

EFFECTIVE NCPs NOW! | REMEDY IS THE REASON



Our campaign demands for policymakers



We need effective NCPs now

The OECD Guidelines for Multinational Enterprises (the Guidelines) are a key intergovernmental instrument to help hold corporations around the world to account for their actions. Member governments of the Organisation for Economic Co-operation and Development (OECD) and governments adhering to the Guidelines have committed to establishing National Contact Points (NCPs). These contacts can handle complaints against multinational enterprises that are not complying with the expectations for responsible business conduct set out in the Guidelines. Acting on behalf of victims of business-related abuses, civil society organisations are the primary users of the NCP complaint procedures, and the greatest number of these complaints have been based on the

newly-added human rights chapter in the Guidelines. In nearly every instance, complainants use this process as a means of seeking remedy for corporate wrongdoing. Unfortunately, complaints against companies filed with NCPs rarely result in remedy for victims of corporate abuse. As a result, civil society organisations are reaching the conclusion that the NCP system is ineffective. The negotiations for a United Nations treaty on business and human rights underscore the fact that there are currently no reliable and effective means to access remedy for international corporate abuses. OECD Watch members support the development of a treaty that provides greater access to remedy and believe that effective NCPs can complement treaty provisions.

Remedy is the reason

NCPs have the potential to be the state-based non-judicial grievance mechanism called for in the UN Guiding Principles on Business and Human Rights (UNGPs). Indeed, governments have repeatedly recognised NCPs as an important mechanism for the provision of remedy:

- 2017:** **G20 Leaders** cited NCPs in relation to remedy¹ and the **European Union Agency for Fundamental Rights** issued an opinion that NCPs “have[e] the power to offer remedy”.²
- 2016:** The **Council of Europe** linked the Guidelines to remedy and urged EU members to further enhance their NCPs for this purpose.³
- 2015:** **G7 Leaders** committed G7 countries to “strengthening mechanisms for providing access to remedy, including the NCPs”.⁴
- 2014:** The Chair of the **OECD Working Party on Responsible Business Conduct** noted that the NCP mechanism “contributes to strengthening implementation of the UNGPs, specifically through providing access to remedy”.⁵

Without incentives, the NCP system won't work

The NCP system primarily uses mediation to resolve complaints, yet most governments do not provide sufficient incentives for companies to participate in mediation or to reach an agreement with complainants.

DETERMINATIONS: If mediation fails, NCPs should investigate the issue and determine whether an enterprise has violated the Guidelines. The willingness of an NCP to make such statements where the company refuses to participate in mediation, or where mediation has failed to produce an agreement, provides what is often the only incentive for a company to participate constructively in mediation. Moreover, the possibility that a final statement may include a determination of non-compliance with the Guidelines will make their participation in the dispute resolution more likely. NCPs

should be given the authority and resources necessary to make determinations and to carry out independent investigations.

CONSEQUENCES: Governments should provide strong incentives for companies to follow the Guidelines and to participate in the NCP mediation process. These incentives should include negative consequences, such as the suspension of access to export credit guarantees, public procurement contracts, development assistance, tax breaks and participation in trade missions.



OECD Watch's experience based on supporting civil society organisations and communities to file complaints over the past two decades is that **governments are failing to honour their commitments needed to establish effective NCPs**

Governments must honour their commitments

All governments that adhere to the Guidelines have made a binding commitment to establish an NCP and to ensure the NCP is adequately resourced to effectively perform its mandated responsibilities. One of these responsibilities is to handle complaints against multinational enterprises that do not respect the Guidelines. When handling these complaints, NCPs must take account of the Guidelines' Procedural Guidance.

The Procedural Guidance sets out four core criteria for NCPs: visibility, accessibility, transparency and

accountability (see below). While governments are free to set up NCPs in different ways, the core criteria are the common standards to be used in determining whether a government has met its obligation to establish an effective NCP.

In addition to the four core criteria for NCPs, the Procedural Guidance also establishes four principles that NCPs must respect when handling complaints: "in a manner that is impartial, predictable, equitable and compatible with the principles and standards of the Guidelines" (see below).



The commitments that must be honoured

VISIBILITY: NCPs must promote the Guidelines; inform potentially interested parties of their role, the facilities they provide and the details of the process that potential complainants would need. A website in multiple languages and promotional activities are a bare minimum.

ACCESSIBILITY: NCPs must remove obstacles for potential complainants, such as excessive standards of proof before a complaint is accepted, unnecessary criteria for accepting cases, rejection of complaints that seek to prevent future harm, and costs for potential complainants, including travel and translation. NCPs must take steps to protect complainants against retaliatory lawsuits or threats to their safety.

TRANSPARENCY: NCPs must not base their decisions on information that has not been shared with both parties. NCPs should not impose confidentiality requirements beyond the content of the mediation process. Such requirements can be a strong deterrent against using the process altogether. NCPs must publish final statements in all cases they handle.

ACCOUNTABILITY: NCPs must seek the support of the social partners, NGOs and other interested parties. NCPs should include credible multi-stakeholder advisory or oversight bodies with authority over the NCP.

IMPARTIALITY: NCPs must be impartial and should have structures that are not perceived as biased or having a conflict of interest. NCPs should not be placed in a ministry or department where decisions can be

influenced by other policy objectives. NCPs should possess skills to act as impartial mediators or access these skills through independent mediators.

PREDICTABILITY: NCPs must meet the indicative timelines in the Procedural Guidance or clearly explain the reasons behind any delays that arise. NCPs should provide public information on how they resolve complaints and the role that the NCP can play in monitoring the implementation of any mediated agreement. Predictability requires transparency and, as such, NCPs should publish all initial assessments.

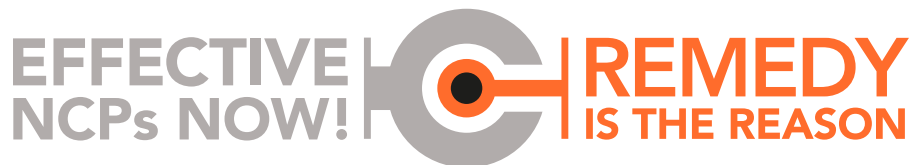
EQUITABLE TREATMENT: NCPs must take into account the power imbalances that exist between complainants and companies. Typically, complainants have suffered an adverse impact through the activity of a company that has not been adequately addressed through national institutions. The complainants have little capacity to defend themselves and often have little choice for recourse.

COMPATIBILITY WITH THE GUIDELINES: NCPs must base their initial assessment on the standards of responsible business conduct contained in the Guidelines. If the complaint process does not result in an agreement between the parties, NCPs should state whether the company's behaviour is compatible with the Guidelines. NCPs must follow up on recommendations made in final statements or on the implementation of mediated agreements in order to ensure that the ultimate outcome of the case is compatible with the standards contained in the Guidelines.

About OECD Watch

OECD Watch is a global network of civil society organisations with more than 100 members in 55 countries. We are made up of a diverse range of organisations – from human rights to environmental and development organisations, from grassroots groups to large, international NGOs. We are bound together

by our commitment to ensure that business activity contributes to sustainable development and poverty eradication; that corporations are held accountable for their actions around the globe; that governments fulfil their duty to protect human rights; and that the victims of business-related abuse receive remedy.



For more information or to find out how you can help, visit
<https://www.oecdwatch.org/remedy-campaign>
or contact us at info@oecdwatch.org

Notes:

- 1 'Shaping an interconnected world', G20 Leaders' Declaration 7-8 July 2017 Hamburg, Germany.
- 2 'Improving access to remedy in the area of business and human rights at the EU level', Opinion of the European Union Agency for Fundamental Rights Vienna, 10 April 2017.
- 3 Council of Europe Recommendation of the Committee of Ministers to Member States on human rights and business, 2 March 2016.
- 4 'Think Ahead. Act Together'. Leaders' Declaration G7 Summit, 7-8 June 2015, Schloss Elmau, Germany.
- 5 Roel Nieuwenkamp, 'OECD's Human Rights Grievance Mechanism as a Competitive Advantage', 4 November 2014, Institute for Business and Human Rights.