



NATIONAL CONTACT POINTS FOR RESPONSIBLE BUSINESS CONDUCT

# Providing access to remedy 20 years and the road ahead



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# **National Contact Points for Responsible Business Conduct**

Providing access to remedy: 20 years and the road ahead





Since 2000, National Contact Points for Responsible Business Conduct have had the mandate to act as non-judicial grievance mechanisms under the OECD Guidelines for Multinational Enterprises. Two decades later there are NCPs in 49 countries that have collectively handled over 500 cases related to RBC issues in over 100 countries and territories.

On the occasion of the 20th anniversary of NCPs as non-judicial grievance mechanism, this report takes stock of NCP's contribution to access to remedy for RBC impacts over that period. It reflects on their positive role and challenges faced in addressing the impacts of business activity worldwide, and also identifies key actions that governments could take to perpetuate success and address weaknesses. Twenty notable cases handled by NCPs in recent years are summarised in the annex, highlighting the distinctive contribution each made to remedy.

This report targets a wide audience. It can help inform the public about RBC, access to remedy and the role of NCPs; serve as a tool for current or potential users of NCPs to understand and seize the benefits of the NCP mechanism; help NCPs themselves in reviewing the way they are set up and operate in light of what works well and less well. Finally, it is also a call to governments to fully recognise and support this unique mechanism.

## FOREWORD



*NCP officials at the June 2019 NCP network meeting in Paris*

This report was prepared by the OECD Secretariat under the supervision of Cristina Tébar Less, Acting Head of the OECD Centre for Responsible Business Conduct. It was co-ordinated and drafted by Nicolas Hachez with Carissa Munro and Luana Nilsen, with significant inputs from Barbara Bijelic, Froukje Boele and Kathryn Dovey. Jean-Francois Leruste provided data support. Juliet Lawal and Roxana Glavanov designed the report and Pauline Alexandrov provided editorial and administrative support.

This report benefitted from the review and input of delegates from the OECD Working Party on Responsible Business Conduct, National Contact Points, as well as Business at OECD (BIAC), the OECD Trade Union Advisory Committee (TUAC) and OECD Watch. The report also benefitted from the insights of a panel of experts and academics.





# EXECUTIVE SUMMARY

The year 2020 marks the 20<sup>th</sup> anniversary of the mandate to National Contact Points for Responsible Business Conduct (NCPs) to act as grievance mechanisms under the OECD Guidelines for Multinational Enterprises (the Guidelines). The Guidelines, adopted in 1976 as part of the OECD Declaration on International Investment and Multinational Enterprises, are recommendations addressed by governments to multinational companies and cover all key areas of business responsibility, including human rights, employment and industrial relations, environment, anti-corruption, competition and taxation. The Guidelines are the only international Responsible Business Conduct (RBC) instrument that includes a built-in State-based grievance mechanism.

All governments adhering to the Guidelines (currently 49) are required to set up an NCP and ensure it has the financial and human resources to function, and does so in a visible, accessible, transparent and accountable way. NCPs have the mandate to provide “good offices” on issues related to the implementation of the Guidelines in specific instances. In line with NCPs’ non-judicial character, good offices include a range of approaches to support agreement between parties, ranging from informal dialogue to professional mediation. NCPs also make extensive use of their ability to make recommendations to the parties on ways to implement the recommendations of the Guidelines.

With globalised corporate activity intensifying and related developments, such as climate change and global inequalities accelerating, RBC and access to remedy are more relevant than ever. Today the 49 NCPs have handled over 500 cases about issues located in over 100 countries and territories, addressing a wide variety of business impacts. NCPs are easily accessible, with little formalities, at no cost and without the need of legal help. Numerous types of submitters, from trade unions and civil society organisations, to indigenous communities, individuals and businesses, have used the NCP mechanism. NCPs have actively facilitated concrete remedies for the persons affected, including through financial or in-kind compensation or changes in companies’ policies and operations. The outcomes of cases handled by NCP have also contributed to shape processes for the development of government policies, and to promote stronger policy coherence for RBC.

In the last 20 years, many NCPs have also faced challenges, which have hampered their ability to contribute to remedy. These challenges include lack of visibility and accessibility, but also difficulties in handling and managing cases efficiently. As a result, the resolution of many cases has been delayed or has not led to a positive outcome. Another important challenge is ensuring that parties can engage fairly and safely in the process, particularly in light of reports that in some cases, submitters face intimidation and reprisals.

These challenges reflect weaknesses that not only affect the operations of individual NCPs, but also their design as a grievance mechanism. In light of this, NCPs’ important achievements are all the more remarkable. However, to keep pace with today’s challenges and to respond to the increased calls for responsible business conduct, it is critical that governments continue to strengthen their NCP, and address their operational and structural weaknesses.

There are several possibilities to do so. At individual NCP level, possible actions by governments include increasing human and financial resources allocated to NCPs and ensuring that NCP structures are fit for purpose. At the level of the network, possible actions include improving coordination of practices and procedures and better monitoring of NCP effectiveness.

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## NCPs at 20, a milestone for access to remedy

The year 2020 is a milestone for the promotion of Responsible Business Conduct, as it marks 20 years since National Contact Points for Responsible Business Conduct were given the mandate to act as non-judicial grievance mechanisms under the OECD Guidelines for Multinational Enterprises.

The Guidelines are recommendations addressed by governments to multinational companies and cover all key areas of business responsibility, including disclosure, human rights, employment and industrial relations, environment, anti-corruption, competition and taxation. The Guidelines are the only international RBC instrument that includes a built-in State-based grievance mechanism.



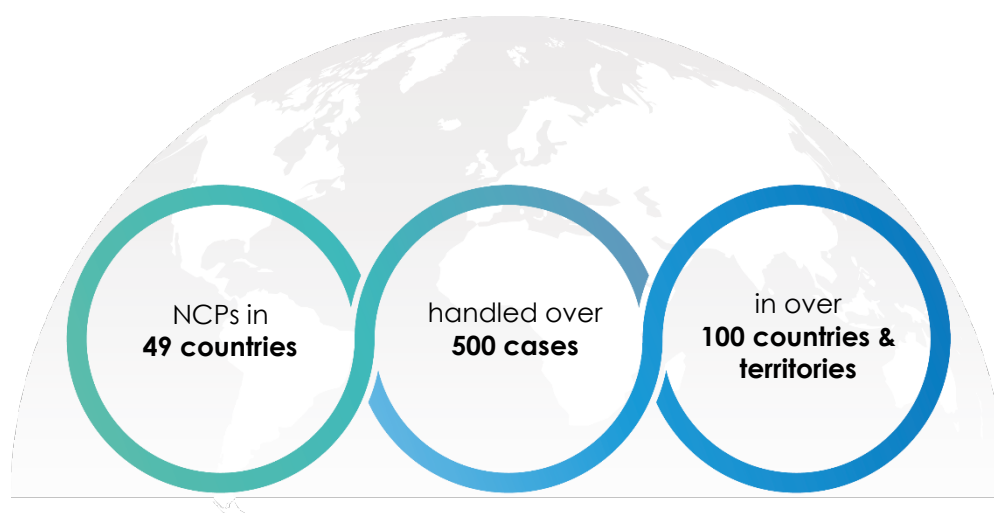


# 1 Introduction: NCPs at 20, a milestone for access to remedy

The year 2020 is a milestone for the promotion of Responsible Business Conduct (RBC), as it marks 20 years since National Contact Points for Responsible Business Conduct (NCPs) were given the mandate to act as non-judicial grievance mechanisms under the [OECD Guidelines for Multinational Enterprises](#) (the 'Guidelines').<sup>1</sup>

The Guidelines are recommendations addressed by governments to multinational companies and cover all key areas of business responsibility, including disclosure, human rights, employment and industrial relations, environment, anti-corruption, competition and taxation. The Guidelines are the only international RBC instrument that includes a built-in State-based grievance mechanism.

In the year 2000, 33 countries had adhered to the Guidelines and set up an NCP. Today, there are NCPs in 49 countries that have collectively handled over 500 cases related to RBC issues in over 100 countries and territories.



<sup>1</sup> The OECD Guidelines for Multinational Enterprises (the Guidelines) were adopted in 1976 as part of the OECD Declaration on International Investment and Multinational Enterprises (the Investment Declaration).

The challenges that NCPs faced in dealing with issues related to business-related impacts have evolved tremendously over the past 20 years. New and more complex patterns of production and consumption are emerging, and capital, goods and services are more mobile than ever: global GDP has almost tripled since 2000, and so has global trade while world FDI stocks have nearly quadrupled (Figure 1.1).

**Figure 1.1. Global economic indicators since 2000**



Source: World Bank and UNCTAD<sup>1</sup>

These developments reflect intense and globalised business activity, which contributed to lifting more than a billion people out of extreme poverty<sup>2</sup> and helped facilitate a better quality of life and longer life expectancy overall.<sup>3</sup> Yet this acceleration of economic globalisation is also partly responsible for severe global challenges, including dramatic increases in greenhouse gas emissions and massive biodiversity loss, inequality increases in most countries, and has contributed to the spread of COVID-19. A key feature of

globalisation is also the growing complexity of and reliance on global supply chains, fragmented corporate structures, and sub-contracting practices, which create challenges in assessing responsibility and identifying the leverage of companies to address impacts.

Against this backdrop, the relevance of the Guidelines has increased, as well as the need to make RBC standards more effective worldwide. Underpinned by the concept that businesses can do well while doing no harm, RBC standards expect that all businesses – regardless of their legal status, size, ownership structure or sector – avoid and address the negative consequences of their operations, while contributing to sustainable development in the countries where they operate. A fundamental change in the meaning of RBC in the context of globalisation has been the notion that business should carry out due diligence to identify, prevent and mitigate adverse impacts.<sup>4</sup>

An important milestone has also been the adoption in 2015 of the Sustainable Development Goals (SDGs) as the 2030 Agenda.<sup>5</sup> The effective implementation of RBC standards is critical to achieving the SDGs, which calls for the private sector's active involvement in global development efforts.

<sup>2</sup> World Bank, Poverty headcount ratio at \$1.90 a day (2011 PPP), <https://data.worldbank.org/indicator/SI.POV.DDAY>

<sup>3</sup> World Bank, Life expectancy at birth, total (years), <https://data.worldbank.org/indicator/SP.DYN.LE00.IN>

<sup>4</sup> The OECD Due Diligence Guidance for Responsible Business Conduct is addressed to all companies operating in all countries and sectors of the economy and sets out practical, clear explanations for how to implement due diligence as recommended in the Guidelines. The OECD also issued sector-specific guidance focusing on due diligence in respect of risks specific to the extractives, minerals, garment, agricultural and financial sectors. For more information, see OECD (2018), *OECD Due Diligence Guidance for Responsible Business Conduct*

<sup>5</sup> United Nations General Assembly (2015), *Transforming our world: the 2030 Agenda for Sustainable Development*, resolution, A/RES/70/1, [https://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/70/1&Lang=E](https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E)

Since the adoption of the Guidelines in 1976 as the first international instrument guiding business behaviour across multiple areas, the international community has developed a set of complementary and mutually reinforcing RBC standards.<sup>6</sup> These standards – including the OECD Guidelines, the United Nations Guiding Principles on Business and Human Rights (UNGP) and the International Labour Organization's Tripartite Declaration of Principles Multinational Enterprise and Social Policy (ILO Declaration) – promote a common understanding of how business should understand and address their actual or potential negative impacts on people, planet and society, and how governments can support and promote responsible business practices.

The Guidelines are addressed to business by government, with governments' role in promoting RBC significantly evolving over the past few years. Governments are taking a more active role in both promoting RBC through mandatory due diligence legislation, shifting the dynamic from voluntary standards to mandatory requirements. Governments are also integrating RBC across policies, including trade and investment and public procurement. An outcome of this trend of increased government engagement are National Action Plans (NAPs) on business and human rights.<sup>7</sup>

While robust standards, legislation and policies are critical, they also need to be complemented by mechanisms to ensure business accountability and to provide access to remedy (Box 1.1.). The UNGP set the framework for this, identifying three types of remedy mechanisms: state-based judicial, state-based non-judicial (citing particularly NCPs as examples) and non-state-based non-judicial mechanisms.

#### **Box 1.1. Remedy, accountability and the role of NCPs**

Handling issues regarding corporate impacts raises inter-related questions of accountability and remedy. This report examines NCPs under the angle of remedy, meaning that, through their mandate as non-judicial grievance mechanisms under the Guidelines, they seek to ensure that a person(s) affected by negative corporate impacts can obtain some form of redress for their harm. Remedy can take the form of financial compensation or reparation, or through apologies, recognition of guilt, or guarantees of non-repetition.

Conferring remedy for corporate impacts may also be analysed as holding the company accountable. Corporate accountability means that a company answers for the impacts of its activities and accepts responsibility for them, possibly by facing consequences. Under the Guidelines, such responsibility relates the expectation that companies should '[c]ontribute to economic, environmental and social progress with a view to achieving sustainable development' (General Policies, para. 1.), and in that regard '[a]void causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur.' (para. 11).

For a company, providing remedy for harm will often – though not always – go hand in hand with accepting responsibility for corresponding negative impacts. NCPs can also facilitate this second aspect, by clarifying the Guidelines' expectations of companies and how the Guidelines' recommendations apply to a company's activities.<sup>8</sup>

<sup>6</sup> OECD, EU & ILO (n.d.), *Responsible Business: Key messages from international instruments*, <https://mneguidelines.oecd.org/Brochure-responsible-business-key-messages-from-international-instruments.pdf>

<sup>7</sup> Adherents to the Guidelines are leading this trend: of the 25 States that have completed a NAP to date, 22 are adherents to the Guidelines. See OHCHR (n.d.), *National Plans of Action for the Promotion and Protection of Human Rights*, <https://www.ohchr.org/en/issues/plansactions/pages/plansofactionindex.aspx>

<sup>8</sup> Since 2014, the UN High Commissioner for Human Rights has conducted a project to clarify and strengthen avenues for accountability and remedy for corporate human rights impacts. See OHCHR (n.d.), *Initiative on enhancing*

By providing affordable, accessible and flexible forums to hear RBC issues, NCPs have made a unique contribution to access to remedy for corporate impacts worldwide. Their critical role in facilitating remedy has grown in recognition, as evidenced by many high level expressions of support for NCPs as grievance mechanisms. For example, in 2017, the G20 Leaders' Declaration stated *'We support access to remedy and, where applicable, non-judicial grievance mechanisms, such as the National Contact Points for the OECD [...] Guidelines (NCPs)'*.<sup>9</sup>

This report takes stock of NCPs' activity since 2000.<sup>10</sup> It recognises the significant contribution they have made in addressing the impacts of business activity worldwide, and highlights the challenges faced in delivering their role. The report then looks ahead and reflects upon key levers that NCPs and governments could activate to perpetuate success and address weaknesses. Twenty notable cases handled by NCPs in recent years are summarised in an annex, highlighting for each of them the distinctive contribution they made to remedy.

This report targets a wide audience. It can help inform the public about RBC, access to remedy and the role of NCPs; serve as a tool for current or potential users of NCPs to understand and seize the benefits of the NCP mechanism; help NCPs themselves in reviewing the way they are set up and operate in light of what works well and less well. Finally, it is also a call to governments to fully recognise and support this unique mechanism.

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accountability and access to remedy,

<https://www.ohchr.org/EN/Issues/Business/Pages/OHCHRAccountabilityandremedyproject.aspx>

<sup>9</sup> G20 (2017), *G20 Leaders' Declaration: Shaping an interconnected world*, <https://www.oecd.org/els/health-systems/G20-leaders-declaration.pdf>

<sup>10</sup> The Guidelines underwent a thorough revision in 2011, which entailed certain changes to NCP procedures and affected NCP practices. For this reason, some datasets presented in this paper are only available from 2011 onwards.





The UK NCP helped protect human rights and the environment from the impacts of oil exploration in the Virunga National Park in the Democratic Republic of Congo.

## Understanding NCPs and their role in remedy

All governments adhering to the OECD Guidelines have the legal obligation to set up an NCP with the role of 'furthering the effectiveness of the Guidelines'.

Over time, NCPs' role and scope have evolved: when they were established in 1984, NCPs were primarily responsible for promoting the Guidelines and responding to enquiries. In 2000, NCPs were given the role of fostering solutions in relation to issues emerging from the implementation of the Guidelines by companies. They have embraced this role, establishing themselves firmly as remedy mechanisms and offering a unique dialogue platform.



## 2 Understanding NCPs and their role in remedy

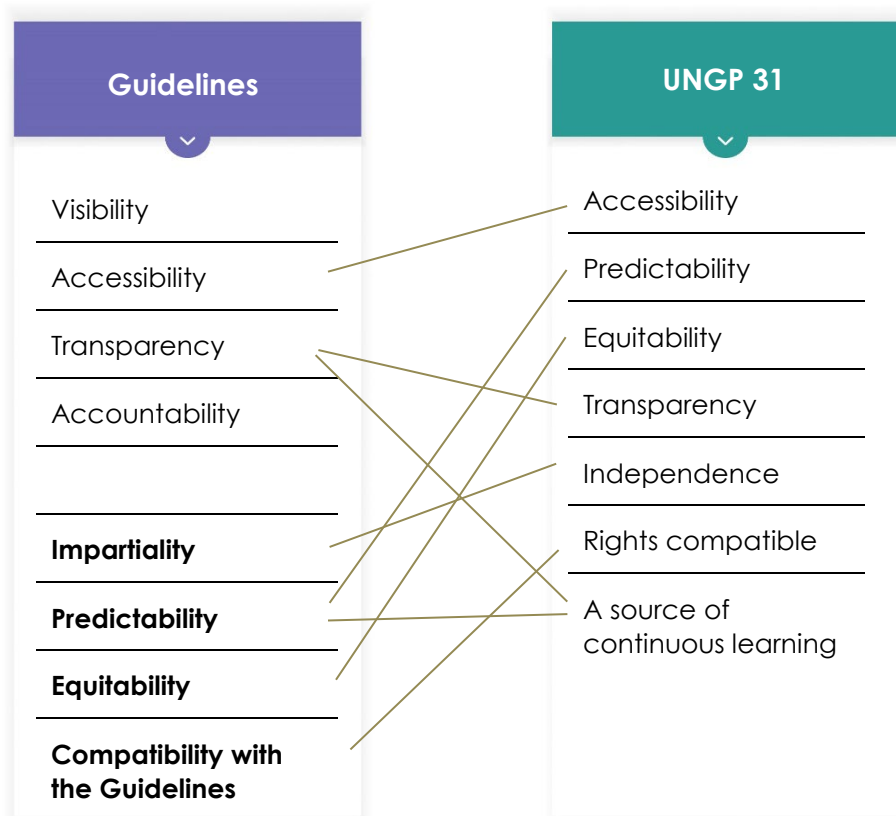
All governments adhering to the OECD Guidelines (hereinafter 'governments') have the legal obligation to set up an NCP with the role of 'furthering the effectiveness of the Guidelines'. Over time, NCPs' role and scope have evolved: when they were established in 1984, NCPs were primarily responsible for promoting the Guidelines and responding to enquiries. In 2000, NCPs were given the role of fostering solutions in relation to issues emerging from the implementation of the Guidelines by companies. They have embraced this role, establishing themselves firmly as remedy mechanisms and offering a unique dialogue platform.

To deliver on this broad mandate, governments have the flexibility to organise their NCP in the form and structure they deem most appropriate. While there is no prescribed model, NCPs must operate in accordance with a number of 'core criteria', namely visibility, accessibility, transparency and accountability. In addition, NCPs must handle cases in a way that is impartial, predictable, equitable and compatible with the Guidelines.<sup>11</sup> Taken together, these criteria largely align with UNGP 31, which identifies 'effectiveness criteria for non-judicial mechanisms' (Figure 2.1).

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<sup>11</sup> See Commentary to the Guidelines, paragraph 22 in OECD (2011), *OECD Guidelines for Multinational Enterprises*, OECD Publishing, <http://dx.doi.org/10.1787/9789264115415-en>

**Figure 2.1. Correspondence between Guidelines requirements for NCPs and UNGP31**



In practice, four broad models of NCPs have emerged (see Figure 2.2). Within these broad models, individual NCP structures are 'evergreen', and can be adjusted to remain fit-for-purpose. Across these structures, NCPs' resources, procedures, and activities vary significantly (see Annex B for an overview of key data regarding all 49 NCPs). The main instrument used to evaluate how NCPs are performing and fulfilling their role are peer reviews, whereby several NCPs review the activities of one of their peers and provide recommendations.<sup>12</sup>

Cases whereby NCPs provide access to remedy are known as 'specific instances'.<sup>13</sup> The specific instance process is governed by a 'Procedural Guidance' attached to the Guidelines,<sup>14</sup> and is designed to be simple and flexible. Any entity – an individual, organisation or community – with an interest in the matter may report issues related to the Guidelines implementation. When NCPs receive a submission, they follow a simple and flexible three-step process: initial assessment, good offices and conclusion (Figure 2.3). As appropriate, a fourth step can be added: follow up. The OECD maintains a [public database](#) of all cases handled by NCPs.<sup>15</sup>

<sup>12</sup> OECD (2003), *Peer Reviews: An OECD Tool for Co-operation and Change*, OECD Publishing, Paris, <https://doi.org/10.1787/9789264099210-en-fr>, p. 9. At the 2017 OECD Ministerial Council Meeting, OECD Countries committed to have all NCPs peer reviewed by 2023. To date, 18 NCPs have been peer reviewed.

<sup>13</sup> This role is described as 'contributing to the resolution of issues that arise relating to the implementation of the Guidelines in specific instances.' See Decision of the Council on the OECD Guidelines for Multinational Enterprises [OECD/LEGAL/0307], Section I.

<sup>14</sup> This report also uses the generic term 'the Guidelines' to designate the Procedural Guidance and its official commentary.

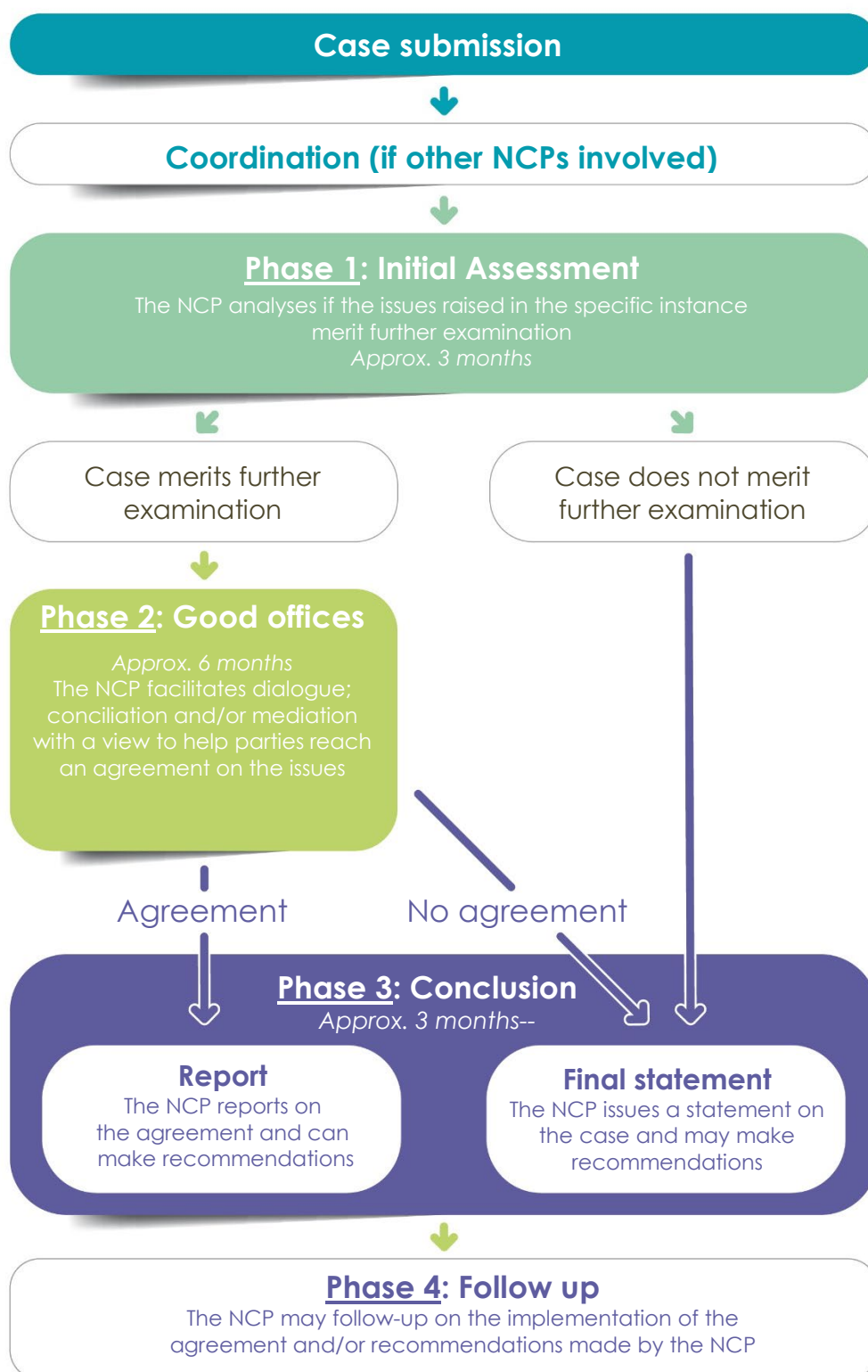
<sup>15</sup> OECD (n.d), *Database of Specific Instances*, <http://mneguidelines.oecd.org/database/>

**Figure 2.2. The four main structures of NCPs**

Note: Countries with an asterisk (\*) have an advisory body including other government departments or stakeholder representatives in an advisory capacity. Source: Adapted from OECD (2019), 2019 Annual Report on the OECD Guidelines For Multinational Enterprise, [C(2020)120].



Figure 2.3. The specific instance process in brief





*NCPs reviewed due diligence practices in global garment supply chains, helping improve the health and safety of workers.*

## NCPs and remedy: 20 years of contribution

Over the past twenty years, NCPs have made a distinctive contribution to remedy by providing access to non-adversarial means to facilitate the resolution of issues related to the implementation of the Guidelines by companies. This section unpacks four characteristics of NCPs that have made such a contribution possible, and illustrates them with concrete cases handled by NCPs.



# 3 NCPs and remedy: 20 years of contribution

Over the past twenty years, NCPs have made a distinctive contribution to remedy by providing access to non-adversarial means to facilitate the resolution of issues related to the implementation of the Guidelines by companies. This section unpacks four characteristics of NCPs that have made such a contribution possible, and illustrates them with concrete cases handled by NCPs.

Annex A further illustrates the variety of ways in which NCPs have assumed their role by providing details on 20 recent notable NCP cases and highlighting significant procedural aspects and the contribution they made to remedy.

## A broad scope of work

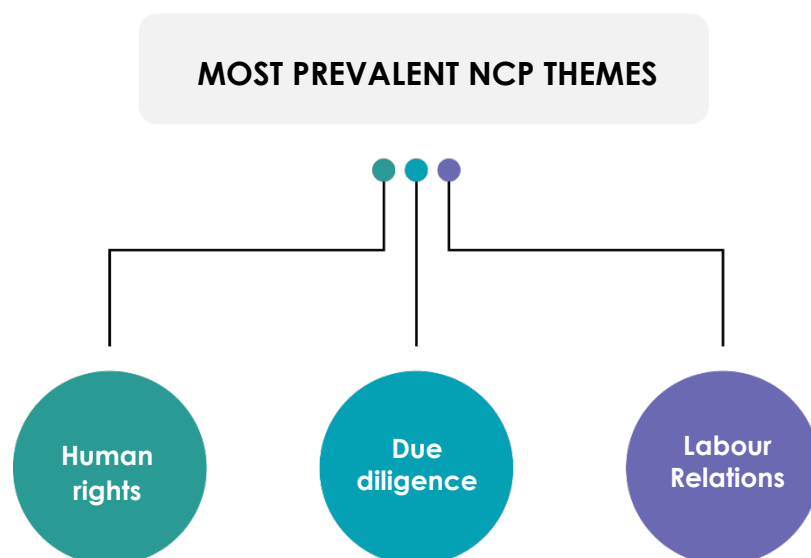
The Guidelines cover a wide range of areas in which business can have adverse impacts, including on human rights, employment and industrial relations, environment, disclosure, anti-corruption, consumer interests, science and technology, competition and/or taxation. The comprehensive scope of the Guidelines has led NCPs to consider an incredibly diverse set of issues (see Box 3.1).

### Box 3.1. NCPs have considered concrete issues across a wide range of areas

Across each of the Guidelines nine chapters, NCPs have considered concrete issues and questions. The following highlights examples from each chapter.

- **Disclosure:** climate reporting expectations
- **Human rights:** cultural rights, indigenous peoples' rights, right to health, child labour, migration detention centres, core labour rights, right to livelihood
- **Employment and Industrial Relations:** anti-union dismissals, recognition of a trade union, launching a collective bargaining negotiation
- **Environment:** climate, use of hazardous chemicals, protection of world heritage sites, greenwashing, sound pollution and air pollution, flooding, destruction of land and ecosystems
- **Combating Bribery, Bribe Solicitation and Extortion:** bribery of community leaders and government officials
- **Consumer Interests:** false advertising
- **Science and Technology:** compensation for intellectual property
- **Competition:** impact of a multinational on local market access
- **Taxation:** tax avoidance, beneficial ownership

The most prevalent themes that dominate NCP cases are human rights, due diligence and labour relations.<sup>16</sup>



The Guidelines' broad scope enables NCPs to handle multiple themes stemming from the impacts of company operations. In fact, since 2011, over two-thirds of cases have concerned more than one chapter of the Guidelines (see examples in Box 3.2).

### Box 3.2. Addressing the multiple dimensions of company impacts

The case **Grupa OLX and Frank Bold Foundation** (2019) addressed the impacts of an Internet company's activities on the environment and on consumers. The company was allowing clients to advertise the sale of furnaces on its portal, mentioning that the furnaces could be used to burn processed oil and discarded wooden railway sleepers, which are considered hazardous waste. The Polish NCP facilitated an agreement whereby the submitter would monitor the content of advertisements to avoid misleading consumers, and would delete advertisements violating environmental protection provisions. Furthermore, the submitter agreed to support the company in its environment protection measures. The NCP monitored implementation of the agreement and noted that, after a year, the company had removed 16,629 advertisements from its platform, and had requested users to revise 6,656 advertisements to ensure compliance with environmental standards.

In the case **WWF International and Soco International Plc** (2014), the UK NCP examined issues linked to oil exploration by the company in an area of the Virunga National Park in the Democratic Republic of the Congo (DRC). The issues were multiple and inter-linked, dealing with the compatibility of the company's activities with the park's status as a World Heritage site, environmental risks, and human rights. Following mediation, the company committed to refrain from activities in the park that UNESCO and the DRC government would regard as incompatible with the park's World Heritage Status.

<sup>16</sup> The human rights chapter was raised in 51% of cases since 2011, the general policies chapter (which contains the due diligence requirement) in 49%, and the employment and industrial relations chapter in 37%.



NCPs also address impacts by a wide range of economic actors, large and small.<sup>17</sup> Whereas the Guidelines are addressed to multinational companies, they do not seek to introduce differences of treatment, and may also apply to domestic companies.<sup>18</sup> Moreover, the Guidelines recommend a flexible interpretation of the notion of enterprise, which allows NCPs to address impacts from actors that might not be considered 'multinational' or 'enterprise' in the strict sense of the terms (Box 3.3). This has enabled NCPs to be active contributors to remedy, regardless of the legal nature of the entity that caused the issues (e.g. NCPs have handled cases relating to multinationals, state-owned enterprises, small and medium enterprises, non-governmental organisations, sporting federations, etc.).

### **Box 3.3. Applying the NCP process to various types of corporate actors**

The Swiss NCP has examined how the Guidelines apply to various types of corporate actors. For example, it deemed the Guidelines applicable to the following organisations headquartered in Switzerland:

FIFA, the international football federation, as its involvement in the organisation of the FIFA 2022 World Cup qualifies as activities of commercial nature.

WWF International, an environmental NGO, as its approach to conservation is to a certain extent market based and it undertakes commercial activities to fund itself (e.g. merchandising and selling royalties on its logo).

The Roundtable for Sustainable Palm Oil (RSPO), a multi-stakeholder initiative promoting sustainable palm oil, established as an association under Swiss law, as its funding is based on contributions from the palm oil trade and on fees for its activities (e.g. certification of plantations), and because the RSPO label creates value for palm oil products.

Additionally, the due diligence provisions of the Guidelines not only assign responsibility to companies for impacts that they cause or contribute to, but also require them to exercise leverage in relation to impacts to which they are directly linked through their business relationships. Relying on this dimension of due diligence, NCPs can facilitate remedy by engaging companies that do not cause or contribute to impacts, but have leverage over the actors that do. This allows NCPs to focus on impacts and act where other mechanisms could be impeded by considerations such as the corporate veil, legal liability for the harm or extraterritoriality (Box 3.4).<sup>19</sup> In practice, NCPs have helped make a difference by recommending that influential actors in supply chains or complex webs of business relationships, exercise leverage on other entities to address and mitigate impacts. For example, companies in the financial sector, whose services such as loan provision or project finance may be linked to impacts, have increasingly been subject to NCP cases (Box 3.4).

<sup>17</sup> For example, since 2011, NCPs have handled 36 cases involving Fortune 500 companies (OECD NCP case database, 08/10/2020)

<sup>18</sup> See Chapter 1, paragraphs 4 and 5 in OECD (2011), *OECD Guidelines for Multinational Enterprises*, OECD Publishing, <http://dx.doi.org/10.1787/9789264115415-en>

<sup>19</sup> To date, NCPs have considered the following types of business relationships relevant in requiring the company involved in the case to use its leverage to address negative impacts: providing financing for business projects, providing loan guarantees, portfolio investment in a company, direct and indirect suppliers in a supply chain, parent-subsidary connection, or brand-franchisee connection.

### Box 3.4. Addressing impacts through business relationships

#### Addressing impacts through supply chain relationships

In the case **PWT Group and Clean Clothes Campaign Denmark and Active Consumers** (2016), the Danish NCP addressed issues related to the alleged failure of the company to carry out due diligence in relation to its supplier, a textile manufacturer located in the Rana Plaza that collapsed in 2013. The parties did not reach agreement, but the NCP made detailed recommendations on revisions to the company's management and risk assessment systems in order to meet due diligence standards. Upon follow up, the NCP concluded that the company had fully complied with its recommendations.

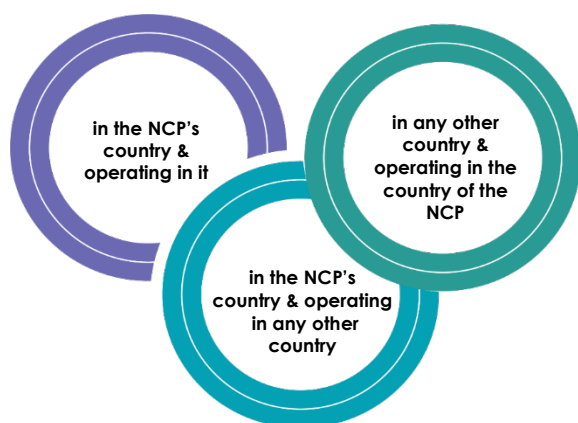
#### Addressing impacts through financial relationships

In the case **Natixis-NGAM (now NBIM) and UNITE HERE** (2017), the French NCP considered issues of freedom of association, collective bargaining and working conditions at a California-based hotel. AEW Capital Management, a US subsidiary of Natixis Global Assets Management (NGAM, now NBIM, part of the French Natixis banking Group) was providing asset management services to an American pension fund that was the hotel's majority shareholder (95%). The French NCP provided mediation between Natixis Group and UNITE HERE, concentrating on the Group's due diligence. The outcome of the case was the sale of the hotel to another American group in the hospitality sector, in which AEW took into account the OECD Due Diligence Guidance for Institutional Investors when selecting the new buyer, and the subsequent unionisation of workers and collective bargaining. As a result of the case, NGAM (now NBIM) also integrated the OECD Due Diligence Guidance for Institutional Investors into its assets management activities, including in relation to AEW Capital Management.

“The French NCP’s critical work on the case, in mediating dialogue with Natixis and NGAM, was central to the outcome. Without this engagement, there surely would have been no resolution.”

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The NCP process also applies to issues on a transnational scale. Over the past 20 years, NCPs have handled cases in over 100 countries and territories, including over 50 that are not adherents to the Guidelines. The Guidelines are addressed by adherent countries to ‘enterprises operating in or from their territories’<sup>20</sup>, which enables NCPs to handle cases involving companies headquartered:



- in the NCP's country and operating in it;
- in any other country and operating in the country of the NCP;
- in the NCP's country and operating in any other country.

Moreover, with the countries adhering to the Guidelines accounting for 50% of the world's GDP, 71% of the global inward stock of FDI and 77% of total outward investment in 2018, NCPs cover issues across a majority of the world's economic activity.<sup>21</sup>

The broad scope of the NCP process has enabled NCPs to fill gaps resulting from other mechanisms' stricter jurisdictional measures. Unlike legal proceedings, which are often accompanied by detailed rules on venue and jurisdiction, the Procedural Guidance includes minimal language on how NCPs should handle issues arising in different jurisdictions. This enables NCPs to act as a recourse mechanism for issues spanning complex corporate structures and different jurisdictions.<sup>22</sup> NCPs have used this broad scope and flexibility to address issues where other mechanisms may face limitations.<sup>23</sup> Similarly, the flexibility of the NCP mechanism has also enabled it to find creative remedy solutions where other remedy, dispute settlement or social dialogue mechanisms have failed (Box 3.5).

### An affordable and widely available remedy platform

An important way in which NCPs have fostered access to remedy is by keeping barriers to participation in the specific instance process as low as possible. The Guidelines do not set precise limits on who can submit a case to an NCP, and submitters do not need to be direct victims of the issues at hand. The Guidelines simply instruct NCPs to verify 'the identity of the party concerned and their interest in the matter', and to ensure that all parties are of good faith.<sup>24</sup> Therefore, any party with a legitimate interest in reporting issues regarding the implementation of

<sup>20</sup> See paragraph 1 in OECD (1976), *Declaration on International Investment and Multinational Enterprises*, [OECD/LEGAL/014](https://www.oecd.org/dai/LEGAL/014)

<sup>21</sup> OECD (n.d), *Declaration on International Investment and Multinational Enterprises and related instruments: National Treatment*

<sup>22</sup> OECD (2019), *Guide for National Contact Points on Coordination when handling Specific Instances*, OECD Guidelines for Multinational Enterprises, <https://mneguidelines.oecd.org/Guide-for-NCPs-on-Coordination-when-handling-Specific-Instances.pdf>

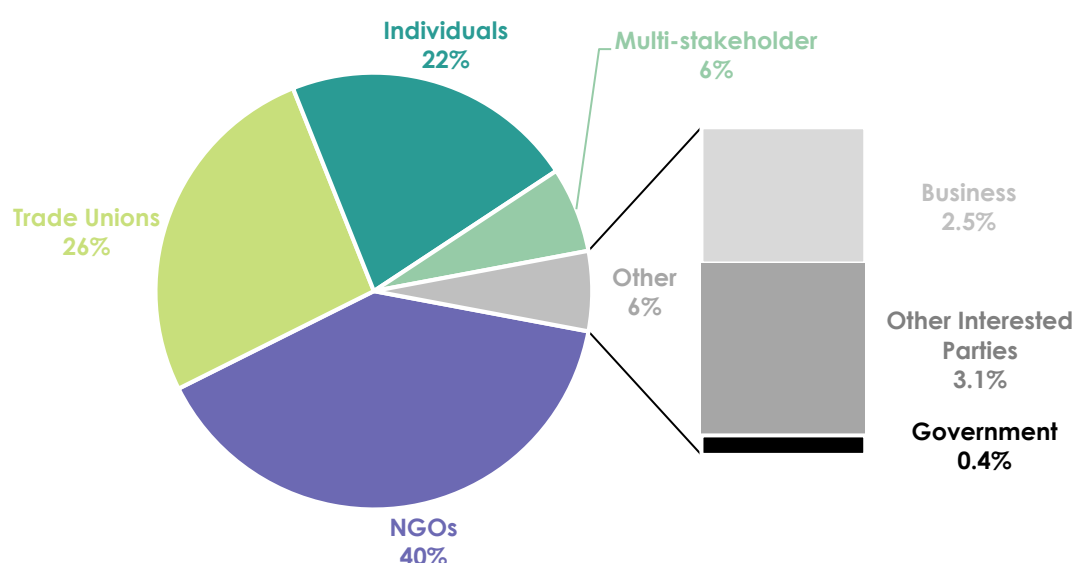
<sup>23</sup> See for example the cases of Starwood Hotels & Resorts Worldwide and International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association (IUF), *Sherpa et al.* and *Bolloré/Financière du Champ de Mars/Socfin/Socfinaf*, and *Future in Our Hands (FIOH)* and *INTEX Resources ASA*

<sup>24</sup> See Procedural Guidance, paragraphs 21 and 25 in OECD (2011), *OECD Guidelines for Multinational Enterprises*, OECD Publishing, <http://dx.doi.org/10.1787/9789264115415-en>

the Guidelines may submit a case.<sup>25</sup> To that end, NCPs have been available to a wide range of actors. Since 2011, NGOs and/or trade unions have submitted over two-thirds of cases. Other submitters have included:

- Indigenous communities<sup>26</sup>
- Individuals<sup>27</sup>
- Elected officials such as members of national parliament<sup>28</sup> or town mayors<sup>29</sup>
- Industry associations<sup>30</sup> and companies<sup>31</sup>

**Figure 3.1. Percentage of cases submitted by stakeholder/type (2011-2019)**



Note: 'Multi-stakeholder' submission refers to cases submitted by several types of parties jointly (e.g. an NGO and a trade union). Submissions by 'other interested parties' refers to cases submitted by a party that does not qualify under the other categories, such as an indigenous group. Figures are from 2011 when the Guidelines were last updated. Source: OECD Database of Specific Instances.

<sup>25</sup> OECD (2019), Guide for National Contacts Points on the Initial Assessment of Specific Instances, OECD Guidelines for Multinational Enterprises, <https://mneguidelines.oecd.org/Guide-for-National-Contact-Points-on-the-Initial-Assessment-of-Specific-Instances.pdf>

<sup>26</sup> Statkraft AS and the Sami reindeer herding collective in Jijnjevaerie Sami Village case, available on: <http://mneguidelines.oecd.org/database/instances/se0004.htm>

<sup>27</sup> Mylan N.V. and Mr. Bart Stapert case, available at: <http://mneguidelines.oecd.org/database/instances/nl0025.htm>

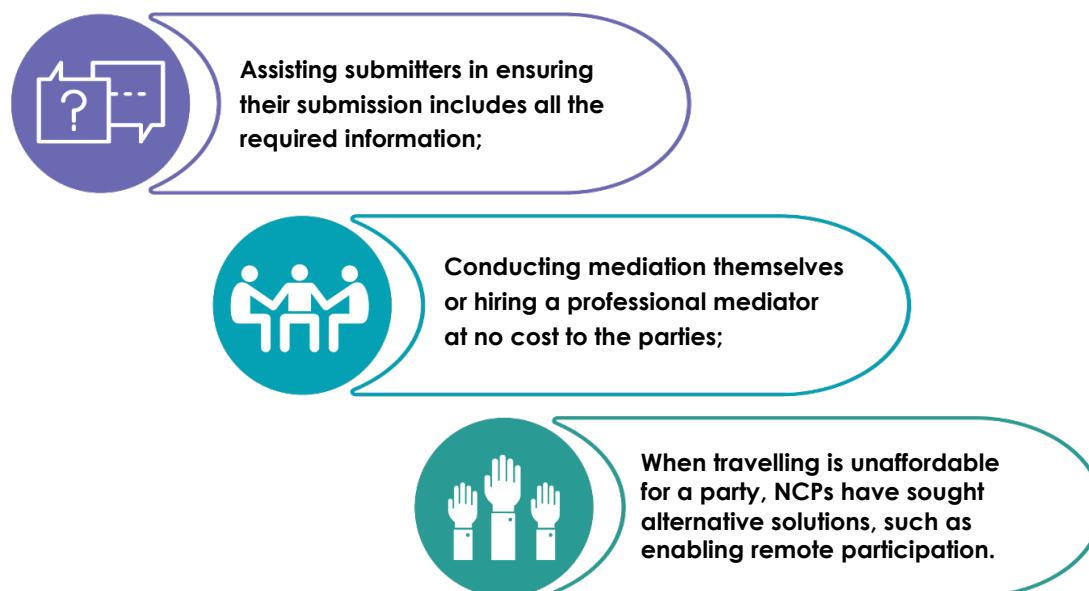
<sup>28</sup> Uwe Kekeritz and KIK Textilien und Non-Food GmbH, Bönen, C&A Mode GmbH & Co case, available at: <http://mneguidelines.oecd.org/database/instances/de0016.htm>

<sup>29</sup> Closure of a paper mill case, available at: <http://mneguidelines.oecd.org/database/instances/fr0019.htm>

<sup>30</sup> Airbnb and AhTop case, available at: <http://mneguidelines.oecd.org/database/instances/fr0031.htm>

<sup>31</sup> Violation of intellectual property rights in Chile case, available at: <http://mneguidelines.oecd.org/database/instances/cl0006.htm>

The NCP process is also comparatively affordable. While any remedy process will of course entail monetary, time and emotional costs, NCPs will generally seek to limit the amount of resources that parties have to invest in the process. Filing an NCP case is free of charge and does not require legal help, and NCPs have also put in place strategies to assist parties, such as:



Finally, most NCPs are not applying time limits for receiving cases. Instead, most NCPs have favoured a case-by-case examination of whether or not, despite the passage of time, they could contribute to the resolution of issues. In seeking to maintain availability and affordability, NCPs have been able to handle cases that had encountered barriers elsewhere (see Box 3.5).

#### **Box 3.5. Ensuring the NCP system is available and affordable for all parties**

In the case of **Heineken, Bralima and former employees of Bralima** (2017), the Dutch NCP helped facilitate an agreement – including financial compensation – between Bralima, a subsidiary of Dutch multinational brewer Heineken in the Democratic Republic of Congo, and 168 workers were laid off without compensation between 1999 and 2003.

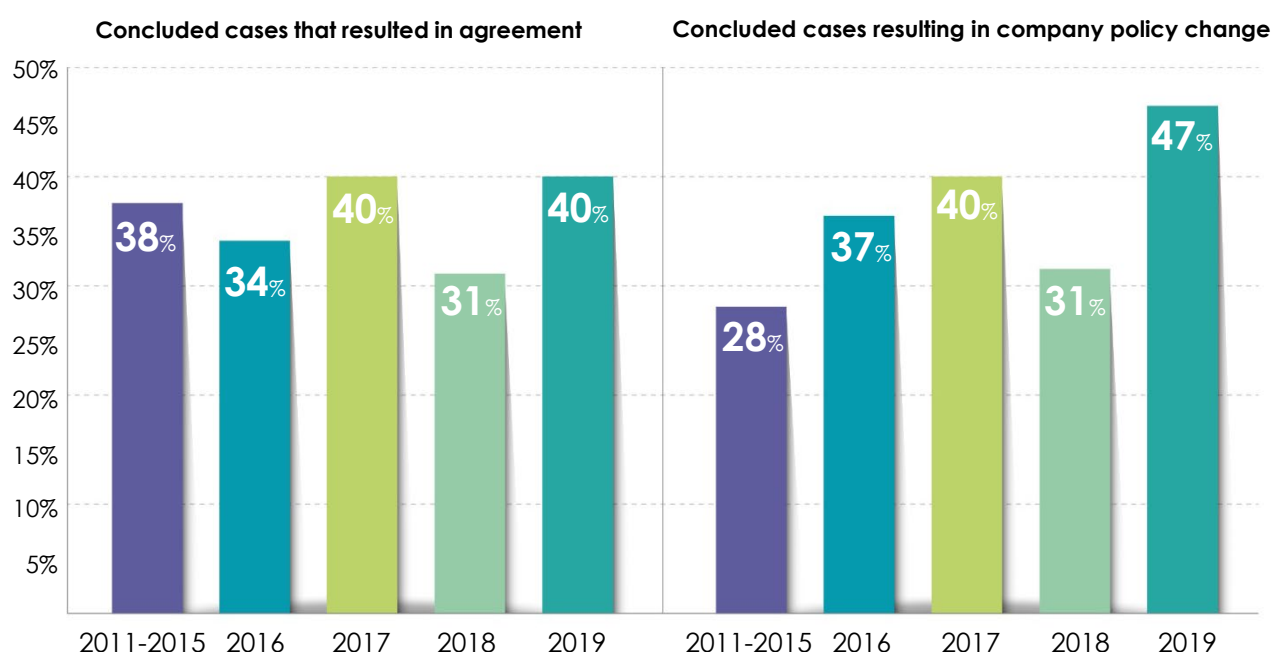
By accepting a case that involved impacts from 16 years ago, submitted by three individuals on behalf of 168 laid-off workers, the Dutch NCP ensured its good offices were available for all parties. Moreover, by traveling to Uganda to hold the mediation at the Dutch embassy, the NCP ensured the process was affordable. Together, these strategies helped the parties reach a favourable outcome in a case that domestic courts had failed to resolve for 16 years.



## Resolving issues and facilitating remedy through dialogue

As noted by the UNGP, access to remedy not only has a procedural dimension, but a substantive one as well.<sup>32</sup> When submitting a case to an NCP, submitters generally expect a particular outcome.<sup>33</sup> However, NCPs cannot order any remediation measure or compel a company to participate in a specific instance. Their core mandate is to contribute to the resolution of issues through non-adversarial procedures. NCPs have used dialogue-based tools, including good offices, conciliation and mediation to facilitate remedy. In any given year, up to 40% of NCP cases in which NCPs provided good offices led to an agreement between the parties, while up to 47% of cases led the company to change its policies to avoid similar impacts in the future (Figure 3.2). In some cases, agreements facilitated by NCPs included financial compensation or reparation for the parties concerned (Box 3.6).<sup>34</sup>

**Figure 3.2. Outcomes achieved by NCPs (2011-2019)**



Note: The results of the two graphs are cumulative. A case may be reflected in both graphs if it qualifies for both.

Source: OECD Database of Specific Instances.

<sup>32</sup> See Principle 25, Commentary of UN (2011), *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, [https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr_en.pdf)

<sup>33</sup> The UNGPs define "remedy" as including "apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions," as well as "the prevention of harm through, for example, injunctions or guarantees of non-repetition." See Chapter 3, UN (2011), *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, [https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr_en.pdf)

<sup>34</sup> The guidelines do not define the legal value of agreements reached through the NCP process, which is for parties to determine

### Box 3.6. Remedies facilitated by NCPs

#### Financial compensation

In the case of **Australia New Zealand Banking Group (ANZ Bank) and NGOs Equitable Cambodia (EC) and Inclusive Development International (IDI)** (2020), the Australian NCP considered issues including land seizures, child labour and destruction of crops and property by Phnom Penh Sugar Co. Ltd in relation to a sugar cane plantation for which ANZ Bank had provided financing. The NCP process did not yield an agreement, but civil society actors on the ground continued to raise the issue of compensation and provided essential support to the NCP to facilitate this during the follow up phase. ANZ Bank agreed to provide financial contribution corresponding to the gross profit it earned from this operation to help alleviate the hardships faced by the affected communities and support their efforts toward rehabilitation.

#### In-kind reparation

In the case of **ENI S.p.A., ENI International BV, and CWA and ACA** (2019) the Italian NCP considered issues related to chronic flooding that had negatively affected the local communities near oil drilling operations in Nigeria by ENI S.p.A. and affiliates since 1971. Following mediation, the company committed to build and maintain an adequate drainage system that would end the annual flooding caused by its operations. Phase one (out of three) of the works is now underway.

In the case of **Kinross Brasil Mineração and Paracatu neighboring associations** (2016), the Brazilian NCP considered allegations by the city of Paracatu's neighbouring associations alleging that the operation of a gold mine by Kinross Brasil Mineração damaged surrounding homes and hindered access to the city. Following mediation, Kinross stated its intent to repair the homes in three urban neighbourhoods through a partnership project with the City of Paracatu and the active participation of the community.

An additional feature of the NCP process is their ability to include 'recommendations on the implementation of the Guidelines as appropriate' in their public final statements.<sup>35</sup> NCPs' recommendations are particularly instrumental to remedy when the parties cannot reach agreement, but they may also complement an agreement that only partially addresses the issues. By doing so, NCPs provide guidance to companies on where they could improve their policies to avoid future adverse impacts. Similarly, while not required by the Guidelines, some NCPs also issue determinations as to whether or not the company observed the Guidelines.<sup>36</sup> These determinations can be a powerful signalling tool, helping to clarify correct application of the Guidelines for companies, and can constitute a remedy for the submitter. The case of Michelin Group and Four NGOs and a Trade Union (Box 3.7) demonstrates how tools such as dialogue, recommendations and determinations helped advance changes in company policy.

<sup>35</sup> See Procedural Guidance, Section I.C.3c in OECD (2011), *OECD Guidelines for Multinational Enterprises*, OECD Publishing, <http://dx.doi.org/10.1787/9789264115415-en>

<sup>36</sup> OECD (2019), *Guide for OECD National Contact Points on issuing Recommendations and Determinations*, OECD Guidelines for Multinational Enterprises, <https://mneguidelines.oecd.org/Guide-for-National-Contact-Points-on-Recommendations-and-Determinations.pdf>

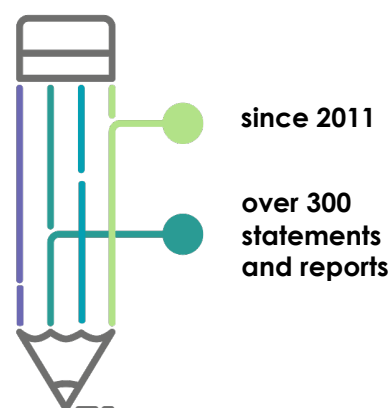
### Box 3.7. Change in company policy as a result of engagement with the NCP

In the case **Michelin Group and four NGOs and a trade union**, the French NCP addressed issues concerning the Guidelines chapters' on general policies, disclosure, human rights, employment and industrial relations, environment, and combating bribery provisions in relation to the company's construction of a tire manufacturing plant in India on recently industrialised pastureland. The NCP offered its good offices to the parties, but no agreement could be reached and the complainants withdrew from the process.

The NCP proceeded to issue a final statement containing determinations on conformity with the Guidelines and four recommendations for the company. Following this, the Michelin Group regularly updated the NCP on their implementation of the recommendations and consulted the NCP on certain matters, which was reflected in two follow-up statements. The continued dialogue between the NCP and Michelin Group, including through follow-up reports, supported the company in integrating due diligence into its global policy. The company also developed innovative standards in the natural rubber sector.

The Guidelines provide that good offices proceedings should remain confidential, but that NCPs should issue public statements when closing a case. Such publicity ensures visibility and transparency for the process, and may also contribute to remedy and to holding the company accountable where relevant (see also below, Box 3.9). Furthermore, these public statements have an informative and normative value as they contain information about how the Guidelines should be interpreted in concrete cases. Illustratively, since 2011 NCPs have published over 300 statements and reports.<sup>37</sup>

Finally, NCPs contribute to resolving issues by using the follow up process to verify that agreements are honoured and recommendations followed. The use of follow up measures can improve compliance with the recommendations issued by NCPs, in part due to the accountability role that follow up measures embody.<sup>38</sup> Moreover, follow up enables dialogue between the company and the submitters to continue, leading to further improvements (Box 3.8).



### Box 3.8. Supporting continued improvement through dialogue

In the case of **Deutsche Post DHL and UNI/ITF (2014)**, the German NCP addressed issues related to the rights of workers of DHL in several countries where it operates, including the right to establish and join trade unions. Following mediation by the NCP, the parties resolved their issues, but also concluded a protocol committing the parties to ongoing quarterly meetings and dialogue on such issues with the continuous support of the NCP. This protocol has since then been extended and revised several times.

<sup>37</sup> This figure represents the sum of all initial assessment, final and follow up statements published by NCPs since 2011.

<sup>38</sup> OECD (2019), *Guide for OECD National Contact Points on issuing Recommendations and Determinations*, OECD Guidelines for Multinational Enterprises, <https://mneguidelines.oecd.org/Guide-for-National-Contact-Points-on-Recommendations-and-Determinations.pdf>

### Promoting RBC policy coherence

NCPs can promote policy coherence on RBC within government through their remedy role, by informing other government agencies of the findings from their statements when relevant to these agencies policies and programmes, as encouraged by the Guidelines.<sup>39</sup> For example, concerning export credits, the OECD Recommendation on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence, known as the 'Common Approaches', specifies that Export Credit Agencies should consider any statement or report made publically available by their NCP when considering an application for export credits.<sup>40</sup> In line with this, the UK Export Finance 'will consider any reports made publicly available by the UK NCP in respect of the human rights record of a company when considering a project for export credit.'<sup>41</sup> Similarly, in Canada, the NCP may request that a company not be eligible for economic diplomacy services if it fails to engage in good faith in an NCP case (Box 3.9).<sup>42</sup>

#### Box 3.9. The role of the Canadian NCP in promoting policy coherence

In the case **Banro Corporation and Group of former employees (2016)**, the Canadian NCP considered issues brought by a group of five former employees of the Société Minière et Industrielle du Kivu (SOMINKI), located in the Democratic Republic of Congo (DRC). The submitters alleged that Banro Corporation, a majority shareholder of SOMINKI, had not observed the Guidelines' general policies chapter by failing to settle the final accounts of 4,987 former employees of SOMINKI following its liquidation.

The Canadian NCP concluded that facilitating dialogue between Banro and the submitters without the presence of other key actors (in particular the Government of DRC and the Liquidation Committee) would not facilitate SOMINKI's liquidation. However, the NCP recommended that Banro reactivate the liquidation process in good faith and implement the OECD Guidelines and the OECD Due Diligence for Meaningful Stakeholder Engagement in the Extractive Sector.

In its follow-up statement however the Canadian NCP expressed its disappointment with Banro's failure to respond to the NCP's requests and repeatedly missed deadlines. The NCP noted that this lack of cooperation would be taken into consideration should the company qualify in the future as a Trade Commissioner Service (TCS) client or for trade advocacy support provided by Canada's diplomatic missions abroad.<sup>43</sup>

Drawing on expertise gained from reviewing corporate impacts through cases, some NCPs have also been consulted by their government on RBC policy issues. For example, the Dutch NCP was tasked with examining the compliance of the oil and gas sector with the Guidelines and providing recommendations to address shortcomings.<sup>44</sup> Amongst other issues, the NCP recommended that

<sup>39</sup> See Procedural Guidance, paragraph 37 in OECD (2011), *OECD Guidelines for Multinational Enterprises*, OECD Publishing, <http://dx.doi.org/10.1787/9789264115415-en>

<sup>40</sup> OECD (2017), *Responsible business conduct and economic diplomacy tools*, <http://mneguidelines.oecd.org/Responsible-business-conduct-and-economic-diplomacy-tools.pdf>

<sup>41</sup> See paragraph 17(ii) in Government of the United Kingdom (2016), *UK National Action Plan on Business and Human Rights*, [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/522805/Good\\_Business\\_Implementing\\_the\\_UN\\_Guiding\\_Principles\\_on\\_Business\\_and\\_Human\\_Rights\\_updated\\_May\\_2016.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/522805/Good_Business_Implementing_the_UN_Guiding_Principles_on_Business_and_Human_Rights_updated_May_2016.pdf)

<sup>42</sup> See section 14.4 in Global Affairs Canada (n.d.), *Procedures Guide for Canada's National Contact Point for the Organization of Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises*, [https://www.international.gc.ca/trade-agreements-accords-commerciaux/ncp-pcn/procedures\\_guide\\_de\\_procedure.aspx?lang=eng](https://www.international.gc.ca/trade-agreements-accords-commerciaux/ncp-pcn/procedures_guide_de_procedure.aspx?lang=eng)

<sup>43</sup> Canadian NCP (2019), *Follow up Statement on Banro Corporation and group of former employees*, <https://www.international.gc.ca/trade-agreements-accords-commerciaux/ncp-pcn/2019-03-19-ncp-pcn.aspx?lang=eng>

<sup>44</sup> Dutch NCP (2019), *Letter of the Dutch NCP regarding research of the oil and gas sector in the Netherlands*, <https://www.oecdguidelines.nl/ncp/news/2019/04/23/publication-ncp-research-of-the-oil-and-gas-sector-and-the-oecd-guidelines>

the government make reporting on international RBC policy a prerequisite for participation in government trade missions or access to other financial facilities.<sup>45</sup> Similarly, following the Rana Plaza tragedy, the French NCP was tasked with clarifying companies' responsibilities with regards to the Guidelines.<sup>46</sup> The resulting report (the [Rana Plaza Report](#)) has been used to reinforce to industry associations the need to embed due diligence and also contributed to the development of [OECD sector guidance](#)<sup>47</sup>.

The impact of NCPs on policy coherence is not only limited to advancing RBC objectives across their own governments. NCPs have also supported broader public policy change in areas related to the issues covered by the Guidelines in non-adherent countries. In the case of FIFA and BWI, for example, the Swiss NCP examined issues related to the human rights of migrant workers constructing the facilities for the FIFA 2020 World Cup in Qatar. The case was one of the drivers for adopting significant labour law reforms in Qatar (see Box 3.10).

### **Box 3.10. Supporting public policy change in no-adherent countries**

In the case of FIFA and BWI (2017), the Swiss NCP examined issues related to the human rights of migrant workers related to the construction of facilities for the FIFA 2022 World Cup in Qatar. As a result of NCP mediation, the parties reached an agreement whereby FIFA committed to issuing a human rights policy and to build and exercise its leverage whenever possible with all relevant actors in Qatar to contribute to ensuring decent and safe working conditions for the 2022 FIFA World Cup Qatar stadiums' construction workers. Following this case, FIFA published a human rights policy and significant labour law reforms have been adopted in Qatar, including the dismantling of the Kafala system.

*"[The Swiss NCP] helped to stimulate quality dialogue and cooperation both with FIFA and the Qatar authorities. [...] We have good and serious cooperation on occupational safety and health and other issues with the SC Qatari authorities. They are also engaged in aligning their labour laws and practices with ILO standards. Further improvement on respect of the human rights of migrant construction workers in Qatar is needed and will take place, but there is already positive movement and a shared vision in many areas." – BWI*

NCPs are also becoming increasingly involved in contributing to policy coherence government-wide through National Action Plans on Business and Human Rights (NAPs). By providing an overarching policy framework for RBC, NAPs may strengthen coordination and coherence within the government among all relevant policies relating to RBC (including investment, procurement, export credits, among others).<sup>48</sup> To date, all 22 NAPs adopted by governments reference the NCP in some role or function; many recognise NCPs as a key mechanism in promoting access to remedy. Beyond this, many NCPs have taken part in the respective design and development of NAPs.<sup>49</sup>

<sup>45</sup> Ibid

<sup>46</sup> French NCP (2013), *NCP Report on Implementation of the OECD Guidelines in the Textile and Clothing Sector*, <https://www.tresor.economie.gouv.fr/Institutionnel/Niveau3/Pages/b5a6e1c0-4f22-487b-b761-de12f330268f/files/9a557d01-a5af-4a71-bbc2-535f5087f8bd>

<sup>47</sup> French NCP website, *Quelles actions ont suivi l'accident du Rana Plaza?*, <https://www.tresor.economie.gouv.fr/tresor-international/pcn-france/rapport-rana-plaza-la-conduite-responsable-des-entreprises-dans-les-chaines-d-appvisionnement-textile-habillement-mondiales>

<sup>48</sup> Global Forum on Responsible Business Conduct (2018), *Background Session Note on National Action Plans to Enable RBC Policy Coherence*.

<sup>49</sup> OECD (2017), *National action plans on business and human rights to enable policy coherence for responsible business conduct*, <https://mneguidelines.oecd.org/NAP-to-enable-policy-coherence-for-RBC.pdf>



*NCPs handled numerous cases in the mining and extractive sectors, addressing impacts on workers, local communities and the environment, as well as corruption issues.*

## NCPs and remedy: 20 years of challenges

In the last 20 years, NCPs have made important contributions to promoting business accountability and providing access to remedy, but have also encountered enduring challenges.

This section will look at five key areas that have limited NCPs' capacity to deliver at their full potential, drawing on feedback from users of the mechanism, from stakeholders and from NCPs themselves through peer reviews. In general, these challenges have multiple causes, in which NCPs' own limitations are just one. This section seeks to disentangle such causes to focus more specifically on addressing NCP limitations in Chapter 5.



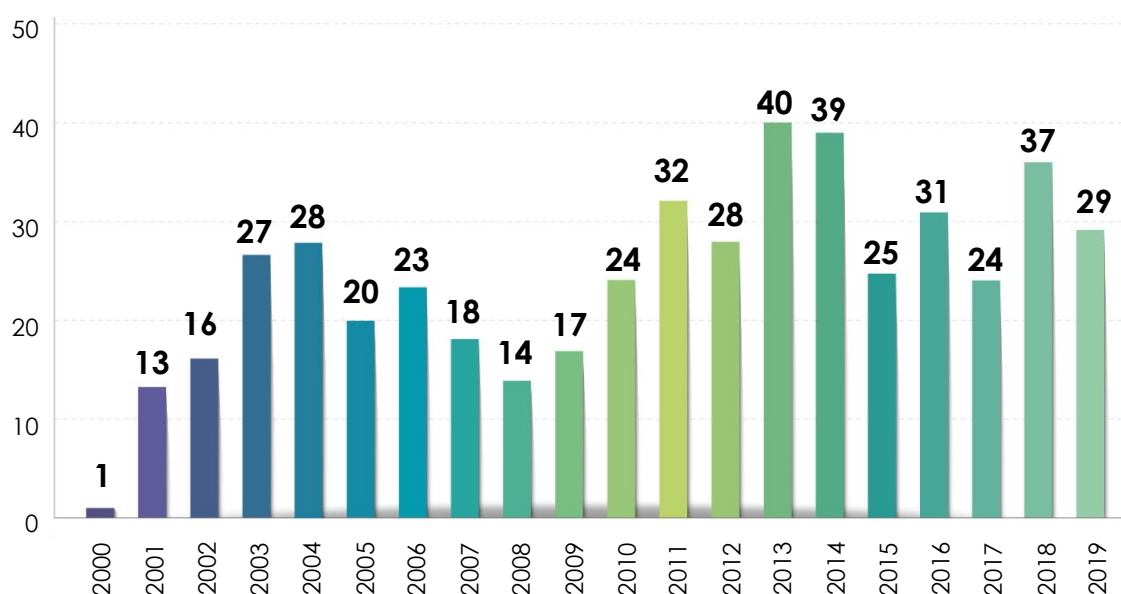
## 4 NCPs and remedy: 20 years of challenges

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### Increasing visibility and exposure

One of the 'core criteria' for NCPs is that they must be visible. Governments are expected to make the existence of their NCP known, and as part of their mandate to promote the Guidelines, NCPs should also contribute to their own visibility.

Some NCPs organise or participate in dozens of RBC events every year, giving them an opportunity to inform the public about their role regarding remedy; some are present in the media, in academia or in experts meetings. The majority of NCPs however have low promotional activity, with few or no events per year. Additionally, when events are organised, they may not equally target all stakeholder groups, or may fail to reach potential users, especially communities located in remote areas. Such limited outreach and exposure reduces the public's knowledge of the specific instance mechanism. This, as a result, contributes to keeping the number of yearly cases filed relatively low (Figure 4.1). The relative stagnation in the number of cases filed annually to NCPs is particularly striking considering that since 2000, 16 countries adhered to the Guidelines and established an NCP.

**Figure 4.1. Cases submitted to NCPs per year**

Note: The number of cases received is based on cases reported to the OECD Secretariat and reflected in the OECD Database of Specific Instances as at 8 December 2020. These numbers may not reflect cases currently pending before NCPs that have not yet been reported, in accordance with those NCPs' rules of procedure.

Source: OECD Database of Specific Instances.

This lack of outreach and exposure also exists with respect to NCPs' visibility across government. Eight governments include only one government department in their NCP, and while the practice of proactively forwarding specific instance statements to relevant government departments as recommended by the Guidelines is on the rise, it is still inconsistently applied across the network. These limitations diminish the potential for NCPs' remedy work to contribute to policy coherence.

### Ensuring accessibility across the board

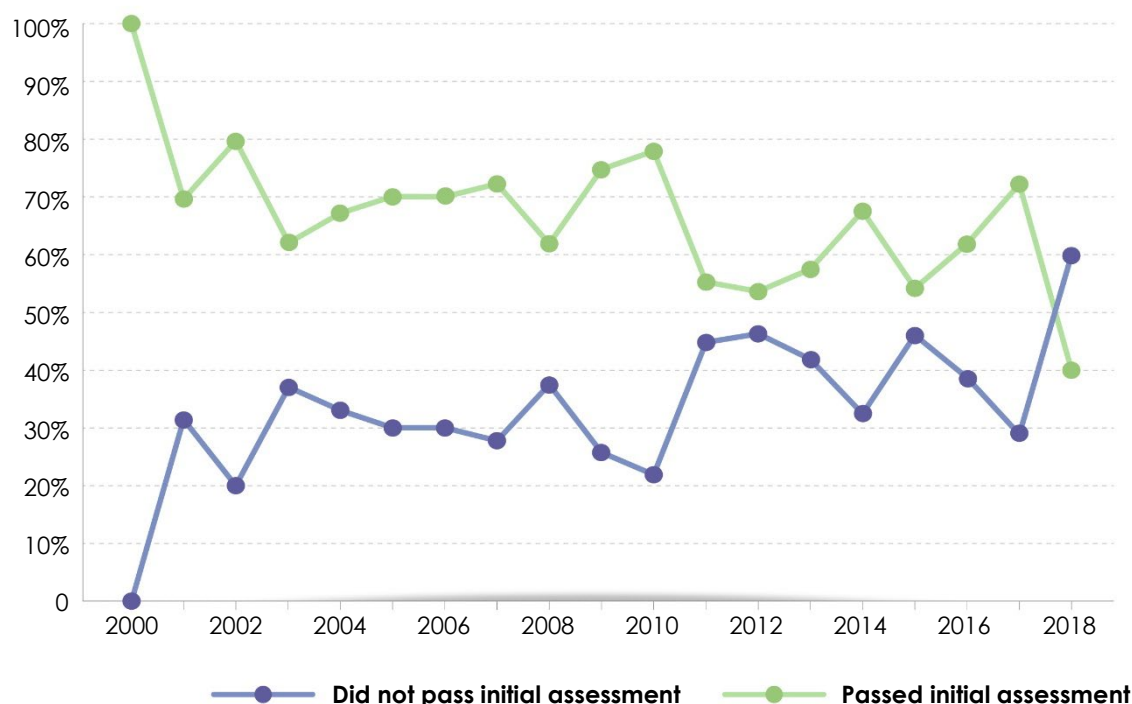
NCPs must be accessible. This means that making use of the grievance mechanism should be straightforward and not too onerous. As indicated previously, NCPs have put in place strategies to ensure that they are as affordable and available as possible, but barriers to accessibility remain.

First, accessibility may not mean the same thing for all categories of submitters. The relatively low procedural bars maintained by most NCPs may be relatively easy to clear for NGOs or trade unions, but still be demanding for some individuals or communities who may lack the required (foreign) language skills or access to online technologies. The fact that individuals have submitted less than a quarter of all cases since 2011 (see above) may be an indication that accessibility could be improved for these categories.

Relatedly, the accessibility of NCPs as remedy mechanisms does not only mean that filing a case should be easy, but also that barriers to accessing good offices should be low. Between 2000 and

2018, 36% of all cases concluded<sup>50</sup> by NCPs failed to pass initial assessment and progress to good offices, with a peak of 60% in 2018 (Figure 4.2). Moreover, many cases are only partially accepted<sup>51</sup>. Reinforcing the point made above, between 2000 and 2018 only 33% of cases submitted by individuals progressed past initial assessment. Less than half the average rate, this figure indicates that building a successful case is more difficult for this category of submitters.

**Figure 4.2. Rate of NCP cases moving past initial assessment**



*Note: This chart shows, for all cases received across the NCP network for a given year, the percentage of all cases that were not accepted for further examination following an initial assessment. Cases received in 2018 had the highest rate of non-acceptance, with 60% of cases not moving past initial assessment. Although a trend toward a lower rate of acceptance is visible, 2018 seems to be an outlier year, which can be explained by a high number of cases submitted to some NCPs that were manifestly outside the scope of the NCP process. These numbers are based on updates reported to the OECD Secretariat by NCPs for publication on the OECD Database of Specific Instances. Source: OECD Database of Specific Instances*

<sup>50</sup> A case that is 'concluded' at the initial assessment phase in one in which the NCP decides the issues raised do not merit further consideration, based on para 25 of the Procedural Guidance (see also Procedural Guidance, section I.C.3a)

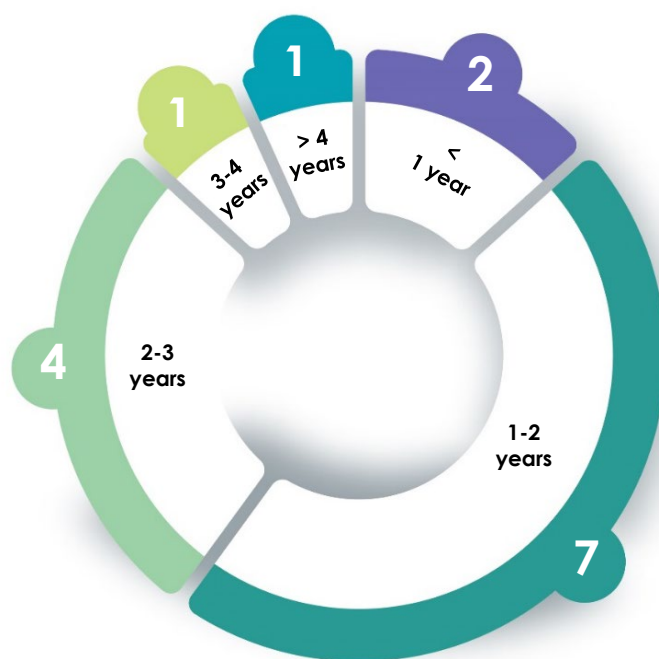
<sup>51</sup> A case that is 'partially accepted' at the initial assessment phase in one in which the NCP decides that some of the issues raised merit further consideration (based on para 25 of the Procedural Guidance), while other issues raised do not. In such cases, only those issues that merit further consideration are addressed during the good offices phase.

A recurrent criticism by submitters has been that there is much variation across the network regarding requirements for acceptance, which is in part due to the broad scope of the initial assessment criteria listed in the Guidelines. For example, NCPs differ in what is required to accept a case, with some only requiring that submitters demonstrate the plausibility of the issues, while others request a significant level of evidence and engage with the merits of the submission; the latter leading to higher levels of rejection.<sup>52</sup>

### Respecting indicative timelines where possible

NCPs are expected to handle cases in an 'efficient and timely manner.'<sup>53</sup> The Guidelines give indicative timelines for the handling of a case: three months for the initial assessment phase, six months for the good offices phase, and three months for publishing the final statement.<sup>54</sup> Compared to other procedures, notably judicial proceedings in many jurisdictions, these indicative timelines are relatively short. In practice, these timelines are difficult to uphold. Illustratively, only two of fifteen cases that were concluded by NCPs in 2019 were done so within the indicative timeframe of twelve months, with one case taking over eight years before conclusion.

**Figure 4.3. Duration of cases concluded in 2019**



Note: 'Concluded' cases are cases that were accepted for further examination and in which the NCP provided good offices. The duration is calculated from the date of the filing of the case to the date of the publication of the final statement.

Source: OECD Database of Specific Instances.

<sup>52</sup> OECD (2018), *OECD Guidelines for Multinational Enterprises: a Glass Half Full*, <http://www.oecd.org/investment/mne/OECD-Guidelines-for-MNEs-A-Glass-Half-Full.pdf>; OECD Watch (2015), *Remedy Remains Rare* in <https://www.oecdwatch.org/wp-content/uploads/sites/8/2015/06/Remedy-Remains-Rare.pdf>

<sup>53</sup> See Procedural Guidance, section I.C in OECD (2011), *OECD Guidelines for Multinational Enterprises*, OECD Publishing, <http://dx.doi.org/10.1787/9789264115415-en>

<sup>54</sup> See Commentary to the Guidelines, paragraph 40 in OECD (2011), *OECD Guidelines for Multinational Enterprises*, OECD Publishing, <http://dx.doi.org/10.1787/9789264115415-en>



As these timelines are 'indicative', NCPs do not have an obligation to meet them, and prolonged proceedings are often simply a reflection of the complexity of the case. For example, parties may need time to review and respond to the information provided through the good offices; for NCPs to analyse the variety of issues; for parties to find availabilities for meetings; for terms of references for mediation to be agreed; for parties to formulate observations on NCPs' draft statements; or for parties to find an agreement. In a number of cases, a party may become unresponsive, or request that proceedings be suspended e.g. while parallel proceedings are ongoing. The context of the COVID-19 pandemic is creating further delays.

However, features of the NCP itself may be creating undue delays in a number of situations:

- NCPs do not have sufficient staff resources to progress cases in a timely manner;
- Some cases involve several NCPs and coordination slows down the treatment of cases, especially when NCPs disagree on which one should lead on the case;
- NCPs lack the means or the authority to enforce the deadlines for various steps of the process.

In these situations, one of the main strengths of NCPs – their versatility and ability to act efficiently through light procedures – is not well exploited. This causes uncertainty for parties, can allow impacts to subsist longer than they should, and diminishes the confidence that NCPs can address issues in a timely and efficient manner.

### **Leveraging remedy outcomes more consistently**

The role of NCPs with respect to providing access to remedy is one of dialogue and facilitation. As noted in section 3, NCPs do not have the authority to order a company to participate in the process or undertake measures to remedy impacts. As a result, arriving at remedy will often depend on the NCP's ability to leverage its tools (mediation, recommendations, and determinations) in a way that fosters a solution to the issues. This difficult task entails managing submitters' expectations, as well as helping companies navigate their responsibilities as regards remediation, in a way that is impartial, predictable, equitable and compatible with the Guidelines.

As indicated above, NCPs have achieved positive results, but in many other cases, NCPs have not been able to facilitate remedy outcomes and submitters' expectations were not satisfied. These situations often result from parties' refusal to participate in good offices. Between 2011 and July 2020, 27% of concluded cases reported an unwillingness to engage from one of the parties. When parties do engage, remedy may fail to materialise because the parties do not reach agreement and the company does not follow the NCP's recommendations (if any).

Several factors may explain why NCPs are not always able to bring parties to the table, or to foster remedy solutions. These outcomes may simply reflect the complexity of the issues and the difficulty to find a constructive solution. They may also be the result of the unwillingness of parties to compromise. It may also happen that parallel proceedings, such as court cases, stall dialogue. In such situations, the job of NCPs can become more difficult as parties may be concerned that information exchanged during the NCP process or concessions made may hurt their position in court.

However, unsuccessful outcomes may also result from factors internal to NCPs. First, the way that some governments have structured their NCPs may hinder the creation of a climate of trust necessary to make a case succeed. This can be the case of single-agency and inter-agency

NCPs that are not clearly separated from other work units with a potentially conflicting portfolio. For example, the NCP may report to an official who is also in charge of investment promotion; or the NCP may be comprised of part-time staff who spend the rest of their time on potentially conflicting issues. Perceptions of partiality may also arise in NCP structures (such as multipartite and expert-based) that include stakeholder representatives who could be in conflict due to their proximity with case submitters or the issues raised. When NCP structures and/or rules or procedures do not allow preventing or managing such situations, it is difficult for NCPs to facilitate agreed solutions, or to make credible recommendations.

Governments may also not assign to their NCPs the level of expertise and senior leadership necessary for them to project authority when dealing with high-level company executives, or when seeking to resolve high stake issues. These structural shortcomings may particularly affect companies' decisions to engage. Companies find themselves in the position of having to respond to serious allegations before the NCP and may be concerned about the submitters' good faith or the impact of the NCP process on parallel proceedings. When in doubt, they may simply find it more reasonable not to participate in this non-binding process, or may lack motivation to find an agreement.

A second factor affecting remedy outcomes is the lack of mediation skills to facilitate productive dialogue. Many governments do not actively ensure that NCPs have access to trained mediators in-house, or the funds to hire external professional mediators. In these cases, good offices are often limited to bringing parties around the table and letting them talk through the issues, with limited engagement on the part of the NCP, and seldom lead to satisfactory agreements. Such absence of agreement can then lead to a second disappointment for the submitter if the NCP does not have the staff or the expertise necessary to engage in a detailed review of the issues, explore creative remedy solutions and make strong recommendations.

Thirdly, even when a case leads to agreement or recommendations, there may be less incentive to implement, as follow up is not systematic across the network of NCPs. This practice is growing, but what follow up means varies in practice and may remain superficial, with little cross-examination or public conclusions as to whether agreements or recommendations were implemented.<sup>55</sup>

Finally, with respect to impacts on human rights (addressed in over half of NCP cases), the UN Guiding Principles, with which the human rights chapter of the Guidelines is aligned,<sup>56</sup> specify that remedy has a substantive dimension.<sup>57</sup> This means that remedy should be 'effective' from the point of view of the outcome achieved. There is no research to date assessing whether NCP-facilitated outcomes consistently qualify as effective remedy. NCPs must handle cases in a way that is compatible with the Guidelines, and therefore should consistently review this aspect of

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<sup>55</sup> OECD (2019), *Guide for National Contact Points on Follow Up to Specific Instances*, OECD Guidelines for Multinational Enterprises, <https://mneguidelines.oecd.org/ncps/Guide-for-National-Contact-Points-on-Follow-Up-to-Specific-Instances.pdf>

<sup>56</sup> See paragraph 36, Commentary to the Guidelines in OECD (2011), *OECD Guidelines for Multinational Enterprises*, OECD Publishing, <http://dx.doi.org/10.1787/9789264115415-en>

<sup>57</sup> See Commentary to Principle 25 in UN (2011), *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, [https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf)

outcomes they facilitate. This is particularly critical when parties have been required to compromise and the submitters' initial expectations are only partially satisfied.<sup>58</sup> A number of NCPs verify agreements for compatibility with the Guidelines, but this is not reflected consistently across all NCPs' rules of procedure.<sup>59</sup>

### Guaranteeing equitable and safe proceedings

NCPs' processes should be as open, accessible and affordable as possible, so that any individual or organisation anywhere in the world can use the mechanism. The Guidelines require that NCPs handle cases in an 'equitable' manner, i.e. ensuring that parties 'can engage in the process on fair and equitable terms.' NCPs have implemented several measures to help assist parties, including advising complainants on how to correct a filing to ensure it falls under the Guidelines. However, some situations may prevent vulnerable persons from engaging freely or on an equal footing in the process.

First, the resources available to parties to a case are often vastly unequal. For example, even though legal representation is not necessary in the NCP process, many companies choose to involve lawyers, which leads to larger volumes of documents being exchanged, or key information being withheld, generally formalising a process which otherwise would remain more flexible. Submitters may then also need to seek legal advice but lack resources to do so. At times, well-resourced submitters have used these methods in cases involving smaller companies. It should be noted that the OECD's institutional stakeholders, Business at OECD (BIAC), the Trade Union Advisory Committee (TUAC), and OECD Watch, frequently assist parties with cases.

Intimidation or fear of reprisals may also prevent submitters from participating fairly in the process, taking various forms, from threats to the submitters' life, employment, or family, to so-called 'SLAPP suits'.<sup>60</sup> OECD Watch recently published statistics about the prevalence of reprisals in NCP cases: at least 20 NCPs have handled cases involving reprisals, and 25% of cases filed by NGOs or communities since 2000 have involved reprisals against the submitters or other persons. These numbers are 'low estimates' given that reprisals are rarely applied openly or are often unreported.<sup>61</sup> Still, few NCPs have an explicit policy to prevent and respond to risks to parties' security.<sup>62</sup>

<sup>58</sup> United Nations Working Group on Business and Human Rights (2017), *Human rights and transnational corporations and other business enterprises*, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/218/65/PDF/N1721865.pdf?OpenElement>

<sup>59</sup> See for example section 13(6) in The Danish Business Authority (2012), *Executive Order on a Mediation and Complaints-Handling Institution for Responsible Business Conduct* [unofficial English translation], <https://businessconduct.dk/file/298160/executive-order-on-mediation.pdf>.

<sup>60</sup> Slapp suits stand for 'Strategic Lawsuit Against Public Participation.' A SLAPP suit is a '[l]awsuit filed strategically by a corporation against a group or activist opposing certain action taken by the corporation, usually in the realm of an environmental protest. Typical claims underlying a SLAPP suit are libel, slander or restraint of business.' See [https://www.law.cornell.edu/wex/slapp\\_suit](https://www.law.cornell.edu/wex/slapp_suit).

<sup>61</sup> OECD Watch (2019), *'Use with caution: The role of the OECD National Contact Points in protecting human rights defenders'*.

<sup>62</sup> See for example the Australian NCP's rules of procedure, para. 3.5. [https://ausncp.gov.au/sites/default/files/2019-09/2019\\_AusNCP\\_Complaint\\_Procedures.pdf](https://ausncp.gov.au/sites/default/files/2019-09/2019_AusNCP_Complaint_Procedures.pdf).



## Thinking ahead: Maximising NCPs' contribution to remedy

This chapter takes a forward-looking and thought-provoking approach to reflect on the strengths and challenges of NCPs over the past 20 years. It lays out two broad areas of action that governments could explore to maximise NCPs' contribution to remedy: one focusing on individual NCPs, the other on the collective action of the network of NCPs.

This section is informed by OECD reports, peer review reports, stakeholder inputs and academic research. Possible actions outlined are not concrete recommendations to governments, nor have they been discussed or agreed by them for the purposes of this paper. Rather, the aim of the OECD Secretariat in outlining these possible areas of action is to initiate a dialogue among governments on how to strengthen the NCPs of the future. Some of these proposals may be adopted in the short term with minimal formalities, while others may require revisiting the Procedural Guidance.



# 5

## Thinking ahead: Maximising NCPs' contribution to remedy

This chapter takes a forward-looking and thought-provoking approach to reflect on the strengths and challenges of NCPs over the past 20 years. It lays out two broad areas of action that governments could explore to maximise NCPs' contribution to remedy: one focusing on individual NCPs, the other on the collective action of the network of NCPs. This section is informed by OECD reports,<sup>63</sup> peer review reports,<sup>64</sup> stakeholder inputs<sup>65</sup> and academic research. Possible actions outlined are not concrete recommendations to governments, nor have they been discussed or agreed by them for the purposes of this report. Rather, the aim of outlining these possible areas of action is to initiate a dialogue among governments on how to strengthen the NCPs of the future. Some of these proposals may be adopted in the short term with minimal formalities, while others may require revisiting the Procedural Guidance.

### Maximising individual NCPs' remedy potential

#### *Increasing NCPs' resources*

Governments have an obligation to 'make available human and financial resources to their National Contact Points so that they can effectively fulfil their responsibilities, taking into account internal budget priorities and practices.'<sup>66</sup> However, staff shortages and turnover, insufficient expertise and budget limitations disrupt the operations of many NCPs.

Core NCP teams, sometimes called 'NCP secretariats', are usually composed of one to three staff members responsible for a wide range of daily tasks, such as organising promotional events, receiving cases and preparing case decisions. Figure 5.1 shows that nearly half of NCPs only have dedicated part time staff, which is likely to limit promotional activity and delay case handling.<sup>67</sup> Insufficient human resources can also create tacit incentives to limit the caseload, for example by setting high acceptance thresholds for cases.

<sup>63</sup> OECD (2019), *Progress Report on National Contact Points for Responsible Business Conduct*, <https://www.oecd.org/daf/inv/mne/progress-report-on-ncps-for-responsible-business-conduct-2019.htm>

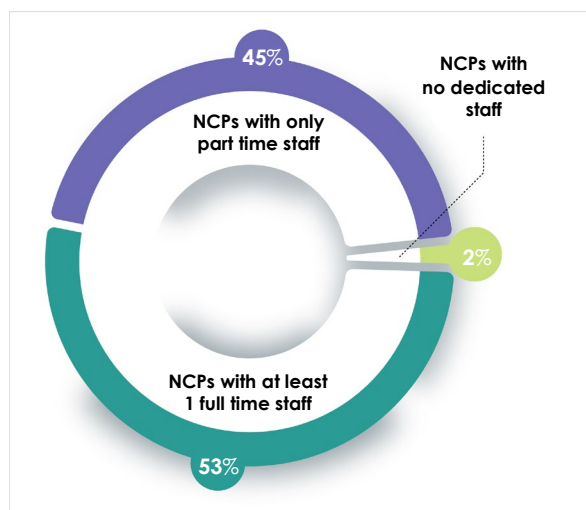
<sup>64</sup> OECD (n.d.), *National Contact Point Peer Reviews*, <https://mneguidelines.oecd.org/ncppeerreviews.htm>

<sup>65</sup> OECD Watch (2016), A "4x10" for why and how to unlock the potential of the OECD Guidelines, <https://www.oecdwatch.org/2016/06/03/a-4x10-plan-for-why-and-how-to-unlock-the-potential-of-the-oecd-guidelines/>; TUAC (n.d.), *National Contact Point best practices*, <https://tuac.org/wp-content/uploads/2019/12/TUACNCP-Principles.pdf>

<sup>66</sup> See section I.4, OECD (2011), *Decision of the OECD Council on the OECD Guidelines for Multinational Enterprises*, <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0307>

<sup>67</sup> OECD (2019), *Guide for National Contact Points on Structures and Activities*, OECD Guidelines for Multinational Enterprises, <https://mneguidelines.oecd.org/Guide-for-National-Contact-Points-on-Structures-and-Activities.pdf>



**Figure 5.1. Dedicated staff at NCPs (2019)**

Source: NCP Annual Reports to the OECD

The COVID-19 crisis has further stretched NCPs' resources and their ability to conduct promotion and handle cases in a timely manner. As a result, many NCPs had to inform current and future parties that their cases would be delayed. This situation likely affects most government agencies, but it is particularly unfortunate in the case of NCPs, as COVID-related business impacts on workers and communities<sup>68</sup> may lead to a surge in cases that NCPs are not currently resourced to handle.

Limitations due to understaffing have been consistently raised in earlier reports about NCPs, as well as in peer reviews. The number one action that almost all governments can take to strengthen their NCP is to **invest sufficient human resources** to enable NCPs to meet the core criteria established in the Procedural Guidance.<sup>69</sup>

Besides low staff numbers, excessive staff turnover is also problematic. In 2019, 24 NCPs reported the departure of one or more members of their staff. Turnover drains an NCP's resources due to frequent re-training needs. Turnover also requires NCPs to re-establish contacts, which can strain their rapport with stakeholders. **Limiting rotations** would be an effective way for governments to avoid case delays, build expertise and gain trust.

NCPs also may not all have the expertise necessary 'for dealing with the broad range of issues covered by the Guidelines.'<sup>70</sup> The sheer variety and complexity of cases increasingly requires NCPs to engage external expertise to understand and analyse the substantive issues. Likewise, responding to sensitive situations such as intimidation and reprisals also requires specialised skills and expertise. Access to expertise is key to stakeholder confidence, as well as NCPs' ability to foster case outcomes that are compatible with the Guidelines, and should be ensured across the network. Currently, expertise may be cultivated through regular training programmes, or available externally through the NCP structure, particularly when NCPs have an inter-agency, multi-stakeholder or expert-based composition, or when they have an advisory body. More effort however is needed to ensure NCPs have sufficient and readily available access to expertise. Staffing NCP secretariat positions through **competitive recruitment processes that require candidates to have expert qualifications in RBC and dispute resolution**, would help increase the expertise directly available to NCPs. Alternatively, governments could make an **expert training programme** available for NCP officials.

<sup>68</sup> See for example OECD (2019), *COVID-19 and responsible business conduct*, Policy Responses to Coronavirus (COVID-19), <http://www.oecd.org/coronavirus/policy-responses/covid-19-and-responsible-business-conduct-02150b06/>

<sup>69</sup> OECD (2019), Progress Report on National Contact Points for Responsible Business Conduct, [https://www.oecd.org/mcm/documents/NCPs%20-%20CMIN\(2019\)7%20-%20EN.pdf](https://www.oecd.org/mcm/documents/NCPs%20-%20CMIN(2019)7%20-%20EN.pdf).

<sup>70</sup> See Procedural Guidance, section I.A.I in OECD (2011), *OECD Guidelines for Multinational Enterprises*, OECD Publishing, <http://dx.doi.org/10.1787/9789264115415-en>

NCPs also need financial resources to effectively handle cases. A fundamental expense that NCPs should be able to cover is advanced mediation training, or alternatively professional mediator fees. Other expenses are translation costs or travel costs. Finally, to enhance accessibility amongst certain groups, governments could allocate financial resources for NCPs to carry out tailored awareness-raising campaigns or training programmes on using the NCP system. That said, 31 NCPs did not have a dedicated operational budget for 2019 and had to apply for funds for most expenses. This reality can lead to delays, limit proactive initiatives and reduce activity overall. Accordingly, governments should ensure that **sufficient funds are available to NCPs in a timely manner**.

While there is a clear need for almost all governments to invest more resources into their NCPs, not all of them necessarily have the capacity or even the need to permanently maintain a fully staffed NCP. These governments could consider pooling resources with others **to carry out certain activities jointly on a regional level**. This would help create synergies, increase visibility and expertise, and strengthen stakeholder relations and confidence.

### *Improving the structure of NCPs*

The Guidelines do not mandate a particular structure for NCPs, but afford governments' flexibility to define the most appropriate set up for their NCP depending on the national context. In practice, several models have emerged (above, Figure 2.2.) with each structure experiencing opportunities and challenges. Regardless of the structure, a core requirement for governments, which NCP peer reviews frequently pointed out, is to ensure their NCP operates effectively and secures stakeholder confidence. To do so, the Guidelines suggest including stakeholders within NCP structures. In practice, NCPs are doing this either by (i) making stakeholders part of the NCP itself (the so-called 'multipartite NCPs'), (ii) including stakeholders in an advisory body (which is typical of single-agency or inter-agency NCPs), or (iii) having stakeholders nominate expert members of the NCP (a method used for expert-based NCPs). However, close to 25% of governments do not include stakeholders in the structure of their NCP in any of these ways. A priority for these governments should be to reform their NCP structure **to provide for stakeholder involvement**.

Other aspects of NCPs' structures may also limit stakeholder confidence. A particular challenge facing a number of single-agency and inter-agency structures relates to a lack of clearly identified organisational units: NCP tasks are distributed across a more or less well defined group of government officials who generally also have other duties. As consistently flagged in NCP peer reviews, this lack of clear identification may limit the visibility, accessibility, transparency and accountability of NCPs. Additionally, when NCP staff work part-time on other agendas (e.g. investment or trade promotion), this may affect stakeholders' perception of impartiality by potentially creating conflicts of interests (see above). An insufficiently defined NCP may also entail resource implications, as this kind of structure will make it difficult for the NCP to obtain a dedicated budget. Where the NCP model is single agency or inter agency, the respective government could ensure that the **structure, roles and responsibilities as an organisational unit are clearly defined and well-identified**. Box 5.1 highlights the positive effects on a NCP's case activity and stakeholder confidence when the respective government clarifies its organisational structure.

### Box 5.1. Chilean NCP's reforms (2017-2019)

Transforming the NCP into a 'distinct unit' was the first recommendation of the peer review report of the Chilean NCP in 2017. Among other reforms incepted after the peer review, the Chilean NCP team has now become the RBC division within Chile's Under-Secretariat for International Economic Relations (Ministry of Foreign Affairs). Since then, the Chilean NCP's staff has tripled, its caseload surged, and its relations with stakeholders greatly improved.

The Guidelines provide that senior officials should lead NCPs<sup>71</sup> to inspire confidence to stakeholders and raise the public profile of NCPs.<sup>72</sup> Many NCPs however are staffed by junior or middle level officials, with leadership limited to reporting to a senior official with a range of other duties and no direct implication in the NCP. This can lead to several issues. First, an NCP's officials may have little experience in RBC and/or mediation, which can impact the effectiveness of the NCP process. Second, the nature of their position may inhibit access to key stakeholders (such as CEOs) and senior leaders within government, reducing the NCP's ability to appear as a respected and credible resource to foster dialogue and solutions in complex and contentious cases. Lack of leadership or seniority may also diminish the NCP's influence within government and its impact on policy coherence. By increasing **the direct involvement of senior officials**, governments would raise the standing, expertise and ultimately the credibility of NCPs.

In light of the above, governments should **periodically review their NCP** to ensure that the structure is fit-for-purpose. For example, between 2017 and 2019, faced with criticism from stakeholders about its NCP, the Australian government commissioned an independent review of the NCP's structure that led to important reforms (see Box 5.2).

### Box 5.2. Australian NCP's reforms (2017-2019)

In 2017, the Australian government commissioned an independent review of the Australian National Contact Point, housed in the Treasury, with a view to evaluating its administrative structure of the NCP and its fit within the Australian Government. The review – released in 2018 – highlighted the need for increased independence and expertise in decision-making, clearer procedural guidance, improved stakeholder outreach and dedicated resources.

In response to the recommendations to address these issues, in 2018, the Treasury made several changes to the role and functioning of the NCP, including:

- The appointment of an independent expert for all specific instance work;
- The establishment of a new advisory body;
- Revisions to the NCPs' rules of procedure;
- Ensuring sufficient human and financial resources.

<sup>71</sup> See Procedural Guidelines, Section 1.A. paragraph 2 in OECD (2011), *OECD Guidelines for Multinational Enterprises*, OECD Publishing, <http://dx.doi.org/10.1787/9789264115415-en>

<sup>72</sup> See Commentary to the Guidelines, paragraph 10 in OECD (2011), *OECD Guidelines for Multinational Enterprises*, OECD Publishing, <http://dx.doi.org/10.1787/9789264115415-en>

Establishing a well-structured and resourced NCP is critical for furthering the effectiveness of the Guidelines, but is not an end in itself. Governments also need to **embed NCPs more strongly and more visibly into government to ensure policy coherence**. For example, all governments could replicate the practice by some governments to require relevant agencies to consider the findings from NCP statements when applicable to their decision-making. Governments should also ensure cross-fertilisation between the NCP and other government agencies whose work is relevant to promote RBC, such as National Human Rights Institutions or other thematic non-judicial grievance mechanisms.<sup>73</sup> Furthermore, governments should regularly review NCP cases as they may be indicative of policy needs.<sup>74</sup> More generally, governments should also seek NCP expertise built through cases and include it into policy processes in which RBC standards are of relevance; e.g. in public procurement, design of trade and investment policies, etc.

### Maximising remedy potential through the NCP network

#### *Better coordinate practices across the network*

Governments increasing the resources of their NCP and improving their structures would already go a long way towards addressing the challenges to access to remedy outlined in Section 4. However, some of the current limitations are systemic in nature and require a coordinated response at the level of the NCP network as a whole.

There is already some coordination among NCPs, facilitated by the OECD Secretariat. NCPs meet twice a year to share expertise, and regularly communicate and update each other through an intranet. NCPs also regularly organise peer-learning events. Such coordination should be intensified and focus particularly on streamlining joint case-handling, harmonising rules of procedures, and ensuring consistency in interpreting the Guidelines. NCPs could also coordinate on larger-scale regional promotion campaigns to raise awareness of the Guidelines extraterritorially.

#### *Streamlining joint case-handling*

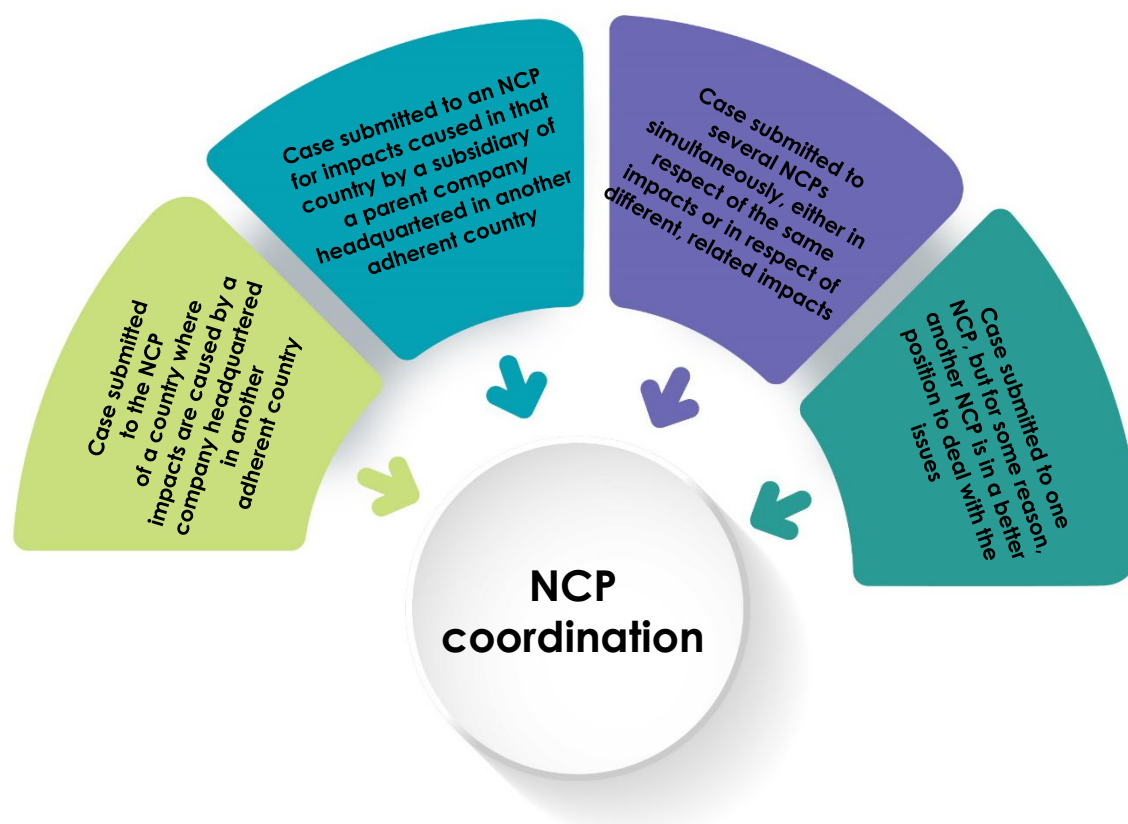
Better coordination on joint case handling would increase predictability and timeliness. Over the years, more and more cases have required the involvement of more than one NCP (Figure 5.2). In 2019, two thirds of cases received involved at least two NCPs, compared to about one third in 2012.

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<sup>73</sup> On NCPs and NHRIs, see Danish Institute for Human Rights and OECD (2020), *Working Together: National Human Rights Institutions and the OECD Guidelines for Multinational Enterprises*, <http://mneguidelines.oecd.org/factsheet-working-together-national-human-rights-institutions-and-OECD-guidelines-for-MNEs.pdf>

<sup>74</sup> On policy coherence, see UN (2018), *Improving accountability and access to remedy for victims of business-related human rights abuse through State-based non-judicial mechanisms: explanatory notes to final report*, OHCHR Accountability and Remedy Project II, <https://undocs.org/A/HRC/38/20/Add.1>

Figure 5.2. Cases requiring the involvement of several NCPs



When required by the case, NCPs will coordinate for more effectiveness. Here, the NCP best placed to handle the case will lead, either because the issues took place in that country, or the NCP has easier access to the parties, whereas the other NCPs involved will support. Supporting NCPs will, for example, share information on their local context, update on parallel proceedings, engage the relevant actors in their country, or provide translation services.<sup>75</sup>

Coordination among NCPs may however also cause effectiveness issues. For example, NCPs may disagree on which one is best placed to take the lead, and the frequent exchanges between coordinating NCPs may create delays. As such, governments could define **clearer and more detailed criteria** for designating the lead NCP for handling the case, ensuring effective information exchanges, and clarifying the role of supporting NCPs. The Secretariat could also be given a role in **centralising the coordination of complex cases** where several NCPs are involved.

#### *Harmonising rules of procedures*

Access to remedy may also be hampered by a lack of predictability, which may result either from an absence of Rules of Procedures at some NCPs, or by discrepancies in procedures followed by different NCPs. 43 out of 49 NCPs have developed and published rules of procedures. Having

<sup>75</sup> For good practices identified by NCPs on case coordination, see OECD (2019), *Guide for National Contact Points on Coordination when handling Specific Instances*, OECD Guidelines for Multinational Enterprises, <http://mneguidelines.oecd.org/Guide-for-NCPs-on-Coordination-when-handling-Specific-Instances.pdf>

clear rules of procedure is a prerequisite of predictability, and therefore it is imperative that **governments ensure their respective NCPs have clear rules of procedure in place.**

Moreover, while the individual rules of procedure of NCPs need to align with the requirements set out in the Procedural Guidance<sup>76</sup>, significant variations exist among NCPs. Examples include key procedural aspects, such as admissibility criteria or whether NCPs will make determinations regarding observance of the Guidelines. This can lead to uncertainties regarding the nature of the NCP mechanism as a whole, and may also create false expectations amongst submitters.<sup>77</sup> It may thus be useful for governments to agree to a **common approach to central aspects of the specific instance process**, while leaving room for country-specific variations. Issues listed in the previous sections that would benefit from joint reflection by all NCPs on rules of procedure include initial assessment thresholds, dealing with claims of conflicts of interest, enforcing indicative timelines, verifying case outcomes for compliance with the Guidelines, and the follow-up process.

Additionally, situations whereby case submitters face intimidation or reprisals are particularly concerning and seem to be increasing. Yet, only a few NCPs have provisions to prevent such situations, or to protect victims of such acts. Governments recently issued an official statement in reaction to reports of reprisals,<sup>78</sup> but the Guidelines provide minimal language in this regard<sup>79</sup> and governments still lack a specific strategy to respond to this systemic issue. A coordinated approach to ensure that all NCPs' **rules of procedure define effective processes to handle situations of intimidation or reprisals**, for example based on existing practices developed by other grievance mechanisms,<sup>80</sup> is urgently needed.

### *Ensuring consistency in interpreting the Guidelines*

The interpretation and application of the Guidelines is a decentralised process conducted by each NCP, and this can at times be an obstacle to access to remedy. There can be claims that an NCP's decision is contrary to the Guidelines, or competing interpretations of some provisions of the Guidelines. While a procedure currently exists whereby NCPs or organisations representing stakeholders at the OECD can request clarification on the substance of the Guidelines,<sup>81</sup> it is in practice unwieldy and rarely used. A quicker and more flexible **mechanism to verify that NCP interpretations are consistent and compatible with the Guidelines** could be established to address doubts more quickly, and to ensure consistency in the interpretation of the Guidelines.

<sup>76</sup> See Procedural Guidance, section I.A-C and Commentary to the Guidelines, section I in OECD (2011), *OECD Guidelines for Multinational Enterprises*, OECD Publishing, <http://dx.doi.org/10.1787/9789264115415-en>

<sup>77</sup> OECD (2019), *Guide for National Contact Points on issuing Recommendations and Determinations*, OECD Guidelines for Multinational Enterprises, <https://mneguidelines.oecd.org/Guide-for-National-Contact-Points-on-Recommendations-and-Determinations.pdf>

<sup>78</sup> OECD Working Party on Responsible Business Conduct (2020), *Statement of the Working Party on Responsible Business Conduct*, <https://mneguidelines.oecd.org/ncps/working-party-on-rbc-statement-march-2020.htm>

<sup>79</sup> See Procedural Guidance, section I.C.4 in OECD (2011), *OECD Guidelines for Multinational Enterprises*, OECD Publishing, <http://dx.doi.org/10.1787/9789264115415-en> and Commentary to the Guidelines, paragraph 30 in OECD (2011), *OECD Guidelines for Multinational Enterprises*, OECD Publishing, <http://dx.doi.org/10.1787/9789264115415-en>

<sup>80</sup> The Guidelines provide that measures should be taken to protect confidentiality in certain circumstances (Procedural Guidance, Commentary, para. 30). For policy guidance and related tools, NCPs could also consider consulting relevant national legislation and policies related to protection from reprisals, as appropriate. A number of guides and tools also exist to address reprisal risks, see for example the Inter-American Development Bank's [Guide for Independent Accountability Mechanisms on Measures to Address the Risk of Reprisals in Complaint Management](#).

<sup>81</sup> See Procedural Guidance, section II, 2c in OECD (2011), *OECD Guidelines for Multinational Enterprises*, OECD Publishing, <http://dx.doi.org/10.1787/9789264115415-en>



### Monitoring the effectiveness of NCPs

The level of effectiveness across the NCP network is uneven, largely due to inadequate resources and structures of individual NCPs. However, fostering effectiveness across the board is also a matter of collective action whereby governments monitor the performance of the network and ensure that governments are held accountable for poorly functioning NCPs. One way in which this is currently done is through the Annual Reports on the OECD Guidelines for Multinational Enterprises, whereby information, statistics and trends on NCPs' activity are discussed every year by the OECD Council.

Moreover, as indicated above, strategies already exist to foster functional equivalence: governments have approved two Action Plans to Strengthen NCPs (2016-2018 and 2019-2021), that focus on peer learning and concrete tools to help NCPs with their mandate. The Procedural Guidance also encourages governments to undergo peer reviews of their NCPs on a voluntary basis. However, to date, only about one third of all governments have done so. Peer reviews are therefore yet to show their full potential in increasing the effectiveness of the NCP network as a whole.

A procedure also exists to review whether an NCP 'is fulfilling its responsibilities with regard to its handling of specific instances.'<sup>82</sup> This procedure, which can be launched by another NCP, OECD Watch, or an advisory body, was used once in 2017 in relation with the NCP of Australia. It led to findings that the NCP had not fully complied with the Guidelines' requirements, and several recommendations were made. The Australian government has since extensively reformed its NCP (see above, Box 5.2). This process is however complex and burdensome, and unlikely to facilitate systematic monitoring of NCPs' effectiveness.

**Mandatory, regular peer reviews** may be a more appropriate tool to support functional equivalence. This may create a virtuous cycle in which best practices would be consistently identified and shared across the NCP network. Regular reviews would also be an incentive for governments to ensure their NCPs maintain high levels of effectiveness over time. It would also help substantiate what the Guidelines' core NCP criteria and guiding principles for handling specific instances mean in practice.

In addition, a **faster and more agile mechanism** to flag issues at a particular NCP, related to the handling of cases, or to its effectiveness in general could also be put in place. Such a mechanism could trigger urgent and targeted support for NCPs in need by the Secretariat or by peers.

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<sup>82</sup> See Procedural Guidance, section II, 2b in OECD (2011), *OECD Guidelines for Multinational Enterprises*, OECD Publishing, <http://dx.doi.org/10.1787/9789264115415-en>



## NCPs: the road ahead

Twenty years ago, NCPs were created as the first, and still only, non-judicial grievance mechanism built into a leading RBC standard, and have since then handled over 500 cases.

Throughout the last 20 years, many stories illustrate the contribution of NCPs to remedy for corporate impacts, sketching the profile of NCPs as remedy mechanisms: they are highly available and affordable bodies, capable of addressing a wide diversity of impacts by a wide diversity of corporate actors, across the entire globe. They facilitate concrete remedy outcomes for individuals, and spur structural policy changes within countries.



## **6 NCPs: the road ahead**

Twenty years ago, governments created NCPs as the first, and still only, State-based non-judicial grievance mechanism built into a leading RBC standard. Many stories illustrate the contribution of NCPs to remedy for corporate impacts: they are highly available and affordable bodies, capable of addressing a wide range of impacts by a wide diversity of corporate actors, across the entire globe. They can facilitate concrete remedy outcomes for individuals, spur structural policy changes and contribute to policy coherence to promote RBC.

The world in which NCPs were first designed has changed, and with that, greater complexities have come, both within the cases that NCPs handle and in the way NCPs interact. A number of challenges threaten to undermine the effectiveness of the mechanism: the public does not know NCPs well enough, and at times, NCPs struggle to keep timelines, to ensure a fair and safe process for all parties and to ensure that enough cases benefit from its good offices. Finally, in too many cases, NCPs have not been able to provide the level of remedy that was expected.

Twenty years of hindsight show that these struggles reflect weaknesses that affect not only the operations of individual NCPs, but also, to some extent, their design as a grievance mechanism. In light of this, NCPs important achievements are all the more remarkable.

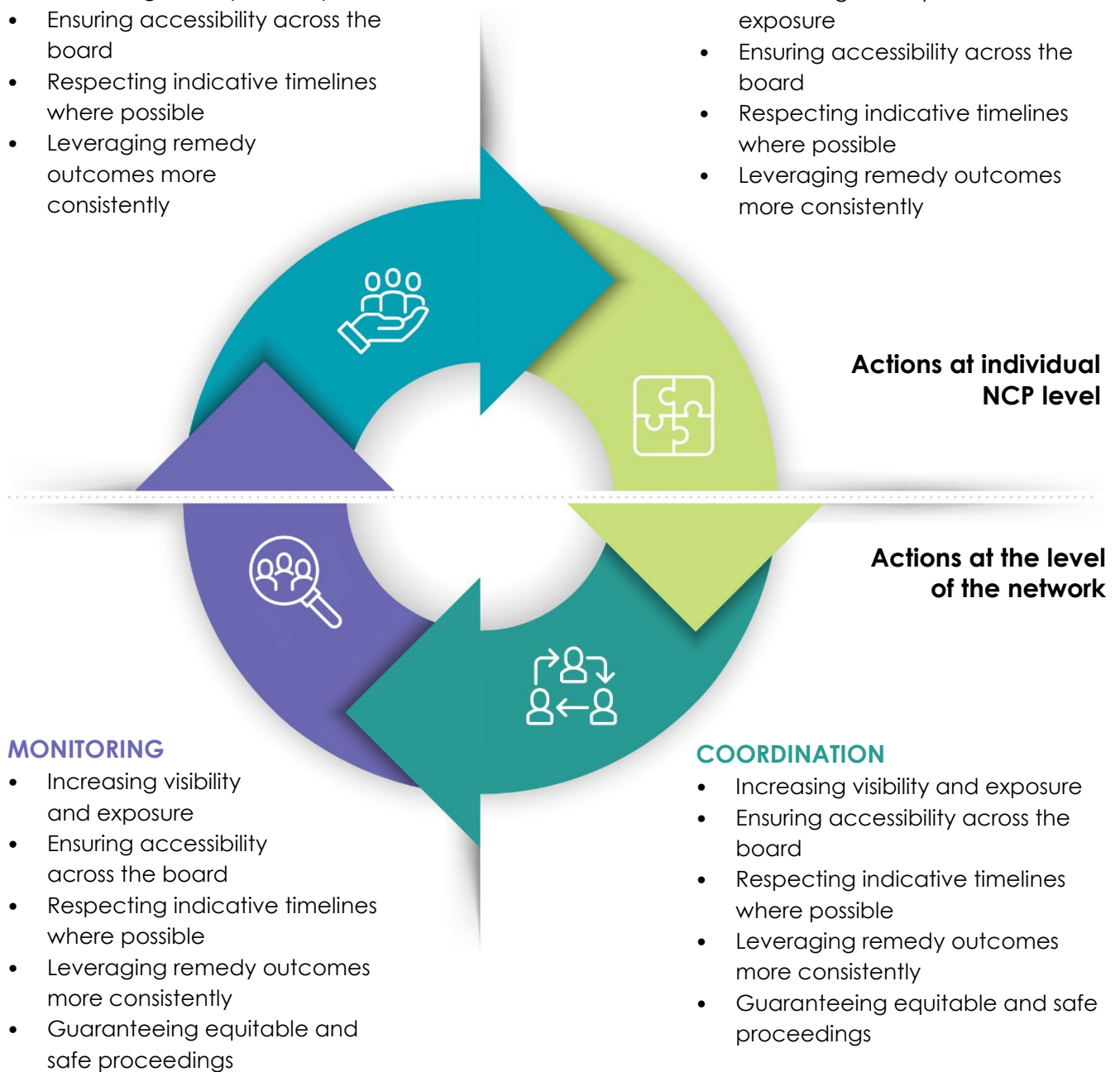
To keep pace with today's challenges and to respond to the increased calls for responsible business conduct, it is critical that governments continue to strengthen their NCPs, and urgently address their operational and structural weaknesses both in respect of their individual NCPs as in that of the NCP network as a whole. This report therefore identifies areas of action that governments could explore to preserve and improve NCPs' contribution to access to remedy. Figure 6.1 contains a summary of these action areas and how they could address the weaknesses identified.

**Figure 6.1. Action matrix: how proposed actions help address challenges****RESOURCES**

- Increasing visibility and exposure
- Ensuring accessibility across the board
- Respecting indicative timelines where possible
- Leveraging remedy outcomes more consistently

**STRUCTURES**

- Increasing visibility and exposure
- Ensuring accessibility across the board
- Respecting indicative timelines where possible
- Leveraging remedy outcomes more consistently



## Annex A. 20 cases for 20 years of NCPs

This annex contains summaries and notable elements of 20 emblematic cases handled by NCPs over the last two decades.

This annex is not meant to suggest that these cases have been unequivocal remedy successes, and that all harms and impacts have been redressed.

However, all these cases illustrate distinctive ways NCPs have been able to make a difference.

### Box A.1. Grupa OLX and Frank Bold Foundation (Poland, 2018)

On 9 April 2018, the NGO Frank Bold Foundation submitted a specific instance to the Polish NCP alleging that Grupa OLX, an internet service company operating an online advertisement portal, did not observe the Guidelines chapters on General Policies, Environment, and Consumer Interests chapters. The issues were that Grupa OLX allowed clients to advertise the sale of furnaces on its platform, and to indicate that they could be used to burn processed oil and discarded wooden railway sleepers, which are considered to be hazardous waste.

As a result of the NCP's good offices, the parties signed a letter of intent on 25 April 2019, agreeing that the submitter would monitor the advertisements' content and the company would delete advertisements violating environmental protection provisions. Furthermore, the parties agreed that the submitter would support the company in its environmental protection activities, aligned with environmental protection and sustainable development principles.

The NCP published a follow up statement on 28 July 2020. The NCP noted that the Company had carried out training for staff to ensure advertisement content aligned with key standards. The NCP also noted that Grupa OLX removed 285 advertisements identified by Frank Bold Foundation as containing inappropriate content. Grupa OLX also undertook their own review and removed 16 629 advertisements containing offers for furnaces burning processed oil. Additionally, in the case of 6 656 advertisements, Grupa OLX informed users that their content did not comply with their advertising expectations, and advertisements that were not subsequently corrected were removed by the company. The follow up statement recommended that Grupa OLX continue its improved approach both in the context of internal activities related to increasing employee awareness, as well as in cooperation with external partners. It also recommended that the submitter continue collaborating with the Company.

#### To note:

- **Digital sector impacts on consumers and environment**
- **Over 16,000 wrongful and environmentally harmful ads taken down**
- **Long term engagement between company and stakeholders**

### **Box A.2. Soco International PLC and World Wildlife Fund for Nature International (WWF) (UK, 2013)**

In October 2013, the NGO World Wildlife Fund for Nature International (WWF) submitted a specific instance to the UK NCP alleging that SOCO International, a company active in the extractives sector, had not observed the Guidelines chapters on General Policies, Human Rights and Environment. The issues were that the company was conducting oil exploration activities in Virunga National Park, located in the Democratic Republic of the Congo (DRC), which posed risks to the local environment and communities that were incompatible with the Virunga's status as a World Heritage Site, and with DRC's legal commitment to preserve it. According to WWF, SOCO also did not conduct appropriate and systematic human rights due diligence, or inform the public about the potential environment, health, and safety risks and impacts of its activities.

The UK NCP appointed an external mediator to assist the parties, which resulted in an agreement and joint statement by the parties in June 2014. The Company agreed to cease and refrain from any exploratory or other drilling within Virunga National Park for as long as UNESCO and the DRC government viewed such activities as incompatible with the Park's World Heritage Status. The company also agreed to complete its current seismic survey and to honour its commitments to local inhabitants to continue its social programmes.

#### **To note:**

- **Direct remedy: the company stopped operations**
- **NCP addressed impacts abroad**

### **Box A.3. Starwood Hotels & Resorts Worldwide and International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association (IUF) (United States, 2015)**

In February 2015, the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association (IUF), an international federation of trade unions, submitted a specific instance to the US NCP. In it, the submitters alleged that affiliates of Starwood Hotels and Resorts Worldwide did not observe the Guidelines chapters on General Policies, Human Rights, and Employment and Industrial Relations. The issues related to alleged failures to recognise and negotiate with trade unions, and mass-terminations of workers at Sheraton-branded properties in the Maldives and in Addis Ababa, Ethiopia.

The US NCP provided mediation services by the US Federal Mediation and Conciliation Service to the parties, and in May 2016, the parties reached agreement that led to a complete resolution of the issues at the Addis Ababa hotel, and to the setting up of a process to continue exploring options regarding the issues at the Maldives hotel. The US NCP also recommended that Starwood review their human rights policies and supplier code of conduct to make reference to the OECD guidance on responsible business conduct.

#### **To note:**

- **NCP addressed impacts abroad through business relationships**



#### **Box A.4. Bolloré Group/Socfin Group/Socapalm and Sherpa concerning operations in Cameroon (Belgium, France and Luxembourg, 2010)**

In December 2010, the NGOs Sherpa, CED, FOCARGE and Misereor submitted a specific instance to the NCPs of Belgium, France and Luxembourg. The submission alleged that the Société Camerounaise de Palmeraies (Socapalm), a Cameroonian producer of palm oil, was causing adverse environmental and social impacts on local communities and plantation workers, in a manner inconsistent with the Guidelines chapters on General Policies, Disclosure, Employment and Industrial Relations, and Environment. The case was directed at shareholders and business partners of Socapalm, namely the Bolloré Group (France), Financière du Champ de Mars (Belgium), Socfinal, now Socfin, (Luxembourg) and Intercultures, now Socfinaf, (Luxembourg), as the submitters alleged that these companies did not use their leverage regarding human rights, social and environmental adverse impacts of Socapalm's activities locally. Following coordination, the French NCP took the lead and engaged with the Bolloré Group, as Socapalm's indirect minority shareholder and board member, as well as majority shareholder in Socfin, itself a majority shareholder in Socfinaf and Socapalm. After several years, the company accepted the good offices of the French NCP, who conducted mediation between Bolloré and Sherpa.

In June 2013, the French NCP concluded that all four companies had failed to conduct due diligence in relation to their business relations with SOCAPALM. Bolloré and Sherpa agreed to establish a remediation plan for Socapalm covering a range of issues, including community dialogue, reduction of environmental nuisances, local development, workers' rights and conditions of work and transparency. The agreement also provided for an independent monitoring mechanism to operationalise the remediation plan and ensure its implementation.

The French NCP followed up with the parties regarding the agreement's implementation, but it appeared that it was being blocked by the Belgian-Luxembourg Socfin Group, Socapalm's parent company. The lead in the case was then transferred to the Belgian NCP to conduct follow up with the Socfin Group. After initially declining, in December 2015, it agreed to participate in further mediation with the Belgian NCP. No agreement was reached, prompting the Belgian NCP to conclude that the 2013 remediation plan was only partially implemented, noting Socfin Group's refusal to carry out neutral and independent monitoring. The French NCP has continued following up with Bolloré Group in relation to due diligence issues. Both NCPs issued Final and Follow up Statements.

#### **To note:**

- **Long lasting effective coordination by 3 NCPs**
- **NCP addressed impacts abroad through business relationships**
- **Reliance on business relationships to respond to lack of company engagement**

#### Box A.5. Future in Our Hands and Intex Resources (Norway, 2009)

In January 2009, the NGO Future in Our Hands submitted a specific instance to the Norwegian NCP, alleging that Intex Resources, a company active in the mining and extractives sector, had not observed the Guidelines chapters on General Policies, Environment and Combating Bribery in relation to a nickel project in the Philippines. The issues related to alleged flawed consultations with indigenous populations, bribery and corruption, and impacts of the project on vital water resources of neighbouring villages and agricultural fields.

In 2010, the NCP decided to conduct on-the-ground fact-checking through the Norwegian embassy in Manila, which hired independent experts and a social anthropologist to examine the allegations. On this basis, the NCP offered mediation to the parties, but the company declined. The Norwegian NCP therefore concluded in 2011 that Intex had failed to undertake a systematic assessment of the affected indigenous groups and had not properly consulted the affected groups, and that its environmental impact assessment was insufficient. The NCP made several recommendations to the company in this regard. It found no evidence indicating that Intex was involved in bribery or corruption but recommended that the company establish a solid managerial system to manage such risks.

##### To note:

- **Extensive fact checking**
- **Use of embassies to review impacts abroad**

#### Box A.6. Mylan N.V. and Mr. Bart Stapert (Netherlands, 2015)

In March 2015, an attorney, Mr. Bart Stapert, submitted a specific instance to the Dutch NCP alleging that Mylan N.V., a pharmaceutical company, had not observed the Guidelines' chapter on Human Rights. The issues concerned the manufacturing of rocuronium bromide used for lethal injections through the sales of the generic medicine in the United States. More specifically, Mr. Bart Stapert alleged that Mylan N.V. had failed to put in place distribution controls so that its products would not be used in relation to capital punishment.

The NCP provided mediation whereby the company committed to put in place restrictions to prevent its distributors from distributing its products for use in lethal injections. In its final statement, the Dutch NCP further clarified that the Guidelines provisions on due diligence apply to business relationships along the supply and distribution chains for products. The NCP made additional recommendations to encourage pharmaceutical companies to work with stakeholders such as distributors and human rights organisations to prevent products from being used in lethal injections. The NCP also suggested that Mylan share the outcome of this matter with other companies in the sector. In September 2017, the Dutch NCP conducted an evaluation with the parties to assess the outcomes of the mediation and found that the agreement had been fully implemented.

##### To note:

- **Case submitted by a concerned individual**
- **NCP clarified the notion of due diligence**

### Box A.7. ING Bank and NGOs concerning climate policy (Netherlands, 2017)

In May 2017, NGOs Oxfam Novib, Greenpeace, Bank Track and Friends submitted a specific instance to the Dutch NCP alleging that ING Bank had not observed the Guidelines' chapters on Environment, Disclosure and Consumer Interests. Most specifically, the submitters alleged that the Bank failed to sufficiently commit and contribute to the targets set in the 2015 Paris Agreement on climate. The issues related to alleged failures in publicly reporting ING's indirect product emissions through the companies and projects it finances worldwide.

The Dutch NCP provided mediation to the parties, which resulted in an agreement in 2019, whereby ING agreed to reach intermediary targets in line with the Paris Agreement. The parties also agreed to jointly call on the Dutch Government to request the International Energy Agency to develop as soon as possible two 1.5 degrees scenarios, one with and one without Carbon Capture and Storage (CCS), that provide a 66% chance to limit global warming to below 1.5 degrees. The NCP further called on the parties to continue their constructive dialogue and to consider the feasibility of developing a joint roadmap to intermediate targets setting and disclosure.

#### To note:

- **Financial sector due diligence responsibilities**
- **Case contributes to fighting climate change**

### Box A.8. Former employees, and Bralima and Heineken N.V (Netherlands, 2017)

In December 2015, three individuals submitted a specific instance to the Dutch NCP alleging that Heineken and its subsidiary in the Democratic Republic of the Congo (DRC), Bralima, had not observed the Guidelines' chapters on General policies, Employment and Industrial Relations, and Combating Bribery. The issues concerned a series of allegedly unfair and unlawful dismissals of 168 former employees by Bralima during the civil war in DRC between 1999 and 2003, and the alleged failure by Heineken to use its influence to prevent further damage for the former employees.

The Dutch NCP provided mediation services to the parties in June 2016, at locations convenient for the submitters, including at the Dutch Embassies in Uganda and Paris, while also helping to cover their travel expenses thereby enabling them to participate. The parties reached agreement in August 2017, including on financial compensation for the employees dismissed.

#### To note:

- **Direct remedy: financial compensation**
- **NCP case solves 17 year old issues**
- **NCP facilitates mediation through embassies**

### **Box A.9. Fédération Internationale de Football Association (FIFA) Building and Wood Workers' International (BWI), (Switzerland, 2017)**

In May 2015, the international trade union federation Building and Wood Workers' International (BWI) submitted a specific instance to the Swiss NCP alleging that the Fédération internationale de Football Association (FIFA) had not observed the Guidelines' chapters on General Policies and Human Rights. The issues concerned a series of human rights violations of migrant workers related to the construction of facilities for the FIFA 2022 World Cup in Qatar. More specifically, the submitter alleged that FIFA had failed to conduct adequate and ongoing human rights due diligence as called for in the Guidelines.

The Swiss NCP determined that, even if not a commercial company, the Guidelines applied to FIFA given that its involvement in the organisation of the FIFA 2022 World Cup qualifies as activities of a commercial nature. It provided mediation services to the parties from January to December 2016, which resulted in an agreement around five areas, including identification and use of FIFA's leverage on relevant actors in Qatar and establishment of a complaint mechanism for workers. FIFA accepted its responsibility to mitigate risks by aiming to exercise its leverage whenever possible with all relevant actors in Qatar to contribute to ensuring decent and safe working conditions for the FIFA World Cup Qatar stadiums. The parties further agreed on a series of follow-up activities and met within nine months after the publication of the final statement under the auspices of the NCP.

#### **To note:**

- **NCP applies Guidelines to sporting federation**
- **NCP case contributes to government policy change**

### **Box A.10. Natixis-NGAM and UNITE HERE (France, 2016)**

In September 2016, the North American trade union, Unite Here, submitted a specific instance to the French NCP alleging that the French Bank Natixis and one of its asset managers, Natixis Global Asset Management (NGAM now NBIM) had not observed the Guidelines' chapters on General Policies and Employment and Industrial Relations. The issues concerned freedom of association, collective bargaining and working conditions at a California-based hotel. AEW Capital Management, a US subsidiary of NGAM (now NBIM) was providing asset management services to an American pension fund that was the hotel's majority shareholder (95%).

The French NCP provided mediation between Natixis Group and UNITE HERE, concentrating on the Group's due diligence. The outcome of the case was the sale of the hotel to another American group in the hospitality sector, in which AEW took into account the OECD Due Diligence Guidance for Institutional Investors when selecting the new buyer, and the subsequent unionisation of workers and collective bargaining. As a result of the case, NGAM (now NBIM) also integrated the OECD Due Diligence Guidance for Institutional Investors into its assets management activities, including in relation to AEW Capital Management.

#### **To note:**

- **Direct remedy: workers allowed to unionise; hotel unionised and collective agreement concluded**
- **Due diligence and use of leverage toward company's subsidiaries**

#### **Box A.11. ANZ Banking Group, and Inclusive Development International and Equitable Cambodia (Australia, 2014)**

In October 2014, Equitable Cambodia (EC) and Inclusive Development International (IDI) submitted a specific instance to the Australian NCP on behalf of 681 Cambodian families alleging that ANZ Bank had not observed the Guidelines' chapters on General Policies and Human Rights. The issues concerned the company's provision of a loan to Phnom Penh Sugar (PPS) for the development of a sugar plantation and refinery project in Cambodia, which is alleged to have forcibly displaced the families and dispossessed them of their land and productive resources.

The Australian NCP provided the services of an external mediator to conduct mediation but the parties could not reach agreement on the issues. The Australian NCP then recommended in October 2018 that the company instigate methods to promote compliance with its stated human rights and due diligence standards in its lending activities, and establish a grievance resolution mechanism to support the effective operation of its corporate standards in relation to human rights.

Civil society actors on the ground continued to raise the issue of compensation and provided essential support to the NCP to facilitate this during the follow up phase. As a result, during follow up, the parties engaged constructively again and reached an agreement whereby the bank recognised the continuing hardships faced by the affected communities, and agreed to pay them profit it earned from the loan.

#### **To note:**

- **NCP addresses impacts of financial sector**
- **Direct remedy: financial compensation**

### Box A.12. PWT Group and the NGOs Clean Clothes Campaign Denmark and Active Consumers (Denmark, 2014)

In December 2014, the NGOs Clean Clothes Campaign Denmark and Active Consumers submitted a specific instance to the Danish NCP alleging that PWT Group, a clothing company, had not observed the Guidelines chapters on General Policies, Employment and Industrial Relations, and Human Rights. More specifically, the submitters alleged that the company had failed to carry out due diligence in relation to its supplier, the textile manufacturer New Wave Style Ltd. which was located in the Rana Plaza, Bangladesh, that collapsed in April 2013, killing 1,138 people.

Mediation offered by the Danish NCP did not lead to an agreement, therefore the NCP examined the issues and concluded that the company had not applied appropriate processes for due diligence, particularly as it did not indicate details on inspections conducted at New Wave Style in 2012, nor whether any improvements had been required by the company following inspection. The Danish NCP concluded the case in October 2016 and made detailed recommendations, including on the revision of the company's management and risk assessment system and the compliance of the company's corporate social responsibility policy with the Guidelines. In January 2018, the NCP published a follow up statement noting the company had fully implemented the NCP's recommendation.

#### To note:

- **Effective change of due diligence policy**
- **Verification of remedy outcome by NCP**

### Box A.13. ENI S.p.A., ENI International BV, and CWA and ACA (Italy, 2017)

In December 2017, the NGO Egbema Voice of Freedom and the law firm Chima Williams Associates submitted a specific instance to the Italian NCP alleging that ENI S.p.A and its affiliate ENI International BC and local subsidiary Nigeria Agip Oil Company Limited (NAOC) had not observed the Guidelines' chapters on General Policies, Human Rights and Environment. The specific instance was filed on behalf of residents near Mgbede, Nigeria, as their village was notably affected since 1971 by regular violent floods resulting from the companies' oil drilling.

Professional mediation facilitated by the Italian NCP led to an agreement whereby the company committed to build and maintain an adequate drainage system that would end the annual flooding caused by its operations. The parties agreed to publish this agreement in full, and phase one (out of three) of the works is now underway.

#### To note:

- **NCP helps solve decades-old issues**
- **Direct remedy: in-kind reparation**



#### Box A.14. Banro Corporation and Group of former employees (Canada, 2016)

In February 2016, a group of five former employees of the Société Minière et Industrielle du Kivu (SOMINKI), located in the Democratic Republic of Congo (DRC) submitted a specific instance to the Canadian NCP, alleging that Banro Corporation, a majority shareholder of SOMINKI, had not observed the Guidelines' chapter on General Policies. The issues related to an alleged failure by the company to settle the final accounts of 4,987 former employees of SOMINKI following its liquidation.

The Canadian NCP concluded that offering facilitated dialogue only between Banro and the submitters without the presence of other key actors in the liquidation process (in particular the Government of DRC and the Liquidation Committee) would not facilitate the completion of SOMINKI's liquidation. However, it requested that the company take action, in good faith, to reactivate the liquidation process, and provide updates to the NCP. It also recommended that the company endorse and implement the OECD Guidelines and the OECD Due Diligence for Meaningful Stakeholder Engagement in the Extractive Sector.

In its follow-up statement, the Canadian NCP expressed its disappointment with Banro's failure to respond to the NCP's requests and repeatedly missed deadlines. The NCP noted that this lack of cooperation would be taken into consideration should the company qualify in the future as a Trade Commissioner Service (TCS) client or for trade advocacy support provided by Canada's diplomatic missions abroad.

#### To note:

- **NCP fosters direct policy coherence**
- **Company faces consequences after NCP follow up**

#### Box A.15. Kinross Brasil Mineração and Paracatu neighbouring association (Brazil, 2013)

In June 2013, the city of Paracatu's neighbouring associations submitted a specific instance to the Brazilian NCP alleging that a subsidiary of Kinross Gold Corporation Group, a mining company, had not observed the Guidelines' chapters on General Policies, Human Rights and Environment. The issues concerned the use of explosives by the company that had allegedly damaged surrounding homes as well as the building of infrastructure in the rural area of Machadinho making the entry to the city of Paracatu difficult.

The Brazilian NCP provided its mediation services to the parties, which led to a mutual agreement. Although no link was established between the company's use of explosives and the damage to homes, the company committed to repair the homes through a partnership project with the City of Paracatu and the active participation of the community. The Brazilian NCP also made recommendations, in particular that the company inform residents from neighbouring areas of their work and future projects, to build a relationship of trust and conduct due diligence processes that assess the adverse impacts of its mining activities.

#### To note:

- **NCP intervention benefits local community**
- **Direct remedy: in-kind reparation**

#### Box A.16. Deutsche Post DHL and UNI/ITF (Germany, 2014)

In November 2012, two trade unions, UNI Global Union (UNI) and International Transport Workers Federation (ITF) submitted a specific instance to the German NCP alleging that Deutsche Post DHL had not observed the Guidelines' chapters on Human Rights and Employment and Industrial Relations. The issues concerned several violations of trade union rights in numerous countries where the company had operations (Bahrain, Colombia, Guatemala, Hong Kong, India, Indonesia, Malawi, Norway, Panama, South Africa, Turkey, the USA, and Vietnam) as well as insufficient due diligence procedures.

Following partial acceptance of the complaint, the German NCP provided mediation with the support of other NCPs and German embassies in Turkey and India. As a result, the parties issued a joint statement whereby they agreed that by means of the mediation process the alleged complaints were clarified and/or could be resolved by further bilateral dialogue. The parties also concluded a protocol committing the parties to ongoing quarterly meetings and dialogue on such issues with the continuous support of the NCP. This protocol has since then been extended and revised several times.

#### To note:

- **Involvement of embassies in mediation**
- **NCP process fosters long-term relationship**

#### **Box A.17. Roundtable for Sustainable Palm Oil and TUK Indonesia: Land Conflict in Indonesia (Switzerland, 2018)**

In January 2018, NGO TUK Indonesia submitted a specific instance to the Swiss NCP on behalf of two Indonesian Communities, Kerunang and Entapang, alleging that the Roundtable for Sustainable Palm Oil (RSPO), a multi-stakeholder organisation incorporated as an association under Swiss law with the goal of promoting sustainable palm oil, had not observed the Guidelines' chapter on Human Rights. The issues concerned an unsolved land conflict in Indonesia dealt through RSPO's own complaint mechanism. The submitter asked the Swiss NCP to support the elaboration of an action plan with clear deadlines between TUK Indonesia and RSPO regarding the resolution of the ongoing complaint.

The NCP noted that its degree of influence in this case may be limited as the issues took place in Indonesia and no operational unit of RSPO was located in Switzerland, but decided to accept the case since no other NCP would be competent. Additionally, despite the fact that RSPO is not an 'enterprise' per se, the NCP concluded that it fell under the Guidelines because its funding is based on contributions from palm oil trade, and on fees for its activities (e.g. certification of plantations) and because the RSPO label creates value for palm oil products.

The mediation offered by the Swiss NCP led to an agreement whereby RSPO committed to include criteria for a fair legal review in an ongoing case dealt by its dispute settlement facility and to present an action plan with clear deadlines. Both parties further committed to continue their regular exchanges and to meet accordingly to the agreed deadlines until the conclusion of the pending case with the RSPO's complaint mechanism.

#### **To note:**

- **NCP applies a global reach and broad interpretation of 'enterprise'**
- **NCP assists other RBC mechanism**

#### **Box A.18. Unilever and Trade Union N°1, Chilean Trade Union Confederation (CUT) (Chile, 2005 and 2019)**

In April 2019, Unilever's No.1 National Workers' Union and the Chilean Trade Union Confederation (CUT) submitted a specific instance to the Chilean NCP alleging that Unilever had not observed the Guidelines' chapters on General Principles, Disclosure of Information, Human Rights, Employment and Industrial Relations, and Consumer interests'. The issues concerned the dismissal of 152 workers associated with the Union as a result of a site closure, which allegedly contradicted a Memorandum of Understanding signed by the parties with the Chilean NCP in 2005 as a result of another specific instance.

The NCP and the parties began preparations for mediating the issues. Meanwhile, the parties reached an agreement in the context of parallel judicial proceedings, including on financial compensation and the deletion of a specific provision from the Memorandum of Understanding signed before the NCP in 2005. Although there were no direct dialogue sessions, the Chilean NCP process contributed to the subsequent agreement reached between the parties. The NCP also recommended to maintain consultations and cooperation between the company, the workers and their representatives on issues of common interest, and to ensure compliance with the updated Memorandum of Understanding, through an effective and constructive dialogue.

#### **To note:**

- **2005 NCP agreement key to solving 2019 issues**
- **NCP supports judicial proceedings**

### **Box A.19. Statkraft AS and the Sami reindeer herding collective in Jijnjevaerie Sami Village (Sweden, 2012)**

In October 2012, the Sami reindeer herding collective in Jijnjevaerie Sami Village submitted a specific instance to the Swedish and Norwegian NCPs alleging that Statkraft AS, a Norwegian multinational enterprise, had not observed the Guidelines' chapters on General Policies, Human Rights and Environment. The issues concerned the building of a wind power plant on the traditional lands of the indigenous reindeer-herding ground of Jijnjevaerie in Sweden. The submitter alleged the project would severely restrict the community's ability to pursue reindeer husbandry, which constitutes the basis of their economic and cultural survival. As such, community members would be forced to their herding practices and dislocate them from the environment that provides them with their cultural identity.

Following coordination between the Swedish and Norwegian NCPs, the Norwegian NCP took the lead. Since the parties had renewed their dialogue bilaterally, the NCPs decided to defer the case. However, after the dialogue failed to produce an agreement, the Saami village requested the NCP to facilitate mediation in September 2013. The Norwegian NCP resumed its lead role and in June 2014, the NCP concluded the mediation without an agreement between the parties.

In February 2016, the Norwegian NCP issued its final statement. While the NCP did not find grounds for concluding that Statkraft had not complied with the Guidelines, it recommended Statkraft to clearly promote indigenous people's rights and the implementation of the Guidelines. The NCP also recommended the parties to continue to negotiate an agreement on the further development of the wind power projects, their scope and extent and compensation schemes.

In August 2016, the parties reached an agreement on the impact of the wind power projects as well as preventative measures to take in order to reduce the negative effects on the village and reindeer herding.

#### **To note:**

- **Case submitted by an indigenous community**
- **Agreement reached**

#### Box A.20. Michelin Group and four NGOs and trade Union (France, 2012)

In July 2012, four NGOs, the Tami Nadu Land Rights Federation (India), the Association of Villagers of Thervoy, SANGAM (Therevoy Grama Makkal Nala Sanga, India), the NGO CCFD-Terre Solidaire (France), the Association SHERPA (France) and the trade union Confederation Générale du Travail (CGT France) submitted a specific instance to the French NCP. In it, they alleged that Michelin Group, a French multinational enterprise, had breached the Guidelines' chapters on General Policies, Disclosure, Human Rights, Employment and Industrial Relations, Environment, and Combating Bribery. The issues raised concerned the impacts that the construction of a tire manufacturing plant had on recently industrialised pasture land.

From 2012 to 2013, the NCP offered its good offices to the parties but no agreement could be reached and the complainants withdrew from the process. In July 2013, the NCP issued a final statement containing determinations on conformity with the Guidelines and four recommendations for the company. As a result of the NCP's good offices, the company undertook preparatory steps for environmental, social and human rights assessment studies for the project, and committed to developing an action plan to adapt its CSR policy and internal due diligence systems accordingly. The NCP further requested that the company ensure compliance with the Guidelines both in the start-up phase of the production on site as well as in the development of the industrial project.

The company regularly updated the NCP on their implementation of the recommendations and consulted the NCP on certain matters, which was reflected in two follow-up statements. Several meetings took place between the NCP and the company. The continued dialogue with the NCP and the follow-up reports supported the company in integrating due diligence into its operations, and in developing innovative standards in the sector.

#### To note:

- **Recommendations and follow up by the NCP**
- **Change in NCP policy**



## Annex B. Key data on NCPs (2019)

**Table B.1. Key data on NCPs**

No.	Country	Full time staff (2019)	Number of cases received since 2000	Rules of procedure online	Number of promotional events (2019)		Peer review completed
					Organised	Participated	
1	Argentina	YES	13	YES	12	14	YES
2	Australia	YES	18	YES	2	10	NO
3	Austria	YES	5	YES	7	3	YES
4	Belgium	YES	22	YES	3	2	YES
5	Brazil	YES	32	YES	9	3	NO
6	Canada	YES	20	YES	1	37	YES
7	Chile	YES	21	YES	7	12	YES
8	Colombia	YES	5	YES	0	6	NO
9	Costa Rica	NO	0	YES	9	7	YES
10	Croatia	No data	0	NO	No data	No data	NO
11	Czech Republic	NO	6	YES	4	0	NO
12	Denmark	YES	18	YES	3	3	YES
13	Egypt	NO	0	NO	0	0	NO
14	Estonia	NO	0	YES	0	0	NO
15	Finland	YES	5	YES	2	4	NO
16	France	YES	32	YES	40	27	YES
17	Germany	NO	32	YES	8	11	YES
18	Greece	NO	0	N/A	0	5	NO
19	Hungary	YES	3	YES	0	1	NO
20	Iceland	NO	0	N/A	0	0	NO
21	Ireland	NO	3	YES	0	1	NO
22	Israel	NO	2	YES	4	3	NO
23	Italy	YES	16	YES	1	9	YES
24	Japan	NO	7	YES	1	4	YES
25	Jordan	No data	0	NO	No data	No data	NO
26	Kazakhstan	YES	0	NO	0	0	NO
27	Korea	YES	15	YES	3	3	NO
28	Latvia	NO	1	YES	6	1	NO
29	Lithuania	YES	0	YES	12	5	NO
30	Luxembourg	NO	3	YES	1	5	NO
31	Mexico	NO	5	YES	1	0	NO
32	Morocco	NO	4	YES	9	7	NO
33	Netherlands	YES	39	YES	1	12	YES
34	New Zealand	NO	6	NO	2	0	NO

No.	Country	Full time staff (2019)	Number of cases received since 2000	Rules of procedure online	Number of promotional events (2019)	Peer review completed	No.
35	Norway	YES	17	YES	9	16	YES
36	Peru	NO	5	YES	1	2	NO
37	Poland	NO	6	YES	3	4	NO
38	Portugal	NO	1	NO	1	0	NO
39	Romania	NO	0	NO	3	2	NO
40	Slovak Republic	NO	0	YES	0	0	NO
41	Slovenia	YES	0	YES	4	1	NO
42	Spain	YES	7	YES	0	6	NO
43	Sweden	NO	6	YES	3	4	NO
44	Switzerland	YES	22	YES	2	19	YES
45	Tunisia	YES	0	NO	0	2	NO
46	Turkey	YES	4	YES	0	1	NO
47	Ukraine	NO	0	YES	1	3	NO
48	United Kingdom	YES	56	YES	21	4	YES
49	United States	YES	48	YES	5	3	YES

Source: NCP annual reports to the OECD and OECD Database of Specific Instances

Note: The number of cases received is based on cases reported to the OECD Secretariat and reflected in the OECD Specific Instance Database as at 8 December 2020. This number may not reflect cases currently pending before NCPs that have not yet been reported, in accordance with those NCPs' rules of procedure.

## **NATIONAL CONTACT POINTS FOR RESPONSIBLE BUSINESS CONDUCT**

### **Providing access to remedy 20 years and the road ahead**

This report marks the 20th anniversary of National Contact Points for Responsible Business Conduct as grievance mechanisms under the OECD Guidelines for Multinational Enterprises. It informs the public about RBC, access to remedy and the role of NCPs; serve as a tool for current or potential users of NCPs to understand and seize the benefits of the NCP mechanism; help NCPs themselves in reviewing the way they are set up and operate in light of what works well and less well. Finally, it is also a call to governments to fully recognise and support this unique mechanism.

**[mneguidelines.oecd.org/ncps](https://mneguidelines.oecd.org/ncps)**

