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State of Remedy 2023



Analysing community
and NGO-led
National Contact
Point complaints
concluded in 2023

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Analysis of community- and NGO-led complaints concluded in 2023

In 2023 a notable majority of concluded complaints were accepted by National Contact Points (NCPs) at the initial assessment stage. For almost two decades, OECD Watch has highlighted the unacceptably high rate of complaints rejected at this preliminary stage and the prohibitive barriers civil society face during the case-handling process. OECD Watch is pleased with this outcome and hopes that NCPs will in the future continue to accept complaints at this stage of the process.

While NCPs facilitated only three agreements in 2023, two additional complaints resulted in positive developments outside the NCP process, including an agreement between the parties. It is also increasingly evident that certain NCPs are routinely using their expertise on the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (Guidelines) to issue determinations of (non-)compliance with the Guidelines and make recommendations to improve responsible business conduct (RBC) by companies in the future. NCPs have an important role not only in clarifying RBC expectations for companies directly involved in NCP complaints, but also the steps of effective human rights and environmental due diligence for all companies operating internationally. If NCP guidance in complaints reflects correct interpretation of the Guidelines, it can provide a useful reference point for the many governments moving to incorporate the Guidelines into mandatory due diligence and RBC legislation.

However, OECD Watch is deeply concerned that these positive developments are limited to a minority of NCPs – with the majority of NCPs increasingly lagging behind their more effective counterparts. NCPs not meeting the expectations in the Procedures for NCPs in the Guidelines (formerly the Procedural Guidance) risk undermining the effectiveness of the entire NCP complaint system.

This paper sets out the key numbers for complaints concluded in 2023, remedy highlights and lowlights, as well as our main conclusions for improving NCP effectiveness in the coming decade. These conclusions reflect our key performance indicators of NCP effectiveness, which were updated in 2024.



Complaints concluded in 2023 and NCP follow-up

This paper analyses complaints filed by communities and NGOs for which NCPs published final statements in 2023. It is important to note though that publication by the NCP of its final statement is often not the last stage of the complaint process. The updated 2023 Guidelines emphasise the importance of NCP's following-up on agreements reached during mediation (or 'good offices') and/or recommendations made to improve corporate conduct in their final statements.

Follow-up is the [seventh and final stage of the complaint process](#) and OECD Watch expects that the majority of future complaints will be followed-up on by NCPs. In the coming years, we will more closely monitor follow-up, including implementation of agreements reached between complaint parties and recommendations made by NCPs.

Key numbers for 2023

20



cases filed by communities and NGOs were **concluded**

3

cases in which the NCP made **determinations** regarding the company's (non-)compliance with the Guidelines:



case in which the NCP determined that the company had **complied** with the standards in the Guidelines



cases in which the NCP determined that the company had **not complied** with the standards in the Guidelines



Excluding 3 cases withdrawn by the complainants, the **majority of cases were accepted by NCPs at the initial assessment stage**

Of accepted cases:

3

cases **reached an agreement** in the NCP process

11

cases ended **without any resolution** of the issues raised in the complaint

2

additional cases reported either **positive progress or an agreement** reached outside the NCP process



cases in which the NCP made **recommendations** regarding corporate alignment with the Guidelines

Remedy highlights

Majority of complaints accepted by NCPs in their initial assessments

Excluding three cases withdrawn by the complainants, the majority of NCPs accepted complaints in their initial assessments.¹ OECD Watch began tracking civil society complaints in 2003 soon after the introduction of the NCP grievance mechanism in the 2000 version of the Guidelines. Since then, the network has repeatedly expressed concern about the unreasonably high rate of complaints rejected at this preliminary stage.

It remains to be seen whether the higher acceptance rate this year results by chance or from improved NCP practice. It may be due to a combination of factors, including better understanding by NCPs about the nature of the initial assessment and low threshold required for these preliminary decisions, and the NCPs that actually handled complaints in 2023. Some NCPs have recently adopted improved case-handling procedures enabling them to more effectively handle complaints in line with the Procedures for NCPs. OECD Watch hopes that this outcome becomes a trend in the future.



Past high rejection rates at initial assessment stage

According to OECD Watch's [database](#) of NCP complaints filed by communities and NGOs, a considerable minority of cases have been rejected by NCPs at the initial assessment stage. As at the date of this report, of the 425 cases filed by civil society since 2003, 141 (33%) of complaints were rejected at this stage. According to OECD Watch's 2015 report [Remedy Remains Rare](#), between 2001-2015, 43% of cases were rejected at the initial assessment stage with this amount increasing to 52% between 2012-2015. The majority were rejected on the grounds of insufficient substantiation of the allegations raised in the complaint, followed by the existence of parallel proceedings, that the NCP considered a mediated agreement unlikely, and the issues falling outside the scope of the OECD Guidelines. More recently, our annual State of Remedy has reported a concerning number of complaints being similarly rejected by NCPs in their initial assessments: 36% in [2019](#) and [2020](#), 50% in [2021](#), and 22% in [2022](#).

Rejections have been a major limitation for civil society complainants seeking remedy for corporate harms. In OECD Watch's view, NCPs have regularly imposed unreasonably high evidentiary standards at what is supposed to be a preliminary stage of the complaint process and required complainants to meet criteria outside of the six admissibility criteria in the Procedures for NCPs.

¹ Two of these three cases were withdrawn by the complainants prior to publication of the NCP's initial assessment. Both of these complaints resulted in remedy outside of the formal NCP process, including reports of 'positive progress' and an agreement. OECD Watch has recorded these cases as 'withdrawn', whereas the OECD's 2023 Annual Report on NCP Activity records these cases as 'not accepted'. Refer to the table below on key elements in community and NGO-led complaint concluded in 2023.

Agreements facilitated by NCPs

In 2023, two NCPs facilitated a total of three agreements.

German NCP facilitated two agreements

The German NCP facilitated two agreements in 2023. In [Society for Threatened Peoples \(STP\) Germany vs. TÜV SÜD](#), the parties agreed to a “catalogue of measures” encompassing “concrete measures and declarations of intent aimed at strengthening the rights of indigenous peoples in business contexts”, including by TÜV SÜD and its suppliers and clients. STP Germany filed the complaint on behalf of the Pataxó and Pataxó Hã-Hã-Hãe Indigenous communities in Brazil, whose lives, livelihoods, and environment had been devastated by the collapse of the Brumadinho dam, which only months earlier had been certified as stable by TÜV SÜD.

The NCP also facilitated an agreement in a complaint filed by Daphne Caruana Galizia Foundation, a Maltese NGO focused on democratic accountability, against technology conglomerate [Siemens](#). The complaint focused on Siemens’ minority shareholdings in ElectroGas Malta consortium and alleged non-compliance by the company’s fully owned subsidiary with the bribery, human rights, and taxation standards in the Guidelines. The details of the agreement are confidential.

Brazilian NCP facilitated one agreement

A complaint filed by Brazilian union ADERE MG and NGO Conectas Human Rights led to an agreement with global company [Nestlé](#). The case concerned the company’s due diligence to address risks of forced labour and other rights violations in its coffee supply chain. The parties reached agreement on some actions aimed at improving working conditions in coffee supply chains and avoiding human rights violations. The precise details of the agreement are confidential.

The complaint against Nestlé is linked to five other cases filed to the Brazilian NCP against multinational coffee brands. Two cases against [Illy](#) and [Starbucks](#) were rejected in 2020 and the remaining complaints against [Dunkin Donuts](#), [Jacobs Douwe Egberts](#), and [McDonald’s](#) are under review.

Positive outcomes reached outside of formal NCP processes

While only three agreements were reached in 2023, positive progress and an agreement reached outside of the official NCP process were also reported in two cases.

In a case concerning human rights and environmental impacts from mining operations in Chile, filed to the Australian NCP by affected peoples against an [anonymous Australian mining company](#), the complainants withdrew the complaint after reporting positive progress through in-country discussions. Another case filed to the Chilean NCP by an Indigenous community in Chile against an [anonymous mining company](#) also resulted in agreement between the parties outside of the NCP process. Further substantive details about these complaints and agreements has not been made public.

While it is not possible to directly correlate the filing of an NCP complaint with positive developments outside of the process, it may be an indication that the NCP process is assisting in some way to facilitate remedy. In some cases, the filing of a complaint may encourage companies to discuss with impacted communities the issues they are facing, or put pressure on companies to agree on how to resolve the issues. OECD Watch encourages NCP complaints to be understood and filed by complainants as part of a [broader, multi-pronged strategy for justice](#), including by raising awareness of the issues being faced by complainants among the public, media, governments, and companies’ shareholders or investors to help bring about remedy in another way.

In OECD Watch's experience, broader strategies for justice, in which NCP complaints are filed as one of many strategies to achieve remedy, are often more successful than NCP complaints filed alone.

NCPs demonstrated their expertise on the Guidelines

Determinations (also called decisions, evaluations, assessments, or the NCP's 'views') are an important way to enable companies to better understand how their past practices did not meet international RBC standards and what they must do to improve their practices in the future. Determinations can also publicly validate complainants' experiences and concerns and help encourage companies to remedy past harms.

Another way for NCPs to demonstrate their expertise on the Guidelines is to make specific recommendations to the company on aligning its future conduct with the Guidelines and taking steps to remedy past harms.



Expert role for NCPs

The OECD Guidelines' Procedures emphasise the critical role NCPs should play as experts on the RBC standards for companies in the Guidelines:

"... 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."

The Procedures also permit NCPs to make determinations in their final statements when no agreement is reached or when one party is unwilling to participate in the proceedings. Determinations are an important way NCPs can use their expertise to guide companies towards responsible conduct:

"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."

The Australian NCP made determinations and recommendations in two cases concluded in 2023, continuing previous trends by the NCP to use its expertise on the corporate standards in the Guidelines.

Australian NCP issued determination on failure of meaningful stakeholder engagement

In a complaint filed by Publish What You Pay Australia on behalf of 245 Myanmar-based civil society organisations, the complainants alleged that mining company [Myanmar Metals](#) irresponsibly disengaged (or divested) from its Myanmar operations. In its final statement, the NCP determined that the company had not conducted human rights due diligence at any time – neither prior to nor during its investment in Myanmar, nor in relation to its divestment. According to the NCP, Myanmar

Metals failed to meaningfully engage with stakeholders before and during the divestment process and the company's disclosures and risk management processes did not meet the expectations in the Guidelines. The NCP also made several recommendations, including for the company to consult with civil society organisations on human rights harms that had allegedly arisen since its disengagement, to use any leverage it had over its former business partners in Myanmar to encourage them to undertake due diligence and address and remediate harms, and share a copy of final contracts between the company and buyer with the complainants and other relevant civil society stakeholders.



Australian NCP recommended improved government action to promote RBC

The Independent Examiner of the Australian NCP also commented on the Australian government's role in promoting investment in Myanmar between 2017 and 2021, prior to the military coup in Myanmar. The NCP observed that government agencies had not assisted Myanmar Metals in knowing and fulfilling the expectations in the Guidelines. Their activities had not emphasised the importance of human rights due diligence and RBC prior to companies entering Myanmar and as they conducted their business in the country. The Independent Examiner recommended that the Australian NCP itself liaise with other government agencies assisting Australian companies operating overseas to ensure that RBC standards were reflected in their materials and activities, particularly for companies operating in high-risk and conflict areas like Myanmar.

The updated Procedures now reflect the important role NCPs can play in advising government policy to advance RBC:

"In furthering the effectiveness of the Guidelines, NCPs may, where appropriate and in coordination with relevant government agencies, support efforts by their government to develop, implement, and foster coherence of policies aimed at promoting responsible business conduct ..."

The Procedures elaborate:

"In particular, NCPs can support the alignment of any such efforts with the Guidelines and contribute to maintaining their position as an international standard for responsible business conduct, as well as other OECD instruments and guidance deriving from the Guidelines, such as the OECD due diligence guidance."

As in the complaint handled by the Australian NCP, OECD Watch urges all NCPs to support their government's efforts to foster coherence between the Guidelines and other policies and laws focused on RBC. In connection, all NCPs should ensure that other relevant government ministries inform companies operating overseas about the Guidelines and the possibility of NCP complaints being filed against them if adverse impacts may potentially or actually occur.

OECD Watch also considers that the Australian NCP's recommendations indicate the strength of NCPs having an independent expert structure. Where NCP case-handlers are strictly independent from their governments, they may have greater ability to recommend action even for the government. OECD Watch's updated indicators highlight benefits of the independent expert structure for NCPs, which in our experience has typically resulted in stronger outcomes and generated greater confidence among civil society.

Australian NCP issued recommendation on ensuring free, prior, and informed consent

The second case handled by the Australian NCP was filed by Project Sepik Inc and Jubilee Australia Research Centre on behalf of 2,638 people living along the Sepik River in Papua New Guinea (PNG). The complaint focused on [PanAust Limited's](#) plans to build a copper and gold mine. The mine would be the largest in PNG's history and include a tailings dam that, if breached, could cause environmental destruction for downriver communities, including Indigenous Peoples. The Australian NCP determined that most of the company's actions were consistent with the Guidelines. The NCP also made several recommendations, including for the company to review its internal procedures on the right to free, prior, and informed consent (FPIC) to ensure consistency with international standards, to include the complainants and communities they represent in future stakeholder engagement, as well as to disseminate the dam break analysis for the project. The NCP also noted the necessity of the company receiving FPIC from Indigenous Peoples for the mining project to proceed.

Dutch NCP issued determination on lack of good faith and failure to participate in remedy

The Dutch NCP determined that oil and gas company Shell's failure to adequately engage in the complaint process breached the Guidelines. The NCP's determination was made in a complaint filed by Aminigboko Community of Abua/Odual against [Shell](#), alleging among other things inadequate disclosure and lack of meaningful engagement by Shell with local communities affected by its operations. The NCP found that Shell's lack of engagement in the complaint process, including its failure to provide information about its exercise of leverage (if any) over its business partners, non-acceptance of the NCP's offer of mediation, and lack of meaningful response to the NCP's requests for information, meant that Shell had not acted as expected by step six of the OECD due diligence process; that is, to provide for or cooperate with legitimate remediation mechanisms.

The NCP also decided that Shell had not engaged in the process in 'good faith' as expected in the Procedures for NCPs, including because the company had not genuinely engaged in the process with a view to find a resolution of the issues raised by the complainants. The NCP recommended that Shell bring its conduct in line with the expectations in the Guidelines, such as by cooperating in good faith and more meaningfully with legitimate remediation mechanisms (including NCPs), and to engage more directly and meaningfully with stakeholders, including local communities.



The OECD Guidelines' Procedures expect 'good faith' engagement by the parties to an NCP complaint:

"The good faith engagement by all parties involved in the proceedings is expected. Good faith engagement in this context means responding in a timely fashion, maintaining confidentiality where appropriate and consistent with the NCP's case-handling procedures, refraining from misrepresenting the issues and the process, notably in public communications, and from threatening or taking reprisals against parties involved in the procedure, or against the NCP itself, and 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."

OECD Watch's [updated indicators](#) of NCP effectiveness emphasise the importance of good faith engagement in the complaint process and of NCPs recommending consequences for companies that engage in bad faith.

Irish NCP issues recommendations in first cryptocurrency complaint

Three cases filed by Chagos Refugees Group United Kingdom and Crypto Currency Resolution Trust (Bahamas) against [Internet Computer Bureau Limited](#), [101 Domains GRS Limited](#), and [Afilias Ltd](#) alleged links between the domain .IO, registered in the Chagos archipelago, to crypto-asset based criminal operations such as cryptocurrency gambling and fraudulent Initial Coin and Token offerings. The complaints were the first concerning cryptocurrency filed to an NCP. The Irish NCP made several general recommendations in its final statement, including that for all business activities bringing a company into contact with a contentious and well-documented human rights issues, the company should be able to demonstrate that it has conducted due diligence and has a human rights policy. The NCP also recommended for consumer-facing companies' to have an appropriate non-judicial dispute resolution mechanism and actively engage with public authorities to help prevent and address deceptive marketing practices.



New expectations for NCPs to follow-up on complaint outcomes

The updated OECD Guidelines' Procedures require NCPs to follow-up on the implementation of the NCP's recommendations or any agreement reached by the parties.

An example of NCP follow-up in 2023 is the Canadian NCP's follow-up on a complaint filed by Chilean community members against [Yamana Gold](#). The complaint alleged environmental damage at Yamana Gold's Chilean subsidiary's mine, including water and air pollution. In 2022, the NCP rejected the complaint on the basis that consideration of the issues would not contribute to the purposes and effectiveness of the Guidelines because the complainant had not yet dialogued with the company. The NCP recommended for the parties to engage in dialogue through the company's grievance mechanism, with the presence of the NCP as an observer. If the parties could not reach a common understanding of the issue or if the complainant was dissatisfied with the grievance mechanism, the NCP stated that it remained open to reconsidering the case.

In its follow-up statement, the NCP noted its participation as an observer in three meetings between the parties in late 2022, following which the NCP reiterated its recommendation for them to clarify the issues, including for the complainant to provide evidence of the alleged impacts and for the company to explain how its due diligence policies were implemented. Following Yamana Gold's acquisition by another Canadian company, the NCP reached out again to the parties but received a response only from the purchaser company. The company noted that it was in the process of renewing environmental permits for the mine and that it was undertaking community consultations and environmental due diligence as part of that process. The NCP encouraged the company to continue conducting due diligence in line with the Guidelines, to remain engaged with local communities through meaningful stakeholder consultations, and to communicate proactively with them about due diligence processes and implementation. The NCP concluded the follow-up process.

Remedy **lowlights**

Gaps between different NCPs' effectiveness

In recent State of Remedy reports, OECD Watch has remarked on positive remedy-related trends, notably increases in NCPs making determinations of (non-)compliance by companies with the corporate standards in the Guidelines. However, these positive developments are generally limited to a handful of NCPs.



Civil society, union, and business statement demanding improvement of NCPs

On 8 March 2024, OECD Watch, alongside the other institutional stakeholders at the OECD, the Trade Union Advisory Committee (TUAC) to the OECD, and Business at OECD (BIAC), respectively representing communities and NGOs, trade unions, and businesses, published a [joint statement](#) urging the OECD and governments to take concrete actions to ensure the effectiveness of NCPs.

OECD Watch, TUAC, and BIAC supported government efforts to strengthen the performance of NCPs, in particular NCPs that need to catch up with more effective NCPs, including through the exchange of best practices and implementation of recommendations to NCPs in the updated Procedures. The three stakeholders jointly urged governments to take meaningful steps to ensure the effectiveness of NCPs, including to ensure that NCPs have the human and financial resources, senior leadership, and access to expertise necessary to fulfil their mandate in a transparent way that fully meets the core effectiveness criteria in the Procedures, and ensure their NCPs develop and maintain meaningful relations with government representatives and stakeholder groups.

The three stakeholders also called upon the OECD to recognise the role of the OECD Guidelines in supporting sustainable development and the necessity of well-functioning NCPs in securing observance of the Guidelines.

Civil society views an NCP's commitment to making determinations as one important indicator of the NCP's own accountability to its mandate and impartiality towards all stakeholders, and thereby its effectiveness. As at the date of this report, [determinations](#) have only been made in 35 of 425 (8%) complaints filed by communities and NGOs, and all of these determinations have been made by a minority of NCPs – 8 of 51 (16%).² Determinations are essential to an NCP's effectiveness in facilitating the resolution of issues raised in complaints. OECD Watch's [updated indicators](#) urge all NCPs to incorporate the requirement to make determinations when no agreement is reached into both their practice and case-handling policies.

Civil society complainants often file complaints to more effective NCPs, meaning NCPs that are more likely to effectively handle their complaint by facilitating resolution of the issues they are facing through agreements and/or making determinations of (non-)compliance with the standards in the Guidelines. NCP effectiveness is also determined by other factors, including those identified in OECD Watch's joint statement with other institutional stakeholders, such as access to adequate human and financial resources and the expertise necessary to fulfil their mandate. Given the gap

² Some NCPs have not yet handled a complaint. This may be due to several factors, including lack of in-country knowledge of the possibility of filing an NCP complaint, lack of confidence in the NCP, as well as the NCP being established relatively recently.

between effective and ineffective NCPs, an increasing amount of complaints are being filed to NCPs perceived to be or that actually are more effective than their peers. This puts pressure on these more effective NCPs, including in terms of their financial and human resources. As expressed in the joint statement, there is agreement amongst the three institutional stakeholders to the OECD that there is an effectiveness gap between NCPs, and that these gaps must urgently be narrowed by OECD governments.

Few agreements reached

NCPs facilitated only three agreements, meaning the majority of issues raised by complainants were not resolved. Unfortunately, agreements in NCP complaints are rare. As at the date of this report, NCPs have only facilitated agreements in 45 out of 425 (11%) complaints filed by communities and NGOs since 2003.

Spanish NCP declines to support discussion on compensation and make determinations

A group of small-scale fisherpeople from Bahía Blanca, Peru, complained to the Spanish NCP about the devastating human rights and environmental impacts of fossil fuel company [Repsol](#)'s oil spill. The complainants sought compensation for the impacts of the spill on their lives and livelihoods. During NCP mediation, Repsol agreed that compensation should be paid to the complainants. However, the NCP subsequently decided not to participate in further discussions focusing on the amount of compensation on the basis that these discussions went beyond its mandate. The NCP published its final statement concluding the complaint without agreement. OECD Watch is disappointed that the NCP did not participate in the dialogue. An NCP's role is not only to facilitate discussions between complaint parties, but also to ensure that any agreements reached are compatible with the Guidelines. Discussion on compensation is not outside the mandate of NCPs, especially where remediation through compensation would ensure an outcome compatible with the due diligence standards for companies in the Guidelines. The Spanish NCP should have participated in the dialogue and not concluded the complaint until a Guidelines-compatible agreement had been reached.



New expectations for NCPs to guide mediation towards company commitments

The Procedures clarify the role NCPs should play during mediation to guide companies to improve their conduct in future and address past impacts where relevant:

“The NCP will offer a forum for discussion and its expertise on the *Guidelines* to assist the business community, worker organisations, other non-governmental organisations, and other interested parties concerned to resolve the issues raised in an efficient and timely manner and in accordance with applicable law and the *Guidelines*. Depending on the characteristics of each case, this assistance may include supporting constructive dialogue, facilitating agreements between the parties and/or issuing recommendations. The aims of such assistance may include furthering the implementation of the *Guidelines* in the future and/or addressing adverse impacts in a way consistent with the *Guidelines*”

OECD Watch's [updated indicators](#) assess whether NCP's commit to playing a guiding role in mediation, ensuring agreements reached further the implementation of the Guidelines and address past harms where relevant.

The Spanish NCP made recommendations to Repsol, but did not make any determinations of the company's (non-)compliance with the Guidelines' standards. The NCP referred to other ongoing legal procedures examining Repsol's liability and noted that in any case Repsol has assumed responsibility and in fact was in the process of cleaning up the oil spill and compensating those affected.

OECD Watch is disappointed by the NCP's failure to make a determination. NCPs can make these decisions even when [parallel proceedings](#) are taking place alongside the NCP complaint because determinations address companies' compliance with the standards in the Guidelines, not the standards in national or international laws. Given the information publicly available about Repsol's responsibility for the human rights and environmental harms caused by the oil spill, and the company's own assumption of responsibility for the spill, it would have been appropriate for the NCP to make a determination on the company's compliance with the Guidelines.

Complainant disputed "mutually agreed solution" in NCP Türkiye's final statement

A complaint was filed by Lumière Synergie pour le Développement (LSD) and the Association of Women Fish Processors of Bargny Guedj against Turkish steel company [Tosyali Holding Senegal](#) to the Türkiye NCP. The complaint alleged due diligence failures linked to the company's plans to build a mining and steel complex on lands currently used by Senegalese women fish processors. The NCP's final statement referred to the parties' agreement to a "mutually agreed solution", including the commissioning of an environment and social impact study and resettlement of the women at another site.

OECD Watch contacted both the NCP and LSD about the 'mutually agreed solution' prior to the publication of this report. According to the NCP, the draft final statement was emailed to both parties for feedback, but input was only received from the company; however, this is disputed by LSD. The complainant also reported that no agreement had been reached, the community never approved the environmental and social impact study, and the relocation site was not appropriate for the women's activities. LSD also stated that Tosyali is still seeking a solution from the public authority.



NCP effectiveness in the context of mandatory due diligence laws

There is a real risk that the NCP complaint system as a whole will be undermined if NCPs do not collectively improve their effectiveness in the near future. This is especially salient in light of the recent adoption by the European Union (EU) of the Corporate Sustainability Due Diligence Directive (CSDDD) – requiring large companies headquartered or operating in the EU to carry out due diligence to address their adverse impacts. As explained in [OECD Watch's recent paper](#), the Directive sets out several remedy-related requirements that align with and sometimes exceed the standards in the OECD Guidelines, including that companies causing or contributing to harms provide remediation via financial and non-financial compensation. Once the CSDDD is implemented by EU states, complaints meeting the Directive's case admissibility criteria can be filed to domestic grievance mechanisms, including judicial and non-judicial mechanisms, under the Directive rather than non-judicial NCPs under the Guidelines.

NCPs can continue to play an essential complementary and supplementary role alongside judicial mechanisms, offering a lower-cost and faster path to justice. As foreseen in the United Nations Guiding Principles on Business and Human Rights (UNGPs), “Even where judicial systems are effective and well-resourced, they cannot carry the burden of addressing all alleged abuses; judicial remedy is not always required; nor is it always the favoured approach for all claimants.” Some cases will be more appropriately handled by NCPs, including cases without a connection to the EU. NCPs are also generally more accessible to complainants than courts, and NCPs are usually able to handle complaints more cheaply, quickly, and simply than judicial processes. But as new judicial paths open up, communities and civil society will only seek NCPs' assistance if NCPs genuinely enable remediation as a possible outcome. It is therefore essential that all NCPs are able to effectively handle complaints in accordance with their mandate.

The rise in government exploration of due diligence legislation also increases attention on NCPs' interpretation of the Guidelines. If NCP guidance in complaints reflects correct interpretation of the Guidelines, it can provide a useful reference point for governments in the EU and other regions that are working to incorporate the Guidelines into mandatory due diligence and RBC legislation.

In the future, OECD Watch will publish reflections on the implications of the CSDDD and other national due diligence laws for the Guidelines and NCPs.



Demanding more from all NCPs in the next decade

Our State of Remedy report demonstrates the unique potential of NCPs to support access to remedy for corporate harms, but also that many NCPs are failing to fulfil their potential. As mutually agreed by OECD Watch and the other institutional stakeholders at the OECD, too few NCPs have access to sufficient human and financial resources, senior leadership, and expertise necessary to fulfil their mandates. Moreover, too few NCPs utilise their expertise to play a guiding role in complaints, including by issuing determinations of (non-)compliance with the RBC standards for companies and making recommendations on how to improve future business conduct. In practice, NCP effectiveness in handling complaints and facilitating resolution of issues faced by civil society varies significantly, with many NCPs failing to meet their basic requirements as a complaints mechanism. This gap was recognised by OECD governments in their [2023 Declaration on Promoting and Enabling Responsible Business Conduct in the Global Economy](#), which recognised the “pressing need to further strengthen the NCP system to realise its full potential in furthering the effectiveness of the Guidelines”. Governments committed to having “fully functioning and adequately resourced NCPs”, as well as “improving stakeholder confidence by developing and maintaining meaningful relations with stakeholders, and regularly engaging in peer reviews as an important part of driving effectiveness throughout the NCP network.”

Recognising the shortcomings in the broader NCP system, the updated Guidelines set new expectations and recommendations to strengthen their performance. Since 2019, OECD Watch has evaluated NCPs against a set of [key performance indicators](#) assessing NCPs’ structures, communication, and case-handling procedures. Our evaluations have contributed to [positive changes](#) in how NCPs operate, including increased commitment to follow-up on agreements reached and recommendations given, improvements to NCP case-handling procedures, and greater involvement of non-government stakeholders in the complaint process. To reflect the updated expectations in the Guidelines as well as lessons-learned from the first five years of evaluations, OECD Watch has [updated our indicators](#) to focus more sharply on [what matters to civil society](#): accessibility, accountability, and stakeholder engagement. Throughout 2024, OECD Watch will evaluate each NCP using the revised set of indicators. Our indicators are a roadmap for improvement by every NCP, and we expect it to be a valuable tool for NCPs that they use to progressively improve. Our expectation is that NCPs will improve their policies and case-handling procedures in line with our indicators and continuously strengthen their performance.

In the next decade, OECD Watch looks forward to supporting NCPs and their governments, as well as civil society, in strengthening NCP effectiveness in promoting access to remedy and clarifying the meaning of corporate RBC due diligence.

Table: Key elements in community and NGO-led complaints concluded in 2023

No.	CASE	OUTCOME	ISSUE	LEAD NCP	COUNTRY(IES) OF HARM	SECTOR(S)	KEYWORD(S)	AFFECTED PEOPLE(S)	YEAR FILED	OUTCOME
1	Conectas Human Rights & ADERE MG v. Nestlé	Agreement	Modern slavery on Brazilian coffee farms	Brazil	Brazil	Agriculture & Food	Forced labour, Human rights, Labour rights, Supply chain	Workers	2018	Agreement reached during NCP mediation. NCP will follow-up on agreement.
2	Daphne Caruana Galizia Foundation vs. Siemens	Agreement	Minority shareholdings in Maltese consortium	Germany	Malta	Energy, Oil and Gas	Bribery, Human rights, Taxation	Public	2020	Agreement reached during NCP mediation. NCP will follow-up on agreement.
3	Society for Threatened Peoples vs. Tüv Süd	Agreement	Certification of Brumadinho dam prior to its collapse	Germany	Brazil	Other	Disclosure, Due diligence, Environment, Human rights	Indigenous Peoples	2020	Agreement reached during NCP mediation. NCP will follow-up on agreement.
4	Chilean Indigenous community vs. anonymous foreign mining company	Withdrawn	Lack of good faith engagement with Indigenous community	Chile	Chile	Mining	Due diligence, Environment, Human rights	Indigenous Peoples	2021	Complainants withdrew prior to initial assessment due to agreement being reached outside NCP process.
5	GLAN vs. BHP	Withdrawn	Cerrejón coal mine in Colombia	Australia	Colombia	Mining	Due diligence, Environment, Human rights	Communities, Indigenous Peoples	2021	Multiple complaints against linked companies handled by Swiss NCP. Complainants withdrew from Swiss case during mediation stage. Australian NCP published final statement.
6	Justicia y Reparación on behalf of affected individuals vs. Australian mining company	Withdrawn	Mining operations in Chile	Australia	Chile	Mining	Environment, Human rights	Communities	2021	Complainants withdrew prior to initial assessment as positive progress had been reached outside NCP mediation.
7	Former employees of Sominki vs. Gramercy Funds Management	Rejected	Severance pay for ex-mining workers	United States of America	Democratic Republic of the Congo	Mining	Labour rights	Workers	2021	Complaint rejected due to company's lack of leverage over new owner of mines.

No.	CASE	OUTCOME	ISSUE	LEAD NCP	COUNTRY(IES) OF HARM	SECTOR(S)	KEYWORD(S)	AFFECTED PEOPLE(S)	YEAR FILED	OUTCOME
8	PITEE Consumer Protection Association for Financial Services vs. Erste Group Bank AG and Raiffeisen Bank International AG³	Rejected	Unknown	Hungary	Hungary	Financial	Consumer interests, Human rights	Public	2023	According to the NCP's 2023 annual report to the OECD, consideration of the issues would not have contributed to the purposes and effectiveness of the Guidelines.
9	PITEE Consumer Protection Association for Financial Services vs. Raiffeisen Bank International AG and Erste Group Bank AG⁴	Rejected	Unknown	Hungary	Hungary	Financial	Consumer interests, Human rights	Public		According to the NCP's 2023 annual report to the OECD, consideration of the issues would not have contributed to the purposes and effectiveness of the Guidelines.
10	Aminigboko Community of Abua/Odual L.G.A. vs. Shell	No resolution	Oil operations in Nigeria	Netherlands	Nigeria	Oil and Gas	Disclosure, Due diligence, Environment, Human rights	Communities	2019	Company did not participate in mediation. NCP recommendations to company and determinations of non-compliance with Guidelines.
11	Asociación de Pescadores, Fundadores, Armadores y Estibadores Artesanales vs. Repsol	No resolution	Oil spill in Peru	Spain	Peru	Oil and Gas	Environment, Human rights	Workers	2022	Parties engaged in mediation without NCP on compensation and clean-up of spill. NCP made recommendations and will follow-up on progress made.
12	Chagos Refugees Group United Kingdom, et al. vs. 101 Domains GRS Limited	No resolution	Cryptocurrency and occupation of Chagos archipelago	Ireland	British Indian Ocean Territory (Chagos Archipelago), United Kingdom	Technology and Telecoms	Consumer interests, Digitalisation, Due diligence, Human rights	Communities	2021	Company did not participate in NCP mediation. NCP recommendations to company.

3 As at the date of this report, the Hungarian NCP had not provided full details about this complaint to the OECD. According to the Austrian NCP's 2023 annual report to the OECD, two complaints were submitted by PITEE Consumer Protection Association for Financial Services against Erste Group Bank AG and Raiffeisen Bank International AG. The complaints were filed on 14 April 2023 and concluded on 6 July 2023. According to the report, the complaints concerned financial and insurance activities, cited the Human Rights and Consumer Interests chapter, and were rejected because they were transferred to the Belgian, Italian, and Hungarian NCPs. As at the date of this report, no further information about the complaints were available on the Austrian, Belgian, or Hungarian NCPs' websites, but the Italian NCP's website noted a complaint also submitted on 14 April 2023 by a Hungarian NGO against an enterprise in the corporate banking sector, which was "Also submitted to several other NCPs and attributed, by mutual agreement, to the competence of the Hungarian NCP primarily." These cases logically appear to be one and the same and have been recorded in OECD Watch's database as such.

4 As above.

No.	CASE	OUTCOME	ISSUE	LEAD NCP	COUNTRY(IES) OF HARM	SECTOR(S)	KEYWORD(S)	AFFECTED PEOPLE(S)	YEAR FILED	OUTCOME
13	<u>Chagos Refugees Group United Kingdom, et al. vs. Afilius Ltd.</u>	No resolution	Cryptocurrency and occupation of Chagos archipelago	Ireland	British Indian Ocean Territory (Chagos Archipelago), United Kingdom	Technology and Telecoms	Consumer interests, Digitalisation, Due diligence, Human rights	Communities	2021	Company did not participate in NCP mediation. NCP recommendations to company.
14	<u>Chagos Refugees Group United Kingdom, et al. vs. Internet Computer Bureau Limited</u>	No resolution	Cryptocurrency and occupation of Chagos archipelago	Ireland	British Indian Ocean Territory (Chagos Archipelago), United Kingdom	Technology and Telecoms	Consumer interests, Digitalisation, Due diligence, Human rights	Communities	2021	Company did not participate in NCP mediation. NCP recommendations to company.
15	<u>KTNC Watch and Samsung Heavy Industries Martin Linge Project Crane Accident Workers Support Team vs. Total et al.</u>	No resolution	Workers killed and injured in shipyard crane accident	Norway	South Korea	Oil & Gas	Disclosure, Due diligence, Human rights, Labour rights	Workers	2019	Mediation did not lead to agreement. NCP recommendations to company.
16	<u>KTNC Watch and Samsung Heavy Industries Martin Linge Project Crane Accident Workers Support Team vs. TECHNIP et al.</u>	No resolution	Workers killed and injured in shipyard crane accident	Norway	South Korea	Oil & Gas	Disclosure, Due diligence, Human rights, Labour rights	Workers	2019	Mediation did not lead to agreement. NCP recommendations to company.
17	<u>KTNC Watch and Samsung Heavy Industries Martin Linge Project Crane Accident Workers Support Team vs. EQUINOR et al.</u>	No resolution	Workers killed and injured in shipyard crane accident	Norway	South Korea	Oil & Gas	Disclosure, Due diligence, Human rights, Labour rights	Workers	2019	Mediation did not lead to agreement. NCP recommendations to company.

No.	CASE	OUTCOME	ISSUE	LEAD NCP	COUNTRY(IES) OF HARM	SECTOR(S)	KEYWORD(S)	AFFECTED PEOPLE(S)	YEAR FILED	OUTCOME
18	Lumière Synergie pour le Développement (LSD) and Association of Women Fish Processors of Bargny Guedj vs. Tosyali Holding Ltd	No resolution	Mining and steel complex on lands used by women fish processors in Senegal	Türkiye	Senegal	Energy, Mining	Environment, Human rights, Land rights	Communities, Women	2020	Complaint accepted but NCP did not offer good offices due to independent dialogue between parties. Complaint closed due to ongoing dialogue and reported agreement between parties, but this is disputed by complainants. Follow-up notes agreement was implemented in full, but again this is disputed.
19	Project Sepik Inc. and Jubilee Australia Research Centre vs PanAust Limited	No resolution	Plans to build a mine in Papua New Guinea	Australia	Papua New Guinea	Energy, Infrastructure, Mining	Disclosure, Environment, Human rights	Indigenous Peoples	2021	Company did not participate in NCP mediation. NCP recommendations to company and determinations of compliance with Guidelines. NCP will follow-up on recommendations.
20	Publish What You Pay Australia and 245 Myanmar CSOs vs. Myanmar Metals	No resolution	Irresponsible disengagement from Myanmar	Australia	Myanmar	Mining	Disclosure, Due diligence, Human rights	Communities, Women	2021	Company did not participate in NCP mediation. NCP recommendations to company and determinations of non-compliance with Guidelines. NCP will follow-up on recommendations.

NOTES

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

- The OECD's database records one entry per case, including for cases filed against more than one respondent company based on the same or similar issues, whereas OECD Watch's database records one entry per respondent company.
- Differences in recording when complaints are 'withdrawn' by one of the complaint parties and when complainants are 'not accepted' by NCPs in their statements concluding the complaint. See footnote 1 for more information.
- Differences in recording transfers of complaints between NCPs.
- Differences due to issues with NCP's own reporting of cases.
- 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 individuals on behalf of communities.

About OECD Watch

OECD Watch is a global civil society network with more than 140 members in over 50 countries. Membership consists of a diverse range of non-governmental organisations as well as grassroots and community groups that share a common vision on the need for corporate accountability for negative impacts on people and the planet. The network is formally recognised as the representative of civil society to the OECD committee that promotes the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct.

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