

# National Contact Points for Responsible Business Conduct: the road ahead for achieving effective remedies

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### The role of the OECD National Contact Points in providing remedies

Access to effective remedies is one of the three core pillars of the UN Guiding Principles on Business and Human Rights (UNGPs). There are different types of grievance mechanisms, including judicial and non-judicial, state-based and non-state-based, which can contribute to ensuring an effective access to remedies for affected individuals and communities of business-related human rights and environmental harms. As for non-judicial remedies, Commentary to Guiding Principle 27 specifies that “gaps in the provision of remedy for business-related human rights abuses could be filled, where appropriate, by expanding the mandates of existing non-judicial mechanisms and/or by adding new mechanisms”.

The UNGPs recommended the use of non-judicial grievance mechanisms as an additional and supportive tool for victims of adverse impacts by businesses. In fact, due to the many challenges encountered with access to judicial remedies for business-related human rights abuses, resorting to non-judicial remedies could have benefits as they could represent a more accessible and affordable mechanism for victims of these violations.

As state-based non-judicial mechanisms, one of the most prominent instruments is represented by the system of National Contact Points (NCPs) under the OECD Guidelines on Multinational Enterprises (The Guidelines). The Guidelines consist of recommendations addressed by adhering governments to multinational enterprises operating in or from their territory, covering labour rights, environmental protection, human rights, consumer protection, information disclosure and the fight against corruption. To date, the Guidelines have been endorsed by 50 states, all 37 OECD Member States and 13 non-OECD members. According to this system, all adhering states are required to establish an NCP domestically. One of the main tasks of the NCPs is to provide mediation in conflicts between the business and communities/individuals affected by business activities and operations.

In this regard, any party can submit a complaint to an NCP regarding the alleged non-observance of the Guidelines under the so-called specific instance procedure. In this procedure, NCPs play a mediating role among multinational enterprises, trade unions, NGOs, individuals or other stakeholders to settle a conflict in accordance with the law. As the last step, the NCP releases a statement including the findings and the outcome of the mediation. This statement could include recommendations in relation to the

implementation of the Guidelines, as well as a determination as to whether a breach occurred.

As some of their main features, NCPs are characterised by their consensual and non-adversarial system, their capacity to consider a broad range of business responsibility issues, and their transnational reach. As regards the cases that have been addressed by NCPs, the most dominant themes have been human rights (raised in 51% of cases since 2011), general policies, including due diligence (in 49% of cases), and employment and industrial relations (in 37% of the cases).

### **The road towards achieving effective remedies**

In the 20th anniversary of the NCPs, the OECD Secretariat produced a report highlighting the achievements made during this period, as well as the challenges ahead in terms of both the individual system of NCPs and the NCP network. Based on the feedback provided by users of the mechanism, stakeholders and NCPs, the report made a number of recommendations for improving access to remedies. According to this analysis, the key areas of concern focus on increasing visibility and exposure; ensuring accessibility across the board; respecting indicative timelines where possible; leveraging remedy outcomes more consistently; and guaranteeing equitable and safe proceedings. Moreover, the report explains that difficulties could be caused by both internal and external factors.

In parallel, a recent evaluation carried out by OECD Watch, a global network of civil society organisations, has shown that the NCP system is underperforming on several criteria, especially those that matter most for civil society. In a previous report, OECD Watch warned about the situations of victims of corporate abuse who “continued to see major barriers to accessing remedy through the NCP system, with inaccessibility, lack of impartiality and lack of equitability being the most cited obstacles”.

More recently, the OECD has been conducting a public consultation process to assess the OECD Guidelines, their implementation and the OECD’s work on Responsible Business Conduct. This consultation process focuses on identifying key achievements, challenges and opportunities for Responsible Business Conduct. One of the elements of consultation process also relates to the challenges for NCPs in facilitating access to remediation.

### **The blog symposium**

Against this backdrop, the aim of this blog symposium is to reflect about the state of remedy of the specific instance procedures at the NCPs for Responsible Business Conduct. The idea is to analyse the main challenges of the system in relation to the effectiveness criteria underlined in the UNGPs (UNGP 31). The different blog posts would focus on different thematic challenges, such as accessibility, predictability, etc.; the perspective of specific stakeholders (NGOs, trade unions, etc.); regional perspectives on this issue; and/or the challenges and lessons learned of specific NCPs.

The first blog posts will be published this week, starting tomorrow, so stay tuned! For those willing to contribute to the blog symposium, please contact us at [laura.inigo@novalaw.unl.pt](mailto:laura.inigo@novalaw.unl.pt)

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