

# Quarterly Case Update

## I. Highlights in this Update


### New cases:

- FOCO and FoE Argentina file complaint against Shell Argentina for environmental and human health violations
- GRESEA and Transparency International Germany file third case against Ratiopharm (NCP Belgium)
- Parliamentarian and lawyer file case against Accor Service in Argentina (NCP Argentina)
- Green Party of Aotearoa New Zealand files second case against ANZ Bank; NZ NCP rejects
- Korean and Philippine unions and NGOs file case against Korean textile companies' for labour abuses in the Philippines (NCP Korea)
- Colombian lawyers file case against BHP Billiton for coal mine operations in Colombia (NCP Australia)

### Developments:

- German NCP rejects Germanwatch Volkswagen climate change case
- Banco del Trabajo sold to Soctiabank (Canada) in labour rights case in Peru; NCP Chile prepares to close case; Complainants consider re-filing the case at the Canadian NCP
- Afrimex withdraws from mediation process in Global Witness case; UK NCP conducts investigation
- Swedish NCP concludes Nordea case, notes that Guidelines "do apply" to banks and financial institutions
- De-escalation in CCC vs G-Star India case; external mediator engaged and ombudsman installed; NCP prepares to close the specific instance
- Dutch NCP plans fact-finding mission in Shell Philippines case
- Brazilian NCP rejects Shell/Exxon case citing parallel legal proceedings
- Brazilian NCP inactive on Alcoa/Votorantim case
- German NCP concludes Bayer case and pledges to monitor developments
- Toyota Philippines case enters fourth year of initial assessment phase at Japanese NCP
- BTC case awaits Steering Board review in UK; Italian NCP finally begins initial assessment
- Six years on, Anglo American Zambia case still lingering at the UK NCP

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

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

### Issue

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


The complaint alleges that the company has ignored the campaigns and public policies

regarding sustainable development that the Argentinean government promotes in the sector, therefore the company has serially violated domestic law. The complaint further states that, with its environmental and socially irresponsible attitude, Shell Capsa has also put the health of hundreds of neighbouring residents in danger. The Shell Capsa facilities, inspected and preventively closed by government authorities for failure to comply with national environmental laws, are located in a area that presents many problems originating from a situation of extreme socio-economic vulnerability of its inhabitants.

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

### Developments/Outcome

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

 <b>Case</b>	<b>Ratiopharm's unethical marketing in Germany, Belgium et al</b>	
<b>Company/ies</b>	<b>Status</b>	<b>Date Filed</b>
Ratiopharm	Filed	24 January 2008
Ratiopharm	Rejected	18 July 2006
Ratiopharm	Rejected	20 April 2006
<b>Complainants</b>	Transparency International–German Chapter (TI-G); Groupe de recherche pour une stratégie économique alternative (GRESEA)	
<b>NCP(s) concerned</b>	National Contact Point Germany, National Contact Point Belgium	
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter II (Supply chain responsibility); Chapter VI (Combating Bribery); Chapter III (Disclosure); Chapter VII (Consumer Interests); Chapter XI (Competition)	

### Issue


The case deals with Ratiopharm, a German pharmaceuticals company and major producer of generic drugs that has allegedly engaged in unethical marketing practices in Germany, Canada, Spain, Estonia, and Belgium. These practices, which include offering illicit rebates to pharmacists, contradict standard governmental health care policies. Three OECD complaints were filed, two in Germany and the most recent one in Belgium.

### Developments/Outcome

The first case by TI-G was rejected on the basis of a lack of transnational investment. In December 2006, the German NCP

rejected the second complaint against Ratiopharm, arguing that the complaint would have to be dealt with by the NCPs of the countries where the alleged misbehaviour occurred, i.e. Belgium, Canada, Estonia, and Spain. TI-G and the NCP met informally in March 2007. Again, the NCP insisted it could not accept the Ratiopharm case and refused to forward it to the relevant NCPs. The NCP claimed its "hands were tied". TI-G maintains that the alleged misbehaviour emanates from Ratiopharm's German headquarters to other countries and that the German NCP should therefore take the lead in handling the complaint. In addition, the

NCP's refusal to forward the case to the other relevant NCPs inspires little faith in the German NCP's offer to assist informally. A third case was filed by GRESEA and TI-G in January 2008 at the Belgian NCP. On 29 February 2008, the NCP invited the complainants to an informal preliminary meeting to discuss the procedure, at which the NCP pledged to undertake an initial assessment within the next three months. At the NCP's request, the complainants provided supplemental information including testimonies from Belgian pharmacists and the state of national regulation in the sector.

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

**Issue**

Accor Service is a French company providing services such as restaurant tickets and food vouchers to businesses and governments. The complaint involves the nature of lunch tickets/vouchers that are currently informally used by employers in Argentina to pay part of employees' salary, but which not formally included for calculations of employees' holidays, sick leave and bonuses. The complaint alleges that after a proposal to "formalise" the inclusion of the lunch vouchers in salaries (a measure that would likely reduce employers' demand for the vouchers) was introduced into the national legislature, a

representative of Accor Service approached the deputy sponsoring the proposal in November 2007 with offers of bribes of up to US\$ 20 million if the deputy agreed to delay the proposal and change it so as to encourage and even compel more employers to purchase the vouchers. The deputy, who is also the complainant in this case, recorded the telephone calls and meetings with the Accor representative in which the representative offered the bribes, and is using the recordings as evidence both in a domestic legal case as well as the OECD Guidelines specific instance.

**Developments/Outcome**

On 27 February 2008, the Argentine NCP informed the complainants that it had accepted the case as a specific instance. In the mean time, an Argentine court indicted both the Argentine manager of Accor Service and the middle-man who offered the bribes. The NCP forwarded the complaint to Accor, and asked the company if it would engage in an NCP-facilitated mediation process. In May 2008 there was a change of personnel at the Argentine NCP, and the complainants were invited to a meeting with the new NCP personnel.



<b>Case</b>	<b>ANZ Bank's facilitation of destructive forestry in PNG</b>	
<b>Company/ies</b>	<b>Status</b>	<b>Date Filed</b>
ANZ Bank	Rejected	01 October 2007
ANZ Bank	Rejected	24 August 2006
<b>Complainants</b>	Australian Conservation Foundation (ACF), Human Rights Council of Australia, Environmental Law Centre, PNG Eco-Forestry Forum, Centre for Environmental Law and Community Rights (CELCOR), Green Party of Aotearoa New Zealand	
<b>NCP(s) concerned</b>	NCP Australia, NCP New Zealand	
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter I (Concepts and Principles), para 7,8; Chapter II (General Policies), para 2,7,8,10; Chapter IV (Employment and Industrial Relations), para 1,2,4,7, Chapter II (General Policies), para 1,2,10; Chapter V (Environment), para 1	

**Issue**

The complainants allege that ANZ Bank financially supports logging companies engaged in human rights abuses and environmental destruction in Papua New Guinea (PNG). Specifically, the complaints state that ANZ is "actively facilitating and supporting" the PNG operations of Malaysian logging giant Rimbunan Hijau (RH), a company whose operations involve "serious human rights abuses, environmentally devastating logging practices and repeated, serious illegal conduct" including:

- By failing to take basic steps to ensure that its clients respect human rights, ANZ becomes closely associated with violations of those rights.
- While ANZ has discussed community concerns with RH on these issues, this engagement has not demonstrated positive outcomes and is likely to be

ineffective, as it does not occur within an articulated and binding framework of acceptable minimum environmental and human rights standards required as a condition for doing business with the bank.

ANZ has not adopted a system of environmental management appropriate to its business in that it has not adopted forestry and human rights policies that set acceptable minimum standards for client engagement, in contrast to a number of other multinational financial institutions.

Two OECD Guidelines complaints against ANZ have been filed: the first at the Australian NCP (ANCP) by ACF et al. and the second at the New Zealand NCP (NZ NCP) by the Green Party of Aotearoa New Zealand.

**Developments/Outcome**

After filing the first complaint in August 2006, ACF submitted

supplementary evidence to the ANCP regarding the existence of an investment nexus between ANZ and RH in September 2006.

In October 2006, the ANCP rejected the complaint, claiming that ANZ's loans and guarantees do not constitute an "investment nexus" between the bank and the logging company. The ANCP also claimed it was unable to ascertain whether ANZ's degree of influence is sufficient to trigger the supply chain provision in the Guidelines. ACF responded by stating its disappointment in the ANCP's highly restrictive interpretation of the "investment nexus".

According to ACF, the Australian NCP excluded consideration of the complaint despite an undisputed debt financing link between ANZ Bank and the logging company. In addition, the rejection appears to be inconsistent with other complaints in which debt financing

relationships have triggered the Guidelines' complaint procedure. The second complaint in New Zealand was rejected by the NZ NCP in February 2008. The NCP

argued that, given the lack of a sufficient link between RH and ANZ's New Zealand-based business and the previous examination of the issue by the

Australian Government, further examination of the complaint was not warranted and would not contribute to the purposes and effectiveness of the Guidelines.



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

**Issue**

The complaint refers to workers' rights problems that began in 2001 when the workers attempted to establish a trade union at the Chongwon Fashion plant in the Philippines. The management threatened to close down if the union was formed. Consequently, the union lost the election. However, new elections at both Chongwon and Phils Jeon (a subsidiary of Il-Kyoung Co.) were held in 2004 which both unions won. Since then, the companies have repeatedly questioned the election results by filing several court petitions, but have lost the case in every instance. In August 2006, the union president at Phils Jeon was dismissed along with 63 other union members. At the same time, workers at the Chongwon plant went on a strike because of harassments. In September 2006, the workers at Phils Jeon went on strike although they had been warned by management that they would be dismissed. The strike was violently dispersed by police and security guards who attacked and beat the mainly women workers, 25 of whom were injured. When the strikes at Chongwon continued

even after 71 of the striking workers were dismissed, workers received death threats in June 2007. In February 2007, the Philippine Department of Labour and Employment (DOLE) suddenly declared that the unions no longer represented the workers. The union believes that the companies offered bribes and has also brought charges against the mediator of the National Relations Commission for taking bribes.

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

**Developments/Outcome**

The Korean NCP acknowledged receipt of the complaint and notified the complainants that:  
1) There is no way to deal with the Chongwon case because the company does not exist any more;

2) It has undertaken an initial assessment of the Phils Jeon/Il-Kyoung case and has accepted it as a specific instance. In November 2007, the NGOs conducted additional field research at the Phils Jeon factory and submitted this to the NCP in a meeting between the unions, NGOs and NCP. Il-Kyoung agreed to enter into a dialogue with the Phils Jeon union, and the complainants are pushing to have this be facilitated by the NCP. On 4 April 2008 an informal meeting took place between the trade union and Phils Jeon management. The NCP played no role in the meeting. Phils Jeon management and Il-Kyoung stated that they would not enter into a dialogue with the workers because they no longer work for the company. The complainants insist that since their dismissal is in dispute, the workers maintain their union membership and urge the Korean NCP to hold a meeting with all the stakeholders. The Korean NCP has not taken any action so far, and has merely repeated the company's argument.



<b>Case</b>	<b>BHP Billiton's forced evictions at a coal mine in Colombia</b>
<b>Company/ies</b>	<b>Status</b>
BHP Billiton	Filed
<b>Complainants</b>	Corporación Colectivo de Abogados (CCdeA)
<b>Date filed</b>	26 June 2007
<b>NCP(s) concerned</b>	NCP Australia (lead), NCP Switzerland, NCP UK
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	No information available

**Issue**

Cerrejon coal, one of the largest open-cut coal mines in the world, is co-owned by BHP-Billiton (Australia), Anglo-American (UK) and Xstrata (Switzerland). According to the complaint, Cerrejon has attempted to depopulate an area of the La Guajira peninsula by means of destroying one 200-year-old

township-pueblo, Tabaco, and the forced expulsion of the remaining population through a purported expropriation.

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

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

**Developments/Outcome**

No further information is available on the developments/outcome in this case.



<b>Case</b>	<b>Volkswagen's climate change impacts</b>
<b>Company/ies</b>	<b>Status</b>
Volkswagen AG	Rejected
<b>Complainants</b>	Germanwatch
<b>Date filed</b>	7 May 2007
<b>NCP(s) concerned</b>	National Contact Point Chile
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Preface, para.1; Chapter II (General Policies), para. 2; Chapter IV (Employment and Industrial Relations), paras. 1a, 2a, 2b and 8.

**Issue**

Mainly due to VW's climate damaging product range and business strategy, Germanwatch accuses the company of violating the Guidelines in 15 concrete cases, grouped into the following categories:

First, given the problem of climate change and the two-degree-limit for global temperature rise, a company like VW must formulate and regularly evaluate detailed climate protection goals for single products as well as for the whole product range – Volkswagen has thus far not done this.

Second, VW does not sufficiently account for dangers to the climate emerging from its products. In order to properly do so, the company would have to forecast and evaluate the actual emissions of its products over their full life cycle and address this in the

management and decision making process.

Third, VW has achieved less progress in complying with the self-commitment (ACEA Agreement) than the company agreed to with the European Commission in 1998. Given the company's existing strategy and its current product range, it is doubtful that VW can achieve the self-commitment by 2008.

Fourth, VW advertises massively for vehicles with high fuel consumption, but fails to transparently inform consumers about the climate impact of such automobiles. Fifth, VW has directly and indirectly (through association memberships) been involved in the distribution of false information about climate change or planned policy measures. Finally, VW has directly and indirectly lobbied against various climate policy

frameworks that include legislation to limit the consumption of new passenger cars.

Germanwatch's complaint is the first that highlights the relevance of the climate change issue in the OECD Guidelines.

**Developments/Outcome**

The German NCP notified the complainants of receipt of the complaint and forwarded the complaint to Volkswagen. However, on 20 November 2007, the NCP rejected the case, claiming that the alleged violations are beyond the scope of the Guidelines. Germanwatch does not agree with the NCP's decision not to investigate the case and is considering further steps, including legal approaches.



<b>Case</b>	<b>Banco del Trabajo's labour rights violation in Peru</b>
<b>Company/ies</b>	<b>Status</b>
Grupo Atlas Cumbres (Chile)	Closed
<b>Complainants</b>	Confederación General de Trabajadores del Perú (CGTP), Federación de Trabajadores Bancarios de Chile, Programa Laboral de Desarrollo (PLADES), Centro de Estudios Nacionales de Desarrollo Alternativo (CENDA)
<b>Date filed</b>	26 April 2007
<b>NCP(s) concerned</b>	National Contact Point Chile
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Preface, para.1; Chapter II (General Policies), para. 2; Chapter IV (Employment and Industrial Relations), paras. 1a, 2a, 2b and 8.

### Issue

G.C.T.P.'s complaint accuses Banco del Trabajo of labour and human rights violations in Peru. Specifically, Banco del Trabajo's anti-union practices have infringed on the rights of labour leaders from SUDEBANTRA (Sindicato Unitario de Empleados of the Banco del Trabajo) and SUTRABANTRA (Sindicato Unificado de Trabajadores del Banco del Trabajo) to collectively negotiate improvements in working conditions. The complaint also accuses the company of


requiring workers to achieve unattainable levels of production. G.C.T.P. has also submitted a complaint to the International Labour Organization (ILO) against the Government of Peru on 6 February 2007. The Atlas Cumbres Group (Chilean life insurance company) owns Banco del Trabajo.

### Developments/Outcome

The Chilean NCP notified the complainants that it had accepted the complaint as a specific instance. However, after informing the company about the complaint, the NCP informed the

complainants that the company had refused to engage in the NCP procedure.

On 20 May 2008, Grupo Atlas Cumbres sold Banco del Trabajo to Scotiabank Perú, a subsidiary of The Scotiabank Group (Canada). The change of owner opens a possibility to resolve the conflict, thanks to possibilities for negotiations with Scotiabank Peru. If the issues cannot be resolved directly with the company, the complainants will consider re-filing the case with the Canadian NCP.

 <b>Case</b>	<b>Afrimex's mineral trading in the DRC</b>
<b>Company/ies</b>	<b>Status</b>
Afrimex (UK) Ltd.	Pending
<b>Complainants</b>	Global Witness
<b>Date filed</b>	20 February 2007
<b>NCP(s) concerned</b>	National Contact Point UK
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter II (General Policies), para 1,2,10,11; Chapter IV (Employment and Industrial Relations), para 1a,1b,4b; Chapter VI (Combating Bribery), para 2,6; Chapter X (Taxation)

### Issue

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

During the DRC's conflict, the RCD-Goma controlled large parts

of the eastern provinces of North and South Kivu, where coltan and cassiterite are mined.

The complaint describes how Afrimex traded coltan and cassiterite (tin ore) and made tax payments to the RCD-Goma, an armed rebel group with a well-documented record of carrying out grave human rights abuses, including massacres of civilians, torture and sexual violence. The complaint also highlights the life-threatening conditions in cassiterite mines and the use of forced labour and child labour.

### Developments/Outcome

As part of the initial assessment, in May 2007, the UK NCP held separate meetings with the parties. In their meeting with Global Witness, the NCP asked a number of detailed questions

related to the complaint. Global Witness responded to the questions in the meeting and in a follow-up letter. In September 2007, the UK NCP issued its initial assessment announcing that it would consider Global Witness's complaint. Global Witness and Afrimex then entered the process of mediation and held several meetings in October and November 2007. These meetings were mediated by the NCP.

Eventually, in January 2008, Afrimex decided to withdraw from the mediation, and the case therefore reverted to an investigation by the NCP. In May 2008, the NCP completed the investigation and invited both parties to submit final clarifications. The NCP's final statement is expected at the end of June 2008.



<b>Case</b>	<b>G-Star's Indian suppliers' labour rights violations</b>
<b>Company/ies</b>	<b>Status</b>
G Star International BV	Closed
<b>Complainants</b>	Clean Clothes Campaign Netherlands (SKK), India Committee of the Netherlands (ICN), Civil Initiatives for Development and Peace (CIVIDEP), Clean Clothes Campaign International Secretariat, Garment and Textile Workers Union (GATWU)
<b>Date filed</b>	13 October 2006
<b>NCP(s) concerned</b>	National Contact Point Netherlands
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter I (Concepts and Principles), para 7,8; Chapter II (General Policies), para 2,7,8,10; Chapter IV (Employment and Industrial Relations), para 1,2,4,7

**Issue**

The complaint stated that G Star's Indian suppliers, Fibres and Fabrics International (FFI) and Jeans Knit Pvt. Ltd. (JKPL), have violated labour rights, including freedom of association, the right to collective bargaining, payment of a living wage, discrimination in employment, working hours, overtime work, occupational health and safety, punishment, abuse, harassment, and lack of legally binding employment relations.

The NGOs requested that the Dutch NCP mediate a dialogue with G-Star and its Indian suppliers in order to develop a remediation plan to address the labour rights violations. The complainants also encouraged FFI and JKPL to engage in a dialogue with local NGOs and labour support organisations about the remediation plan.

At the time of filing, FFI/JKPL were also producing for Ann Taylor, Armani, Gap, Guess, Mexx and RaRe.

**Developments/Outcome**

In November 2006, the NCP held separate, informal meetings with G-Star and an external person familiar with the case. The following month, the NCP accepted the complaint. By accepting the case, the NCP explicitly agreed that an "investment nexus" exists given the parties' direct and well-established relationship. The NCP tried to bring the parties together for a mediation process; however, G-Star refused to enter into the NCP process in which all parties would have to agree on the outcome. Although no formal mediation could be started, the NCP nonetheless

organised an informal meeting between the parties in June 2007. After the escalation of the situation in India, where an Indian court charged the Dutch NGOs and their internet providers with criminal defamation, it was suggested that a more prominent role for the Dutch government was required.

In December 2007, G-Star unexpectedly announced that it would sever relations with FFI, at which time CCC and ICN expressed their concerns that 'cutting and running' is not the solution of the problems at FFI/JKPL and urged G-Star to develop and implement a responsible exit strategy. In February 2007, the NCP held further separate, informal meetings with the complainants and G-Star. Also in February 2007, a civil judge in Bangalore reinforced a restraining order on five Indian labour organisations that was first issued in July 2006. The restraining order was a heavy blow to the fundamental right to freedom of speech and freedom of association in India.

Subsequently, upon request of the Dutch Minister for Economic Affairs, former Prime Minister Ruud Lubbers was involved as mediator. In January 2008, Mr Lubbers brokered an agreement between the parties. This agreement is to pave the way for a sustainable mechanism to solve possible future labour conflicts at FFI/JKPL. An important outcome of the mediation is that, with the consent of all parties, an ombudsman will be installed. This ombudsman will follow up on complaints from FFI/JKPL employees and labour rights organisations. After some

deliberation, all parties concerned agreed upon Dr. Justice V.S. Malimath, former Chief Justice of Karnataka and Kerala High Courts and previously member of the Indian National Human Rights Commission, to take the role of ombudsman. A "Committee of Custodians" will serve as a sounding board for the ombudsman and safeguard that all parties adhere to the agreement. The Committee will include Mr Lubbers, Mr Ashok Khosla, an Indian national who has previously worked for the Indian government and the United Nations as well as Mr. A.P. Venkateswaran, former ambassador for India in China and Russia.

The ombudsperson will aim for solutions that are acceptable to all parties. When dealing with complaints confidentiality is crucial. The ombudsperson will regularly report on the processing of complaints.

G-Star has repaired its relations with FFI/JKPL. CCC and ICN have put an end to their public campaigning against G-Star and its supplier FFI/JKPL. Another crucial element of the Lubbers-brokered agreement is the withdrawal of all court cases undertaken by FFI/JKPL against Indian and Dutch parties. So far, FFI/JKPL has withdrawn the case against CCC, ICN and their internet providers, and the cases against Indian organisations and individuals are supposed to be withdrawn very soon.

The Dutch NCP did not play a role in reaching this agreement. When Mr Lubbers got involved, the NCP announced that the mediation by Lubbers made the NCP procedure redundant. CCC and ICN did not

agree with this point of view, and have expressed reservations against the position of the NCP. The main arguments put forward by CCC and ICN are the following:

- The NCP was asked to assess compliance with the OECD Guidelines in a specific instance; by ending the procedure in this way, this has not been done.
- The complaint by CCC and ICN addressed the role of the Dutch buyer G-Star, while the mediation by Mr Lubbers focused on the conflict that had arisen between the garment producer FFI and CCC and ICN. This is a fundamental difference.

- The complaint filed by ICN and CCC concerned a clear period in time (September 2005 to October 2006), whereas Mr Lubbers only started his mediation in December 2007;
- Central to the complaint filed by CCC and ICN is the question of G-Star's supply chain responsibility. The NCP could and should have offered a setting to address G-Star concerning this matter.
- All parties concerned, including CCC, ICN, G-Star and the NCP itself, have invested a great deal of time and energy in the procedure. It is most

unsatisfactory to end the procedure without an answer to the main question (whether or not the OECD Guidelines were complied with).

Despite these arguments, CCC and ICN accepted the closure of the NCP procedure the light of the agreement reached on 28 January. The NCP is preparing to publish a final statement concerning the procedural aspects of how the complaint was handled. The statement will not deal with the content of the complaint. Upon request, CCC and ICN provided input to the statement.

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

#### Issue

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

#### Developments/Outcome

After accepting the case, the Dutch NCP held separate meetings with Shell and the

complainants in August and December 2006.

In March 2007, the Philippines' Supreme Court ordered the City of Manila to uphold Ordinance 8027 and close the Pandacan oil depot within six months. The ordinance aims to protect residents from the health and safety dangers of the dilapidated depot, which is situated in the heart of densely populated Manila. Shell and the other oil companies operating the depot (Chevron and Petron) asked the Court to reconsider the decision, but on 13 February 2008, the First Division of the Supreme Court upheld its original decision

and gave the oil companies 90 days to submit a relocation plan.

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

The Dutch NCP is currently planning a fact-finding mission to the Philippines in the consultation with both parties.

<b>Case</b>	<b>Chemical storage, human health impacts in Brazil</b>
<b>Company/ies</b>	<b>Status</b>
Royal Dutch Shell Exxon Mobil	Rejected Rejected
<b>Complainants</b>	FoE Netherlands (Milieudefensie), Friends of the Earth International, Coletivo Alternativa Verde (CAVE), SIPETROL-SP
<b>Date filed</b>	15 May 2006
<b>NCP(s) concerned</b>	NCP Brazil, NCP Netherlands, NCP USA
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter II (General Policies), para 5; Chapter V (Environment), para 1,3,4

### Issue

The complaint states that Shell and Exxon have refused to comply with the Brazilian Government's the high concentrations of chemicals and heavy metals in their blood. The complainants charge the companies have demonstrated little concern for their own employees and local residents. In January 2005, the government called on the companies to stop the practice of storing chemicals at and below their facilities and to help workers and local residents with health complaints arising from the high concentrations of chemicals and heavy metals in their blood. The complainants charge the companies have demonstrated little concern for their own employees and local residents.

### Developments/Outcome

In June 2006, the Brazilian NCP conducted an initial assessment and accepted the complaint as a specific instance. The Dutch NCP also wrote to the Brazilian NCP and "offered its assistance in the handling of the instance" by

providing suggestions on how it would handle the case and declaring it would closely follow the case.

The Brazilian NCP forwarded the complaint to the two companies involved and requested a response. In its 16 October 2006 response, Exxon claimed that it was a minor partner in the Brazilian consortium accused of the violations and that Shell, as the lead partner and "facility operator", should be responsible for responding to the allegations in the complaint. The NCP accepted this argument and thus dismissed the case against Exxon.

In its turn, Shell responded to the complaint stating that the alleged violations were already being considered by domestic legal bodies and thus should not be considered under the NCP/OECD Guidelines process. In early 2007 the NCP accepted Shell's argument and decided not to "interfere" in the legal proceedings by further examining the issues.

The NCP then requested that the

complainants make specific proposals for areas that could be negotiated with the Shell that were not covered by any parallel legal proceeding. On 7 April 2007 the complainants provided suggestions, but Shell refused to agree to mediation, again claiming that the issues were under judicial review.

The NCP again accepted Shell's argument and thus concluded that its involvement in the case would not be effective. The NCP thus decided to terminate the specific instance in the NCP framework, and on 20 March 2008 the NCP unilaterally produced a final statement without consulting the complainants as to its content

The complainants are disappointed with the NCP's outright refusal to examine the allegations due to the existence of parallel legal proceedings and that the NCP seems to have simply accepted the companies' position and adopted this as its own. The NCP had numerous "meetings and contacts with Shell" but never once met with the complainants.



<b>Case</b>	<b>Botnia's Orion pulp mill project in Uruguay</b>	
<b>Company/ies</b>	<b>Status</b>	<b>Date Filed</b>
Nordea	Concluded	28 June 2006
Finnvera	Rejected	8 June 2006
Oy Metsä-Botnia	Concluded	18 April 2006
<b>Complainants</b>	Fundación Centro de Derechos Humanos y Ambiente (CEDHA)	
<b>NCP(s) concerned</b>	NCP Finland, NCP Sweden, NCP Norway	
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter VI (Combating Bribery); Chapter III (Disclosure); Chapter VII (Consumer Interests); Chapter XI (Competition)	

### Issue

CEDHA's complaint alleges that Botnia's Orion pulp mill project will impact local communities' economic livelihoods and human rights. The complainants maintain that the project is plagued with environmental problems, including bank violated the Guidelines in two respects: first, through its partial financing of the Orion paper mill, and second, by refusing to provide information about its dealings with Botnia. Apart from providing \$300,000 of its own funds towards the pulp mill, Nordea also helped arrange finance from other banks and financial intermediaries.

the company's failure to collect and provide reliable information about the project's real and foreseeable impacts. The complaint also states that the project is straining regional diplomatic relations between Argentina and Uruguay. The Botnia and Finnvera cases were filed with the Finnish NCP, while the Nordea case was submitted to the Swedish and Norwegian NCPs.

### Developments/Outcome

The Finnish NCP invited CEDHA to a meeting on 30 August 2006 in Helsinki to discuss the complaints against Botnia, Finnvera and

Finnvera, the Finnish Export Credit Agency, is supporting Botnia's Orion pulp mill project. Nordea is a Swedish-Norwegian financial institution that is set to provide Botnia with a multi-million dollar package to finance the project. The Nordea complaint alleges that the Nordea. In November 2006, the Swedish NCP, with support from the Norwegian NCP, accepted the complaint against Nordea.


In October 2006, the Finnish NCP rejected the Finnvera complaint citing the fact that the company is not a multinational enterprise and the Guidelines are therefore not applicable.

In a December 2006 statement, the Finnish NCP concluded that the evidence presented did not prove that Botnia had failed to comply with the Guidelines. In response, CEDHA lodged two complaints with the OECD's Investment Committee and Finland's Parliamentary Ombudsman concerning the Finnish NCP's decision to reject the complaint in January 2007.

In February 2007, the Finnish NCP refused to review its decision.

In January 2008, the Swedish NCP concluded the Nordea case. Based on the dismissal by the Finnish NCP of the Botnia complaint, the Swedish NCP, supported by the Norwegian NCP, concluded that there was no indication that Nordea had violated the Guidelines. The NCP conducted no further examination.

Despite the NCP's unwillingness to investigate the allegations on its own, the fact that the NCP upheld the principle that "the Guidelines can and do apply to the financial sector as well as to other multinational enterprises", firmly establishes the applicability of the Guidelines to banks and other financial institutions, which can be held to account for their lending decisions under the Guidelines.

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

**Issue**

Nepenthes' complaint states that Dalhoff, Larsen & Hornemann (DLH) buys timber from countries with a high rate of illegal logging, and some of DLH's suppliers have been convicted of forest crimes. DLH also buys timber from Burma and parts of Africa, where the timber industry is known to be involved in violent conflicts. According to the complaint, DLH does not verify whether the timber it buys is legal and the company has been caught buying illegal timber several times. With regards to the purchase of timber from conflict zones the complaint states that DLH ignores the risk that the


timber purchase causes violent conflicts and violation of human rights.

**Developments/Outcome**

After the Danish government developed a draft position on "sustainable" and "legal" timber in Spring 2007, the NCP began work on the case. In the mean time, Nepenthes (which owns a share in DLH) put forward a proposal for DLH's 2007 general assembly that stated that DLH should conduct their business in a way that is in accordance with the OECD Guidelines. The general assembly (in which DLH itself owns more than 50% of the shares)

voted "no" to Nepenthes' proposal, and instead adopted a proposal put forward by the board of DLH, that stated that DLH will "aim at" conducting business in a way that is in accordance with the OECD Guidelines. The Danish NCP is planning a meeting (possibly including DLH) at which Nepenthes expects the proposal to be discussed.

Nepenthes has requested that DLH provide information about the quantity and origin of the timber purchased and the certifications. Further plans of the NCP are unclear to Nepenthes.

 <b>Case</b>	<b>Alcoa Alumínios' Barra Grande hydroelectric dam in Brazil</b>
<b>Company/ies</b>	<b>Status</b>
Alcoa Alumínios S.A Grupo Votorantim	Pending Pending
<b>Complainants</b>	Terra de Direitos, Movimento dos Atingidos por Barragens (MAB)
<b>Date filed</b>	06 June 2005
<b>NCP(s) concerned</b>	National Contact Point Brazil
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter V (Environment), para 1,3,4; Chapter II (General Policies), para2,5

**Issue**

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

Grande do Sul. The companies are majority shareholders in Baesa consortium responsible for the construction.

**Developments/Outcome**

In September 2005, the Brazilian NCP accepted the case and held a meeting with complainants. The head of the NCP promised to

organize more meetings, but admitted that the current political situation in Brazil would make it difficult to resolve the case.

The complainants have heard from unofficial sources that the NCP plans to close the case do to a lack of evidence about the behaviour of the companies; however, the

NGOs maintain they have sufficient evidence.

Despite the lack of progress and communication from the NCP on

the case, the NGOs continue to monitor fulfilment of the conditions agreed by the venture partners (BAESA), environmentalists and the

Movement of Affected by Dams (MAB).

<b>Case</b>	<b>British companies and UK export credit program</b>
<b>Company/ies</b>	<b>Status</b>
BAE Systems	Pending
Airbus S.A.S.	Pending
Rolls Royce	Pending
<b>Complainants</b>	The Corner House
<b>Date filed</b>	01 April 2005
<b>NCP(s) concerned</b>	National Contact Point UK
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter VI (Combating Bribery), para 2

**Issue**

The Corner House's complaint alleges the companies have violated the Guidelines' bribery provision, because they refuse to provide details of their agents and their commissions to the UK

Government's Export Credit Guarantee Department.

**Developments/Outcome**  
In May 2005, the UK NCP accepted the complaint and

forwarded it to the companies for comment. In May 2007, the complainant reported that the UK NCP has taken no further action

<b>Case</b>	<b>UK companies and illegal resource exploitation in DRC</b>
<b>Company/ies</b>	<b>Status</b>
Oryx National Resources	Concluded
Avient Air	Concluded
Dairo Air Services	Pending
Tremalt Ltd	Withdrawn
Alex Stewart (Assayers) Limited	Withdrawn
Ridgepoint International Developments Ltd	Withdrawn
<b>Complainants</b>	Rights and Accountability in Development (RAID)
<b>Date filed</b>	28 June 2004
<b>NCP(s) concerned</b>	National Contact Point UK
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter IX (Competition), para 1; Chapter III (Disclosure), para 3,4; Chapter VI (Combating Bribery), para 1,5; Chapter V (Environment), para 6; Chapter II (General Policies), para 2,11

**Issue**

In October 2002, a United Nations Panel of Experts accused 85 OECD-based companies of violating the Guidelines for their direct or indirect roles in the illegal exploitation of natural resources in the Democratic Republic of Congo (DRC). The Panel alleged that "elite networks" of political and military elites and businesspersons fuelled the conflict in order to retain their control over the country's vast natural resources.

**Developments/Outcome**

*Alex Stewart (Assayers) Ltd:* The UK NCP claimed the case was resolved by the UN Panel and could not be reopened. Due to

RAID was allowed to participate in the proceedings in May 2005.

the NCP's inaction, RAID withdrew the complaint.

*Avient:* RAID, having been accepted as a complainant, was locked out of the process. In September 2004, the UK NCP issued a weak statement, which accepted Avient's contention that it was working within a contractual arrangement with the officially recognized governments in the area.

The NCP's recommendations merely highlight the existence of a few provisions of the Guidelines, but did not declare breaches or offer specific actions a company is expected to take to remedy the breaches.

DAS Air moved to close the case in December 2005.

Following a September 2006 expose in the UK's Sunday Times, RAID called on the UK NCP to reopen the case. RAID has gathered extensive documentation to show that Avient was engaged in mercenary operations in the DRC, including bombing missions. But given the gravity of the allegations against Avient, RAID is trying to encourage the UK Attorney General to investigate Avient for complicity in war crimes.

*Das Air:*

The complaint was accepted in July 2004; however, RAID was prohibited from taking part in the negotiation process for one year.

However, based on material from an official Uganda Judicial

Commission of Inquiry, RAID was able to provide evidence that DAS Air had made regular flights into the DRC from the military airport in Entebbe.

The NCP is currently undertaking an assessment of information provided by RAID and the company. RAID welcomed the fact that after the revision of the UK NCP procedures, the NCP did undertake some fact finding but the process has been extremely slow. In the interim, DAS Air has gone into receivership. A statement is in the pipeline. Once this case is concluded the UK Government is committed to issuing a statement to Parliament on its handling of the UN Panel cases.

*Oryx:* In July 2004, the UK NCP accepted the complaint; however, RAID was prohibited from taking part in the negotiation process for one year while the NCP engaged

in extensive discussions with Oryx. Most of the complaint was rejected on the grounds that a UN Panel had resolved the issue. The NCP insisted RAID resubmit its complaint in April 2005.

RAID was allowed to participate in the proceedings in April 2005, but under very restrictive and summary procedures.

RAID was able to comment on the NCP's draft statement, which was the only area in which the UK NCP followed the Guidelines' complaint procedures. The majority of issues raised in the complaint were disallowed by the NCP on grounds that they had been "resolved" by Panel.

The final statement was highly unsatisfactory and did not incorporate any of RAID's recommendations.

*Ridgepoint:* The UK NCP claimed the case was resolved by the UN Panel and could not be reopened. Due to the NCP's inaction, RAID withdrew the complaint. At the end of 2007, the Congolese Government declared Billy Rautenbach, the director of Ridgepointe, persona non grata and expelled him from the country.

The Congolese inter-ministerial commission set up to review mining contracts also declared in Oct 2007 Rautenbach's title to the mining concession invalid.

*Tremalt:* The UK NCP claimed the case was resolved by the UN Panel and could not be reopened. Due to the NCP's inaction, RAID withdrew the complaint.



<b>Case</b>	<b>Bayer's cotton seed production in India</b>
<b>Company/ies</b>	<b>Status</b>
Bayer	Concluded
<b>Complainants</b>	Germanwatch, Coalition Against Bayer Dangers (CBG), Global March Against Child Labour
<b>Date filed</b>	11 October 2004
<b>NCP(s) concerned</b>	National Contact Point Germany
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter IV (Employment and Industrial Relations), para 1; Chapter II (General Policies), para 10

### Issue

Bayer suppliers in India are alleged to have violated the OECD Guidelines chapter on employment and industrial relations by using child labour.

The case is based on a 2003 study entitled "Child Labour and Transnational Seed Companies in Hybrid Cottonseed Production" and a follow up study from 2004. The study found that cottonseed farms, largely in South India, employ children in large numbers, predominantly girls between 6 and 14 years of age. Many of them work in bonded labour and are forced to stay with their employers for several years, their work serving as payment for servicing loans at usurious interest. Because large quantities of pesticides are in constant use, their health conditions are negatively affected all the time. Procurement prices

paid for cotton seeds are so low that farmers employ children, who are paid less money, because otherwise they would not make any at all. The study found that around 2,000 children were working for suppliers of Proagro, a subsidiary of the German company Bayer AG. Bayer has failed to address these concerns, which form the basis of the complaint.

### Developments/Outcome

On October 26, 2004, Bayer responded to the NGO complaint in a letter to the NCP. Bayer stated that it does enough to deal with the issue of child labour and that the complaint is unfounded. In December 2004, the NGOs responded to Bayer's comments in another letter to the NCP, and in a January 2005 letter to the NCP,

Bayer reacted to the NGOs' second letter.

After having received comprehensive comments by both parties, the German NCP invited all parties involved to a meeting. However, Bayer objected to the participation of one of the NGO participants, and refused the offer. Nevertheless, Bayer has told the NCP and the public that it has already taken constructive and concrete steps to solve the problems raised. Instead of a joint meeting, the NCP held separate meetings. First there was a meeting between Bayer and the NCP in which the company explained its plan on how to face the problem. The company's presentation and the minutes of the meeting were communicated to the NGOs. Afterwards, the NCP


held a subsequent meeting with the NGOs. The NGOs were concerned about the omission of some comments made during their meeting in the meeting minutes issued by the NCP, but after some arguing with the NCP, finally their points were taken up in a new version of the minutes. In general it was felt that having separate meetings with the complainant and the company can compromise the NCP's (supposed) independent/objective nature because it puts the NCP into the role of having to present the view and arguments of the company to the NGOs.

In December 2005, the complainants sent a letter to Bayer

with questions regarding the company's action plan. Bayer promised a response by January, but failed to do so, and in May, 2006, the NGOs resent the letter, this time through the NCP. In the mean time, independent research revealed that there were still 450-500 children working in the fields in the 2005/06 season producing for ProAgro/Bayer, meaning that there was a reduction in the number of children, but that the problem remains. In late 2006 and early 2007, there were more (separate) meetings at the NCP. The results of independent indicating structural problems in Bayer's implementation of the action plan (e.g. Bayer is now partly producing in another state where the action plan is not

implemented), were handed over, along with an analysis by the complainants, to the NCP in June 2007 for consideration.

In August 2007, the NCP concluded the complaint with a final statement. The statement could not be a joint statement due to Bayer's refusal to communicate with one of the complainants, and the complainants do not feel that the statement appropriately reflects their position. In order to further assess the outcome of the case, the complainants will continue to monitor the situation on the ground and will wait to see how/whether the German NCP assumes the monitoring role that is foreseen in the final statement.

 <b>Case</b>	<b>Toyota's anti-trade union practices in the Philippines</b>
<b>Company/ies</b>	<b>Status</b>
Toyota Motor Corporation	Filed
<b>Complainants</b>	Toyota Motor Philippines Corporation Workers' Association (TMPCWA), Support Group for TMPCWA in Japan
<b>Date filed</b>	04 March 2004
<b>NCP(s) concerned</b>	National Contact Point Japan
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter IV (Employment and Industrial Relations), para 1,6,7,8; Chapter II (General Policies), para 2

**Issue**

The complaint alleges that Toyota Motor Philippines Corporation (TMP) refused to recognise TMPCWA, which was registered in 1998 with the Philippine Department of Labour and Employment (DOLE), as the sole and exclusive bargaining agent. The complaint states the company is actively trying to hinder the right to association and collective bargaining.

The complaint further alleges that TMP refused to organise Certification Elections (CE) as stipulated by law. When CE were eventually held in March 2000, TMP challenged the result (which was favourable to TMPCWA), refused to open negotiations, and launched various administrative appeals against TMPCWA.

Under pressure from Toyota, DOLE remained passive and procrastinated. When DOLE organised an unusual "clarification

hearing" in February 2001, the workers organised a peaceful protest gathering. On 16 March 2001, the Philippine authorities reaffirmed TMPCWA's legitimacy. On the same day, 227 leaders and members of the organisation (who had participated in the previous month's gathering) were unjustifiably dismissed.

**Developments/Outcome**

In September 2004, the Japanese NCP said "the matter is still under examination, and the initial assessment has not yet come to an end. We are of the opinion that the case of TMPCWA is still at bar at Court of Appeals." The complainants wrote to the NCP expressing their disappointment with its (non)handling of the complaint. In February 2005, Support Group met with the NCP, and the NCP said that it would not specify any time limit for an initial assessment.

The Japanese NCP appeared to have changed its attitude after it was criticised in OECD meetings and by an International Solidarity Campaign initiated by IMF in 2006, but in 2007 it returned to its previous position that "The matter is still under examination and at the stage of the initial assessment."

TMPCWA and Support Group have met with Toyota regularly every year outside the NCP forum at Toyota headquarters in Tokyo and Toyota City, but there has been no movement on the issues.

Case	BTC oil pipeline in Azerbaijan, Georgia & Turkey	
Company/ies	Status	Date Filed
B.P. p.l.c	Pending	29 March 2003
ENI	Pending	29 March 2003
TotalFinaElf	Pending	29 March 2003
ING Belgium	Pending	9 May 2004
Dexia Bank	Pending	9 May 2004
KBC Bank NV	Pending	9 May 2004
Complainants	Campagna per la Riforma della Banca Mondiale (CRBM), FERN, Friends of the Earth France (FOE France), Friends of the Earth United States of America (FOE US), FoE Netherlands (Milieudefensie), PLATFORM, urgewald e.V. (urgewald), World Economy, Ecology & Development (Weed), Germanwatch, Friends of the Earth Germany (BUND), Friends of the Earth England, Wales and Northern Ireland (FOE EWNI), The Corner House, Proyecto Gato	
Date filed	29 March 2003	
NCP(s) concerned	NCPs UK, France, Germany, Italy, USA, Belgium	
Guidelines Chapter(s) & paragraph(s)	Chapter I (Concepts and Principles), para 7; Chapter II (General Policies), para 5; Chapter V (Environment), para 1,2,4; Chapter III (Disclosure), para 1	

### Issue

The Baku-T'bilisi-Ceyhan (BTC) oil pipeline (now completed) spans 1,760 kilometres from the Azerbaijan capital of Baku, through T'bilisi Georgia, ending in the Mediterranean city of Ceyhan, Turkey.

The complaint, filed simultaneously at the UK, France, Germany, Italy, and USA NCPs, alleges that the BP-led BTC consortium of oil companies sought tax and law exemptions and undue influencing of governments in construction of Pipeline in Georgia and Turkey. Specifically, the complainants argued that the consortium had: 1) exerted undue influence on the regulatory framework for the project; 2) sought or accepted order to promote sustainable development.

### Developments/Outcome

The UK NCP accepted the complaint in August 2003. One month later, on 22 September 2003, BP made public a "Deed Poll" (formally entitled "Human Rights Undertaking") in which the company committed to not challenging future human rights laws so long as the company did not deem them "rent-seeking".

In March 2004, BP responded to the complaint, stating it thought the project complied with the Guidelines.

In October 2004, NGOs sent a letter to the NCP, expressing

exemptions related to social, labour, tax and environmental laws; 3) pressured the Georgian environment minister to approve the Environmental Impact Assessment; and 4) undermined the host government's ability to mitigate serious threats to the environment, human health and safety by, among other actions, negotiating agreements that free the pipeline project from any environmental, public health or other laws that the three host countries might adopt in the future. The complaint also raised concerns about BP's failure to adequately consult with project-affected communities and failure to operate in a manner concern about the UK Export Credit Guarantee Department's (ECGD) statement that the BTC project complied with the OECD Guidelines and its decision to support the project.

NGOs also lodged a complaint with the Investment Committee over the ECGD prejudicing the case. The Committee responded by stating that "the good offices of the Chair and Bureau members of the Investment Committee remain available to the UK NCP and The Corner House to assist in resolution of matters left pending".

The UK NCP thereafter offered to facilitate a dialogue between the parties. Despite the length of time

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

that ensued, the NCP failed to follow agreed procedures and produce an initial assessment of the complaint.

In September 2005, the UK NCP visited the region. The NCP organised this trip in close collaboration with both the complainants and BP to ensure all parties were satisfied with the terms of reference. After the trip, a dialogue meeting took place. Despite promises to respond to the issues raised by NGOs, BP refused to disclose their response to the complainants. In January 2006, BP broke off the dialogue process.

The NCP has stated the UK will consider forwarding a series of

recommendations made by the complainants to the OECD's Investment Committee. NGOs have requested the Investment Committee issue guidance on the legitimate scope of "stabilisation clauses" in investment agreements. NGOs are also seeking a clarification on what constitutes an acceptable level of consultation with stakeholders.

The UK NCP has stated that it will prepare a document "outlining areas (including those identified by the BTC complainants) of the Guidelines that might be clarified or improved".

In a separate development, the NCP released a draft statement on the BTC complaint following a Freedom of Information Act (FOIA) request by The Corner House in October 2006. The draft statement exonerated BP. It relied heavily on a BP report which "was not copied to the complainants" at the request of the company. According to the NCP, the BP report responds "to each of the complaints raised by the villagers who spoke to the NCP along the pipeline route during his field visit

[in 2006]". However, the draft statement also records that the villagers had provided evidence that BP had not visited them to investigate their concerns since the NCP's visit.

On 15 August 2007, the NCP issued a final statement, which, despite protests from the complainants following the release of the draft statement under FOIA, still relied heavily on BP's undisclosed report to exonerate the company. The complainants wrote to the NCP on 12 September 2007 seeking an appeal before the newly established Steering Board. The complainants argued that the NCP's statement was unfair and that it failed to "make any serious attempt to engage critically with the issues".

In December 2007, the NCP acknowledged procedural failures and offered to undertake its own review of the procedural aspects of the August 2007 decision. The statement was removed from the NCP's website.

In January 2008, the complainants rejected the offer that the NCP re-examine the procedural aspects of the decision and opted instead for a review by the Steering Board once its appeals procedures had been agreed.

After a nearly five-year delay, the Italian NCP finally, in January 2008, agreed to conduct an initial assessment of the case against consortium partner ENI. The NCP hosted a meeting between the parties, and ENI agreed to submit a written response to some of the issues in the complaint. A second meeting is being planned.

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



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

**Issue**

The case concerns unfair conduct during the privatisation of Zambia's copper mines, ZCCM. Main areas of concern detailed in the submission include:

- Manipulation of the privatisation regime
- Anti-competitive practices during negotiations
- Tabling of extraordinary tax concessions
- Withdrawal from social provision
- Environmental deregulation

- Inadequate disclosure and accountability

In early 2002, Anglo American plc withdrew from Zambia in order to concentrate its investments in Latin America.

**Developments/Outcome**

This case has been pending for over six years. Anglo American initially successfully persuaded the UK NCP not to proceed. Then after a year of inaction, the company claimed that the UK NCP

did not have the competence to examine the case, and the matter was referred to the Investment Committee for clarification. Since then, there have been a number of exchanges between the parties at drawn-out intervals, which has added to the delay. In August 2006, the NCP committed to drafting a statement, which would be reviewed by all parties. A draft was prepared in October 2006 but withdrawn. As of March 2008, the statement was still pending.

### III. Current case statistics

Current Status of the 72 OECD Guidelines cases filed by NGOs		No. Cases
Filed	The NGO has sent the complaint to the NCP	4
Pending	The NCP has confirmed that it is admissible and the specific instance procedure is under way	20
Concluded	The NCP has reached a decision and issued a statement or the case was settled outside the NCP forum	19
Closed	The NCP has started the case but dropped it before issuing a statement	2
Rejected	The NCP has formally rejected the case (declared it inadmissible)	19
Withdrawn	The complainants have decided to close the case	5
Blocked	The NCP is not clear about the status of the case (no formal rejection, but no intention of accepting it as a specific instance)	3

Chapter of the OECD Guidelines		No. Cases
Chapter I	Concepts and Principles	11
Chapter II	General Policies (incl. Human rights and the supply chain)	59
Chapter III	Disclosure	21
Chapter IV	Employment and Industrial Relations	24
Chapter V	Environment	29
Chapter VI	Combating Bribery	18
Chapter VII	Consumer Interests	5
Chapter VIII	Science and Technology	0
Chapter IX	Competition	9
Chapter X	Taxation	6

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



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

OECD Watch strives to ensure that the information in this case update is reliable, but ultimately OECD Watch is not responsible for the content. OECD Watch is willing to correct or remove any information that is factually inaccurate. For more specific information about the cases in this update, please visit [www.oecdwatch.org](http://www.oecdwatch.org) or contact the parties involved directly.

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OECD Watch is an international network of civil society organizations promoting corporate accountability. For more information on the network and on this and other Quarterly Case Updates contact the OECD Watch secretariat at: **SOMO - The Centre for Research on Multinational Corporations**, Sarphatistraat 30, 1018 GL Amsterdam, The Netherlands, [info@oecdwatch.org](mailto:info@oecdwatch.org) / [www.oecdwatch.org](http://www.oecdwatch.org), +31 20 639 1291