



SESSION NOTE

The role of National Contact Points and National Human Rights Institutions in RBC policy making

Thursday 21 June 2018 - 11:30-13:00
Room CC12 - OECD Conference Centre

National Contact Points for the OECD Guidelines for Multinational Enterprises (NCPs) and National Human Rights Institutions have the potential to collaborate and mutually reinforce their input and activities in the field of Responsible Business Conduct (RBC). NCPs are bodies which all governments adhering to the OECD Guidelines for Multinational Enterprises (the Guidelines) are required to set up to ensure the effectiveness of the Guidelines through promotional activities and the handling of 'specific instances' of reported non-observance of the Guidelines. NHRIs are also set up by governments with the role of protecting and promoting human rights. Governments have flexibility in the design of NCPs and NHRIs and standards of 'quality' apply to both.

In practice, NCPs exist in a variety of forms: some are hosted in one or several ministries, possibly with the support of advisory bodies bringing together stakeholders; others are multipartite as they include stakeholders in their decision-making structures; while yet others are composed of independent experts.¹ NCPs, whatever their form, must be visible, accessible, transparent and accountable. In addition, when handling specific instances, NCPs must do so in a way that is impartial, predictable, equitable and compatible with the Guidelines.² These criteria may be verified through a mechanism of peer review by other NCPs.³

NHRIs also may take different forms and, depending on country context, may e.g. take the form of human rights commissions, independent ombudsman institutions, consultative bodies, research institutes, or be made up of different bodies.⁴ Contrary to NCPs, the respective mandates of NHRIs vary. Some NHRIs are tasked with providing research and/or advice to government on human rights, while others may act as grievance mechanisms and can receive complaints. The United Nations General Assembly has adopted a set of principles which NHRIs should strive to meet, these are known as the 'Paris Principles.'⁵ NHRIs are attributed a status corresponding to their degree of compliance with the Paris Principles: 'A' NHRIs are fully compliant with the Paris Principles; 'B' NHRIs are partially compliant; and 'C' NHRIs are non-compliant.

¹ OECD, Implementing the OECD Guidelines for Multinational Enterprises: The National Contact Points from 2000 to 2015, 2016, p. 69.

² OECD Guidelines for Multinational Enterprises, (2011). Section I of the Commentary: *Core Criteria for Functional Equivalence in the Activities of NCPs*.

³ So far 10 NCPs have been peer reviewed, 3 peer reviews are ongoing, and seven are planned.

⁴ See www.nhri.ohchr.org/EN/AboutUs/Pages/RolesTypesNHRIs.aspx: 'Six models of NHRIs exist across all regions of the world today, namely: Human rights commissions, Human rights ombudsman institutions, Hybrid institutions, Consultative and advisory bodies, Institutes and centres and multiple institutions.'

⁵ *Id.*: 'The Paris Principles set out six main criteria that NHRIs require to meet: Mandate and competence: a broad mandate, based on universal human rights norms and standards; Autonomy from Government; Independence guaranteed by statute or Constitution; Pluralism; Adequate resources; and Adequate powers of investigation.'

Possible areas for NCP-NHRI engagement

There are a number of opportunities for cooperation and mutual reinforcement between NCPs and NHRIs. In particular, their partly overlapping mandates allow for the sharing of expertise and knowledge. The Guidelines contain a chapter on Human Rights, on which the NHRI can be consulted by the NCP. Likewise, NCPs can inform NHRIs on the theme of business and human rights. Additionally, NCPs are expected to build trust with stakeholders and therefore, strong engagement with independent and representative NHRIs may increase stakeholder confidence, as well as visibility and credibility.

With regard to policy development, NCPs and NHRIs may also contribute their respective expertise in the design, implementation and monitoring of National Action Plans on Business and Human Rights and/or RBC. As of June 2018, 21 countries, 20 of which are adherents to the Guidelines,⁶ had adopted a NAP, and a number are in preparation.⁷ All NAPs adopted by adherents to the Guidelines mention and give some role to the national NCP. Likewise, NHRIs are frequently involved in the development and monitoring of NAPs. In addition, some NHRIs have been engaged in the development of NAPs at international level through the publication of guidance for the development of NAPs by governments.⁸

Second, NCPs and NHRIs can assist each other in relation to their roles as grievance mechanisms. While providing a forum to handle specific instances is one of the main features of NCPs, some NHRIs also have a grievance function. Most cases submitted to the NCP mechanism were related to the human rights Chapter of the Guidelines.⁹ Cross-learning between NCPs and NHRIs can therefore present an important added value particularly in the case of complex human rights issues. Likewise, for those NHRIs which have a grievance function and which do not possess expertise in the field of RBC, assistance from the NCP can also represent an opportunity.

The OECD Network of NCPs and the Global Alliance of NHRIs (GANHRI) have also pursued deeper engagement. In this context, the OECD and GANHRI signed a joint MoU in 2017 to continue to cooperate for a further 5 year period. The activities covered under the MoU include capacity building and knowledge sharing between NCPs and NHRIs as well as more general information sharing and participation in one another's events related to business and human rights matters.

Examples of NCP-NHRI engagement and questions for discussion

In Chile, both the NHRI and the NCP collaborated in the development of the NAP. In December 2017, as mandated by the Chilean NAP itself, the NCP and the NHRI signed a Memorandum of Understanding which provides that the NHRI will provide advice on the human rights aspects of specific instances, and be represented on the advisory board of the NCP.¹⁰

⁶ Annual report on the Guidelines, p. 55.

⁷ See <http://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx> and <https://globalnaps.org/>.

⁸ See the 'Toolkit for the Development, Implementation, and Review of State Commitments to Business and Human Rights Frameworks', jointly developed by the International Corporate Accountability Roundtable (ICAR) and the Danish Institute for Human Rights: <https://static1.squarespace.com/static/583f3fca725e25fcd45aa446/t/5865d59fe6f2e17f4f0cb629/1483068841826/DIHR-ICAR-National-Action-Plans-NAPs-Report3.pdf>.

⁹ See annual report on the guidelines, p. 30: '[In 2017, the] chapter on human rights was cited in 15 specific instances, representing 54% of all specific instances submitted, and was the most frequently cited chapter. This is in line with previous years since the 2011 revision of the Guidelines when the chapter on human rights was added.'

¹⁰ See <https://www.direcon.gob.cl/2017/10/direcon-y-el-instituto-nacional-de-derechos-humanos-indh-firman-convenio-para-promover-compromisos-en-materia-de-derechos-humanos-y-empresas/>.

In Morocco, the NHRI is a full member of the NCP, alongside other ministerial departments. This not only means that the Moroccan NHRI participates in the promotion of the Guidelines, but that it also examines and deliberates on specific instances. In addition, since the Moroccan NHRI's own membership comprises civil society representatives, the latter are also *de facto* represented on the NCP.

In New Zealand, the NHRI is part of the NCP's interagency stakeholder advisory group which is convened periodically to discuss specific instances or strategies for promoting the Guidelines. In this role, the NHRI – which has identified business and human rights as an area of focus – may assist the NCP in handling sensitive human rights issues that may arise in specific instances.

Based on the experience of the speakers regarding NCP-NHRI engagement in Chile, Morocco and New Zealand, this session will seek to highlight challenges and opportunities linked to such engagement in policy-making on RBC and in fulfilling their roles as grievance mechanisms. Questions addressed will include the added value, for NCPs, in terms of human rights expertise and stakeholder trust, of associating NHRIs to their work; the potential, for NHRIs, of connecting with NCPs to build links on Business and Human Rights; the modalities of structural engagement between NCP and NHRIs (cross-membership, permanent advisory roles, etc.), particularly as regards the possibility for expertise sharing in specific instances; the respective roles of NCPs and NHRIs in the design, implementation and monitoring of NAPs and the potential for empowerment that NAPs represent for both types of bodies.