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2006 Review of National Contact Points for the OECD Guidelines

Introduction

In September 2005, to mark the five-year anniversary of the revision of the OECD Guidelines for Multinational Enterprises (Guidelines), governments made a commitment to "enhance [their] value" and "reaffirmed their commitment to making them an even more useful instrument for promoting corporate social responsibility among multinational enterprises". OECD Watch also marked the anniversary by producing its most comprehensive assessment of NCPs' implementation to date, "Five Years On: A Review of the OECD Guidelines and National Contact Points" (NCPs).

The divergence in governments and civil society's assessment of how effectively NCPs had implemented the Guidelines during the first five years could not have been star-

ker. NCPs maintained that they took action on 72 out of 106 cases and "this action has contributed to a resolution of issues and to better understanding between the parties concerned". In their statement, two of the earliest cases were cited as evidence of this successful action. OECD Watch, however, found non-governmental organisations' (NGO) confidence in the Guidelines had greatly declined and NCPs' implementation to be fraught with problems. Of the 106 cases cited by NCPs, 45 were submitted by NGOs and of these, only seven had some positive outcomes.

This year, OECD Watch again invited NGOs to report on their experiences with the Guidelines and NCPs. We received responses from 16 countries, including Australia,

Austria, Belgium, Canada, Czech Republic, Democratic Republic of the Congo (DRC), Ecuador, Germany, Italy, the Netherlands, Norway, Pakistan, Serbia, Switzerland, the United Kingdom and the United States.

On the positive side, NGOs have applauded how the Australian and Norwegian NCPs handled cases that involved sensitive human rights issues – both of which illustrate the growing recognition that companies do indeed have human rights responsibilities. In Canada, the Netherlands and the United Kingdom, multi-stakeholder consultations to examine how to improve implementation are also underway. However, many of the problems that were described at length in OECD Watch's "Five Years On" report persist. The responses underscored the ongoing problems with cases being mishandled due in part to the lack of administrative procedures. In several cases, NGOs were treated unfairly and were not consulted properly. Respondents also provided feedback on whether they believed the Guidelines were still useful in changing the behaviour of companies.

● **Positive outcomes in cases**

The Norwegian case involved a subsidiary of Aker Kværner, which owns and operates prison facilities at Guantanamo Bay, Cuba. The NCP's statement on the case noted, "The activities that the company has carried out can be said, at least partly, to have affected the inmates of the prison". The NCP also strongly encouraged the company draw up guidelines for ethical behaviour. A representative of ForUM, the complainant in the case, said that it was "interesting to follow [the NCP's] work, and I was actually impressed by the efforts and engagement, particularly by the business representative".

Brother of St. Laurence (BSL) reports that the Australian NCP handled a case involving Global Solutions Limited (Australia) (GSL) "in a positive, transparent and conciliatory manner". The case concerned human rights abuses in GSL's immigration detention facilities in Australia, particularly the detention of children. BSL reports that the NCP treated the parties fairly and the case was resolved in a reasonable timeframe. According to BSL, "The best aspect was the willingness of both parties, with the assistance of the office of the NCP, to meet and openly discuss and try and reach agreement. Not all matters were resolved, [but] the complainants would rate the mediation as a success".

● **Stakeholder consultation on the Guidelines**

From June to November 2006, the Canadian government is hosting a series of roundtables in response to a report by the Parliamentary Standing Committee on Foreign Affairs and International Trade. In its report, the Committee

recommended that the Canadian government move away from its current voluntary approach to corporate social responsibility and called for policies that condition public assistance for Canadian companies on compliance with international human rights and environmental standards, including core labour rights. The report also identified the need for legislation that holds companies accountable for their actions overseas.

The Dutch Ministry of Economic Affairs launched an evaluation of the NCP's work to implement the Guidelines and its institutional arrangements in September 2005. Dutch NGO SOMO reports that the evaluation was partly a response to concerns raised by several members of Parliament about the Guidelines' voluntary nature and need to improve implementation. It was also prompted by Dutch NGOs' criticisms of how the NCP has handled cases and their resulting lack of interest in the Guidelines.

In October 2005, the British government announced a multi-stakeholder consultation to discuss possible improvements to the UK NCP's promotion and implementation of the OECD Guidelines. The impetus for the consultation was a report by the All Party Parliamentary Group on the Great Lakes Region of Africa, which criticised the UK NCP's handling of multiple complaints related to the UN Panel of Experts' reports on illegal exploitation of natural resources in the DRC.

While several NCPs have been consistent in meeting with stakeholders over the past several years, the number of NCPs that hold consultations does not appear to have increased overall. Transparency International and Germanwatch report that the German NCP has not held a consultation since 2005 and has yet to explain why. In Australia, one consultation took place; a second meeting was postponed to allow the case concerning GSL to conclude. The Berne Declaration reports that the Swiss NCP held its first consultation in May 2006. The Clean Clothes Campaign noted that the Austrian NCP organizes two or three meetings per year. Italian NGO Campaign for Reform the World Bank (CBRM) reports their NCP has never held a consultation. Similarly, the US NCP does not host consultations with NGOs.

● **Mishandling of complaints and the lack of administrative procedures**

The Belgian NCP recently rejected a case involving Nami Gems, which was one of four complaints filed in response to the UN Panel of Experts' 2002 and 2003 reports on illegal exploitation in the DRC. The case concerned Nami Gems' alleged tax evasion and diamond smuggling activities. The NCP rejected the case on the grounds that

the company's activities were not investment-related and in any event, they were no longer continuing.

Nami Gems was one of seven cases referred by the UN Panel of Experts for investigation by the Belgian government. So far, most cases have been declared inadmissible either because the NCP stated there were on-going parallel legal procedures or because of the lack of an investment nexus. One specific instance related to the Forest Group was concluded with recommendations that the company be more transparent about financial and environmental issues. NGOs have criticised the Belgian NCP for putting narrow commercial interests above the human rights of the communities in developing countries affected by the behaviour of Belgian companies.

In complex cases like the complaint concerning the Baku-Tbilisi-Ceyhan (BTC) oil pipeline, the lack of administrative procedures has been very problematic. Campaign for Reform the World Bank (CBRM) reports that the Italian NCP's handling of their case involving ENI, a member of the BTC consortium, has been extremely unsatisfactory. According to CBRM, after the complaint was filed in April 2003, the NCP did not contact them until October 2005 to organize a meeting. CBRM responded with information on their availability four times during October and November 2005. CBRM reports, "Only in December 2005, after one more communication from our side, the Italian NCP informed us that a first meeting had occurred with ENI" and that the NCP would follow the decision taken by the British NCP.

Meanwhile, the British NCP would only allow non-UK NGOs to have "observatory" status during meetings with BP despite the fact that 1) NGOs in five countries lodged cases with their NCPs; and 2) all NCPs had decided to defer to the UK. The UK NCP's bewildering procedural rule also prevented Azeri, Georgian and Turkish NGO representatives who are the direct representatives of communities from being active participants.

Canadian NGO L'Entraide Missionnaire reports that there is a lack of confidence in the Canadian NCP given its track record and refusal to assess alleged breaches. In addition, L'Entraide Missionnaire states that when Vernon McKay went on study leave, not enough resources were made available to continue the work of the NCP in his absence.

In the past year, two cases were filed in Canada and neither was resolved. After one meeting with NGOs and the company, the case concerning Anvil Mining's logistical role in a massacre in the DRC was rejected, because the NCP said it only mediates resolutions and does not carry out investigations.

The case concerning Ascendant Copper Corporation's activities in Ecuador is the most recent example of an NCP erecting a procedural roadblock. After agreeing to facilitate a meeting in Ecuador, the Canadian NCP insisted that a meeting with community leaders, NGOs and the company be confidential. However, the NGOs feared that a confidential meeting would exacerbate the already tense situation if community representatives were prohibited from reporting back to community members. They asked the NCP to see if the company would agree to have the meeting's outcomes transparent, but the NCP flatly refused. The NCP's intransigence illustrates why basic administrative procedures for handling cases are needed, as the ad hoc manner in which many NCPs handle cases procedurally continues to result in negative outcomes. In this case, the complainants had no other option but to withdraw their case.

It is also worth highlighting how when it comes to some aspects of the Guidelines, NCPs adopt quite a literal interpretation of the text that appears disadvantageous to NGOs. For example, NCPs' assertion that the Guidelines only apply to investment activities and not trade has resulted in many cases being rejected. However, when it comes to NCPs' obligations to issue statements when the parties cannot agree, they have taken a very liberal reading of the Procedural Guidance when this particular obligation could not be clearer.

● **The Guidelines' usefulness in changing corporate behaviour**

Brotherhood of St. Laurence predicts that the successful outcome on the GSL case "may encourage other NGOs in Australia to file a case...perhaps now that a test case has occurred, and a difficult case, this may encourage others to use the Guidelines". Norwegian NGO ForUM notes, "As it is the best (only) CSR framework we have, it has been a useful lesson to prepare, file, participate in NCP meetings and advocate the case". Pakistan NGO Citizens for a Better Environment reports:

The OECD Guidelines are useful in [our] work and for a country like Pakistan, they are helpful in providing an analytical framework for assessing and evaluating the relevant national rules, regulations and standards, in identifying shortcomings and suggesting appropriate changes. They are also useful in raising the awareness levels of civil society groups on issues related to CSR and in better equipping them to tackle and challenge violations of relevant standards/regulations.

However, there remains a lack of faith in the implementation procedures being able to produce good outcomes. The process is seen as quite daunting, because there are

often procedural roadblocks and again, the lack of administrative procedures that are understandable and applicable to all cases.

Many respondents listed measures that could improve implementation in their countries. Several echoed one of OECD Watch's recommendations in "Five Years On" to have a judge or an ombudsman that is independent of governments handle alleged breaches to the Guidelines. The growing popularity of this idea is symptomatic of many NCPs' failure to handle cases properly.

Austrian NGO Clean Clothes Campaign reports, "One member of government had the idea of setting up an award for NCPs to foster good practice/projects. The overwhelming feedback from NGOs [was] what sense does it make to establish an award if we have not even agreed on standards and criteria".

NCPs continued to be viewed as being overwhelmingly biased in favour of companies. They are also viewed as either too passive or obstructionist rather than helpful. US NGO Jus Sempter Global Alliance believes, "There is almost no interest on the part of the Mexican government regarding the NCP...the position of the government remains systematically supportive of corporations and against unions and civil society". Oxfam Novib feels that there needs to be "a political breakthrough to re-interpret the investment nexus. Without this breakthrough, there is little room for improvement". Pakistan NGO Citizens for a Better Environment reports, "Governments are on the defensive when confronted with [multinationals'] practices".

Another interesting development is NCPs that are not receiving cases may be using the lack of submissions to assert that no problems exist. In reality, many NGOs are so disenchanted with the process they are not submitting complaints. Germanwatch paraphrased a recent statement by the new German NCP: "If there are no cases, that means everything is fine with German companies, otherwise NGOs could file complaints". Swiss NGO Berne Declaration reports, "The weakness of the implementation of the OECD Guidelines and the rules of the complaint procedure are the reasons why the Swiss NCP is not actively used by Swiss NGOs".

The idea of peer reviews to improve implementation has also fallen by the wayside despite interest on the part of some NCPs. Similarly, the Investment Committee's crucial role as arbiter of procedures and interpreter of the Guidelines in order to maintain "functional equivalence" appears to be waning. Austrian NGO Clean Clothes Campaign reports that the NCP "does not like the notion of using the Investment Committee as a clarifying or appeal unit [as] the independence of the NCP seem to be important to it".

Many respondents reiterated their belief that there needs to be legally binding frameworks to curb irresponsible corporate behaviour. One NGO noted that the Guidelines are "mainly an awareness-raising tool to show that regulation of corporations can only be compulsory". It appears the overall experience with the Guidelines during the past year has only reinforced this view.

OECD Watch News

● **NGOs and business' statement on Guidelines' implementation in the UK**

A Joint Working Group (JWG) made up of NGOs and businesses – including Anglo American, Standard Bank, Barclays, Shell and De Beers – recently issued a statement outlining areas for improving implementation of the Guidelines in the UK as part of the Department for Trade and Industry's (DTI) consultation. The JWG, which was established under the aegis of the All Party Parliamentary Group on the Great Lakes Region of Africa (APPG), met between March and May 2006.

Under the neutral chairmanship of Lord Mance, a senior judge and law lord, the JWG's statement noted the potential of the Guidelines' procedures to play a useful and appropriate role, so long as they are properly implemented. The statement also stressed the importance of the procedures being credible, effective, fair, and timely and operating in accordance with due process and with proper safeguards against malicious, vexatious or insubstantial complaints.

While the JWG recognised that the primary focus of the Guidelines' procedures should be on mediation between the parties, it concluded that if mediation is unsuccessful, the NCP should reach a clear and reasoned finding on the substance of the allegations, whether they represent a breach of the Guidelines and offer practical recommendations to help improve compliance.

One interesting proposal put forward by the JWG is for an assessor, who if mediation fails, would examine the material available, hear arguments from both sides and resolve issues of fact as far as possible. The assessor would then issue a report on the substance of the allegations and whether they represented a breach of the Guidelines. The NCP would review this report and use it to make a final, public determination.

The JWG's recommendations have been submitted to DTI for consideration. The British government is expected to announce details on the revision to the UK NCP's procedures in time for the annual meeting of NCPs. For further information, contact Tricia Feeney, Rights and Accountability in Development at tricia.feeney@raid-uk.org.

Background note: Since the publication of the UN Panel of Experts' reports on the illegal exploitation of natural resources in the DRC, the APPG has undertaken a process of consultation and roundtable meetings on issues of corporate accountability, including a study on the functioning of the Guidelines' procedures. The JWG came together to explore the scope for common ground between business-

es and NGOs on providing frameworks for business conduct in areas of conflict and weak governance. The APPG's study and the JWG's terms of reference are available at www.appggreatlakes.org.

● **Canada's roundtables on CSR and the extractive industries**

The first of four roundtables to identify ways for Canadian extractive sector companies operating in developing countries to meet or exceed international standards and best practices will take place in Vancouver on 14-15 June and thereafter in Toronto (12-13 September), Calgary (18-19 October) and Montreal (15-16 November).

The roundtables are the Canadian government's response to a report by the Parliamentary Standing Committee on Foreign Affairs and International Trade, which recommended the government move away from its current voluntary approach to corporate social responsibility (CSR). While the government refused to adopt the majority of the Committee's recommendations, it did commit to hosting a series of roundtables. The themes are CSR standards and best practices; positive and negative CSR incentives; verification/assurance and dispute resolution; host country governance and capacity building; and support for industry implementation of CSR and best practices.

Civil society's analysis, "Moving Beyond Voluntarism", can be found at www.ccic.ca. For further information, contact Andrea Botto, Canadian Network on Corporate Accountability at cnca@halifaxinitiative.org.

● **Capacity-building in Eastern Europe**

In April 2006, OECD Watch and the Friedrich Ebert Foundation organised a two-day capacity-building seminar in Warsaw, Poland. The meeting brought together nearly 60 civil society representatives from nine Eastern European countries. Most of the participants were unfamiliar with the OECD Guidelines.

In addition to learning how the OECD Guidelines have been used by NGOs in their work to promote responsible corporate conduct and corporate accountability, attendees participated in a question and answer session with a representative from the Polish National Contact Point. Participants also heard from trade union representatives on their experiences with filing cases.

On the second day of the seminar, former employees of the Polish supermarket chain, Biedronka, which is owned

by the Portuguese multinational, Jeronimo Martins, described how workers' rights are abused by Biedronka management. The organizers designed workshops for participants to explore concrete steps for filing a complaint against Biedronka as a way of training them on the Guidelines' implementation procedures.

At the end of the seminar, many participants expressed an interest in using the Guidelines to hold companies to account for irresponsible social and environmental practices. However, many participants also expressed scepticism about the Guidelines given NGOs' experiences with cases over the past six years. They felt the Polish and other Eastern European NCPs should be challenged to implement the Guidelines effectively.

the Transitional government to be reviewed and renegotiated. Groups have alleged that the most lucrative concessions have been sold-off in a number of highly disadvantageous deals. ACIDH has also been accused of inciting tribal hatred in Katanga in order to sabotage the upcoming elections by calling on citizens not to vote for "alleged perpetrators of human rights abuses".

● **SOMO and IRENE host dialogues with business in the Netherlands**

In March 2006, Dutch NGOs IRENE and SOMO hosted two dialogues with business to hear their views on CSR and the role of the OECD Guidelines. ABN AMRO, Heineken, Nutreco, Berenschot, NBC/Vermogensbeheer as well as representatives from the Dutch Ministry of Economic Affairs were among the participants.

Issues such as the evolution of the Guidelines within the broader development of corporate values, companies' supply chain responsibilities, NCPs' procedures for handling complaints and some of the practical limitations of implementing the Guidelines were discussed. The possibility of business assessing their own adherence to the Guidelines was explored, as the number of companies that refer to the Guidelines is slowly increasing. Attendees also discussed how the Guidelines could help to create a level playing field between OECD-based and non-OECD-based multinationals. The dialogues observed the Chatham House Rule.

● **Threats against OECD Watch's Congolese members**

Representatives of Action Against Impunity for Human Rights (ACIDH) and African Association for the defence of Human Rights (ASADHO) – OECD Watch's Congolese members – have again received threats, including death threats, for speaking out about corruption and abuses in the DRC's mining sector. Both groups were the subject of campaigns of intimidation for their work to help the victims of the Kilwa massacre, a counter-offensive carried out by the Congolese military and aided by Anvil Mining in the form of logistical support in October 2004.

Congolese and international civil society groups are calling for all mining concessions that have been signed by

New cases submitted by NGOs

● Case filed against Botnia S.A. in Finland

In April 2006, Argentinean NGO Center for Human Rights and Environment (CEDHA) filed a complaint with the Finnish NCP concerning Botnia's Orion pulp mill project in Uruguay. CEDHA has alleged multiple and widespread breaches of the Guidelines. They cite a number of the project's expected impacts on local communities' economic livelihoods and human rights. The complainants also maintain that Botnia's project is plagued with environmentally related problems, including the company's failure to collect and provide reliable information about the project's real and foreseeable impacts. CEDHA reports that the NCP

has confirmed receipt of their case and will decide whether it merits further examination in early June.

Another pulp mill project is planned by Spanish multinational, ENCE. Both projects are straining diplomatic relations between Argentina and Uruguay. The government of Argentina has sued Uruguay at the International Court of Justice at The Hague for Uruguay's decision to allow construction of the two pulp mills in violation of the Uruguay River Treaty. According to CEDHA, Botnia's refusal to stop construction of its mill for 90 days while Uruguay and Argentina examined missing infor-

mation and conducted further impact studies essentially torpedoed presidential negotiations, which had finally begun to advance.

CEDHA reports that ING Group is no longer considering financing the Botnia project. Also in April, the World Bank's private sector lending arm, the International Finance Corporation, announced it was postponing consideration of loans for both projects until the shortcomings in the environmental and social assessments could be addressed. For more information, go to www.cedha.org.ar/en/initiatives/paper_pulp_mills.

● Two cases filed against Royal Dutch Shell in the Netherlands and Brazil

In May 2006, several NGOs lodged two complaints with the Dutch and Brazilian NCPs concerning Royal Dutch Shell's activities in the Philippines and Brazil. In one case, the groups cite Shell's refusal to comply with the Brazilian Government's January 2005 demand that it stop the practice of storing chemicals at and below their facilities, which the company has done for over 20 years. The government also called on Shell 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 that Shell has demonstrated little concern for their own employees and local residents.

The complainants have also accused Shell of manipulating local authorities in the Philippines. They charge that Shell has withheld information from local residents and employees about the environmental, health and safety impacts of its operations. They also alleged that Shell is failing to maintain

plans and adopt technologies to mitigate potential hazards at its oil depot. The complainants include Coletivo Alternativa Verde (CAVE, Brazil), Fence-line Community for Human Safety and Environmental Protection (Philippines), Friends of the Earth International, Friends of the Earth Netherlands (Milieudefensie), and the Labour Union of Petroleum By-Products Workers in the State of São Paulo (SIPETROL, Brazil). For more information, go to www.oecdwatch.org/docs/Shell_complaint_Brazil_Philippines.pdf.

● Case filed against Ratiopharm in Germany

In April 2006, Transparency International Germany filed a case with the German NCP in response to media reports that Ratiopharm, a German multinational pharmaceuticals com-

pany and major producer of generic drugs, has engaged in unethical marketing behaviour, including misinformation and bribery of doctors and pharmacists. Transparency Inter-

national has asked the NCP to ascertain whether the company has breached Guidelines' provisions on disclosure and combating bribery.

OECD Consultations

● Oxfam Novib assesses the Policy Framework for Investment

In May, several European NGOs including Oxfam Novib, SOMO, the Dutch Southern Africa Institute (NIZA), the International Institute for Sustainable Development (Canada) and WEED (Germany) met with Rainer Geiger, the OECD's Deputy Director for Financial and Enterprise Affairs to discuss the Policy Framework for Investment (PFI).

The PFI is a “non-prescriptive checklist of issues for consideration by any interested governments” seeking to attract investment. It aims to promote substantial domestic reforms to increase investment. It also calls for aid to be more oriented towards building capacity to undertake such reforms and to absorb investment.

A major issue for NGOs is investment should not be viewed as the goal per se and that attracting more investment does not automatically mean more development; rather investment should serve the wider goal of sustainable development. While the PFI makes a general reference to the Millennium Development Goals, the text is not specific on how these can be achieved by implementing the PFI.

At the NGOs urging, the PFI now emphasises further that investment is not the intrinsic goal (in line with the World Trade Organisation's preamble). While this change could make a difference, particularly in dispute settlements, there is no guarantee it will. A link with investment disputes is not formalised, but it could be possible as investment arbiters look at relevant policy documents for guidance in these disputes. It is apparent that the OECD hopes the PFI document will be used in this regard.

The PFI also does not define what good investment is and it does not suggest instruments that countries could use to select investments based on their contribution to sustainable development. NGOs noted that a methodology to assess the consequences of investment for sustainable development is still needed.

The NGOs also raised concerns with combining “non-discrimination” with “national treatment” principles in investment agreements. While “non-discrimination” is nearly always equated with “national treatment”, the two concepts are very different. National treatment in all investment agreements means that foreign investors are treated “at least as favourable as domestic industry”. In practice, this allows for a broad spectrum of more favourable treatment for foreign investors, and thus less favourable treatment for domestic investors. Favourable treatment for for-

ign investors is very common, notably through tax exemptions. Non-discrimination, on the other hand, means equal treatment for both foreign and domestic investors. The PFI notes this important distinction, which is the first time an institution has recognised that the national treatment principle in investment agreements is discriminatory.

Another issue raised by the NGOs is the PFI appears to be mainly an instrument to increase foreign investment. While some measures are geared towards increasing domestic investment as well, the PFI largely refers to international instruments for promoting foreign investment. The OECD has committed to developing a guide that outlines how the PFI principally benefits small and medium-sized enterprises.

The PFI is not as one-sided as other investment agreements such as the Multilateral Agreement on Investment, which OECD governments tried to adopt in the 1990s. It also benefited from wider consultation with non-OECD countries like Chile, South Africa and India. Presumably, the OECD hopes it will set the framework for a future global investment treaty. One way of realizing this goal is to see it adopted and used by inter-governmental institutions like the IMF and World Bank in their policy dialogues with developing countries.

As a policy framework, the PFI is not a formal agreement or treaty among OECD member states. The OECD will review it over the next two years, though experience suggests the text will probably remain the same unless something odd happens. The PFI's unique status could mean it is used extensively in a variety of policy-making fora and thus it is a *potentially* very important instrument that NGOs should closely monitor.

● OECD improves PFI's CSR chapter, but comes up short on companies' obligations

UK-based Rights and Accountability in Development (RAID) reports that governments have improved the PFI's chapter on policies for promoting responsible business conduct. The text of section 7.1 now includes explicit language that implies governments should effectively enforce laws on respecting human rights, environmental protection, labour relations and financial accountability – the absence of such language was a point RAID raised in its comments on the PFI. The annotation for section 7.1 also states that companies' responsibilities go beyond complying with legal and regulatory requirements and include “responding to societal expectations that might be com-

municated through channels other than law" (which is further elaborated in the annotation for section 7.2). RAID also supports improvements made to section 7.6 and its annotation, which are now more specific on the existing and emerging legal framework for appropriate business conduct.

However, OECD governments stopped short of stating that companies should adhere to internationally agreed standards and law to protect human and workers' rights and the environment. The demonstration effect of responsible business behaviour that is consistent with relevant international standards and law would inevitably help bolster governments' efforts to combat corruption, uphold human and labour rights and protect the environment.

● **OECD to adopt "Risk Awareness Tool"**

In early 2005, the OECD's Investment Committee launched a process to explore the unique issues and challenges companies face when investing in post-conflict/conflict-prone areas and countries with weak governance. These discussions came about from the experiences with complaints concerning illegal exploitation in the DRC and issues raised by trade unions concerning companies operating in Myanmar. The first phase of this process has now concluded with the creation of a "Risk Awareness Tool", which the OECD Council is set to adopt in June 2006.

The new tool includes a comprehensive set of questions companies may need to consider when investing in these higher risk areas. However, NGOs and some business representatives alike have complained that while the new tool asks many important questions, it does not provide enough guidance. It does made reference to a number of best practice instruments, including the US-UK Voluntary Principles on Security and Human Rights and the Extractive Industries Transparency Initiative. However, further guidance is needed that draws clearer lines between acceptable and unacceptable behaviour on how to operate in areas where the host government is unwilling or unable to enforce the rule of law.

At the last meeting of the Investment Committee in April 2006, the US NCP proposed that OECD Watch and the Business and Industry Advisory Committee to the OECD (BIAC) discuss developing a follow-up document to the Risk Awareness Tool such as a toolkit that the Committee could consider. BIAC has insisted that any new instrument should not be regarded as part of the OECD Guidelines for Multinational Enterprises. However, OECD Watch

is of the view that the Risk Awareness Tool and a possible toolkit should be used to guide NCPs in their consideration of specific instances in addition to providing companies with much-needed guidance. It remains to be seen whether NGOs and BIAC will be able to find common ground in this regard. For further information, contact Tricia Feeney, Rights and Accountability in Development at tricia.feeney@raid-uk.org.

● **Update on "parallel legal proceedings" debate**

In March 2006, the OECD Investment Committee published a "Draft Summary of Discussions" (Draft) concerning specific instances that are subject to parallel legal proceedings, a topic the Committee has been deliberating since 2002. "Parallel legal proceedings" is the term NCPs use when a complaint deals with business behaviours that are also the subject of other proceedings at the sub-national, national or international level. According to the Draft, "these proceedings may be of the following types: 1) criminal, administrative, or civil; 2) alternative dispute settlement proceedings (arbitration, conciliation or mediation); 3) public consultations; or 4) other enquires (e.g. by UN agencies).

The Draft describes a host of considerations that NCPs might take into account when they receive complaints that are subject to parallel legal proceedings. There are more reasons given for not considering these cases than otherwise – some of which are clearly legitimate such as the existence of national legislation the would prohibit an NCP from taking a case on board.

However, other reasons are more subjective, such as the assumption that the existence of parallel proceedings creates an "adversarial state of mind", thus leading NCPs to assume companies would not want to participate in a specific instance process. It appears NCPs could essentially decide from the outset that parallel proceedings would prohibit the possibility of finding a resolution through the Guidelines' procedures. This view ignores NCPs' obligations to issue a statement if parties to a case cannot find a resolution. In OECD Watch's view, if a company refused to participate in the process, the NCP can and should still consider the alleged breaches and issue a statement after due consideration and consultation.

Another problematic assumption relates to NCPs' unwillingness or hesitancy to accept these cases because of a possible "infringement of national sovereignty". Many

cases are submitted precisely because of the weakness of host country governance and institutions. Issues that call into question the host government's policies (or implementation thereof) could prove challenging to address in some instances. However, it is difficult to see how considering a companies' activities against the Guidelines infringes national sovereignty. Investor and trade agreements can and have eroded national sovereignty, but the Guidelines as a voluntary CSR instrument and the implementation procedures as a non-adversarial method for problem solving, simply cannot.

The Draft notes that the summary of discussions on parallel legal proceedings should not be viewed as the final word on the subject. However, in producing the Draft, it appears that the Investment Committee may be moving towards formalizing some sort of procedure or checklist for handling these cases. Currently, however, NCPs will continue to consider complaints on a case-by-case basis. The existence of this document could help inform NGOs that are considering filing cases on some of the issues they should consider, though OECD Watch cautions that it should not be viewed as prescriptive as many of the assumptions can and should be challenged. For more information, contact OECD Watch at info@oecdwatch.org.

New OECD Watch Members

Since March 2006, two organisations have joined OECD Watch, bringing the total number of members to 53 organisations representing 30 countries.

● Citizens for Justice Malawi

Founded in 2005, Citizens for Justice Malawi (CFJ Malawi) was formed to raise awareness about uranium mining in Malawi, promote and defend social justice and protect the rights of indigenous people. CFJ Malawi's goal is to make certain uranium mining brings about desired economic and social benefits, ensure the impacts of mining on people and the environment are greatly mitigated and that multinational enterprises attend to all human rights, environmental and social concerns. For more information, go to www.citizensforjusticemalawi.org.

● Green Alternative Collective (Coletivo Alternativo Verde), Brazil

Green Alternative Collective's (CAVE) principal objectives are to defend social ecology and the rights of traditional and indigenous communities. The Brazilian organisation conducts research and publishes reports on the behaviour of multinational enterprises that work in the field of petrochemicals. CAVE has recently filed an OECD Guidelines case against Royal Dutch Shell and ExxonMobil for breaching the OECD Guidelines. For more information, go to www.cave.org.br.

Current case statistics

As of May 2006, 52 cases have been presented by NGOs.

Status		Number of Cases
Filed	The NGO has sent the complaint to the NCP	5
Pending	The NCP has confirmed that it is admissible and the specific instance procedure is underway	13
Concluded	The NCP has reached a decision and issued a statement or the case was settled outside the NCP forum	14
Closed	The NCP has started the case but dropped it before issuing a statement	2
Rejected	The NCP has formally rejected the case	10
Withdrawn	The complainants have decided to withdraw the case	2
Blocked	The NCP is not clear about the status of the case (no formal rejection, but no intention of accepting it as specific instances either)	6

Chapter of the OECD Guidelines		Number of Cases
Chapter I	Concepts and Principles	8
Chapter II	General Policies (including human rights and supply chain issues)	42
Chapter III	Disclosure	14
Chapter IV	Employment and Industrial Relations	17
Chapter V	Environment	24
Chapter VI	Combating Bribery	11
Chapter VII	Consumer Interests	2
Chapter VIII	Science and Technology	0
Chapter IX	Competition	7
Chapter X	Taxation	3

Quarterly case update

The following tables provide an overview of the cases filed by NGOs that are currently classified as filed, pending or recently concluded. The cases are presented in reverse chronological order, beginning with the most recent.

Case	Shell's behaviour in the Philippines and Brazil
Company/ies	Status
Royal Dutch Shell	Filed
ExxonMobil	Filed
Complainants	Coletivo Alterna tiva Verde (CAVE, Brazil), Fenceline Community for Human Safety and Environmental Protection (Philippines), Friends of the Earth
Date filed	15-05-2006
NCP(s) concerned	The Netherlands, Brazil
Guidelines' chapter(s) & paragraph(s)	Chapter II (General Policies), para 1, 5; Chapter V (Environment), para 1, 3, 4

Issues

In the Philippines, Shell is accused of manipulating local authorities and failing to adequately inform local residents and employees about the dangers of its operations. This involves the withholding of information on the environmental, health and safety consequences of Shell's activities. Furthermore, the company lacks plans to diminish the dangers around its oil depot. In São Paulo, Brazil, the main allegations concern chemicals that Shell and ExxonMobil have stored at and below their facilities for over twenty years. In January 2005, the Brazilian government demanded that the companies stop this practice and help workers and local residents with health complaints related to chemicals and heavy metals in their blood. However, the companies have not taken a proactive response to this requirement and have shown little concern for their own employees and local residents.

Developments/Outcome

The Dutch NCP has confirmed receipt of the complaint and is conducting an initial assessment.

Case	Rationpharm accused of bribery and unethical behaviour
Company/ies	Status
Rationpharm	Filed
Complainants	Transparency International Germany
Date filed	20-04-2006
NCP(s) concerned	Germany
Guidelines' chapter(s) & paragraph(s)	Chapter III (Disclosure); Chapter VI (Combating Bribery)

Issues

According to investigations by reputable media, Ratiopharm, a German multinational pharmaceuticals company and major producer of generic drugs has engaged in unethical marketing behaviour, including misinformation and bribing of doctors and pharmacist.

Developments/Outcome

On May 4, 2006, the NCP sent a letter to the complainant acknowledging receipt. The complainant is now waiting for the NCP to conduct the initial assessment.

Case	Botnia's pulp paper mill in Uruguay
Company/ies	Status
Oy Metsä-Botnia	Filed
Complainants	Fundación Centro de Derechos Humanos y Ambiente (CEDHA)
Date filed	18-04-2006
NCP(s) concerned	Finland
Guidelines' chapter(s) & paragraph(s)	Chapter II (General Policies), para 1, 2, 5; Chapter III (Disclosure), para 1; Chapter V (Environment), para 1, 3, 2, 4, 5, 6

Issues

CEDHA has alleged multiple and widespread breaches of the Guidelines, including a number of the project's expected impacts on local communities' economic livelihoods and human rights. The complainants also maintain that Botnia's project is plagued with environmentally related problems, including the company's failure to collect and provide reliable information about the project's real and foreseeable impacts.

Developments/Outcome

After sending a follow-up letter to the NCP a one month after submitting the case to request that the NCP acknowledge

receipt and make an initial assessment, CEDHA reports that the NCP has now confirmed receipt of their case and will decide whether it merits further examination in early June.

Case	Aker Kværner ASA and Kværner Process Services Inc.'s involvement in Guantanamo Bay prisons
Company/ies	Status
Aker Kværner ASA	Concluded 11/2005
Complainants	Forum for Environment and Development (FoRUM)
Date filed	20-06-2005
NCP(s) concerned	Norway
Guidelines' chapter(s) & paragraph(s)	Chapter II (General Policies), para 2

Issues

Since 1991, the Norwegian corporation Aker Kværner ASA, through its wholly owned subsidiary company Kværner Process Services Inc. (KPSI) has carried out assignments for the US Department of Defence at Guantanamo Bay, Cuba. In 2001, the scope of activities was expanded to include the building and maintenance of facilities for the incarceration of captives taken during military operations from, among other places, Afghanistan. ForUM alleges that Aker Kværner, through its subsidiary KPSI, has breached Chapter 2, §2 by contributing to a prison system that abuses international law and core human rights.

Developments/Outcome

The NCP held two joint meetings with the NGO and the company on September 5 and October 26, 2005. In addition, there has been some correspondence between the meetings. Aker Kværner has confirmed that they are pulling out of Guantanamo Bay, but the official reason is allegedly losing a bid for a contract. According to the company, they should pull out by the end of 2005. The NGOs are very content with the decision to pull out, and believe that their effort has also played a part in the company's decision. On November 29, 2005, the NCP issued a statement reprimanding the company and noting, "the activities that the company has carried out can be said, at least partly, to have affected the inmates of the prison." The NCP further concluded, "Aker Kværner could have delivered a great deal more documentation without compromising customer confidentiality" and "strongly encouraged" the company to draw up guidelines for ethical behaviour. The complainants are pleased with the outcome.

Case	Ascendant Copper Corporation' Junín mining project in the cloud forests of Ecuador
Company/ies	Status
Ascendant Copper Corporation (ACC)	Withdrawn 01/ 2006
Complainants	Defensa y Conservación Ecológica de Intag (DECOIN) (Ecuador), Friends of the Earth Canada, MiningWatch Canada
Date filed	18-06-2005
NCP(s) concerned	Canada
Guidelines' chapter(s) & paragraph(s)	Chapter I, paragraph 7; Chapter II, paragraphs 2, 5, 10; Chapter III, paragraphs 1, 4e, 4f, 5c; Chapter V, paragraphs 2a, 2b

Issues

The complaint concerns ACC's "Junín" project ("Golden 1" and "Golden 2" mining concessions) located in the Junín area of Cotacachi County, Imbabura Province, Ecuador. The complaint states that ACC has not disclosed material information to the public and potential shareholders concerning its Junín project, including information on: pending legal actions by the Cotacachi County government challenging the legality of the Junín concessions; a land ownership dispute that could lead to militarization in the project area; and intense opposition from local representatives and government officials to the potential forced relocation of four communities and the proposed mining activities generally. The complaint requests that the Canadian NCP also assess whether ACC has: disclosed reliable exploration data regarding mineral reserves; engaged in improper political activities to seek an exemption to an environmental regulatory framework; violated Ecuador's Constitution and the national mining law for failing to obtain authorization from officials and local communities to conduct exploratory activities; and address allegations of human rights abuses that have been levelled by a prominent Ecuadorian human rights organization.

Developments/Outcome

After agreeing to facilitate a meeting in Ecuador, the Canadian NCP insisted that a meeting with community leaders, NGOs and the company be confidential. However, the NGOs feared that a confidential meeting would exacerbate the

already tense situation if community representatives were prohibited from reporting back to community members. They asked the NCP to see if the company would agree to have the meeting's outcomes transparent, but the NCP flatly refused. The complainants had no other option but to withdraw their case.

Case	Anvil Mining's logistical role in a massacre in the DR Congo
Company/ies	Status
Anvil Mining Corporation	Rejected 05/2006
Complainants	Rights and Democracy, L'Entraide Missionnaire
Date filed	17-06-2005
NCP(s) concerned	Canada
Guidelines' chapter(s) & paragraph(s)	Chapter II (General Policies), para 2

Issues

In October 2004, Anvil Mining, an Australian/Canadian company provided logistical help to the Congolese military in a massacre killing at least 100 people in the remote town of Kilwa. The complaint is based on the report of the Congolese human rights organisation Association Africaine de Défense des Droits de l'Homme (ASADHO-Katanga), "Rapport sur les violations des droits de l'homme commises à Kilwa au mois d'Octobre 2004". The fact that Anvil Mining Corporation of Canada provided logistical assistance in the form of air and ground transportation to the Congolese military has been acknowledged by the company in their press releases of 7 and 21 June 2005.

Developments/Outcome

After the filing of the case on 17 June, Anvil issued a press release on 21 June denying the accusations made against it in the complaint. On 3 August, the Canadian Ministry of Foreign Affairs invited NGOs and the company to meet. The Canadian NCP was present. In May 2006, the Canadian NCP rejected the Anvil case on the grounds that the NCP was not able to investigate the facts. According to the NCP, it is not able to carry out investigations of the type requested by the complainants.

Case	Global Solutions Limited's detention centres in Australia
Company/ies	Status
Global Solutions Limited (Aus) Pty Ltd	Concluded 04/2006
Complainants	Human Rights Council of Australia, ChilOut, International Commission of Jurists, Rights and Accountability in Development (RAID), Brotherhood of St. Laurence (BSL)
Date filed	15-06-2005
NCP(s) concerned	Australia, United Kingdom
Guidelines' chapter(s) & paragraph(s)	Chapter II (General Policies), para 2; Chapter VII (Consumer Interests), para 4

Issues

GSL (Australia) invests in and manages immigration detention centres in Australia. The groups alleged GSL breached the Guidelines by acquiescing in the detention of children in its immigration detention centres and failing to remove the children following recommendations of health care professionals. The case asserts GSL is facilitating violations of the Convention on the Rights of the Child and is also in breach of the human rights provision for failing to act on the recommendations of international human rights bodies concerning: the automatic and indiscriminate character of detention of asylum seekers, in contravention of Article 9 of the International Covenant on Civil and Political Rights; the indefinite nature of detention of asylum seekers including those who have failed in their applications for recognition as refugees, in contravention of Article 9 of the International Covenant on Civil and Political Rights; and the penalising of asylum seekers who enter Australia without valid documentation, in contravention of Article 31 of the Refugee Convention. The complaint states GSL is also violating the consumer interest provision by misrepresenting its policies, procedures and practices about human rights. GSL claims to be "committed to promoting best practice in human rights". A complaint has been filed simultaneously by the same groups with the UK NCP concerning the parent company, Global Solutions Limited.

Developments/Outcome

The NGOs raised the complaint at the Annual meeting of NCPs at the OECD in Paris on 15 June 2005. On 17 June, the Australian government announced that it was going to transfer all families – not just families seeking asylum - from detention centres to community detention. This is seen as a welcome first step by the complainants. The NCP held several meetings with the complainants during its initial assessment and officially accepted the case on 1 August 2005. In general, the complainants are happy with how the NCP has conducted the case. There has been a good deal of communication, clear procedural guidelines and transparency. This is particularly encouraging given the extreme sensitivity of this issue and

the public spotlight on related issues. On 6 April, the case against GSL Australia was concluded. In the final statement the NCP states: "A significant outcome was the value both parties gained in engaging openly on the human rights aspects of GSL Australia's operations. The discussion was frank and robust and enabled consideration of potential solutions." GSL Australia agreed to improve the conditions in the detention centres. The ANCP congratulated GSL Australia and the complainants for engaging constructively in a manner that will contribute to resolving many of the issues considered in this specific instance.

Case	Alcoa and Grupo Votorantim's hydroelectric dam in Barra Grande, Brazil
Company/ies	Status
Alcoa Alumínios S.A	Pending
Grupo Votorantim	Pending
Complainants	Terra de Direitos, Movimento dos Atingidos por Barragens (MAB)
Date filed	06-06-2005
NCP(s) concerned	Brazil
Guidelines' chapter(s) & paragraph(s)	Chapter V (Environment), para 1, 3, 4; Chapter II (General Policies), para 2, 5

Issues

Alcoa Alumínios S.A. and the Companhia Brasileira de Alumínio/Grupo Votorantim are alleged to have violated various human, economic, social, cultural, and environmental rights in the construction of the Barra Grande hydroelectric plant in the states of Santa Catarina and Rio Grande do Sul, Brazil. The complainants maintain that the companies utilized a fraudulent environmental impact assessment conducted by the company Engevix Engenharia S.A. in 1999. Despite being aware of the fraudulent nature of the assessment, the Baesa Consortium went ahead with exploration and used the flawed assessment to justify its disregard for its commitments to sustainable development.

Developments/Outcome

The Brazilian NCP received the case and held a meeting with the NGOs and the nine executive Ministers of the Brazilian NCP, in which they questioned the NGOs about the recommendations of the World Commission of Dams (WCD). In September 2005, the NGOs met with the head of the NCP, who promised to organize more meetings, but admitted that the current political situation in Brazil would make it difficult to resolve the case. The NGOs have heard from unofficial sources that the NCP plans to close the case due to a lack of evidence about the behaviour of the companies, but the NGOs believe that they do have sufficient evidence. The NGOs continue to monitor Baesa's fulfilment of the conditions in the Adjustment of Conduct Terms.

Case	Bribery in UK Export Credit Program
Company/ies	Status
BAE Systems	Pending
Airbus S.A.S.	Pending
Rolls Royce	Pending
Complainants	The Corner House
Date filed	01-04-2005
NCP(s) concerned	United Kingdom, France
Guidelines' chapter(s) & paragraph(s)	Chapter VI (Combating Bribery), para 2

Issues

The complainant alleges that the companies' refusal to provide details of their agents and agents' commissions to the UK Government's Export Credit Guarantee Department represents a violation of the bribery provision of the Guidelines.

Developments/Outcome

In May 2005, the NCP accepted the complaint and forwarded it to the companies concerned for comment. The complainants are still waiting for a response from the companies.

Case	Nami Gem's alleged diamond smuggling and tax evasion activities in the DR Congo
Company/ies	Status
Nami Gems	Rejected 05/2006
Complainants	Vlaamse Noord-Zuid beweging (11.11.11: Flemish North-South Movement), Rights and Accountability in Development (RAID), Proyecto Gato, Groupe de Recherche pour une Stratégie économique alternative (GRESEA)
Date filed	24-11-2004

NCP(s) concerned	Belgium
Guidelines' chapter(s) & paragraph(s)	Chapter II (General Policies), para 1, 2, 3, 4, 6, 7, 11; Chapter III (Disclosure), para 1, 2, 4, 5; Chapter IV (Employment and Industrial Relations), para 4; Chapter V (Environment), para 1, 2, 3, 7; Chapter IX (Competition), para 2

Issues

Nami Gems, according to the UN Panel of Experts, allegedly worked with La Societe Victoria, a company run by a Ugandan elite network. A Ugandan judicial commission of inquiry also implicated Nami Gems in the smuggling of diamonds from foreign and rebel-controlled northeastern DRC. Nami Gems is also alleged to have: evaded taxes; hidden revenues and failed to provide to the relevant authorities the information necessary for the correct determination of taxes by smuggling of diamonds from DRC through Uganda to Belgium; provided, by evading taxes, unfair competition to legitimate buyers that legally value and declare their merchandise and must therefore pay sales and export taxes; failed to apply good corporate governance practices; failed to encourage their business partner to apply principles of corporate conduct compatible with the Guidelines; and violated the existing Congolese regulations and provided financial resources to MLC rebels.

Developments/Outcome

In May 2006, the complainants received a statement from the Belgian NCP declaring that the case had been rejected on the grounds that things have changed for the better since the facts of the case and there is no investment nexus. One of the complainants, GRESEA, responded to the statement with a press release criticizing the Belgian NCP's refusal to take a position on past violations.

Case	Bayer's supply chain includes child labour in India
Company/ies	Status
Bayer	Pending
Complainants	Germanwatch, Coalition Against Bayer Dangers (CBG), Global March Against Child Labour
Date filed	11-10-2004
NCP(s) concerned	Germany
Guidelines' chapter(s) & paragraph(s)	Chapter IV (Employment and Industrial Relations), para 1; Chapter II (General Policies), para 10

Issues

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 in 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 is negatively affected. Procurement prices paid for cottonseeds 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

After having received comprehensive comments from 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 in the meeting's 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 has not produced a response. In May 2006, the NGOs resent their request, this time through the NCP. In the meantime, independent research has revealed that there are still 450-500 children working in the fields producing for ProAgro/Bayer, meaning that there is a reduction in the number of children, but that the problem is still not resolved.

Case	DAS Air's role in the DR Congo conflict
Company/ies	Status
DAS Air	Pending
Complainants	Rights and Accountability in Development (RAID)
Date filed	28-06-2004
NCP(s) concerned	United Kingdom
Guidelines' chapter(s) & paragraph(s)	Chapter II, 2 and 10

Issues

DAS Air (Dairo Air Services) was, according to the UN Panel, involved in the transportation of coltan from the eastern DRC to the benefit of the Ugandan backed RCD-ML rebel force. DAS Air's activities appear to be incompatible with the provisions under the Guidelines requiring respect for human rights and contributions to economic progress and sustainable development.

Developments/Outcome

In July 2004, the NCP accepted the complaint against DAS Air, but RAID was locked out of the negotiation process for one year. RAID was re-admitted in May 2005. The company moved to close the case in December 2005, but based on material from the official Uganda Judicial Commission of Inquiry, the complainants were able to provide evidence that DAS Air had made regular flights into the DRC from the military airport in Entebbe. The complainants sent this additional information to the UK NCP in April 2006. Since then there has been no response from the company. Once this case is concluded, the UK government is committed to issuing a statement to Parliament on its handling of the UN Panel cases.

Case	BP's role in the Baku-Tbilisi-Ceyhan oil pipeline
Company/ies	Status
BP p.l.c.	Pending
Complainants	Campagna per la Riforma della Banca Mondiale (CRBM), FERN, Friends of the Earth (FoE) France, FoE United States, FoE Netherlands (Milieudedefensie), PLATFORM, Urgewald, World Economy, Ecology & Development (Weed), Germanwatch, FoE Germany (BUND), FoE England, Wales and Northern Ireland, The Corner House
Date filed	29-04-2003
NCP(s) concerned	United Kingdom, France, Germany, Italy, United States
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

Issues

The Baku-T'bilisi-Ceyhan (BTC) oil pipeline is a proposed pipeline that would span 1,760 kilometres from the Azerbaijan capital of Baku, through T'bilisi Georgia, ending in the Mediterranean city of Ceyhan, Turkey. A gas pipeline is also said to follow the same route. British Petroleum (BP) is the lead sponsor; there are nine other participants in the consortium. The BTC consortium is seeking the political and financial support of their countries' export credit agencies, the European Bank for Reconstruction and Development and the International Finance Corporation of the World Bank Group. The consortium is accused of seeking tax and law exemptions and undue influencing of governments in construction of Pipeline in Georgia and Turkey. The complainants argued that the consortium had: exerted undue influence on the regulatory framework for the project; sought or accepted exemptions related to social, labour, tax and environmental laws; pressured the Georgian environment minister to approve the Environmental Impact Assessment despite the minister's protests that it violated Georgian law (the minister actually wrote a letter to BP, dated 26 November 2002, where he confirmed that BP representatives were requesting the Georgian government to violate their own environmental legislation); and 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 when constructing a Pipeline in Azerbaijan, Georgia and Turkey. Concerns were also expressed over failure to adequately consult with project-affected communities and failure to operate in a manner contributing to goals of sustainable development.

Developments/Outcome

The complaint was declared eligible by the UK NCP in August 2003. In March 2004, almost one year after the filing of the complaint, BP responded to the complaint stating that they thought the project complied with the OECD Guidelines. The fact that a funding package has been approved, which makes the UK government a financial stakeholder in the BTC, led the NGOs to doubt the impartiality of the UK NCP. There were also concerns about the NCP's delays in dealing with the case. In October 2004, the NGOs sent a letter to the NCP, expressing concern about the ECGD's statement that the BTC project complied with the OECD Guidelines and its decision to support the project. After more delay, in October 2005,

the UK NCP visited with affected community members and NGOs in Azerbaijan, Georgia and Turkey. The NCP organized his trip in close collaboration with both the complainants and BP to ensure all parties were satisfied with the terms of reference. The NCP that carried out the information-gathering trip has now left his post. The new UK NCP held one meeting with the NGOs and company. After the meeting, NGOs report, "The NCP is of the view that there is no prospect of the parties reaching agreement on the issues raised in the Specific Instance and the Complaint should therefore be brought to a close. This view is shared by BP which has stated that it will not seek further dialogue or participate in further meetings with the Complainants". The Complainants are now waiting for the NCP to issue a statement.

Case	Toyota's anti-trade union practices in the Philippines
Company/ies	Status
Toyota Motor Corporation	Pending
Complainants	Protest Toyota Campaign (PTC), Toyota Motor Philippines Corporation Workers' Association (TMPCWA)
Date filed	04-03-2004
NCP(s) concerned	Japan
Guidelines' chapter(s) & paragraph(s)	Chapter IV (Employment and Industrial Relations), para 1, 6, 7, 8; Chapter II (General Policies), para 2

Issues

Toyota Motor Corporation Philippines (TMCP) refuses to recognize the existence of the TMPCWA, an independent trade union. Not only does the company do everything in its power to hinder the right to association and collective bargaining, it also represses unionists, 227 of whom have been terminated illegally. To protest against the dismissals and support their colleagues deprived of an income, the workers organized a picket line outside the two Toyota production sites. However, the firm obtained the intervention of the police who, with private vigilantes, violently dispersed the protestors.

Developments/Outcome

More than eight months after the filing of the complaint, the Japanese NCP finally responded with a letter in December 2004 stating that it would take no action on the case until a related case in a Philippine court of appeals was resolved. In December 2004, the complainants expressed their disappointment with the NCP's (non)handling of the case. The Protest Toyota Campaign met with the NCP in February 2005. At the meeting, only the foreign and labour ministries were present. The Ministry of Economy was not present, nor was any representative from Toyota present or invited. The NCP maintained that it will not take any action or work toward resolution in Japan until the court case in the Philippines is finalized. The Protest Toyota Campaign has met with Toyota's PR department three times outside the NCP forum at Toyota's headquarters in Tokyo, but there has been no movement on the issues.

Case	Anglo American mining activities in Zambia
Company/ies	Status
Anglo American Plc	Pending
Complainants	Rights and Accountability in Development (RAID), Afronet, Citizens for a Better Environment (CBE)
Date filed	27-02-2002
NCP(s) concerned	United Kingdom
Guidelines' chapter(s) & paragraph(s)	Chapter II (General Policies), para 1, 2; Chapter IX (Competition), para 1, 3; Chapter V (Environment), para chapeau, 2; Chapter III (Disclosure), para 2

Issues

This 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; and inadequate disclosure and accountability. In early 2002, Anglo American plc withdrew from Zambia in order to concentrate its investments in Latin America.

Developments/Outcome

For almost a year after the filing of the complaint, the UK NCP refused to take any action on the case; another year was wasted when the company questioned the NCP's jurisdiction and the scope of the Guidelines. The matter had to be referred to the Investment Committee for a ruling, which found in favour of the case continuing. The NGOs submitted their final response to the company in April 2005, but Anglo American has refused to enter into the dialogue process. The complainants are concerned that Anglo American has misinterpreted the Investment Committee's clarification about the scope of the Guidelines. The complainants are preparing to draft concluding remarks to enable to the NCP to finalise the case, more than four years after its filing.



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OECD Watch is an international network of 53 civil society organisations promoting corporate accountability. The purpose of OECD Watch is to test the effectiveness of the OECD Guidelines for Multinational Enterprises and to inform the wider NGO community about the policies and activities of the OECD's Investment Committee.

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 **OECD Watch**

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SOMO

CALENDAR OF EVENTS

June 16

London, United Kingdom

- Amnesty International
Open meeting for NGOs with Professor John Ruggie, the UN Secretary-General's Special Representative for Business and Human Rights (SRSG)

June 19-23

Paris, France

- OECD Annual Meeting of NCPs
19th: OECD Roundtable on Corporate Responsibility: Developing a proactive approach to the OECD Guidelines for Multinational Enterprises
20th: Consultations with BIAC, TUAC and NGOs

July 3-7

Tarkwa, Ghana

- OECD Watch
Interregional Seminar Africa

September 11-15

Paris, France

- OECD
Investment Committee (Consultations with BIAC, TUAC and NGOs 7 September)

September 26

Rotterdam, Netherlands

- Ministry of Economic Affairs of the Netherlands
Workshop on CSR and Trade: Informing consumers about Corporate Social Responsibility (CSR) in production and international trade

October 4-6

Amsterdam, The Netherlands

- The Amsterdam global conference on transparency and sustainability
Global Reporting Initiative (GRI)

November

Istanbul, Turkey

- OECD
Global Forum on International Investment
– International investment and the public interest: the case of infrastructure

December 6-8

Paris, France

- OECD
Investment Committee (Consultations with BIAC, TUAC and NGOs 7 December)