

Leading RBC on the ground: National Contact Points for Responsible Business Conduct, looking back to prepare for the future

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Two decades ago, governments created the National Contact Points for Responsible Business Conduct (NCPs) as the first, and still only, State-based non-judicial grievance mechanism built into a leading responsible business conduct (RBC) standard: the OECD Guidelines for Multinational Enterprises (the Guidelines). The dual mandate of NCPs, covering both promotion and remedy, allows them to foster the effectiveness of the Guidelines both proactively through promotion, and retroactively as non-judicial grievance mechanisms. NCPs also contribute to shaping government policies and promoting stronger policy coherence for RBC.

To date, 50 NCPs form part of the network, one for each adhering Government. Since receiving their mandate as a grievance mechanism in 2000, NCPs have collectively handled close to 600 cases. With their ability to review issues involving companies operating 'in or from' their territory, they have addressed issues in over 100 countries and territories. Considering that adherents to the Guidelines represent over 50% of the world's GDP and over 70% of FDI stocks, NCPs cover a large share of the world's economic activity.

The year 2020 marked 20 years of the mandate of these unique bodies' to act as grievance mechanisms under the Guidelines (1). This anniversary, coupled with the global challenges brought by the COVID-19 pandemic, invited us to pause and reflect on how NCPs are contributing to the promotion of RBC and access to remedy. By looking back, we can prepare for the NCPs we want for the future to help respond to the needs of tomorrow's world.

A year in numbers: a focus on the strengths and challenges of the NCP system in 2020 (2)

To fulfil their remedy mandate, NCPs boast measures such as affordability (e.g. filing a case is free-of-charge and does not require legal help) and availability (e.g. anyone with a legitimate interest can submit a case; parties do not have to be direct victims). NCPs are also flexible: they regularly leverage creative and innovative tools to facilitate remedy for those affected by corporate impacts across a range of issues. Let's take a closer look at how NCPs demonstrated these characteristics in 2020.

For the people, by the people: access by different groups is expanding, but showing signs of fatigue amongst traditional users

With 54 cases received, 2020 registered as the record year concerning cases received. The most prevalent sectors referenced in these cases included mining and extractives (13 submissions), energy (8 submissions), and financial and insurance activities (7 submissions). These cases addressed a number of different issues: for example, the Brazilian NCP is currently examining three cases concerning human rights and environmental issues following the collapse of a tailings dam from mining operations in Brazil (3).

Moreover, 2020 also saw more individuals accessing the mechanism, making up 48% of new submissions. Historically, individuals have only filed around 22% of the cases, leading to concerns about their barriers to access without support from a trade union or NGO. Such numbers hint towards a positive step in easing these barriers. However, this increase in individual submissions also corresponds to a decrease in submissions by traditional users of the mechanism, like NGOs and trade unions. This decrease may speak to some fatigue in the mechanism by these groups.

Remedy for all and all for remedy?

NCPs are not courts and therefore rely on dialogue and mediation to seek agreement between the parties and/or make recommendations on solutions to the issues. By doing so, NCPs regularly facilitate remedies for the persons affected, including through financial or in-kind compensation or by fostering changes in companies' policies and operations, thereby aspiring to contribute to the prevention of future harms.

Yet the mechanism also faces challenges facilitating outcomes and impact. For example, less than a third of cases for which NCPs provided mediation in 2020 resulted in agreements. This is a low figure compared to previous years, but at the same time, NCPs have been making more systematic use of other tools to facilitate remedy, such as addressing public recommendations to companies involved in cases on how they could improve their practices to align with the Guidelines. Likewise, more and more NCPs systematically follow-up on agreements and recommendations to verify whether and how they are being implemented.

The numbers also suggest that more efforts across the network may be needed to improve visibility and access throughout the entire NCP network: in 2020, 20 NCPs received at least

one submission, representing only 40% of all NCPs. Furthermore, almost half of the cases were received by just four NCPs, and no NCP received its first case in 2020. Historically, 13 NCPs out of 50 are yet to receive a case.

2021 and beyond: where do we go from here?

The world in which NCPs first emerged has changed, and with that, greater complexities have come, both within the cases that NCPs handle and in the way NCPs interact. By delivering on their dual mandates, NCPs have proven that they can facilitate concrete remedy outcomes for individuals and contribute to advancing RBC around the world. Yet despite these remarkable achievements, a number of challenges limit the mechanism's potential.

By looking back on the last 20 years, we see 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. To keep pace with tomorrow's challenges, it is critical that governments act decisively now to address the challenges NCPs face related to resources and structure. Governments can take action to help their NCPs increase their visibility and exposure, ensure accessibility across the board, and leverage remedy outcomes more consistently. With this, NCPs will be able to more consistently leverage their strengths to provide access to remedy and ultimately realise RBC on the ground.

Footnotes:

(1) To mark the 20th anniversary of NCPs, the OECD Secretariat published the report *Providing access to remedy – 20 years and the road ahead*, which takes stock of NCP's contribution to access to remedy for RBC impacts over that period.

(2) This analysis draws from OECD (2021), *Annual Report on the OECD Guidelines for Multinational Enterprises 2020: Update on National Contact Point Activity*

(3) See for example Vale and BHP Biliton and SITICOP, CNQ-CUT, BWI, and IndustriALL, Vale S.A., and Mr. Carlos Cleber Guimarães Júnior and Ms. Carla de Laci França Guimarães and Vale S.A. and Multiple Individuals.

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