

## OECD Watch's 2023 Global Gathering

The role of the OECD, OECD Guidelines, and OECD Watch in the changing corporate accountability landscape

Marking 20 years since the establishment of the OECD Watch network

*Conference Report*



*Global Gathering participants, including representatives from civil society organisations, the OECD, and NCP Chile*

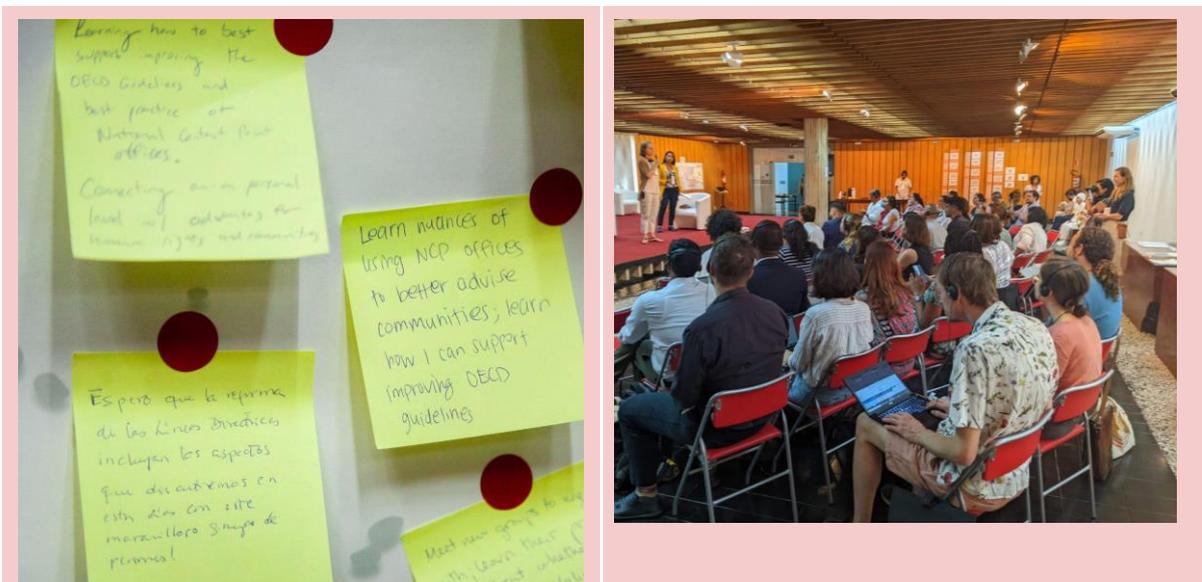
# 20 OECD Watch YEARS

Advancing Corporate Accountability

OECD Watch held its biennial Global Gathering in São Paulo, Brazil from 30 January to 1 February 2023. The Gathering was co-hosted by [Conectas Direitos Humanos](#) with support from [Swedwatch](#), and marked 20 years since the establishment of the OECD Watch network.

Approximately 70 participants from 50 civil society organisations based in 19 countries attended the Gathering. Representatives from the OECD and NCP Chile also participated in the conference for one of the three days. During the three days the following issues areas were covered:

1. Strengths and challenges in the National Contact Point (NCP) complaint process, and ways to improve civil society’s trust in NCP processes.
2. Targeted updates to the OECD Guidelines for Multinational Enterprises (OECD Guidelines).
3. Human rights due diligence initiatives in Latin America and the potential impacts of European due diligence legislation on the region.
4. Leveraging the OECD’s accession process to achieve human rights and environmental reforms.



*Participants’ expectations for and the opening of the Global Gathering*

## 1. Strengths and challenges in the NCP complaint process

The OECD Guidelines are the leading global standard on responsible business conduct (RBC). According to the OECD Guidelines, all OECD member states and OECD adhering governments are required to establish an NCP, which is tasked with increasing awareness of the Guidelines as well as handling complaints alleging non-compliance by companies with Guidelines.

### Strengths of NCPs

- **Cheaper, faster, and less adversarial** than other grievance mechanisms.
- NCPs provide a platform for **discussion** between complainants and companies, given that during the good offices stage of an NCP complaint an NCP will try to reach mutual agreement between the parties.
- **Remedy possibilities** are also more **flexible** than for traditional litigation. For example, NCP-brokered agreements may include remedies such as apologies, acknowledgement of harms, improved internal policies and practices, as well as compensation.
- NCPs are **often the only mechanism available** to file a complaint alleging adverse corporate impacts by a company.
- NCP complaints can also seek to **prevent the occurrence of an adverse impact**.

In [Union Hidalgo vs EDF Group](#), the indigenous Zapotec community in Mexico filed a complaint to NCP France, seeking to prevent the construction of a wind farm on their lands, which they claimed violated their right to free, prior and informed consent (FPIC). The NCP complaint was later withdrawn due to concerns about NCP France's effectiveness and, interestingly, filed anew using the new French Duty of Vigilance Law.



*Eduardo Villarreal (ProDESC, Mexico)*

### Key challenges

- The **voluntary** and **non-binding** nature of the Guidelines and NCPs for companies, which are not required to implement the standards in the Guidelines nor to participate in NCP processes. Companies are arguably not required to comply with agreements reached during mediation.
- **High rejection rate** of complaints by NCPs at the initial assessment stage.
- **Few agreements are reached** in complaints that are accepted by NCPs.

- **Substantive remedy is not guaranteed** in complaints that reach agreement between the parties.

For more information, watch **OECD Watch’s video explainers on the strengths and challenges associated with the NCP complaint process.** [English](#), [French](#), and [Spanish](#) videos are available online.



*Mustapha Mahamah  
(Advocates for Alternatives)*

Challenges related to implementing NCP-brokered agreements are apparent in the NCP case [Egbema Voice of Freedom et al vs ENI](#). This case resulted in an agreement for the construction and maintenance of drainage channels to prevent flooding in the Aggah Community, Nigeria caused by nearby oil fields. Since the announcement of the agreement, ENI has conducted works to prevent flooding in the community, but the complainants claim that ENI should do more to implement the terms of the agreement. The Italian NCP has rejected the complainants calls to follow-up on the implementation of the agreement.





*Panels on challenges at various stages of an NCP complaint and ways to overcome those challenges*

### **The importance of trust in NCPs and the complaint process**

Civil society's perception of the *effectiveness* of NCPs - in terms of their accessibility, accountability, equitability, impartiality, predictability, transparency, and visibility - is closely related to the *trust* of these organisations in the NCP and NCP complaint process. Unfortunately, civil society's trust in individual NCPs greatly differs.

*Trust is built from the inside out*; that is, from NCP's procedures and structures to their handling of complaints. *Engagement by NCPs with stakeholders*, including NGOs and trade unions, is an important foundation for trust. Some NCPs have close relationships with civil society and so are generally perceived to be more effective than other NCPs. NCP Netherlands has a civil society advisory body and engages with elected civil society representatives on complaints and recommendations to the Dutch government on responsible business conduct (RBC) issues. NCP Chile has a multi-stakeholder committee composed of academics and NGO representatives that engage in capacity-building efforts and NCP publications. Trust is also generated through the NCP's handling of complaints. *NCPs should recognise and address power imbalances between the parties in an NCP complaint.*

- **Initial assessment:** NCPs should not impose an overly high standard of

proof on complaints. It is often not possible for complainants to conclusively prove an alleged breach of the OECD Guidelines due to insufficient or inadequate information disclosed by companies. Civil society trust in the NCP process is significantly impacted by the perception that complaints will be or are dismissed without strong justification.

- **Good offices:** NCPs should fairly balance the confidentiality of information disclosed by the parties and the need for transparency in NCP proceedings. OECD Watch recommends for NCPs to maintain transparency generally, but to allow for confidentiality only over: (a) the personal identities of parties for security/privacy reasons, (b) legitimately sensitive business information, and (c) documents shared and discussions had during good offices.
- **Final statement:** NCPs should use their expertise to make determinations (or decisions) of (non-)compliance with the OECD Guidelines and/or recommendations to companies to better align their policies and practices with the Guidelines. Determinations are useful as they clarify the often-vague standards in the Guidelines and enable companies to understand and comply with the Guidelines. Determinations and recommendations increase companies' accountability and can also represent a form of remedy for complainants in terms of public validation of their experiences and concerns.
- **Follow-up:** Determinations, recommendations, and agreements reached during good offices should be followed-up by the NCP. Follow-up should ideally be an ongoing process and involve close communication between the parties and NCPs. NCPs should assess whether companies have met their responsibilities under the OECD Guidelines in relation to any agreement reached to ensure that NCP processes lead to improved compliance with the Guidelines by companies.



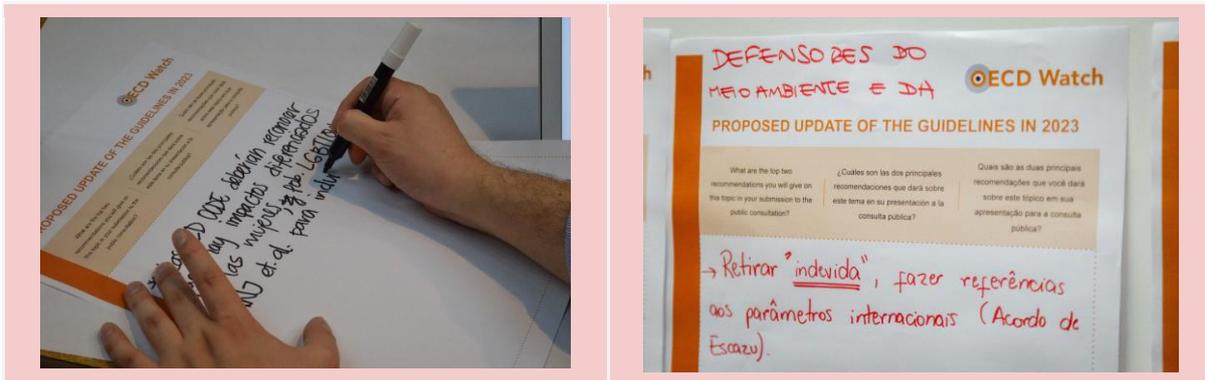
*Participants consider common challenges arising in NCP complaints and ways to overcome these challenges*

## 2. Targeted updates to the OECD Guidelines for Multinational Enterprises

The OECD Guidelines are a set of government-backed recommendations to multinational enterprises on RBC in areas such as human rights, the environment, and labour rights. Originally adopted in 1976, the Guidelines have undergone several updates, the latest one in 2011. To advance the Guideline's uptake and promotion, as well as to ensure that they remain relevant for the next decade, the OECD is therefore undertaking a targeted update of the OECD Guidelines in 2023.

From 13 January to 10 February 2023, the OECD conducted a public consultation on the proposed updates to the OECD Guidelines. OECD Watch's Global Gathering provided an opportunity for civil society to review the proposed updates, including to identify and discuss gaps and necessary amendments to the proposed text and consider the content of their own submissions for the public consultation. OECD Watch and others strongly encouraged civil society organisations present at the Gathering to mobilise and submit their own inputs for the public consultation in order to increase the chances of the targeted updates covering relevant RBC topics in an effective way.





*Participants discuss their key recommendations for the targeted updates*

The OECD Guidelines have several elements that make them an important and impactful standard on RBC, including their broad issue and sectoral coverage, extraterritorial and international scope, coverage of all MNEs causing, contributing to, or directly linked to adverse impacts, and their acceptance by all OECD adhering governments as a leading international standard on RBC. On the other hand, the current text of the 2011 OECD Guidelines is outdated in several key areas. Some of the areas of improvement discussed in the Global Gathering included, but were not restricted to:

*1. Climate change and environmental impacts*

Civil society representatives suggested the inclusion of language on climate change as an adverse impact that should be subject to due diligence, as well as language identifying numerous other adverse environmental impacts, including related to conservation, biodiversity, and animal welfare, and language on remediation of environmental impacts. Representatives also suggested a clearer and broader definition of just transition and ‘environmental impact’ beyond “known or foreseeable” impacts. Language on the environment and climate should also be strengthened by linking environmental and human rights impacts and clearly outlining the six steps of environmental due diligence.

*2. Human rights and environment defenders*

The OECD should align the language on defenders with internationally recognised instruments and initiatives defining expected corporate behaviour as it relates to human rights defenders. The consultation draft for the public consultation condemned “undue pressure” by companies on defenders and union representatives, a phrasing that was considered problematic as it left space for *due* pressure being exercised by companies. Civil society representatives also

encouraged the OECD to consult with relevant international entities, such as UN Special Rapporteurs, the UN Working Group on Business and Human Rights, and the OHCHR, on language of defenders.

### *3. Land rights and indigenous peoples*

References to Indigenous Peoples' rights in the proposed targeted updates were considered by civil society representatives to be too weak, particularly given increasing threats to Indigenous People's lives and livelihoods. Representatives at the Gathering strongly recommended the targeted updates better clarify the rights of Indigenous Peoples and highlight respect for their land rights.

### *4. Gender*

Participants recognised that women are often disproportionately impacted by irresponsible business practices, usually in the form of discriminatory practices and adverse impacts, due to structural inequalities faced by women. Civil society representatives strongly recommended that gender be mainstreamed throughout the OECD Guidelines.

### *5. Digitalisation*

Civil society participants noted that the Science and Technology Chapter of the OECD Guidelines is extremely outdated and that the revision is therefore very welcome. However, the proposed targeted updates focused too much on certain rights (such as the right to privacy) at the expense of other prevalent rights, such as rights-violations connected to surveillance technologies. Participants also urged the inclusion of a reference to downstream due diligence, especially related to misuse of technology by government entities.

### *6. Expectations for NCPs to implement the Guidelines*

NCPs play a crucial role in the successful uptake and implementation of the OECD Guidelines by companies. Today, many of the NCPs do not fully comply with their dual mandate to promote the Guidelines to companies and contribute to the resolution of allegations of non-compliance with the Guidelines in complaints. The proposed updates to the Procedural Guidance include many needed improvements, however, improvements in several areas are still missing. For instance, the updates should explicitly provide a low threshold ('credible' or 'plausible') for complaints to be declared admissible in an NCP's initial assessment. The proposed updates should also prioritise transparency over confidentiality throughout the NCP process and ensure effective follow-up of cases by NCPs, to increase implementation by companies of NCP-brokered agreements.



*Participants outline their key recommendations for the targeted updates*

Cividep India has advocated since 2000 for workers' rights and corporate accountability. Cividep is currently advocating for local workers employed by a foreign company operating in India. These workers have been subject to labour violations (including delayed payment of wages, excessive work, and lack of overtime wages).



*Pradeepan Ravi  
(Cividep India)*

### **3. Due diligence initiatives in the Latin America and Caribbean region and the potential impacts of European due diligence legislation**

The international standards on RBC, including the United Nations Guiding Principles on Business and Human Rights (UNGPs) and the OECD Guidelines, provide that companies have a responsibility to respect human rights. Part of this responsibility is to conduct due diligence to identify, prevent, mitigate, and remedy adverse impacts across their value chains.

There are some due diligence laws in place in Europe, such as the French Duty of Vigilance Law and the Dutch law on child labour due diligence, and others are being negotiated, such as the European Union's proposed law on corporate sustainability due diligence. In the Latin America and Caribbean (LAC) region, the need for legal frameworks on corporate accountability (including mandatory due diligence) is pressing and in recent years various civil society organisations have advocated for the creation of national law on due diligence. Initiatives in the LAC region are underway, including in Brazil, Mexico, and Peru.

During a session focused on due diligence initiatives and laws, panellists made the following recommendations in relation to the development of these initiatives and laws, especially in the LAC region:

- In some LAC countries, due diligence laws may not be the most appropriate legal measure to ensure corporate accountability for harms occurring in their country. In some cases, strengthened national laws may more effectively encourage RBC. Due diligence laws are generally developed in home countries (in which companies are headquartered) and address adverse impacts in host countries (where companies operate). Due diligence laws should be considered alongside new or strengthened national laws to best ensure RBC and corporate accountability.
- All due diligence laws should be strongly drafted to ensure that companies are more likely to be held accountable for their adverse impacts, and also that companies do not escape liability due to gaps in laws.
- Given the post-conflict contexts in many LAC countries, due diligence initiatives and laws should focus on access to justice for affected communities and open up possibilities for affected communities to seek justice and reparations for adverse impacts (including historical impacts) involving companies.
- Affected peoples must always be at the centre of the development of corporate due diligence laws. Similarly, it is also vital to ensure meaningful

stakeholder and civil society participation in the development and implementation of due diligence laws.

- European due diligence initiatives and laws can guide the development of due diligence initiatives in the LAC region, but it is essential that countries in the LAC region create legislation on corporate accountability that is tailored to their own national contexts.
- The purpose of due diligence legislation should be to ensure corporate accountability for adverse impacts. Effective mechanisms to hold companies to account should be built into these laws. Legal standards and the burden of proof should not be onerous for the complainant. Grievance mechanisms (judicial and non-judicial mechanisms, as applicable) should be empowered to impose significant consequences on companies for their behaviour.



*Interventions from panellists and participants during a session focused on due diligence*



*Jorge Acosta (ASTAC, Trade Union Association of Banana and Agricultural Workers)*

Banana workers in Ecuador are often subject to numerous human and labour rights violations, including unfair working conditions, harassment of unionised workers, and unsafe exposure to pesticides. Many of these issues adversely impact women workers. Among other things, ASTAC claims that certification schemes do not adequately involve workers in their processes. ASTAC is working to improve the rights of these workers in close collaboration with them.

International Rivers (IR) is campaigning against Belo Sun Mining Corporation’s proposed gold mining project in Volta Grande do Xingu, Brazil. The region is home to more than 2000 indigenous peoples and 500 traditional communities, and represents 22% of Amazonian wildlife. According to IR, the project will lead to human rights and environmental impacts, including food and water insecurity, deforestation, risk of dam failure, and failure to adequately consult with indigenous peoples. A coalition of civil society organisations is working to prevent these harms from occurring.



*Flávio Montiel da Rocha (International Rivers)*

#### 4. Leveraging the OECD’s accession processes

Membership in the OECD would give one country many economic benefits, including greater access to international financing and investment opportunities. Becoming a member of the OECD is a complex process that only occurs after a rigorous review process. To be allowed to accede, candidate countries need to demonstrate willingness, preparedness, and ability to adopt OECD practices, policies, standards, and values. These [values](#) include the promotion of an open, free, fair, and rules-based multilateral trading system; transparency and accountability of government; promotion and protection of the rule of law; the protection of human rights and the environment, including a focus on addressing climate change.

OECD Watch, FIDH, and Conectas have identified key moments and methods for civil society advocacy to leverage the OECD's highly political and technical accession process to demand significant reforms in candidate states (detailed in their joint [guide for civil society](#)).

In summary, the OECD accession process has three phases:

- **Pre-accession:** Involves a closed-door political debate amongst OECD member states on candidate countries. During this phase, civil society can raise awareness about governance gaps between the candidate country's laws and the OECD's standards on human rights and the environment and advocate for higher standards to strengthen the protection of human rights.
- **Accession:** At the start of this phase the OECD provides each candidate country with a generic "roadmap," setting out essential requirements for the country to accede. The roadmap includes the relevant technical committees reviewing the candidate's willingness, preparedness, and ability to adopt OECD practices, policies, standards, and values. During this phase, civil society organisations can provide each relevant committee and target member state research exposing governance gaps or non-compliance with that committee's policy standards and goals.
- **Post-accession:** If a state becomes a member of the OECD, ongoing post-accession requirements to meet the OECD's standards may still be required. Civil society can monitor whether those requirements are met and continue to provide input to the committee and other member states about the new member's (lack of) progress. Civil society can also propose steps for the country to bring itself into alignment.

In the case of Brazil's accession, OECD Watch, FIDH, and Conectas conducted [extensive research](#) on Brazil's compliance with the OECD's standards, showing the country's poor track record on deforestation, human rights of indigenous peoples, and labour rights. They have used these publications at meetings with OECD representatives and OECD member state delegates, in order to highlight gaps between Brazil's laws and practices and the standards set down in the OECD's accession roadmap, to ensure that Brazil is only permitted to accede once its government has addressed these challenges.

An example of governance gaps in Brazil is the [case of the tailing dam collapses](#), sending toxic mud into rivers and killing hundreds of people, including in Minas Gerais, Brazil. These dam collapses occur due to a myriad of factors, including poor environmental licensing laws and inadequate maintenance of dams by companies. These are just one example illustrating Brazil's broader failure to protect the environment and human rights.



*Interventions from panellists and participants during the session focused on OECD accession*

OECD Watch, Conectas, and Swedwatch warmly thank all participants and panellists that attended the Gathering, including representatives from civil society organisations, NCP Chile (Vanessa Maynou Gallegos) and the OECD (Germán Zarama).

**OECD Watch** is a network of civil society organisations focused on achieving effective remedy for adverse corporate impacts by using the OECD Guidelines for Multinational Enterprises and the Guidelines' non-judicial grievance mechanism. OECD Watch membership is open to all non-governmental, not-for-profit entities whose work is relevant and related to OECD Watch's mission.

**Conectas** is a Brazilian human rights organisation that exists to preserve, implement, and extend the human rights of all, especially the most vulnerable. More than a non-governmental organisation, we are part of a lively and global movement that continues in the fight for equal rights. Connected via a broad network of partners, spread across Brazil and around the world, we participate in various decision-making debates that advance the path of human rights from the Global South perspective. We propose solutions, avert setbacks, and denounce violations to create transformations.

**Swedwatch** is an independent, non-profit research organisation working to promote responsible business practices. Through research and dialogue, Swedwatch highlights the impacts on people and planet by unsustainable business operations and builds bridges between stakeholders in order to affect change. Swedwatch's work is based on international human rights and environmental law, conventions and guidelines, including the United Nations Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises.

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