Improving effectiveness of non-judicial mechanisms: focus on NCPs and independent accountability mechanisms

Parallel session

28 November

15:00-18:00

Part 1: Improving effectiveness of non-judicial mechanisms: Lessons learned from the OECD NCP peer review process
15:00-16:25
Organized by OECD

Part 2: The Road to Remedy: Challenges and Opportunities for Communities Accessing Remedy in International Development Projects
16:35-18:00
Organized by the Independent Accountability Mechanisms Network (IAMNet), Centre for Research on Multinational Corporations (SOMO), Accountability Counsel, Bank Information Center, Center for International Environmental Law

Part 1: Improving effectiveness of non-judicial mechanisms: Lessons learned from the OECD NCP peer review process

Brief outline: As part of its Action Plan to Strengthen NCPs the OECD has been undertaking peer reviews of OECD National Contact Points (NCPs). The peer review process provides the NCP under review with a mapping of its strengths and accomplishments, while also identifying opportunities for improvement. Thus far seven NCP peer reviews have been completed and another four are currently underway. This session will provide an opportunity to discuss lessons learned from the OECD NCP peer review process and how the process can be further improved to ensure that outcomes contribute to strengthening the NCP network.
**Objectives:** To discuss lessons learned from the OECD NCP peer review process and to discuss how the process can be further improved to ensure that outcomes contribute to strengthening the NCP network.

**Key discussion questions:**

- What does an NCP peer review entail?
- How can the NCP Peer review process contribute to strengthening the NCP network?
- How can the peer review process be improved to encourage meaningful outcomes? For example:
  - How can stakeholders best be involved in the NCP peer review process?
  - What can be learned from other peer review models to optimize the NCP peer review process?
- In what way should the current methodology for peer reviews be adapted to less advanced NCPs?

**Speakers:**

- **Roel Nieuwenkamp**, Chair of the OECD Working Party on Responsible Business Conduct (Keynote introduction)
- **Cristina Tebar Less**, Manager, Responsible Business Conduct Unit, OECD (Moderator)
- **Cyril Lance**, NCP of Belgium
- **Alan Krill**, NCP of the United States
- **Iris Hammerschmid**, NCP of Austria (tbc)
- **Kristine Drew**, Senior Policy Adviser, TUAC
- **Joseph Wilde**, Senior researcher, SOMO/OECD Watch Network

**Format:** The session should be structured as a discussion to encourage input from participants. Speakers identified above will have an opportunity to respond to the leading discussion questions (5 minutes per speaker) after which attendees to the meeting will have an opportunity to input into the discussion and raise additional questions.

**Background:**

**ABOUT THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES**

The OECD Guidelines are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. They provide non-binding principles and standards for responsible business conduct in a global context consistent with applicable laws and internationally recognised standards. The OECD Guidelines are the only multilaterally agreed and comprehensive code of responsible business conduct that governments have committed to promoting.

**ABOUT NCPs**

OECD National Contact Points (NCPs) are agencies established by adhering governments to promote and implement the OECD Guidelines for Multinational Enterprises. NCPs assist enterprises and their stakeholders to take appropriate measures to further the implementation of the Guidelines. They also provide a mediation and conciliation platform for resolving practical issues that may arise.

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1 Further information on speakers provided in Annex
ABOUT NCP PEER REVIEWS

Adhering governments to the OECD Guidelines for Multinational Enterprises are required to set up a National Contact Point (NCP) that functions in a visible, accessible, transparent and accountable manner. During the 2011 update of the OECD Guidelines for multinational enterprises, NCPs agreed to reinforce their joint peer learning activities and, in particular, those involving voluntary peer reviews. The peer reviews are conducted by representatives of 2 to 4 other NCPs who assess the NCP under review and provide recommendations. The reviews give NCPs a mapping of their strengths and accomplishments, while also identifying opportunities for improvement.

More information about the peer reviews process and well as published NCP reports can be accessed here: [http://mneguidelines.oecd.org/ncppeerreviews.htm](http://mneguidelines.oecd.org/ncppeerreviews.htm)

Part 2: The Road to Remedy: Challenges and Opportunities for Communities Accessing Remedy in International Development Projects

**Brief outline:** This session organized jointly by the Independent Accountability Mechanisms Network (IAMNet), Centre for Research on Multinational Corporations (SOMO), Accountability Counsel, Bank Information Center, Center for International Environmental Law will discuss the main challenges and opportunities faced by communities when using IAMs to obtain remedy, and will explore which possible reforms, actions or good practices would help ensure an effective remedy. It seeks to identify the main challenges and opportunities faced by communities when using IAMs to obtain remedy, and will explore which possible reforms, actions or good practices would help ensure an effective remedy.

**Key discussion questions:**

- How do communities identify who is responsible for the adverse impact of a development project and how they find out about the existence of the IAMs as a resource?
- What challenges and opportunities do communities face in deciding their course of action?
- What challenges and opportunities do communities face in choosing dispute resolution or investigation?
- What challenges and opportunities do communities face when the complaints process is concluded?
- How can IAMs, as non-judicial mechanisms, advance in observing effectiveness criteria such as, accessibility, legitimacy, predictability, rights-compatibility and transparency?
Speakers:

- **Kristen Genovese**, Senior Researcher, Centre for Research on Multinational Corporations (SOMO) *(Co-moderator)*
- **Gina Barbieri**, Principal Ombudsman, Compliance Advisor Ombudsman (CAO) *(Co-moderator)*
- **Sukhgerel Dugersuren**, Executive director, OT Watch
- **Anirudha Nagar**, South Asia Director, Accountability Counsel
- **Nicholas Cotts**, Vice President - Sustainability and External Relations, Newmont Mining Corporation
- **Dinding Tang**, Chair, Compliance Review Panel concurrently Head, Office of the Compliance Review Panel, Asian Development Bank
- **Arantxa Villanueva**, Compliance Review Phase Coordinator, Independent Consultation and Investigation Mechanism (MICI)
- **Erica Bach**, Project Complaint Mechanism Officer, Project Complaint Mechanism (PCM)
- **Erica Lennon**, Senior Attorney, Climate & Energy Program, Center for International Environmental Law (CIEL)

**Format**: The format will combine a role-play format with a panel discussion. The session will begin with presenters travelling through the audience to recreate the journey that a complaint takes through a process alongside a panel discussion to elaborate on existing opportunities and challenges of IAMs to act as a resource for complainants to achieve remedy. It will conclude with Q&A from the audience.

**Background**: The independent accountability mechanisms of the development finance institutions are often referred to as a model for non-judicial grievance mechanisms that meet the effectiveness criteria in Principle 31 of the UN Guiding Principles. Research has shown that, in some cases, communities have received some benefits as a result of a complaint to an IAM, but many do not. This is, in part, because DFIs fail to provide them with the necessary mandate to ensure remedy is provided and/or fail to address the IAMs’ findings. Also, recently, there have been efforts to undermine the IAMs as the main existing recourse for communities whose rights are affected by IFI-financed activities. This session seeks to show, from the communities’ perspective, the significant obstacles and opportunities when using an IAM and what is needed to improve the likelihood of receiving a remedy.

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2 Further information on speakers provided in Annex
ANNEX. SPEAKERS SHORT BIOS.

PART 1.

Cristina Tebar Less

Manager, Responsible Business Conduct Unit, OECD

As Head of the OECD Responsible Business Conduct (RBC) Unit, Cristina Tébar Less manages a team of experts that supports governments, business, worker representatives and civil society in the implementation of the OECD Guidelines for Multinational Enterprises.

@ctebarless

Roel Nieuwenkamp:

Chair of the OECD Working Party on Responsible Business Conduct

Roel Nieuwenkamp is Chair of the OECD Working Party on Responsible Business Conduct. He supervises and provides leadership to CSR programmes on the Financial Sector, Mining Sector and conflict minerals. Prior to his current position, Roel was Chair of the OECD Working Party on international Investment responsible for the negotiations on the 2011 update of the OECD Guidelines for Multinational Enterprises.

He has also served the European Commission and was a consultant in New Zealand on the issue of results oriented government. For several years, he was management consultant at Arthur Andersen. As the Director of the International Trade Policy & Economic Governance with the Ministry of Foreign Affairs of the Netherlands, his responsibilities concern trade policy (WTO), investment treaties, corporate social responsibility, and the regulation of strategic goods. He studied Economics, Law and Philosophy at the Erasmus University Rotterdam.

@nieuwenkamp_csr

Iris Hammerschmid

NCP of Austria, Federal Ministry of Science, Research and Economy

Iris Hammerschmid is the head of the Austrian NCP. Prior to joining the Austrian NCP, she has worked for the Austrian Supreme Administrative Court, an Austrian law firm and the European Commission. She holds an LL.M. degree from Columbia Law School, a law degree from the University of Vienna and a degree in international business administration from the Vienna University of Economics and Business.
Dr. Joseph Wilde-Ramsing, Ph.D.

Senior Researcher and Coordinator, Centre for Research on Multinational Corporations (SOMO) and OECD Watch

Joseph holds degrees in political science and Spanish from universities in the USA and a doctorate degree in energy governance from Twente University (Netherlands). At SOMO since 2005, Joseph researches the impacts of corporations in the energy, extractives and public services sectors. With OECD Watch he advocates for effective corporate accountability rules and mechanisms and works with communities and victims of corporate abuse to hold corporations accountable and seek remedy.

@OECDWatch @SOMO

Alan Krill

NCP of the United States

Alan Krill serves as Special Advisor for Corporate Responsibility in the Office of the U.S. National Contact Point for the OECD Guidelines for Multinational Enterprises at the U.S. Department of State. In this capacity, Krill works with U.S. companies to promote responsible business practices globally, leads mediation and dispute-resolution processes between companies and civil society organizations and/or labor groups, and represents the U.S. government on responsible business matters in international forums such as the OECD and UN. Krill also manages the Secretary of State’s Award for Corporate Excellence, which recognizes U.S. companies that uphold high standards globally, and coordinates the State Department’s Advisory Committee on International Economic Policy, comprised of senior leaders from business, civil society, and labor.

@AlanKrill

Ms. Kirstine Drew

Senior Policy Advisor, Trade Union Advisory Committee to the OECD (TUAC)

Kirstine Drew is a Senior Policy Advisor at the Trade Union Advisory Committee to the OECD (TUAC). Kirstine is primarily responsible for carrying out TUAC’s work on the OECD Guidelines for Multinational Enterprises, although she also works in the policy areas of investment, export credits and anti-corruption.

Prior to joining TUAC Kirstine was the coordinator of the Trade Union Anti-corruption Network, UNICORN and co-founder of the Civil Society Coalition working on the UN Convention against Corruption.

Kirstine has an M.A. in Development from the University of Manchester, UK and an M.A. in Economics from the University of Aberdeen, UK.

@TUACGuidelines
Cyril Lance

\textit{NCP of Belgium}

Cyril Lance graduated from a master in Business and Economics and started his career as a EU policy officer for the French region Provence-Alpes Cote d'Azur. He then joined the Belgium Ministry of Economic Affairs as part of the service for foreign investments and then became secretary of the National Contact Point for the OECD Guidelines in Belgium for now 2 years on.

\textbf{PART 2.}

Kristen Genovese

\textit{Senior Researcher, Centre for Research on Multinational Corporations (SOMO)}

Kris specializes in supporting communities and workers who are seeking remedy for corporate-related human rights abuses through non-judicial grievance mechanisms. Since 2007, Kris has worked with sugarcane workers in Nicaragua affected by chronic kidney disease to help determine the cause of the epidemic and to obtain improved health and social services. Prior to joining SOMO in 2014, Kris was the director of the People, Land, and Resources Program at the Center for International Environmental Law (CIEL). Kris received her law degree from New York University School of Law in 2004 and holds a Bachelor’s degree in Environmental Policy and Behavior from the University of Michigan School of Natural Resources and the Environment.

Gina Barbieri

\textit{Principal Ombudsman, Compliance Advisor Ombudsman (CAO)}

Gina Barbieri manages the CAO’s Dispute Resolution function which mediates between private sector clients of the World Bank Group and communities impacted by private sector projects. She is an internationally accredited mediator and human rights lawyer.

Sukhgerel Dugersuren

\textit{Executive Director. OT Watch}

D. Sukhgerel is a co-founder of OT Watch, a non-profit NGO established to monitor compliance of Mongolia's largest foreign investment in mining with international environmental and human rights standards, including protection of the rights of local nomadic communities. She serves as adviser to herders who file complaints against multinational corporations using non-judicial grievance mechanisms. OT Watch is also engaged in policy advocacy and monitoring implementation of the commitments taken under the UN human rights conventions by national government.
Anirudha Nagar

**South Asia Director, Accountability Counsel**

Anirudha Nagar leads Accountability Counsel’s cases in South Asia, working with local partners in the region to assist communities to defend their environmental and human rights. Nagar’s human rights legal experience includes casework and policy advocacy in both international and domestic settings.

@AnirudhaNagar

Nicholas Cotts

**Vice President - Sustainability and External Relations, Newmont Mining Corporation**

Nick has worked with Newmont for over 24 years managing environment and social programs at the operational level, regionally and globally. He has worked from the Corporate offices since 2012 where he has focused broadly on sustainability and leading a number of global initiatives in the sustainability and external relations areas including biodiversity, community development foundations, indigenous peoples, and human rights, artisanal small-scale mining, and overall social performance.

Dinding Tang

**Chair, Compliance Review Panel concurrently Head, Office of the Compliance Review Panel, Asian Development Bank**

Dingding Tang is a national of the People’s Republic of China. He has a Master’s degree in Business Economics from the University of Asia and the Pacific, and a Bachelor’s Degree in Water Supply and Sewage Treatment from Harbin Industry University. Prior to his appointment as Chair of the Compliance Review Panel, he was Director General of the Department of International Cooperation, Ministry of Environment Protection where he was responsible as a national focal point for developing cooperation programs with international finance institutions. He specializes in environmental protection, specifically in implementing environmental safeguards, and conducting assessment and investigation.

Arantxa Villanueva

**Compliance Review Phase Coordinator, Independent Consultation and Investigation Mechanism (MICI)**

Arantxa Villanueva is the head of MICI’s compliance review phase. She has worked as a lawyer at the Inter-American Court of Human Rights, has served as Advisor to the Chief Justice of the Mexican Supreme Court and has been consultant to the Inter-American Institute of Human Rights on matters involving economic, social and cultural rights.
Erica Bach

Project Complaint Mechanism Officer, European Bank for Reconstruction and Development (EBRD)

Bio: Erica Bach administers the Project Complaint Mechanism, the independent accountability mechanism of the EBRD. She is a Canadian lawyer specialized in international human rights and justice, and has worked for a variety of governmental, development, civil society and legal organizations in Canada, South-East Asia and Southern Africa. She holds an LL.M. from New York University, an LL.M. from the National University of Singapore, a J.D./LL.B. from Dalhousie University and a B.A. from Concordia University.

Erica Lennon

Senior Attorney, Climate & Energy Program, Center for International Environmental Law (CIEL)

Bio: Erika Lennon is a Senior Attorney in the Climate and Energy Program. Her work focuses primarily on the Green Climate Fund, UNFCCC, and climate liability. Prior to joining CIEL, Erika was the Coordinator of the Program on International and Comparative Environmental Law (PICEL) at the American University Washington College of Law (AUWCL). In that role, she worked on numerous projects related to environmental and social safeguards and independent accountability mechanisms as well as areas related to climate finance. Erika graduated from the University of California, Berkeley with a B.A. in history and is a member of the State Bar of California.