The year 2020 was a disappointing one for remedy under the OECD Guidelines for Multinational Enterprises (Guidelines). Of the 14 community- or civil society-led complaints concluded that year, only one reached agreement. This factsheet presents key numbers, highlights and lowlights in complaints concluded as well as arguments for how to improve outcomes by revising the Guidelines to close gaps in expectations for National Contact Points (NCPs) and standards for multinational enterprises (MNEs).

Key numbers
- 14 cases filed by civil society and communities were concluded by NCPs in 2020
- Only 1 case reached agreement
- NCPs rejected 5 cases at the initial assessment phase, closing the door to dialogue between communities and companies
- The Slovenian NCP concluded its first complaint in 2020 – by rejecting it
- 7 complaints were accepted, but concluded without resolution
- 1 case was withdrawn by the complainants due to concerns with the NCP’s procedures and failures to address security risks for rightsholders
- 8 complaints took two or more years to reach a conclusion – at least double the timeframe prescribed by the Guidelines

Highlights

Benefits of professional mediation
The case Forum Suape et al. vs. Van Oord reached an agreement, demonstrating the value of NCPs using trained mediators to help handle disputes. The case concerned human and environmental impacts of dredging operations for a port in Brazil. The final agreement, reached through external impartial mediation, addressed several issues raised in the initial complaint, including critical evaluations of the utility of artificial
reef and public health systems, improved anchoring areas for vessels, and safety equipment for local fishermen. A downside: the complaint took five years to be completed.

**NCP determination despite company’s refusal to participate in good offices**

Although oil company Shell’s Nigerian subsidiary refused to participate in mediation in the complaint Obelle Concern Citizens & FOCONE vs. Shell, the Dutch NCP proceeded to evaluate as much as it could of Shell’s activities regarding an eruption and gas fire in Nigeria. Of note, the NCP issued a determination that Shell’s subsidiary had "failed to demonstrate that its grievance mechanism functions in a manner that can be considered to be consistent with the OECD Guidelines and the UNGPs."

In two exciting 2021 litigation proceedings in Dutch courts, the Hague court of appeal ordered Shell to compensate Nigerian farmers for oil spill harm, and the Hague district court ordered Shell to reduce its carbon emissions to comply with the Paris Agreement. In the latter case, the court referred extensively to the UNGPs and OECD Guidelines as providing an “unwritten standard of care” that Shell is expected to follow. This is an exciting example of the Guidelines’ soft law standard being turned into hard law by courts.

**Lowlights**

**Company’s refusal to sign Terms of Agreement**

The case Ali Enterprises Factory Fire Affectees Association vs. RINA S.p.A highlighted problems with social auditing in the garment sector – and challenges when MNEs refuse to support agreements reached in complaints. In 2012, a fire at Pakistani Ali Enterprises garment factory killed over 250 workers just three weeks after RINA S.p.A. had certified the factory under the SA8000 standard. The Italian NCP offered good offices and mediation by an external conciliator helped the parties develop a Terms of Settlement. But the company refused to sign it.

Fortunately for the workers, in a parallel negotiation requested by the German government and facilitated by the ILO, German brand KiK agreed to pay an additional US$5.15 million to fund loss of earnings, medical and allied care, and rehabilitation costs to the injured survivors and dependents of those killed in the disaster.

**NCP’s poor procedures on confidentiality, security for defenders prompt NGO’s withdrawal**

The case Union Hidalgo vs. EDF Group concerned impacts on the environment and indigenous land rights of a windfarm of French state-owned enterprise EDF. After a year and a half of engagement, the complainants withdrew their complaint over concerns with the French NCP’s procedures, including overly extensive confidentiality requirements and failure to address security concerns raised by complainants.

The complainants are now pursuing litigation under the French Duty of Vigilance law to protect the community’s right to free, prior, and informed consent. Judges evaluating French companies’ vigilance plans are encouraged to consider the OECD Guidelines’ due diligence expectations.

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**NCP rejects complaint against its export credit agency**

The UK NCP rejected the complaint Global Witness vs. UK Export Finance, arguing that the export credit agency (ECA) is not a multinational covered by the OECD Guidelines. The NCP thereby endorsed a gap in enforcement – and a double standard – on sustainability expectations for ECAs, which play a critical role in facilitating commercial investment in high-risk areas.

In addition to the UK NCP, the Korean NCP has also recently rejected complaints against its ECA, KEXIM. Another complaint concluded in 2020, South Korean Civil Society Task Force vs. SK E&C, underscores the gap this allows: when SK E&C refused to participate in good offices, the Korean NCP simply closed the complaint; meanwhile, the NCP had already rejected the same complaint against KEXIM. Victims now lack any recourse to remedy. In contrast, the Dutch NCP already accepted a complaint against Atradius, the Dutch ECA, over the same Brazilian port issue cited in the first complaint above. Although no agreement was reached, the NCP found the Guidelines applicable to the ECA and called for Atradius to use its leverage over investor Van Oord to ensure fulfilment of stakeholder dialogue. That finding, and Atradius’ leverage, likely helped bring about the agreement reached above.

**Conclusion & Recommendations**

OECD Watch continues to believe that gaps in the standards for MNEs and expectations for NCPs generate poor outcomes in NCP complaints. The complaints concluded in 2020 help demonstrate many of the gaps that governments must close to ensure the Guidelines remain fit for purpose. Meanwhile, several court proceedings mentioned above underscore a key reason why the Guidelines should be revised: because they are being used to underpin hard law on corporate accountability.

**Recommendations**

- **The Procedural Guidance should be strengthened to ensure NCPs:**
  - Proceed with investigations and findings even when companies refuse to join in good offices.
  - Issue determinations when companies breach the Guidelines.
  - Seek to promote, rather than limit, the Guidelines’ applicability to all MNEs, including by
    - Accepting all complaints that state a plausible claim against a company under the Guidelines, and
    - Applying the Guidelines to states acting as economic actors such as ECAs (the definition of MNEs in Chapter I should also be clarified in this respect).
  - Engage professional mediators or internal mediation training as one of several steps to promoting impartiality in complaint handling.
  - Develop procedural rules that prioritize transparency over confidentiality.
  - Adopt policies and procedures to address security risk to human rights defenders.

- **The standards for MNEs should be strengthened to ensure MNEs:**
  - Understand their responsibility to respect land rights of Indigenous peoples and other marginalised groups even where states fail their own duty.
  - Don’t rely on auditors to replace their own labour rights due diligence responsibilities.
  - Address their carbon impacts by setting and achieving targets in line with the Paris Agreement.
  - Undertake thorough, responsive, and continuous due diligence – including participating in stakeholder engagement and providing remedy – that is tailored to meet the needs of marginalised and disadvantaged groups.

OECD governments have a duty to ensure accountability for adverse business impacts and remedy for victims, including via non-judicial mechanisms such as the NCPs. Revising the Guidelines to close these and other gaps and make them fit for purpose is a key step in fulfilling that duty.
## Key elements in community- and civil society-led complaints concluded in 2020

<table>
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<tr>
<th>Case &amp; Lead NCP</th>
<th>Issue</th>
<th>Status</th>
<th>Sector(s)</th>
<th>Keywords</th>
<th>Victim group(s)</th>
<th>Duration</th>
<th>Analysis of complaint handling, outcome</th>
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<td>Dredging impacts in Brazil</td>
<td>Agreement</td>
<td>Infrastructure</td>
<td>Environment, Human rights, Land rights</td>
<td>Communities</td>
<td>2015-2020</td>
<td>Agreement reached through external mediation process.</td>
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<td>Obelle Concern Citizens &amp; FOCONE vs. Shell; NCP Netherlands</td>
<td>Gas fire eruption in Nigeria</td>
<td>No Resolution</td>
<td>Oil &amp; Gas</td>
<td>Disclosure, Environment, Human Rights</td>
<td>Communities, Indigenous</td>
<td>2018-2020</td>
<td>Company rejected good offices, NCP proceeded to issue a determination.</td>
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<td>Ali Enterprises Factory Fire Affectedees Assoc. vs. RINA S.p.A; NCP Italy</td>
<td>Wrongful certification by audit company of garment factory</td>
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<td>Garment &amp; Textile; Other</td>
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<td>2018-2020</td>
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<td>South Korean Civil Society Task Force vs. SK E&amp;C; NCP Korea</td>
<td>Dam collapse in Laos</td>
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<td>Communities</td>
<td>2019-2020</td>
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<td>Southeast Alaskan Conservation Council vs. Imperial Metals; NCP Canada</td>
<td>Mining due diligence gaps in Canada</td>
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<td>2016-2020</td>
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<td>UK Lawyers for Israel vs. PwC; NCP UK</td>
<td>Allegation of inadequate audit of Palestinian Authority</td>
<td>No Resolution</td>
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<td>2016-2020</td>
<td>NCP assessed that the company did not breach the Guidelines.</td>
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<td>Several individuals vs. Nokia; NCP Finland</td>
<td>Violation of tax and labour agreements in Argentina</td>
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<td>Disclosure, Labour rights, Taxation</td>
<td>Workers</td>
<td>2019-2020</td>
<td>NCP assessed that the company did not breach the Guidelines.</td>
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<tr>
<td>CCC et al. vs. Adidas; NCP Germany</td>
<td>Labour rights violations at Indonesian supplier</td>
<td>No Resolution</td>
<td>Garment &amp; Textile</td>
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<td>Global Witness vs. UK Export Finance; NCP UK</td>
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<td>Rejected</td>
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<td>Climate change, Disclosure, Environment</td>
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<td>NCP rejected complaint, claiming the company not an MNE covered by the Guidelines.</td>
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<td>Focus vs. Ascent Resources plc; NCP Slovenia</td>
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<td>Rejected</td>
<td>Oil &amp; Gas</td>
<td>Environment, Health</td>
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<td>NCP assessed that the company did not breach the Guidelines.</td>
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<td>ClientEarth vs. BP; NCP UK</td>
<td>Misleading fossil fuel advertising</td>
<td>Rejected</td>
<td>Oil &amp; Gas</td>
<td>Climate Change</td>
<td>Public</td>
<td>2019-2020</td>
<td>Company adapted its policy, so mediation was deemed unnecessary.</td>
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<td>Conectas Human Rights &amp; ADERE MG vs. Illy; NCP Brazil</td>
<td>Labour rights violations on coffee farms in Brazil</td>
<td>Rejected</td>
<td>Agriculture &amp; Food</td>
<td>Human rights, Labour rights, Supply chain</td>
<td>Workers</td>
<td>2018-2020</td>
<td>NCP stated that evidence was admitted too late by complainants.</td>
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<tr>
<td>Conectas Human Rights &amp; ADREP MG v. Starbucks; NCP Brazil</td>
<td>Labour rights violations on coffee farms in Brazil</td>
<td>Rejected</td>
<td>Agriculture &amp; Food</td>
<td>Human rights, Labour rights, Supply chain</td>
<td>Workers</td>
<td>2018-2020</td>
<td>NCP stated that evidence was admitted too late by complainants.</td>
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<td>Union Hidalgo vs. EDF Group; NCP France</td>
<td>Violation of FPIC, environmental harms at wind energy park in Mexico</td>
<td>Withdrawn</td>
<td>Energy</td>
<td>Environment, Human rights, Land rights</td>
<td>Indigenous</td>
<td>2018-2020</td>
<td>Complaint withdrawn due to concerns over NCP procedures, lack of transparency, security risks.</td>
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