Trade Union Advisory Committee to the OECD

TUAC

Commission syndicale consultative auprès de l'OCDE

Trade Union Guide

on the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct

Understanding and using the OECD Guidelines
to implement labour rights along the supply chain
– from headquarters to suppliers



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The **aim of this guide** is to introduce the OECD Guidelines for Multinational Enterprises (MNEs) on Responsible Business Conduct (RBC) and to guide workers and their unions through the process of filing a complaint against a company in case of alleged violations of the Guidelines.

This Trade Union Guide intentionally focuses on the **employment and industrial relations chapter** of the Guidelines (Chapter V). This practical guide is written for workers and union practitioners (like delegates, representatives and organisers). It is intended to be used by workers and their unions in all tiers of the supply chains. It provides basic information in an easy-to-understand way to increase awareness and capability in the field.

If you **require additional information**, want to discuss your complaint, strategy or action plan, want to know more about good practice examples and/or **seek general support, contact the Trade Union Advisory Committee (TUAC) at tuac@tuac.org**.

For more information on TUAC, visit tuac.org.

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Introduction

Workers have a right to be treated with dignity and respect worldwide. They have a right to collectively organise to make their voice heard in the workplace.

Fundamental principles and rights at work are the basis for decent work. All workers must enjoy these fundamental principles and rights at work – regardless of who you are, where in the world you work and whether or not the country you live in has legislation in place or has ratified relevant international conventions. They are shared values indispensable for social, economic and political life. They are universal rights and include that workers have the right to meet, organise and bargain with the employer collectively. It also means zero tolerance towards forced labour and child labour. Discrimination against workers is also not acceptable, and nor are unsafe or unhealthy working conditions. These rights and more will be discussed in Part 1 of this guide.

Yet, you might have experienced violations of rights yourself and know that workers' rights are far from realised. Workers' rights violations are persistent, which shows that there are gaps in implementing fundamental rights at work.

Multinational enterprises (MNEs) with their supply chains and networks are powerful players in global trade affecting all countries on the globe. One of the driving factors for the expansion of MNEs is to successfully compete based on cheaper labour and material. This cost-cutting behaviour often has negative impacts on workers, communities and the environment. However, MNEs have a responsibility to respect and implement labour rights throughout their supply chain, and you have a right to enjoy your labour rights, be safe, secure and valued.

Governments have recognised the importance of ensuring that MNEs are accountable and transparent entities and formulated recommendations on how MNEs must conduct their business and treat their workforce and the environment.

The OECD Guidelines are recommendations to MNEs which governments formulated originally in 1976 and updated over the past decades. The Guidelines are a mechanism to hold MNEs accountable for how they treat workers and the environment (and how MNEs should fight corruption, keep consumers safe, use technology responsibly, compete fairly with other businesses, pay their taxes – but this guide will focus on workers' rights).

The Guidelines describe a process MNEs must use to identify, prevent and mitigate possible and actual violations of workers' rights. Workers and their unions must be involved in this process. The process is referred to as carrying out risk-based due diligence.

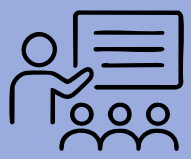


The Guidelines also have a **mechanism where you and your union can file a complaint** about violations of your rights at work and seek remedy. This mechanism operates through the National Contact Point (NCP), an entity created by governments to promote and support the implementation of the Guidelines. The NCP can facilitate remedy to the situation workers and their unions have complained about through a mediation-like process.

Workers and their unions can use the Guidelines to support their claims in bargaining or to support developing company policies and processes, to advocate for better working conditions including to form a union, and to seek remedy when violations have occurred.

We have created this guide to make the Guidelines accessible to workers and to facilitate their use. Understanding your rights and knowing which instruments and mechanisms are available to you and your union is the first step to making your voices heard and realising your rights. That is why we have created this Trade Union Guide.

We encourage you to use the Guidelines to:



Explain

to your colleagues what their rights are



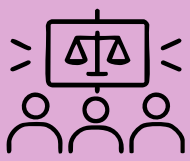
Organise

your colleagues to ensure workers' rights are respected



Be involved

– together with the employer – in identifying, preventing and mitigating risks to workers



Seek remedy

when violations of your rights have occurred



Demonstrate solidarity

with workers and their unions in other tiers of the supply chain

Let's now dive into the GUIDELINES and explore how you can use them!

1

What are the OECD Guidelines?

The OECD Guidelines for Multinational Enterprises (MNEs) on Responsible Business Conduct (RBC) are part of the OECD Investment Declaration and Multinational Enterprises adopted in 1976. The first instrument of its kind, it sets out expectations for MNEs on how to conduct their business responsibly.

They define responsible business conduct for key areas relevant to MNEs: employment and industrial relations; human rights; environment and climate change; anti-corruption and bribery; information disclosure; science technology and innovation; consumer interests; competition and taxation. The expectations in relation to employment and industrial relations are aligned with the ILO fundamental principles and rights at work. They also define the due diligence framework to appropriately deal with risks related to the key areas.

The Guidelines include recognised international labour rights and a risk-based approach to their implementation and through meaningful stakeholder engagement. A state-backed, dedicated, national grievance mechanism (the National Contact Point, NCP) is set up to provide remedy when companies are accused of failing to comply with their labour rights obligations. This is a unique mechanism to remedy labour rights violations. For workers and their unions, the Guidelines serve as a minimum standard for claims (in bargaining or developing company policies and processes), for advocacy as well as a remedy mechanism through the NCPs.

The Guidelines are part of a suite of international, non-regulatory mechanisms, meaning that they cannot be enforced by an authority. Instead, they leverage collaboration and commitment from companies, unions, civil society organisations and investors by integrating policies, practices and decision-making processes into companies' operations. As such these instruments have the advantage of being less adversarial and more accessible than legal proceedings. If dialogue is established, it can lead to agreements, including legally binding collective agreements, that can lead to improvements in labour rights across the company's operations.

Global Framework Agreements (GFAs), which are negotiated between a company and a global union federation (GUF) can refer to the Guidelines alongside other international instruments such as the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration) or the UN Guiding Principles on Business and Human Rights. If the Guidelines are included in a GFA, it means that the company affirms their commitment to the Guidelines.

Six updates over 50 years ensured that the Guidelines remain topical. Over the years they have shaped legislation, grievance mechanisms, company policies, expectations of investors as well as sectoral standards. The Guidelines are an authoritative set of standards OECD Member States must adhere to and require their MNEs to implement.

Over time, the number of adhering states to the Guidelines has increased. States who are not members of the OECD can and are adhering to the Guidelines. The non-OECD Member States adhering to the Guidelines are Argentina, Brazil, Bulgaria, Croatia, Egypt, Jordan, Kazakhstan, Mauritius, Morocco, Peru, Romania, Tunisia, Ukraine and Uruguay (as of October 2026).

To read the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, visit the OECD website.

1.1 THE AIM OF THE GUIDELINES

The Guidelines are based on the duty of states to protect, respect and fulfil human rights including the fundamental principles and rights at work. They are also based on the obligations of companies to respect, protect and remedy human rights. Overall, **the aim of the Guidelines is to promote RBC and to identify, prevent, mitigate and remedy negative impacts on people, planet and prosperity** occurring now and those potentially occurring in the future.

The Guidelines set a baseline for minimum working standards, industrial relations, and due diligence requirements for companies and offer a grievance mechanism to remedy violations.

In addition to respecting human and labour rights, promoting RBC

- enables the creation of a **level playing field** across global markets,
- creates a **coherent policy environment**,
- fosters a **dynamic and well-functioning business sector**,
- and enhances the **contribution of enterprises to sustainable development**, including solutions to address and respond to climate change.

1.2 THE WORK AND INDUSTRIAL RELATIONS MATTERS COVERED BY THE GUIDELINES

Regulations nationally or internationally underline what we value as a society. **Chapter V of the Guidelines on employment and industrial relations** emphasises the respect for internationally recognised labour standards, aligned with ILO Conventions and fostering constructive industrial relations. Workers must be valued and treated with respect. States have committed to these Guidelines because they value decent work for all workers, constructive industrial relations and the existence and participation of trade unions in their societies and economies.

The expectation of businesses is to **respect the rights of all workers along the supply and value chains, not only those employed by the MNE** (a major change achieved by the 2023 review of the Guidelines).

This means the Guidelines also cover workers who are **not directly employed**, who are contractors, employed by labour hire and temporary work agencies, platform workers, informal workers and home-based workers.

- **Contractors**
- **Labour hire and temporary work agency workers**
- **Platform workers**
- **Informal workers**
- **Home-based workers**

THE RIGHTS OF WORKERS COVERED IN THE GUIDELINES ARE:

01

Respect workers' rights, including freedom of association, the right to form or join trade unions and the right to collective bargaining

- These rights are also enshrined in the ILO Declaration on Fundamental Principles and Rights and mean that **every worker can freely form and join a union of their choosing** without the employer or government interfering. Hence workers **cannot be forced to join employer-controlled or yellow unions**
- These fundamental rights and principles at work are often referred to as **enabling rights** because they give workers a voice in developing collective agreements, labour regulation and policy and therefore contribute to stronger, more balanced and fairer outcomes.

> ⚠ Note that union busting is always unacceptable including before and after filing a complaint as well as during the process with an NCP.

02

Eliminate forced labour and child labour

Forced labour is defined as work that a person is performing under the menace of any penalty and the person has not offered voluntarily. This work must be eliminated.

Child labour is work which interferes with a child's right to education, health, rest and play.

03

Ensure non-discrimination in employment and equality in workplace practices

- Non-discrimination applies in **hiring, job assignment, discharge, pay and benefits, promotion, transfer or relocation, termination, training and retirement.**
- Discrimination based on race, colour, sex, age, religion, political opinion, disability, pregnancy, marital status, sexual orientation, HIV status etc.
- It also includes discrimination or exclusion of workers **based on their union activity.**
- **Violence and harassment** are seen as a barrier to equal opportunities in the workplace and therefore violates the principle of equality.

04

Provide and maintain highest standards of health and safety

- This means that companies must **prevent work related injuries and diseases**, protect and promote workers' safety and health through continuous improvement and the development of a health and safety system that helps to **identify, prevent, mitigate and stop risks** to health and safety.

05

Provide facilities to assist workers and their unions in preparing for collective bargaining

- This can include that the employer provides you with **time off work without loss of pay** or other benefits to carry out your representative role, attending meetings or training, with **spaces for you and your union members to meet**.
- It can also include access to necessary tools such as some IT equipment or being able to create a **union notice board** for your fellow union members.

06

Provide adequate information to worker and union representatives for negotiating working conditions, understanding operational results, restructuring, or closure plans

- This information must provide a **'true and fair view'** of the enterprise's performance.
- It includes the structure, economic and financial situation and prospects, adverse environmental health and safety aspects, employment trends, expected substantial changes in operation.

07

Promote consultation and cooperation with workers and their union through legitimate processes, structures or mechanisms

- Consulting and otherwise cooperating with workers and their union **does not substitute for collective bargaining**.
- If you want to initiate bargaining over terms and conditions of employment while you already engage in consultation or other means of cooperation **you have a right to do so**.

08

Observe standards of employment, contractual arrangements and industrial relations throughout the supply chain operations of a company

- For the Guidelines, employment and industrial relations standards are understood to include **pay and working-time arrangements** primarily.
- However other important factors such as **paid leave, training**, and other additional agreed obligations of the employer towards workers can form the suite of standards.

09

Employ local workers to the greatest extent practicable and provide skills development and training in cooperation with workers and their union

- Companies should **recruit workers locally** including for managerial positions and provide training to them.
- Training for **up-skilling and re-skilling** should anticipate future changes in operations and employer needs, including those responding to societal, environmental technological changes, risks and opportunities linked to automation, digitalisation, just transition and sustainable development.

10

Cooperate with workers and their union in case of dismissals, closure or restructuring processes to mitigate to the maximum extent negative impacts on workers

- Because companies have an important role to play in promoting and creating decent work, they should provide **reasonable notice** to workers and their union of changes in their operations.
- Changes with major effects upon the livelihood of workers involve collective or large-scale layoffs or dismissals due to, for example, increasing automation of jobs or moving from non-renewable to renewable energy sources (and sectors).
- Workers and their unions have **the right to participate in mitigating the effects** of such changes and to ensure just transition.

11

Prohibition of threatening workers to transfer operations to another country

- Companies must **refrain from threatening workers** to transfer operations to another country.

12

Enable workers and their union to participate in collective bargaining and discuss matters with management during their working time

- Companies must **address barriers** to participating in collective bargaining or other worker-management related discussion.
- This includes that workers can do so **in their paid working time**.

1.3 THE COMPANIES COVERED BY THE GUIDELINES

52
adhering states (in October 2026)

~2/3
of global trade and investment

The Guidelines apply to 52 adhering states (in October 2026), which account for around two-thirds of global trade and investment, meaning **the Guidelines cover a very large share of companies worldwide.**

The Guidelines apply to MNEs. **A multinational enterprise is defined as a company which is comprised of and linked to companies in more than one country.** Ownership of the company can be private, it can be state-owned or mixed.

MNEs and domestic companies are subject to the same expectations in the Guidelines. The location of the company is insofar relevant as a company must be **in and/or connected to a company or an investor in one of the adhering states**.

The Guidelines are addressed to **all enterprises regardless of**

Size
(e.g. the number of employees, number of subsidiaries, annual revenue)

Sector
(formal and informal, private or state-owned public)

Ownership
(private, state-owned or mixed)

Structure
(including the use of platform work and indirect employment through temporary work agencies)

You can

You can file a complaint against a **state-owned enterprise (SOE)** if it operates in more than one country. An SOE is an entity recognised by national law and created by the government. It is fully or partly owned or controlled by the state and undertakes commercial activity.

You cannot

Under the Guidelines you cannot file a complaint against **a government or government departments as the employer**.

In summary, if a company, supplier, platform, contractor is linked to a company that is headquartered in one of the 52 adhering states and provisions in the Guidelines have been violated, you can file a complaint. That means you can file a complaint even though the violations occurred for example in India, Cambodia, the Democratic Republic of Congo or Fiji.

1.4 THE DUE DILIGENCE PROCESS AND WORKER AND UNION PARTICIPATION

Companies must undertake **due diligence (DD)** processes, meaning that potential and actual risks for labour rights violations need to be identified, assessed, stopped, prevented or mitigated. **Unions are a key stakeholder and social partner in the process and must be meaningfully engaged** in the whole process of identifying risks together, deciding how to deal with them and keeping track of (and where required adjust) risk management. Due diligence is a dynamic, ongoing and responsive process.

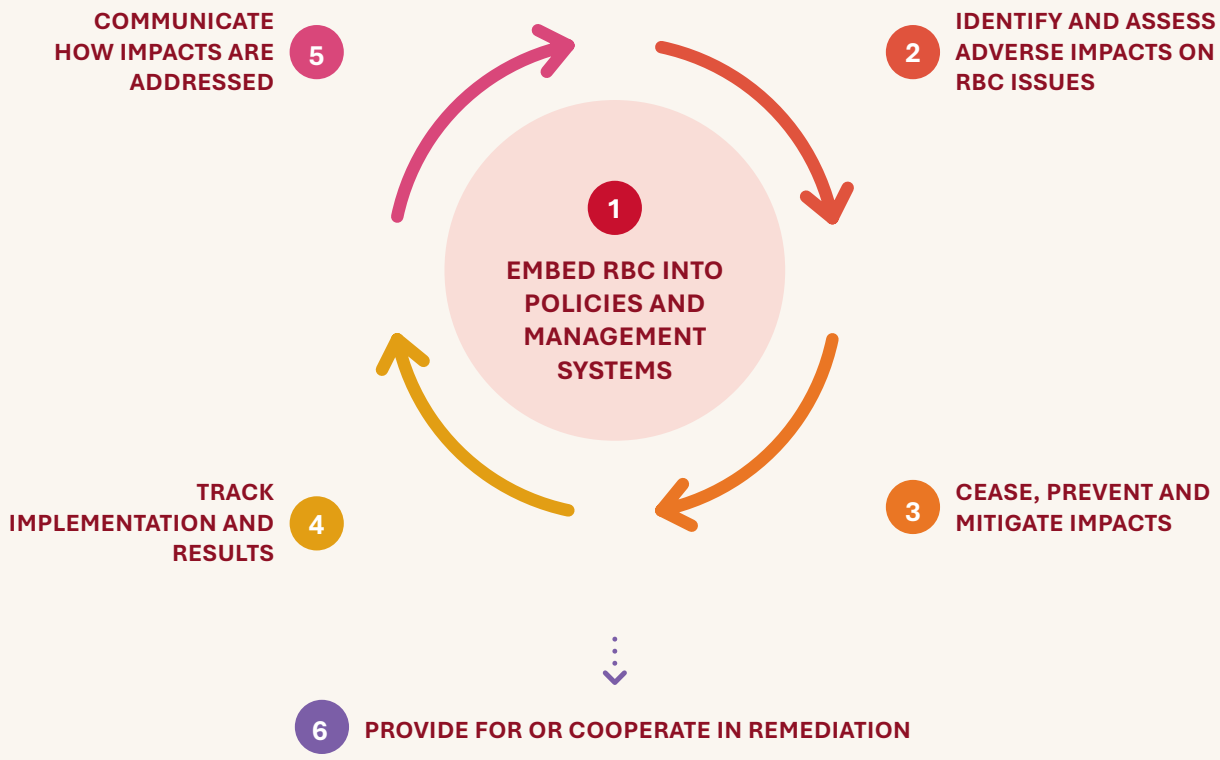
⚠ Please note that the DD process is **a complementary process to collective bargaining and doesn't replace it**. Any information sharing, consultation, or negotiation is not a substitute for collective bargaining.

A specific Guidance document on the 6-step process on due diligence was developed by the OECD to support implementation of the due diligence requirements in the Guidelines.

To read the OECD Due Diligence Guidance for Responsible Business Conduct, visit the OECD website.

Below is an explanation of the six steps of due diligence and how unions should be involved.

This table shows the different steps of due diligence and how workers and their union can and should participate meaningfully in the process.



The six steps of the due diligence process, after the OECD Due Diligence Guidance for Responsible Business Conduct.

→ *Union engagement in each step, p.11*

DUE DILIGENCE STEP	UNION ENGAGEMENT
1 STEP 1 **Embed RBC into policies and management systems**	• **Workers and their unions participate in developing policies and commitments on RBC and how workers and their unions participate in the DD process.** • To enable workers and their unions to participate, this could include the identification of barriers to participation and commitments on how they are addressed. To protect workers and their unions this could include an **anti-reprisal policy**. • Industrial relations and social dialogue with workers and their unions are systematically embedded into the operations of the company by establishing corporate governance. • This can mean that unions are included and active in collective bargaining, advisory boards, steering groups, worker-management committees, strategic fora etc. to participate in decision-making. • It also includes adequate resourcing, planning, and training those involved in the DD process. Adequate time needs to be provided to engage meaningfully and barriers to engagement such as language, culture, gender and power imbalances and lack of resources must be removed.
2 STEP 2 **Identify and assess adverse impacts on RBC issues**	• **Workers and their unions participate in scoping, identifying, deciding indicators, and prioritising RBC risks.** They also participate in developing indicators to measure and monitor progress. • Workers and their union are actively involved in the assessment of prioritised operations, suppliers and other business relationships, for example through being part of on-site visits and assessments, providing data and information, and (re-) assessing impacts.
3 STEP 3 **Cease, prevent and mitigate impacts**	• **Workers and their union participate in stopping, preventing and mitigating risks on labour rights.** • This can include enshrining clauses on worker and union participation and the DD process in collective agreements and international agreements such as global framework agreements (GFAs). This can be complemented by being involved in developing road maps, action plans, capacity building workshops and meetings with suppliers, government officials or labour inspectors.

DUE DILIGENCE STEP	UNION ENGAGEMENT
4 STEP 4 **Track implementation and results**	• **Workers and their union participate in monitoring and validating the effectiveness of due diligence related activities.** • Establishing works councils and worker-management committees can facilitate effective monitoring of implementing collective agreements, international agreements, road maps and action plans including the effectiveness of industrial relations and worker and union participation.
5 STEP 5 **Communicate how impacts are addressed**	• **Workers and their union participate in how the enterprise may communicate publicly in addressing risks and impacts.** • This includes following through and closing the loop with workers and their union on how outcomes of engagement have been considered. • It can also include the distribution of information on how to join the local union, the collective agreement and any other international agreements. • Communication must always ensure workers are kept safe and information is timely and culturally sensitive and written in a language understandable to workers.
6 STEP 6 **Provide for or cooperate in remediation**	• **Workers and their union participate in designing and implementing grievance mechanisms.** This ensures grievance mechanisms are known, understood, trusted and safe to access for workers. • Workers and their union participate in determining appropriate remedies. They also support addressing ineffective or inefficient elements in the grievance mechanism to ensure continuous improvement to remedy labour rights violations.

2

How to use the OECD Guidelines?

In this part we will explore how you can use the Guidelines. Before filing a complaint consider what you and your colleagues want to achieve and what outcomes you can expect from the NCP process.

2.1 BE CLEAR ABOUT WHAT YOU ARE TRYING TO ACHIEVE AND HOW

WHAT DO YOU WANT TO ACHIEVE?

Before choosing to use the Guidelines, reflect on what you are trying to achieve (primarily). Knowing what you are trying to achieve will help you choose the most appropriate way of realising your objectives.

Ask yourself:

- ☐ What are the issues that occur in the company?
- ☐ Do you have evidence and documentation to show what issues occurred when?
- ☐ What is the goal you want to achieve?
- ☐ What is your broader strategy?
- ☐ Can you cooperate with unions you are a member of like national confederations, global union federations or work councils (e.g. in the company's headquarters), union representatives on boards, union friendly investors or civil society organisations?
- ☐ Do you need support with preparing the complaint?

⚠ Also ensure that the Guidelines apply to the company you are seeking remedy from (see Part 1.3).

→ *The companies covered by the Guidelines, p.9*

WHY USE THE OECD GUIDELINES?

If the issue is related to suppliers in international supply chains, in countries with limited or poor domestic labour law and/or enforcement, **the NCP mechanism can be a useful instrument to seek remedy**. As mentioned above, it is irrelevant if the State where the labour rights violation has occurred is an adherent to the Guidelines.

If a company can be linked to **a MNE headquartered in an adherent country**, a complaint can be filed to encourage dialogue with a company, supplier, subcontractor in a different country.

Similarly, if **an MNE headquartered in a non-adherent country operates in an adherent country** and violates the Guidelines, a complaint can be filed as well.

Due to addressing violations in headquarters and along a company's supply chain, **the Guidelines can be a tool**

- **to raise awareness among workers**
- **to build international solidarity**
- **to organise workers**
- **and to recruit new members to the union**

The NCP mechanism is also **free of charge.**

The engagement of a lawyer to file a complaint is **not required.**

2.2 KNOW WHAT TO EXPECT FROM THE NCP PROCESS

The NCP mechanism is a tool for social dialogue. The NCP process is comparable to a mediation process rather than to filing a court case. Consequently, the focus is on facilitating and finding solutions to the problems you and your colleagues are experiencing to move forward.

Through dialogue and mediation, you might reach an agreement with the company on how to work with the company to solve the issues and to prevent them from occurring in the future. This can be a formal written agreement which may be legally binding between the union and MNE or an informal agreement.

Examples of outcomes facilitated by NCPs

- An agreement to enter collective bargaining
- An agreement to invite labour inspectors to check health and safety standards
- Reinstate workers who lost their jobs e.g. due to union activities
- Compensate workers adequately when they were made redundant without redundancy pay
- Agree a concrete action plan on how to improve specific working conditions
- A policy on building and systemically integrating industrial relations and worker and union participation into company structures and processes. This can include establishing works councils, health and safety committees and a process on the participation of workers and their unions into the 6-step due diligence process
- A memorandum of understanding committed to preventing and eliminating risks that caused negative impacts for workers etc.
- A commitment to updating conditions for supplier codes of conduct (including the working conditions of workers and support for unionisation)
- An agreement on participation of workers and their union in monitoring and reporting mechanisms
- Improving or setting up a company grievance mechanism with sufficient resourcing; clear communication on access and process; guidance translated into multiple languages; accompanied with active encouragement by the company to form or contact the legitimate union.

The list is not exhaustive. The outcome of a complaint depends on the complaint itself and what you agree during mediation with the NCP. Rather think creatively what solutions are possible and bring about the desired objectives you have formulated earlier.

If no agreement can be achieved, the NCP can make recommendations suggesting to the company how they can improve to effectively implement the Guidelines. These recommendations can be used for following up with the company. The NCP will explain if they can support the process. While the recommendations are not enforceable by the NCP, **unions can use them to organise and influence the company** through participation, negotiation, collective bargaining and campaigning. The recommendations are usually included in the final statement published by the NCP.

2.3 HOW TO PREPARE FOR DRAFTING AND SUBMITTING A COMPLAINT

After mapping what you and your colleagues want to achieve through social dialogue, you are now ready to prepare your complaint.

WHO CAN SUBMIT A COMPLAINT?

- A complaint (or in OECD language **"a specific instance"**) can be filed by **any trade union or worker organisation or individual worker**.
- Trade unions can file complaints on their own or with other unions or organisations like non-governmental organisations (NGOs). These unions can be company, sector, national or global union federations.

You don't need a lawyer to support you.

TUAC strongly encourages you to contact your local, sectoral or national union, and, if relevant, the GUF responsible for your sector or TUAC (check out the fact sheet at the end on who is doing what in the global labour movement).

→ *Who is doing what in the global labour movement, p.28*

WHERE DO I SUBMIT A COMPLAINT?

- A complaint should be submitted to **the NCP in the country where the violations have occurred**.
- If the violations occur in a country that is not adhering to the Guidelines, the complaint should be submitted to **the NCP of the country in which the parent company is headquartered**.

EXAMPLE That means for instance that a complaint against an Indian supplier who provides parts for a UK company and violates labour rights can be submitted to the UK NCP.

COLLECT EVIDENCE FOR YOUR COMPLAINT

1 If you and your colleagues decide using the Guidelines can achieve your desired objectives and you know what the main violations are **you can start drafting a complaint**. You might have already collected evidence of the violations of labour rights you have experienced. If not, now is the time to start (see Checklist No.2)

2 You need to be able to **show and illustrate what has happened** to you and your colleagues. The evidence you need to present to the NCP is not as extensive and detailed as when filing a court case. However, do take this exercise seriously. The better you can document what has happened to you and your colleagues the more likely it is that the NCP agrees to assess the complaint and propose mediation to the parties.

3 It is important that **your evidence relates to the Guidelines' standards**. Also consider concentrating on the main issues you and your colleagues have experienced. This might depend on how serious the violations are and how much impact they have on respecting other standards at work. For instance, not being able to collectively organise and bargain is a major barrier to making your voice heard and achieve other changes in your collective working conditions. The amount and quality of your evidence might also play a role in deciding what the major issues are.

→ *How to collect evidence – Checklist No.2, p.26*

TIP

Consider embedding your complaint into a wider strategy

- In addition to collecting evidence, consider finding out about **the company's ownership and investor structures**. Research if there is a works council at headquarters and consider reaching out to your international, sectoral union (GUF) for additional information and insight.
- Also consider the act and process of filing a complaint and the possibility of achieving remedy as **an organising opportunity** to encourage your colleagues to join the union. Together you are strong!
- You should also discuss with your colleagues who is doing what to use the resources you have wisely. Think about the possible outcomes of your complaint. Depending on the outcome, what will you do? **Always aim to be a step ahead** in your thinking and planning if you can!

HAS THE COMPANY BEEN TAKEN TO COURT OR IS THE COMPANY INVOLVED IN OTHER NCP PROCESSES?

If the company you are filing a complaint against is involved in any other formal procedures at a national court, tribunal or NCP on the same issues, it is referred to as "**parallel proceedings**".

Parallel proceedings do not mean that the NCP cannot assess your complaint, but it could have an impact. You might want to consider why you are also filing your specific complaint. It might be because you are seeking **systemic outcomes** such as building constructive social dialogue with the company that a court decision cannot provide for.

If you are aware of parallel proceedings, mention them in your complaint.

PROTECTION FROM RETALIATION AGAINST INDIVIDUAL WORKERS AND UNION BUSTING

The Guidelines underline workers have the right to organise, form and join unions which means that any activities of a company that **intimidate, threaten, limit or actively stop unionisation** are not aligned with the Guidelines.

After a complaint was filed with the NCP and while the NCP is assessing the complaint, offering mediation until publishing its final statement, some NCPs have **zero-tolerance policies against retaliation and union busting** against complainants. Always check the NCPs' website and particularly the procedural guidance which will provide you with useful information on their own policies and processes. To find links to the NCPs' websites, visit the OECD NCP directory.

Always consider and ensure it is safe to file a complaint e.g. through filing it with a partner union and maintaining anonymity of specific workers where possible. Always consider unintended negative outcomes for you and your colleagues. If you or colleagues are experiencing reprisals or you are worried this might happen, consult with your union.

COMPANIES MUST OBEY NATIONAL LAW AND THE GUIDELINES

Both national law such as employment or labour law and the Guidelines, set minimum standards for compliance and implementation. **Whichever standard is higher must be taken as a benchmark for implementation.** National law however can be enforced while the Guidelines cannot be legally enforced.

If the violations you and your colleagues are experiencing at work are related to the company not following and including workers and their unions into the due diligence process, you might be interested in checking out **European Union (EU) or national legislation on mandatory due diligence** frameworks. They can also help you to achieve justice at work.

2.4 HOW TO DRAFT AND SUBMIT A COMPLAINT

Once you have decided if you want to submit your complaint with another union or organisation, where to submit your complaint, and if your objectives are aligned with what the NCP mechanism can deliver, it is time to draft your complaint.

Some NCPs offer online forms to file your complaint. Below are a few checklists for you, you can follow in preparing and drafting your complaint.

SUGGESTED STEPS TO DRAFT AND SUBMIT YOUR COMPLAINT

1 Identify trade union support	• Can you contact a national trade union, trade union confederation or GUF to support you? • Have you contacted **TUAC** for support with your complaint?
2 Check the NCP's website	• The NCPs' websites include information on **how to make a complaint and what needs to be included**. To find the NCPs' respective websites, visit the OECD NCP directory. If you need assistance with the information and application to draft a complaint do not hesitate to contact TUAC.
3 Collect evidence of the issue you are trying to solve	• **Relate your evidence to the Guidelines!** The better you can document what has happened to you and your colleagues the more likely it is that the NCP agrees to assess the complaint and propose mediation to the parties.
4 Check that your complaint is eligible	• First, the issues you are experiencing must be part of the Guidelines. • Second, the violations of the Guidelines take place in a company headquartered in the adherent country (with providers in adherent or non-adherent countries) or a company headquartered in a non-adherent country engaging with companies in adhering countries.

5	**Identify your primary objective**	• Before choosing to use the Guidelines, reflect on what you want to achieve. Try to be **as clear and focused as possible**.
6	**Identify your resources**	• If you have jointly filed the complaint with another local, national or global union, be clear about your **shared expectations, process of working together and respective roles** in the process. Discuss who is doing what.
7	**Consider what you are doing when the complaint is closed**	• Reflect on what you want to and can do when the complaint is closed, and issues remain unresolved. Are you prepared and resourced to run a campaign? Did you gather information on other mechanisms that you might be able to use to remedy rights violations? Who are potential allies and with whom could you collaborate (such as the GUFs)?
8	**Show how the issues are related to the expectations in the Guidelines**	• Describe how, where and when the company has violated the Guidelines, and relate your description clearly to the Guidelines.
9	**Draft your complaint**	• See the suggested elements to include in your complaint in the table on p.21.
10	**Submit your complaint to the relevant NCP**	• Check the website for your options. With most NCPs you can fill in an online form, send your documents by email or send them by post.
11	**Inform TUAC**	• **Keep us informed about your complaint!** • Knowing about the active complaints helps TUAC to be stronger in our advocacy on workers' rights. It also helps us to contribute to effective coordination of the global labour movement to respect labour rights globally.

→ *What to do before submitting – Checklist No.1, p.25*

→ *How to collect evidence – Checklist No.2, p.26*

→ *What information must be included in your complaint – Checklist No.3, p.26*

WHILE YOU ARE DRAFTING THE COMPLAINT, GIVE A BIT OF THOUGHT TO THIS AS WELL!

Reflect on the NCP's confidentiality requirements

- Confidentiality requirements before and during the complaint process are important for you to understand. They indicate if you can share your complaint publicly for instance.
- The Guidelines encourage NCPs to allow parties to publish their own initial submission and to communicate publicly about the stage of the process.
- The confidentiality requirements set by NCPs are included in their procedural guidance. You can find them on the NCP's website.
- Not complying with the procedural guidance can be seen as **not acting in good faith** and jeopardise the process. Therefore, spend a bit of time on reflecting on your options to publicise and campaign.

Assess and understand the NCP's effectiveness

- Assess the effectiveness of the relevant NCPs, you can submit to. Sometimes there is only one option, sometimes there are several options.
- Due to a variety of factors some NCPs are more effective in providing remedy than others. This can be due to their expertise and experience, resources, structures and procedures among other things.

Reflect on a company's potential engagement in the process

- Companies' preparedness to engage in the NCP process once you have filed a complaint can vary.
- There are several good reasons why companies should participate in the process.
- Reflecting on companies' preparedness to engage helps you to understand your options and possible outcomes.

→ *Reasons why companies should participate in the process – Fact Sheet No.1, p.27*

SUGGESTED ELEMENTS TO INCLUDE IN YOUR COMPLAINT TO THE NCP

Summary	• Provide a summary of the key points of your complaint at the beginning.
Complainant(s)	• Explain the reason why you are using this mechanism and explain who you are representing. Are you filing the complaint on behalf of other people? Are they affiliated to a union? What is your interest? You should also include your **full contact details**.
Enterprise(s)	• You should provide as much information as possible about the company, its suppliers, investors, ownership, headquarters, structure and location. • You can add here why you think that the chosen NCP is the right one to deal with your complaint based on the company's operations and where the violations occurred. • You can also mention if you have informed the MNE about the complaint or if you have tried to solve the issues through different channels.
Do workers need to be protected?	• Information about your complaint is usually **shared with the company in full**. • If you think it is important to keep information on workers' names or the union's name confidential you must briefly explain why. • This can be particularly relevant if you are complaining about a company preventing, stopping or undermining union activity.
Issues with the Guidelines	• Describe **how the company has violated the Guidelines, where and when**. While you should relate your complaint clearly to the Guidelines and specific chapters, you can add supporting international instruments such as the ILO Conventions and Recommendations. • Also consider if you want to focus on the key violations or all violations. Focussing only on the key violations might speed up the process yet note that it can be difficult to add issues later.
Description of facts and circumstances	• Be **concrete, concise and clear** in your language and provide sufficient information so that the NCP understands the link to the Guidelines and the issues at hand.
Are there any parallel proceedings?	• If you are aware of any parallel proceedings with an NCP or national legislation, do mention it in your complaint.
What are your desired outcomes?	• You should mention **what outcomes or remedy you are seeking** through mediation (see examples of outcomes facilitated by NCPs, p.15).

→ *What information must be included in your complaint – Checklist No.3, p.26*

2.5 WHAT DOES THE PROCESS LOOK LIKE AND HOW LONG DOES IT TAKE?

The timeframe to conclude a complaint depends on the complexity of the complaint, the willingness of stakeholders to participate, the workload of the NCP, etc. and varies sometimes significantly.

While the indicative timeframe is about **12 months to complete the five-step process** (and two months longer if the NCP must coordinate with other NCPs), it can take longer than that. **It is not a quick-fix solution.** Considering the different stages of the process and the length it might take to get from one stage to the next might be relevant to your overall action plan.

The NCP may coordinate with other NCPs that are involved or related to the complaint. The NCP will keep you informed if this is taking place. After this the NCP assesses your complaint to determine if further examination is required. If the NCP concludes that further investigation is needed, the NCP will offer mediation to the parties. If no further investigation is accepted by the NCP the final statement will conclude the complaint. After the mediation process a final statement will also be drafted. A follow up can be conducted by NCPs.

THE FIVE STEPS OF THE NCP PROCESS



1	2	3	4	5
Coordination with other NCPs, where relevant	**Initial assessment** is further examination required?	**Offer of mediation** the "good offices" offered to the parties	**Final statement** concludes the complaint	**Follow up** usually one year after the final statement
Approx. 2 months	*Approx. 3 months*	*Approx. 6 months*	*Approx. 3 months*	

Indicative timeframe: about 12 months to complete the five-step process (two months longer if the NCP must coordinate with other NCPs) – and it can take longer than that.

What to do during the NCP process?

The mediation phase is formally called 'good offices' and similar to other labour related mediation you and your colleagues might have participated in such as collective bargaining or individual grievances. Therefore, similar principles apply:

WHAT TO DO DURING THE NCP PROCESS

1 Engage in good faith	• Acting in good faith is essential to industrial relations to build constructive and healthy relationships. It means being **fair, honest, open, respectful and solution oriented**. • All parties are to respond in a timely fashion, maintaining confidentiality where appropriate and consistent with the NCP's procedures available on their website. • Threatening or taking reprisals against you as complainants constitutes a breach of good faith engagement. If this happens or you are concerned this might happen, consult with your union.
2 You can ask to agree terms of reference for the mediation	• Like a Bargaining Process Agreement (BPA), you can agree **Terms of Reference (ToR)** with the NCP and the company. It can be a helpful document to reference and solve issues that might arise with the process of mediation.
3 Honour confidentiality agreement	• You as the complainant, the company or the NCP may communicate publicly on the existence of the specific instance. If you agreed otherwise with the NCP and the company, you cannot. • NCPs are encouraged to allow the parties to communicate publicly about the stage of the process and to allow parties to publish their own initial submission. • Do check the procedural guidance of the NCP **before publishing any information**.
4 Prepare for mediation similarly to a conversation or negotiation you might have with the employer	• Reflect on your objective, your interests and arguments, the company's possible interests and arguments, and possible options for solving the issues. • Think about your engagement during the mediation process. Ask questions to test assumptions and show that you have listened to what they have shared. Be mindful of your and the other parties' body language. • If you can't resolve the issue or agree on your preferred outcome, consider your best alternative to your preferred outcome. **Know what you can accept as an outcome and what you cannot.** • If you are in a group, decide who your lead person in the mediation process is.

5	**You can ask for breaks and clarifications during mediation**	• Be prepared to improvise when unpredictable arguments or turns in the conversation arise. • If you are uncertain on how to respond or the mediation conversation is getting heated, **you can always request a break**. • You can always ask the company or NCP for clarification on substantial or procedural matters.
6	**Keep workers you are representing informed about the process**	• It is important to keep workers you are representing in the loop of the process. Consider different ways of updating workers and which mechanism might be most appropriate to use.
7	**If capacity allows continue to organise and recruit workers in the company if feasible**	• The complaint might be a **good organising opportunity** depending on the context. It shows workers you and your union are standing up for their rights and that you are stronger and more successful together.
8	**A company does not want to engage in mediation**	• This is very disappointing because it signals that the company has no interest to find a solution together. Ask the NCP why the company is unwilling to engage or why they are pulling out mid-way through the process. • Should the NCP close the case, consider what your follow up can be.
9	**Before the final statement is drafted, check and encourage follow up by the NCP**	• Many NCPs follow up on the agreements and outcomes of complaints to assess whether the company is complying with the agreement or implementing the recommendations of the NCP. • Follow up statements are usually published **one year after the final statement** was published by the NCP.

3

Checklists and fact sheets

In this part you will find practical checklists to help you prepare, document and submit your complaint, and fact sheets with key information to support your case.

3.1 CHECKLISTS

CHECKLIST NO.1: WHAT TO DO BEFORE SUBMITTING

- ☐ Identify trade union support where possible
- ☐ Check the relevant NCP's website
- ☐ Check that your complaint is eligible
- ☐ Collect evidence of the issue you are trying to solve
- ☐ Identify your primary objective
- ☐ Identify your resources
- ☐ Consider what you are doing when the complaint is closed
- ☐ Show how the issues are related to the expectations in the Guidelines
- ☐ Draft your complaint
- ☐ Submit your complaint to the relevant NCP
- ☐ Inform/consult TUAC

⚠ **Also, give a bit of thought to this:**

- Reflect on the NCP's confidentiality requirements and what it means for publishing information
- Assess and understand the NCP's effectiveness
- Reflect on a company's potential engagement in the process

CHECKLIST NO.2: HOW TO COLLECT EVIDENCE

- ☐ Keep your notes in a safe place and not at work
- ☐ Write down the facts immediately after the incident as it happened. If you didn't, try to recall the incident as accurately as possible.
- ☐ Include the date, time, location and people that have been involved or witnessed the incident.
- ☐ If appropriate discuss the issue with your colleagues and listen to their experiences.
- ☐ You might want to save emails, text messages, letters or other notes. Keep credible information that is related to and illustrates your complaint.
- ☐ Be aware of the provisions in the Guidelines and focus on evidence that illustrates how the Guidelines' provisions were violated.

⚠ **Note:** The process of collecting evidence can be an opportunity to talk with your colleagues, share and understand experiences, discuss your interests and needs, support each other and become more organised to advance your interests and needs. If you are union members already – great! If not, this can be an opportunity to form a union (which is your right!).
Make sure to take precautionary measures to organise safely and avoid negative reactions by your employer!

CHECKLIST NO.3: WHAT INFORMATION MUST BE INCLUDED IN YOUR COMPLAINT?

- ☐ Short summary of the key elements of the complaint
- ☐ Information on the complainant(s), your interest in the complaint and mandate
- ☐ Information on the enterprise(s)
- ☐ Do workers require protection?
- ☐ Which provisions in the Guidelines have been violated?
- ☐ Description of facts and circumstance that illustrate the violations
- ☐ State any parallel proceedings you are aware about
- ☐ What are your desired outcomes?

⚠ **Note:** There are different ways to submit your complaint. Depending on the NCP, you can send it by post, email (easiest with an attachment), or by filling in a form on the NCP's website. Your complaint can usually be filed in English or the local language of the NCP.

3.2 FACT SHEETS

FACT SHEET NO.1: REASONS WHY COMPANIES SHOULD PARTICIPATE IN THE PROCESS

- Complaints and the NCP process can be an **efficient and effective way to resolve issues** and avoid costly legal disputes at courts and tribunals.
- Unresolved issues can carry **costs to the company** such as delays in projects and investments, loss of workers' productivity and managerial time, increased turnover costs etc.
- Governments might tie **financial support or contracts** (such as export credits, investment guarantees, trade assistance or public procurement) to good faith engagement in the process.
- Campaigns by unions might lead to loss of sales or market value due to **negative public reputation** and/or decreasing confidence by investors and hence access to capital.
- Complaints and the NCP process can **strengthen and rebuild trusting industrial relations** and social dialogue between workers and their unions and the company. It is a collaborative, non-confrontational approach with the possibility to agree on a wider variety of remedies (for examples of agreements see section 2.2).
- Workers and their unions can support companies to **improve their due diligence** through participating in the process and negotiating collective agreements and global framework agreements. This supports companies to meet expectations of governments, regulators, investors and business partners.

FACT SHEET NO.2: WHO DOES WHAT IN THE INTERNATIONAL UNION MOVEMENT ON THE OECD GUIDELINES?

- **Local unions:** Your local union represents workers in your workplace or company branch. Your local union supports you with issues and grievances in your workplace that can be solved on a local level. They organise workers to be stronger together.
- **National unions:** National unions organise workers across a country within a specific industry or occupation. They negotiate major national or multi-employer collective agreements. They often provide legal support and training to representatives and delegates.
- **National union (con)federations:** National union (con)federations unite and represent unions across sectors in a given country. They advocate on behalf of members vis-à-vis governments for example on labour law and social policy and coordinate broad political campaigns.
- **Global union federations (GUFs):** Global union federations unite national unions from different industries and occupations. They negotiate global framework agreements, and campaign for respecting international labour rights.
- **Trade Union Advisory Committee (TUAC)** unites national union (con)federations and is the official voice of workers and their unions at the Organisation for Economic Co-operation and Development (OECD). TUAC supports and coordinates workers and their unions on the OECD Guidelines, RBC and the NCP mechanism.

⚠ **Note:** The structure of unions in your country depends on the industrial relations system and can vary from country to country.

Trade Union
Advisory Committee
to the OECD

TUAC

Commission syndicale
consultative
auprès de l'OCDE



tuac@tuac.org