

# State of Remedy 2022



Examining  
outcomes  
of complaints  
concluded  
in 2022

Exploring  
key highlights  
for remedy under  
the updated  
OECD Guidelines

## Table of contents

---

Introduction.....	3
OECD Watch’s analysis of community- and NGO-led complaints concluded in 2022.....	5
Key numbers for 2022.....	5
Remedy highlights.....	6
Remedy lowlights.....	15
Strengthening NCP effectiveness.....	18
Conclusion.....	22
Table: Key elements in community- and civil society-led complaints concluded in 2022 ..	23

## Introduction

---

**The year 2023 marks two important milestones for OECD Watch:** the release of the updated and newly renamed 'OECD Guidelines for Multinational Enterprises on Responsible Business Conduct' (Guidelines) and the 20<sup>th</sup> anniversary of the OECD Watch network.

OECD Watch was established during a meeting of civil society in Amersfoort, the Netherlands in March 2003. All of the 50 meeting participants agreed that there was need for better cooperation between NGOs working on the Guidelines and business and human rights more broadly, and that the Guidelines and its new grievance mechanism of National Contact Points (NCPs) should be tested to assess their effectiveness in improving corporate accountability. Since then, the vision of the network – to ensure that all business is conducted in a human rights-respecting manner, with remedy for those harmed – has remained the same, while its membership has grown to more than 130 civil society organisations from across the world.

Over the past two decades, OECD Watch has played a vital role in informing and advising communities and NGOs on how to use of the Guidelines and NCP complaints to achieve corporate accountability and remedy. The network has been committed to improving the implementation and effectiveness of the Guidelines through increased global NGO coordination, advocacy with governments and international institutions, and case support to civil society.<sup>1</sup>

The network has also played a crucial role in shaping the development of the Guidelines. In 2011, OECD Watch provided civil society's input into the 2011 revision of the Guidelines. This brought the standards in the Guidelines into alignment with the United Nations Guiding Principles on Business and Human Rights (UNGPs), resulting in the inclusion of a new human rights chapter and strengthened provisions on due diligence and supply chain responsibility. The 2011 Guidelines also recognised OECD Watch as an institutional stakeholder, formalising the network's role as the representative for civil society to the OECD Investment Committee.

In 2023, the Guidelines have again been updated with OECD Watch's input as the representative for civil society. In OECD Watch's [view](#), the majority of the "targeted updates" strengthen responsible business conduct (RBC) standards for enterprises. In many areas, the changes reiterate and therefore bolster international norms on RBC, and on some topics, the changes even advance normative guidance. However, the updated text largely does not raise requirements for governments to improve their implementation of the Guidelines through NCPs. While the updates significantly improved *recommendations* for NCPs, the improvements are still largely optional. For instance, while the 2023 text improves on the 2011 text by emphasising the goal of "Guidelines-compatible" agreements in NCP complaints, and by expecting NCPs to play an active role in helping bring about commitment by the company to implement the Guidelines in the future and address any adverse impacts that have occurred, the term "remedy" is still not used in the Procedures for NCPs. It remains to be seen whether governments will voluntarily choose to improve their NCP - making the drive for laws focused on improving corporate behaviour and mandatory due diligence legislation aligning with the standards in the Guidelines all the more urgent to ensure accountability.

This report examines important trends and issues in complaints concluded in 2022. It also highlights not only OECD Watch's views on how NCPs should improve, but also where the updated OECD

---

<sup>1</sup> See OECD Watch's publications: OECD Watch, 'Five Years On: A Review of the Guidelines and National Contact Points', 2005, <https://www.oecdwatch.org/oecd-watch-five-years-on/>; OECD Watch, '10 Years On: Assessing the Contribution of the Guidelines for Multinational Enterprises to Responsible Business Conduct', 2010, <https://www.oecdwatch.org/oecd-watch-10-years-on/>; OECD Watch, 'Remedy Remains Rare: An Analysis of 15 Years of NCP Cases and Their Contribution to Improve Access to Remedy for Victims of Corporate Misconduct', 2015, <https://www.oecdwatch.org/remedy-remains-rare/>.

Guidelines encourage better NCP performance. We urge NCPs to heed the recommendations laid out in the updated Procedures and strengthen access to remedy for the next ten years.

As OECD Watch enters its third decade, the network will have an important role to play in strengthening implementation of the Guidelines. OECD Watch will continue to raise awareness amongst communities about the RBC standards for enterprises in the Guidelines and assist rightsholders in filing more effective and strategic NCP complaints using the updated text. If gaps in NCP performance continue to hinder the effectiveness and functional equivalence of the NCP system, OECD Watch will help civil society overcome those gaps.

OECD Watch will continue to promote civil society engagement with OECD governments to encourage them not only to implement the recommendations for NCPs in the updated Guidelines, but also to strengthen expectations of corporations acting in and from their territories. In this regard, the network will continue to advocate for the adoption of strong national and international laws based on the Guidelines.

In the next decade, the network will also continue to bring the voice of civil society into policy making on responsible business conduct at the OECD, supporting civil society initiatives and collaborations to ensure that the OECD itself increasingly promotes only business models that are conducted in a manner that respects human rights and environment. OECD Watch looks forward to engaging with and accompanying civil society in the years ahead.

## OECD Watch’s analysis of community- and NGO-led complaints concluded in 2022

2022 marked a disappointing year in terms of agreements reached in complaints filed by communities and NGOs under the Guidelines. Only one of the 23 cases concluded by NCPs reached an agreement. This is the stark reality of the NCP system as it currently stands – NCPs are generally challenged in facilitating agreements to resolve the issues raised in complaints.

Despite this, there are several positive remedy-related trends to highlight from the NCP complaints concluded in 2022. Unlike previous years, far fewer complaints were rejected by NCPs at the initial assessment stage. There was also a notable increase in NCPs using their expertise to make determinations of (non-)compliance by companies with the standards in the Guidelines. Some NCPs provided guidance on novel and important RBC concepts relating not only to the OECD framework, but also to developing national and international laws, such as the non-static nature of a company’s relationship to an adverse impact and the need for heightened due diligence in conflict situations where impacts are more likely. NCPs are also increasingly following up on agreements reached between the parties, and on determinations and recommendations made by NCPs in their final statements.

### Key numbers for 2022

- **23 cases** filed by communities and NGOs were concluded
- **5 cases (22%)** were rejected at the initial assessment phase
- **17 cases (74%)** proceeded to NCP mediation, a significant improvement compared to previous years, of which:
  - **1 case** reached an agreement
  - **16 cases** did not reach an agreement
- Of the **16 cases** that proceeded to mediation and that did not result in an agreement between the parties:
  - **2 cases** were withdrawn by the complainants
  - In **6 cases (38%)**, the NCP made determinations regarding the company’s compliance and/or non-compliance with the Guidelines
    - In **5 cases**, the NCP determined that the company *had not* complied with the standards in the Guidelines
    - In **2 cases**, the NCP determined that the company *had* complied with the standards in the Guidelines

## Remedy highlights

### NCP facilitates agreement

The Czech NCP facilitated an agreement in one anonymous complaint: [Czech NGO vs. Czech company](#). The complaint concerned the company's supplier's activities in Myanmar related to garment manufacturing. Among other things, the company agreed to adopt a public policy on RBC and due diligence applicable to its own operations and its suppliers. The company also agreed to amend its due diligence processes to identify, prevent, and mitigate potential risks of human rights violations in its supply chain.

### NCPs issue determinations of non-compliance with the Guidelines

Six NCP cases concluded with determinations on whether the company had observed the Guidelines. In five cases, the NCP determined that the respondent company had *failed to comply* with the Guidelines. In two cases, the NCP determined that the company had in fact *complied* with the Guidelines.<sup>2</sup>



**OECD Watch stance on determinations:** In OECD Watch's view, determinations (also called decisions, evaluations, or assessments) on whether or not a company has observed the Guidelines' standards in a specific instance are critical to effective implementation of the Guidelines. Determinations clarify the often-vague standards in the Guidelines, enabling companies to better understand both how their past behaviour did not meet international expectations and what they must do differently to meet the norms in future. This helps strengthen corporations' accountability for their future conduct. Determinations can also represent a form of remedy for complainants by publicly validating their experiences and concerns. Because such public statements can encourage enterprises to rectify adverse impacts related to their past conduct, determinations can also help strengthen corporations' accountability for past impacts. Finally, because NCPs usually only make determinations in cases in which the parties do not reach an agreement, the NCP's commitment at the outset to issuing a determination where mediation fails provides vital incentive to companies to engage in the good offices process with a good faith intention to reaching meaningful agreement.

Despite the high value of determinations, a minority of NCPs make them, and some oppose their use. OECD Watch's [NCP Evaluations](#) indicate that 13 out of 49 NCPs (27%) have issued one or more determination of (non-)alignment with the Guidelines, or otherwise have a policy commitment (typically in their rules of procedure) to do so.<sup>3</sup>

**OECD Watch seeks more discussion with the OECD, OECD governments, and other experts in the access-to-remedy field to address governments' and companies' concerns and misunderstandings about determinations.**

OECD Watch urges all NCPs to make determinations in their final statements in order to improve companies' alignment with the Guidelines and generate more meaningful complaint outcomes. OECD governments must also provide NCPs with the technical capabilities and resources needed to make determinations.

<sup>2</sup> The discrepancy in numbers is due to one complaint in which the NCP made determinations of both compliance and non-compliance with the Guidelines.

<sup>3</sup> OECD Watch's NCP evaluations were last updated in 2021.



**The 2023 version of the Guidelines now explicitly allows NCPs to make determinations of (non-)observance by companies of the Guidelines standards:**

“If allowed by applicable law and the NCP’s case-handling procedures, the NCP may, at its own discretion, set out its views in its final statement on whether the enterprise observed the Guidelines.”

In OECD Watch’s view, the 2023 text slightly improves on the 2011 text. Throughout the update process, OECD Watch repeatedly urged for NCPs to be required (“will”) or otherwise encouraged (“should”) to determine whether an enterprise has observed the Guidelines. We also discouraged the insertion of the qualifier on NCPs making determinations “if allowed by applicable law and the NCP’s case-handling procedures”. While the new text is an improvement, in our view it does not go far enough to actually enhance NCP’s effectiveness.

In [Centre d’Actions pour la Vie et la Terre et al. vs. COPAGEF, SOMDIAA and SOSUCAM](#), the French NCP determined that the companies did not fully comply with several standards in the Guidelines, including in relation to their activities affecting human rights and the environment, engagement with stakeholders, and disclosure. The NCP made several recommendations to the companies to improve their policies and human rights due diligence. The complaint concerned improper due diligence regarding societal and environmental impacts caused by SOSUCAM’s sugar cane plantations and processing plants in Cameroon.

In [IDI, EC, and LICADHO vs. Bonsucro](#), the UK NCP made determinations regarding sugar industry sustainability certification body Bonsucro’s non-alignment with the Guidelines. In this case, representatives of more than 700 Cambodian families alleged that Bonsucro had failed to hold member company Mitr Phol accountable after they were violently and forcibly displaced by the company to make way for a sugar plantation. The NCP found that Bonsucro was directly linked to the adverse human rights impacts through its business relationship with Mitr Phol, and that Bonsucro did not exercise its leverage appropriately when readmitting Mitr Phol as a member of the multistakeholder initiative. The NCP also determined that Bonsucro did not carry out adequate due diligence in accordance with the Guidelines.

In [Cameroon communities vs. Victoria Oil and Gas](#), the UK NCP made determinations of both alignment and non-alignment with the standards in the Guidelines. In this case, two community-based Cameroonian organisations alleged that the company had not fully complied with the Guidelines. The NCP found that the company did not have a system in place to “effectively engage with the local population, and to foster a relationship of confidence.” The NCP also found that the company had not fully complied with the Guidelines in terms of its efforts to improve corporate environmental performance, including through target setting and the development of strategies for emission reduction, and did not demonstrate the existence of a contingency plan for addressing serious environmental and health damage from its operations that might impact the local community. The NCP also determined that the company had complied with the Guidelines, including in relation to its disclosure, human rights, labour, and environmental practices.

[FNV et al. vs Chevron Netherlands BV & 13 other affiliated entities](#) was filed by four trade unions, FNV, ITF, PSI, and IndustriALL Global Union, supported by Friends of the Earth, against Chevron Netherlands and 13 affiliated Chevron entities, all based in the Netherlands, to the Dutch NCP. The complaint alleged concealment by Chevron’s Dutch subsidiaries of basic company and tax-related information for the purpose of tax avoidance, as well as concealment of the amount of tax revenue it avoided paying to governments, among other things. In its final statement, the Dutch NCP made

four determinations of non-compliance, or alternatively failure by Chevron to demonstrate compliance, with the Guidelines. First, based on the absence of information provided by Chevron and its own examination, the NCP considered that the companies did not “seem to observe” the standards on disclosure in the Guidelines. Second, the NCP assessed Chevron’s disclosure of its corporate group’s tax practices, deciding that the companies had “failed to demonstrate, either through freely and publicly available information or by providing answers to the NCP’s questions, that the 14 corporate entities at stake comply with the spirit of the law.”



**OECD Watch comment on determinations:** Some NCPs believe that they cannot issue determinations because they have not conducted an extensive investigation on the facts or issues raised in the complaint, or are not judicial authorities. However, there is no requirement for an NCP’s determination to meet the same evidentiary requirements as judges or courts, such as ‘beyond reasonable doubt’ or ‘on the balance of probabilities’. In many cases, NCPs can make *qualified* determinations of (non-)compliance with the Guidelines based on the information available to them. They do not necessarily need to undertake their own fact-finding or field research to make these evaluations. For example, some NCPs qualify their determinations as being ‘based on available information’.

OECD Watch urges NCPs to not rule out the possibility of determinations at the outset of a complaint, but rather to consider make determinations in cases where they have sufficient information to do so. We also urge governments to ensure NCPs have the resources to acquire enough information to make determinations. Determinations also do not need to be made in relation to *all* of the issues raised in the complaint, but can address only *some* issues.

Third, the Dutch NCP considered Chevron’s cooperation in the NCP procedure. In view of Chevron’s lack of cooperation and withdrawal from participation in the NCP procedure, the NCP determined that Chevron had not “acted as could have been expected from them under step six of the due diligence process... i.e. to “Provide for or cooperate in remediation when appropriate”.



**OECD Watch’s stance on companies’ participation in good offices:** While participation by companies in NCP procedures is voluntary, the standards in both the Guidelines and UNGPs are clear – companies have a responsibility to provide for or cooperate in remediation where appropriate. This means that companies should engage or cooperate with non-judicial grievance mechanisms – including NCPs – if their activities are the subject of an NCP complaint.

Finally, the Dutch NCP considered Chevron’s “lack of responsiveness and cooperation in the NCP procedures” to mean Chevron and its affiliates “have not acted as could have been expected from them” in terms of good faith behaviour involved in these procedures. Notably, this is the second complaint in two years to determine that an enterprise’s refusal to engage in the NCP process constitutes a failure to observe the standards in the Guidelines.<sup>4</sup>

<sup>4</sup> *Individuals & ElectraNet Pty Limited, NCP Australia, filed 28 October 2020, <http://mneguidelines.oecd.org/database/instances/au0018.htm>, final statement at paragraph 61.*





**New text in the updated Guidelines clarifies engagement in complainants as an important element of good faith engagement in NCP processes:**

**“The good faith engagement by all parties involved in the proceedings is expected. Good faith engagement in this context means... genuinely engaging in the proceedings with a view to finding a Guidelines-compatible solution to the issues raised, including giving serious consideration to any offer of good offices made by the NCP.”**

**ASF and I Watch vs. Perenco** concerned the company’s failure to be transparent about its oil extractive activities in Tunisia. The French NCP decided that the company’s Tunisian operations were not in line with the standards in the Guidelines, including in relation to its due diligence policy, stakeholder engagement, and transparency of information. However, the NCP noted that Perenco had developed its corporate policy as a result of the NCP’s good offices, but encouraged Perenco to further develop its due diligence policy, including with dedicated group-level governance. The NCP also encouraged “additional efforts” in terms of engagement with stakeholders when Perenco’s activities or projects are likely to have a significant impact on local populations.

**Committee Seeking Justice for Alethankyaw vs. Telenor** concerned the involvement of telecommunications company Telenor in crimes against the Rohingya ethnic minority group in Myanmar. The Norwegian NCP determined that the company was directly linked to adverse human rights impacts and had identified and sought to mitigate these impacts as part of its due diligence processes. Among other things, Telenor included human rights policies in its contracts with its business partners and conducted follow-up on the implementation of these policies. The NCP also noted that while Telenor had engaged with Myanmar and international partners and stakeholders, the company had not prioritised engagement with the most vulnerable and severely impacted groups (the Rohingya). The NCP recommended for Telenor to prioritise the most vulnerable groups in future stakeholder engagement.



**Update on ongoing complaint – Telenor’s Myanmar operations are the subject of another NCP complaint: SOMO representing 474 Myanmar CSOs vs. Telenor.** The complaint alleges irresponsible disengagement in relation to the sale of Telenor’s Myanmar business.

In October 2022, the Norwegian NCP published a joint Memorandum of Understanding agreed between the parties. Among other things, Telenor agreed to share its expertise and experience about risks to digital rights in Myanmar under the military junta (e.g. data sharing with the illegal junta) and has commenced an internal review process with the possibility for the complainants to provide input. Telenor also agreed to support the implementation of follow-up actions recommended by an ICT Eco-System Risk Study. One of these actions is exploring how an independent digital security relief mechanism could be established to provide training and financial and legal support to Myanmar citizens at risk due to their digital footprint.

The case is still open. Both parties asked for the NCP not to close or conclude the complaint but to keep the process open until they reach an agreement or otherwise conclude that no agreement is possible.

## NCPs offer guidance on responsible business conduct issues

Some NCPs are increasingly using their expertise on the Guidelines to improve corporate alignment with the standards for companies.



### New text in the 2023 Guidelines on the role of NCPs in complaints as experts in the Guidelines:

“When issues arise relating to implementation of the Guidelines in specific instances, the NCP is expected to assist in resolving them, serving as a non-judicial grievance mechanism. In that context, **NCPs will aim to facilitate dialogue between the parties and support them in seeking mutually agreeable and Guidelines-compatible solutions to the issues raised, but also actively inform such dialogue with their expertise on the Guidelines. NCPs should also draft final statements in such a way as to provide guidance on resolving the issues and implementing the Guidelines.**”

In OECD Watch’s view, the 2023 text improves on the 2011 text by emphasising the goal of “Guidelines-compatible” (that is, rights and RBC-compatible) agreements and by expecting the NCP to play an active role in complaints by using its knowledge of the Guidelines to guide discussions. In OECD Watch’s view, while mediation should empower parties to develop and implement their own solutions to issues raised, mediation should never occur in a vacuum divorced from reference to the firm and clear standards in the Guidelines. The 2023 updates encourages NCPs not to be passive participants in good offices dialogue, but rather actively to explain the standards’ meaning and implications for corporate conduct, and help parties develop Guidelines-compatible outcomes.

## Guidance on the shift from directly linked to contributing to an adverse impact

[In Milieudéfensie et al. vs. ING](#), the complainants alleged that ING Group breached the Guidelines by contributing to adverse impacts caused by ING’s palm oil clients or their subsidiaries. This case was one of the first NCP complaints arguing that ING’s relationship to the impacts had shifted from directly linked to contributing using the factors in the [OECD Due Diligence Guidance for Responsible Business Conduct](#) (Due Diligence Guidance).



**Relationship to adverse impacts under the OECD Guidelines:** According to the Guidelines, companies can cause, contribute to, or be directly linked to an adverse impact through its business relationships. All companies have remedy-related responsibilities: companies ‘causing’ or ‘contributing’ to impacts are expected to provide for or cooperate in remediation, and companies ‘directly linked’ to impacts are expected to use their leverage to influence the entity causing the impact to cease causing the impact and to remedy it.

The 2023 updates to the Guidelines reflect the Due Diligence Guidance, inserting new text clarifying that an enterprise’s relationship to an impact is “not static” and may “evolve”.

**“An enterprise’s relationship to [an] adverse impact is not static. It may change, for example as situations evolve and depending upon the degree to which due diligence and steps taken to address identified risks and impacts decrease the risk of the impacts occurring.”**

Therefore, in certain circumstances, a company’s relationship to an impact can shift from directly linked to contributing. **The Due Diligence Guidance sets out a non-exhaustive list of factors for determining whether an enterprise is ‘contributing’ to harm, including ‘the degree to which the activity increased the risk of the impact occurring or continuing, the foreseeability of the adverse impact, and the degree to which any of the enterprise’s activities actually mitigated the impact or decreased the risk of it occurring. The updated Guidelines recommend the Guidance as a useful tool to help enterprises understand and implement the due diligence recommendation of the Guidelines.**

In OECD Watch’s view, the 2023 addition on the shift or evolution of responsibility marks an improvement on the 2011 text. OECD Watch encourages NCPs to help implement this new text during complaints by carefully considering, with attention to the types of factors laid out in the Due Diligence Guidance, whether an enterprise’s ongoing failure to address adverse impacts directly linked to it is causing the enterprise’s relationship to the harm to shift, deepen, or worsen.

While the parties ultimately did not reach an agreement during good offices, the Dutch NCP made several important observations regarding key RBC issues.

Regarding the shift from companies being directly linked to contributing to an adverse human rights impact, the Dutch NCP noted:

**“In practice, there is a continuum between ‘contributing to’ and having a ‘direct link’ to an adverse human rights impact: a bank’s involvement with an impact may shift over time, depending on its own actions and omissions.”**

The NCP also gave an example of a bank shifting from direct linkage to contribution:

“For example, if a bank identifies – or is made aware of – an ongoing human rights issue that is directly linked to its operations, products or services through a client relationship, yet over time fails to take reasonable steps to seek to prevent or mitigate the impact, it could eventually be seen to be facilitating the continuance of the situation and thus be in a situation of ‘contributing.’ Such reasonable steps could for instance be: bringing up the issue with the client’s leadership or board, persuading other banks to join in raising the issue with the client, making further financing contingent upon correcting the situation, etc.”



**OECD Watch comment on the responsibility of financial actors for adverse impacts:** The Dutch NCP's guidance on the potential shift by banks from direct linkage to contribution is timely. Under the 2011 Guidelines, approximately 20 NCP complaints have considered the responsibility of financial actors, including banks,<sup>5</sup> which have immense leverage or influence over their investee or client companies. An increasing number of NCP complaints are also focusing on banks' indirect contributions to climate change.

#### Guidance on engaging with multistakeholder initiatives

The Dutch NCP also noted that participation in multistakeholder initiatives (MSIs) "does not shift responsibility from the enterprise to the initiative for adverse impacts [the enterprise] causes, contributes to or to which it is directly linked". The NCP emphasised, "the enterprise itself remains responsible for ensuring that its due diligence is carried out effectively." The NCP's comments align with the OECD Investment Committee's [clarification](#) in 2021, which referred to the Due Diligence Guidance that states, "[e]nterprises can collaborate at an industry or multi-industry level as well as with relevant stakeholders throughout the due diligence process, although they always remain responsible for ensuring that their due diligence is carried out effectively."



**OECD Watch comment on MSIs, etc:** Many civil society actors are concerned about companies over-relying on MSIs, industry schemes, and third-party auditing when conducting human rights and environmental due diligence. At least two NCP complaints have been filed against auditing companies that certified companies subsequently involved in human and/or labour rights violations.<sup>6</sup>

According to OECD Watch member SOMO's recent publication [A Piece, Not a Proxy](#), the European Commission's February 2022 [Proposal for a Directive on Corporate Sustainability Due Diligence](#) places these initiatives at the heart of the due diligence process and, in certain circumstances, allows companies to use them as a defence against legal liability. According to SOMO, "considerable research has shown that these measures are insufficient when it comes to discharging an adequate and comprehensive [human rights and environmental due diligence] process that is capable of consistently and effectively identifying risks and preventing harm."<sup>7</sup>

MSIs, industry schemes, and third-party auditing are not a substitute for effective due diligence processes by companies. OECD Watch's publication [Achieving Alignment: Syncing EU due diligence legislation with the updated OECD Guidelines](#) calls on European policymakers to address non-alignment between all three of the EU institutional positions and the updated Guidelines as regards encouraging corporate reliance on MSIs and other such initiatives to implement their due diligence obligation.

5 The figures are based on a preliminary study of the human rights responsibilities of financial institutions by Otgontuya Davaanyam, PhD candidate at FAU Erlangen-Nuremberg.

6 *ECCHR et al vs. TÜV Rheinland AG*, NCP Germany, filed 2 May 2016, <https://www.oecdwatch.org/complaint/ecchr-et-al-vs-tuv-rheinland-ag/>; *Ali Enterprises Factory Fire Affectees Assoc. v. RINA S.p.A.*, NCP Italy, filed 11 September 2018, <https://www.oecdwatch.org/complaint/ali-enterprises-factory-fire-affectees-assoc-v-rina-s-p-a/>.

7 Gabriela Quijano and Joseph Wilde-Ramsing, SOMO, 'A piece, not a proxy', November 2022, <https://www.somo.nl/wp-content/uploads/2022/11/A-piece-not-a-proxy.pdf>.

The Dutch NCP noted that companies should conduct due diligence on MSIs, including by assessing the quality of MSIs at the outset of collaboration, and conducting periodic reviews of the appropriateness of their reliance on multi-stakeholder and industry initiatives.



#### New text in the 2023 version of the Guidelines on participation by companies in MSIs:

**“Self-regulatory practices and multi-stakeholder initiatives should be credible and transparent.** Where such initiatives are focused on responsible business conduct due diligence, alignment with relevant international standards such as the Guidelines can foster greater effectiveness while reducing complexity and cost for businesses engaged in such initiatives. In turn, developing such practices can further constructive relationships between enterprises and the societies in which they operate. **Although enterprises can collaborate at an industry or multistakeholder level, they remain individually responsible for ensuring that their due diligence is carried out effectively.**”

OECD Watch advocated for the inclusion of new text on MSIs and the network is pleased with the updated text, which improves on the 2011 text that spoke only positively about MSIs.

#### Guidance on other elements of responsible business conduct

In another complaint, [GLAN vs. San Leon Energy](#), the complainants alleged that the company did not obtain the free, prior, and informed consent (FPIC) of the Sahrawi indigenous peoples in Western Sahara before engaging in oil extractive activities. At that time, San Leon Energy operated in the territory under licenses obtained from the Moroccan government, despite Morocco’s control not being recognised by other states and the area generally being viewed as a Non-Self-Governing Territory (NSGT). The Irish NCP made three notable recommendations:

- For all companies considering investing in NSGTs to have regard to the rights of NSGTs under [Chapter XI of the United Nations Charter](#).
- Companies should be aware that operating in NSGTs carries heightened risks of adverse impacts concerning human rights and stakeholder engagement, and accordingly companies are expected to undertake enhanced due diligence measures to identify and address such risks.
- The NCP also referred to the Due Diligence Guidance, stating that in some circumstances, mitigation of human rights impacts will be “impossible”, and that in these situations the Due Diligence Guidance “will require them to disengage from the business relationship.”

 **CASE UPDATE****Update on ongoing complaint – Appointment of an independent investigator:**

In late 2020, Human Rights Law Centre (HRLC) filed a complaint with the Australian NCP on behalf of 156 indigenous residents of Bougainville, Papua New Guinea, who have been gravely impacted by pollution caused by Rio Tinto's former copper and gold mine: [HRLC vs. Rio Tinto](#). In mid-2021, after months of NCP-facilitated discussions, the parties agreed to implement an impact assessment to identify and assess environmental and human rights impacts of the mine and develop recommendations for what needs to be done to address them.

In late 2022, the NCP announced that an independent investigation into the environmental and human rights impact of the mine had commenced. The appointment of an independent investigator is relatively novel in NCP cases, and an example of good practice by NCPs. In order for NCPs to initiate such investigations, it is essential that NCPs are adequately funded and supported by their governments.

The case is still open and the Australian NCP will continue its good offices throughout 2023.

## Remedy **lowlights**

### Parallel proceedings obstruct access to remedy

**Daphne Caruana Galizia Foundation vs. Accenture** concerned alleged bribery and corruption by an Accenture employee advising on the purchase of a wind power concession in Montenegro. The Irish NCP rejected the case for two reasons: first, the risk of creating serious prejudice to ongoing judicial proceedings, which it described as “highly relevant” and “intrinsically linked” to the complaint, and second, its view that consideration of the case would be unlikely to contribute to the purposes and effectiveness of the Guidelines. The NCP failed to explain its reasoning in relation to the latter.

The complainants strongly dispute the NCP’s reasons for its rejection of the complaint. They argue that the judicial proceedings in question do not directly concern Accenture, and so do not risk serious prejudice to the company, and that consideration of the case would have furthered the objects of the Guidelines because there is no other forum in which Accenture is being held accountable for the alleged impacts.

The case is also one of only two NCP complaints filed by communities or NGOs against advisory or consulting companies.<sup>8</sup>



#### **New text in the updated Guidelines on NCP initial assessments and parallel proceedings:**

The 2023 update of Guidelines clarified slightly the six criteria NCPs should follow in determining whether a case is eligible for acceptance. These criteria now include: “the extent to which applicable law and/or parallel proceedings limit the NCP’s ability to contribute to the resolution of the issue and/or the implementation of the Guidelines...”

“The term “parallel proceedings” refers to judicial or non-judicial processes, which may be domestic or international in nature, involving the same or closely related issues and which could influence the ongoing specific instance. This includes for example specific instances before the same NCP or another NCP. **If parallel proceedings have been conducted, are under way or are available to the parties concerned, this does not preclude the NCP from offering good offices to the parties. NCPs should evaluate whether an offer of good offices could make a positive contribution to the resolution of the issues raised and/or the implementation of the Guidelines going forward and would not create serious prejudice for either of the parties involved in these other proceedings or cause a contempt of court situation. In making such an evaluation, NCPs could take into account practice among other NCPs, consider the possibility to partially accept the specific instance or to suspend its examination while the parallel proceedings are ongoing and, where appropriate, consult with the institutions in which the parallel proceedings are being or could be conducted.** NCPs will seek parties’ assistance in considering these matters by requesting relevant information and views on the parallel proceedings.”

In OECD Watch’s view, these updates generally improve the 2011 text. However, OECD Watch and TUAC’s joint proposal to remove the term “serious prejudice” was rejected during negotiations. OECD Watch is concerned that parallel proceedings will remain a common (and often intentional, on the part of companies) barrier to companies’ participation in good offices. **OECD Watch seeks more discussion with the OECD, OECD governments, and other experts in the access-to-remedy field to address governments’ and companies’ concerns and misunderstandings about the handling of NCP complaints related to proceedings underway in parallel grievance fora.**

<sup>8</sup> See *UK Lawyers for Israel vs. PricewaterhouseCoopers Global Network (PwC) 2*, NCP UK, filed 10 October 2019, <https://www.oecdwatch.org/complaint/uk-lawyers-for-israel-uklfi-vs-pricewaterhousecoopers-global-network-pwc-2/>.

The case [Public Eye et al. vs. Syngenta](#) concerned the alleged poisoning of Indian agricultural families through use of a Syngenta pesticide called Polo whose active ingredient has been banned in Switzerland and Europe for years. The Swiss NCP accepted the complaint but ultimately ended good offices because, in its view, discussions between the parties on the question of whether the company’s product caused poisoning of farmers would create “serious prejudice” for the company in parallel judicial proceedings.

The NCP complaint was filed by a coalition of civil society organisations on behalf of poison-affected agricultural families in Yavatmal, central India. Meanwhile, the judicial proceedings in question were commenced by three families unrelated to the NCP complaint that sought compensation based on Swiss product liability law. The Swiss NCP accepted the Guidelines complaint and the parties met a few times to discuss, among things, the alignment of Syngenta’s customer complaint process with expectations under the Guidelines. However Syngenta was unwilling to discuss issues being dealt with in the court proceedings, particularly the question of whether its insecticide caused the poisonings. Based on the Procedural Guidance of the OECD Guidelines, the Swiss NCP held bilateral conversations with the lawyers of both parties to the court proceedings to better understand the scope of the legal proceedings and the possibility for interference by the NCP procedure. The NCP concluded that discussion on causation of poisoning – and, in relation, of remediation for the physical and social harms incurred – would create “serious prejudice” for the company in the judicial proceedings. Without the chance to discuss remediation for the harm, the complainants were unwilling to proceed to addressing other issues less important to them, and the NCP closed the proceedings.

The NCP’s decision to end discussions on grounds that the discussion allegedly could create serious prejudice for the company in the judicial proceeding was criticised by Marcos Orellana, UN Special Rapporteur on Toxics and Human Rights:

“The group of 51 farmers and their families should not be deprived of their right to access remedy through a non-judicial process simply because another group of victims chose to file a civil lawsuit... This is setting a bad precedent that underscores the weaknesses of national contact points for the Guidelines”.

While the complaint was not *rejected* due to parallel proceedings, the NCP’s decision to end good offices on the basis of parallel proceedings resulted in a similar outcome: the possibility for further meaningful dialogue between the parties regarding remedy was ended, the poison-affected families did not receive any remedy, and the company allegedly causing the harms evaded accountability for its adverse impacts under the Guidelines, as distinct from under Swiss law.<sup>9</sup>

Complaints involving parallel proceedings are undoubtedly challenging for NCPs. In view of these challenges, **OECD Watch calls on the OECD to develop guidance, in close consultation with stakeholders and other grievance mechanisms, on how NCPs should approach concurrent (judicial and non-judicial) proceedings concerning similar issues to those raised in NCP complaints.**

### Complainants withdraw over concerns about NCP processes

In [ASF and I Watch vs. Perenco](#), the complainants withdrew from the NCP process after more than 2.5 years of good offices, during which the French NCP arranged only one meeting between the parties. In their press release announcing the withdrawal, the complainants expressed concern about the NCP’s approach to the complaint, which had in their view “favoured integrating and then

<sup>9</sup> The NCP also made several recommendations in its decision, including for Syngenta to review its complaints process in India based on the Due Diligence Guidance. The NCP’s follow-up statement published in June 2023 noted that the company had reportedly improved the accessibility and transparency of its complaints mechanism in India.



maintaining the company in the good offices procedure, at the cost of the principles essential to the effectiveness of such a recourse: the predictability, impartiality and fairness of the procedure.” They called for in-depth reform of the French NCP.

### NCP rejects complaint over a year after its filing

In January 2020, Comité de la Solidaridad con la Causa Árabe filed two complaints against [Shapir Engineering and Industry](#) (to the Israeli NCP) and [Construcciones y Auxiliar de Ferrocarriles \(CAF\)](#) (to the Spanish NCP) regarding their construction and infrastructure activities in the Occupied Palestinian Territory (OPT). More than one year after the complaint was filed, neither NCP had published any information, including their initial assessment, on the case. Such a long and unexplained delay represents a failure to meet the Guidelines’ expectation that NCPs publish their assessment within a three-month period.

More than 16 months after the complaint was filed, the Israeli NCP published its initial assessment, in which it rejected the case against Shapir Engineering and Industry. The initial assessment is not public despite the 2011 Guidelines requiring this statement (which doubles as a final statement due to its rejection of the complaint outright) to be publicly published. The complainants believe that the Israeli NCP made several errors in its initial assessment, including by applying an overly high standard of proof at the preliminary stage of the proceedings and inaccurately interpreting the Guidelines.

#### CASE UPDATE

**In relation to the complaint against CAF, the Spanish NCP published its final statement more than 17 months after the complaint was filed:** In its statement, the NCP stated that it accepted the complaint and offered its good offices to the parties, but ultimately decided to close the complaint due to the company’s refusal to engage in mediation. In its statement, the Spanish NCP made several important statements and recommendations to CAF to improve its due diligence procedures. Regarding companies operating in the OPT:

**“In accordance with the provisions of international law [...], the settlements of Israel (occupying power) in the occupied Palestinian territories contravene international law and give rise to a situation in that part of the world which cannot be ignored by economic operators who intend to carry out their activity there.”**

The NCP also made recommendations concerning CAF’s alignment with the Guidelines, including for CAF to:

- Review and integrate its human rights policy into other policies, including on corporate social responsibility, as well as its code of conduct and due diligence procedures.
- Review its disclosure policy so that it publishes, in a timely manner, accurate information on all significant aspects of its activities, including risk factors that may exist in the activities it is carrying out or may carry out in the future.
- Commission an independent report examining the social impact of CAF’s project on the OPT, which should be made available to the NCP within one year of the report’s publication. The NCP also recommended for the company to remind its partners and suppliers to respect the Guidelines in their business activities.

## Strengthening NCP effectiveness

More effective NCPs are more likely to, among other things, facilitate agreements in NCP complaints, make determinations of non-compliance with the Guidelines, and provide guidance on RBC issues, as outlined in the ‘Remedy Highlights’ section of this report.

### Core effectiveness criteria for NCPs

The 2023 version of the Guidelines outlines seven *core effectiveness criteria for NCPs, which should be: visible, accessible, transparent, accountable, impartial and equitable, predictable, and compatible with the Guidelines*. These criteria broadly align with [UNGP 31](#), which sets out internationally recognised effectiveness criteria for non-judicial grievance mechanisms.

The core effectiveness criteria are referenced in many parts of the 2023 text in order to create real benchmarks for NCP performance. For instance, the updated Decision of the Council on the Guidelines, which is fully binding on adhering governments, states that governments must “make available human and financial resources to their NCPs so that they can effectively fulfil their responsibilities in a way that fully meets the effectiveness criteria..., taking into account internal budget capacity and practices.”

NCPs that meet the core effectiveness criteria are in a strong position to fulfil their *dual mandate*. The updates describe an NCP’s dual mandate as follows:

“NCPs shall have the following responsibilities:

- a. Promote awareness and uptake of the Guidelines, including by responding to enquiries;
- b. Contribute to the resolution of issues that arise in relation to the implementation of the Guidelines in specific instances.”

OECD Watch pushed for the explicit inclusion of NCPs’ dual mandates during the negotiation process and views the updated text as an improvement on the 2011 version.

### OECD Watch’s NCP Evaluations

OECD Watch’s [NCP Evaluations](#) assist civil society to assess an NCP’s effectiveness on 40 organisational, procedural, and communications key performance indicators (KPIs) based in the 2011 Guidelines.<sup>10</sup>

OECD Watch is pleased to note that many of the recommendations made in the 2023 update to the Procedures of the OECD Guidelines are in line with OECD Watch’s KPIs. Accordingly, OECD Watch will be updating our NCP Evaluations and also re-evaluating NCPs in the near future. Out of necessity, this briefing paper draws on our Evaluations which are from before the targeted updates.

Below, we highlight areas (KPIs) in which NCPs are, under the 2023 Guidelines, encouraged to do better on. Unfortunately, our Evaluations indicate that, as yet, there is still widespread inadequate performance by NCPs in these areas. OECD Watch welcomes the recommendations made in the Procedures (although, as noted elsewhere, we are disappointed that these *recommendations were not made requirements*). *We encourage NCPs to strengthen and improve their structures and practices in line with these recommendations, and we look forward to engaging with NCPs in these processes.*

<sup>10</sup> OECD Watch’s NCP Evaluations were last updated in 2021; the update scheduled for 2023 has been delayed as a result of the 2023 update of the Guidelines, to allow both OECD Watch time to update its indicators and methodology and governments time to begin bringing their NCPs into alignment with new expectations and recommendations.

### NCP communications

NCPs promote awareness and uptake of the Guidelines primarily through their [communications](#). According to OECD Watch’s NCP Evaluations, effective NCP communication relates to:

- **Visibility:** Whether NCPs publish key information about their composition and activities, such as contact information, complaint filing instructions, and complaint database (with initial assessments and final statements).
  - **2023 Guidelines:** New text calls asserts NCPs should be “easily identifiable” by stakeholders and governments within and outside the ir country. NCPs are expected to have a website and publish basic information, such as location in government, institutional arrangements, case-handling procedures, and promotional events and materials.
- **Promotional activities (promotional plans, events, and materials):** Whether NCPs organise promotional activities and events, including promotion abroad.
  - **2023 Guidelines:** New text expects NCPs to engage in promotional activities, which may involve creation of events or materials, including in partnership with stakeholders including civil society, and not necessarily with all groups on each occasion (enabling targeted outreach to each stakeholder group).
- **Due Diligence Guidance:** Whether NCPs’ websites show the text of all the OECD’s due diligence guidance (31 out of 49 NCPs, 63%).
  - **2023 Guidelines:** New text encourages NCPs to promote the OECD’s due diligence guidance on RBC.

### NCP organisation

NCPs fulfil their complaint handling mandate mainly through their [organisation](#) and [procedures](#). OECD Watch measures NCP *organisation* to include:

- **Expertise:** Whether the NCP ensures broad expertise in its complaint handling and promotion functions through formally involving diverse relevant government departments, having a multipartite structure, or having an independent expert structure (29 out of 49 NCPs, 59%). OECD Watch recommends that complaints be handled strictly by non-governmental independent experts (5 out of 49 NCPs, 10%).
  - **2023 Guidelines:** The updates did not make significant amendments in terms of NCP structure and expertise. However, certain minimal features are deemed necessary for NCPs, including “sufficient access to expertise on the issues covered by the Guidelines”. In consultation with the parties, NCPs may also choose to involve external mediators in the mediation process.
- **Location in bureaucracy:** OECD Watch recommends that NCPs not be housed within a ministry focused on economics, trade, or investment to ensure there is no real or perceived conflict of interest in the NCPs promotional activities and handling of complaints (14 out of 49 NCPs, 29%).
  - **2023 Guidelines:** While NCPs continue to have flexibility in their institutional arrangements, certain minimal features are now necessary for NCPs, such as involving senior leadership, having sufficient human and financial resources, and having sufficient access to expertise on the issues covered by the Guidelines. Further, updates to the core effectiveness criterion ‘Impartial and equitable’ provide that NCPs will ensure impartiality in NCP complaints, including by “actively seeking to prevent and address potential or perceived conflicts of interests of any person playing a role on behalf of the NCP in assisting the parties with the resolution of issues raised in a specific instance.”

- **Staffing resources:** Whether an NCP employs the equivalent of two or more full-time staff (15 out of 49 NCPs, 31%).
  - **Council Decision:** New text states that governments “shall” make available resources so that NCPs can meet their responsibilities in a way that “fully meets” the core effectiveness criteria, but taking into account internal budget capacity and practices.
- **Stakeholder advisory body and stakeholder involvement in the NCP:** Whether the NCP has a multistakeholder advisory body involving representatives of all three core stakeholder groups (labour unions, business, and NGOs) consulted at least two times in the past year, and whether the NCP formally involves representatives of stakeholder groups in its governance and decision-making structure (both 13 out of 49 NCPs, 27%).
  - **2023 Guidelines:** Some updates were made in terms of stakeholder input in NCPs. Governments are encouraged to include multistakeholder advisory/oversight bodies where useful to help the NCP carry out its tasks. NCPs also “will” develop and maintain meaningful relations with social partners, government representatives, and other stakeholders (including NGOs) “to gain the active support and confidence of stakeholders.” To foster confidence in the NCP, governments should now also consult stakeholders regarding decisions that may significantly affect an NCP’s institutional arrangements.

#### NCP procedures

NCP *procedures* are equally important for NCPs fulfilling their complaint handling mandate. NCPs should publish their rules of procedure for complaint handling on their website (36 out of 49 NCPs, 73%). The 2023 updates to the Guidelines encourage NCPs to consult their stakeholders in developing their case-handling procedures. These rules or procedures should outline key information about complaints, including in relation to:

- **Complainant anonymity:** Whether complainants are allowed to withhold their identity from the company for security reasons, often due to attacks or harassment against (potential) complainants (22 out of 49 NCPs, 45%).
  - **2023 Guidelines:** In new text guiding NCPs in responding to the threat or existence of reprisals against parties involved in a specific instance, the updated Guidelines note that appropriate responses to reprisals include “keeping the identity of the person at risk confidential”.
- **Mediation accessibility:** Whether the location of mediation is able to be altered and/or video conferencing is available to increase accessibility for complainants (18 out of 49 NCPs, 37%).
  - **2023 Guidelines:** To improve NCP accessibility, new text encourages that NCPs should provide affordable options for participation in the process, such as remote meeting facilities.
- **Confidentiality rules:** Whether the NCP maintains transparency generally, but allows 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 the good offices stage (11 out of 49 NCPs, 22%).
  - **2023 Guidelines:** The updated Guidelines elaborate on situations in which confidentiality will be maintained during NCP processes. Regarding transparency between parties, “the NCP should, in principle, make parties aware of all relevant facts and arguments brought forward to the NCP by the other parties during proceedings... If a party makes a reasonable request not to share a submission in full with the other party, notably to protect sensitive business information and the interests of other stakeholders, the NCP should work with the submitting party to redact any sensitive content in order to facilitate sharing. As much as possible, NCPs should avoid basing fundamental aspects of their decisions on information that is not available to both parties.” Regarding transparency toward the public/third parties, “the parties and the NCP may communicate publicly on the existence of the specific instance, except where

otherwise agreed between the parties and the NCP. Furthermore, NCPs are encouraged to allow the parties to communicate publicly about the stage of the process ... (or to do so themselves), and to allow parties to publish their own initial submission. Both parties may also discuss information or documents shared by the other party with their advisors to the specific instance, provided these advisors do not themselves further disclose such information.”

- **Determinations:** Whether the NCP makes a finding (determination or decision) on whether a company has failed to comply with the Guidelines (13 out of 49 NCPs, 27%).
  - **2023 Guidelines:** As discussed elsewhere, new text recognises that NCPs may make determinations of (non-)observance of the Guidelines in their final statements.
  
- **Consequences:** Whether an OECD government has given consequences (such as limited access to export promotion and other economic benefits) to companies that refuse to engage in the complaint process (5 out of 49 NCPs, 10%).
  - **2023 Guidelines:** New text permit NCPs to “inform relevant government agencies of the good faith engagement, or absence thereof, of the parties”. This aligns with the OECD Council’s 2022 [Recommendation on the Role of Government in Promoting Responsible Business Conduct](#), which recommends governments to encourage RBC across relevant policy areas, including by “[t]aking into account the good faith engagement of companies in the context of NCP specific instances when reviewing eligibility for government support and services, such as trade advocacy, economic diplomacy, or other benefits.”
  
- **Follow-up monitoring:** Whether the NCP engages in follow-up of recommendations made/ agreements reached in final statements for all complaints reaching that stage (17 out of 49 NCPs, 35%).
  - **2023 Guidelines:** NCPs are expected to carry out follow-up on agreements they facilitate or recommendations they make in almost all cases.

## Overview

The above analysis makes two things clear. **First, there is broad agreement** amongst the 51 governments that adhere to the Guidelines and the three institutional stakeholders (representing civil society, unions, and business), which took part in the update of the Guidelines, **that NCPs are recommended to improve their communication, organisation, and complaint-handling procedures in line with many of the elements of OECD Watch’s NCP Evaluations. Second,** as OECD Watch’s NCP Evaluations demonstrate, **most NCPs still need to take significant action to align themselves with the recommendations made in the Guidelines.** OECD member states have made important updates to the Guidelines to raise recommendations for NCPs. Now is the time for governments to meet those recommendation by better resourcing, structuring, and capacitating their NCPs. OECD Watch looks forward to engaging with governments and their NCPs as they do so.

## Conclusion

---

Eight years ago, in recognition of the first 15 years of NCPs, OECD Watch published '[Remedy Remains Rare](#)', which analysed NCP cases and their contribution to improving access to remedy for victims of adverse corporate impacts. Our State of Remedy for complaints concluded in 2022 indicates that many of the issues identified in that report remain unresolved. This is demonstrated in part by the fact that only one agreement was facilitated by an NCP in 2022.

But remedy is not limited to agreements reached during NCP-brokered mediation. Determinations of (non-)compliance by NCPs constitute a form of remedy in terms of public validation of complainants' experiences and concerns. OECD Watch urges those NCPs that have issued determinations to continue doing so, and NCPs that have not done so to exercise their expertise on the standards in the Guidelines and confirm whether or not a company has met these standards. Determinations are often accompanied by an NCP's recommendations to improve alignment between corporate behaviour and the Guidelines. In all cases, determinations and/or recommendations, and agreements reached during NCP mediation, should be followed up by NCPs to encourage their implementation by companies.

The "targeted updates" to the Guidelines contain important new recommendations for NCPs in terms of their communication, organisation, and complaint handling function. OECD Watch strongly urges governments to implement the recommendations. It is important for all parties, including the OECD, OECD Guidelines-adhering governments, NCPs, and also stakeholders (including civil society organisations, trade unions, and business) to guide their proper implementation. OECD Watch look forward to supporting civil society and governments in this process in the future.

## Table: Key elements in community- and civil society-led complaints concluded in 2022

No.	CASE	LEAD NCP	ISSUE	OUTCOME	SECTOR(S)	KEYWORD(S)	AFFECTED PEOPLE	YEAR FILED	OUTCOME
1	<a href="#">Czech NGO vs. Czech company</a>	Czech Republic	Labour rights violations in supply chain of Czech reseller	Agreement	Garment & Textile	Labour rights, Supply chain	Workers	2018	Agreement reached, focusing on RBC and due diligence. NCP will monitor agreement.
2	<a href="#">GLAN vs. Coal Marketing Company</a>	Ireland	Impacts associated with Cerrejón mine, Colombia	Rejected	Mining	Due diligence, Environment, Human rights	Communities	2021	As company had ceased trading, NCP decided that mediation would not contribute to resolution of the issues raised.
3	<a href="#">Chilean community members vs. Yamana Gold</a>	Canada	Environmental and human rights impacts at the Pedro Valencia mine, Chile	Rejected	Mining	Environment, Human rights	Communities	2022	Complaint rejected because NCP considered offer of good offices premature.
4	<a href="#">Colombian NGO on behalf of individual consumer vs. Company in the information services sector</a>	Colombia	Consumer protection issues related to a company operating in the information services sector	Rejected	Other	Consumer interests	Public	2021	Complaint rejected. NCP referred to past judicial proceedings against the company and inadequate substantiation of the complaint.
5	<a href="#">Comité de la Solidaridad con la Causa Árabe v. Shapir Engineering &amp; Industry</a>	Israel	Impacts associated with tram line construction in the OPT	Rejected	Infrastructure	Disclosure, Due diligence, Human rights	Communities	2020	Complaint rejected in statement published more than one year after filing.
6	<a href="#">Daphne Caruana Galizia Foundation vs. Accenture</a>	Ireland	Accenture's links to bribery and corruption concerning the purchase of a wind power concession in Montenegro	Rejected	Energy	Corruption	Public	2021	Complaint rejected due to parallel proceedings.

No.	CASE	LEAD NCP	ISSUE	OUTCOME	SECTOR(S)	KEYWORD(S)	AFFECTED PEOPLE	YEAR FILED	OUTCOME
7	<a href="#">Cameroon communities vs. Victoria Oil and Gas</a>	UK	Impacts associated with gas extractive project in Cameroon	No resolution	Oil & Gas	General policies, Disclosure, Human rights, Employment and industrial relations, Environment	Communities	2018	Parties agreed to mediation outside NCP processes. No agreement reached. Determinations of compliance and non-compliance with the Guidelines.
8	<a href="#">Centre d'Actions pour la Vie et la Terre et al. vs. COPAGEF, SOMDIAA and SOSUCAM</a>	France	Impacts associated with sugar cane plantations and processing plants in Cameroon	No resolution	Agriculture, forestry and fishing	Concepts and principles, General policies, Disclosure, Human rights, Employment and industrial relations, Environment	Communities	2020	Companies withdrew from mediation due to disagreement on logistical issues. Determination of non-compliance with the Guidelines.
9	<a href="#">Centre d'Actions pour la Vie et la Terre et al. vs. SOMDIAA, COPAGEF and SOSUCAM</a>	France	Impacts associated with sugar cane plantations and processing plants in Cameroon	No resolution	Agriculture, forestry and fishing	Concepts and principles, General policies, Disclosure, Human rights, Employment and industrial relations, Environment	Communities	2020	Companies withdrew from mediation due to disagreement on logistical issues. Determination of non-compliance with the Guidelines.
10	<a href="#">Centre d'Actions pour la Vie et la Terre et al. vs. SOSUCAM, COPAGEF, and SOMDIAA</a>	France	Impacts associated with sugar cane plantations and processing plants in Cameroon	No resolution	Agriculture, forestry and fishing	Concepts and principles, General policies, Disclosure, Human rights, Employment and industrial relations, Environment	Communities	2020	Companies withdrew from mediation due to disagreement on logistical issues. Determination of non-compliance with the Guidelines.
11	<a href="#">Comité de la Solidaridad con la Causa Árabe vs. Construcciones y Auxiliar de Ferrocarriles (CAF)</a>	Spain	Impacts associated with tram line construction in the OPT	No resolution	Infrastructure	Disclosure, Due diligence, Human rights	Communities	2020	NCP ended good offices, apparently on the basis that CAF refused to engage in mediation.



No.	CASE	LEAD NCP	ISSUE	OUTCOME	SECTOR(S)	KEYWORD(S)	AFFECTED PEOPLE	YEAR FILED	OUTCOME
12	<a href="#">Committee Seeking Justice for Alethanyaw vs. Telenor</a>	Norway	Impacts associated with inadequate due diligence in Myanmar	No resolution	Technology & Telecoms	Human rights	Communities	2019	NCP offered its good offices, but complainants did not engage in mediation due to lack of trust in the company. Determination of compliance with the Guidelines.
13	<a href="#">FNV et al. vs Chevron Netherlands BV and 13 other affiliated entities</a>	Netherlands	Non-disclosure of subsidiaries' tax information and tax avoidance	No resolution	Mining, quarrying	Disclosure, Taxation	Public	2018	Company refused to engage in mediation. Determination of non-compliance with the Guidelines.
14	<a href="#">GLAN vs. San Leon Energy</a>	Ireland	Impacts associated with oil exploration in disputed territory without prior consent of indigenous peoples in Western Sahara	No resolution	Oil & Gas	Human rights	Indigenous people	2018	No agreement reached during mediation. Recommendations made to company.
15	<a href="#">Group of neighbours of Villa Estadio vs. Minera Candelaria</a>	Chile	Minera Candelaria's mining activities in Tierra Amarilla, Chile	No resolution	Mining	Environment, Human rights	Communities	2019	No agreement reached. Recommendations made to company were followed-up and implemented.
16	<a href="#">Inclusive Development International (IDI) vs. Bonsucro</a>	United Kingdom	Impacts associated with inadequate due diligence in Cambodia	No resolution	Activities of extraterritorial organisations and bodies, Agriculture, forestry and fishing	General policies, Human rights	Communities, Human Rights Defenders	2019	No agreement reached during mediation. Determination of non-compliance with the Guidelines.
17	<a href="#">KTNC Watch et al. vs. National Pension Service, POSCO International and KEXIM</a>	Korea	Impacts associated with palm plantations in Papua, Indonesia	No resolution	Agriculture & Food, Financial	Due diligence, Environment, Human rights, Supply chain	Communities, Public	2019	No agreement reached during mediation.
18	<a href="#">KTNC Watch et al. vs. POSCO International, National Pension Service and KEXIM</a>	Korea	Impacts associated with palm plantations in Papua, Indonesia	No resolution	Agriculture & Food, Financial	Due diligence, Environment, Human rights, Supply chain	Communities, Public	2019	No agreement reached during mediation.

No.	CASE	LEAD NCP	ISSUE	OUTCOME	SECTOR(S)	KEYWORD(S)	AFFECTED PEOPLE	YEAR FILED	OUTCOME
19	<a href="#">KTNC Watch et al. vs. Samsung Heavy Industries et al.</a>	Korea	Impacts associated with workers injured and killed in shipyard crane accident in Korea	No resolution	Oil & Gas	Disclosure, Due diligence, Health, Human rights, Labour rights	Workers	2019	No agreement reached during mediation.
20	<a href="#">Milieudéfensie et al. Vs. ING</a>	Netherlands	Impacts associated with financing of companies in Indonesia's palm oil sector	No resolution	Financial and insurance activities, Agriculture, forestry and fishing	General policies, Human rights	Communities, Public	2019	Company withdrew from NCP mediation.
21	<a href="#">Public Eye et al. vs. Syngenta</a>	Switzerland	Impacts associated with pesticide poisonings of agricultural workers in India	No resolution	Agriculture & Food, Manufacturing	Due diligence, Health, Human rights	Communities, Women, Workers	2020	No agreement reached during mediation.
22	<a href="#">ASF and I Watch vs. Perenco</a>	France	Impacts associated with extractive activities in Kebili, Tunisia	Withdrawn	Oil & Gas	Due diligence, Environment, Health, Human rights	Communities	2018	Complainants withdrew from the complaint following acceptance of NCP's good offices. Determination of non-compliance with the Guidelines.
23	<a href="#">GLAN vs. Glencore</a>	Switzerland	Glencore and others' human rights and environmental impacts at Cerrejón mine, Colombia	Withdrawn	Mining	Due diligence, Environment, Human rights	Communities	2021	Complainant withdrew following provisional acceptance of NCP's offer of good offices. NCP issued recommendations to company.

## NOTES

Inconsistencies between the OECD's and OECD Watch's complaints database are due to several factors, including:

- The OECD database records one entry per case, including for cases involving more than one respondent company, whereas OECD Watch's database records one entry per respondent company.
- Differences in recording transfers of complaints between NCPs.
- Differences in recording the notifier of the complaint. For example, the OECD records some complaints as filed by individuals, whereas OECD Watch records the same complaints as filed by communities. In these complaints, the individual often represents groups of people, particularly communities.

In 2022, the Italian NCP concluded the complaint 'Law firm on behalf of several stakeholders & Company in the automatic sector'. The complaint was filed in 2022 and also involved the Dutch NCP. As at the date of this report, neither the OECD's database nor the Italian or Dutch NCP's website included any information about this complaint. Additional information, including whether the complaint was filed by communities or NGOs and thus should be included in OECD Watch's complaints database and this report, were unknown as at the date of publication of this report.

### About OECD Watch

OECD Watch is a global network with more than 130 members in over 50 countries. Membership consists of a diverse range of civil society organisations bound together by their commitment to ensuring that victims of corporate misconduct have access to remedy, that business activity contributes to sustainable development and poverty eradication, and that corporations are held accountable for their actions around the globe.

### Contact

OECD Watch Secretariat (c/o SOMO)  
KNSM-laan 17  
1019 LA Amsterdam  
The Netherlands

T: +31 20 6391291

E: [info@oecdwatch.org](mailto:info@oecdwatch.org)

Katharine Booth, Researcher and Policy Advisor

E: [k.booth@oecdwatch.org](mailto:k.booth@oecdwatch.org)

[www.oecdwatch.org](http://www.oecdwatch.org)

### Follow us

[@OECDwatch](https://twitter.com/OECDwatch)

[Subscribe to our newsletter](#)

[Learn about becoming an OECD Watch member](#)