



## **Columbia FDI Perspectives**

Perspectives on topical foreign direct investment issues

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### **National Contact Points for responsible business conduct and access to remedy: Achievements and challenges after 20 years**

by

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Responsible business conduct (RBC) is a key driver of a fair, sustainable and resilient global economy. The [OECD recently showed](#) that a RBC approach to the COVID-19 crisis would make the recovery faster, greener, more inclusive, and help prevent future crises.

A central tenet of RBC is access to remedy: people, planet and society must be able to seek and obtain redress for negative corporate impacts. Twenty years ago, [National Contact Points for RBC](#) (NCPs), the implementation bodies of the [OECD Guidelines for Multinational Enterprises](#) (Guidelines), became the only grievance mechanisms built into an international RBC standard. In this role, NCPs receive cases (“specific instances”) reporting alleged non-observance of the Guidelines by companies and seek to facilitate solutions through “good offices” (ranging from informal dialogue to professional mediation) and/or recommendations. To date, 50 NCPs have collectively handled over [575 cases](#).<sup>1</sup> The main asset of NCPs is that, being a widely available and open platform, it can cast a wide net on business impacts.<sup>2</sup> This shows along three dimensions.

- *Where?* NCPs can receive cases involving companies operating “in or from” their country, extending their geographical coverage. Additionally, NCPs capture a large proportion of global economic activity: the Guidelines’ adherents account for over 50% of world GDP and over 70% of inward and outward FDI stocks. To date, 45% of the cases addressed by NCPs involve non-adherent countries, totaling over 100 countries. This linkage between FDI and NCP coverage invites further action in international investment agreements, to leverage RBC standards and access to remedy via NCPs. Recent agreements (e.g., the [USMCA](#), [EU FTAs](#)) explicitly refer to the Guidelines, giving NCPs an opportunity to address investment-related impacts.
- *Who?* NCP cases can be filed free of charge and without representation by showing a legitimate interest. This has allowed a varied mix of people, organizations and communities

to seek remedy with NCPs. Oftentimes, this is the only forum available for reasons of cost, distance or jurisdiction. While historically NGOs and trade unions have been the most active NCP-users, the number of cases brought by individuals has risen in recent years. One reason is that, thanks to their openness and availability, NCPs are often the only recourse available to persons affected by the issues.

- *What?* The Guidelines are the broadest RBC instrument available, entitling NCPs to review issues across all their eleven chapters. Since 2011, most cases have involved human (e.g., protection of indigenous peoples, children, health), labor (e.g., union busting, factory closures), environmental (e.g., climate change, pollution), and consumer rights (e.g., false advertising). NCPs have also leveraged the Guidelines' [due diligence](#) provisions, which require companies to identify and mitigate negative impacts that they may cause, contribute to or to which they are directly linked through business relationships. NCP cases have helped powerful enterprises address impacts down their supply chains and institutional investors in their portfolios. To ensure coherence around RBC expectations across governments, NCPs are encouraged to report cases to relevant agencies, such as Export Credit Agencies or trade missions. Recently, the [Canadian NCP recommended](#) that a company that had refused to engage in a case not be eligible for trade support or diplomacy from the Canadian government. Attaching consequences to NCP cases bolsters NCPs' authority and encourage companies' active participation in the process.

These features translate into impact. Since 2011, NCPs provided good offices for 55% of the cases received, of which 42% concluded with agreement; and in 47% of which, companies implemented policy changes to prevent similar issues in the future. Yet, challenges such as lack of visibility, barriers to access, lengthy proceedings, or lack of companies' engagement, still limit that impact.<sup>3</sup> Also, stakeholders expressed concerns regarding diverging criteria applied by NCPs on whether to offer mediation, resulting in varying degrees of accessibility across the network. Likewise, the significant proportion of "unsolved" cases suggests that NCPs could better leverage their mandate to foster positive outcomes. Maximizing NCPs' contribution to remedy requires policy action from governments at several levels, including:

- *Human resources:* NCPs should be adequately staffed to timely and effectively handle cases.
- *Institutional arrangements:* NCPs must inspire confidence and project impartiality, by generalizing best practices, such as isolating NCPs from potential conflicts of interest or including stakeholders in their structure. Additionally, better access to senior leadership could elevate their authority and leverage, to foster solutions.
- *Access to expertise:* NCPs should be able to access networks of experts (e.g., government colleagues, professional mediators) to best deal with the incredibly diverse cases they encounter.
- *Coordination:* because the Guidelines only provide high-level procedural guidance on case handling, NCPs and governments should coordinate to establish common interpretations of their mandate and key procedural steps (e.g., conditions to accept cases).

To address these challenges and increase NCPs' contribution to a fairer and more sustainable globalization—especially in light of pressing challenges such as climate change and the current pandemic—governments should invest more resources and political capital in the NCP mechanism.

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<sup>1</sup> NCP cases [database](#).

<sup>2</sup> [OECD, \*National Contact Points for Responsible Business Conduct – Providing Access to Remedy: 20 years and the road ahead\* \(Paris: OECD, 2020\)](#).

<sup>3</sup> See the March 2020 [Statement of the Working Party on Responsible Business Conduct](#).

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