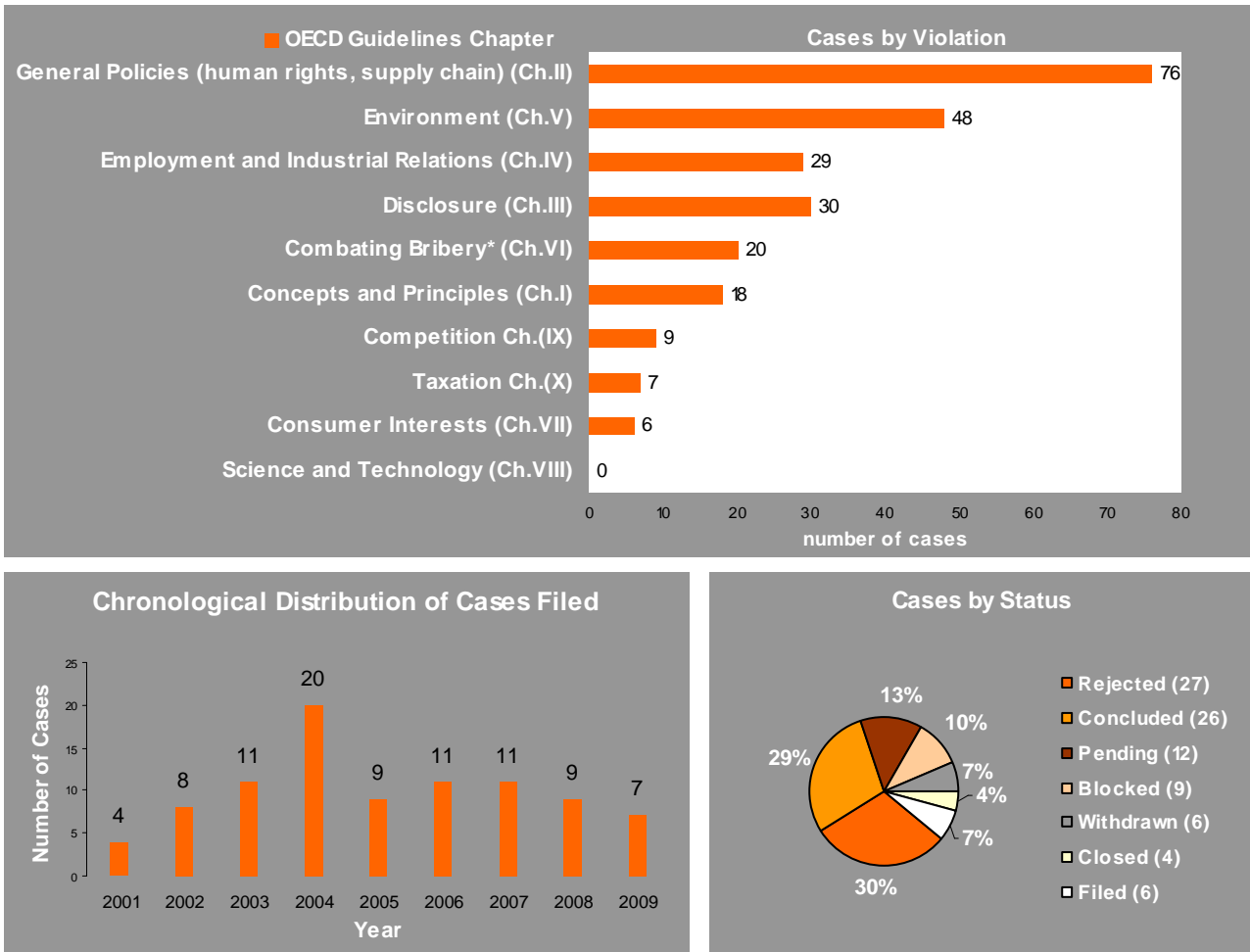
In the ENI case, the Italian NCP finally agreed in January 2008 to conduct an initial assessment of the case against consortium partner ENI. The NCP hosted a meeting between the parties, and ENI agreed to submit a written response to some of the issues raised in the complaint. After an exchange of views and a disagreement about the interpretation of the Guidelines, the complainants asked the NCP for a clarification. It is still unclear whether the Italian NCP

forwarded the request to the UK NCP and the OECD Investment Committee for an opinion.

The Belgian NCP 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 and the cases remain in limbo.

### III. Current case statistics

As of January 2010, 90 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 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).

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.

The publication of this Quarterly Case Update has been made possible through funding from the Dutch Ministry of Foreign Affairs and Oxfam Novib (Netherlands).

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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