

National Contact Point complaints

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Complaints

You can file a complaint under the OECD Guidelines against a company you feel has not met the Guidelines' standards. While the Guidelines and complaint system are voluntary for companies, you have higher chances of achieving remedy and promoting better business conduct if you follow OECD Watch's advice here, including on embedding your complaint in a broader strategy for justice.

The OECD Guidelines include a complaint system for victims of corporate harm. National Contact Points (NCPs) – the government offices that implement the Guidelines – are required to handle complaints against companies alleged not to have met the Guidelines' standards. Part II of the OECD Guidelines (called the 'Procedures') sets out how NCPs should handle complaints (formally called 'specific instances'). Through the complaint process, NCPs are expected to help resolve disputes between companies covered by the OECD Guidelines and people harmed by the companies' business activities.

Civil society from around the world have used the NCP complaint process to fight social and environmental harms connected to corporate misconduct. Complaints sometimes (though not often) result in remedy for victims or prevention of harmful business activity. More often, they raise awareness and help encourage better business conduct in future. In OECD Watch's experience, civil society that follow OECD Watch's guidance and also embed their complaint in a larger strategy – seeking international collaboration with other NGOs; engaging the media, government allies, and investors; and even targeting higher legal or normative change where possible – have higher chances of success.

Before filing a complaint, communities and their representatives should consider whether an NCP complaint is the right tool to challenge the harm they are facing. We encourage civil society fighting corporate impacts to read our guidance on the stages of the NCP complaint process and our advice on whether and how to file a complaint.

Stages of an NCP complaint

For potential complainants, it is helpful to consider the complaint process in seven stages:

Pre-filing

1. **Deciding to file:** Determine whether the Guidelines apply and whether a complaint will support your broader strategy and goals.
2. **Preparing and filing:** Collect evidence, decide which claims to raise against which companies, and write and file a strong complaint using OECD Watch's tips.

Post-filing

3. **Coordination:** If multiple NCPs are involved, they will coordinate to pick the lead and supporting NCPs (± 2 months).
4. **Initial assessment:** The lead NCP conducts an initial assessment to decide whether to accept the complaint (± 3 months).
5. **Mediation:** If the NCP accepts the complaint, it tries to support mediation to help parties agree on a solution to the issues (± 6 months).

6. **Final statement:** The NCP publishes a final statement, which may include recommendations and determinations (\pm 3 months).
7. **Follow-up:** The NCP usually follows-up on any agreement reached or recommendations made (\pm 1 year).

In practice, the whole complaint process often takes 1 to 3 years, plus 1 year for follow-up.

Stage one: Deciding whether to file

Filing a complaint with a National Contact Point (NCP) can be a way to seek remedy for corporate harms and address corporate misconduct. However, before filing an NCP complaint, communities and their representatives should determine whether the OECD Guidelines apply and decide whether a complaint supports their broader strategy and goals.

Step 1: Determine whether the OECD Guidelines apply

The OECD Guidelines apply to many, but not all, situations of corporate harm. Consider the following questions to see whether you can file a complaint.

Who can file an NCP complaint?

Any individual, group, or organisation with an interest in the issues raised can file a complaint. This includes:

- Community members
- Collective movements
- Workers
- NGOs
- Trade unions or labour unions

What issues are covered?

You can file a complaint about an alleged failure by one or more companies to follow the many [standards](#) in the OECD Guidelines. The Guidelines are very broad, so most issues are covered. Complaints can be filed about past harms not properly addressed by a company, harms currently occurring, or harms that may occur in the future if a company goes ahead with planned activities.

Against which companies can you file a complaint?

You can file a complaint against one or more companies that are connected to the harm. However, the company must either be headquartered in one of the [51 countries that follow the Guidelines](#), or the harm must be occurring in a country that follows the Guidelines.

When can you file?

Complaints can be filed before, during, or after alleged harms occur. Sometimes, NCP complaints deal with the same issues that are being dealt with by another grievance mechanism, like a court or tribunal. These kinds of cases are called ‘parallel proceedings’. We have developed guidance for civil society on how to pursue NCP complaints when matters are being addressed in [parallel proceedings](#).

How can you file?

Follow [OECD Watch’s guidance](#) on how to draft an effective and strategic complaint.

Step 2: Consider strengths, limitations, and possible outcomes of a complaint

If you have determined that the OECD Guidelines apply, consider the strengths, weaknesses, and limitations of the NCP complaint process to decide whether filing a complaint is the right tool to use to challenge the harms you are facing.

Strengths

NCP complaints can be a useful tool to fight for justice against corporate harm. They offer advantages over other types of claims:

- **Accessibility:** NCPs are more accessible to complainants than courts or administrative tribunals. The NCP complaint process is usually cheaper, faster, and simpler than litigation, and the amount of evidence needed for the complaint to be accepted by the NCP is lower.
- **Issue-coverage:** Because the OECD Guidelines set out a broad range of [social and environmental standards](#) that companies should respect, NCP complaints often cover more issues than under national law.
- **Country-coverage:** NCP complaints can be filed against companies operating anywhere in the world as long as the company involved is headquartered or operates in a country that follows the Guidelines.
- **Focus on dialogue:** NCP complaints are less adversarial (or combative) than court cases because they are focused on dialogue between the complainant and the company to reach an agreement.
- **Remedy possibilities:** Companies can agree to a wider range of responses or remedies than under national law, such as preventing harms that might occur in the future, stopping current harms, improving future practices, strengthening corporate policies, cleaning up harms (such as pollution), and compensating victims (although this is currently rare).
- **Recommendations and determinations:** Even if mediation does not reach an agreement, NCPs can make recommendations to encourage better company observance of the Guidelines and may determine that the company's conduct met or fell below the Guidelines' standards.

Limitations

Although good outcomes are possible, they are not guaranteed. NCPs and the complaint process have serious limitations that you should carefully consider before deciding to file:

- **Non-binding standards:** The OECD Guidelines are not binding on companies. This means that NCPs cannot require a company to participate in a complaint or take action to remediate or prevent harm. There are also usually no formal consequences if a company initially decides to mediate but later withdraws from the complaint process.
- **Voluntary:** At best, NCPs can only critique poor company conduct and encourage action. While some NCPs have actively promoted meaningful resolution of complaints and remedy of harm, not all NCPs have a strong track record in this. As OECD Watch's [NCP evaluations](#) show, there are big gaps in the performance of different NCPs.
- **Few agreements:** Historically, the NCP complaint process has not led to many agreements between the parties. For example, only around 10% of complaints filed by civil society have reached an [agreement](#).

It is important to consider the strengths and limitations of the NCP complaint process, as well as the possible outcomes, within your larger strategy for justice.

Outcomes

NCPs use mediation to facilitate dialogue between the complainant and the company to encourage them to reach an agreement. Agreements can include many different types of remedies, and even when no agreement is reached, the complaint process can lead to positive outcomes for complainants.

Agreements

Agreements can include action to remedy harms that occurred in the past and/or are continuing, as well as action to prevent similar harms from happening in the future.

Company actions to remedy harm include:

- Rehabilitate environmental damage
- Apologise publicly
- Committing to not repeat the harm in future
- Rehire workers fired unfairly
- Investigate and report publicly on the harms
- Repair damaged infrastructure
- Return land or property unjustly taken
- Provide monetary compensation.

Company actions to prevent harm include:

- Establish a company-level complaints mechanism
- Adopt measures to prevent future harm
- Align company targets with international standards
- Improve human rights and environmental policies and practices
- Strengthen ongoing community engagement

- [Examples of agreements](#) reached during NCP mediation.

Outcomes even if no agreement is reached

Even if no agreement is reached, the complaint process may still lead to positive outcomes that advance your broader strategy for justice:

1. NCP actions: The NCP can include in its public final statement:

- **Recommendations:** Suggest what the company should do moving forward to better align its conduct with the Guidelines' standards.
- **Determinations:** Explain why the company did or did not meet the Guidelines' standards.
- **Consequences:** Ask other ministries to penalise or withhold benefits from the company if it did not observe the Guidelines' standards or participate in good faith in the complaint process.

Recommendations and determinations are useful to ensure that the company aligns its future policies and practices with the Guidelines to ensure no future repetition of similar harms.

- [Examples of determinations](#) by NCPs.
- [Examples of consequences](#) by NCPs.

Recommendations, determinations, or other relevant statements by the NCP could encourage another complaint mechanism to take further steps in their case.

2. Actions by others: Complaint publicity may generate impactful action by others:

- **Media:** Media attention may open new doors to dialogue and remedy.
- **Government:** Government officials may issue sanctions against the company, strengthen related policy or law, or take other steps.
- **Investors:** Investor pressure may prompt companies to improve.
- **Other companies:** Business relations or peer companies in the sector may be encouraged to improve their own conduct.

3. Strengthened civil society:

- Communities have better access to dialogue with the company or other influential entities.
- Collaboration is increased between local, national, and international civil society working on related issues.
- Communities are more organised in their struggle for justice.

4. Open door for discussion:

- Open door for discussion between the complainants and company on the same or similar issues in the future.

Unintended outcomes

Sometimes, an NCP complaint may lead to unintended outcomes. For example, the company may push back on the issues raised in the complaint, or the NCP could conclude that the company actually followed the standards in the Guidelines.

Companies could retaliate against the individuals or organisations that filed the complaint. NCPs are aware of the possibility of reprisals against complainants and should take all appropriate steps to ensure the proceedings are safe for all participants. Contact OECD Watch if you are experiencing or are concerned about reprisals related to an NCP complaint.

Sometimes, filing an NCP complaint is not the right way forward.

Talking directly to a company may be faster and more impactful. It may also be a good idea to talk to the company's business partners or shareholders, a government office, or the media. There may also be better remedy pathways, including filing a complaint to a court, tribunal, human rights commission, accountability mechanism of a development finance institution, or company or industry grievance mechanism.

Stage two: Preparing and filing the complaint

Once you have decided to file a National Contact Point (NCP) complaint, follow the steps below to make sure it is as effective as possible in helping you achieve your goals.

Step 1: Collect evidence about your strongest claims

Collect evidence and documents – such as witness statements, company policies, scientific tests, and public articles or reports – showing the harm that has occurred or may occur and a connection to a company. The evidence should be credible and plausibly linked to harmful corporate activity, showing that harm is occurring or likely to occur and linked to a company’s failure to meet the [standards](#) in the OECD Guidelines.

You should also collect information about the company involved in the harm, including where it is headquartered. Read OECD Watch’s tips below to make your complaint more effective and strategic, and contact us if you need assistance.

Step 2: Determine which claims to raise

Based on the evidence, determine which claims to raise against which company(ies). We recommend you raise only your strongest claims, showing the clearest evidence of a company’s breach of the OECD Guidelines. Filing strong claims on just a few Guidelines provisions is better than including multiple less-substantiated claims.

You can file a complaint against numerous companies if they are all linked to the same underlying situation or harms and fall under an NCP’s jurisdiction.

You may also need to file under the [2011 and/or 2023 versions](#) of the OECD Guidelines. OECD Watch has developed guidance for civil society on which version of the Guidelines to reference in an NCP complaint.

Step 3: Determine which NCP(s) to file to

Based on the claims and the company(ies) you have identified, determine which NCP(s) you will file the complaint to.

Complaints should be filed at the NCP of the country where the issues have arisen. This may be the country where the harm is felt on the ground (the country ‘hosting’ the business activity, called the ‘host country’). This may also or alternatively be the country where the company is headquartered (the ‘home country’), either because the host country does not follow the OECD Guidelines and has no NCP or because the issues actually arose during (poor) decision-making at headquarters level. Sometimes, both the host and home countries have NCPs. Complaints can be filed at both NCPs or just one. NCPs handling complaints related to the same situation will [coordinate](#) with each other. Contact OECD Watch if you have questions about which NCP to file to.

Step 4: Consider our tips for strengthening your complaint

Based on our understanding of the limitations of the NCP complaint process and experience advising civil society complainants, we have identified tips for complainants to enhance the effectiveness of their NCP complaint.

- **Embed your complaint in a wider strategy for justice:** The OECD Guidelines’ standards are voluntary, and National Contact Points cannot require companies to participate in a complaint or remediate harms. This means that an NCP complaint itself may not achieve meaningful change. However, if embedded in a broader strategy, a complaint can achieve remedy or increase attention to the harms among the public, media, governments, and the company’s shareholders or investors to help bring about remedy later.
- **Collaborate with other communities and civil society:** Collaborating with communities and national and international civil society organisations experiencing or focused on similar issues, harms, companies, sectors, or victim groups can strengthen your expertise and impact in a complaint. Consider co-filing complaints or filing “campaigns” of complaints highlighting a particular issue or theme across different companies and geographies. Contact OECD Watch for help building collaborations.
- **File the complaint at the right time to support your wider strategy:** Consider public awareness of the situation, media interest, government activity on related issues, or the timelines of other ‘parallel’ complaints.
- **Think carefully about the strengths and weaknesses of relevant NCPs:** Depending on what companies are involved, the complaint may be admissible at more than one NCP. Some NCPs facilitate more transparency in complaints. Some are willing to issue determinations for company misconduct. Others will proceed with analysis even if a company refuses to participate. Explore [OECD Watch’s evaluations of NCP effectiveness](#) to learn about the different NCPs and how they could best support your larger strategy.
- **File a complaint towards the companies connected to the harm that best support your wider strategy.** Try to identify the company or actor causing the harm. Then, find out all the companies that have a business relationship with that company or actor and may, therefore, be connected to the harm and headquartered in countries that follow the Guidelines. This could be done through your own research, for example, by looking at the company’s website or media articles or with the support of other civil society groups.

Companies that may have responsibility for harms

- Parent company
- Subsidiary company(ies)
- Buyers like trading companies or supermarkets
- Certifiers or auditors
- Consultants or advisors
- Manufacturers
- Suppliers
- Investors like banks or pension funds

All of these actors may have some [responsibility for the harm](#) under the OECD Guidelines – see OECD Watch’s guidance for civil society on understanding the different ways that companies can be connected to harm. Consider strategically which companies to target. Factors to consider include the level of the company’s responsibility for the harm; public focus on certain companies or sectors; the company’s reputation for engaging in responsible business conduct issues and complaints; the company’s headquarters location; and related opportunities for media and government attention. Reach out to OECD Watch if you need help understanding and researching the different actors that might be connected to the harms you are facing.

- **Consider filing a complaint to advance national law or global standards:** Because the scope of the Guidelines is often broader than national law, an NCP complaint can highlight and advocate closure of gaps in national law. The Guidelines also outline responsibility for companies all the way up and down the value chain, advancing global responsible business conduct standards.

Step 5: Write the complaint

Follow all of our tips for filing strong complaints. OECD Watch has also developed a [template](#) for complainants to structure their complaints.

Note on language: Complaints can be written, and evidence can be provided to the NCP in your own language if that is easiest for you. Keep in mind, however, that the NCP may not accept the complaint in any language, may not be willing to translate (all) documents, and that not translating the complaint could result in additional delays. If possible, writing the complaint in English or a national language of the NCP receiving the case can help ensure the complaint is heard. Contact the NCP to clarify whether they will accept a complaint in your language of choice. Also, contact us if you are facing difficulty with language barriers.

Step 6: File the NCP complaint

File the complaint according to any particular processes required by the relevant NCP(s). Some NCPs have specific requirements on what information must be included in a complaint or how information should be presented. Be sure to check the NCP(s) website to which you will file your complaint to ensure you meet their requirements. It is also important to consider the NCP's requirements on [confidentiality](#) when filing complaints.

Stage three: Coordination between NCPs

If a complaint is filed to multiple National Contact Points (NCPs), the NCPs will coordinate with each other to decide their roles, either leading or supporting the complaint process.

Coordination process

Typically, the NCP of the country where the issues arose will take the lead. However, another NCP may lead, particularly if that NCP could better facilitate the resolution of the issues. NCPs are expected to consider the complainant's preference when determining the lead NCP. The lead NCP will usually oversee the entire complaint process. This means that the lead NCP's complaint-handling process will govern the entire complaint. The supporting NCP(s) will stay updated and can contribute resources, such as reviewing statements, providing translations, facilitating joint meetings, and other practical assistance.

This stage should only take two months.

Role of complainants and companies

NCPs should keep all parties informed of coordination arrangements. Any decision to change the lead NCP role should involve consultation by the NCP with the parties.

Stage four: Initial assessment

After a complaint is submitted to a National Contact Point (NCP), the NCP conducts an initial assessment to decide if the case should proceed.

Initial assessment process

After a complaint is filed, the NCP should confirm receipt of the complaint within a couple of weeks. The NCP then takes about three months to evaluate the complaint to determine whether to accept or reject it – but some NCPs have taken much longer.

- If the NCP accepts the complaint, it will invite parties to proceed to the next stage.
- If the NCP rejects the complaint, the NCP must tell the parties the reasons for the rejection.

Most NCPs publish an initial assessment statement explaining the complainant's basic allegations, the company(ies)'s response, the NCP's decision to accept or reject the complaint, and the reasons for that decision. Initial assessments should be based only on information that both parties have seen and had the opportunity to refute.

Initial assessment evaluation criteria

To determine whether a complaint is admissible, NCPs should evaluate the complaint according to six "admissibility criteria" established in the Procedures in the OECD Guidelines:

1. Does the complainant have an interest in the issues?
2. Are the issues covered in the Guidelines and plausible based on sufficient and believable evidence (not certain or proven)?
3. Is the company a multinational enterprise covered by the Guidelines and does it operate internationally? And is the company headquartered in a country that follows the Guidelines or does the harm occur in a country that follows the Guidelines?
4. Is there a link between the company's activities and the issues raised in the complaint?
5. Is the NCP's ability to contribute to the resolution of the issues or the company's implementation of the Guidelines not limited by other laws or parallel proceedings?
6. Would the examination of the issues in the complaint contribute to the purposes and effectiveness of the Guidelines?

NCPs should explicitly examine these six criteria only. The NCP should not, for example, also require the complainant to pursue other remedies before filing a complaint, set a statute of limitations, or reject a case if a company refuses to engage, if either party is unwilling to agree to confidentiality terms, or as a result of pressure from the company or a government office. During the initial assessment stage, NCPs should not begin an in-depth analysis of the evidence presented in the complaint or an extensive assessment of the company's connection to the harm. Contact us if you feel an NCP has not followed these criteria appropriately.

An NCP may agree to proceed with all or only some of the claims in the complaint.

Role of complainants

As a complainant, you should anticipate being asked by the NCP to clarify aspects of the complaint or provide additional evidence through written submissions, on calls, or in meetings. You may be invited to comment on the draft initial assessment statement.

Complainants often wonder how much they can communicate about the case during the initial assessment stage. We have developed [guidance](#) on transparency and confidentiality for complainants and companies during the NCP complaint process.

Role of companies

Because the OECD Guidelines are not binding on companies, companies can choose not to engage in the initial assessment stage or complaint process overall.

- If a company decides to participate in the initial assessment, it will be asked to respond to the complaint and additional clarifying information. It may also be invited to comment on the draft initial assessment statement.
- If the company does not engage, we recommend complainants ask the NCP still to investigate the claims, make recommendations for improving the company's compliance with the standards, and determine whether the company breached the OECD Guidelines. Contact us if you need advice on a company's approach at this stage.

Stage five: Mediation

If the complaint is accepted, the National Contact Point (NCP) will offer assistance (officially called ‘good offices’), usually in the form of mediation or conciliation, to help the parties resolve the issues.

Mediation process

The mediation stage is supposed to last about six months – but it has often lasted much longer. During this stage, NCPs typically offer mediation services to the parties. Mediation is dialogue-based and intended to facilitate an agreement between the parties on the issues raised in the complaint.

- NCPs usually offer video calls and sometimes in-person meetings, including one-on-one meetings with each party or joint meetings all together.
- NCPs may provide mediation themselves or through a hired professional mediator.

Mediation may result in an agreement between the parties on all or just a few of the claims discussed, or it may yield no agreement. The NCP will conclude the discussion in consultation with the parties, usually after an agreement is reached or if the NCP perceives no further progress will be made in mediation.

Role of complainants

As a complainant, you should prepare for this stage in a few ways:

- Think about your goals: you may not be able to achieve all of them, so decide which are your priorities.
- Know your limits: Don’t compromise too much during a negotiation, and be ready to leave the discussion if it is not an effective mechanism to resolve the issues or you feel harmed by the process.
- Try to understand the company’s goals, perspectives, weaknesses, and where common interests may be shared.

Complainants often wonder how much they may communicate about the case during mediation. We have developed [guidance](#) on transparency and confidentiality by complainants and companies during the NCP complaint process.

Role of companies

Because the OECD Guidelines are not binding on companies, companies can choose not to engage in the mediation stage or complaint process overall.

- If a company decides to participate in mediation, the NCP will offer video calls and/or in-person meetings, including one-on-one meetings with the NCP or joint meetings with the complainant.

If the company(ies) does not engage or leaves the mediation before the complainants feel ready to stop, OECD Watch recommends complainants ask the NCP still to investigate the claims, make recommendations to improve the company's compliance with the standards, and determine whether the company breached the OECD Guidelines. Contact us if you need advice on a company's approach at this stage.

Stage six: Final statement

After the conclusion of the mediation, the National Contact Point (NCP) will issue a final statement.

Final statement process

The NCP's final statement is either published after the conclusion of the initial assessment when rejecting a complaint or three months after the conclusion of mediation. It may explain why the NCP did not accept the complaint, discuss whether and what agreement was reached by the parties, or, if no agreement was reached, provide an overview of the issues raised and procedures followed.

Recommendations and determinations

Especially if parties do not reach an agreement, OECD Watch encourages NCPs to commit to including in their final statement:

- Recommendations to the company on aligning its future conduct with the OECD Guidelines and taking steps to remedy past harms (wherever applicable).
- Determinations on whether the company met or did not meet the standards in the OECD Guidelines. Determinations are useful as they clarify the meaning of the standards in the Guidelines and enable companies to understand and comply with them in the future. Determinations also increase companies' accountability and can represent a form of remedy for complainants in terms of public validation of their experiences and concerns.

You should also ask the NCP to follow-up on any recommendations or determinations in a follow-up statement.

Consequences

Some NCPs are also able to ask other government ministries to apply consequences to companies that did not participate in the process in good faith. If you feel this is the case in your complaint, we encourage you to ask the NCP to seek such consequences. You can check [OECD Watch's evaluations of NCP effectiveness](#) to see whether the NCP has a practice of doing this.

We consider recommendations, determinations, and consequences important to incentivise companies to negotiate in good faith and reach an agreement. NCPs should make clear before the complaint begins that they will issue recommendations and determinations and seek consequences whenever applicable.

Role of complainants

As a complainant, you may be asked to comment on a draft final statement. Make sure the final statement accurately represents your position and sentiment towards the complaint process. Feel free to urge the NCP to include in the final statement recommendations, determinations, a request for consequences, and a commitment to engage in follow-up.

You should also feel free to publish your own statement on the case proceedings and outcome alongside the NCP's statement.

Complainants often have questions about how much they may communicate about the case during the final assessment stage. We have developed [guidance](#) on transparency and confidentiality by complainants and companies during the NCP complaint process.

Role of companies

Because the OECD Guidelines are not binding on companies, they can choose not to engage in the final statement stage or complaint process overall. However, if they do engage, they may also be asked to comment on a draft final statement.

Stage seven: Follow-up

After the final statement is published, many National Contact Points (NCPs) follow up on the outcomes of the cases they handle.

Follow-up process

NCPs conduct follow-up by investigating the situation themselves or seeking updated reports from the parties. The reason for follow-up is to assess whether or not the company is complying with any agreements reached or implementing any recommendations made by the NCP. NCPs usually publish follow-up statements 12 months after the publication of the final statement.

Role of complainants

You may be asked to provide an updated report on developments since the NCP's final statement and comment on a draft follow-up statement. Ensure the follow-up statement accurately represents your position, your own assessment of the company's implementation activities, and your sentiment towards the complaint process.

You should also feel free to publish your own follow-up statement alongside the NCP's.

Complainants often wonder how much they may communicate about the case during the follow-up stage. We have developed [guidance](#) on transparency and confidentiality for complainants and companies during the NCP complaint process.

Role of companies

Companies may also be asked to provide an update report on their compliance with any agreement reached or implementation of any recommendations made and comment on a draft follow-up statement.

Other filing considerations

After you have read the information on the stages of a complaint to a National Contact Point (NCP), we suggest you consider the following information on particular topics.

- NCP parallel proceedings
- Transparency and campaigning
- 2011 or 2023 OECD Guidelines
- Company responsibility for harm

NCP parallel proceedings

A “parallel proceeding” is a formal procedure at another court, tribunal, or complaint mechanism that deals with the same issue and occurs at the same time as the National Contact Point (NCP) process. This includes proceedings at the national or international level and complaints to other NCPs.

The existence of a parallel proceeding does not prevent an NCP from also proceeding with the complaint, but it does generate some additional considerations.

Why file an NCP case despite a parallel proceeding

There are several reasons why complainants might want to file an NCP complaint even though another court or tribunal is considering a related case:

- The other proceedings are “stuck” – i.e. indefinitely delayed or unreliable due to court corruption or incompetence, or the company is delaying court processes – and therefore not a viable means of resolving the dispute.
- The issues covered in the OECD Guidelines are broader or different and permit consideration of issues the court or tribunal cannot deal with.
- The opportunity to engage in constructive dialogue supported by the NCP alongside a more combative parallel process may enable more creative and mutually beneficial solutions.
- The NCP complaint may enable remedy outcomes (such as an apology or improved practice moving forward) that are not possible via a court or tribunal and that are also desired by the community.

What the Guidelines say on parallel proceedings

The Procedures for NCPs in the OECD Guidelines’ state that NCPs should not reject a case in its initial assessment simply because parallel proceedings are underway. Instead, if there are parallel proceedings, NCPs should consider whether mediation could help to solve the issues raised in the complaint or improve the company’s future implementation of the Guidelines, and also whether mediation would create “serious prejudice” or a “contempt of court situation” for the parties. NCPs should also consider partially accepting a complaint – i.e. offering mediation only for some of the issues raised in the complaint or suspending its examination while the parallel proceedings are ongoing. The NCP may also consult with the court or tribunal where the other proceedings are being or could be conducted. In all cases, NCPs must seek both parties’ assistance, including by requesting further information and their views on parallel proceedings.

Important considerations on parallel proceedings

Although the Procedures in the OECD Guidelines state that NCPs should not automatically dismiss a case when they learn of a parallel proceeding, many NCPs have done so. To try to avoid rejection, OECD Watch encourages complainants in their complaint to:

- Identify the parallel proceeding(s) and explain how the cases are different and distinguishable, for example, because they are filed by different complainants or raise different issues or legal standards (the Guidelines versus a national or international law).
- Remind the NCP of the Procedure's rule on parallel proceedings and emphasise enabling acceptance of claims despite parallel proceedings.
- Explain how the NCP's consideration of the complaint would not create serious prejudice or a contempt of court situation for a party in the other proceeding.
- Explain to the NCP how its consideration of the complaint could help solve the issues raised in the complaint or improve the company's implementation of the Guidelines in future.
- If applicable, explain to the NCP how its assistance could help facilitate an out-of-court solution supporting the other proceeding.
- If expected to be helpful, encourage and facilitate the NCP to consult the parallel complaint mechanism for its views on continuing the complaint.

Transparency and campaigning

The Procedures for National Contact Points (NCPs) in the OECD Guidelines require NCPs to be transparent and also to encourage complaint parties to be transparent.

Communication by NCPs

Transparency is a core criterion for NCPs, including with respect to the complaint process. The NCP's rules of procedure should be publicly available on its website. The NCP should regularly and promptly communicate with parties about the status of the complaint, including reasonable delays to timelines and the publication of the initial assessment, final statement, and follow-up statement. Importantly, the Procedures for NCPs in the OECD Guidelines require NCPs to publish the final and follow-up statements, not their initial assessments. [OECD Watch's evaluations of NCP effectiveness](#) analyse individual NCPs' communication practices.

[Contact us](#) if you are concerned about an NCP's communication practices.

Transparency between parties

NCPs are expected to ensure transparency between the parties in the complaint process generally, including by sharing all relevant facts, arguments, and documents submitted by each party. NCPs' statements should be based only on information seen by both parties, and parties should also have an opportunity to comment on draft statements. NCPs should ensure that complainants representing larger communities can communicate freely with their constituents about the complaint proceedings and discussions.

Transparency toward the public

NCPs should ensure transparency toward the public regarding individual complaints, though as a general rule, the following information should be kept confidential:

- The identity of individuals involved in a case, for security/privacy reasons,
- The contents of discussions and documents shared during the initial assessment, mediation, and final assessment stages, unless these are already in the public sphere and
- Business information that truly constitutes a trade secret.

Public campaigning during cases

Many civil society complainants want to know if they can continue campaigning about complaints after they are filed. This is because many NCPs seek to restrict campaigning activities.

- Some NCPs believe that public campaigning during a complaint may reduce a company's willingness to engage in the complaint process. However, in our experience, campaigning can help correct a power imbalance against complainants by incentivising the company to engage to protect its reputation.
- Some NCPs see campaigning during a complaint as a breach of confidentiality and may dismiss a complaint if complainants communicate anything publicly about it. This is beyond

the guidance NCPs have received from the OECD. We believe campaigning can be done while maintaining confidentiality over those aspects of the process that should be confidential.

- Some NCPs see campaigning during a complaint as a breach of good faith by the complainants. To counter this erroneous view, we encourage complainants to ensure their campaign materials:
 - Do not incorrectly present or exaggerate the procedural stages of the complaint or the statements or authorities of the NCP.
 - Emphasise the complainants' good faith commitment to resolving the claims through the NCP's mediation services.

Under the Procedures of the OECD Guidelines, campaigning that respects confidentiality requirements is allowed. Complainants must decide for themselves whether and how to proceed with campaigning in light of an NCP's transparency or confidentiality requirements and the expected response of the company.

- In some cases, less or more narrowly targeted campaigning may build confidence between the parties and encourage constructive dialogue – provided the company still acts in good faith to resolve the issues and the NCP adheres to the timeframe and procedures.
- In other cases, broader or more campaigning may be necessary to encourage the company(ies) and relevant governments to take the claims and complaint process more seriously.

Below are some general guidelines for communication at different stages of the complaint process:

Communication before filing a complaint

Prior to filing a complaint, no rules govern communication by complainants about a situation, company, or potential NCP complaint.

Communication at the time of filing

At the time of filing, the general rule is transparency. Many NGOs publish a press release upon filing their complaint to raise public awareness, and many publish the complaint text itself. This may cause concern to the particular NCP to which you are filing, and some NCPs prohibit the publication of complaints. It is best to check the NCP's rules on confidentiality and transparency before filing to see what constraints apply. OECD Watch recommends discussing any concerns or requests with the NCP and contacting us for support if you have questions or concerns.

Communication after the complaint has been filed

After the case has been filed, including during the mediation, final statement, and follow-up stages, the general rule is the transparency of the process along the way and final outcomes, but confidentiality of the content of discussions and non-public documents disclosed and any other matters agreed to be kept confidential. During the entire time the complaint is being handled by the NCP:

- Complainants should not publicly disclose information – including correspondence, documents, or opinions – that is learned or exchanged during the process unless it is already

in the public sphere. This helps NCPs encourage both parties to engage fully and openly in the process.

- Complainants may publicly disclose information about purely procedural aspects of the case, such as whether or not the company responds to the allegations or NCP's follow-up (though not the content of the company's response), whether meetings between the parties are being organised or have taken place (though not the content of the meetings), and if mediation has begun/ended.

Complainants are free to publish their own statement alongside the NCP's own final statement and follow-up statement.

2011 or 2023 Guidelines

On 8 June 2023, the OECD updated the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct ('OECD Guidelines'), replacing the previous 2011 version. As the standards in the OECD Guidelines are not retroactive, they cannot be applied to business activities that occurred before they were updated. This means that different versions of the Guidelines are now applicable in different situations.

There are now three situations when the 2011/2023 versions of the Guidelines will apply to an NCP complaint.

Which version of OECD Guidelines (2011 or 2023) to use for which complaints?

	When did the harm occur?	Under which version of the Guidelines is the complaint filed?	Under which version are the alleged breaches?	Which version of the Guidelines and the NCP's complaint-handling procedures does the NCP use?
1.	Harms occurring only before 8 June 2023	2011 and/or 2023 Guidelines	2011 Guidelines	<ul style="list-style-type: none"> • 2011 Guidelines – to decide on admissibility of claims and potentially make determinations regarding conduct before 8 June 2023+2011 Guidelines and old complaint handling procedures – to make recommendations regarding future conduct, or • 2023 Guidelines and updated complaint handling procedures – to make recommendations regarding future conduct
2.	Harms that began before 8 June 2023 but are still ongoing	Both 2011 and 2023 Guidelines	2011 Guidelines – for harms that occurred before 8 June 2023, to address failure to meet standards at that time+2023 Guidelines – for	<ul style="list-style-type: none"> • 2011 Guidelines and old complaint-handling procedures – to decide on admissibility of claims originating before 8 June 2023 and make determinations

			harms that continued after 8 June 2023, to address ongoing failure to correct the harm, now under new (higher) standards	regarding conduct before 8 June 2023, and <ul style="list-style-type: none"> • 2023 Guidelines and updated complaint-handling procedures – to make determinations and recommendations regarding conduct after 8 June 2023
3.	Harms occurring only after 8 June 2023	2023 Guidelines	2023 Guidelines	2023 Guidelines and updated complaint-handling procedures

NCP complaint handling procedures

Each NCP has its own procedures for handling complaints. While these procedures are based on the expectations for complaint handling described in the Procedures for NCPs in the OECD Guidelines, the procedures differ by NCP. In 2024, NCPs are expected to revise their old (pre-update) procedures (made under the 2011 Guidelines) where necessary to align with the new expectations in the 2023 Guidelines.

Because individual NCPs have their own specific complaint-handling procedures, we strongly recommend that civil society complainants review the complaint-handling procedures and any templates for filing complaints by the NCP(s) to which you are filing, and also contact those NCP(s) to discuss any specific requirements for filing complaints or questions related to your case.

Harms occurring only before June 2023

For harms occurring only before June 2023 (i.e. the harm stopped before June 2023 and is not ongoing), civil society should allege breaches of the 2011 Guidelines. The NCP will use the 2011 Guidelines to assess the admissibility of the complaint and potentially determine whether the company met the responsibilities applicable to it at that time. If the NCP makes recommendations for good practice moving forward, it will use either its existing (pre-update) complaint handling procedures or its procedures updated in accordance with the 2023 Guidelines. It is up to the NCP to decide whether these cases will continue under its old or updated complaint handling procedures.

Harms that began before June 2023 but are still ongoing

For harms that began before June 2023 but have continued since then (ongoing harms), civil society should allege breaches of the 2011 Guidelines for activities that originated before June 2023. Additionally, breaches of the 2023 Guidelines should be alleged for the company's *ongoing failure* to improve irresponsible conduct or resolve harms that initially began before June 2023, but have continued past that date. If ongoing, civil society should also argue breaches of the 2023 Guidelines for failures to align with new standards.

Example

In 2018, an oil and gas company began extracting oil without an adequate environmental impact assessment and adequate stakeholder consultation. In 2019, the company's operations caused an oil spill. In January 2024, the company has still not adequately cleaned up the spill. The company also has no policy to align itself with the Paris Agreement's temperature goals.

Alleged breaches:

- Of the 2011 Guidelines standards on inadequate environmental impact assessments, inadequate stakeholder consultation, and environmental/human rights impacts caused by the oil spill.
- Of the 2023 Guidelines standards on the company's *ongoing failures* to conduct an adequate environmental impact assessment (under heightened expectations in Chapter VI, 2023), ensure meaningful stakeholder consultation (under heightened expectations in Chapter II, 2023), and remediate the oil spill (since June 2023).

Of the 2023 Guidelines to have a policy in place to align itself with the Paris Agreement, starting from 8 June 2023 (under heightened expectations in Chapter VI, 2023).

For harms occurring only before June 2023, the NCP will use the 2011 Guidelines and its pre-update complaint-handling procedures to determine the admissibility of each claim and potentially determine whether the company met the responsibilities applicable to it at that time. If the NCP makes recommendations for good practice moving forward, it will use its updated complaint-handling procedures.

For harms continuing after June 2023, the NCP will use its updated complaint-handling procedures to potentially determine whether the company is meeting the (higher) responsibilities now applicable to it after 8 June 2023. If the NCP makes recommendations for good practice moving forward, it will use its updated complaint-handling procedures.

Harms occurring only after June 2023

For harms occurring only after June 2023 (i.e. the investment, activity, or harm only began after June 2023), civil society should allege breaches of the 2023 Guidelines. The NCP will use its updated complaint handling procedures for all stages in the complaint process, including assessing the admissibility of the claims, determining whether the company met its responsibilities, recommending good practice moving forward, and following up on the complaint.

This information draws on OECD Watch's interpretation of both the 2011 and 2023 versions of the Guidelines and has been developed in consultation with the OECD secretariat.

Company responsibility for harm

National Contact Point (NCP) complaints can only be filed against companies connected to a harm covered by the OECD Guidelines.

Three levels of company responsibility for harm

There are three ways that a company can be linked to a harm through their activities (including actions or omissions):

- Companies *cause* a harm where their own activities result in that harm. For example, an employer discriminates against female workers in its hiring practices, or a company pays a bribe to a foreign official.
- Companies *contribute* to a harm where their activities in combination with other actor(s) cause the harm, or if their activities facilitate another actor to cause the harm. For example, a retailer sets a short delivery time for a product despite knowing from similar products in the past that the production time is not feasible, forcing the manufacturer's workers to perform excessive overtime. A private investor in a steel plant also sits on the board of the plant, and the investor votes against installing equipment treating run-off from the plant, resulting in the pollution of drinking water of local communities.
- Companies can be *directly linked* to a harm where there is a link between the harm and their products, services, or operations through business relationships with other actors. For example, an electronics company sources cobalt from a minerals trader that mines using child labour.

According to the OECD, a company's relationship to an adverse impact or harm determines the action the company should take to address the harm.

- Companies *causing* a harm should cease, prevent, and/or remedy the harm.
- Companies *contributing* to a harm should cease or prevent their contribution and remedy the impact to the extent of their contribution, and also use leverage to mitigate remaining harms and prevent further impacts, as well as to encourage remedy of any remaining harms.
- Companies *directly linked* to harms should use leverage to influence the entity causing the impact to stop causing and mitigate the impact, as well as to influence the entity causing the impact to remedy it.

As a general rule, complainants should argue the highest company relationship to harm that is possible and appropriate based on the facts of the case. Contact OECD Watch if you need guidance on this.

Shift in company responsibility for harm

A company's relationship to harm is not static but can deepen. For example, a company that has only been "directly linked" to harm may later be found to be "contributing" to it. This change depends on a non-exhaustive list of factors, such as whether the company increased the risk of the impact occurring, whether the company knew or should have known about the impacts, and whether the

company's responsive actions actually decreased the likelihood of the impacts (re-) occurring. Other factors may also be relevant, such as how well the company (de-) prioritised addressing the risks or whether its business model is actually exploitative and premised on the risk. Inaction or ineffective action over a long period to mitigate the harm, particularly where a company knows or should have known of the harm, can result in a company shifting from directly linked to contributing. Where relevant, based on the factors present, complainants may wish to argue that a company's relationship to the harm has deepened.

Filing tools & resources

OECD Watch has developed several tools and resources to help complainants pursue complaints:

- [Short guide to the Guidelines for civil society](#), also available in [Arabic](#), [French](#), [Portuguese](#), and [Spanish](#).
- [Guide to what's in the Guidelines](#), also available in [Arabic](#), [French](#), [Portuguese](#), [Spanish](#), and [Thai](#)
- [Brief for civil society on the OECD Due Diligence Guidance](#)
- OECD Watch's template to support communities and NGOs filing complaints is available in [English](#), [French](#), and [Spanish](#).
- OECD Watch's webpages on complaints are also available in a single document in French, and Spanish.

The following OECD documents may also be useful:

- [2011 version of the OECD Guidelines](#)
- [2023 version of the OECD Guidelines](#)
- [OECD Due Diligence Guidance for Responsible Business Conduct](#)
- [OECD sector-specific due diligence guidance](#) for the extractive sector, mineral supply chains, agricultural supply chains, garment supply chains, financial sector, and more topics