

Labor Rights as Human Rights

The Role of the Organisation for Economic Cooperation and Development's
(OECD's) Responsible Business Conduct Guidelines

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Civil society's criticism of how business is being conducted by Multinational Enterprises (MNE) was strongly expressed as for instance through the "Occupy Wall Street Movement," through often violent demonstrations during the meetings of the G8, against the Bretton Woods institutions (International Monetary Fund and World Bank) and the World Economic Forum's annual meeting in Davos, Switzerland. Civil Society organizations objected to MNE's disregard of Labour Conventions (e.g. child labour, free association of labour movements), to the disproportionate bonus systems to the top executives resulting in growing gaps between the very well-paid top managers compared to their employees and to the stagnation of worker's salaries for the past 10 years in industrialized countries (Bonich, et. al, 2009; Saner and Yiu, 2014; Stiglitz, 2016; Michel & Schweder, 2017).

Over the last five years, the business community has taken the criticism to heart and has undergone substantial re-assessment of the role of business in society, particularly with regard to human rights and business ethics. According to the results of an online survey of 853 senior corporate executives conducted by the Economist (2015), 83 percent of respondents agreed (74 percent of whom did so strongly) that human rights were a matter for business as well as governments and 71% said that their company's responsibility to respect these rights went beyond simple obedience to local laws.

Christine Kaufmann, professor of law at the University of Zurich and chair of the Organisation for Economic Co-operation and Development (OECD) Working Party on Responsible Business Conduct citing research by the OECD writes that investment treaties increasingly include articles pertaining to sustainable development and Responsible Business

Conducts (RBC) and that virtually all of the International Investment Agreement concluded in 2012-2013 include language pertaining to RBC (p.157).

Several international initiatives and inter-governmental agreements have played a major role in bringing business to acknowledge human rights and to improve the treatment of their employees. They have honoured international standards such as the United Nations Guiding Principles on Business and Human Rights, Guidelines on Responsible Business Conduct of the Organisation for Economic Cooperation and Development (OECD), and the Declaration on Multinational Enterprises of the International Labour Organisation (ILO). Although there remain cases of violations of human rights by some Multinational Enterprises, thanks to the impact of these international standards, violations and disregard of human rights by MNE has declined. The possibility of public awareness of violations of these minimum standards of responsible business behaviour has caused most MNEs to reflect on their potential risk of losing reputational capital should HR violations linked to their business practices become known to the public at large.

Successful resolution of conflicts around human rights and business in the context of the OECD Guidelines requires competencies in international legal, financial, and managerial rules and practices in addition to the known competencies in consensus building, mediation and conflict resolution. These multi-disciplinary competencies are needed to solve conflicts involving different stakeholders such as multinational companies, civil society organisations and governments facing reported violations of human rights by private sector companies.

In addition to the legal, financial and managerial expertise, but often overlooked, is the need to understand opposing motivations of the stakeholders and to create multi-stakeholder collaboration to assist disputants in reaching mutually acceptable solutions. This ability of

building consensus is the competence domain of social science particularly of social and organisational psychology and their subfields of mediation and negotiations. What follows will illustrate the need for expertise in mediation, negotiations and social science. This article provides background information on the evolution of these standards, how they are organised and how these standards help protect human rights, and particularly labour rights, from being violated by MNEs. The authors will show in more detail how the OECD Guidelines of RBC (Responsible Business Conduct) function and are applied using a recent case of a successful agreement amongst parties to a reported breach of conduct and illustrate how skills and knowledge of social and organizational psychology particularly in the subfield of mediation and negotiations are important domains of knowledge and competencies that can support successful resolution of multi-stakeholder conflicts and compliance with the OECD guideline standards.

Human Rights and Labor Rights – Overlapping and Connected

Interpreting the scope and meaning of Human Rights varies depending on what treaty a person refers to. The Universal Declaration of Human Rights (UDHR) is a non-binding declaration adopted by the United Nations General Assembly (UNGA) on 10th December 1948, partly in response to the barbarism of the Second World War (OHCHR, 1948). The declaration was the first international legal effort to limit the behaviour of states and press upon their citizens the duty to follow the model of the rights-duty duality.

Subsequent to signing the UDHR (Universal Declaration of Human Rights (art. 1), adopted by General Assembly Resolution 217 A (III) of 10 December 1948, countries negotiated two more treaties in 1966, namely the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The two treaties were adopted by the member states of the United Nations on 16 December 1966.

However, they only came into force in 1976, when a sufficient number of countries ratified them. According to the Office of High Commissioner for Human Rights (OHCHR), the second covenant (ICESCR) has been ratified to date by 169 states but not the United States of America. (OHCHR Status of Ratification Interactive Dashboard, <https://indicators.ohchr.org/>). Together with the UDHR, these documents are referred to as the International Bill of Rights.

The value of these two covenants is illustrated by the decision of the United States not to sign the ICESCR. As a result, discussions on human rights in the U.S. have been focused mostly on civil and political rights and U.S. citizens are often not aware of the social, economic and cultural rights enshrined by the ICESCR treaty. Consequently, in the U.S. labour rights can be seen only from the civil and political rights perspective (e.g. child labour) while economic, social and cultural rights might be excluded (e.g. right to unionize) in the U.S. discourse.

In contrast, from a global perspective, most persons involved in labour relations view Labour Rights as part of labour relations between employers/enterprise owners and their respective workers and employees. Discussing the scope of labour rights and potential due diligence measures covering Business and Labour Rights, Nicolas Bueno (2019) states:

(...) the responsibility of business enterprises to respect human rights refers to internationally recognised human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the ILO Declaration on Fundamental Principles and Rights at Work (ILO Declaration, 2018, p.4).

Bueno is referring to the International Labour Organization (ILO)'s Declaration of 1998, titled the *Declaration on Fundamental Principles and Rights at Work and its Follow-up* (ILO

Declaration, 199), calling for its Member States to respect and promote the underlying principles of the Declaration. These principles are divided into four categories namely: Freedom of association and effective recognition of the right to collective bargaining; Elimination of all forms of forced and compulsory labour; Effective abolition of child labour; and Elimination of discrimination concerning employment and occupation. Together they form part of the ILO's Core Conventions (ILO, Conventions and Recommendation, ILO, 2019).

Importantly, the Declaration commits the Member States of the ILO to respect the above-mentioned principles whether or not they have ratified the specific International Covenants. Further, the Universal Declaration of Human Rights (UDHR) also enshrines labor rights within human rights. Specifically, Article 23 of the UDHR which states that people should enjoy the right to work, equal pay for equal work and the right to form and join trade unions, and Article 24, which limits working hours to a reasonable amount. While it is acknowledged that the UDHR is not a binding document, it can be considered as a highly influential cornerstone agreement on human rights.

Hence, the incorporation of labour issues into international human rights instruments points to the increasingly popular school of thought that labour rights should now be viewed under the umbrella of human rights. Indeed, in the absence of an international labour court, adherence to these documents seems the best way to enforce labour rights. When viewed separately from human rights, the value and importance of decent working conditions and basic employment rights as a measure of a fair standard of decent work is diluted (Saner et. al. 2015).

The United Nations Guiding Principles on Business and Human Rights

After decades of debates regarding how human rights applied to businesses, the United Nations Guiding Principles on Business and Human Rights (UNGP) was approved in June 2011

(United Nations Human Rights, 2014). By clearly stating what the responsibilities of businesses are, the UNGP provides businesses with a framework to respect and avoid violations of human rights... Not only has the Human Rights Council endorsed the principles, but many companies, business organizations, civil society organizations, trade unions, national and regional institutions support them and other stakeholder groups (United Nations Human Rights, 2014). Harvard Professor and United Nations Secretary-General's Special Representative, John Ruggie originally developed them. These principles were drafted in response to a mandate from the United Nations Commission on Human Rights in 2005 due to worries about the impact that business practices were having on human rights (United Nations Human Rights, 2014). Over a span of six years from 2005 until 2011, they were officially endorsed.

Ultimately, the finished text includes 31 principles. The UNGPs are not comprised of legal obligations, but rather they clarify businesses' obligations to uphold human rights in their practices and provide states and businesses with guidance. Most importantly, they define corporate responsibility in this regard (United Nations Human Rights, 2011). The UN Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises further promotes the principles. In addition, the UN Working Group endeavours to create a dialogue on the topic of good business practices and to discuss the lessons learned through experience. It aims at getting agreement on remedial action in favour of victims of Human Rights abuses.

OECD Guidelines on Responsible Business Conduct

The OECD member countries agreed to create the Responsible Business Conduct (RBC) agreement. This is the first set of international agreements that integrates the UN's *Guiding Principles on Business and Human Rights* (OECD, 2014b) and is seen by many as a collective

response to the Rana Plaza tragedy in Bangladesh on 24th April 2013. The Rana Plaza tragedy happened when a garment factory based in Dhaka, Bangladesh collapsed. This eight-story high building was not, according to the responsible architect, meant to be used as a factory. The owners ignored cracks that appeared in the building and pushed the labour forces back into the building. The building ultimately collapsed leading to a death toll of 1,134. Approximately 2,500 injured people who were rescued from the building alive. The Rana Plaza tragedy is considered the deadliest structural failure accident in modern human history, as well as the deadliest garment-factory disaster in history. Western garment brands sourcing from local suppliers operating out of the Rana Plaza factory were accused of being co-responsible for the tragedy since they knew about the precarious condition of the building and the bad treatment of the workers, who could not find decent work and faced life-threatening working conditions (Alam & Hossain, 2013).

The governments who signed onto the agreements are required to set up a National Contact Point (NCP) that essentially handles and attempts to resolve issues related to the Guidelines, for example cases of businesses not adhering to the Guidelines. The NCPs must rely on inputs from stakeholders and their relationships with other businesses and Non-governmental Organizations (NGOs). National Contact Points do not act as judicial bodies, but rather as problem solvers providing guidance to the businesses (OECD, 2014b). The OECD guidelines are discussed in more detail in following sections of this chapter.

ILO Tripartite Declaration of Principles concerning Multinational Enterprise and Social Policy: The MNE Declaration

Another international organisation which has developed tools and practices covering the behaviour of MNEs is the ILO which is celebrating its 100-year anniversary this year and is

based on a tripartite approach to labour relations consisting of trilateral cooperation between governments, employers and labour unions. The tool that businesses can use to get instruction on good business practices is the ILO's MNE Declaration, which was adopted in Geneva, Switzerland in 1977 by the Governing Body of the ILO; it was last revised in 2017 to concur with following developments. They are the new labour and policy outcomes that were put forth by the 329th International Labour Conference in 2017, the Guiding Principles on Business and Human Rights endorsed by the Human Rights Council in 2011, and the adoption of the 2030 Agenda for Sustainable Development.

According to the ILO, the MNE Declaration is to “encourage the positive contribution which multinational enterprises can make to economic and social progress and the realization of decent work for all” and also to “minimize and resolve the difficulties to which their various operations may give rise.” (ILO, 2017b) The ILO makes clear that national and multinational enterprises should be subject to the same expectations and that these guidelines are relevant to both of them. The ILO also proclaims that it is the only global instrument in this area that was “elaborated and adopted by governments, employers’ and workers from around the world,” (ILO, 2017b). Like the other two instruments, it is a useful tool in providing businesses with a framework for good business practices and information surrounding human rights.

UN Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises

As mentioned earlier, A Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, also referred to as the Working Group on Business

and Human Rights, was created in 2011 by the Human Rights Council. The Working Group is composed of five independent experts, of balanced geographical representation.

The mandate of the Working Group is broad and far-reaching. Key features of the mandate given to the Working Group by the Human Rights Council in 2011 are (1) to promote the effective and comprehensive dissemination and implementation of the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework; and (2) to continue to explore options and make recommendations at the national, regional and international levels for enhancing access to effective remedies available to those whose human rights are affected by corporate activities, including those in conflict areas. (UN-OHCHR, 2018).

To fulfil this mandate, the Group conducts country visits, provides a gender perspective, enhances access to effective remedies, and provides guidance regarding the development of domestic legislation related to business and human rights, and reports annually to the Human Rights Council and the General Assembly (United Nations Human Rights, 2018).

In contrast to the UNGP, the ILO MNE Declaration and the OECD RBC Guidelines, the goal of the UN Working Group is to reach an agreement through a convention that identifies ways to provide remedies to Human Rights violations by transnational companies.

Until such a binding convention or treaty is reached, the OECD Guidelines on RBC offer the most effective methods, also referred to as “soft law practice” to address Human Rights violations by transnational companies and enterprises in general no matter their size (Kapiola, 2018).

Review of the OECD Guidelines on Responsible Business Conduct (RBC)

Broadly speaking, OECD's mission is to promote policies that will improve the economic and social well-being of people around the world. Since 1961, OECD has committed to produce guidelines for multinational enterprises and domestic firms all around the world whose objective was to conciliate a capitalistic economy, economic growth and open markets with job creation, efficient capital distribution and environmental sustainability (OECD, 2014b). According to Article 5 of the OECD Convention, the organization pursues these aims through dialogue with members, non-member States and international organizations by entering into agreements, making binding decisions, and making recommendations to member states (Convention on the Organization for Economic Cooperation and Development, 1960.). OECD is an important reference point in the international context for both multinational enterprises and governments because of its promotion of economic and sustainable guidelines. For researchers and experts, the OECD was helpful due to the data and publications about available economic statistics via its online database ("OECD Guidelines", 2014b).

In addition to having relationships with 38 states, the OECD also has relations with international organizations and institutions such as the ILO, the Food and Agriculture Organization (FAO) of the UN and others. Moreover, it cooperates with civil society on a number of levels; for example, it works with BIAC ("Business Industry Advisory Committee at OECD", an international business network with a global membership representing over 7 million companies of all sizes) and TUAC (The Trade Union Advisory Committee to the OECD) and OECD Watch which represents NGOs and Civil Society Organizations. These collaborations are extremely important to establish a dialogue on a multitude of topics and issues. Considering that the lion share of the global trade and economic activities are conducted by MNEs that originated from the OECD countries, the influence of the RBC Guidelines of the OECD can be applied

extraterritorially and be substantial including the human rights as practiced in the non-OECD developing countries.

History of the OECD RBC Guidelines

The OECD Guidelines for Multinational Enterprises, or more commonly known as the Guidelines, were adopted in 1976. On September 11, 1976 there was a coup d'état in Chile led by General Pinochet. A multinational enterprise based in the U.S., ITT, was implicated in overthrowing the democratically elected Chilean government led by President Allende (Tapiola, 2018). This became a clear example of why it was necessary for governments to set up a specific instrument to manage both the positive and negative aspects of the activities of multinational enterprises (MNEs) (Tapiola, 2018). During the same time that the OECD was drafting a code of conduct, the ILO was also toying with the question of how best to regulate MNE behaviour. However, the OECD's Guidelines were put into practice before the UN or the ILO had even started to work on drafting conventions (Tapiola, 2018).

The Guidelines were not composed of entirely new ideas--they took inspiration from good management practices that had been a part of the European Recovery Programme since the 1940s, which were originally inspired by the ILO's Philadelphia Declaration of 1944 (Tapiola, 2018). However, while its contents were not entirely original, they were impactful. Trade unions almost immediately clashed amongst themselves about whether or not they should support the OECD RBC process, which points to the trend in which the Guidelines would completely shift the ways in which both enterprises and governments would think about labour rights.

The Content of the OECD Guidelines

The OECD being an inter-governmental organisation, all agreements or conventions are negotiated and agreed by the participating member countries whose responsibilities define their roles and contributions (OECD 2011).

The text of the OECD Guidelines for RBC describes and explains the component parts of the Guidelines. The following are the provisions of the Guidelines of OECD RBC: 1. Concept and Principles, 2. General Policies, 3. Disclosure, 4. Human Rights, 5. Employment and Industrial Relations, 6. Environment, 7. Combating Bribery, Bribe Solicitation and Extortion; 8. Consumer Interests, 9. Science and Technology, 10. Competition, and 11. Taxation. Most relevant for the current discussion are provisions 4 (Human Rights) and 5 (Employment and Industrial Relations).

Relevance of the OECD Guidelines for RBC

During the negotiations of the first version of the OECD Guidelines for RBC in 1976, disagreements arose about the Guideline's voluntary format. If it was not mandatory for countries to sign onto the agreements, how could it be assured that workers' rights would be protected? As Kari Tapiola, Former Deputy Director General of the ILO, writes, "The Guidelines were a way for the OECD countries to signal that they were willing to go that far, but not further" (Tapiola, 2018, p. 30) which indicates that there were worries that the Guidelines could potentially limit countries from regulating their labour market or from taking further measures to protect labour rights. Nevertheless, the Guidelines would serve as a baseline requirement for protecting labour rights (Tapiola, 2018). While efforts were made to make the Guidelines mandatory for countries, attendees at the World Employment Conference could not come to an agreement on how to create a set of binding conventions, so the Guidelines were instead established in a non-binding format. Around the same time as this was occurring, the ILO constructed a Declaration on Multinational Enterprises which was then later adopted by the Governing Body of the Organization in 2017 (Tapiola 2018).

In the words of Nicola Bonucci and Catherine Kessedjian, editors of the book "40 years of the OECD Guidelines for Multinational Enterprises", the Guidelines became "the first comprehensive international code for corporate social responsibility" (Bonucci & Kessedjian, 2018, p. 30). Essentially, the Guidelines are a set of recommendations set forth by governments

to give multinational enterprises guidance so they can build a strong relationship between them and societies in which they operate. Since their creation, the Guidelines have been updated five times, the most recent update being in 2011. The OECD notes that, “The regular updates are important to ensure that they remain at the forefront of the global responsible business conduct agenda and a leading tool in the ever-changing landscape of the global economy” (OECD Guidelines for Multinational Enterprises, 2011). Furthermore, Bonucci and Kessedjian write that while only 48 countries adhere to the Guidelines, “the Guidelines’ reach is far broader due to their coverage of enterprises operating in and from adherent countries” (Bonucci and Kessedjian, 2018, p15.). Therefore, the Guidelines are recognized in the international community and influence enterprises’ actions and conduct around the world.

It is important to note that the Guidelines do not act as the single governing set of recommendations on responsible business conduct; instead, the Guidelines align with other types of international instruments like the ILO Tripartite Declaration on Principles concerning Multinational Enterprises and the UN Guiding Principles on Business and Human Rights. Therefore, there is a convergence between different human rights instruments. However, the main difference distinguishing the OECD Guidelines is its embedded mediation mechanism, i.e., National Contact Points, with the given mandate to intervene when complaints about human rights abuse are received.

The National Contact Points (NCPs)

The true intent and purpose of the Guidelines can only be realised through collaborative and multi-stakeholder action. Adhering governments engage with stakeholders in different ways in the implementation of the Guidelines. On a national level, many of these interactions are channelled through NCPs.

Governments that adhere to the OECD Guidelines on Multinational Enterprises are required to set up a National Contact Points (NCPs) whose main role is to further the effectiveness of the Guidelines by undertaking promotional activities, handling enquiries, and contributing to the resolution of issues that arise from the alleged non-observance of the Guidelines in specific instances (OECD, 2018b).

When complaints are brought to NCPs, in the first instance a mediation procedure is offered to the parties involved. As a last resort, if mediation fails or parties do not want to mediate, the NCP makes recommendations regarding the particular case. Many NCP's also make determinations of whether a company has breached the OECD Guidelines or not (OECD, 2018b).

In 2016, fifteen years after the creation of National Contact Points as a means to further the effectiveness of the OECD Guidelines for Multinational Enterprises, the OECD has conducted an analysis of the functioning and performance of this unique implementation mechanism. The publication of this report coincides with the 40th anniversary of the Guidelines ("Implementing the OECD Guidelines" 2016). It concluded that the Guidelines are the most important non-judicial mechanism available that contributes to guiding business based on ethical and social standards for the benefit of society but also in the interest of the companies' own sustainability (Saner 2018).

Reported NCP cases focusing on Employment Relations and Labour Rights

Figure 7.1 below gives an overview of all the breaches of each provision of the Guidelines in 2014. The highest number of breaches related to human rights violations and breaches of general policies is the second most breached provision, followed by employment and industrial relations, and environment.

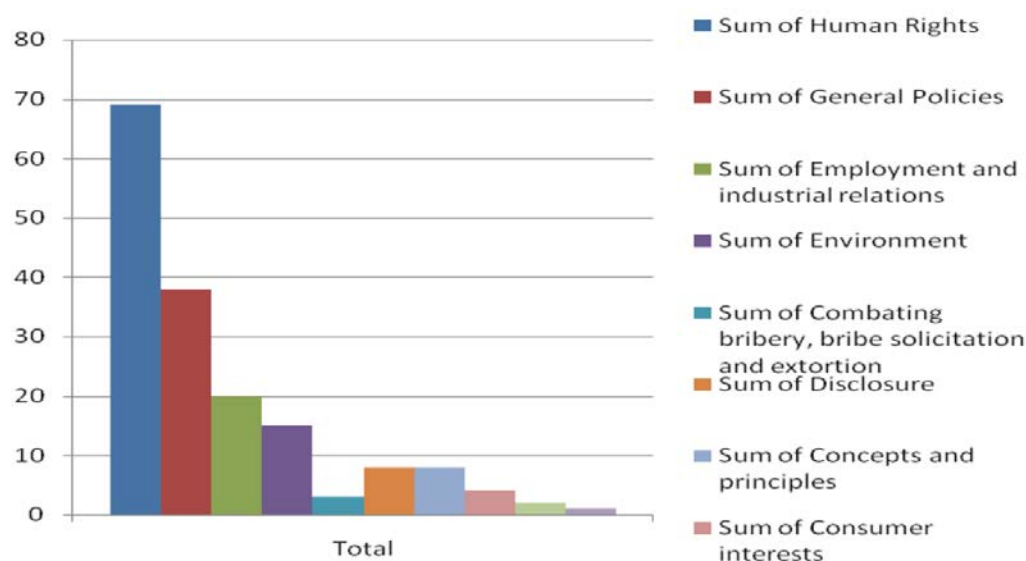


Figure 7.1. Reported Breaches of Labour Right Guidelines (Source: Saner, Viciglione & Yiu, 2015)

Thus, most of these reported alleged breaches to NCPs of provisions of the Guidelines are linked to some degree with human rights violations, and it can be easily imagined how in the examples of employment relations (where employees are at the centre of the provision) and environment (where lives of individuals might be affected by MNEs impact on the environment in which they live or work) represent causes of human rights violations. Other kinds of RBC-GL provision might also be linked to Human Rights violations such as consumer's interests (e.g. misleading advertising of health products potentially endangering the consumer), competition (e.g. cartels arrangements illegally keeping food prices high endangering survival of impoverished people) or environment (e.g. use of child labour in the extraction industry).

The Functioning of the NCP

As Scheltema and Kwant (2018) write in their article titled “Alternative approaches to strengthen the NCP function”, NCPs have a dual function to not only find a solution between two parties, which include the complainant and the multinational corporation, but also to deliver a final statement in order to come to a conclusion on the issue. Any interested party – individual, employers, workers associations, NGOs – can submit a specific instance to an NCP regarding the non-observance of the Guidelines. According to Ole Mestad, a professor at the University of Oslo as well as the Chair of Norway’s National Contact Point, “The Guidelines are very liberal with respect to who may bring a complaint” (p. 168) which means that there are not many restrictions of who can bring a new issue forward to the National Contact Points (Mestad, 2018).

Once the party has submitted the instance, it goes through three stages (see Figure 7.2):

- 1) Initial Assessment
- 2) Good Office: to facilitate dialogue and get a consensual and non-adversarial means of resolving the instance.
- 3) Conclusion

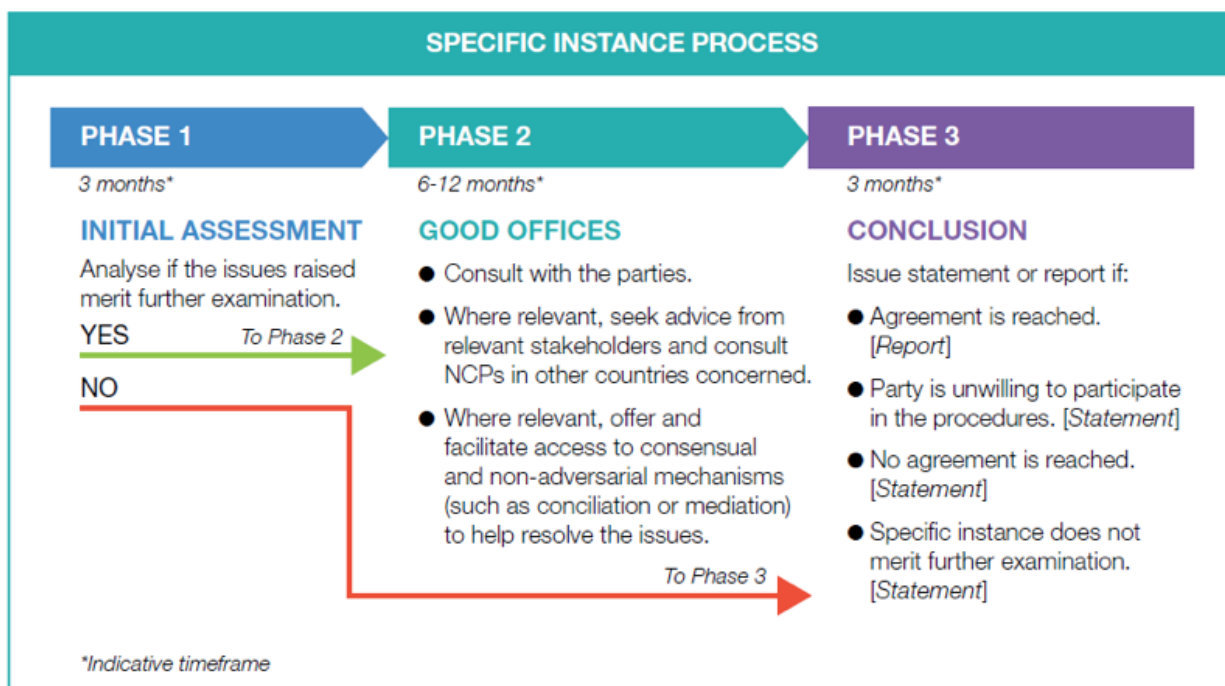


Figure 7.2: Complaint Procedures at the NCP (Figure Source: OECD, 2014, p. 13)

In this process, the NCPs have a good level of authority, but their power is limited in the sense that the Guidelines are non-binding and are not a legal instrument; hence companies, civil society, and the states hold the majority of the power (Mestad, 2018).

As a result, governments are in a powerful position to either give or withhold support to their NCPs. Governments have the opportunity to enact policies that create consequences if a multinational enterprise refuses to acknowledge a complaint that is filed or to propose solutions after there has been an agreement (Mestad 2018). As a result, the Guidelines place trust in governments to ensure that the Guidelines are honoured and taken seriously by all parties.

7.2.11.1 Case Example: The Bralima Case

What follows is case example that was brought to the Dutch NCP which was concluded successfully. The case example below was drawn from the website of OECD Watch, the NGO

representative to the OECD (<https://www.oecdwatch.org/cases>), the Dutch NCP (2016, 2017) and the NCP instances reported by the OECD (2015). In addition, TUAC (2007) has published its own list of NPC cases relating to claims concerning labour rights including the case Bralima-Heineken. (Information on this list can be found at https://members.tuac.org/en/public/e-docs/00/00/01/70/document_doc.phtml).

The Bralima Case - Former employees vs. Heineken (Agreement)

On 14 December 2015, the Dutch NCP received a submission from three individuals involving Heineken, a Dutch multinational and its subsidiary Bralima operating in the Democratic Republic of Congo (DRC). The three individuals stated that Bralima had not observed the Guidelines in the dismissals of 168 former employees in the DRC between 1999 and 2003.

Because the issues occurred before the revision of the OECD Guidelines for multinational enterprises in 2011, the NCP decided whether the specific instance merited further consideration on the basis of the 2000 version of the OECD Guidelines.

In its initial assessment published on 28 June 2016, the Dutch NCP accepted the specific instance for further consideration. The NCP offered its mediation services which both parties accepted.

The dialogue was conducted under the chairmanship of the NCP and resulted in an agreement between the parties. The NCP was asked by the parties to monitor these next steps to ensure an objective, neutral and due process. Heineken also indicated that it will draw up a policy, including guidelines, on how to conduct business and operate in volatile and conflict-affected countries. (OECD list of reported incidences, 2015; The Netherlands Ministry of Foreign affairs, 2016)

The Netherlands' NCP issued the following message in its final statement on the 18th August 2017:

“The parties agreed to have had a constructive dialogue and resolved the issue at hand. The NCP appreciates the willingness of both Heineken and Bralima and the former employees to enter into an open dialogue, even though the events happened long ago. The parties are happy to be able to close the issue that lasted for so many years. The NCP, as part of its monitoring role, concludes that all parties have participated to the process in a proper and fair way. The NCP appreciates this.” (The Netherlands Ministry of Foreign Affairs, 2017, p.6).

Reaching this multi-stakeholder agreement required the participation of several institutions (NL NCP in the Netherlands, the Dutch Embassies in Uganda and in Paris, an independent mediator, Heineken Company, an expert in Congolese labour law and a representative of the people employed, then dismissed, in Congo DRC). The mediation was held in Dutch, French and English and lasted two and a half year. The case illustrates the importance of mediation skills, cross-cultural communication and understanding and efforts by the company and the Dutch NCP to find a solution that was agreeable for all parties.

In a remarkable final move, all parties agreed to form a panel at the 2017 Forum of the United Nations Forum on Business and Human Rights held on 27-29 November

in Geneva and told the story of their mediation and final successful conclusion of their NCP case (UN Forum on Business and Human Rights (2017)).

To strengthen the application and interpretation of the OECD Guidelines, due diligence guidelines have been developed and made available in separate publications covering the following sectors such as Child Labour, Minerals, Extractive, Garment and Footwear, Agriculture, Institutional Investors (OECD 2018b). In addition, publications are available that provide Multinational Enterprises a better understanding of how they could limit their exposure to the risk of being reported as having breached the OECD Guidelines (Saner & Yiu, 2014).

The NCPs as a member based intergovernmental network participate in peer reviews which provide opportunities for each NCP to learn from other NCP and hence improve their own functioning. The OECD itself published documents which offer guidance on how to make processing of instances or claims as transparent and efficient as possible. Instance refers to a reported case of violation of the OECD Guidelines, claim is made when a party that considers itself harmed requests corrective action. Important guidance has been provided by Professor Larry Susskind (2012) of the MIT based Consensus Building Institute (CBI). Susskind drafted the *NCP Mediation Manual* in 2012 and provided training for NCP staff.

The Intersection between Policies of the OECD Guidelines and Psychology

Implementing the OECD RBC Guidelines requires the ability to engage constructively with internal and external counterparts and to attempt to solve disagreements and conflicts. This holds for all three major stakeholders namely business, governments and civil society. To engage these stakeholders at the same time means stepping out of the still prevalent focus of many psychologists which is the focus on an individual's psychological functioning (Velez, 2016). In addition, in order to be of service to all the stakeholders involved in RBC instances or work-

related disputes, consulting psychologists have to be able to understand economic, political and cultural factors which influence behaviour of the stakeholders on an individual, organisational and societal level. Failure to broaden the perspective from an individual focus to a multi-actor focus can lead to over-individualising behaviour (Blustein et al, 2016) instead of observing and intervening with a larger set of actors and organisations in the context of RBC this could be a MNE, government, labour union, media, and NGOs.

Contributing effectively to the OECD RBC process requires multi-disciplinary know-how bridging domains of psychology such as social, political, and organisational psychology as well as the knowledge domains of economics, business, law and anthropology. A summary of the main schools of negotiations provides guidance for further studies of academic fields that can inform and guide a consulting psychologist involved in OECD RBC related activities (Saner, 2010).

Adhering to the OECD Guidelines on RBC could, for instance, lead to disagreements in enterprises between the Corporate Social Responsibility (CSR) unit eager to get their company to comply with the OECD Guidelines on RBC while line managers of the same company might fear additional costs and possible liabilities, especially if their performance reviews, salaries, and bonuses are only determined by profit targets. In governments, there could be a conflict of policy and interest between the Ministry of Foreign Affairs intent on honouring international agreements such as the OECD Guidelines on RBC while their counterparts in the Ministry of Economy are worried about the impact RBC might have on foreign direct investment and on MNEs domiciled in their territory. Regarding the international NGOs, tensions can arise and need to be solved between the political fundamentalists versus the more pragmatically oriented

NGO staff who understand that business has to cope with both achieving sufficient revenues while at the same time attempting to live up to social and environmental standards.

Further, conflicts can arise between the three main stakeholder groups. Abilities to negotiate with conflicting parties and mediate between opposing positions are must. Parties engaged in the process need to create interest alliance as much as this is possible in the context of an RBC case. However, due to its soft law nature (RBC is non-binding) enterprises might be tempted to ignore the potential negative publicity in case the media reports that they have been documents as being a violator of the RBC guidelines.

But in view of the growing effectiveness of investigate journalism, adherence to the RBC code should not be 'lip service,' but should rather be a must for an enterprise interested in its image in the public at large but also with its key business partners. RBC GLs should hence be integrated into the enterprise's underlying operating principles. However, without the top leadership driving the process and key stakeholders rewarding the behaviour, the organization might be hard pressed to have RBC guidelines adopted and practiced.

Conclusion

The purpose of having frameworks such as the OECD Guidelines is to support labour rights and to instil a sense of corporate responsibility by promoting good practice within multinational enterprises. Overall, it contributes to the general economic, social, and environmental well-being of states by respecting human rights and encouraging the involvement on more of the local level ("Guiding Principles", 2011). While multinational enterprises are international and have an influence that spreads around the world, issues arise and violations often occur at the local level, so it is important to engage local players in a mediation process in case of a RBC instance. In addition, these frameworks require good communication and

interpersonal relations skills, which in turn informs the workers of their rights and responsibilities (“OECD Guidelines”, 2008).

Multiple frameworks exist that promote the same ideals of having a just and fair working environment for workers and the enterprise. Yet while these measures exist, there is still much to be done within the RBC context in order to ensure that the adhering governments of the OECD RBC comply and ultimately make sure that all business within their jurisdiction comply with the RBC guidelines

Applying principles of Business Diplomacy would help MNEs bring their business in line with the OECD RBC and conduct constructive, mutually beneficial relations with their workers, their suppliers and the communities within which their subsidiaries operate (Saner, Yiu, 2018).

To respect and protect human rights should not be a merely legal compliance activity. Instead, it should be based on a higher level of integrity of business conduct where the profit motive needs to be mitigated by social and environmental considerations. Social empathy as a foundational competence of social and organisational psychology complements a business diplomacy acumen by bridging the tension between the “doing well” with “doing good”. Without the human interface and a relational approach of organisational psychology, OECD RBC Guidelines alone will not be able to prevent a repetition of the tragic event of Rana Plaza in Bangladesh nor other abuses happening at the workplace in many other parts of the world.

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