



Analysis of OECD Guidelines

Ch. IV Human Rights Cases

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A Paul Hastings Report | December 2022



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I. Foreword – The B Team

As practitioners in the world of business and human rights, it is easy to question the impact of our efforts. How have the influential UN Guiding Principles and the OECD Multinational Guidelines driven the agenda forward? What norms and best practices have emerged over time? And what role do existing mechanisms and institutions play in the adjudication of human rights cases? As The B Team, a collection of business and civil society leaders committed to business's role in building a more inclusive economy, we strongly support the integration of human rights into a holistic business agenda that puts humanity at the center of the economic compass.

With this report, and the broader knowledge-sharing project behind it, Paul Hastings sets out to find answers. Using the OECD Guidelines for Multinational Enterprises as a frame, in particular Chapter IV on Human Rights, they have gathered and reviewed information on human rights cases from dozens of countries around the world—drawing on the unique system of NCPs that was established by the OECD Guidelines. As such, both the system and the aggregated information are unique—and of huge value to the Business and Human Rights community.

The B Team welcomes the evidence, analysis, and approach taken by Paul Hastings in this effort. The database resource they have built represents a useful tool for Human Rights practitioners, providing stakeholders access to case material and enabling our understanding of trends in the field. This report, with its ten-year snapshot of the human rights cases brought into the NCP system, can also help us understand how well the system itself—the NCP architecture—is working. Writing now, in late 2022, protecting Human Rights in the value chain is in the spotlight more than ever, with the EU and several other jurisdictions on the cusp of introducing mandatory human rights due diligence. Investor pressure too, has grown, as Human Rights issues—in many instances linked to land or environmental disputes—can present systemic risks.

For business in particular, the analysis provided in this report can begin to demonstrate how operational models can be adapted to avoid future risks. Strategic corporate tools such as stakeholder engagement, human rights, and environmental due diligence in the supply and value chains; deeper in-country engagement between corporate headquarters and regional offices; and periodic human rights impact assessments are crucial to every business context. Assessment of cases can also highlight gaps in practice, showcase regional and sectoral challenges, and serve as a reminder that, despite progress on respect of human rights by business, stakeholders do have options for recourse when human rights concerns are neglected.

The private sector still has a long way to go to better integrate human rights perspectives into business practice. From the company side, support is not universal, and materiality is not always clear. Yet there is often a cost to both action and inaction. Investors, employees, and the communities that companies work in depend on and even demand attention to Human Rights. Not only can and should business prioritize Human Rights as part of a sustainability framework, but the private sector should also

be ready to support systems such as the NCPs, to provide a critical space for cases to be raised and resolved. Business should also engage in the design of broader policy frameworks that create a level playing field for risk mitigation and access to remedy.

This project and report appear at a fortuitous time, as the OECD prepares a refresh of the Guidelines for Multinational Enterprises. It is important that all those engaged, whether companies, legal advisors, investors, governments and their NCPs, civil society, or academia, make use of the data and analysis available, to learn, adapt, and improve. Right now, with the evidence gathered here by Paul Hastings, we have an opportunity to embed ambition into this agenda.

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II. Executive Summary

A. Brief Project History

The OECD Human Rights Project (“Project”) was developed by the Paul Hastings (“the Firm” or “PH”) Business and Human Rights Practice Group as an initiative to create both a public resource for understanding, and a reference of human rights claims being brought under the National Contact Point (“NCP”) system established under the aegis of the Organisation for Economic Cooperation and Development (“OECD”) in the context of the OECD Guidelines for Multinational Enterprises (“OECD Guidelines” or “Guidelines”).

The OECD Guidelines reflect the OECD’s expectation from governments and businesses on how to act responsibly. They cover all key areas of business responsibility, including human rights, labor rights, environment, bribery, and consumer interests, as well as information disclosure, science and technology, competition, and taxation.

The Human Rights chapter of the OECD Guidelines—Chapter IV—was added in 2011. It is now a good time to take stock of Chapter IV claims for various reasons:

- i) There is a sufficient wealth of experience from which to draw useful lessons for corporations and other stakeholders;
- ii) Ongoing discussions on mandatory due diligence for corporations taking place in the European Union and at the United Nations can benefit from select findings in the report; and

- iii) The OECD itself is working towards “a targeted update of the OECD Guidelines on Multinational Enterprises to advance their implementation, promotion and to keep them fit for purpose”.¹

The implementation of the Project is twofold: first, the creation of the human rights case database described here, and second, the preparation of this report, which leverages the database to generate findings about the NCP process and how human rights provisions of the OECD Guidelines are being interpreted.

The goal of the database is (1) to provide a comprehensive, unified record of human rights-related cases (“specific instances” or “instances”) being brought under the NCP system; and (2) to establish a framework for tracking information about case processes that will be helpful to practitioners, researchers, and interested parties. The aim is for the database to be maintained and enriched on an ongoing basis.

The core purpose of the Project is to facilitate the comparison and contrast of objective case outcomes and to identify relevant lessons, directions, and trends. Mapping these trends can help corporations and other stakeholders to better understand the NCP system as an evolving non-judicial grievance mechanism and to illustrate with numbers and objective data this emerging area of law.

The aim of the report is to provide key information on ten years of experience with respect to the sole existing intergovernmental mechanism addressing business and human rights today.

We also foresee that the database will allow us to produce more focused reports and documents and to respond to targeted questions.

We hope that the Project will be seen as a useful contribution to the coherent implementation of, and compliance with, international standards relating to human rights across global supply chains.

B. Key Findings

- More than 50% of all cases brought before NCPs since 2011 included allegations related to Chapter IV Human Rights violations.
- Of these, more than 70% of Chapter IV instances are also linked to Chapter II – General Policies. Many complaints also raise other sectoral chapters, such as Chapter V – Employment and Industrial Relations (37% or 77 of 206 instances), and Chapter VI – Environment (29% or 59 of 206 instances).

¹ <https://www.oecd.org/mcm/2022-MCM-Statement-EN.pdf>

- Of all Specific Instances involving Chapter IV claims, two industrial sectors were most commonly implicated: manufacturing (44 of 206 instances), and mining and quarrying (40 of 206 instances).
- Just over 40% of the 206 Chapter IV complaints reviewed alleged insufficient human rights due diligence.
- Almost 60% of the Specific Instances reviewed involving Chapter IV were filed in part or entirely by Non-Governmental Organizations (“NGOs”).
- Most Specific Instances reviewed dealt with conduct occurring outside of the territory in which the NCP is located. Brazil, South Korea, and the United States were the only countries that received 10 or more complaints where the Lead NCP was also the country where the alleged harmful conduct took place (“Host Country”) for over 25% of the Specific Instances submitted to them.
- “Communities” and “Workers” were the most commonly affected groups among the reviewed complaints. “Human Rights Defenders,” “Children,” and “Women” were each unlikely to be cited as the sole affected group in a complaint.
- The United Kingdom, the Netherlands, and South Korea were the three most frequently utilized NCPs for Specific Instances involving Chapter IV. The United Kingdom NCP addressed approximately 53% more Specific Instances than the next most frequently utilized NCP, the Netherlands.
- Only 32 of 96 concluded Specific Instances resulted in an agreement between the parties.
- Among the most-utilized NCPs, the rate at which mediation was offered by the NCP and accepted by the parties varied significantly.
- The average duration of the NCP process from Initial Assessment to Final Statement was approximately 661 days.
- Approximately one-third (69 out of 206) of Complaints submitted with a Chapter IV claim were not accepted by the relevant NCP. The most common reasons that NCPs gave for not accepting a Complaint were: 1) “Issues were not material and substantiated” (38% of not-accepted complaints) and 2) “consideration of the specific instance would not contribute to the purpose and effectiveness of the OECD Guidelines” (33% of not-accepted complaints).
- The way in which NCPs are structured appears to have an impact on several aspects of the process. For example, multipartite and expert-based NCPs were least likely to reject a Specific Instance. Expert-based NCPs also had the highest proportion of Specific Instances ending in agreement between the parties.

- NCPs have broadly interpreted the term “enterprises” and some have considered entities such as the International Olympic Committee and FIFA to fall under the purview of the Guidelines.²³

III. Background

A. The OECD Guidelines

First adopted as part of the Declaration on International Investment and Multinational Enterprises in 1976, the OECD Guidelines are a voluntary commitment by OECD members and other adhering countries to promote responsible business conduct.⁴ Uniquely, the OECD Guidelines are the only multilateral agreement among national governments that promotes a comprehensive code of responsible business conduct.⁵ Adoption of the Guidelines demonstrates the expectations on the adherent governments and businesses (referred to by the OECD as “enterprises”) on how to act responsibly in all areas where business interacts with people, the planet, and society.⁶⁷ The Guidelines include not only principles on human rights—the focus of this report—but also labor rights, the environment, bribery, consumer interests, information disclosure, science and technology, competition, and taxation. As of November 2022, 51 countries have adhered to the OECD Declaration of International Investment and Multinational Enterprises.⁸

The Guidelines apply to enterprises broadly wherever the impact occurs (even in the territory of a non-adherent country). While the Guidelines are non-binding on enterprises, governments adhering to them must establish NCPs—institutional frameworks to promote and monitor implementation of the Guidelines, as discussed further below.

Since their initial adoption, the Guidelines have gone through periodic rounds of review and have been updated to reflect evolving international norms. Reviews of the Guidelines occurring in 1979, 1982, 1984, and 1991 resulted in relatively minor changes.⁹ A review in 2000 led to more far-reaching changes, including additions to address child and forced labor and environmental concerns, and new chapters

² Per the OECD Stocktaking Report, “The MNE Guidelines emphasise that the concept of a multinational enterprise should be broadly interpreted. In recent years, specific instances involving negative impacts associated with entities that would not traditionally have been considered multinational enterprises have become increasingly common.”

OECD (2022) Stocktaking Report on the OECD Guidelines for Multinational Enterprises (“[OECD Stocktaking Report](#)”).

³ <https://mneguidelines.oecd.org/stocktaking-report-on-the-oecd-guidelines-for-multinational-enterprises.pdf>

⁴ <https://www.oecd.org/investment/mne/1903291.pdf>; <https://www.oecd.org/daf/inv/mne/48004323.pdf>

⁵ <https://www.oecd.org/daf/inv/mne/48004323.pdf>;

⁶ The OECD defines an “enterprise” as a legal entity possessing the right to conduct business on its own, for example, to enter into contracts, own property, incur liabilities and establish bank accounts. An enterprise may be a corporation, a quasi-corporation, a non-profit institution, or an unincorporated enterprise. Enterprises can be classified in different categories according to their size.

⁷ OECD (2022), Enterprises by business size (indicator). doi: 10.1787/31d5eeaf-en (Accessed on 15 November 2022).

⁸ OECD (2022) Stocktaking Report on the OECD Guidelines for Multinational Enterprises (“[OECD Stocktaking Report](#)”) at p. 10.

⁹ <https://www.oecd.org/investment/mne/1903291.pdf>

regarding corruption and consumer interests.¹⁰ All of these changes were made with input from the business community, labor representatives, non-governmental organizations, and OECD member and non-member governments.¹¹

The last update to the Guidelines in 2011—the fifth since their inception—is the source of the Project.¹² This update included the fundamental addition of the human rights chapter, discussed below. This chapter was developed in close consultation with John Ruggie, the UN Secretary-General’s Special Representative on Business and Human Rights, and his team, and is fully aligned with the United Nations Guiding Principles on Business and Human Rights (“UNGP”). The OECD Human Rights principles, found in Chapter IV of the OECD Guidelines, outline six main principles for enterprises to observe within the framework of international human rights:

1. Respect human rights;
2. Avoid causing or contributing to adverse human rights impacts and address such impacts when they occur within the context of their own activities;
3. Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to an enterprise’s business operations, products, or services by a business relationship, even if they do not contribute to those impacts;
4. Have a policy commitment to respect human rights;
5. Carry out human rights due diligence as appropriate to an enterprise’s size, the nature and context of its operations, and the severity of the risks of adverse human rights impacts;
6. Provide for or cooperate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.

Chapter IV, like all other chapters of the Guidelines, is complemented by a commentary. Both Chapter IV and the related commentary can be found in Annex D of this report.

In addition to addressing human rights expectations, the 2011 revisions also included amendments to specialized chapters,¹³ provided guidance for NCPs to improve performance and procedural consistency, provided new guidance on due diligence and supply chain management for businesses, and outlined a proactive implementation

¹⁰ <https://www.oecd.org/investment/mne/1903291.pdf>

¹¹ <https://www.oecd.org/investment/mne/1903291.pdf>

¹² <https://www.oecd.org/daf/inv/mne/oecdguidelinesformultinationalenterprises.htm>

¹³ In particular, on Employment and Industrial Relations, Combating Bribery, Bribe Solicitation and Extortion, Environment, Consumer Interests, and Disclosure and Taxation.

agenda to help companies meet their responsibilities.¹⁴¹⁵ Currently the OECD is considering a further update of the Guidelines to be delivered in 2023.

B. *The National Contact Point (NCP) System*

The OECD Guidelines require all OECD member and adhering governments to establish a functioning NCP, a government-supported office whose core duty is to advance the effectiveness of the OECD Guidelines. NCPs advance the effectiveness of the Guidelines by raising awareness among businesses and other stakeholders about the Guidelines' standards and the NCP grievance mechanism, and by handling grievances against companies who have allegedly failed to meet the Guidelines' standards. NCPs also have other obligations, such as engaging in peer learning and participating in the work of the OECD Investment Committee, but are not themselves judicial bodies. The use of 'national contact points' as a means for decision-making and collective action had been previously incorporated into other intergovernmental instruments.¹⁶ NCPs were proposed as public bodies for implementing the OECD Guidelines in the 1979 review of the Guidelines, and the OECD Council decided in the 1984 revision that "Member Governments shall set up National Contact Points for undertaking promotional activities, handling enquiries and for discussions with the parties concerned in all matters related to the Guidelines."¹⁷ Nonetheless, it was the 2000 review that provided detailed Procedural Guidance on the role and functions of NCPs and gave them a broader role to deal with all matters relating to the Guidelines, including resolving issues related to the non-observance of the Guidelines by companies.¹⁸ In this respect, the NCP system was intended to further the effectiveness of the Guidelines by creating a locus for their application and enforcement.¹⁹

The OECD Guidelines require that all NCPs be "functionally equivalent" in their ability to accomplish their central purpose of promoting adherence to the Guidelines, and operate in accordance with four core criteria: visibility, accessibility, transparency and accountability. NCPs must assist in resolving disputes in a manner that is impartial, predictable, equitable, and compatible with the Guidelines. An independent network of civil society organizations—OECD Watch—has been urging NCPs to uphold these

¹⁴ The 2011 update to the Guidelines was made with input from adhering and non-adhering governments, the OECD Business and Industry Advisory Committee, the OECD Trade Union Advisory Committee, the OECD Watch, the UN Secretary-General's Special Representative on Business and Human Rights, and the International Labour Organisation, among others.

¹⁵ <https://www.oecd.org/daf/inv/mne/48004323.pdf>.

¹⁶ For example, The Antarctic Treaty, the United Nations Arms Trade Treaty, and the research and innovation programme Horizon 2020 of the European Union. See OECD (2018), *Structures and Procedures of National Contact Points for the OECD Guidelines for Multinational Enterprises*, at 13.

¹⁷ OECD (2022) Stocktaking Report on the OECD Guidelines for Multinational Enterprises ("OECD Stocktaking Report"), <https://mneguidelines.oecd.org/stocktaking-report-on-the-oecd-guidelines-for-multinational-enterprises.pdf>

¹⁸ OECD (2018), *Structures and Procedures of National Contact Points for the OECD Guidelines for Multinational Enterprises*, <https://mneguidelines.oecd.org/Structures-and-procedures-of-NCPs-for-the-OECD-guidelines-for-multinational-enterprises.pdf>

¹⁹ <https://www.oecd.org/corporate/mne/15-years-of-ncps.htm>

requirements.²⁰²¹ It has been observed that “[w]hile the impartiality of NCPs is an explicit goal in the OECD Guidelines, their independence is not guaranteed and often not the norm... On the other hand, impartiality is highly dependent on the structure, and many NCPs especially are housed in departments charged with investment promotion.”²²

Through the decision-making aspect of their mandate, NCPs act as a non-judicial grievance mechanism by which stakeholders can raise concerns and seek a remedy for issues related to operations of companies operating in or from adhering countries. In addition to their quasi-judicial capacity, NCPs have the mandate to provide “good offices” on issues related to the implementation of the Guidelines in Specific Instances. In line with NCPs’ non-judicial character, good offices include a range of approaches to support agreement between parties, ranging from informal dialogue to professional mediation. NCPs also make extensive use of their ability to make recommendations to the parties on ways to implement the recommendations of the Guidelines.²³

C. Structure of NCPs & Peer Review Process

As core requirements, the Guidelines require adherent states to ensure that their respective NCPs have the necessary financial and human resources to function, and that they function in a visible, accessible, transparent, and accountable way.²⁴ Provided that they meet these core criteria and broad requirements, however, governments have significant flexibility in the way they set up their NCPs.²⁵ Accordingly, countries have used a variety of domestic methods to set up their NCPs, ranging from legislative acts (e.g., Denmark and Italy) to governmental decrees (e.g., Colombia and the Czech Republic) or ministerial decrees (e.g., Argentina and Belgium).²⁶

NCPs can also be distinguished based on the structure of their decision-making processes. In this respect, NCPs can usually be classified by one of four decision-making structures—(1) single agency; (2) inter-agency; (3) multipartite; or (4) expert-based. They can involve a hybrid of more than one model.²⁷

- **Single agency NCP:** The NCP is composed of one individual in a single ministry, or by a group of individuals belonging to the same service in the same ministry. The OECD’s 2020 Annual Report on NCPs noted that 19 NCPs had identified themselves as having a single agency structure: Argentina, Austria, Chile,

²⁰ According to its website: “OECD Watch is a global network of civil society organisations with more than 130 members in over 50 countries. OECD Watch’s key aim is to inform and advise the global NGO community on how to use the OECD Guidelines for Multinational Enterprises (OECD Guidelines) and its associated grievance mechanism to achieve corporate accountability and access to remedy.”

²¹ See <https://www.oecdwatch.org/>.

²² Kinnari Bhatt and Gamze Erden Turkelli, *OCED National Contact Points as Sites of Effective Remedy: New Expressions of the Role and Rule of Law within Market Globalization?* Cambridge University Press, 2021 at p.431.

²³ <http://mneguidelines.oecd.org/OECD-report-15-years-National-Contact-Points.pdf>

²⁴ <http://mneguidelines.oecd.org/NCPs-for-RBC-providing-access-to-remedy-20-years-and-the-road-ahead.pdf>

²⁵ <https://mneguidelines.oecd.org/Structures-and-procedures-of-NCPs-for-the-OECD-guidelines-for-multinational-enterprises.pdf>

²⁶ <https://mneguidelines.oecd.org/Guide-for-National-Contact-Points-on-Structures-and-Activities.pdf>

²⁷ <https://mneguidelines.oecd.org/Guide-for-National-Contact-Points-on-Structures-and-Activities.pdf>

Colombia, Estonia, Greece, Iceland, Ireland, Israel, Italy, Luxembourg, Mexico, New Zealand, Peru, Poland, Turkey, Ukraine, the United Kingdom, and the United States.²⁸ The 2022 OECD Stocktaking Report noted that number at 20.²⁹

- **Inter-agency NCP:** The NCP is composed of a group of representatives from several ministries or government agencies. The OECD's 2020 Annual Report on NCPs noted that 12 NCPs had identified themselves as having an inter-agency structure: Brazil, Canada, Costa Rica, Germany, Hungary, Japan, Morocco, Portugal, Romania, Slovenia, Spain, and Switzerland.³⁰ The 2022 OECD Stocktaking Report put that number at 14.³¹
- **Multipartite NCP:** The NCP is composed of a group of government officials and stakeholder representatives. Both the OECD 2020 Annual report on NCPs and the 2022 Stocktaking Report identified ten NCPs as having a multipartite structure.³² Of these, five were tripartite, including representatives of government, business, and trade unions: Belgium, France, Latvia, Sweden, and Tunisia. The remaining five were quadripartite, further including representatives of civil society organizations: Croatia, Czech Republic, Finland, Kazakhstan, and the Slovak Republic.
- **Expert-based NCPs:** The NCP is composed of experts who are appointed by, but external to, the government. These NCPs are generally set up as entities independent of the government, although they are still ultimately government-funded. In any individual situation, experts may either be required to act in a personal capacity (not to represent particular interests) or they may be required to represent the views of the organizations that nominated them. Both the 2020 and 2022 reports identified four NCPs as having an expert-based structure: Norway, Denmark, Lithuania, and the Netherlands.³³
- In addition to these four core categories, both Australia and South Korea have NCPs set up under a hybrid structure: reflecting a mix of single-agency and expert-based elements (Australia), and inter-agency and expert-based elements (South Korea).³⁴ Information regarding the structure of the Bulgaria, Egypt, Jordan, and Uruguay NCPs was not available in the most recent NCP reports.

Even within each structural category, composition may vary from country to country. Among the NCP types including government involvement (i.e., all but purely

²⁸ <https://mneguidelines.oecd.org/2020-Annual-Report-MNE-Guidelines-EN.pdf>.

²⁹ <https://mneguidelines.oecd.org/stocktaking-report-on-the-oecd-guidelines-for-multinational-enterprises.pdf>

³⁰ <https://mneguidelines.oecd.org/2020-Annual-Report-MNE-Guidelines-EN.pdf>

³¹ <https://mneguidelines.oecd.org/stocktaking-report-on-the-oecd-guidelines-for-multinational-enterprises.pdf>

³² <https://mneguidelines.oecd.org/2020-Annual-Report-MNE-Guidelines-EN.pdf>; <https://mneguidelines.oecd.org/stocktaking-report-on-the-oecd-guidelines-for-multinational-enterprises.pdf>

³³ <https://mneguidelines.oecd.org/2020-Annual-Report-MNE-Guidelines-EN.pdf>; <https://mneguidelines.oecd.org/stocktaking-report-on-the-oecd-guidelines-for-multinational-enterprises.pdf>

³⁴ <https://mneguidelines.oecd.org/2020-Annual-Report-MNE-Guidelines-EN.pdf>; <https://mneguidelines.oecd.org/stocktaking-report-on-the-oecd-guidelines-for-multinational-enterprises.pdf>

Expert-Based NCPs), the OECD Stocktaking report found that the majority (35 NCPs) were based in ministries of economy, trade, or investment, while smaller numbers of NCPs were based in investment promotion agencies (3 NCPs) or in ministries of foreign affairs (10 NCPs), often in departments handling economic affairs.³⁵ According to the 2020 Annual Report, 36 NCPs include business representatives either in the NCP itself or in its advisory body, while 27 include civil society organizations, and 24 include trade union representatives. In its most recent NCP Evaluations Analysis, the OECD Watch noted that NCPs that are based in an economics or trade ministry raise civil society concerns about their impartiality, (perceived) conflict of interest, and expertise in complaint-handling, while NCPs having an independent panel structure where complaints are handled strictly by non-governmental independent experts have been shown to be most associated with successful outcomes.³⁶

Many NCPs are supported by advisory bodies in addition to their formal decision-making structures. These advisory bodies may serve a dual purpose—acting as both an expert resource for the NCP and ensuring a stronger connection to relevant actors in government or in society.³⁷ Advisory bodies may be composed of government representatives, ‘external’ (i.e., non-governmental) stakeholders, or a combination of both.³⁸ Certain NCPs also include other actors such as National Human Rights Institutions (“NHRIs”) (e.g., Chile) or ‘unaffiliated’ independent experts (e.g., United Kingdom) in their advisory board.³⁹

In order to improve NCP functioning and consistency, the 2011 update to the Guidelines amended the Procedural Guidance to include a peer evaluation program.⁴⁰ Beginning in 2016, NCPs agreed on a schedule targeting four to six reviews annually, facilitated by the OECD Secretariat and conducted by representatives of two to four peer NCPs via questionnaires, site visits, and meetings with stakeholders.⁴¹ Though voluntary, these evaluations are highly encouraged as a way for NCPs to learn from each other about strengths and areas for improvement, and as a means to promote functional equivalence among the NCPs in various countries.⁴² In particular, peer reviews assess the conformity of an NCP with the core criteria envisioned in the Guidelines: visibility, accessibility, transparency, and accountability.⁴³ These reviews also consider whether the NCP handles cases with impartiality, predictability,

³⁵ OECD Stocktaking Report; and see “Summary of NCP Survey Findings,” May 2022, <https://mneguidelines.oecd.org/stocktaking-exercise-on-the-oecd-guidelines-for-multinational-enterprises-summary-of-ncp-survey-findings.pdf>. The survey itself was performed as part of a public consultation held from June-September 2021

³⁶ NCP Evaluations Analysis, <https://www.oecdwatch.org/oecd-ncps/national-contact-points-ncps/ncp-evaluations-analysis/>. In its NCP Evaluations Analysis, the OECD Watch assessed NCPs on 40 organizational, procedural and communications key performance indicators. Forty-nine NCPs provided information for the analysis.

³⁷ <https://mneguidelines.oecd.org/Guide-for-National-Contact-Points-on-Structures-and-Activities.pdf>

³⁸ <https://mneguidelines.oecd.org/Guide-for-National-Contact-Points-on-Structures-and-Activities.pdf>

³⁹ <https://mneguidelines.oecd.org/Guide-for-National-Contact-Points-on-Structures-and-Activities.pdf>

⁴⁰ <https://mneguidelines.oecd.org/national-contact-point-peer-reviews-core-template.pdf>. Further structure was added to this process in 2015, including the creation of a core template for conducting peer reviews (last updated in 2019).

⁴¹ <https://www.oecd.org/daf/inv/mne/ncpeerreviews.htm>

⁴² <https://mneguidelines.oecd.org/national-contact-point-peer-reviews-core-template.pdf>

⁴³ <https://mneguidelines.oecd.org/national-contact-point-peer-reviews-core-template.pdf>

equitability, and compatibility with the Guidelines.⁴⁴ Following each review, the subject NCP may respond to the public report issued after its peer review.⁴⁵ The OECD maintains copies of all peer reviews conducted to date.⁴⁶

D. Procedures for Handling Specific Instances

Guidance for the “Implementation of Specific Instances” is laid out in part C of the Procedural Guidance, and elaborated in the more detailed *Structures and Procedures of National Contact Points for the OECD Guidelines for Multinational Enterprises* (last updated in 2018). According to these procedures, any party or organization with a legitimate interest in a matter can submit a case to an NCP that relates to any company that operates from or within the country of the NCP.⁴⁷ NCPs may have different requirements for their initial submissions, but a number of procedural aspects are similar based on OECD-level guidance:

- **Initial Assessment:** Following case submission, the NCP will conduct an initial assessment to determine whether the Specific Instance merits further examination.⁴⁸ If the NCP determines further examination is not warranted and does not accept the case based on its analysis, it will issue a statement explaining this decision.⁴⁹
- **Dialogue / Good Offices:** If further examination is warranted, the NCP will work to facilitate a dialogue between the company at issue in the Specific Instance and any relevant stakeholders.⁵⁰ This usually involves conciliation or mediation in an effort to help the parties reach agreement on how to rectify the issues identified in the case submission, with the NCP offering its “good offices” to assist.⁵¹ If an agreement is reached, the NCP will issue a report regarding the agreement and make any other recommendations regarding compliance with the Guidelines.⁵²
- **Final Report or Statement:** If the parties are not able to reach agreement with the assistance of the NCP, the NCP will issue a final statement and may make recommendations to the company identified in the Specific Instance regarding observance of the Guidelines.⁵³
- **Follow Up:** Whether the NCP issues a report regarding the parties’ agreement or a final statement with recommendations, the last phase of NCP case handling

⁴⁴ <https://www.oecd.org/daf/inv/mne/ncppeerreviews.htm>

⁴⁵ For example, the NCPs of France, Germany, Italy, and Japan have made such responses to date.

<https://www.oecd.org/daf/inv/mne/ncppeerreviews.htm>

⁴⁶ <https://www.oecd.org/daf/inv/mne/ncppeerreviews.htm>

⁴⁷ <http://mneguidelines.oecd.org/ncps/how-do-ncps-handle-cases.htm>

⁴⁸ <http://mneguidelines.oecd.org/ncps/how-do-ncps-handle-cases.htm>

⁴⁹ <https://mneguidelines.oecd.org/Flyer-OECD-National-Contact-Points.pdf>

⁵⁰ <http://mneguidelines.oecd.org/ncps/how-do-ncps-handle-cases.htm>

⁵¹ <http://mneguidelines.oecd.org/ncps/how-do-ncps-handle-cases.htm>

⁵² <http://mneguidelines.oecd.org/ncps/how-do-ncps-handle-cases.htm>

⁵³ <http://mneguidelines.oecd.org/ncps/how-do-ncps-handle-cases.htm>

consists of follow up to see if the parties have followed through with their agreement or implemented the recommendations made by the NCP.⁵⁴

Typically, the Initial Assessment phase is generally expected to last approximately three months, the dialogue phase six months, and the final report phase another three months. However, these timelines are not compelled at the OECD level, and so timing may vary widely by NCP and by instance. Similarly, the exact timing of such follow up varies.⁵⁵

It is important to underscore that participation in the NCP process is entirely voluntary for both enterprises and other stakeholders because the Guidelines are not legally binding on them. As such, the NCPs have no authority to compel certain actions.⁵⁶ Rather, they may only offer recommendations for steps or actions to ensure a company's compliance with the Guidelines, as interpreted by the NCP. In this respect, the quasi-judicial role of NCPs in the handling of specific issues is dependent on the parties buying in to the process, and this in turn depends on the credibility of the institution and the shared commitment to the values embodied by the Guidelines themselves.

E. NCP Instances

Given the structural and procedural variety among the various NCPs, there has been significant work by the OECD, academics, and other interested parties to evaluate how these differences may influence the handling of Specific Instances.

i. Tracking of case outcomes

Each year, NCPs report on their activities to the OECD's Investment Committee, and the OECD issues an annual report compiling and analyzing key data reported by NCPs. The most recent OECD Annual Report on National Contact Point Activity⁵⁷ surveys (a) key outcomes of Specific Instances,⁵⁸ (b) types of companies involved in Specific Instances, (c) final statements, (d) follow-up, (e) Specific Instances not accepted for further examination, (f) duration of procedures, (g) summary of closed Specific Instances, (h) trends of new Specific Instances, (i) Specific Instances by industry sectors, (j) chapters of the Guidelines cited in Specific Instances, (k) host countries, and (l) submitters of Specific Instances. In 2022, the OECD issued a "stocktaking" report providing a "comprehensive review of key developments,

⁵⁴ <http://mneguidelines.oecd.org/ncps/how-do-ncps-handle-cases.htm>

⁵⁵ <http://mneguidelines.oecd.org/ncps/how-do-ncps-handle-cases.htm>

⁵⁶ <http://mneguidelines.oecd.org/ncps/how-do-ncps-handle-cases.htm>; <https://www.oecdwatch.org/oecd-ncps/the-oecd-guidelines-for-mnes/>

⁵⁷ OECD (2021), *Annual Report on the OECD Guidelines for Multinational Enterprises 2020: Update on National Contact Point Activity*. ("OECD NCP Activity Annual Report 2020").

⁵⁸ "Key outcomes" refers to whether a Specific Instance resulted in a full or partial agreement between the parties inside or outside of the NCP process. OECD NCP Activity Annual Report 2020 at pp.10-11.

achievements and challenges” related to the Guidelines since 2011.⁵⁹ In this report, the OECD contends that Instances brought under Chapter IV of the Guidelines since 2011 “have resulted in changes to companies’ policies and due diligence processes; the establishment of dedicated grievance mechanism, renewed inputs for stakeholder engagement, and concrete remedial outcomes, including compensation.”⁶⁰ However, in its annual reports on NCP Activity, the OECD does not appear to survey the particular remedies adopted in closed NCP Instances.

ii. Findings concerning case outcomes

According to the OECD, Chapter IV on Human Rights is the most cited chapter in Specific Instances, accounting for 58% of all cases received by NCPs since its incorporation in the 2011 update of the Guidelines.⁶¹ According to the 2022 Stocktaking Report, since 2011, 55% of all closed cases—including non-Chapter IV cases—were accepted, while 45% were not accepted. Of those cases that were accepted and concluded, 42% led to an agreement either within or outside the NCP process.⁶² Finally, since 2011, NGOs have been the primary submitters of cases (having submitted 41% of all cases), followed by trade unions (38%) and individuals (18%). Recently, however, the share of NGOs and trade unions in new submissions is decreasing, while the share of those submitted by individuals is increasing.⁶³

According to the OECD, recent NCP cases have led to the provision of direct remedies by companies to submitters, including monetary or in-kind compensation.⁶⁴ Also according to the OECD, final statements by NCPs increasingly include specific recommendations to companies on how to implement the Guidelines with regard to the issues raised, and NCPs increasingly follow up on such recommendations, leading to increased effectiveness of the Specific Instance process. Some NCPs also issue determinations on whether the particular company involved has observed the Guidelines in respect of the issues raised.⁶⁵

Among other things, NCP survey responses indicate that in any given year, up to 40% of cases in which NCP good offices are provided lead to an agreement between the submitter and the company within the NCP process, and up to 47% of these cases result in policy changes at the company to address the issues raised.⁶⁶ However, stakeholder confidence in NCPs and perceptions of the impartiality of NCPs are challenging to maintain over time, particularly when an NCP’s staff or the unit within which it is based cannot clearly be isolated from potentially conflicting interests and responsibilities, or when the NCP does not have a strategy to prevent and address

⁵⁹ OECD (2022) *Stocktaking Report on the OECD Guidelines for Multinational Enterprises* (“OECD Stocktaking Report”) <https://mneguidelines.oecd.org/stocktaking-exercise-on-the-oecd-guidelines-for-multinational-enterprises.htm>

⁶⁰ OECD Stocktaking Report at p. 45.

⁶¹ OECD Stocktaking Report at p. 45.

⁶² OECD Stocktaking Report at p. 72.

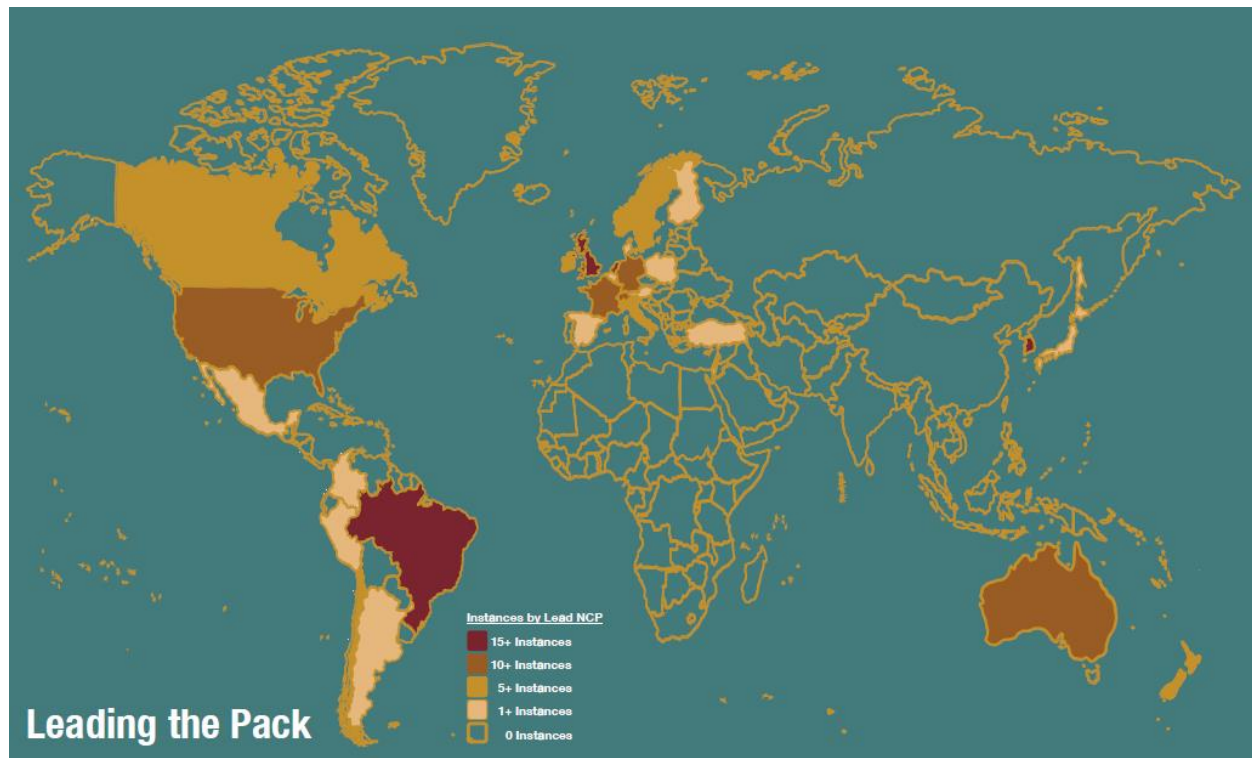
⁶³ OECD Stocktaking Report at p. 72.

⁶⁴ <https://mneguidelines.oecd.org/NCPs-for-RBC-providing-access-to-remedy-20-years-and-the-road-ahead.pdf>

⁶⁵ OECD Stocktaking Report at p. 75.

⁶⁶ OECD Stocktaking Report at p. 75.

conflicts of interest.⁶⁷ OECD Watch has argued that NCPs must deliver meaningful outcomes that are compatible with the principles and standards expressed in the Guidelines by making findings of non-compliance with the Guidelines based on independent investigations if cases are not amenable to mediation, or if mediation fails. It has also argued for the continued monitoring of cases after they are concluded, including monitoring whether mediated agreements or the NCP's recommendations have been implemented.⁶⁸



IV. Analysis of Chapter IV Specific Instances

The findings in this section are based on an analysis by Paul Hastings attorneys of 206 Specific Instances begun between 2011, when Chapter IV was added to the Guidelines, and July 31, 2022. As part of that process, we reviewed documentation from each Specific Instance in order to identify the data points outlined in Appendix B, among others. These included, for example, information on NCPs and parties in each case; data on the industries, stakeholders, and subject matter; and details regarding the timing and outcome of the handling by each NCP. While the scope of this review is limited to Specific Instances involving at least one claim under Chapter IV – Human

⁶⁷ OECD Stocktaking Report at p. 76.

⁶⁸ Indeed, the OECD Watch has recommended that NCPs be directed to conduct follow-up activities regarding agreements reached through mediation and recommendations made by NCPs in all instances where follow-up would be relevant. The OECD Watch also has recommended that monitoring of a mediated agreement should be automatic and that follow-up activities include, at minimum, a request that the parties submit periodic reports to update the NCP on their progress and corresponding publicly available monitoring reports by the NCP. OECD Watch, *Remedy Remains Rare* at pp 5-6, 49.

Rights of the OECD Guidelines, many of these cases also involved claims under other chapters, and many of the findings may be relevant to NCP procedural questions of general interest, not limited to human rights matters *per se*.

The below data was compiled from a variety of existing sources, primarily the databases of published materials available on the websites of the OECD and of OECD Watch. Where information was lacking, we referred to the website of the appropriate lead NCP to examine the filings. While the report is provided in English, our attorneys reviewed documents in over a dozen languages to provide qualitative and quantifiable data for the analysis.

While we have endeavored to be comprehensive with respect to published materials and filings, we note that systems for storing and retrieving documentation related to Specific Instances vary from country to country, such that not all such documents are public or accessible. Where possible, our review included analysis of complaints, initial assessments, responses, final statements, follow-up statements, and press releases; however, for some Specific Instances only some of these documents were available on the OECD or OECD Watch databases. In such cases, filings were retrieved from NCP websites if available. For those Specific Instances where no or insufficient filings were available, the analysis was based on summaries provided on the OECD or OECD Watch databases. For consistency, we employed the following classification: where a complaint was filed against multiple respondents at the same time before the same NCP, and the NCP addressed all of the respondents together in their subsequent publications, this was considered to be a single Specific Instance, regardless of the number of respondents. Where a complaint was filed against multiple respondents at the same time before the same NCP, but the NCP subsequently addressed different respondents (or groups of respondents) separately, each respondent or group of respondents was counted as a distinct Specific Instance for outcome tracking purposes. Where the same complaint was filed before multiple NCPs, each filing was considered a separate Specific Instance, even if all addressed the same set of respondents or if ultimately all of the cases were transferred to a single NCP.

We also note that for some Specific Instances, the information provided by the OECD, OECD Watch, and filings was inconsistent. Where this was the case, preference was given to the parties' filings and NCP publications as the most authoritative source of information. However, certain information may consequently differ from representations made in secondary sources about the Specific Instances in question.

For some data points, more than one response could apply to a single Specific Instance. For example, a single complaint could allege harm to multiple categories of affected people or could involve conduct occurring in more than one country. In those cases, the total number of Specific Instances recorded in charts may exceed 206.

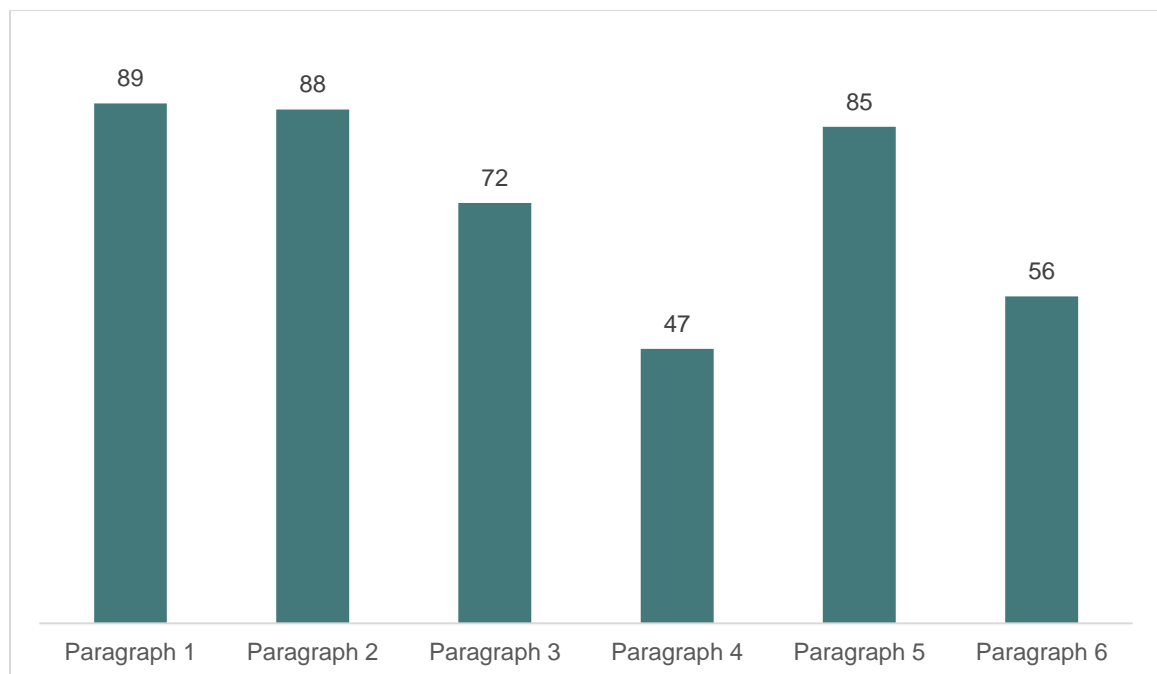
The below sections summarize our findings on 11 areas of interest: (A) Guideline Chapters Cited by Complainants; (B) Case Status at Time of Review; (C) Industry of

Respondents; (D) Lead NCP Patterns; (E) Supporting NCP Patterns; (F) Complainant Types; (G) Affected People; (H) Duration of Implementation of Specific Instances; (I) NCP Decision-Making; (J) Lead NCP Structure; and (K) Host Countries.

A. Guideline Chapters Cited by Complainants

The provisions of the Guidelines cited by complainants provides insight into the nature and purported basis of claims. We analyzed two aspects of these citations: (1) which provisions of Chapter IV were most commonly cited, and (2) which Chapters, other than Chapter IV, were most commonly cited in complaints that involved at least one Chapter IV claim.

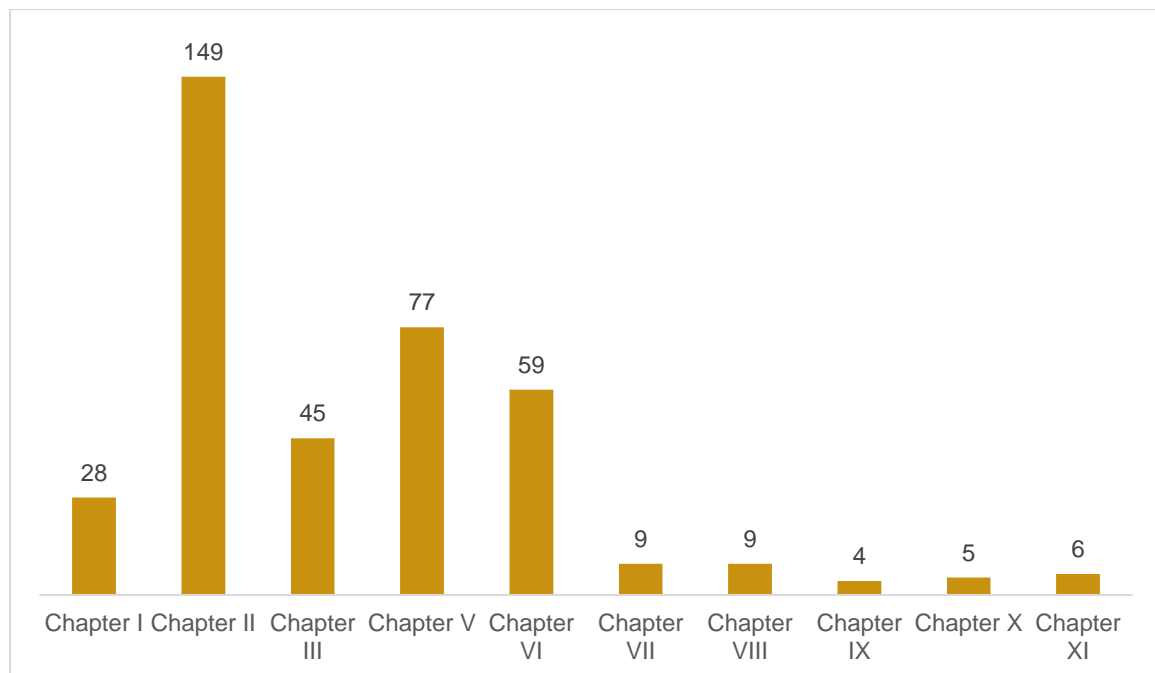
Figure A.1 – Citations of Chapter IV



- **Chapter IV Citations:** Among complaints raising Chapter IV human rights issues, three paragraphs were the most frequently mentioned. Paragraph 1, which sets the general principle that enterprises should “[r]espect human rights” was unsurprisingly the most frequently cited basis for action (89 instances). The next most frequently cited paragraph was Paragraph 2 (88 instances), which provides that enterprises should “within the context of their own activities [...] avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.” Interestingly, Paragraph 5—which provides that enterprises should “carry out human rights due diligence”—was cited nearly as frequently as Paragraph 1 and 2 (85 instances). This indicates that alleged lack of or insufficient due diligence is a relatively common ground for complaints

(appearing in approximately 40% of the 206 Specific Instances reviewed). Paragraph 4—stipulating that enterprises should have “a policy commitment to respect human rights”—was the only paragraph of Chapter IV cited in less than a quarter of the total cases (47 of 206 instances, or 23%).⁶⁹ One potential implication of these numbers is that a number of enterprises have adopted a “policy commitment,” but that such commitment is not deemed to be followed on substance and/or due diligence is deemed to be inadequate.

Figure A.2 – Citations of Other Chapters in Complaints Referencing Chapter IV



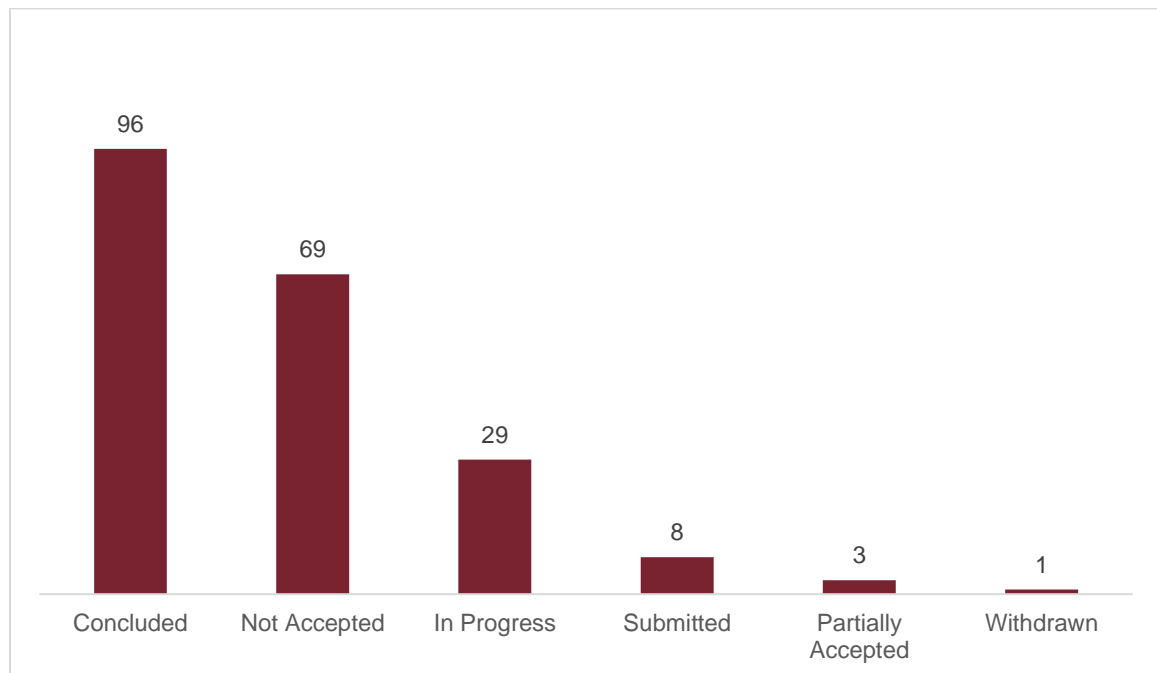
- Other Chapter Citations:** Of the 206 cases we reviewed involving Chapter IV claims, 163 cases also cited at least one other Chapter of the OECD Guidelines. In these cases, the most commonly cited were: (1) Chapter II – General Policies (149 instances; 72%); followed by (2) Chapter V – Employment and Industrial Relations (77 instances; 37%); and (3) Chapter VI – Environment (59 instances; 29%). The least co-cited Chapters were Chapter IX – Science and Technology (4 instances); Chapter X – Competition (5 instances); and Chapter XI – Taxation (6 instances).

⁶⁹ We note that a small number of cases cited to the Commentary to Chapter IV, which provides supplementary explanations of the paragraphs of Chapter IV. The full text of Chapter IV, including the Commentary, can be found in Appendix D.

B. Case Status at Time of Review

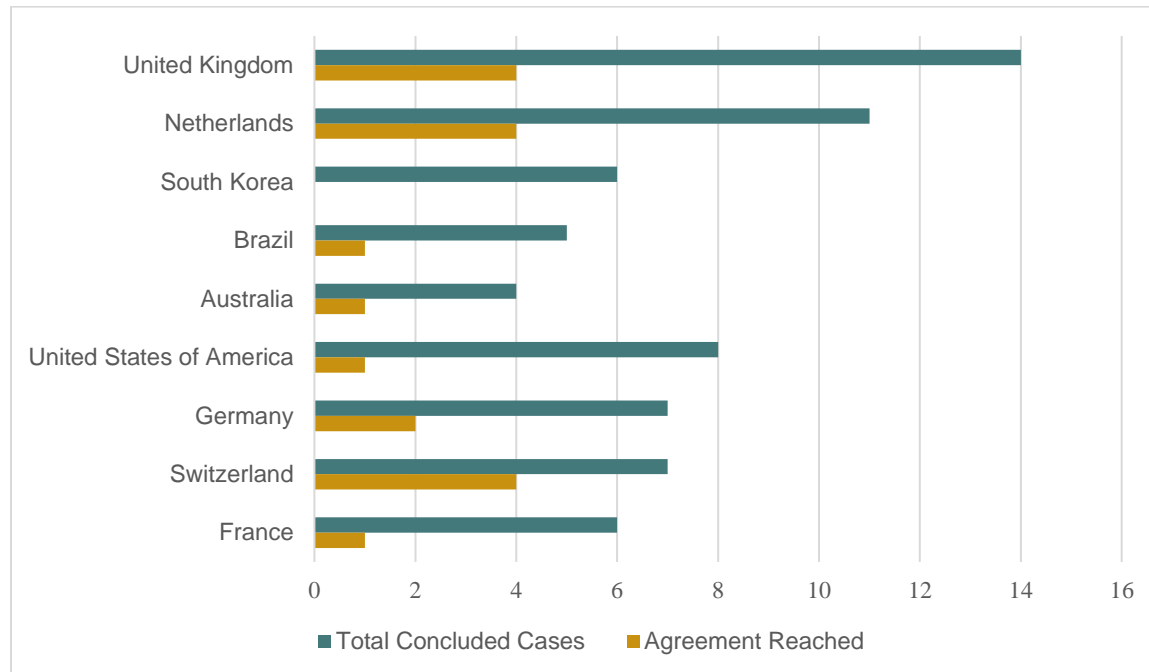
Of the 206 Specific Instances we assessed, 96 (47%) were concluded as of July 31, 2022.⁷⁰ Of the remaining cases, 69 (33%) were not accepted; 29 (14%) were in progress; 8 (4%) were submitted but had not yet been either accepted or rejected; 3 (1%) were partially accepted; and 1 was withdrawn. Note that “Concluded” may include Specific Instances where the NCP ended its involvement due to lack of participation from the parties.

Figure B.1 – Case Status



⁷⁰ This is the cutoff date for the project as of the drafting of this report.

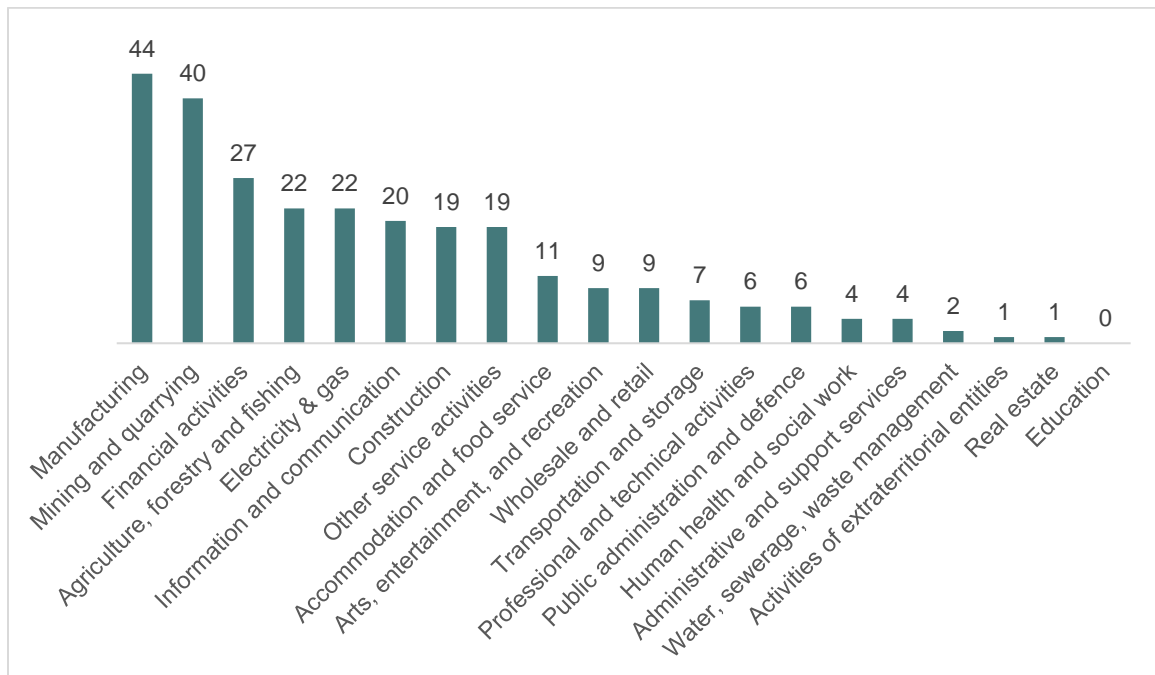
Figure B.2 – Agreement Reached in Concluded Cases for Most Frequent Human Rights NCPs



C. Industry of Respondents

We examined the industry, or industries, most often implicated in complainant submissions, using categories maintained by the OECD and OECD Watch. Often there was more than one industry implicated. Including instances with multiple industries, the most common industries involved were: (1) Manufacturing (44 instances); (2) Mining and Quarrying (40 instances); (3) Financial and Insurance Activities (27 instances); (4) Agriculture, Forestry, and Fishing (22 instances); and (5) Electricity, Gas, Steam and Air Conditioning Supply (22 instances). Four additional industries each had over ten instances: (1) Information and Communication (20 instances); (2) Construction (19 instances); (3) Other service activities (a catch-all category employed by the OECD; 19 instances); and (4) Accommodation and Food Service (11 instances).

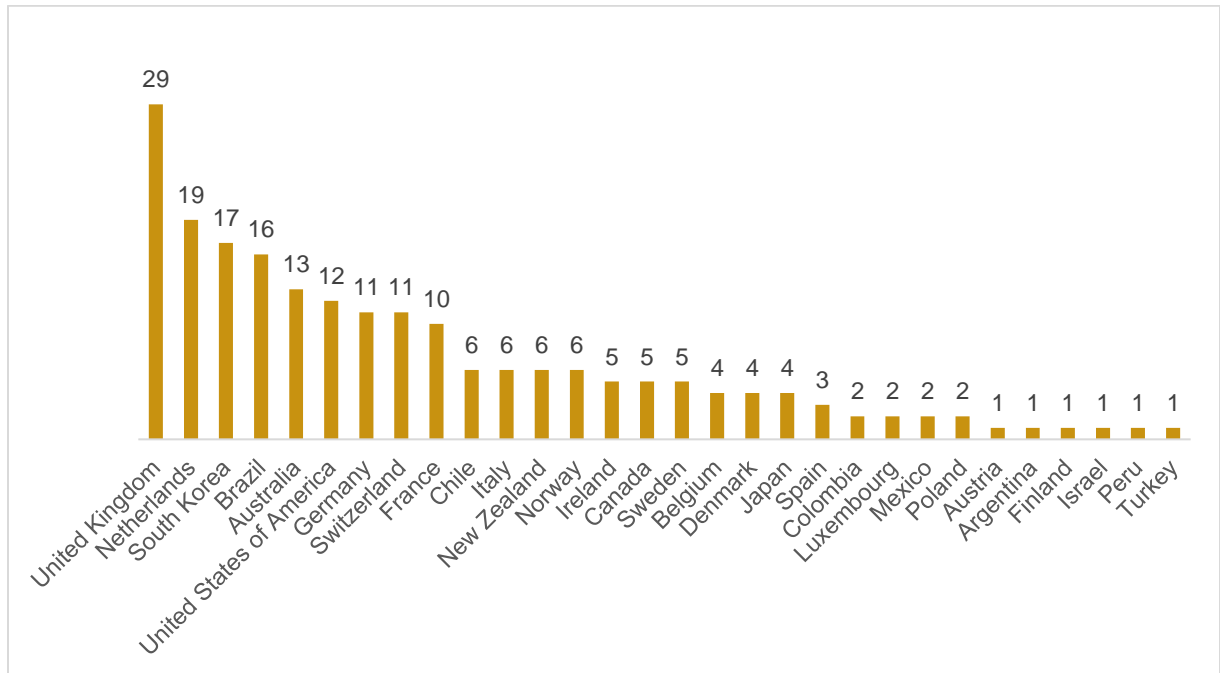
Figure C.1 – Frequency of Industry Affected



D. Lead NCP Patterns

The “Lead NCP” is the NCP that takes primary responsibility for the handling of a Specific Instance—whether as sole NCP or in conjunction with supporting NCPs—including decision-making power over the disposition of the instance. Where a Specific Instance is submitted to multiple NCPs (for example, because the conduct or the respondent is present in more than one country) one will act as the Lead NCP, while the others will be Supporting NCPs. Globally, the NCP with the greatest number of Specific Instances as Lead NCP is the United Kingdom, with 29 instances. This is just over 50% more than the second most frequent Lead NCP, the Netherlands, which had 19 instances. Per the chart below, nine NCPs had 10 or more Specific Instances involving Chapter IV (“Most Frequent Human Rights NCPs”). Five of the Most Frequent Human Rights NCPs are in Europe—United Kingdom, Netherlands, Germany, Switzerland, and France—while South Korea, Brazil, Australia, and the United States round out this group.

Figure D.1 – Lead NCP Frequency by Country



We also examined the frequency with which the Lead NCP is the “Host Country”. Globally, the Lead NCP and the Host Country were the same in approximately 29% of cases. Certain countries were far more likely to be both Lead NCP and Host Country than others. Among the Most Frequent Human Rights NCPs, Brazil and South Korea were the only NCPs for which the majority of submissions complained about conduct within the country. Brazil was both Lead NCP and Host Country in 14 of 16 instances, significantly exceeding all other NCPs with over ten instances, while South Korea trailed behind at 8 of 17 instances. The United Kingdom and United States NCPs had the next greatest number of instances where the conduct took place in the country, with 5 of 29 and 5 of 12 instances, respectively. Germany fell on the other end of the spectrum, receiving no submissions complaining of conduct within the county.

Figure D.2 – Most Frequent Human Rights NCPs; Location of Conduct and Parties

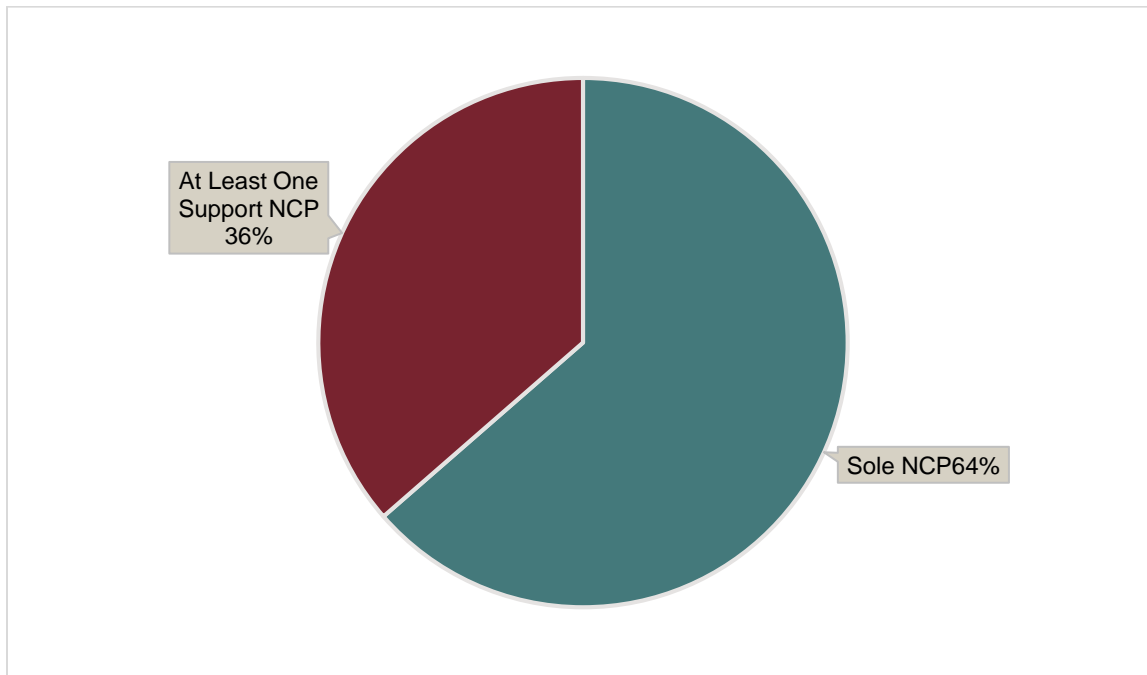
Most Frequent Human Rights NCPs	Total Specific Instances	Lead NCP is Host Country	Lead NCP is Respondent location	Lead NCP is Complainant location
1. United Kingdom	29	5	26	16
2. Netherlands	19	3	17	8
3. South Korea	17	8	15	14
4. Brazil	16	14	8	12
5. Australia	13	3	10	7
6. United States of America	12	5	10	7

Most Frequent Human Rights NCPs	Total Specific Instances	Lead NCP is Host Country	Lead NCP is Respondent location	Lead NCP is Complainant location
7. Germany	11	0	11	5
8. Switzerland	11	1	8	6
9. France	10	1	9	2

E. Supporting NCP Patterns

Of the cases sampled, 131 had only a single NCP involved, while 75 included at least one Supporting NCP. The most common Supporting NCPs were the United States (21 instances) and the United Kingdom (12 instances). In 43% of instances with at least one Supporting NCP, one or more Supporting NCPs was also listed as a host country. Often, where the Supporting NCP was not the host country, it was the country where Respondent or Complainant was based.

Figure E.1 – Frequency of Supporting NCP Involvement

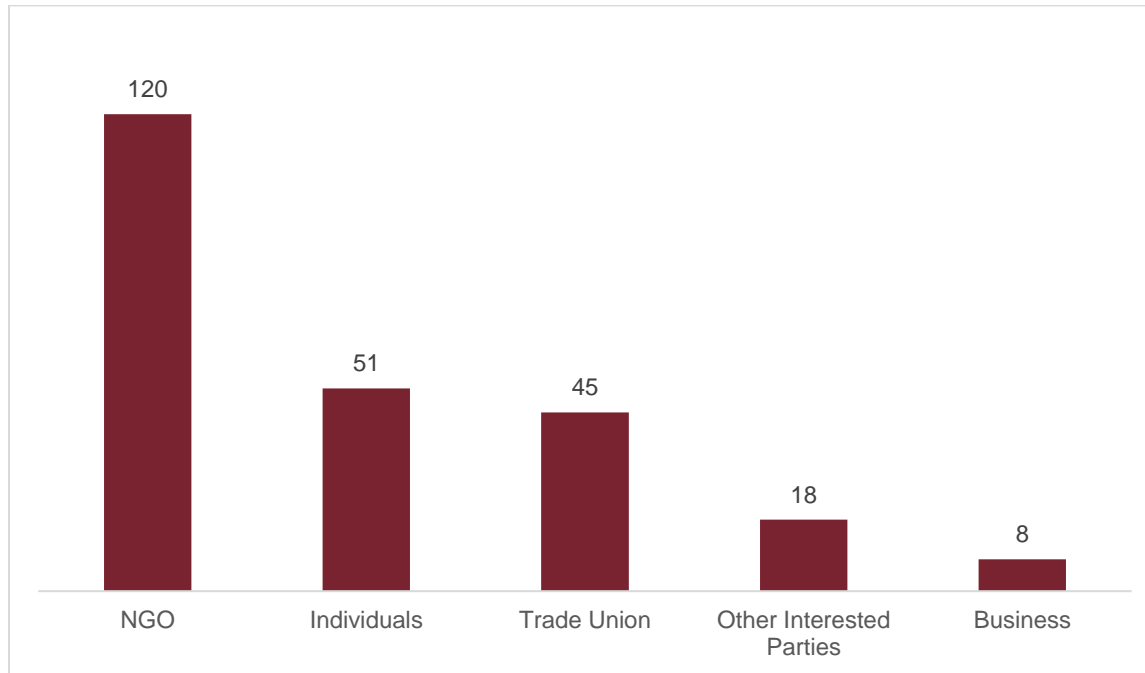


F. Complainant Type

Of 206 Specific Instances reviewed, over half involved NGOs (120 instances; 58%). The next most frequent submitters were individuals (51 instances; 24%), trade

unions (45 instances; 22%), “other interested parties” (18 instances; 9%),⁷¹ and businesses (8 instances; 4%).

Figure F.1 – Number of Complaints Brought by Complainant Type



G. Affected People

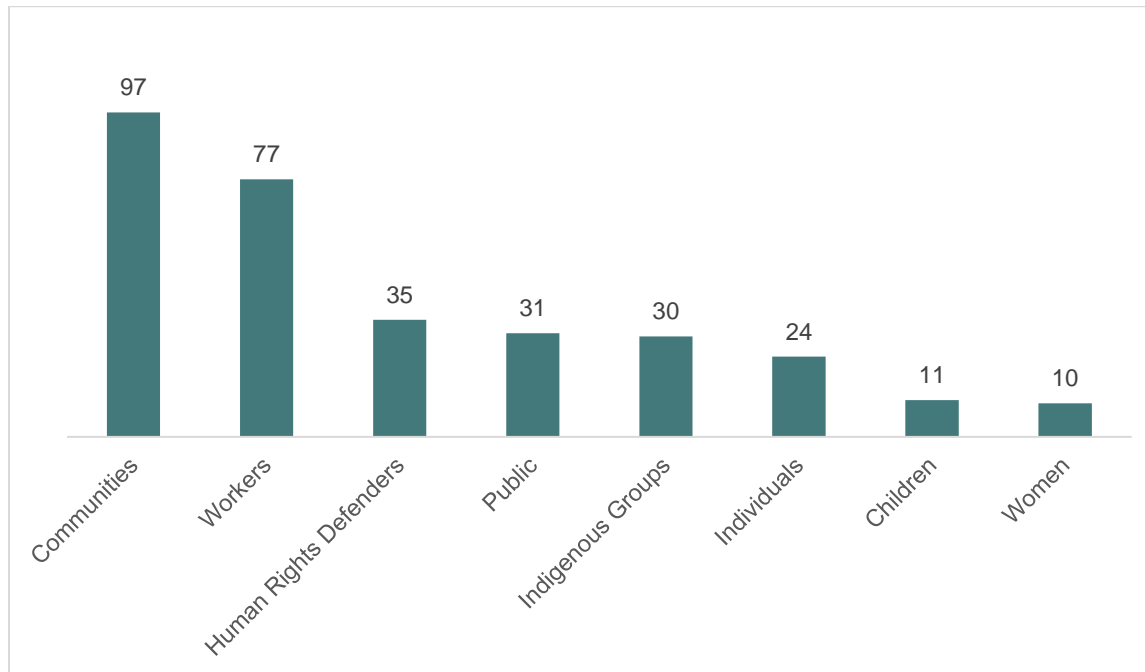
We examined the “Affected People” cited in each submission, meaning the group or groups whose human rights were allegedly affected by the business entity’s conduct. The categories for these groups mirrored those identified by OECD Watch, to which we added “Individuals” based on our review of numerous Specific Instances.

- **Type of Group Affected:** The most commonly affected groups were “Communities” (97 instances), meaning groups of people directly affected by the alleged misconduct such as local landowners, ethnic groups, or villagers, and Workers (77 instances), including unionized employees, unions, and individual workers. Following this were “Human Rights Defenders” (35 instances), “Public” (31 instances) meaning the entire population in a given region or entire country, and Indigenous Groups (30 instances). “Individuals” were included in 24 instances, and “Children” and “Women” were named in 11 and 10 instances, respectively.
- **Multiple Affected Groups:** 82 instances, or 40% of all instances, cited more than one group of affected peoples. “Workers” were the most likely to be cited as the sole group (48 instances, or 62% of all cases citing workers), while

⁷¹ Some complaints may have been brought by more than one complainant.

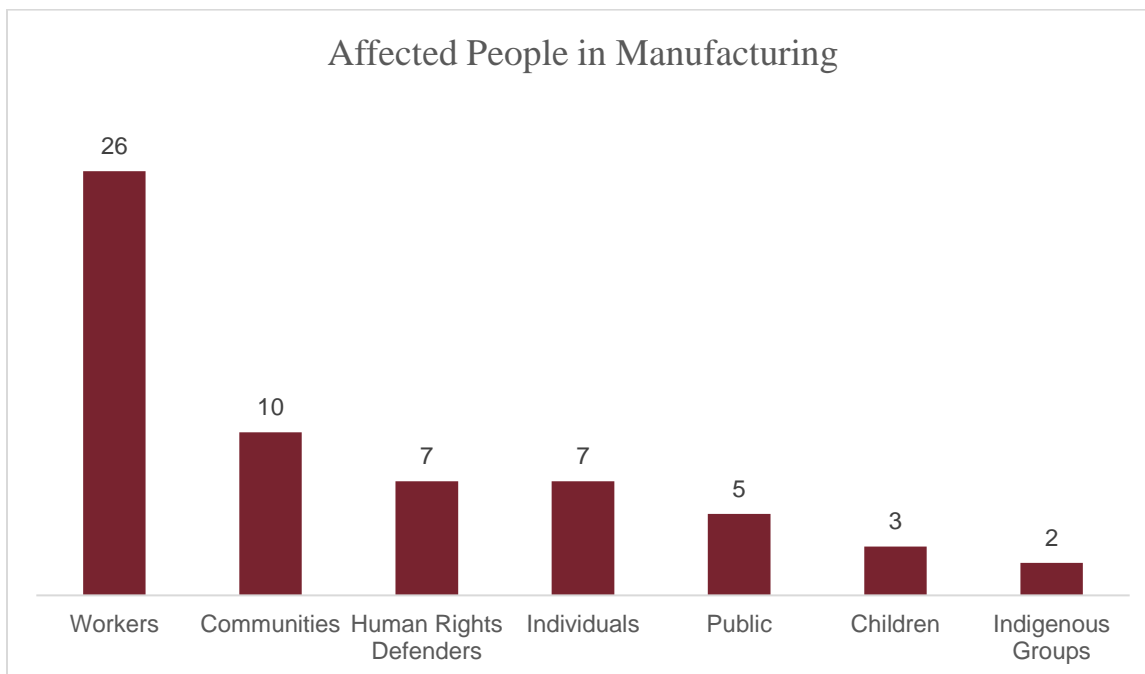
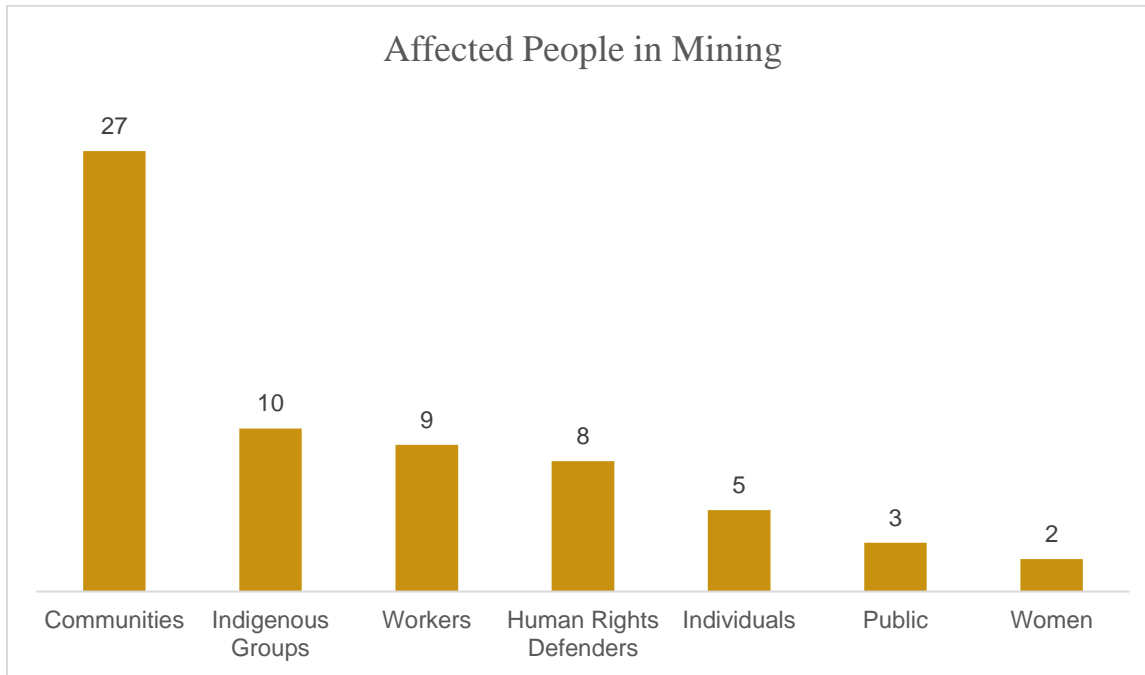
“Communities” were cited as the sole group in 38 instances (40% of all cases citing communities). “Human Rights Defenders,” “Children,” and “Women” were all unlikely to be cited alone (2 instances, and 1 instance each, respectively).

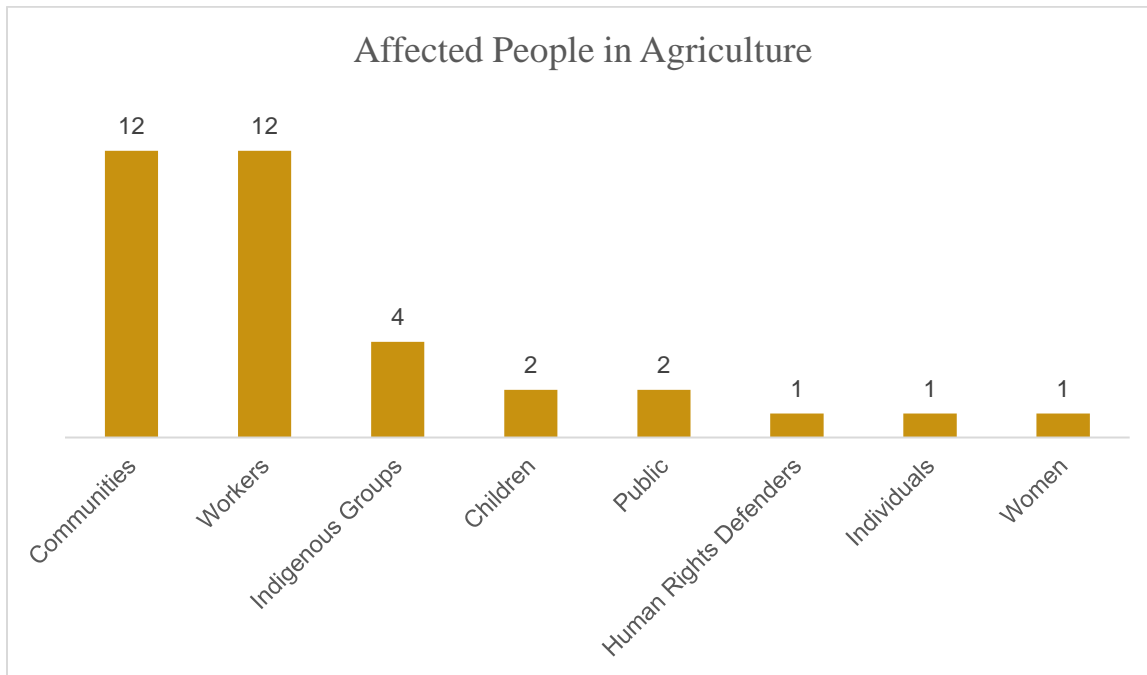
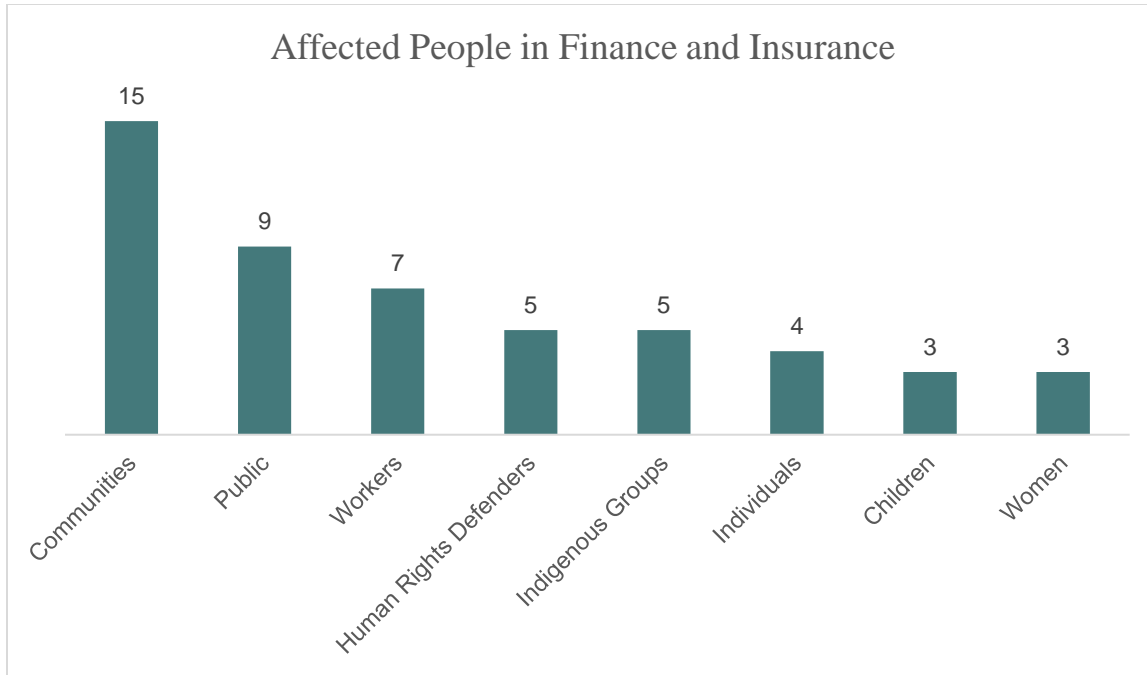
Figure G.1 – Number of Instances by Category of Affected People



- **Affected Group by Industry:** When breaking down the Affected Group based on industry, we found that Communities were the most frequently affected group for cases relating to Mining and Quarrying (27 out of 40 Mining and Quarrying instances). Workers were the most frequently affected in Manufacturing cases (26 out of 44 Manufacturing instances). Communities and Workers were also the most frequently cited affected groups for cases relating to the next two most common industries, namely: Financial and Insurance activities (15 and 7 instances, respectively), and Agriculture, Forestry and Fishing (12 instances each).

Figure G.2 – Affected People by Key Industries





H. Duration of Specific Instances

We measured the duration of each Specific Instance that was not rejected and for which the relevant NCP had issued a final statement; spanning from the date that the complaint was filed until the date that a final statement was published by the NCP. The mean average duration for the NCP process using this measure was roughly 661 days. The longest noted duration was 1,842 days (5.0 years), for a Specific Instance filed in Sweden in 2015 which related to a contract to develop a coal-fired power plant in Senegal. Among the Most Frequent Human Rights NCPs, Australia had the longest average duration at 968 days, trailed by the United Kingdom and the Netherlands (around 852 and 678 days, respectively). The United States had the shortest average duration among the Most Frequent Human Rights NCPs, at less than 300 days.

Figure H.1 – Frequency of Specific Instances by Duration (Days)

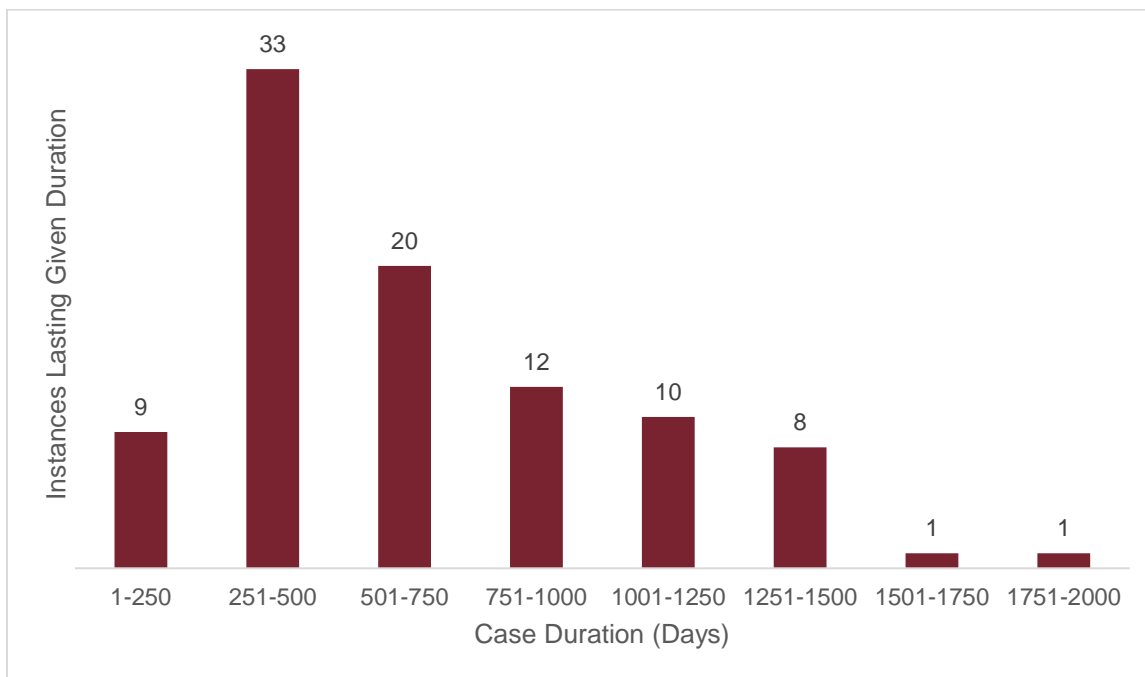
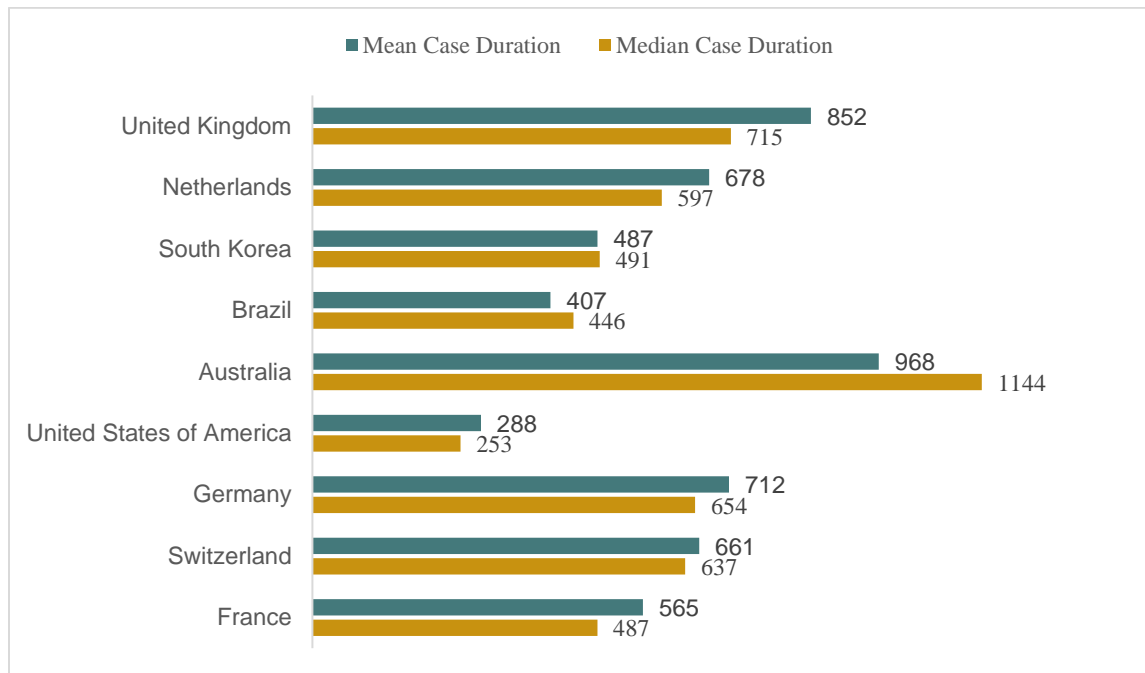


Figure H.2 – Average Case Duration for Most Frequent Lead NCPs (Days)



I. NCP Decision-Making

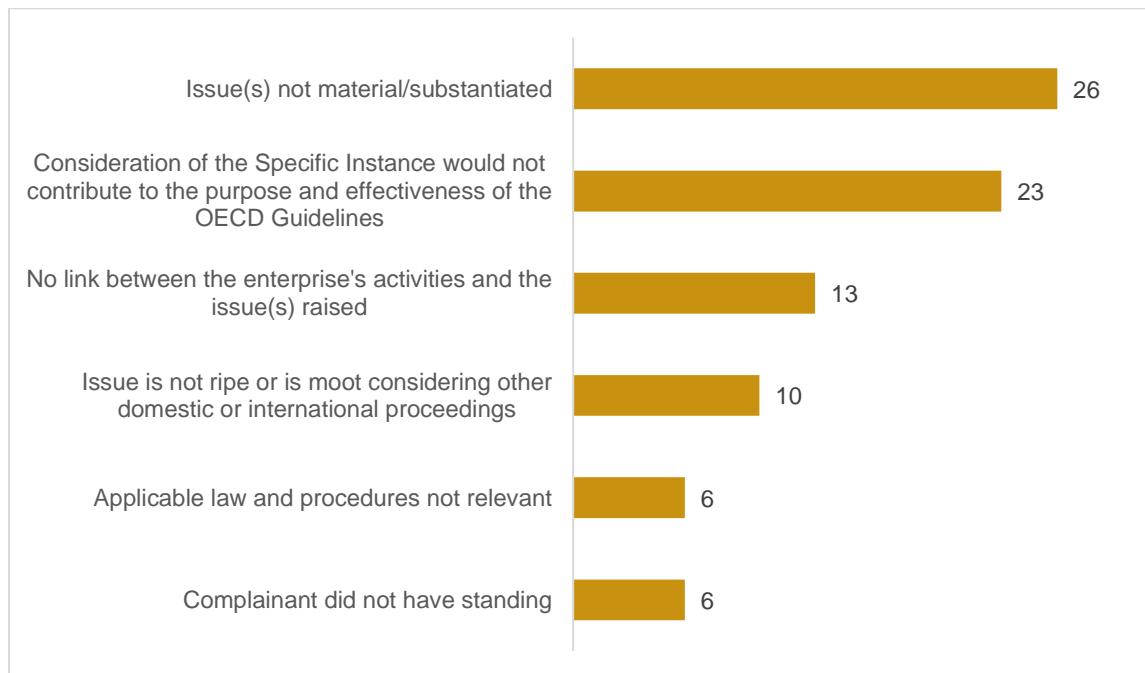
We examined the bases on which NCPs resolved Specific Instances at various phases. In particular, we looked at (1) the reason(s) that a complaint was not accepted; (2) among accepted cases, when an NCP engaged in independent fact-finding and when an NCP offered mediation to the parties; and (3) the types and frequency of NCP publications in the course of a Specific Instance.

- Reason for Non-Acceptance:** The OECD’s “Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises” provides that NCPs should take into account several factors when deciding whether to accept or reject a submission.⁷² The Procedural Guidance provides that: “[i]n making an initial assessment of whether the issue raised merits further examination, the NCP will need to determine whether the issue is bona fide and relevant to the implementation of the Guidelines. In this context, the NCP will take into account:” the identity of the party concerned and its interest in the matter; whether the issue is material and substantiated; whether there seems to be a link between the enterprise’s activities and the issue raised in the Specific Instance; the relevance of applicable law and procedures, including court rulings; how similar issues have been, or are being, treated in other domestic or international proceedings; and whether consideration of the

⁷² OECD Guidelines for Multinational Enterprises, pp. 82–83, <https://www.oecd.org/daf/inv/mne/48004323.pdf>

specific issue would contribute to the purposes and effectiveness of the Guidelines. Of the 69 cases that were not accepted (“Non-Accepted Instances”), the most common basis for refusing to accept the submission was a determination that the issues were not material or substantiated (cited in 26 out of 69 Non-Accepted Instances). This was just ahead of the next most common reason, which was “Consideration of the Specific Instance would not contribute to the purpose and effectiveness of the OECD Guideline” (23 out of 69 Non-Accepted Instances).⁷³ NCPs provided reasons outside of the prescribed factors in 20 of the 69 Non-Accepted Instances. These supplemental reasons included, for example, lack of jurisdiction of the NCP over the respondent(s), failure to correctly identify the respondent(s), and determinations that respondents or their activities fall outside the scope of the Guidelines. In all but one of the 69 Specific Instances that were not accepted, the NCP provided an explanation for not accepting the complaint. In the one instance where this was not the case, the NCP rejected the case without issuing a public statement or informing the complainants directly, and the complainants were informed of the decision through the local embassy.

Figure I.1 – Reason for Non-Acceptance of Submission

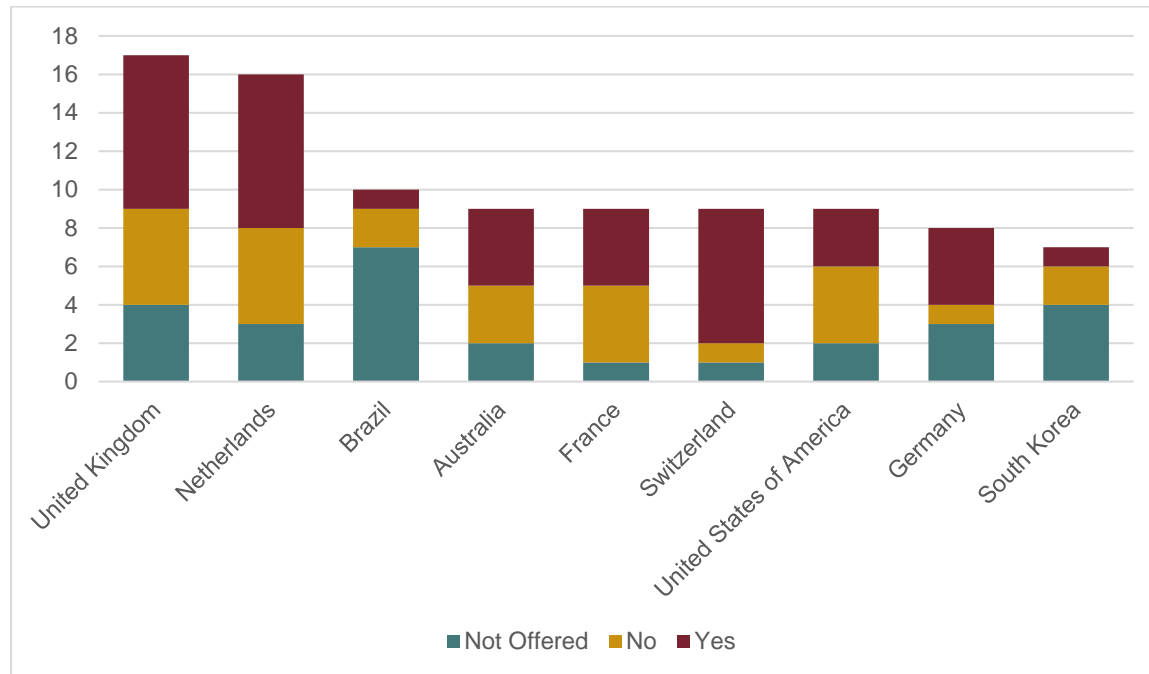


- **Frequency of Mediation:** For complaints that were accepted (“Accepted Instances”), we looked at the frequency with which NCPs offered mediation, advancing the Specific Instance to the next stage in the NCP process. Among

⁷³ “Consideration of the Specific Instance would not contribute to the purpose and effectiveness of the OECD Guideline” means

the Most Frequent Human Rights NCPs, France and Switzerland were the Lead NCPs that most consistently offered mediation (89% of Accepted Instances). The Dutch, Australian, and American NCPs were close behind, offering mediation in close to 80% of Accepted Instances. The Brazilian NCP lagged behind, offering mediation in only 30% of Accepted Instances.

Figure I.2 – Frequency of Mediation Offer and Acceptance for Most Frequent Lead NCPs (Accepted Instances Only)



- Frequency of Fact Finding:** For Accepted Instances, we also looked at the frequency with which NCPs engaged in independent fact-finding to inform their decision-making. Across all of the Lead NCPs we considered, only that of the United Kingdom engaged in independent fact-finding in more than 5 instances—the United Kingdom NCP undertook independent fact-finding in 10 of 17 Accepted Instances. France and Switzerland had the next highest number of instances including independent fact-finding, with 4 instances each. Looking at the proportion of Accepted Instances in which NCPs undertook independent fact-finding, among those that engaged in independent fact-finding more than once, Denmark took the lead at 100% (2 of 2) of Accepted Instances, Chile came in second with independent fact-finding in 75% (3 of 4) of Accepted Instances, and the United Kingdom in third at 59% (10 of 17) of Accepted Instances. Canada, Ireland, and New Zealand were the only NCPs that never undertook independent fact-finding despite having multiple Accepted Instances.

Figure I.3 – Chart of Mediation and Fact-Finding for Most Frequent Lead NCPs

Lead NCP	Total Accepted Instances	Mediation Offered	Mediation Offered - Percentage of Accepted Instances	Independent Fact-Finding Undertaken	Independent Fact-Finding - Percentage of Accepted Instances
1. United Kingdom	17	15	88%	10	59%
2. Netherlands	16	14	88%	2	13%
3. South Korea	7	5	71%	2	29%
4. Brazil	10	4	40%	3	30%
5. Australia	10	8	80%	3	30%
6. United States of America	9	7	78%	1	11%
7. Germany	8	5	63%	1	13%
8. Switzerland	9	8	89%	4	44%
9. France	9	8	89%	4	44%

- Reporting:** The Procedural Guidance requires NCPs to make an Initial Assessment of whether the issues raised in a Specific Instance merit further examination and to respond to the parties involved. However, not all NCPs publish these documents. Instead, many are made available only to the parties to the Specific Instance. Furthermore, in some cases, NCPs publish notices or interim statements that function in a similar role, but do not publish an initial assessment, or publish a final statement in lieu of an initial assessment (especially when rejecting a submission). Of 206 Specific Instances reviewed, including instances where a complaint has only been submitted, an Initial Assessment was published in 124 Specific Instances. When closing a Specific Instance, whether due to the inability of the parties to reach an agreement, because of successful mediation, or for any other reason, NCPs will typically issue a Final Statement that may include recommendations to the company identified in the Specific Instance regarding observance of the Guidelines. A Final Statement was issued in 116 of the 166 Specific Instances reviewed where the submission was rejected or withdrawn, or where the Specific Instance was concluded.

J. Lead NCP Structure

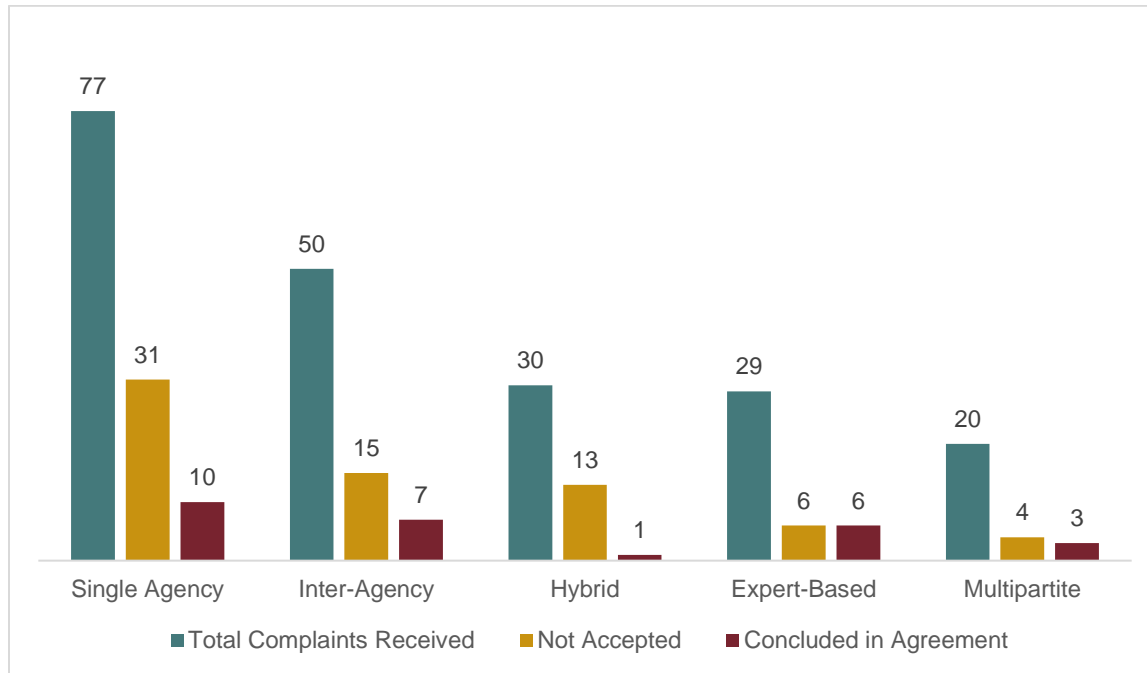
We considered whether the structure of NCPs had any impact on several aspects of their process: (1) case acceptance or rejection; (2) success in bringing the

parties to an agreement; and (3) use of independent fact-finding. To perform this analysis, we aggregated the data for each Lead NCP included by classification and assessed them on that basis.⁷⁴

- **Rejections by NCP Structure:** Single agency NCPs as a group had the highest total number of rejected cases. Hybrid and Single Agency NCPs had the highest ratios of rejected submissions at 43% (13 of 30 instances) and 40% (31 of 77 instances), respectively. Inter-agency NCPs were middle of the pack at 30% (15 of 50 instances). Expert-based and multipartite NCPs were lower at around 20% (6 of 29 instances, and 4 of 20 instances, respectively).
- **Resolution of Specific Instances Ending in Agreement:** We considered whether the parties to each concluded Specific Instance arrived at a resolution by way of the OECD NCP process, and compared the likelihood of that outcome based on NCP structure. Expert-based NCPs showed a higher chance of arriving at an agreement between the parties, with nearly 40% of concluded instances (6 of 16) resolved in this way. Single agency, inter-agency, and multipartite NCPs were aligned at approximately 28% (10 of 34 concluded instances, 7 of 25 concluded instances, and 3 of 11 concluded instances, respectively). Hybrid NCPs fell behind at approximately 10% (1 of 10 concluded instances).

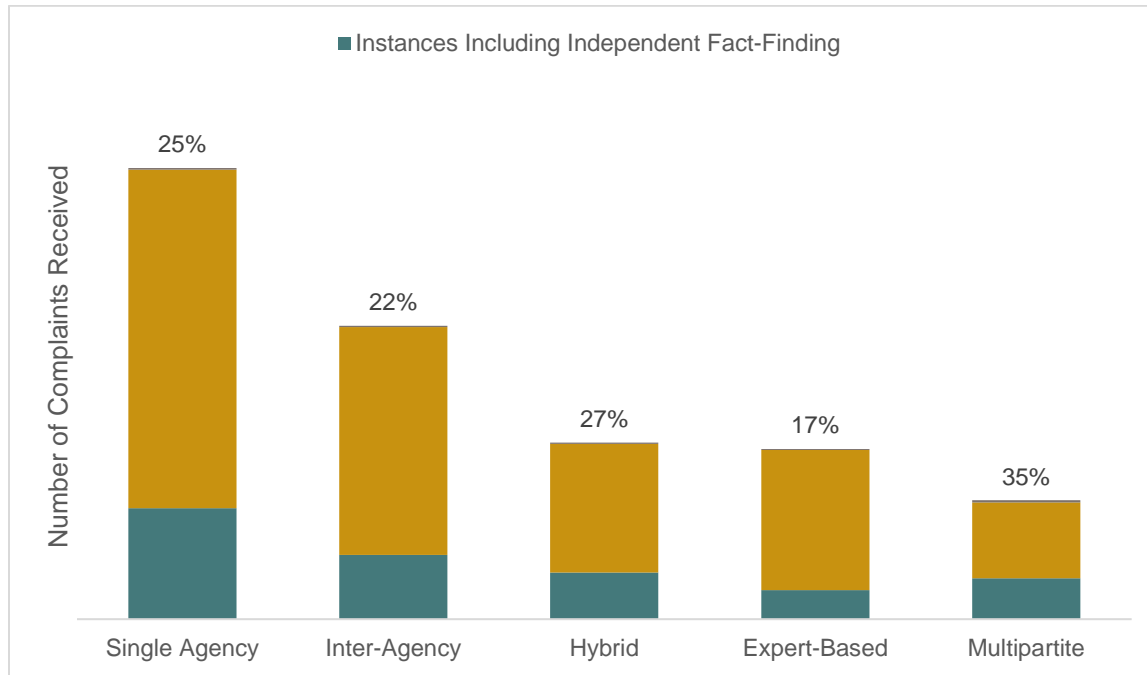
⁷⁴ Based on available OECD Guidance, we categorize existing NCPs as: 1) “Single agency NCP”: Argentina, Austria, Chile, Colombia, Estonia, Greece, Iceland, Ireland, Israel, Italy, Luxembourg, Mexico, New Zealand, Peru, Poland, Turkey, Ukraine, United Kingdom, United States; 2) “Inter-agency NCP”: Brazil, Canada, Costa Rica, Germany, Hungary, Japan, Morocco, Portugal, Romania, Slovenia, Spain, Switzerland; 3) “Multipartite NCP”: Belgium, Croatia, Czech Republic, Finland, France, Kazakhstan, Latvia, Slovak Republic, Sweden, Tunisia; 4) “Expert-Based NCP”: Denmark, Lithuania, Netherlands, Norway; 5) “Hybrid”: Australia, South Korea; 6) “Undetermined”: Bulgaria, Egypt, Jordan, Uruguay. See <https://mneguidelines.oecd.org/2020-Annual-Report-MNE-Guidelines-EN.pdf> (2020). The “Undetermined” NCPs did not receive any complaints, and therefore do not impact our analysis of the data.

Figure J.1 – Outcomes by NCP Structure



- **Independent Fact-Finding:** We considered the frequency with which NCPs engaged in independent fact-finding in each structure. Multipartite NCPs were significantly more likely to engage in independent fact-finding than other NCPs, at 35% (7 of 20 instances) of instances. Hybrid, single agency, and inter-agency NCPs were close together at around 25% (8 of 30 instances, 19 of 77 instances, and 11 of 50 instances, respectively). Expert-based NCPs engaged in independent fact-finding in just 17% (5 of 29) of instances.

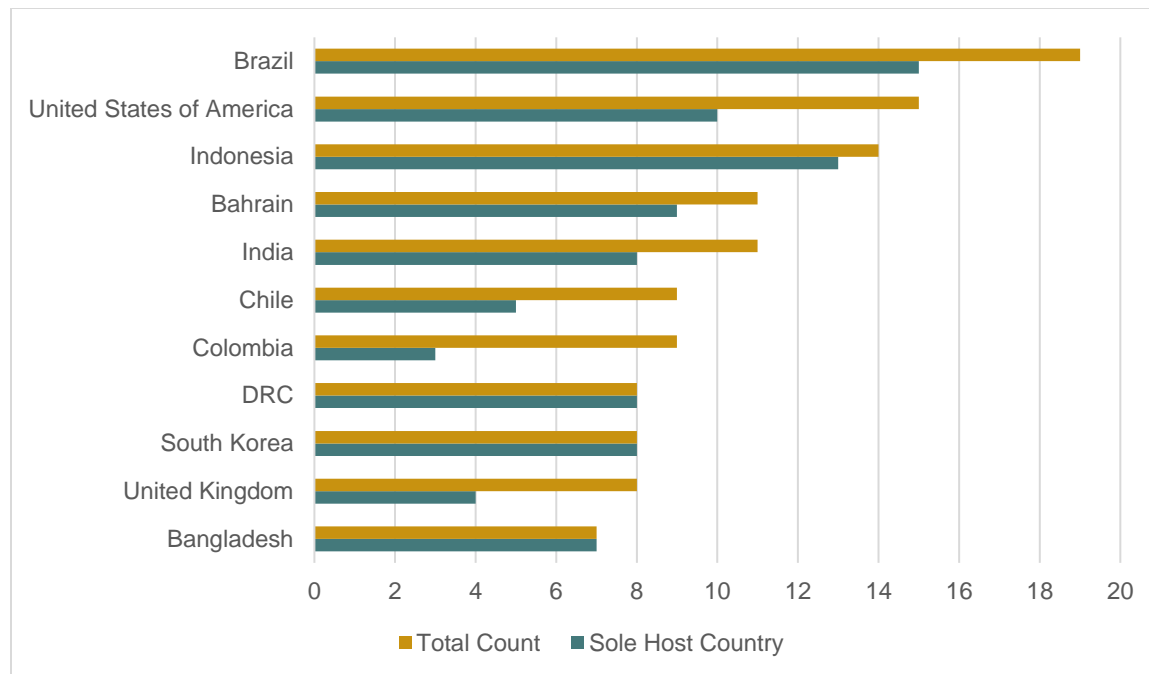
Figure J.2 – Percentage of Fact-Finding for Complaints Received by NCP Structure



K. Host Countries

Figure K.1 – Location of Alleged Misconduct

The location of the alleged misconduct was frequently different than the location where the complaint was filed. While certain of the countries on this list are also among the Most Frequent Human Rights NCPs, such as Brazil and the United States of America, other countries that have been the origin of a number of Chapter IV complaints are either non-adhering nations or have not acted as Lead NCP for those claims.



L. Conclusion

The key findings of the Report are presented in Section I.B of the Report.⁷⁵ Naturally, it is for each reader of the Report to draw their own conclusions and to determine the degree of usefulness of the Guidelines and the NCP process. It is our hope that this Report will help inform such considerations, shape future policy discussions, and spread awareness of this process within corporations and the legal profession.

We recognize that, in some respects, the ability to draw definite conclusions from a still-emerging body of law is limited. That is especially the case where, as here, the cases stem from many different jurisdictions and entail several distinct procedural and juridical forms, operating under a loose set of rules and principles. It is an imbalanced system, in the sense that there is significant divergence between the volume of cases seen in some NCPs versus others, and tremendous divergence in the types of claims and circumstances in which they may be brought. All of this transpires within a small sample size considering each NCP, such that it would be simple for case-to-case differences to frustrate attempts at pattern-seeking. This poses not only a challenge for observers, but also for the NCPs themselves, who must work to develop standard approaches and consistency in their actions.

Nonetheless, identifying early trends or phenomena from these cases may be a tool to help identify and shape the trajectory of the system over time, before practices

⁷⁵ See *supra*, pp. 2-3.

are deeply set. The data provided in this Report highlights that is important for NCPs to pursue “building and maintaining impartiality” as stressed by the OECD itself in a recent document.⁷⁶ Structure, timing, publication, mediation, and fact-finding decisions are all important elements of NCP operations, which should be measured for their impact on case flow over time. Where one option appears to be trending toward more constructive, timely outcomes, NCPs may wish to favor that approach, *ceteris paribus*, until a larger body of outcomes suggests otherwise.

In a similar vein, it would be interesting to survey the set of non-Chapter IV cases, to see whether jurisdictional and process characteristics are similar or divergent. Again, one can expect the lines to be blurred, given the frequency with which multiple Guidelines claims are brought in a single complaint, or with regard to a common set of facts. Nonetheless, seeing where parties have greater success or failure with different substantive approaches may help the OECD and stakeholders to prioritize areas for clarification, elaboration, and reform. Since human rights principles for businesses are an especially novel area of law, there may be lessons contained for human rights practitioners in the handling of longer-rooted areas of the guidelines.

Finally, we note that it is the intention of the authors of this Report to continue to follow Specific Instances brought under Chapter IV of the OECD Guidelines and to complement the Report with more focused data analysis and awareness-raising activities in the future. There may be additional work that can be performed with this dataset, given time, and findings that may be updated as cases progress in 2023 and beyond. The authors welcome all commentary and look forward to continuing dialogue on these matters.

⁷⁶ OECD (2022), Guide for National Contact Points on Building and Maintaining Impartiality, see <https://mneguidelines.oecd.org/guide-for-national-contact-points-on-building-and-maintaining-impartiality.pdf>

V. Appendices

To compile the data for this report, a team of Paul Hastings attorneys reviewed case materials available on the OECD Database, OECD Watch Complaints Database, and filings and publications by the NCPs. For each unique case identified, the reviewer assigned the case completed a questionnaire developed by Paul Hastings attorneys in conjunction with our in-house Practice Innovation and Legal Solutions team. As part of the project, the team also aggregated document filings by the parties and publications by the NCPs for each Specific Instance.

Following this analysis, the Paul Hastings team prepared this report with the aim of identifying procedural and substantive trends reflected in the sampled cases—for example, the types of cases being filed, how these cases are being handled, and which parties are commonly implicated. The report and database received feedback throughout the process from various stakeholders.

This report represents the outcome of months of work by dozens of Paul Hastings personnel who offered their time on a pro bono basis, and we encourage those with additional interest to contact our Business and Human Rights Practice Group leads for further information and to access the PH OECD Human Rights database.

A. Appendix A – Contributors

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Special thanks to
Michael Nghiem of
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assistance, along with
his colleagues Brian
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 The logo for LINEAL, featuring the word "LINEAL" in a bold, sans-serif font. The letter "I" is replaced by a horizontal bar with a green segment on the left and a purple segment on the right.

B. Appendix B – Select Data Fields and Explanations

Question	Description
Lead NCP	Lead NCP for a given complaint, based on OECD or OECD Watch database.
Supporting NCPs	Supporting NCP(s), if any, for a given complaint, based on OECD or OECD Watch database.
Filing Date	Date when complaint was filed with an NCP. Where unclear, priority was given to the date provided on the OECD database.
Host Country	Country where the alleged misconduct took place.
Industry/Sector	A list of industries was compiled based on the OECD and OECD Watch databases. Priority was given to the industries listed in the OECD database entry; where not available, the OECD Watch Database was considered, and in all cases, entries reflected the best judgement of the team member making the entry.
Status	Status of the complaint based on information available on the OECD and OECD Watch databases, or NCP website.
Details if not accepted	Reason provided by NCP for not accepting a Specific Instance.
Chapters	Chapters of the OECD Guidelines referenced by Complainant(s) as the basis for the Specific Instance. Specific paragraph data were collected only for Chapter IV.
Respondent(s)	All named entities noted as respondents by Complainant(s) or by the NCP.
Lead Complainant(s)	All entities or persons named as complainants in the Complaint or identified as such by the NCP.
Affected Peoples	Categories were derived from the OECD Watch Database, with “Individuals” added as a supplemental category to be used where appropriate as determined by the best judgement of the team member making the entry.
Date of Final Assessment / Date Rejected	Where available, the data was sourced from the filings, but where unclear, priority was given to the date provided on the OECD database. This category did not include the date of supplemental publications (e.g. NCP follow-up statements) beyond the final assessment.

Appendix B – Select Data Fields and Explanations

Question	Description
Final Assessment Published	Whether or not the NCP issued a final statement. In some cases, NCPs issued final statements when rejecting Specific Instances; in others, NCPs issued an initial assessment even when rejecting Specific Instances. The variety of NCP approaches resulted in inconsistent data.
Date of Alleged Harm (Approx.)	Date when Complainant(s) alleged that harm took place. Where harm was alleged to have occurred over period of time, the earliest date was recorded. If only a year was provided, January 1 of that year was recorded.
Date of initial assessment	Where available, the data was sourced from the filings, but where unclear, priority was given to the date provided on the OECD database.
Initial Assessment Published	Whether the NCP published an initial assessment, or made that initial assessment to the parties.
Mediation offered	Whether the NCP offered formal mediation to the parties, based on the filings and NCP publications.
Mediation accepted	Whether both parties accepted formal mediation, based on the filings and NCP publications.
Independent fact-finding by NCP	Whether the NCP engaged in independent fact-finding (e.g., sent personnel to the host country; conducted interviews of the parties; looked to third party research; etc.) or based its assessment(s) exclusively on information provided by the parties.
Complainant Type	Categories included “Business,” “Individuals,” “NGO,” “Trade Union,” and “Other interested parties,” and were distilled based on review of numerous complaints. Complainant type was identified based on review of the filings or secondary research where necessary.
Complainant location at time of filing	Country where Complainant is registered (if an entity) or where harm occurred (for an affected individual).
Government involvement alleged	Whether complaint alleges involvement of government officials in facilitating or perpetrating alleged harms.
Respondent(s) Country	Country where Respondent is domiciled (i.e. country where incorporated and/or where principal place of business is located).
Agreement reached between parties	Whether the parties reached an agreement during the initial NCP process. Any other/subsequent agreement,

Appendix B – Select Data Fields and Explanations

Question	Description
	even if reached through the NCP, was noted in “Alternative outcomes between the parties.”
Alternative outcomes between the parties	Any outcome reached outside of the initial NCP process (e.g. direct mediation, settlement, etc.).
Did parties attempt to resolve by different means before utilizing NCP mechanism?	Whether the parties attempted to resolve the dispute prior to the complaint being filed with the NCP.

C. Appendix C – Available NCP Websites

Argentina: <https://cancilleria.gob.ar/en/initiatives/ancp>

Australia: <https://ausncp.gov.au/>

Austria: <https://www.bmaw.gv.at/en/Topics/International/OECD-Guidelines-for-Multinational-Enterprises-and-the-Austrian-NCP.html>

Belgium: <https://economie.fgov.be/en/themes/enterprises/oecd-guidelines-multinational/national-contact-point-ncp>

Bulgaria: <https://www.mi.government.bg/en/>

Brazil: <https://www.gov.br/produtividade-e-comercio-exterior/pt-br/assuntos/camex/pcn>

Canada: https://www.international.gc.ca/trade-agreements-accords-commerciaux/ncp-pcn/index.aspx?lang=eng&menu_id=1&menu=R

Chile: <https://www.subrei.gob.cl/ejes-de-trabajo/cer/punto-nacional-de-contacto/>

Colombia: <https://www.mincit.gov.co/mincomercioexterior/temas-de-interes/punto-nacional-de-contacto-pnc-de-las-directrices>

Costa Rica: <https://www.comex.go.cr/punto-nacional-de-contacto>

Czech Republic: <https://www.mpo.cz/dokument75865.html>

Croatia: <https://investcroatia.gov.hr/en/oecd-rbc-national-contact-point/>

Denmark: <https://ncp-danmark.dk/>

Estonia: <https://ttja.ee/en/private-client/consumer-rights/consumer-rights-and-obligations/national-contact-point-responsible>

Finland: <https://tem.fi/en/handling-specific-instances-of-the-oecd-guidelines-for-multinational-enterprises>

France: <https://www.tresor.economie.gouv.fr/tresor-international/pcn-france>

Germany:
<https://www.bmwk.de/Redaktion/DE/Textsammlungen/Aussenwirtschaft/nationale-kontaktstelle-nks.html>

Hungary: <https://oecdmnkp.hu/en>

Iceland: <https://www.government.is/topics/business-and-industry/business/>

Ireland: <https://enterprise.gov.ie/en/what-we-do/trade-investment/oecd-guidelines-ncp/>

Israel: <https://www.gov.il/he/Departments/Guides/proper-business-conduct-ncp?chapterIndex=2>

Italy: <https://pcnitalia.mise.gov.it/index.php/it/>

Japan: <https://www.mofa.go.jp/policy/economy/oecd/index.html>

Luxembourg: <https://cdc.gouvernement.lu/fr/service/attributions/point-contact-national-luxembourgeois.html>

Mexico: <https://www.gob.mx/se/acciones-y-programas/punto-nacional-de-contacto?state=published>

Netherlands: <https://www.oesorichtlijnen.nl/>

New Zealand: <https://www.mbie.govt.nz/business-and-employment/business/trade-and-tariffs/oecd-guidelines-for-multi-national-enterprises>

Norway: <https://www.responsiblebusiness.no/en/>

Peru: <https://www.investinperu.pe/es/clima/punto-de-contacto-de-la-ocde>

Poland: <https://www.gov.pl/web/fundusze-regiony/oecd-national-contact-point>

Portugal: <https://www.dgae.gov.pt/servicos/sustentabilidade-empresarial/ponto-de-contacto-nacional-para-as-diretrizes-da-ocde-para-as-empresas-multinacionais.aspx>

Romania: <http://www.imm.gov.ro/ro/mmaca/investitii-straine/>

Slovak Republic: <https://www.economy.gov.sk/obchod/multilateralne-obchodne-vztahy/oecd/narodne-kontaktne-miesto-pre-smernice-oecd-pre-nadnarodne-spolocnosti>

Slovenia: <https://www.gov.si/teme/slovenska-nacionalna-tocka-oecd/>

South Korea: <http://www.ncp.or.kr/jsp/kncp/kor/main/main.jsp>

Spain: <https://comercio.gob.es/InversionesExteriores/PNCLD/Paginas/default.aspx>

Sweden: <https://www.government.se/government-policy/enterprise-and-industry/national-contact-points2/>

Switzerland:

https://www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/nachhaltigkeit_unternehmen/nkp.html

Turkey: <https://www.sanayi.gov.tr/anlasmalar/utn-ncp>

Ukraine: <https://ncp.gov.ua/?lang=en>

United Kingdom: <https://www.gov.uk/government/groups/uk-national-contact-point-for-the-organisation-for-economic-co-operation-and-development-guidelines>

United States: <https://www.state.gov/u-s-national-contact-point-for-the-oecd-guidelines-for-multinational-enterprises/>

Uruguay: <https://www.gub.uy/ministerio-economia-finanzas/politica-comercial/punto-nacional-contacto>

*D. Appendix D – Text of Chapter IV of the OECD Guidelines for
Multinational Enterprises*

States have the duty to protect human rights. Enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:

1. Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.
2. Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.
3. Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.
4. Have a policy commitment to respect human rights.
5. Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.
6. Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.

i. Commentary on Human Rights

36. This chapter opens with a chapeau that sets out the framework for the specific recommendations concerning enterprises' respect for human rights. It draws upon the United Nations Framework for Business and Human Rights 'Protect, Respect and Remedy' and is in line with the Guiding Principles for its Implementation.
37. The chapeau and the first paragraph recognise that States have the duty to protect human rights, and that enterprises, regardless of their size, sector, operational context, ownership and structure, should respect human rights wherever they operate. Respect for human rights is the global standard of expected conduct for enterprises independently of States' abilities and/or willingness to fulfil their human rights obligations, and does not diminish those obligations.
38. A State's failure either to enforce relevant domestic laws, or to implement international human rights obligations or the fact that it may act contrary to

such laws or international obligations does not diminish the expectation that enterprises respect human rights. In countries where domestic laws and regulations conflict with internationally recognized human rights, enterprises should seek ways to honour them to the fullest extent which does not place them in violation of domestic law, consistent with paragraph 2 of the Chapter on Concepts and Principles.

39. In all cases and irrespective of the country or specific context of enterprises' operations, reference should be made at a minimum to the internationally recognised human rights expressed in the International Bill of Human Rights, consisting of the Universal Declaration of Human Rights and the main instruments through which it has been codified: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and to the principles concerning fundamental rights set out in the 1998 International Labour Organisation Declaration on Fundamental Principles and Rights at Work.
40. Enterprises can have an impact on virtually the entire spectrum of internationally recognised human rights. In practice, some human rights may be at greater risk than others in particular industries or contexts, and therefore will be the focus of heightened attention. However, situations may change, so all rights should be the subject of periodic review. Depending on circumstances, enterprises may need to consider additional standards. For instance, enterprises should respect the human rights of individuals belonging to specific groups or populations that require particular attention, where they may have adverse human rights impacts on them. In this connection, United Nations instruments have elaborated further on the rights of indigenous peoples; persons belonging to national or ethnic, religious and linguistic minorities; women; children; persons with disabilities; and migrant workers and their families. Moreover, in situations of armed conflict enterprises should respect the standards of international humanitarian law, which can help enterprises avoid the risks of causing or contributing to adverse impacts when operating in such difficult environments.
41. In paragraph 1, addressing actual and potential adverse human rights impacts consists of taking adequate measures for their identification, prevention, where possible, and mitigation of potential human rights impacts, remediation of actual impacts, and accounting for how the adverse human rights impacts are addressed. The term 'infringing' refers to adverse impacts that an enterprise may have on the human rights of individuals.
42. Paragraph 2 recommends that enterprises avoid causing or contributing to adverse human rights impacts through their own activities and address such impacts when they occur. 'Activities' can include both actions and omissions. Where an enterprise causes or may cause an adverse human

rights impact, it should take the necessary steps to cease or prevent the impact. Where an enterprise contributes or may contribute to such an impact, it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible. Leverage is considered to exist where the enterprise has the ability to effect change in the practices of an entity that cause adverse human rights impacts.

43. Paragraph 3 addresses more complex situations where an enterprise has not contributed to an adverse human rights impact, but that impact is nevertheless directly linked to its operations, products or services by its business relationship with another entity. Paragraph 3 is not intended to shift responsibility from the entity causing an adverse human rights impact to the enterprise with which it has a business relationship. Meeting the expectation in paragraph 3 would entail an enterprise, acting alone or in co-operation with other entities, as appropriate, to use its leverage to influence the entity causing the adverse human rights impact to prevent or mitigate that impact. 'Business relationships' include relationships with business partners, entities in its supply chain, and any other non-State or State entity directly linked to its business operations, products or services. Among the factors that will enter into the determination of the appropriate action in such situations are the enterprise's leverage over the entity concerned, how crucial the relationship is to the enterprise, the severity of the impact, and whether terminating the relationship with the entity itself would have adverse human rights impacts.
44. Paragraph 4 recommends that enterprises express their commitment to respect human rights through a statement of policy that: (i) is approved at the most senior level of the enterprise; (ii) is informed by relevant internal and/or external expertise; (iii) stipulates the enterprise's human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services; (iv) is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties; (v) is reflected in operational policies and procedures necessary to embed it throughout the enterprise.
45. Paragraph 5 recommends that enterprises carry out human rights due diligence. The process entails assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses as well as communicating how impacts are addressed. Human rights due diligence can be included within broader enterprise risk management systems provided that it goes beyond simply identifying and managing material risks to the enterprise itself to include the risks to rights-holders. It is an on-going exercise, recognising that human rights risks may change over time as the enterprise's operations and operating context evolve. Complementary guidance on due diligence, including in relation to supply chains, and appropriate responses to risks arising in

supply chains are provided under paragraphs A.10 to A.12 of the Chapter on General Policies and their Commentaries.

46. When enterprises identify through their human rights due diligence process or other means that they have caused or contributed to an adverse impact, the Guidelines recommend that enterprises have processes in place to enable remediation. Some situations require cooperation with judicial or State-based non-judicial mechanisms. In others, operational-level grievance mechanisms for those potentially impacted by enterprises' activities can be an effective means of providing for such processes when they meet the core criteria of: legitimacy, accessibility, predictability, equitability, compatibility with the Guidelines and transparency, and are based on dialogue and engagement with a view to seeking agreed solutions. Such mechanisms can be administered by an enterprise alone or in collaboration with other stakeholders and can be a source of continuous learning. Operational-level grievance mechanisms should not be used to undermine the role of trade unions in addressing labour-related disputes, nor should such mechanisms preclude access to judicial or non-judicial grievance mechanisms, including the National Contact Points under the Guidelines.

E. *Appendix E – Text of the Remaining Chapters of the OECD Guidelines*⁷⁷

i. Preface

1. The OECD Guidelines for Multinational Enterprises (the Guidelines) are recommendations addressed by governments to multinational enterprises. The Guidelines aim to ensure that the operations of these enterprises are in harmony with government policies, to strengthen the basis of mutual confidence between enterprises and the societies in which they operate, to help improve the foreign investment climate and to enhance the contribution to sustainable development made by multinational enterprises. The Guidelines are part of the OECD Declaration on International Investment and Multinational Enterprises the other elements of which relate to national treatment, conflicting requirements on enterprises, and international investment incentives and disincentives. The Guidelines provide voluntary principles and standards for responsible business conduct consistent with applicable laws and internationally recognised standards. However, the countries adhering to the Guidelines make a binding commitment to implement them in accordance with the Decision of the OECD Council on the OECD Guidelines for Multinational Enterprises. Furthermore, matters covered by the Guidelines may also be the subject of national law and international commitments.
2. International business has experienced far-reaching structural change and the Guidelines themselves have evolved to reflect these changes. With the rise of service and knowledge-intensive industries and the expansion of the Internet economy, service and technology enterprises are playing an increasingly important role in the international marketplace. Large enterprises still account for a major share of international investment, and there is a trend toward large-scale international mergers. At the same time, foreign investment by small- and medium-sized enterprises has also increased and these enterprises now play a significant role on the international scene. Multinational enterprises, like their domestic counterparts, have evolved to encompass a broader range of business arrangements and organisational forms. Strategic alliances and closer relations with suppliers and contractors tend to blur the boundaries of the enterprise.
3. The rapid evolution in the structure of multinational enterprises is also reflected in their operations in the developing world, where foreign direct investment has grown rapidly. In developing countries, multinational enterprises have diversified beyond primary production and extractive industries into manufacturing, assembly, domestic market development

⁷⁷The full text of the Guidelines, including the Commentaries, may be accessed at <http://mneguidelines.oecd.org/guidelines/>.

and services. Another key development is the emergence of multinational enterprises based in developing countries as major international investors.

4. The activities of multinational enterprises, through international trade and investment, have strengthened and deepened the ties that join the countries and regions of the world. These activities bring substantial benefits to home and host countries. These benefits accrue when multinational enterprises supply the products and services that consumers want to buy at competitive prices and when they provide fair returns to suppliers of capital. Their trade and investment activities contribute to the efficient use of capital, technology and human and natural resources. They facilitate the transfer of technology among the regions of the world and the development of technologies that reflect local conditions. Through both formal training and on-the-job learning enterprises also promote the development of human capital and creating employment opportunities in host countries.
5. The nature, scope and speed of economic changes have presented new strategic challenges for enterprises and their stakeholders. Multinational enterprises have the opportunity to implement best practice policies for sustainable development that seek to ensure coherence between economic, environmental and social objectives. The ability of multinational enterprises to promote sustainable development is greatly enhanced when trade and investment are conducted in a context of open, competitive and appropriately regulated markets.
6. Many multinational enterprises have demonstrated that respect for high standards of business conduct can enhance growth. Today's competitive forces are intense and multinational enterprises face a variety of legal, social and regulatory settings. In this context, some enterprises may be tempted to neglect appropriate principles and standards of conduct in an attempt to gain undue competitive advantage. Such practices by the few may call into question the reputation of the many and may give rise to public concerns.
7. Many enterprises have responded to these public concerns by developing internal programmes, guidance and management systems that underpin their commitment to good corporate citizenship, good practices and good business and employee conduct. Some of them have called upon consulting, auditing and certification services, contributing to the accumulation of expertise in these areas. Enterprises have also promoted social dialogue on what constitutes responsible business conduct and have worked with stakeholders, including in the context of multi-stakeholder initiatives, to develop guidance for responsible business conduct. The Guidelines clarify the shared expectations for business conduct of the governments adhering to them and provide a point of reference for enterprises and for other stakeholders. Thus, the Guidelines

both complement and reinforce private efforts to define and implement responsible business conduct.

8. Governments are co-operating with each other and with other actors to strengthen the international legal and policy framework in which business is conducted. The start of this process can be dated to the work of the International Labour Organisation in the early twentieth century. The adoption by the United Nations in 1948 of the Universal Declaration of Human Rights was another landmark event. It was followed by the ongoing development of standards relevant for many areas of responsible business conduct – a process that continues to this day. The OECD has contributed in important ways to this process through the development of standards covering such areas as the environment, the fight against corruption, consumer interests, corporate governance and taxation.
9. The common aim of the governments adhering to the Guidelines is to encourage the positive contributions that multinational enterprises can make to economic, environmental and social progress and to minimize the difficulties to which their various operations may give rise. In working towards this goal, governments find themselves in partnership with the many businesses, trade unions and other non-governmental organisations that are working in their own ways toward the same end. Governments can help by providing effective domestic policy frameworks that include stable macroeconomic policy, nondiscriminatory treatment of enterprises, appropriate regulation and prudential supervision, an impartial system of courts and law enforcement and efficient and honest public administration. Governments can also help by maintaining and promoting appropriate standards and policies in support of sustainable development and by engaging in ongoing reforms to ensure that public sector activity is efficient and effective. Governments adhering to the Guidelines are committed to continuous improvement of both domestic and international policies with a view to improving the welfare and living standards of all people.

- ii. Concepts and Principles

1. The Guidelines are recommendations jointly addressed by governments to multinational enterprises. They provide principles and standards of good practice consistent with applicable laws and internationally recognised standards. Observance of the Guidelines by enterprises is voluntary and not legally enforceable. Nevertheless, some matters covered by the Guidelines may also be regulated by national law or international commitments.
2. Obeying domestic laws is the first obligation of enterprises. The Guidelines are not a substitute for nor should they be considered to override domestic law and regulation. While the Guidelines extend

beyond the law in many cases, they should not and are not intended to place an enterprise in situations where it faces conflicting requirements. However, in countries where domestic laws and regulations conflict with the principles and standards of the Guidelines, enterprises should seek ways to honour such principles and standards to the fullest extent which does not place them in violation of domestic law.

3. Since the operations of multinational enterprises extend throughout the world, international co-operation in this field should extend to all countries. Governments adhering to the Guidelines encourage the enterprises operating on their territories to observe the Guidelines wherever they operate, while taking into account the particular circumstances of each host country.
4. A precise definition of multinational enterprises is not required for the purposes of the Guidelines. These enterprises operate in all sectors of the economy. They usually comprise companies or other entities established in more than one country and so linked that they may coordinate their operations in various ways. While one or more of these entities may be able to exercise a significant influence over the activities of others, their degree of autonomy within the enterprise may vary widely from one multinational enterprise to another. Ownership may be private, State or mixed. The Guidelines are addressed to all the entities within the multinational enterprise (parent companies and/or local entities). According to the actual distribution of responsibilities among them, the different entities are expected to co-operate and to assist one another to facilitate observance of the Guidelines.
5. The Guidelines are not aimed at introducing differences of treatment between multinational and domestic enterprises; they reflect good practice for all. Accordingly, multinational and domestic enterprises are subject to the same expectations in respect of their conduct wherever the Guidelines are relevant to both.
6. Governments wish to encourage the widest possible observance of the Guidelines. While it is acknowledged that small- and medium-sized enterprises may not have the same capacities as larger enterprises, governments adhering to the Guidelines nevertheless encourage them to observe the Guidelines' recommendations to the fullest extent possible.
7. Governments adhering to the Guidelines should not use them for protectionist purposes nor use them in a way that calls into question the comparative advantage of any country where multinational enterprises invest.
8. Governments have the right to prescribe the conditions under which multinational enterprises operate within their jurisdictions, subject to

international law. The entities of a multinational enterprise located in various countries are subject to the laws applicable in these countries. When multinational enterprises are subject to conflicting requirements by adhering countries or third countries, the governments concerned are encouraged to co-operate in good faith with a view to resolving problems that may arise.

9. Governments adhering to the Guidelines set them forth with the understanding that they will fulfil their responsibilities to treat enterprises equitably and in accordance with international law and with their contractual obligations.
10. The use of appropriate international dispute settlement mechanisms, including arbitration, is encouraged as a means of facilitating the resolution of legal problems arising between enterprises and host country governments.
11. Governments adhering to the Guidelines will implement them and encourage their use. They will establish National Contact Points that promote the Guidelines and act as a forum for discussion of all matters relating to the Guidelines. The adhering Governments will also participate in appropriate review and consultation procedures to address issues concerning interpretation of the Guidelines in a changing world.

iii. General Policies

Enterprises should take fully into account established policies in the countries in which they operate, and consider the views of other stakeholders. In this regard:

A. Enterprises should:

1. Contribute to economic, environmental and social progress with a view to achieving sustainable development.
2. Respect the internationally recognised human rights of those affected by their activities.
3. Encourage local capacity building through close co-operation with the local community, including business interests, as well as developing the enterprise's activities in domestic and foreign markets, consistent with the need for sound commercial practice.
4. Encourage human capital formation, in particular by creating employment opportunities and facilitating training opportunities for employees.
5. Refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to human rights, environmental, health, safety, labour, taxation, financial incentives, or other issues.

6. Support and uphold good corporate governance principles and develop and apply good corporate governance practices, including throughout enterprise groups.
7. Develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate.
8. Promote awareness of and compliance by workers employed by multinational enterprises with respect to company policies through appropriate dissemination of these policies, including through training programmes.
9. Refrain from discriminatory or disciplinary action against workers who make bona fide reports to management or, as appropriate, to the competent public authorities, on practices that contravene the law, the Guidelines or the enterprise's policies.
10. Carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts as described in paragraphs 11 and 12, and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation.
11. Avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur.
12. Seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship.
13. In addition to addressing adverse impacts in relation to matters covered by the Guidelines, encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of responsible business conduct compatible with the Guidelines.
14. Engage with relevant stakeholders in order to provide meaningful opportunities for their views to be taken into account in relation to planning and decision making for projects or other activities that may significantly impact local communities.
15. Abstain from any improper involvement in local political activities.

- B. Enterprises are encouraged to:
1. Support, as appropriate to their circumstances, cooperative efforts in the appropriate fora to promote Internet Freedom through respect of freedom of expression, assembly and association online.
 2. Engage in or support, where appropriate, private or multi-stakeholder initiatives and social dialogue on responsible supply chain management while ensuring that these initiatives take due account of their social and economic effects on developing countries and of existing internationally recognised standards.

III. Disclosure

1. Enterprises should ensure that timely and accurate information is disclosed on all material matters regarding their activities, structure, financial situation, performance, ownership and governance. This information should be disclosed for the enterprise as a whole, and, where appropriate, along business lines or geographic areas. Disclosure policies of enterprises should be tailored to the nature, size and location of the enterprise, with due regard taken of costs, business confidentiality and other competitive concerns.
2. Disclosure policies of enterprises should include, but not be limited to, material information on:
 - a) the financial and operating results of the enterprise;
 - b) enterprise objectives;
 - c) major share ownership and voting rights, including the structure of a group of enterprises and intra-group relations, as well as control enhancing mechanisms;
 - d) remuneration policy for members of the board and key executives, and information about board members, including qualifications, the selection process, other enterprise directorships and whether each board member is regarded as independent by the board;
 - e) related party transactions;
 - f) foreseeable risk factors;
 - g) issues regarding workers and other stakeholders;
 - h) governance structures and policies, in particular, the content of any corporate governance code or policy and its implementation process.

3. Enterprises are encouraged to communicate additional information that could include:
 - a) value statements or statements of business conduct intended for public disclosure including, depending on its relevance for the enterprise's activities, information on the enterprise's policies relating to matters covered by the Guidelines;
 - b) policies and other codes of conduct to which the enterprise subscribes, their date of adoption and the countries and entities to which such statements apply;
 - c) its performance in relation to these statements and codes;
 - d) information on internal audit, risk management and legal compliance systems;
 - e) information on relationships with workers and other stakeholders.
4. Enterprises should apply high quality standards for accounting, and financial as well as non-financial disclosure, including environmental and social reporting where they exist. The standards or policies under which information is compiled and published should be reported. An annual audit should be conducted by an independent, competent and qualified auditor in order to provide an external and objective assurance to the board and shareholders that the financial statements fairly represent the financial position and performance of the enterprise in all material respects.

V. Employment and Industrial Relations

Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices and applicable international labour standards:

1.
 - a) Respect the right of workers employed by the multinational enterprise to establish or join trade unions and representative organisations of their own choosing.
 - b) Respect the right of workers employed by the multinational enterprise to have trade unions and representative organisations of their own choosing recognised for the purpose of collective bargaining, and engage in constructive negotiations, either individually or through employers' associations, with such representatives with a view to reaching agreements on terms and conditions of employment.

- c) Contribute to the effective abolition of child labour, and take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.
 - d) Contribute to the elimination of all forms of forced or compulsory labour and take adequate steps to ensure that forced or compulsory labour does not exist in their operations.
 - e) Be guided throughout their operations by the principle of equality of opportunity and treatment in employment and not discriminate against their workers with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin, or other status, unless selectivity concerning worker characteristics furthers established governmental policies which specifically promote greater equality of employment opportunity or relates to the inherent requirements of a job.
- 2.
 - a) Provide such facilities to workers' representatives as may be necessary to assist in the development of effective collective agreements.
 - b) Provide information to workers' representatives which is needed for meaningful negotiations on conditions of employment.
 - c) Provide information to workers and their representatives which enables them to obtain a true and fair view of the performance of the entity or, where appropriate, the enterprise as a whole.
 - 3. Promote consultation and co-operation between employers and workers and their representatives on matters of mutual concern.
 - 4.
 - a) Observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country.
 - b) When multinational enterprises operate in developing countries, where comparable employers may not exist, provide the best possible wages, benefits and conditions of work, within the framework of government policies. These should be related to the economic position of the enterprise, but should be at least adequate to satisfy the basic needs of the workers and their families.
 - c) Take adequate steps to ensure occupational health and safety in their operations.

5. In their operations, to the greatest extent practicable, employ local workers and provide training with a view to improving skill levels, in co-operation with worker representatives and, where appropriate, relevant governmental authorities.
6. In considering changes in their operations which would have major employment effects, in particular in the case of the closure of an entity involving collective lay-offs or dismissals, provide reasonable notice of such changes to representatives of the workers in their employment and their organisations, and, where appropriate, to the relevant governmental authorities, and co-operate with the worker representatives and appropriate governmental authorities so as to mitigate to the maximum extent practicable adverse effects. In light of the specific circumstances of each case, it would be appropriate if management were able to give such notice prior to the final decision being taken. Other means may also be employed to provide meaningful co-operation to mitigate the effects of such decisions.
7. In the context of bona fide negotiations with workers' representatives on conditions of employment, or while workers are exercising a right to organise, not threaten to transfer the whole or part of an operating unit from the country concerned nor transfer workers from the enterprises' component entities in other countries in order to influence unfairly those negotiations or to hinder the exercise of a right to organise.
8. Enable authorised representatives of the workers in their employment to negotiate on collective bargaining or labour-management relations issues and allow the parties to consult on matters of mutual concern with representatives of management who are authorised to take decisions on these matters.

VI. Environment

Enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards, take due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development. In particular, enterprises should:

1. Establish and maintain a system of environmental management appropriate to the enterprise, including:
 - a) collection and evaluation of adequate and timely information regarding the environmental, health, and safety impacts of their activities;

- b) establishment of measurable objectives and, where appropriate, targets for improved environmental performance and resource utilisation, including periodically reviewing the continuing relevance of these objectives; where appropriate, targets should be consistent with relevant national policies and international environmental commitments; and
 - c) regular monitoring and verification of progress toward environmental, health, and safety objectives or targets.
 2. Taking into account concerns about cost, business confidentiality, and the protection of intellectual property rights:
 - a) provide the public and workers with adequate, measureable and verifiable (where applicable) and timely information on the potential environmental, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance; and
 - b) engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation.
 3. Assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle with a view to avoiding or, when unavoidable, mitigating them. Where these proposed activities may have significant environmental, health, or safety impacts, and where they are subject to a decision of a competent authority, prepare an appropriate environmental impact assessment.
 4. Consistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account human health and safety, not use the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent or minimise such damage.
 5. Maintain contingency plans for preventing, mitigating, and controlling serious environmental and health damage from their operations, including accidents and emergencies; and mechanisms for immediate reporting to the competent authorities.
 6. Continually seek to improve corporate environmental performance, at the level of the enterprise and, where appropriate, of its supply chain, by encouraging such activities as:

- a) adoption of technologies and operating procedures in all parts of the enterprise that reflect standards concerning environmental performance in the best performing part of the enterprise;
 - b) development and provision of products or services that have no undue environmental impacts; are safe in their intended use; reduce greenhouse gas emissions; are efficient in their consumption of energy and natural resources; can be reused, recycled, or disposed of safely;
 - c) promoting higher levels of awareness among customers of the environmental implications of using the products and services of the enterprise, including, by providing accurate information on their products (for example, on greenhouse gas emissions, biodiversity, resource efficiency, or other environmental issues); and
 - d) exploring and assessing ways of improving the environmental performance of the enterprise over the longer term, for instance by developing strategies for emission reduction, efficient resource utilisation and recycling, substitution or reduction of use of toxic substances, or strategies on biodiversity.
7. Provide adequate education and training to workers in environmental health and safety matters, including the handling of hazardous materials and the prevention of environmental accidents, as well as more general environmental management areas, such as environmental impact assessment procedures, public relations, and environmental technologies.
 8. Contribute to the development of environmentally meaningful and economically efficient public policy, for example, by means of partnerships or initiatives that will enhance environmental awareness and protection.

VII. Combating Bribery, Bribe Solicitation and Extortion

Enterprises should not, directly or indirectly, offer, promise, give, or demand a bribe or other undue advantage to obtain or retain business or other improper advantage. Enterprises should also resist the solicitation of bribes and extortion. In particular, enterprises should:

1. Not offer, promise or give undue pecuniary or other advantage to public officials or the employees of business partners. Likewise, enterprises should not request, agree to or accept undue pecuniary or other advantage from public officials or the employees of business partners. Enterprises should not use third parties such as agents and other intermediaries, consultants, representatives, distributors, consortia, contractors and suppliers and joint venture partners for channelling undue pecuniary or other advantages to public officials, or to employees of their business partners or to their relatives or business associates.

2. Develop and adopt adequate internal controls, ethics and compliance programmes or measures for preventing and detecting bribery, developed on the basis of a risk assessment addressing the individual circumstances of an enterprise, in particular the bribery risks facing the enterprise (such as its geographical and industrial sector of operation). These internal controls, ethics and compliance programmes or measures should include a system of financial and accounting procedures, including a system of internal controls, reasonably designed to ensure the maintenance of fair and accurate books, records, and accounts, to ensure that they cannot be used for the purpose of bribing or hiding bribery. Such individual circumstances and bribery risks should be regularly monitored and re-assessed as necessary to ensure the enterprise's internal controls, ethics and compliance programme or measures are adapted and continue to be effective, and to mitigate the risk of enterprises becoming complicit in bribery, bribe solicitation and extortion.
3. Prohibit or discourage, in internal company controls, ethics and compliance programmes or measures, the use of small facilitation payments, which are generally illegal in the countries where they are made, and, when such payments are made, accurately record these in books and financial records.
4. Ensure, taking into account the particular bribery risks facing the enterprise, properly documented due diligence pertaining to the hiring, as well as the appropriate and regular oversight of agents, and that remuneration of agents is appropriate and for legitimate services only. Where relevant, a list of agents engaged in connection with transactions with public bodies and State-owned enterprises should be kept and made available to competent authorities, in accordance with applicable public disclosure requirements.
5. Enhance the transparency of their activities in the fight against bribery, bribe solicitation and extortion. Measures could include making public commitments against bribery, bribe solicitation and extortion, and disclosing the management systems and the internal controls, ethics and compliance programmes or measures adopted by enterprises in order to honour these commitments. Enterprises should also foster openness and dialogue with the public so as to promote its awareness of and cooperation with the fight against bribery, bribe solicitation and extortion.
6. Promote employee awareness of and compliance with company policies and internal controls, ethics and compliance programmes or measures against bribery, bribe solicitation and extortion through appropriate dissemination of such policies, programmes or measures and through training programmes and disciplinary procedures.

7. Not make illegal contributions to candidates for public office or to political parties or to other political organisations. Political contributions should fully comply with public disclosure requirements and should be reported to senior management.

VIII. Consumer Interests

When dealing with consumers, enterprises should act in accordance with fair business, marketing and advertising practices and should take all reasonable steps to ensure the quality and reliability of the goods and services that they provide. In particular, they should:

1. Ensure that the goods and services they provide meet all agreed or legally required standards for consumer health and safety, including those pertaining to health warnings and safety information.
2. Provide accurate, verifiable and clear information that is sufficient to enable consumers to make informed decisions, including information on the prices and, where appropriate, content, safe use, environmental attributes, maintenance, storage and disposal of goods and services. Where feasible this information should be provided in a manner that facilitates consumers' ability to compare products.
3. Provide consumers with access to fair, easy to use, timely and effective non-judicial dispute resolution and redress mechanisms, without unnecessary cost or burden.
4. Not make representations or omissions, nor engage in any other practices, that are deceptive, misleading, fraudulent or unfair.
5. Support efforts to promote consumer education in areas that relate to their business activities, with the aim of, inter alia, improving the ability of consumers to: i) make informed decisions involving complex goods, services and markets, ii) better understand the economic, environmental and social impact of their decisions and iii) support sustainable consumption.
6. Respect consumer privacy and take reasonable measures to ensure the security of personal data that they collect, store, process or disseminate
7. Co-operate fully with public authorities to prevent and combat deceptive marketing practices (including misleading advertising and commercial fraud) and to diminish or prevent serious threats to public health and safety or to the environment deriving from the consumption, use or disposal of their goods and services.

8. Take into consideration, in applying the above principles, i) the needs of vulnerable and disadvantaged consumers and ii) the specific challenges that e-commerce may pose for consumers.

IX. Science and Technology

Enterprises should:

1. Endeavour to ensure that their activities are compatible with the science and technology (S&T) policies and plans of the countries in which they operate and as appropriate contribute to the development of local and national innovative capacity.
2. Adopt, where practicable in the course of their business activities, practices that permit the transfer and rapid diffusion of technologies and know-how, with due regard to the protection of intellectual property rights.
3. When appropriate, perform science and technology development work in host countries to address local market needs, as well as employ host country personnel in an S&T capacity and encourage their training, taking into account commercial needs.
4. When granting licenses for the use of intellectual property rights or when otherwise transferring technology, do so on reasonable terms and conditions and in a manner that contributes to the long term sustainable development prospects of the host country.
5. Where relevant to commercial objectives, develop ties with local universities, public research institutions, and participate in co-operative research projects with local industry or industry associations.

X. Competition

Enterprises should:

1. Carry out their activities in a manner consistent with all applicable competition laws and regulations, taking into account the competition laws of all jurisdictions in which the activities may have anticompetitive effects.
2. Refrain from entering into or carrying out anti-competitive agreements among competitors, including agreements to:
 - a) fix prices;
 - b) make rigged bids (collusive tenders);
 - c) establish output restrictions or quotas; or

- d) share or divide markets by allocating customers, suppliers, territories or lines of commerce.
3. Co-operate with investigating competition authorities by, among other things and subject to applicable law and appropriate safeguards, providing responses as promptly and completely as practicable to requests for information, and considering the use of available instruments, such as waivers of confidentiality where appropriate, to promote effective and efficient co-operation among investigating authorities.
4. Regularly promote employee awareness of the importance of compliance with all applicable competition laws and regulations, and, in particular, train senior management of the enterprise in relation to competition issues.

XI. Taxation

1. It is important that enterprises contribute to the public finances of host countries by making timely payment of their tax liabilities. In particular, enterprises should comply with both the letter and spirit of the tax laws and regulations of the countries in which they operate. Complying with the spirit of the law means discerning and following the intention of the legislature. It does not require an enterprise to make payment in excess of the amount legally required pursuant to such an interpretation. Tax compliance includes such measures as providing to the relevant authorities timely information that is relevant or required by law for purposes of the correct determination of taxes to be assessed in connection with their operations and conforming transfer pricing practices to the arm's length principle.
2. Enterprises should treat tax governance and tax compliance as important elements of their oversight and broader risk management systems. In particular, corporate boards should adopt tax risk management strategies to ensure that the financial, regulatory and reputational risks associated with taxation are fully identified and evaluated.