

Quarterly Case Update

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1

Case	Human rights abuses associated with ENRC mines in the DRC		
Company/ies	Date filed	Current status	Duration (to date)
ENRC	13 May 2013	Filed	1 month
Complainants	Rights and Accountability in Development (RAID)		
National Contact Point(s) concerned	UK		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), § A1, A2, A3, A11, A12, A13; Chapter IV (Human Rights), § 1, 2, 3		

Issue

The complaint – filed by the law firm Russell-Cooke LLP acting on behalf of Rights and Accountability in Development (RAID) – concerns mining assets controlled by companies associated with Eurasian Natural Resources Corporation (ENRC) in the Democratic Republic of Congo, including the Canadian company Africo Resources. The complaint addresses alleged human rights impacts affecting the impoverished populations of Kisankala and Lenge villages,

which are located on two adjacent mining concessions in the province of Katanga.

The complaint alleges that Kisankala village's only clean water system has been in disrepair for over 10 months, following a clash between local security guards and artisanal miners based at Kisankala. Additionally, the complaint addresses underlying problems the communities face, including claims concerning resettlement and compensation, the alleged

absence of environmental and social monitoring, particularly for Lenge village, and the alleged misbehavior of private security guards. The complainants request that the UK NCP determine whether ENRC's behavior amounts to a violation of the OECD Guidelines.

Developments/ Outcome

The complaints are awaiting the outcome of the NCP's initial assessment.

2

Case	Role of C&A, KiK and Karl Rieker in textile factory fire in Bangladesh		
Company/ies	Date filed	Current status	Duration (to date)
C&A	13 May 2013	Filed	1 month
KiK	13 May 2013	Filed	1 month
Karl Rieker	13 May 2013	Filed	1 month
Complainants	Uwe Kekeritz (German Parliament - Alliance 90/The Greens), European Center for Constitutional and Human Rights (ECCHR), Medico International		
National Contact Point(s) concerned	Germany		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), § A10, A11, A12; Chapter IV (Human Rights), § 2, 3, 5		

Issue

The complaint addresses the (partial) responsibility of three German garment retail companies for the Tazreen factory fire in Bangladesh in November 2012 that caused 112 deaths and injured 300. The high number of casualties was exacerbated by poor fire safety and a lack of emergency exits.

The complainants allege that – as customers of the textiles

produced in the Tazreen factory – the German companies are partly responsible for the poor safety and working conditions there. The complainants argue that the German companies are not fulfilling their obligations towards their workers within the global supply chain and that the remedial measures taken by the companies after the fire are insufficient. The complainants call on the companies to ensure that their suppliers improve fire

protection and pay compensation to families of the victims and others affected. Furthermore, the complainants call on the companies to pay fair wages, enter into dialogue with trade unions and conduct due diligence in their supply chains.

Developments/Outcome

The complaints are awaiting the outcome of the German NCP's initial assessment.

3

Case	Anti-union practices by Electrolux and Mönlycke in Thailand		
Company/ies	Date filed	Current status	Duration (to date)
Electrolux	9 April 2013	Filed	2 months
Mönlycke	9 April 2013	Filed	2 months
Complainants	Swedwatch		
National Contact Point(s) concerned	Sweden		
Guidelines Chapter(s) & paragraph(s)	Chapter I (Concepts & Principles), § 2; Chapter II (General Policies), § A5; Chapter IV (Human Rights), § 1; Chapter V (Employment), § 1a, 1e, 3		

Issue

The complaint was filed simultaneously against Swedish electronics companies Electrolux and Mönlycke for separate incidents of anti-union behaviour. The complaint against Electrolux alleges that a subsidiary engaged

in anti-union practices in Thailand following wage negotiations with workers at its Rayong plant in 2012. Following the negotiations, Electrolux Thailand allegedly removed and suspended the chairperson of the local trade union, detained protesting

workers against their will, terminated nearly one hundred employees who participated in demonstrations.

In the Mönlycke case, the complaint concerns action taken by the company at its Thai

Factory 1 during wage negotiations with the local trade union in 2011. When the company refused to inform workers on the factory floor about the negotiations, the union arranged to inform the workers and solicit their opinions outside of the factory. In August 2011, Mölnlycke management suspended ten workers - all of whom were active in the union and several of whom were responsible for the distribution of information to the other workers - without explanation.

According to the complaint, the issue was brought to the Thai Industrial Relations Committee (IRC), which concluded that the

terminations violated Thai labour law and ordered Mölnlycke to reinstate all terminated employees. However, Mölnlycke appealed the decision, forcing the workers into protracted conciliation meetings. Though the workers initially resisted accepting compensation rather than the reinstatement ordered by the IRC, as time went by an increasing number of workers were forced to accept the company's conditions because they could not continue to provide for themselves or their families without income. The case dissolved in January 2013 when the last worker accepted compensation.

Swedwatch requests that Electrolux and Mölnlycke uphold the OECD Guidelines by allowing the suspended and dismissed trade union members to return to work and improving guidelines and mechanisms for dealing with workers' complaints and negotiation routines.

Developments/Outcome

The complainants are awaiting the Swedish NCP's initial assessment in both cases. Electrolux has issued a public statement dismissing the allegations and maintaining that it has not breached the OECD Guidelines.

4	Case	Gamma & Trovicor's role in Bahraini human rights abuses		
	Company/ies	Date filed	Current status	Duration (to date)
	Trovicor	1 February 2013	Filed	4 months
	Gamma International	1 February 2013	Filed	4 months
	Complainants	Privacy International, Bahrain Center for Human Rights, Bahrain Watch, European Center for Constitutional and Human Rights (ECCHR), Reporters Without Borders		
	National Contact Point(s) concerned	Germany and United Kingdom		
	Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), § A2; Chapter IV (Human Rights), § 1.		

Issue

The complaint presents evidence indicating that Gamma and Trovicor sold intrusive surveillance technology and training to the Bahraini government. By doing so, and by continuing to maintain the technologies, the complainants

believe that the two companies are aiding and abetting the Bahraini government in its perpetration of human rights abuses, including violations of the right to privacy, freedom of expression and freedom of association, as well as arbitrary arrest and torture.

Developments/ Outcome

The UK NCP's initial assessment is expected in late-June. The German NCP has not yet acknowledged the receipt of the complaint.

5	Case	Abuses of human and indigenous rights by mining agents on South Africa's Wild Coast		
	Company/ies	Date filed	Current status	Duration
	MRC Ltd.	1 February 2013	Rejected, March 2013	2 months
	Complainants	Amadiba Crisis Committee		
	National Contact Point(s) concerned	Australia		
	Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), § A2, A3, A5, A6, A7, A8, A10, A12, A13, A14; Chapter III (Disclosure), § 1; Chapter IV (Human Rights), § 3, 4, 6; Chapter VI (Environment), § 1; Chapter VII (Bribery), § 1		

Issue

The Australian venture capital mining company MRC Ltd has ambitions to mine in an environmentally sensitive and pristine stretch of coastline on the Pondoland Wild Coast of South Africa, which has been inhabited for centuries by the amaMpondo Indigenous People. The sacred ancestral land of the AmaDiba clan, one of the 21 constituent Chiefdoms of the amaMpondo, is host to their revered ancestors.

The South African government

provisionally awarded mining rights to the Amadiba's land in 2008 but – after an outcry from the community – revoked them in 2011. The Environmental Impact Assessment revealed that the negative impacts of mining could not be adequately mitigated. Moreover, analysis of economic benefits showed that the profits and other benefits from a 25-year mining venture could only accrue at the cost of the once thriving and much more appropriate income generation opportunities from a community based eco-tourism venture, which was

already providing income opportunities for 400 local residents. Even the effect of the six-year prospecting process on the eco-tourism industry was devastating. Eco-tourism was beginning to recover when the same mining company returned to lodge a fresh prospecting rights application.

Members of the indigenous Amadiba clan allege that MRC Ltd co-opted, intimidated and subverted the members of the clan in order to obtain their consent for the issuing of a

mining license on ancestral land. Other issues raised in the complaint include adverse environmental impacts, loss of livelihood, inadequate disclosure of project plans and impact assessments, and bribery.

Developments/ Outcome

After conducting an initial assessment, the Australian NCP rejected the case on the grounds that the complainants expressed unwillingness to enter into

mediation with the company and because the mineral exploration rights are currently being considered by the relevant local authorities. The NCP declined to investigate the allegations in the complainant.

6

Case	Human rights violations at GCM's Phulbari coal mine in Bangladesh		
Company/ies	Date filed	Current status	Duration (to date)
GCM Resources plc	19 December 2012	Pending	6 months
Complainants	International Accountability Project, World Development Movement		
National Contact Point(s) concerned	United Kingdom		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), § A2, A7; Chapter III (Disclosure), § 2e; Chapter IV (Human Rights), § 1, 2, 3, 4, 5		

Issue

Communities in the Bangladeshi sub-districts of Phulbari, Birampur, Nababganj and Parbatipur – including villages of indigenous households who are considered to be the oldest inhabitants of the South Asian sub-continent – have been fighting to halt a proposed open-pit coalmine known as the Phulbari Coal Mine Project for over six years. The complaint – filed on behalf of the communities – alleges that GCM Resources plc, the company that has full management responsibility for the mine, has violated the human rights of the communities, failed to properly

consult them, and failed to disclose relevant information.

Developments/ Outcome

After conducting an initial assessment, in June 2013 the UK NCP accepted the complaint for further consideration. In its assessment, the NCP stated that its handling of the case would focus on issues regarding violation of the rights of affected communities, the alleged failure by GCM to follow its own self-regulatory standards, and whether the company's review of its plans in the period between September 2011 (when Chapter IV provisions were added to the Guidelines) and December 2012

(when the complaint was filed) included appropriate human rights due diligence. The complainants are encouraged that the NCP has accepted the case, but are disappointed that it decided to limit its inquiry to current impacts, rather than also examining foreseeable future violations.

The NCP has offered to facilitate mediation between the parties for mediation. GCM denied the allegations and urged the NCP not to accept the case, so it is unclear if the company will agree to mediation.

7

Case	Abuse of migrant Chinese workers at Panasonic plant in Singapore		
Company/ies	Date filed	Current status	Duration (to date)
Panasonic Corporation	20 November 2012	Filed	7 months
Complainants	Humanitarian Organisation for Migration Economics (HOME)		
National Contact Point(s) concerned	Japan		
Guidelines Chapter(s) & paragraph(s)	Chapter IV (Human Rights), § 1, 2, 3, 4, 5, 6; Chapter V (Employment), § 1d & 1e		

Issue

The complaint alleges that the wages paid to Chinese migrant workers at a Panasonic plant in Singapore are barely enough to meet their own basic needs and are below Singapore's standard for similarly-employed workers. Additionally, because of remittances necessary to support families in China and high recruitment debts, workers are pressured to accept excessive overtime of up to 150 hours per month.

According to the complaint, the high recruitment fees that bind workers to huge debts for long

periods of time are a violation of Singapore's Employment Agencies Act and the ILO's Private Employment Agencies Convention, which Japan has ratified. These debts cause many workers to stay in exploitative work situations and make them highly vulnerable to situations of forced labour since they fear losing their jobs.

The complaint further alleges that Panasonic has failed to conduct due diligence in ensuring the employment agencies it hires abide by ethical recruitment practices.

Although media pressure in August 2012 forced Panasonic to slightly increase wages, return the migrant workers' passports and make contracts available in Chinese, the complaint claims that these measures have had a limited impact on the workers' rights and well-being.

Developments/Outcome

The case remains in the initial assessment phase. The NCP requested additional information from the complainants, which they provided, but since then the complainants have not had contact with the NCP.

8

Case	Illegal eviction of villagers for ASR's sugar production in Cambodia		
Company/ies	Date filed	Current status	Duration (to date)
American Sugar Refining Incorporated	31 October 2012	Filed	7 months
Florida Crystals Corporation	31 October 2012	Filed	7 months
Sugar Cane Growers Cooperative of Florida	31 October 2012	Filed	7 months
Fanjul Corporation	31 October 2012	Filed	7 months
Complainants	Community Legal Education Center of Cambodia (CLEC), EarthRights International (ERI)		
National Contact Point(s) concerned	United States		
Guidelines Chapter(s) & paragraph(s)	n/a		

Issue

American Sugar Refining (ASR), the world's largest sugar cane refiner and best known for producing Domino Sugar, holds an exclusive contract to buy all the sugar produced at a sugar plantation and factory in Sre Ambel District, Koh Kong Province, Cambodia, where

villagers were illegally evicted from their land without fair or adequate compensation. The villagers are now facing impoverishment, malnutrition, and other social deprivations. The complaint alleges that ASR's parent companies Florida Crystals Corporation, Sugar Cane Growers Cooperative of Florida

and Fanjul Corporation are also responsible for the illegal eviction and subsequent deprivation of the villagers.

Developments/Outcome

The complainants are awaiting the US NCP's initial assessment.

9

Case	Statkraft's wind power operations in breach of indigenous rights in Sweden		
Company/ies	Date filed	Current status	Duration (to date)
Statkraft SCA AB	29 October 2012	Pending	8 months
Complainants	Jijnjevaerie Saami village		
National Contact Point(s) concerned	Sweden and Norway		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), § 1, 2, 14; Chapter IV (Human Rights), § 1, 2, 5; Chapter VI (Environment), § 2a, 2b.		

Issue

Statkraft is currently in the process of building a 360-turbine wind establishment in the municipality of Jämtland, Sweden, all to be located on the traditional lands of the indigenous reindeer herding collective of Jijnjevaerie Saami village. Much of these lands are sensitive migration routes and winter herding pastures. If the project goes ahead as planned, it will severely restrict the community's possibility to pursue reindeer husbandry, which is the basis of the community's economic and cultural survival. This would force Jijnjevaerie village members to abandon their herding practices and would forcefully dislocate them from the environment that provides them with their cultural identity.

The complaint alleges that Statkraft has failed to meaningfully engage with the Saami village and that the consultations that have taken place have been flawed. The complaint further alleges that Statkraft has failed to take adequate steps to prevent adverse impacts from the farm.

Jijnjevaerie Saami village demand is that Statkraft engage in meaningful consultations with Jijnjevaerie Saami village on any and all developments affecting them and take all appropriate steps to prevent adverse impacts on the environment and their reindeer herding practices.

Developments/Outcome

The Swedish and Norwegian NCPs declared that they would collaborate in handling the case.

On 14 February 2013, the NCPs finalised the initial assessment and accepted the case. However, a dialogue between the parties had been renewed following the filing of the case, so the NCPs initially decided to defer the case to allow the parties to find a mutually-acceptable solution to the situation without the NCPs' assistance.

However, in May 2013 an informal meeting between the parties was held at the Swedish NCP to discuss a set of proposals made by the Saami village on how to mitigate the damage from the wind farms. Statkraft has of yet not responded to whether they will follow up on these proposals. The complainants expect that an official NCP review will follow shortly.

10

Case	POSCO's involvement in human rights and environmental impacts in India and the responsibility of the project's investors for the impacts		
Company/ies	Date filed	Current status	Duration (to date)
POSCO	9 October 2012	Filed	8 months
ABP/APG	9 October 2012	Concluded, March 2013	5 months
Norwegian Bank Investment Management (NBIM)	9 October 2012	Concluded, May 2013	7 months
Complainants	Lok Shakti Abhiyan, KTNC Watch, Fair Green Global Alliance, Forum for Environment and Development (ForUM)		
National Contact Point(s) concerned	South Korea, Netherlands, Norway		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), §A10, A11, A14; Chapter IV (Human Rights), § 1, 2, 5; Chapter VI (Environment), §2a, 3		

Issue

The complaint, filed by Lok Shakti Abhiyan and supporting coalitions in S. Korea, Netherlands, and Norway, concerns POSCO's failure to seek to prevent human rights abuses and carry out comprehensive human rights and environmental studies for its proposed iron mine, steel plant and associated infrastructure in the State of Odisha, India.

The complaint alleges POSCO's efforts to construct a 12 million-ton per annum integrated steel plant, captive power plant, captive port and other related infrastructure in the Jagatsinghpur District will lead to the physical and economic displacement of more than 20,000 people, including individuals who have special legal protections under the Scheduled Tribes or Other Traditional Forest Dwellers (Recognition of Forest Rights) Act. The complainants maintain POSCO has not engaged in meaningful stakeholder consultation with all affected communities to identify the full scope and severity of human rights, social and environmental impacts. The complainants fear that POSCO's failure to conduct due diligence will mean the company will be incapable of preventing or mitigating significant adverse

impacts on thousands of people and the environment.

The complaint also addresses the responsibility of the Dutch pension fund ABP and the Norwegian Government Pension Fund – Global (along with the pension funds' asset managers APG and NBIM) for investing in POSCO. The complaint calls on the pension funds to seek to prevent or mitigate adverse impacts directly linked to their operations through their financial relationships with POSCO.

Developments/Outcome

The complaint was filed simultaneously at the Korean, Dutch and Norwegian NCPs. The Dutch NCP, dealing with the case against ABP, accepted the complaint and successfully facilitated several meetings between the parties. In March 2013, a joint final statement was issued in which ABP and APG commit to exercise their leverage bringing POSCO's business practices in line with international standards. The joint statement calls on the three NCPs involved to jointly commission a review and assessment mission to India and to help to facilitate a meaningful stakeholder consultation process.

Following the joint agreement, the Dutch NCP published a

statement confirming that the OECD Guidelines apply to minority shareholdings. This sets an important precedent for future cases against financial institutions. The Dutch NCP has offered to assist the Korean NCP in handling its part of the case.

The Norwegian NCP accepted the case and tried to facilitate mediation. However, NBIM refused to engage with the NCP. On 27 May 2013, the Norwegian NCP published its final statement reaffirming the Dutch NCP's assertion that the Guidelines apply to minority shareholders. The NCP further concluded that NBIM was in violation of the OECD Guidelines for refusing to cooperate with the NCP, and for lacking a strategy on how to address human rights risks related to companies in which it invests.

The Korean NCP sent the complaint to POSCO for a response. POSCO denied the allegations, and the NCP requested additional information from the complainants, which they provided. The complainants are still awaiting the results of the initial assessment and have urged the Korean NCP to collaborate with the Dutch and Norwegian NCPs in facilitating an independent assessment and review mission to India.

11

Case		Involvement of Shell and UK banks in adverse human rights and environmental impacts of the Sakhalin II oil and gas project in Russia	
Company/ies	Date filed	Current status	Duration
Royal Dutch Shell	31 July 2012	Rejected, March 2013	9 months
Royal Bank of Scotland (RBS)	31 July 2012	Rejected, December 2012	6 months
Standard Chartered	31 July 2012	Rejected, January 2013	7 months
Barclays	31 July 2012	Rejected, December 2012	6 months
Complainants	Stroitel Association and Sakhalin Environment Watch		
National Contact Point(s) concerned	Netherlands and the United Kingdom		
Guidelines Chapter(s) & paragraph(s)	Chapter I (Concepts and Principles), §2, 3, 8; Chapter II (General Policies), chapeau and §A1, A2, A6, A7, A12, A13; Chapter III (Disclosure), §1; Chapter IV (Human Rights) §1, 3; Chapter VI (Environment), chapeau and §1, 2		

Issue

Complainants, on behalf of residents living just 1.2 kilometres from the Sakhalin II Prigorodnoye Production Complex (the "Project") – a highly polluting liquefied natural gas ("LNG") plant and oil and gas export terminals on Sakhalin Island, Russia – allege that Shell and three of the largest UK banks have severely harmed community members, endangering their health, jeopardizing their food security and polluting and

destroying local environmental resources. Additionally, their homes have been devalued by the Project to the point that they cannot sell them and buy other homes in safer locations. Despite these significant adverse impacts, community members have not been resettled or justly compensated.

According to the complaint, Shell, RBS, Standard Chartered and Barclays have a business relationship with the project

operator, Sakhalin Energy Investment Company ("SEIC") and have a financial interest in the Sakhalin II project. Each of them failed to use their influence on SEIC to correct the environmental and human rights abuses associated with the Project.

Developments/Outcome

The UK and Dutch NCPs decided to handle the cases separately, with the UK NCP handling the 3 complaints against the UK banks,

and the Dutch NCP handling the complaint against Shell.

The UK NCP rejected each of the complaints against the banks. In each case, the UK NCP reasoned that: a) enterprises are not accountable under the new provisions of the 2011 Guidelines for actions they took before those provisions applied, which according to the UK NCP is September 1, 2011; b) the due diligence provision added in Chapter 2, paragraph 10 acknowledges that the nature and extent of due diligence will depend on circumstances and does not oblige enterprises proactively to review all their existing business relationships; and c) the UK NCP therefore looks for evidence that an enterprise should have been prompted to apply the provisions in a specific relationship. This evidence might relate to the enterprise's knowledge of an ongoing impact, or to new actions or events that took place after September 1, 2011.

Regarding the complaint against Barclays, the company's response to the complaint indicated that Complainants had named Barclays in reliance on an erroneous report from a Bloomberg database. Complainants did not dispute that the Bloomberg database may have contained an error, of which they were unaware when they submitted the complaint. As a result, the complaint was rejected.

In rejecting the RBS complaint, the UK NCP argued that the necessary business relationship between RBS and SEIC had not been substantiated. Specifically, RBS's response to the complaint indicated that a company it owned jointly with other banks had acquired a Netherlands-based bank in October 2007, which had earlier participated in a syndicate that made loans to Gazprom, a Russian company that became SEIC's controlling shareholder around the same time the syndicate made the loans to Gazprom. These loans were corporate loans, which could have been used in the acquisition of SEIC, as alleged in the complaint. Thus, RBS had acquired these loans, but had not been a party to them, nor had SEIC. Moreover, because the loans were corporate loans,

Complainants were unable to prove that they had been for the purpose of acquiring SEIC, and RBS's response to the UK NCP indicated that it would not disclose information that was confidential, commercially sensitive and/or protected under contract law. The UK NCP noted that the loans, which RBS said had since lapsed, may have been used to acquire SEIC, but found that RBS's link to SEIC was not substantiated because, at the time the loans were made, the Project was operational, and also because the acquisition occurred before RBS inherited the loans.

The NCP rejected the complaint against Standard Chartered because it found that the actions already taken by the bank to monitor and evaluate SEIC were sufficient to meet its obligations under the Guidelines. The complainants strongly disagreed, arguing that the monitoring reports revealed SEIC's failure to implement key recommendations in early reports, but that later reports simply stopped mentioning those issues, inexplicably finding SEIC in compliance with its obligations, despite having never corrected previously identified problems. Under these circumstances, the bank should have done more than rely on the baseless conclusions in these reports.

Overall, although Complainants disagreed with the outcome of the complaints against RBS and Standard Chartered, they appreciated the UK NCP's responsiveness and willingness to consider their point of view. That being said, it took a fair amount of expertise to be able engage in the process, raising a question of accessibility for communities who may not have access to help from sophisticated partners.

In March 2013, the Dutch NCP rejected the complaint against Shell because it felt the issues raised were not material and substantiated and that moving forward would not likely contribute to the purpose and effectiveness of the 2011 Guidelines. Significant to the Dutch NCP's reasoning was its unexplained claim that Shell's history and present tensions with relevant companies and the Russian government made the NCP believe that Shell lacked the ability to exert substantial

influence over the situation – despite its 27.5% stake in SEIC. At no point in its Initial Assessment did the Dutch NCP identify the source of this claim or provide any further substantiating information. Complainants believe that the Dutch NCP failed to apply a fair and predictable standard to all relevant allegations because, while the Initial Assessment appropriately considered whether the issues raised in the Notification were material and substantiated, it did not apply the same standard when considering the extent of Shell's leverage over SEIC.

Complainants also believe that the Dutch NCP's Initial Assessment was flawed and illogical on numerous other fronts, including decisions that touch on issues as important to the 2011 Guidelines as sustainable development, human rights and corporations' responsibility for negative impacts associated with them through their business relationships. Particularly difficult to understand was the Dutch NCP's suggestion that allegations of human rights violations must first be litigated in domestic or international court before being brought to the NCP.

Finally, in addition to their strong disagreement with the Dutch NCP's reasoning and ultimate decision, Complainants were disappointed with the Dutch NCP's overall lack of transparency and communication throughout the process. At one point, Complainants requested that the Dutch NCP speak with a partner organization, who they explained had been assisting them throughout the complaint process, and the Dutch NCP refused. Additionally, and in contrast to Complainants' experience with the UK NCP, the Dutch NCP failed to provide any acknowledgement of Complainants' comments on the draft Initial Assessment or explanation of its failure to address many of these comments in the final Initial Assessment. For more information and analysis of the NCP's rejection of the case, see Accountability Counsel's report annexed to OECD Watch's submission to the 2013 NCP meeting and on the OECD Watch website.

Case	Multiple violations during construction of Michelin tyre factory in India		
Company/ies	Date filed	Current status	Duration (to date)
Michelin	10 July 2012	Pending	11 months
Complainants	CCFD-Terre Solidaire, Tamil Nadu Land Rights Federation, Thervoy Sangam, Association Sherpa, CGT		
National Contact Point(s) concerned	France		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General policies) §A2, A5, 10, 11, 12 and 14, Chapter IV (Human Rights), §1, 2, 3, 5 and 6, Chapter V (Employment) § 1e, 2c, 5 and 8, Chapter VI (Environment) § 1a-c, 2a- b and 3, Chapter VII (Bribery) §2 and 4, Chapter XI (Taxation) §1		

Issue

In November 2009, the French company Michelin acquired lands near the Thervoy village from the Tamil Nadu Government and started building the largest tyre factory in India. The complaint alleges that the land was sold to Michelin by local authorities without any prior consultation with the local villagers, a mainly Dalit community who has been living there for over two hundred years. Furthermore, a village near the site is inhabited by indigenous people of Irula ethnicity. The villagers were not consulted nor was their right of free, prior and informed consent respected. Moreover, civil

movements objecting to the factory have been severely repressed.

The development of the area around the village has caused the destruction of 450 hectare-collective forest that hosted agricultural and pastoral activities, thus depriving the local people of their main means of livelihood. Eighteen other villages are also directly impacted by the construction of the infrastructure associated with the factors. The complainants furthermore allege that the factory is likely to cause water pollution and have a negative impact on local peoples' health.

Despite numerous requests by CCFD-Terre Solidaires that Michelin suspend construction on the factory until appropriate impact studies and consultations with affected stakeholders are conducted, Michelin has carried on the work in the name of the project economic benefit. The complainants now turn to the French NCP to intervene to ensure that Michelin changes its behaviour in accordance with the OECD Guidelines.

Developments/Outcome

The case is currently pending at the French NCP.

Case	Pöyry Group's involvement in adverse social and environmental impacts from the Xayaburi hydroelectric dam in Laos		
Company/ies	Date filed	Current status	Duration (to date)
Pöyry Group	11 June 2012	Concluded, June 2013	1 year
Complainants	Siemenpuu Foundation, Friends of the Earth Finland, Finnish Asiatic Society, International Rivers, Community Resource Center, Vietnam Rivers Network, Berne Declaration, Buddhist Association for Environmental Development (BAED) Working for Development, Environment and Peace, Towards Ecological Recovery and Regional Alliance, NGO Forum on Cambodia, Mekong Energy and Ecology Network, Focus on the Global South, the Corner House, Center for Water Resources Conservation and Development		
National Contact Point(s) concerned	Finland		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), §1, 11, 12, 13; Chapter IV (Human Rights), §2, 3; Chapter VI (Environment), §4, 6, 6b, 6c and 8		

Issue

An international coalition of 14 civil society organisations alleges that the services provided by the Pöyry Group to the government of Lao PDR as a part of the preparations for construction of the Xayaburi hydroelectric dam are in breach of the Guidelines. The construction of the dam is controversial because it would have severe environmental and social impacts along the entire Lower Mekong Basin. Impacts include displacement of villagers and a loss of fertile land, income, livelihoods and food security due to alterations of one of the world's most productive freshwater fisheries.

Neighbouring Mekong countries, scientists, experts and NGOs have called for the deferment of construction until additional research on the dam's impacts has been conducted. Despite these protests, the government of Lao PDR is justifying proceeding with the project without additional research based on the advice of the Pöyry Group, a Finland-based consulting firm it hired for technical advice. Though it acknowledges numerous technical shortcomings and the need for additional research, Pöyry has advised Lao PDR to proceed with construction.

The Mekong River Commission for Sustainable Development

Secretariat (MRCS) reviewed Pöyry's report to the Laotian government and disputes Pöyry's main finding that any studies on the Xayaburi Dam site can be conducted after construction is already underway.

The complaint alleges that the services provided by Pöyry undermine the co-operative regional process regarding the use of Mekong trans-boundary water resources. The complaint also accuses Pöyry of not contributing to sustainable development and failing to conduct appropriate due diligence. The complainants requested that a process be initiated with the aim of correcting Pöyry's behaviour,

mitigating the damage already caused, and preventing further damage. They called on Pöyry to engage in dialogue with relevant stakeholders and, where applicable, compensate those adversely impacted.

Developments/Outcome

As part of the initial assessment, the Finnish NCP solicited comments on the complaint from Pöyry. In a public response, Pöyry rejected all of the complaint's allegations. Pöyry also issued a separate response directly to the NCP, but insisted that this remain confidential and not be shared with the complainants. The NCP accepted the complaint in October 2012 and invited the parties for mediation.

The NCP facilitated a meeting between the parties in December 2012 intended to clarify the positions of both parties. After the meeting Pöyry stated it was not interested in further dialogue with the complainant. The Finnish Ministries of Environment and

Foreign Affairs – both of which advise the NCP – issued public statements on the complaint. The ministries affirmed Pöyry's responsibilities in the case and reaffirmed the complainants' argument that the possibility of an adverse impact on human rights exists, but stated that they were unable to assess the extent to which Pöyry fulfilled its due diligence obligations without additional information from Pöyry.

Both parties responded to the statements of the ministries and the complainants engaged with the NCP to provide additional information and discuss the case further. Given Pöyry's unwillingness to engage in further dialogue, the NCP issued a final statement.

The final statement confirms that consulting and business service companies such as Pöyry are covered by the Guidelines and have a responsibility to conduct due diligence to avoid being

linked to adverse social and environmental impacts caused by their clients. However, the NCP determined that Pöyry had not acted in breach of the Guidelines in this case. Finnwatch, an NGO advising the NCP, issued a statement disputing this finding.

The case, which was the first ever handled by the Finnish NCP, raises serious concerns about the NCP's equitability. The NCP gave in to Pöyry's demands for an excessive degree of confidentiality and did not allow the complainants to see or rebut to the company's response to the allegations. The NCP based part of its final statement on Pöyry's confidential response, which was never shared with the complainants – a practice that has been deemed unacceptable by other NCPs. Recall that a similar lack of equitability led the UK NCP's Steering Board to overturn its own flawed final statement in the BP BTC case in 2011.

14

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

Issue

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

In 2008, La Sierrita agreed to lease a portion of their land to Excellon Resources for the development of the company's La Platosa poly-metallic (silver, lead and zinc) mine. The complaint alleges Excellon Resources has breached the land rental contract with La Sierrita. The complainants allege that Excellon Resources failed to obtain consent before engaging in exploration activities on land outside the area designated in

the contract and has also failed to take any steps to comply with its contractual obligation to build a water treatment plant, leading to reduced potable water supplies and contamination of La Sierrita.

The complainants furthermore contend that the company sought to stop workers from joining a local affiliate of the mining union, thereby violating the right to freedom of association and collective bargaining of workers at the La Platosa mine. The complaint accuses Excellon Resources of engaging in worker intimidation and actively supporting a "rogue" union to strategically undermine the unionization efforts of the SNTMMSSRM. The complainants contend the company has aggressively misled investors about the local labour dispute as well.

Developments/Outcome

The complaint was filed simultaneously at the Mexican and Canadian NCPs. In November 2012, the Mexican NCP rejected the case. The NCP found that the issues raised in the complaint were material but not substantiated. The NCP also cited Excellon's unwillingness to participate in any possible NCP-facilitated mediation as a reason for rejecting the case.

The complainants are concerned about the flawed procedures followed by the NCP, including the unreasonably high threshold for accepting a case and the failure to take into account international laws and standards for employment and labour issues. The complainants feel that the NCP exhibited a clear bias toward the company and are concerned by the lack of

cooperation with the Canadian NCP, which appears not to have been involved at all.

In 2011, prior to the filing of the specific instance, the Canadian Office of the Extractive Sector CSR Counsellor received a

complaint on the same issue and concluded that the request should directly proceed to structured dialogue. However, Excellon withdrew from this process before dialogue could begin. The complainants present these varying

conclusions as evidence that the Mexican NCP has unduly rejected the case, particularly as the Canadian official's detailed investigation included a field visit to the mine site and the surrounding community.

15

Case	Human rights violations at George Forrest's CMSK mine in the DRC		
Company/ies	Date filed	Current status	Duration
George Forrest International	4 April 2012	Rejected, February 2013	10 months
Complainants	Action Contre l'Impunité pour les Droits Humains (ACIDH), Rights and Accountability in Development (RAID), La Fédération internationale des ligues des droits de l'homme (FIDH), Ligue des droits de l'Homme, Ligue des Electeurs and Groupe Lotus		
National Contact Point(s) concerned	Belgium		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), §2, 5, 11, 12; Chapter IV (Human Rights), §2, 4, 6		

Issue

The residents of Kawama village on the outskirts of Lubumbashi in the DRC, close to the Luiswishi mine operated by the Compagnie minière du Sud Katanga (CMSK), were seeking compensation after their homes were unlawfully demolished by the CMSK in November 2009. CMSK is a joint venture between the Entreprise Générale Malta Forrest (EGMF) and the state-owned mining company, La Générale des carrières et des mines (Gecamines). EGMF, a subsidiary of George Forrest International (GFI), has a 60% shareholding in the Luiswishi mine. In September 2012 the Forrest Group announced that it had sold its shares in CMSK.

The complaint to the Belgian NCP alleged that the demolitions, which had been undertaken ostensibly to prevent artisanal miners from stealing CMSK minerals, negatively affected long-term residents.

CMSK and the Congolese authorities failed to conduct a full inquiry into the incident and did not engage in negotiations with representatives of the affected community in order to reach a settlement. In April 2012, given the stalemate, the NGOs filed a complaint with the Belgian NCP. They asked the NCP to examine GFIs alleged responsibility for the human rights violations and to use its good offices to bring a satisfactory and fair resolution to the long-running dispute. Despite the fact that the company's employees and bulldozers were involved in the demolitions, GFI denied all responsibility and stated that this was a standard government operation.

Developments/ Outcome

The Belgian NCP rejected the complaint on the grounds that it would be impossible to reach a determination about the human rights violations that had occurred. Despite rejecting the case, the NCP – in an unusual

departure from proscribed procedures – did offer to facilitate mediation between the parties. However, there were no agreed terms of reference for the mediation and the complainants felt that the Belgian NCP, far from being neutral, had limited the scope of the issues and the remedial action to be discussed. The NCP did not share information provided by the company nor did it give the NGOs access to a report that it had requested from the Belgian consul in Lubumbashi.

The mediation broke down after GFI made clear that it would only be willing to take some limited measures including improvements to the water supply and maternity care in Kawama. Despite the fact that these measures did not address the long-term adverse impacts caused by the demolitions, the Belgian NCP, in its final statement welcomed the company's proposal.

16

Case	Human rights and environmental violations at Centerra Gold's mining operations in Mongolia		
Company/ies	Date filed	Current status	Duration
Centerra Gold Inc	15 March 2012	Rejected, November 2012	8 months
Complainants	MiningWatch Canada, United Mongolian Movement of Rivers and Lakes (UMMRL), Oyu Tolgoi Watch, Southwest Research and Information Center (SRIC), Rights and Accountability in Development (RAID)		
National Contact Point(s) concerned	Canada		
Guidelines Chapter(s) & paragraph(s)	Chapter I (Concepts and Principles), §2; Chapter II (General Policies), §5,10, 11; Chapter IV (Human Rights), §1; Chapter VI (Environment), §1, 2a, 4		

Issue

The complaint, filed by a consortium of Canadian and Mongolian NGOs, alleges that Centerra Gold has violated Mongolian law and the human rights and environment

provisions of the OECD Guidelines at its gold mining operations at the Boroo Mine and its Gatsuurt gold deposit in Selenge Province, Mongolia.

According to the complaint,

Centerra's proposed mine is situated in a forested area where mineral exploration and mining operations are prohibited. The law protecting the forests and rivers was passed in July 2009, and in 2010 the Mongolian

Cabinet issued a list of licences to be revoked, among them Centerra Gold's licences for the Gatsuurt project.

Despite formal notifications that the company's license might be revoked and that it should halt its activities until a formal decision had been taken, the company has continued extensive forest-clearing and disruption of the Gatsuurt River by mine-related operations. Local herders complain that the forest-clearing and use of explosives have released arsenic and other heavy metals into the Gatsuurt River, which is now too contaminated to

safely drink. Livestock have developed lesions and local people suffer from skin disorders that they attribute to the company's activities.

Developments/Outcome

After conducting an initial assessment, the NCP rejected the case in November 2012, arguing that although the issue is material, the company's link to the problem had not been substantiated. The NCP argued it is not clear whether the contamination of water resources is attributable to the company. The complainants disagreed with several of the NCPs

interpretations of the Guidelines and its logic for rejecting the case.

Despite rejecting the case, the NCP did recommend that the company improve communication with the local population and continue to permit public access to the Mount Noyon site for cultural and religious purposes. The NCP also recommended that the company increase efforts to maintain a dialogue with the local population to ensure they are aware of the access routes to the site.

17

Case	Environmental and human rights breaches by Shell in the Niger Delta		
Company/ies	Date filed	Current status	Duration
Royal Dutch Shell	30 December 2011	Withdrawn, June 2013	17 months
Complainants	Amnesty International, Friends of the Earth International (FoEI)		
National Contact Point(s) concerned	Netherlands, United Kingdom		
Guidelines Chapter(s) & paragraph(s)	Chapter III (Disclosure), Chapter IV (Human Rights), Chapter VI (Environment) and Chapter VIII (Consumer Interests).		

Issue

Amnesty International & FoEI allege that Royal Dutch Shell has breached human rights and environmental provisions of the Guidelines at its oil operations in Nigeria. The complainants are concerned by the practices and communications of Shell with regard to its in Ogoniland in the Niger Delta. According to the complainants, Shell is in breach of the OECD Guidelines because of the severe pollution it has caused, the company's slow and inadequate response to oil spills, and insufficient control and maintenance of oil infrastructure. The complaint also alleges that the information provided by Shell with regard to these matters is incorrect, misleading and unsubstantiated. The complainants have documented the impact of the oil industry on the environment and human rights in the Niger Delta over many years and also base their complaint on a report

recently conducted by the United Nations Environment Programme (UNEP) at the request of the Nigerian Government to determine the environmental and health impacts of oil contamination in Ogoniland. Over slightly more than a year the UNEP researchers examined many locations, surveyed kilometres of pipeline, reviewed medical records and engaged people at local community meetings.

Oil production in the Niger Delta Area ran from the end of the 1950s until 1993. The UNEP report maintains that even though no oil production has taken place in the region since, the oil field facilities have not been decommissioned. Oil pipelines carrying oil from other parts of the country still pass through Ogoniland but are not being adequately maintained.

Consequently, the infrastructure

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

Developments/Outcome

The case was accepted, but was put on hold until a related complaint filed in January 2011 (see case 29 below) was concluded. The complainants were disappointed in the outcome of that case, which convinced them that the Dutch NCP was incapable of contributing to a meaningful resolution to the dispute with Shell. The complainants thus decided to withdraw this case.

18

Case	BHP Billiton's violation of intellectual property rights in Chile		
Company/ies	Date filed	Current status	Duration (to date)
BHP Billiton	15 December 2011	Pending	18 months
Complainants	Escapes Santander		
National Contact Point(s) concerned	Chile		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Principles), §3, 6, 10; Chapter IX (Science and Technology), §2		

Issue

This case involves a complaint filed by Escapes Santander

(Santander), a small Chilean company active in the country's northern mining zone, against

Minera Escondida Limitada (Minera), a subsidiary of Australia-based mining giant BHP Billiton.

Santander alleges that Minera/BHP Billiton has violated its intellectual property rights related to the design of safety equipment for light trucks used in mining operations. Despite the fact that Santander's designs are patented under Chilean law, Minera/BHP Billiton is employing Santander's design without paying compensation. Santander is also pursuing legal recourse in Chile.

Minera/BHP Billiton has fired back by requesting that Santander's patents be nullified. In addition to the intellectual property rights issue, the complaint also accuses the company of not operating in accordance with sound commercial practice, of failing to

uphold and apply good corporate governance practices, and of failing to encourage business partners to apply principles of corporate conduct compatible with the Guidelines.

Though not an NGO case, this case is notable (and is therefore included in this update) because it is one of the few cases filed against a multinational enterprise by another company (in this case a local small/medium-sized enterprise).

Developments/Outcome

The Chilean NCP accepted the case, and attempted to set up mediation. Minera/BHP Billiton denied all of the allegations in the complaint and noted that, given the on-going legal

proceedings, it had no reason to engage in the NCP-facilitated process. Santander emphasized that the complaint extends beyond the narrow legal issues to broader management practices, particularly related to the supply chain and local SMEs.

The Chilean NCP told the complainants that it would be difficult to proceed with the case with BHP refusing to engage. The complainants are disappointed that BHP is not willing to engage and believe that the NCP could and should do more to encourage BHP to engage in mediation or – failing that – take other action to try to solve the dispute.

19

Case	Sjovik's breaches of human rights in Western Sahara		
Company/ies	Date filed	Current status	Duration (to date)
Sjovik AS.	5 December 2011	Pending	18 months
Complainants	The Norwegian Support Committee for Western Sahara (NSCWS)		
National Contact Point(s) concerned	Norway		
Guidelines Chapter(s) & paragraph(s)	Chapter IV (Human Rights)		

Issue

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

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

people, and failing to consult the Saharawi people in case of the exploitation of natural resources.

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

Developments/Outcome

After receiving the complaint, the Norwegian NCP forwarded it to and had a meeting with the company, who argued that it

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

After an initial assessment, the NCP accepted the case for further examination in March 2012. The complainants are currently engaging in negotiations with Sjovik and a final statement is expected in June 2013.

20

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

Issue

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

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

The complainants call on Nidera to develop and implement an effective company-wide human rights policy and commitment including concrete human rights due diligence procedures. Such procedures are necessary for identifying, preventing and

mitigating actual and potential adverse human rights impacts throughout its global operations, in particular regarding hiring and employment processes of temporary workers in detasseling.

Developments/Outcome

The NCP conducted an initial assessment and accepted the case for further consideration. After a series of meetings enabled by the NCP in which the parties discussed the issues in the complaint, an agreement was reached. As part of the agreement, Nidera strengthened its human rights policy, formalised human rights due diligence procedures for temporary rural workers, and allowed the NGOs to monitor its Argentine corn seed operations through field visits. A final statement issued by the Dutch NCP on 5 March 2012 confirmed the positive outcome of the

dialogue between the parties. Both parties thanked the Dutch NCP for providing an environment that enabled constructive dialogue and discussion.

As was foreseen in the agreement that concluded the case, the complainants were allowed to monitor the implementation of the agreement during the 2011-2 summer corn detasseling season. The complainants visited fields and campsites, interviewed workers, and documented working and environmental conditions photographically. In their report, the complainants confirmed that Nidera had complied with all of the conditions of the agreement. Workers' health and safety conditions were satisfactory, and workers themselves reported their contentment with the improved conditions.

Additionally, Nidera complied with its commitment to implement an operational-level grievance mechanism and produced its first-ever corporate responsibility report in line with the GRI's G3.1 Guidelines.

In February 2013, the parties submitted a joint 'One Year On' report to the NCP. The report details how the agreements made in the 2012 joint statement were monitored, including through joint field visits to various corn fields.

The case serves as a model for how agreements in Guidelines' cases can be followed up upon. The 'One Year On' report is annexed to OECD Watch's submission to the 2013 NCP meeting and available on the OECD Watch website.

21

Case	Environmental pollution at Barrick Gold's mines in Argentina		
Company/ies	Date filed	Current status	Duration (to date)
Barrick Gold Corporation	9 June 2011	Pending	24 months
Complainants	Citizen Participation Forum for Justice and Human Rights (FOCO), Asociación Ecologista Inti Chuteh, Asamblea Popular por el Agua, Asamblea Permanente por los Derechos Humanos de La Matanza; Bienaventurados los Pobres, Conciencia Solidaria al Cuidado del Medio Ambiente, el Equilibrio ecológico y los derechos humanos Asociación Civil, National Deputy Victoria Donda, National Deputy Miguel Bonasso; the Frente Cívico por la Vida, Nora Cortiñas, Organización de Naciones y Pueblos Indígenas en Argentina and the Inter-American Platform for Human Rights, Democracy and Development		
National Contact Point(s) concerned	Argentina		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), Chapter III (Disclosure), Chapter VI (Environment)		

Issue

The complaint alleges that Barrick has violated Guidelines' provisions on disclosure, environment and general policies at the company's Veladero and Pascua Lama gold mines in the Argentine San Juan province.

The complainants allege that Barrick has systematically polluted groundwater, air, soil and glaciers and has caused a loss of biodiversity around the mines. The complainants also highlight the company's negative impact on the local population's health and the deteriorating regional economy resulting from the destruction of natural landscapes and restrictions on access to land and water resources. Moreover, the complainants allege that Barrick has violated the right to information, has been improperly involved in local political decision

making, and has used violence against social and environmental organisations. The complainants call on Barrick to actively engage and consult affected communities, to conduct an interdisciplinary environmental analysis, and to initiate medical studies to investigate negative impacts on the local people's health.

Developments/Outcome

After not hearing back from the NCP more than a month after filing the complaint, on 22 July 2011 FOCO submitted a written request for information on the status of the complaint. The NCP invited the complainants to a meeting on 2 August 2011, at which time the NCP requested additional documentation of the alleged violations and more detail regarding parallel legal proceedings against Barrick.

On 6 October 2011, FOCO provided the NCP with the additional information and requested that the NCP move quickly to finalise the initial assessment and forward the complaint to the company. On 2 November 2011, the Minister asked the complainants to specify whether the complaint is primarily directed against the parent company, against its Argentine subsidiaries, or both.

In December 2011, FOCO clarified its complaint against Barrick Exploraciones Argentinas S.A. and Exploraciones Mineras S.A. and submitted additional information. More administrative delays from the NCP ensued, partly due to multiple changes in NCP personnel. Following repeated requests by the complainants, the NCP finally

invited the complainants to an 'informal' meeting on 10 August 2012. The complaint was officially

accepted in May 2013, but no further progress has been made.

22

Case	Labour and environmental violations in the USA by United Water		
Company/ies	Date filed	Current status	Duration
United Water	8 June 2011	Part withdrawn, part concluded, Feb 2013	20 months
Complainants	Utility Workers Union of America (UWUA), Food & Water Watch (FWW)		
National Contact Point(s) concerned	United States, France		
Guidelines Chapter(s) & paragraph(s)	Chapter I, §2; Chapter V (Employment), §1b, 8; Chapter VI (Environment), §1a, 2		

Issue

United Water is an American water utility and a wholly-owned subsidiary of French MNE Suez Environment. The complaint alleges environmental and labour violations by United Water.

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

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

Furthermore, in December 2010, a federal grand jury issued a criminal indictment charging that United Water intentionally manipulated E. coli bacteria monitoring tests at a wastewater treatment plant in Gary, Indiana, between 2003 and 2008. The company has pleaded not guilty.

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

Developments/Outcome

The US NCP held a meeting with the company to get its position on the issues raised in the complaint. The complainants also

provided additional information as requested by the NCP. Given that United Water is a subsidiary of the French Suez Environment, UWUA requested that the French NCP get involved and engage the company's French management. French NCP declined to do so.

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

FWW decided not to continue the specific instance process but did not wish to withdraw its filing. Given the union and civil society organization's positions, the NCP concluded the specific instance and issued a final statement, which was not made public.

23

Case	Xstrata's negative impacts on glaciers in Argentina		
Company/ies	Date filed	Current status	Duration (to date)
Xstrata	1 June 2011	Pending	24 months
Complainants	The Center for Human Rights and Environment (CEDHA), supported by Fundación Ciudadanos Independientes and Asamblea El Algarrobo		
National Contact Point(s) concerned	Argentina (lead), Australia		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), §1,6,7; Chapter III (Disclosure), §1,2,4,5; Chapter VI (Environment), §1 3,4,5,6,8		

Issue

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

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

According to the complaint, a map produced by the consulting firm URS for Xstrata Copper reveals the presence of over 200 rock glaciers and 20% permafrost

in El Pachón's vicinity. Xstrata, however, refuses to admit to the presence of any glaciers at either of the project sites. Moreover, Xstrata has filed an injunction request to the federal courts in Argentina, requesting that a recent National Glacier Protection Act be declared unconstitutional.

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

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

Developments/Outcome

After consulting with the Argentine NCP, the Australian NCP decided, based on the location of the actors involved, the place of operations, and the language of operations, that it would be best to engage the Argentine NCP in the Specific

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

Since then, the case has suffered innumerable delays, largely due to Xstrata's ambivalence as to whether it would engage in NCP-facilitated mediation. More than a year has passed with no visible advancements on the proposed areas of discussion.

The parties were scheduled to meet to discuss logistics, timeframe and expected outcomes, including CEDHA's proposal to work collaboratively on drafting a Protocol for Mining Activity in Glacier Territory. This idea moved forward until Xstrata's legal team obtained victory in federal courts regarding the temporary suspension of parts of the National Glacier Act.

Xstrata has subsequently stalled their engagement in the NCP process. That court decision was recently reversed, placing Xstrata once again, in problematic contention with compliance of Argentina's glacier law, which is fundamental to this specific instance. Progress now depends on Xstrata's willingness to keep to the agreed engagement and the NCPs insistence on the parties keeping their commitments.

The Argentine NCP has changed key NCP personnel several times since the opening of the case, which has complicated matters. This has been further complicated by internal delays in maintaining continuity with administrative responsibilities of the NCP. Nearly two years have passed since the presentation of the case and no substantive progress has been made on early commitments to collaborate constructively on a mutually-acceptable settlement.

24

Case	Human rights violations at UCM's Wishbone Hill coal mine		
Company/ies	Date filed	Current status	Duration
Usibelli Coal Mine J-Power	5 May 2011 5 May 2011	Rejected, July 2012 Rejected, July 2012	14 months 14 months
Complainants	Chickaloon Village Traditional Council (CVTC)		
National Contact Point(s) concerned	United States, Japan		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), §1,2,5 ; Chapter III (Disclosure), §1,2,4,5 ; Chapter VI (Environment), §2,3		

Issue

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

electric utility, is "the most likely purchaser" of coal from the mine.

Specifically, the complainant contends that UCM has failed to contribute to sustainable development, violated the human rights of Chickaloon Tribal members, sought and accepted exemptions not contemplated in the statutory or regulatory framework, has failed to properly consult and disclose information to Tribal members, and has failed to prepare an appropriate environmental impact assessment for its Wishbone Hill activities. According to the complainant, UCM's exploration activities were environmentally destructive, socially disruptive and undertaken without any Tribal consultation. The company has failed to provide the community with accurate information on the effects of its (proposed) activities on the survival of a culturally important salmon species and has ignored CVTC's considerable

efforts to restore the salmon, decimated by previous coal mining. CVTC's further alleges that UCM's environmental impact assessment is based on incomplete and false information about mammal (particularly moose), salmon and bird species and habitats and that it failed to adequately address the Tribe's concerns about water and health problems their religious and spiritual rights, their life-ways, ceremonies and spiritual relation to their ancestral lands.

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

Developments/Outcome

The US and Japanese NCPs collaborated on the initial

assessment, with the US NCP contacting the US-based complainants and UCM, and the Japanese NCP contacting J-Power. It took the NCPs over one year to complete the initial assessment, finally issuing a statement signed by both NCPs in July 2012. Though the NCPs acknowledged the relevance of the issues raised by the complainants, they rejected the

case against UCM on the grounds that the company has only domestic (US) operations and is thus not a multinational enterprise. The NCPs claimed that this means that the Guidelines “do not pertain” to UCM. The NCPs did not mention the Guidelines’ stipulation that “The Guidelines represent good practice for *all* companies”. The NCPs also rejected the case

against J-Power, claiming that the business relationship between the two companies is “not strong enough to require the application of the Guidelines”. The NCPs do not explain exactly what sort of relationship would be “strong enough” to require the application of the Guidelines.

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Case	CRH’s construction activities in the Occupied Palestine Territories		
Company/ies	Date filed	Current status	Duration (to date)
CRH plc.	3 May 2011	Blocked	25 months
Complainant	Ireland Palestine Solidarity campaign		
National Contact Point(s) concerned	Ireland (lead), Israel		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), §1,2,3,6,11		

Issue

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

The complaint contends that CRH, through its jointly-owned subsidiary Neshor Cement Enterprises, has violated OECD Guidelines provisions related to sustainable development and respect for human rights.

Through its subsidiary, CRH supplies cement for the Separation Wall, which restricts the movement of the Palestinian people, destroys property, trees and agricultural land and cuts off access to water in the West Bank and East Jerusalem. The Wall

cuts communities and families off from each other, separates people from vital services such as health care and educational facilities, and hinders Palestinian access to employment. CRH also provides cement used for building illegal settlements in the West Bank.

Developments/Outcome

As part of its initial assessment, the Irish NCP contacted the company for a response. CRH did not respond to the content of the complaint but did raise questions regarding legal and procedural matters of the complaint procedure. The Irish and Israeli NCPs initially collaborated on the case, but an inordinate amount of time has passed, and the NCPs have still not even issued any formal initial assessment.

The NCPs seem paralysed and unable or unwilling to move forward on the case. The case is now considered blocked. It is notable that CRH is the largest company in Ireland and politically very influential. In an attempt to move the case forward, the complainants sent a letter to the Irish Minister of Jobs, Enterprise and Innovation in February 2013. The letter urges the Minister to engage directly with the NCP to take the case forward. After the letter was sent, the Irish NCP met with the complainants and declared it is determined to ‘unblock’ the case. The NCP contacted the company again, but CRH again responded with procedural queries.

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Case	Tax evasion by Glencore and First Quantum Mining in Zambia		
Company/ies	Date filed	Current status	Duration
Glencore International	12 April 2011	Concluded, November 2012	19 months
First Quantum Minerals	12 April 2011	Concluded, November 2012	19 months
Complainants	Sherpa, Berne Declaration, Centre for Trade Policy and Development, L’Entraide Missionnaire, Mining Watch Canada		
National Contact Point(s) concerned	Switzerland, Canada		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), §1,5,6; Chapter XI (Taxation)		

Issue

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

Mopani is the largest mining corporation operating in Zambia

and one of the country’s largest producers of copper and cobalt. Mopani Copper Mines operates within a highly attractive fiscal environment, with a royalty tax rate of 0.6%, a corporate tax rate limited to 25%, exemptions on customs duties, and a stability clause valid for 20 years (starting in 2000). Despite these numerous fiscal incentives and the assumed profitability of its mining operations, Mopani Copper Mines reports no profits, thereby

considerably reducing its tax obligations.

A 2009 audit conducted by international accountants at the request of the Zambian authorities concluded that Mopani employs various techniques in order to avoid paying taxes in Zambia. These techniques include overestimation of operating costs, underestimation of production volumes, transfer

pricing manipulation and breach of the "Arm's Length" principle.

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

Developments/Outcome

The Swiss and Canadian NCPs agreed that the Swiss NCP would take the lead in handling the complaint. In October 2011, the Swiss NCP concluded its confidential initial assessment and accepted the complaint.

Both parties accepted the NCP's offer to facilitate mediation. The NCP convened the meeting, which was led by an external mediator, in July 2012. According to the complainants, the company rejected the allegations without providing any evidence or new facts that would have supported their view.

The NCP issued a final statement in November 2012. The statement proclaims that – following a thorough exchange of information and constructive discussions – the parties 'agreed to disagree' on the issues raised in the complaint. The parties

further agreed to seek ways to engage in further dialogue.

Although an agreement with the company was reached through mediation, the complainants are disappointed that the agreement did not go further than an agreement to disagree. They feel that the result shows that there is little value in engaging in a dialogue with the companies on these issues. According to the complainants, the company has not complied with its commitment as part of the agreement to respond to a detailed set of questions regarding its tax payments.

27

Case	Human rights abuses at Barrick Gold's Porgera Mine in Papua New Guinea		
Company/ies	Date filed	Current status	Duration (to date)
Barrick Gold Corporation	1 March 2011	Pending	27 months
Complainants	MiningWatch Canada, Akali Tange Association, Porgera SML Landowners Association		
National Contact Point(s) concerned	Canada		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), §1,2,5,6,7,8,11 ; Chapter III (Disclosure), §1,5 ; Chapter VI (Environment), §1a,2a,4		

Issue

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

The complainants contend that Barrick/PJV has violated sustainable development and environmental provisions of the Guidelines and abused the human rights of the local community in a number ways. Over the past two decades, there have been consistent and widespread allegations of human rights abuses committed by PJV security personnel in and around the mine site, including killings and beatings of local Ipili men and beatings and rapes, including gang rape, of Ipili women. Additionally, the living conditions of people within the PJV mines Special Mine Lease Area are incompatible with human health and safety standards and the

OECD Guidelines provision on sustainable development. Moreover, in 2009 troops from the PNG Defense Force forcefully evicted local landowners near the

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

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

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

Developments/Outcome

The NCP accepted the case and offered to facilitate mediation at meetings to be held in Australia and to be led by an external mediator. Before the first mediation meeting Barrick engaged in consultations to create a non-judicial project-level grievance process to handle claims from women who had been raped by PJV security guards. Although the issue of rape by security guards addressed in the Guidelines complaint, Barrick did not consult with the complainants or their advisors when establishing the grievance mechanism.

At the time of the first meeting in November 2012, Barrick's complaints procedure for rape victims was in place. Based on information obtained outside the mediation, the complainants were deeply concerned about potential harm being done by the grievance procedure, particularly as Barrick requested the rape victims sign legal waivers if they accepted an individual remedy package.

Mindful of the Mediation Agreement that had been signed, and following consultation with the mediator, MiningWatch Canada and the

two advisors (RAID and ERI) issued a press release in January 2013, which explicitly did not contain confidential information. Nonetheless, Barrick made it a condition of continuation in the mediation process that MiningWatch Canada remove the press release and related documents.

Furthermore, even though ERI had not posted any materials to its web site, and even though ERI and RAID were advisors to all the complainants, Barrick insisted that RAID and ERI be removed from the process. In order to assure continuation of the process for the local

complainants, MiningWatch Canada, ERI and RAID withdrew from process after the first face-to-face mediation.

Mediation between the local complainants and Barrick is continuing and a second meeting has taken place.

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Case	Environmental pollution at metallurgical complex in La Oroya, Peru		
Company/ies	Date filed	Current status	Duration
Doe Run Peru Corporation	24 February 2011	Closed, July 2011	5 months
Renco Group	24 February 2011	Closed, July 2011	5 months
Complainants	CooperAcción, Movimiento por la Salud de La Oroya (MOSAO), Forum Solidaridad, , Red Uniendo Manos- Peru, Oxfam America		
National Contact Point(s) concerned	Peru, United States		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), § 1, 2, 7; Chapter III (Disclosure), § 2, 4(e) , 5(a, b); Chapter V (Environment), § 1(a), 2, 3, 5, 8		

Issue

The complaint alleges that Doe Run Peru (DRP) and its parent company, the Renco Group, failed to meet environmental and human health standards set by Peruvian law and the OECD Guidelines at the La Oroya metallurgical complex, one of the world's largest polymetallic processing facilities. When Renco/DRP acquired La Oroya the company committed to significantly reduce the its environmental impact but failed to meet these commitments.

The complainants maintain that when the DRP lead smelter is in operation, concentrations of lead,

cadmium and sulphur dioxide strongly exceed WHO standards. Several studies have proven the negative health effects on the inhabitants of La Oroya, who do not have access to adequate health care or treatment for pollution-related diseases. Moreover the complainants contend that the company failed to adequately disclose the consequences of the contamination to the La Oroya citizens and have continuously failed to abide by the obligatory Environmental Management and Mitigation Plan (PAMA).

The company filed for bankruptcy in 2009 and smelting activities

temporarily stopped, but were expected to start again in February 2011 as finance from Glencore was obtained. The complainants asked the NCPs to engage with the companies to make them comply with all the provisions in the PAMA.

Developments/ Outcome

Renco officially went bankrupt just a few months after the complaint was filed, and the case was closed without an examination of the allegations. However, in mid-2012, a new corporation started running the smelter again, without the required PAMA.

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Case	Misleading disclosure by Shell on oil spills in Nigeria		
Company/ies	Date filed	Current status	Duration (to date)
Royal Dutch Shell	25 January 2011	Concluded, June 2013	29 months
Complainants	Amnesty International, Friends of the Earth (FoE) International, FoE NL		
National Contact Point(s) concerned	Netherlands		
Guidelines Chapter(s) & paragraph(s)	Chapter III (Disclosure), §1,2, 4e; Chapter VI (Environment), §2, 3; Chapter VIII (Consumer Interests), §4		

Issue

Amnesty International and FoE allege that Royal Dutch Shell has breached the OECD Guidelines by making false, misleading and incomplete statements about incidents of sabotage to its operations and the sources of pollution in the Niger Delta.

Specifically, the complainants are concerned by Shell's repeated claims about the high proportion of oil spills in the Niger Delta that are due to sabotage committed by criminal gangs. According to the complainants, the company provides misleading information and omits mentioning relevant

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

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

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

Developments/Outcome

Based on its initial assessment of the complaint, the Dutch NCP accepted the case in February 2011. Shell headquarters initially tried to distance itself from the Nigerian operations and referred the NCP to the local subsidiary.

However, the NCP insisted that the parent company must take responsibility and exert its influence over subsidiaries to ensure that they are abiding by the Guidelines. Shell headquarters eventually agreed to take part in the mediation. In total, two joint mediated meetings and several bilateral meetings were held. Under pressure from Shell, Milieudefensie agreed to step back from the mediation to facilitate the process.

One of the main stumbling blocks in the negotiations was Shell's demand that the complainants issue guarantees that they would not publicly disclose information related to the pre-2011 oil spills

that were to be discussed. The complainants responded that though they did not have any plans to campaign on the cases and that they were committed to the NCP's confidentiality procedure, they could not guarantee that they would not communicate with the Nigerian communities about the cause of the oil spills. This impasse proved insurmountable for the dialogue.

Throughout the process, the complainants repeatedly expressed serious concern that the Dutch NCP allowed Shell to dictate the parameters for the dialogue, which effectively left unaddressed all past harm done to the people of the Niger Delta

as a result of Shell's flawed statements.

Following the unsuccessful mediation attempt, the Dutch NCP issued a final statement in June 2013 finding that Shell's statements on the oil spills were based on flawed investigations and disputed evidence. The NCP furthermore found that Shell's general communication with stakeholders about the percentage of oil spills caused by sabotage was flawed. However, the NCP did not explicitly conclude that Shell's failures constituted a breach of the Guidelines, nor did the NCP evaluate what the impact of Shell's flawed statements on the local communities had been.

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Case	Mismanagement of community fund by ArcelorMittal Liberia		
Company/ies	Date filed	Current status	Duration (to date)
ArcelorMittal	24 January 2011	Pending	29 months
Complainants	Friends of the Earth Europe (FoEE), Sustainable Development Institute (SDI)/FoE Liberia		
National Contact Point(s) concerned	Luxembourg (lead), Netherlands		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), §1, 7, 11; Chapter VII (Bribery), §5		

Issue

FoEE and Liberia-based SDI allege that ArcelorMittal has breached the OECD Guidelines with regard to its management of the County Social Development Fund (CSDF).

According to the 25-year concession to develop the iron ore deposits that was negotiated in 2005, ArcelorMittal is obliged to provide approximately US\$ 73 million over the 25-year span of the Mineral Development Agreement to support socio-economic development in Liberia via the CSDF. The benefits of this fund should go to the Nimba, Bong, and Grand Bassa counties, with specifically 20% of each county's allocation to be spent annually on communities classified as directly affected by ArcelorMittal's operations.

The widespread allegations of misappropriation and misuse of the CSDF lead the complainants to conclude that the CSDF is failing to address the needs of communities impacted by the operations of ArcelorMittal. Moreover, the complainants argue that ArcelorMittal is not properly informing neighbouring communities about its operations and the possible impacts on these communities. Additionally, the complainants have concerns about the use of 100 pick-up trucks that were donated by ArcelorMittal to the Liberian government in 2008. Although the trucks were allegedly intended to support agricultural activities, the complainants found them to be mostly in the hands of Liberian government officials.

Developments/Outcome

The complaint was filed with the Dutch NCP, but because

ArcelorMittal is headquartered in Luxembourg, the Dutch NCP, after consulting with the complainants, forwarded the complaint to Luxembourg's NCP. However, the Dutch NCP did offer to assist Luxembourg's NCP with the procedural and the mediation aspects of the process.

After accepting the complaint, Luxembourg's NCP invited the parties to an initial joint meeting on 8 June 2012 to discuss terms and procedures for the mediation. Mediation is now in process.

In a related development, in March 2012 the Government of Liberia announced that it was "gravely concerned" about the alleged mismanagement of the CSDF and that it would begin an independent and comprehensive audit of the fund.

Case	Environmental and labour rights breaches at Cameroonian palm oil plantations		
Company/ies	Date filed	Current status	Duration (to date)
Bolloré	7 Dec 2010	Statement issued; mediation pending	30 months
Financière du champ de Mars	7 Dec 2010	Statement issued; mediation pending	30 months
SOCFINAL	7 Dec 2010	Statement issued; mediation pending	30 months
Intercultures	7 Dec 2010	Statement issued; mediation pending	30 months
Complainants	Association Sherpa, Centre pour l'Environnement et le Développement (CED), Fondation Camerounaise d'Actions Rationalisées et de Formation sur l'Environnement (FOCARFE), MISEREOR		
National Contact Point(s) concerned	Belgium, France, Luxembourg		
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), §1, 2, 3, 4, 6, 7, 10; Chapter III (Disclosure, §2, 3, 4, 5; Chapter V (Employment), §1a, 2, 4b, 5, 8; Chapter VI (Environment), §1, 2, 3, 6d, 7, 8		

Issue

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

The complainants also allege that SOCAPALM's treatment of plantation workers constitutes a breach of the Guidelines. They claim that precarious work is rampant, and freedom of association is limited. Additionally, the housing facilities are deplorable, and dividends promised to employees when SOCAPALM was privatised in 2000 were never paid. The complaint also claims that SOCAPALM has breached the

Guidelines' disclosure chapter by failing to properly disclose relevant information about the company and potential environmental risks.

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

Developments/Outcome

After conducting an initial assessment, the French NCP declared the cases against all four companies admissible

After having refused to collaborate with the NCP for almost two years, Bolloré finally declared its willingness to use its leverage with SOCAPALM to solve the issues and bring SOCAPALM's operations in line with the Guidelines. Sherpa and Bolloré accepted the NCP's offer of mediation in February 2013.

The NCP published its final statement in June 2013, concluding that through their

business relations with SOCAPALM, all four companies violated the OECD Guidelines. The NCP recommended that the companies find a remedy to the violations, and that they rely on the action plan prepared during the mediation in doing so.

The complainants insisted on obtaining the NCP's final statement before the end of the mediation (planned for August 2013), so that the parties could concentrate on a future action plan, rather than discussing on the alleged violations, and in order to clearly differentiate the procedures of mediation from the one of the final statement. The complainants are pleased that the Statement points out the violations of the companies, reviewing each chapter of the OECD Guidelines.

During mediation the parties agreed that the action plan would cover community dialogue, reduction of environmental nuisances, public services, local development, workers' rights and conditions of work, transparency, and compensation of local communities for their loss of resources and lands. The parties agreed that the plan should be adopted before September 2013, and that it will be audited by an independent observer that they have to determine.

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

Issue

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

The use of child labour in the cotton harvest in Uzbekistan is a recognized problem. During the harvest season, schoolchildren are taken from classes and forced to pick cotton under poor labour conditions. The complainants claim that the money earned through the cotton trade flows directly into the Uzbek state treasury, leaving the families of the affected children with very little profit from their hard work. The complainants argue that if companies have built up intensive trade relations with state-owned enterprises of the Uzbek regime they should be aware of the problem of child labour in Uzbekistan and can thus be held accountable for their role in supporting and maintaining the system of forced child labour.

Developments/Outcome

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

Despite receiving the complaints two months later than the other NCPs, the UK NCP was the first to act and the first to facilitate a settlement. In its initial assessment, the UK NCP concluded that the presence or lack of an investment nexus is not an appropriate criterion for

determining whether a complaint deserves further consideration and subsequently accepted the two complaints in February 2011.

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

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

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

The NCP also facilitated a mediated dialogue in the Louis Dreyfus case. During the mediation the company acknowledged the problems in the Uzbek cotton trade and that cotton traders have a responsibility in the issue. The parties agreed that if the consultations between cotton traders and the Uzbek government fail to improve the situation, ECCHR and Louis Dreyfus will meet again for a dialogue on how to find a solution.

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

In September 2012, the French NCP issued a final statement in the Devcot case. The NCP held that the trade in goods produced from forced child labor constitutes a flagrant violation of the OECD Guidelines, but stated that Devcot was not involved in the purchase of such goods because Devcot has not purchased any Uzbek cotton in

the last few years. Additionally, the NCP noted Devcot's commitment not to resume its trade in Uzbekistan until child labour has ended. The NCP also reminded the company of its responsibility for its supply chain and invited Devcot to carry out due diligence and to encourage its business partners to implement the OECD Guidelines. ECCHR and SHERPA welcome this decision as a new step towards increased supply chain responsibility.

In a follow-up evaluation published in May 2013, ECCHR concluded that the submission of the cases had encouraged traders to take some steps to

pressure the Uzbek government to end forced labour. However, after the cases were concluded and the media coverage decreased, the companies' commitment tailed off.

Despite increased respect for the ban on child labour, the 2012 cotton harvest remained marked by continued state-sponsored forced labour of children and adults. If the companies had taken a strong public position against the practice, this may have put sufficient pressure on the regime to improve the situation. The companies, however, refused to do so. According to ECCHR, the cessation of business

relationships with the Uzbek cotton industry remains the only adequate measure to apply further pressure on the Uzbek government and ensure that European companies do not contribute to human rights violations in Uzbekistan.

ECCHR nevertheless highlighted the fact that the Guidelines cases have triggered several positive responses from leading investment banks, which now monitor the Uzbek forced labour situation with help from ECCHR. The follow-up report is annexed to OECD Watch's submission to the 2013 NCP meeting and available on the OECD Watch website.

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Case	Cermaq ASA's salmon farming in Canada and Chile		
Company/ies	Date Filed	Current status	Duration
Cermaq ASA	19 May 2009	Concluded, August 2011	2 years
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 (General Policies), §7; Chapter V (Employment) §1a, 1d, 4; Chapter VI (Environment), §2, 3, 4		

Issue

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

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

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

The groups also contend that Cermaq has carried out unfounded dismissals, attempted to prevent free association of employees in labour unions, discriminated against women and implemented inadequate safety procedures for its employees. Further, they allege Cermaq's activities pose an environmental threat through the spread of salmon lice and disease.

Developments/Outcomes

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

The complainants provided the Norwegian NCP with additional evidence of the alleged breaches in Spanish, but the NCP concluded it could not process the information due to lack of translation resources.

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

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

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

The joint statement was reached on 1 July and officially signed on 10 August 2011. In the joint statement, Cermaq admits to have taken insufficient account to the precautionary principle in meeting social and environmental challenges. The parent company also takes responsibility for its subsidiaries' activities abroad. Friends of the Earth Norway and ForUM recognize that Cermaq has learned from the fish crisis in Chile and has made positive changes in procedures to prevent fish disease in Chile and in Cermaq's global business. The parties have also agreed upon principles for responsible aquaculture, indigenous peoples rights, human rights, workers' rights and sustainability reporting. In addition they have agreed that the complaint included claims about Cermaq and its business that have been refuted and that future cooperation and contacts shall be based on mutual trust and clarification of facts.

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

The strong role played by the NCP of the country in which the company is headquartered (i.e. Norway), as well as the direct participation of the company's CEO in the mediated negotiations appear to be crucial

factors in the successful outcome achieved.

Approximately one year after the agreement was reached, the complainants commissioned a study to analyse the impact of the case and agreement on local communities and the environment in Chile. The study recognises that Cermaq has stated its ambition to become a leader in corporate responsibility in its sector, but concludes that Cermaq failed to change its operations in Chile accordingly. The study finds that little has been done to improve the conditions of workers, specifically women and subcontracted workers, at production facilities.

Moreover, the study maintains that Cermaq has done little to improve communication with trade unions, nor has it convincingly addressed disputes with indigenous communities. There is little evidence that Cermaq conducted a thorough environmental risk assessment before expanding its operations to other areas. Two years after signing the joint statement, much remains to be done before the company can call itself a leader in corporate responsibility. The follow-up report is annexed to OECD Watch's submission to the 2013 NCP meeting and available on the OECD Watch website.

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

Issue

FOCO and FoE Argentina filed a complaint against Royal Dutch Shell's Argentine subsidiary, Shell Capsa, for violating domestic law and ignoring the Argentinean government's sustainable development campaigns and policies. The complaint alleges the irresponsible actions at the company's oil refinery in the Dock Sud industrial area have put the health and safety of neighbouring residents in danger.

The affected community, called Villa Inflamable, is home to about 1,300 families who live in extreme poverty and lack access to basic sanitation, clean water and other essential utilities. Many of these problems stem from the socio-economic vulnerability of the inhabitants of the area. For decades, they have been living with the toxic fumes produced by Shell Capsa's oil refinery. The complaint notes that the refinery was closed for seven days in August 2007 after Argentina's national environmental authority found multiple violations to national environmental law.

Developments/Outcome

The case was filed simultaneously with the Argentine and the Dutch NCPs because the complainants believed the violations were a systemic problem in the global operations of Shell.

Despite the existence of parallel legal proceedings, in September 2008 the Argentine and Dutch NCPs accepted the case (with the former taking the lead). The Argentine NCP prepared a list of "considerations" from the complaint and asked the parties to respond; both complied. In addition, in April 2009, three members of the NCP visited Villa Inflamable to interview residents and see the conditions.

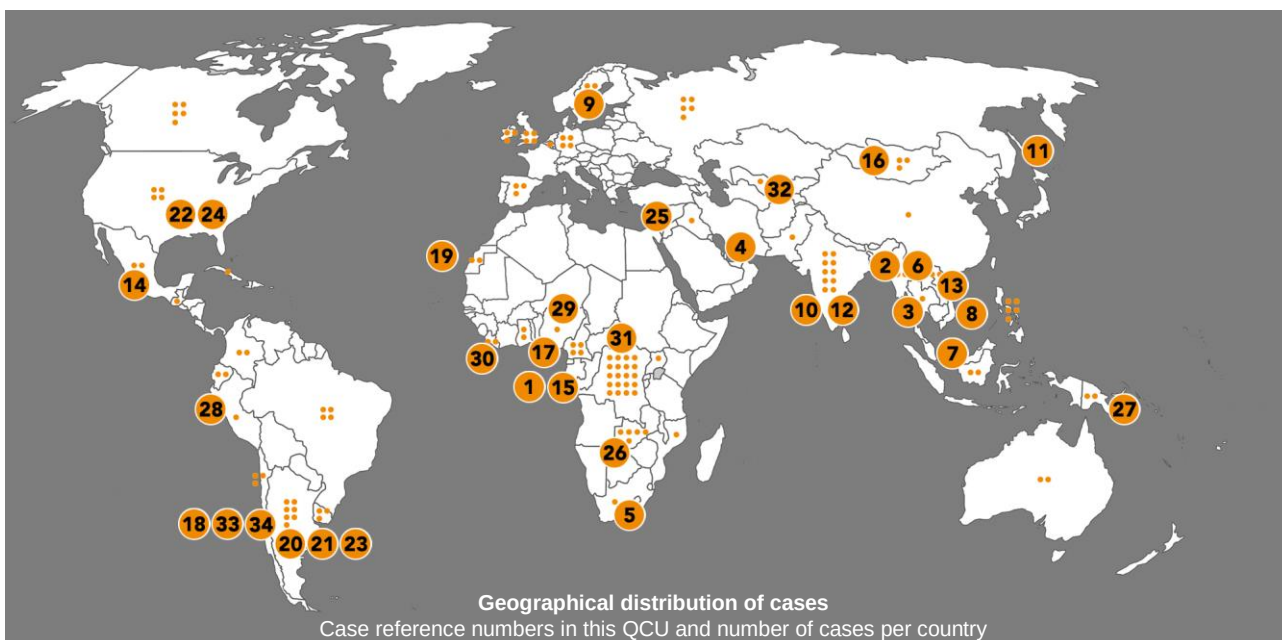
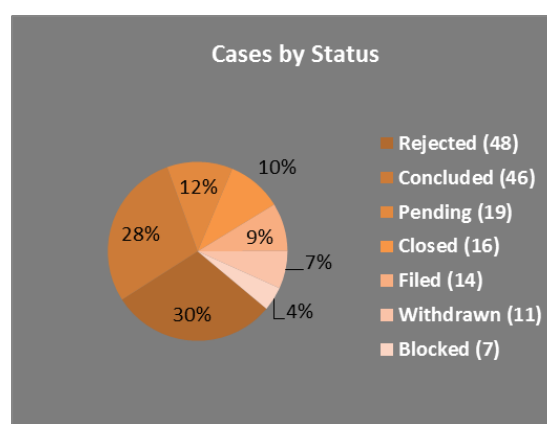
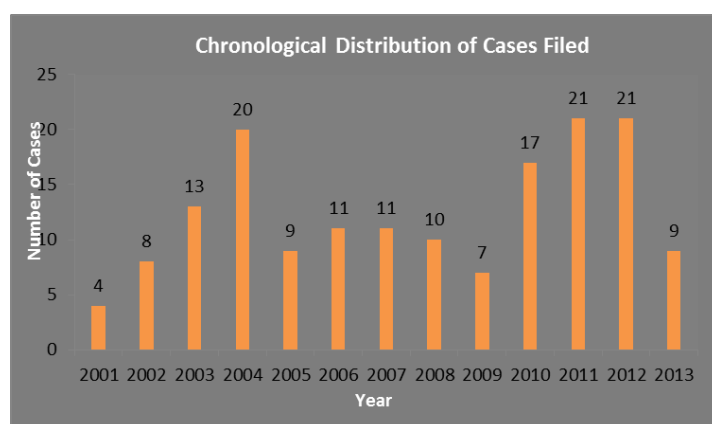
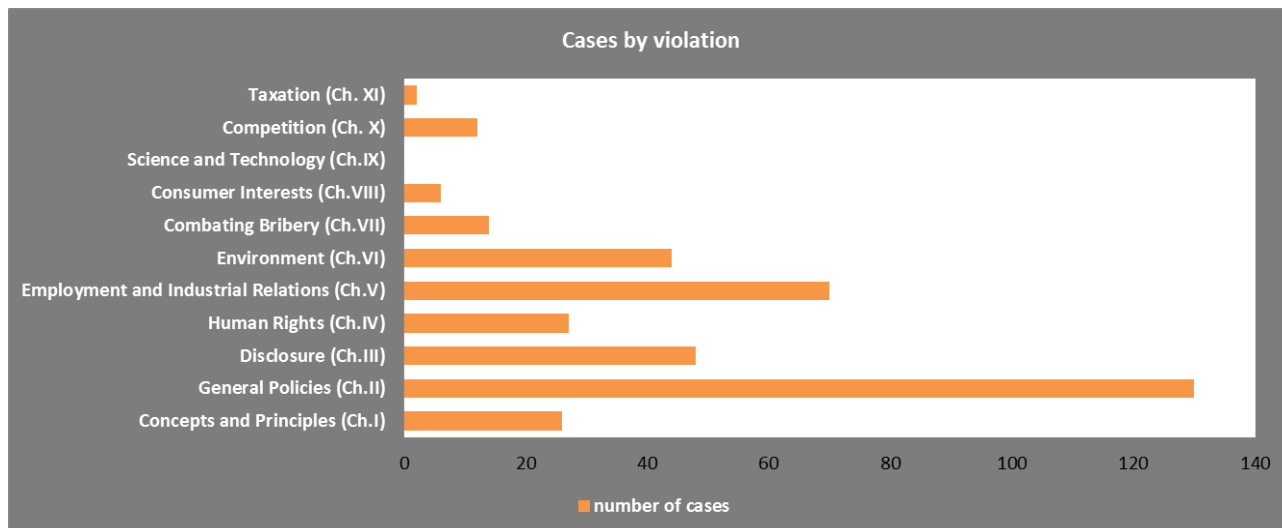
However, Shell Capsa refused to participate in the process or even recognize the NCP as the appropriate body for addressing the concerns raised in the complaint. Subsequently, in May 2009, the NCP indicated that it may have to close the case, but offered the parties the possibility of participating in a roundtable meeting outside the specific instance process. The complainants indicated that they would be open to such a meeting, but to date there has been no follow-up by the NCP.

In November 2009 the Argentine NCP announced it would close the case by publishing a report that describes its findings on the case, including the fact that the company refused to cooperate. However, the case remains pending and the company refuses to respond to the complaint until the court case against Shell Capsa is closed. The complainants are urgently requesting that the Argentinian and Dutch NCPs move forward on the case.

After years of paralysis, the Argentine NCP still has not issued a final statement on the case, FOCO has therefore made an urgent request for the finalization of the case to be expedited, asking the NCP to fulfil its obligations under the OECD Guidelines' Procedural Guidance.

In June 2012, the NCP again requested that Shell inform the NCP about the actions it has taken in relation to the allegations in the complaint and the progress in the parallel court case. No further progress on the case has been made.

 As of June 2013, 161 OECD Guidelines cases have been filed by civil society organisations and individuals



OECD Watch is an international network of civil society organizations promoting corporate accountability. The Quarterly Case Update aims to document the views and experiences of NGOs involved in NCP/OECD Guidelines procedures. This Quarterly Case Update has been compiled and edited by Joseph Wilde-Ramsing, Virginia Sandjojo and Karlijn Kuijpers, Centre for Research on Multinational Corporations (SOMO). OECD Watch strives to ensure that the information in this case update is accurate, but does not independently verify the information provided to it by the complainants, NCPs, and the companies involved in the various cases. The publication of this Quarterly Case Update has been made possible through funding from the Dutch Ministry of Foreign Affairs. For more information on these and all OECD Guidelines cases filed by NGOs, visit www.oecdwatch.org/cases or contact the OECD Watch secretariat at Sarphatistraat 30, 1018 GL Amsterdam, The Netherlands, info@oecdwatch.org, www.oecdwatch.org, +31 20 639 1291.