Recent Development of the National Contact Points of signatory countries to the OECD RBC Guidelines

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The OECD has been working for years on the development of measures that would prevent businesses and corporations from having a negative impact on societies and individuals. The regulation of business conduct is a controversial topic and it has been at the center of attention of the OECD for several decades. A first version of the guidelines is dated back to 1976 and has been reviewed five times since then in order to improve its effectiveness in dealing with responsible business conduct by adapting the guidelines to economical and non- structural changes over time. The most recent

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version of guidelines was updated in 2011 with a collaboration and participation of businesses, labor, NGOs, international organizations and countries non-adhering the OECD. The guidelines can be defined as a set of government-backed recommendations on responsible business conduct and governments subscribing them encourage a positive business impact on the society. In order to enhance companies to behave more responsibly in their practices, especially when dealing with impacts on stakeholders, the guidelines have included eleven provisions that help business to asses different possible effects and externalities on parties (external and internal) that might take place during the daily operations of business. The OECD guidelines, as of the last revision of 2011, contain provisions regarding the sectors of human rights, employment and industrial relations, environment, informational disclosure, bribery, consumer interest, science and technology, competition, taxation, general policies, and concepts and principles. As it can be easily seen, these provisions contained in the most recent text, underline recommendations in every sector of companies' operations that deal with third parties. It can be noticed how the guidelines try to asses also impacts on the environment, topic at center of attention of the last decades and in which businesses play a central role. The provisions address issues related to employees and consumers (under the provisions employment and industrial relations, and consumer interest), but also to other businesses (mostly bribery and information disclosure). Attention is paid also to the relation with government through the issue of taxation. One of the most relevant provisions, however, is the one designed to protect human rights and which, in a certain sense, relates to all the others since human rights are a universal topic that affects all sectors and stakeholders.

From the OECD website it is reported that the guidelines have been subscribed by all 34 OECD signatory members as well as 12 non-OECD countries (Argentina, Brazil,

Colombia, Costa Rica, Egypt, Jordan, Latvia, Lithuania, Morocco, Peru, Romania, and Tunisia), and China (with regards to the mining sector). As mentioned by the Swiss NGO Alliance Sud, countries subscribing the OECD guidelines count for 85% of all foreign direct investment, for this reason if guidelines are followed there would be a considerable impact on the world economy (especially in developing countries). Countries which have subscribed the text agreed to set a National Contact Point (NCP), which will have the task to handle complaints and reports of alleged cases of non-observance of the provisions contained in the guidelines. It is stated by the OECD that countries have flexibility in the organization of their respective NCP, however it is expected to be adequate to deal with the issues reported.

National Contact Points are institutions that provide a platform for discussion and assistance to parties who reported an alleged breach of the Guidelines provisions in order to possibly find a resolution and agreement. NCPs can accept complaints from any party (individuals, NGOs, businesses, trade unions and so on). It is important to notice that NCPs are not judicial bodies as well as instances are not legal cases. For this reason, the role undertaken by the NCPs is more of informal help and possible mediation in order to find an agreement or solution. To ensure a coordinated approach to cases, contact points from different countries meet regularly with the OECD Investment Committee and its Working Party on Responsible Business Conduct.
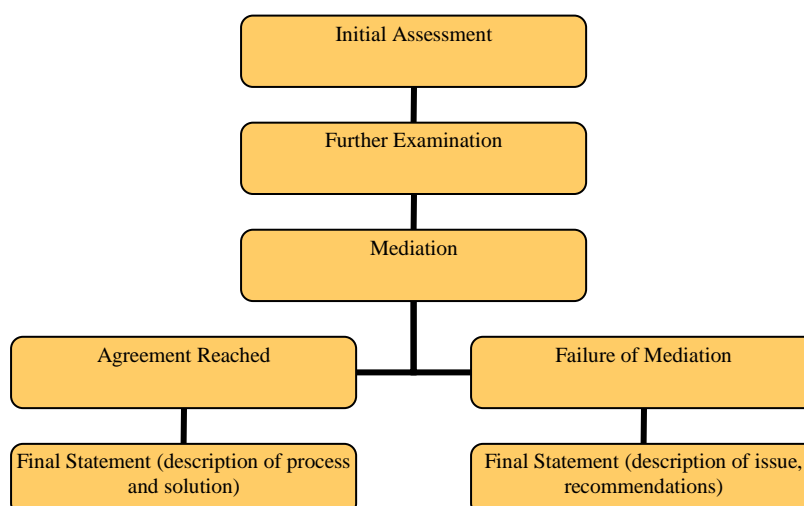
The procedure followed by National Contact Points involves three main steps in its function of assistance and resolution. The first part is an initial assessment in which the NCP considers the case and decides whether it merits further examination. There could be instances where none of the provisions of the guidelines is breached and others (most of the accepted cases in truth) which breach more than one provision. A second phase of the process involves an attempt of mediation in which the NCP tries to find a consensual resolution and agreement between the parties involved. A final stage then will be the conclusion in which the NCP issues a final statement with recommendations. The final statement in case of a successful mediation and a reached agreement includes a review by the NCP of the initial issue as well as the process followed and the solution found. In case of a failure in the mediation process and the agreement is not found then the NCP will remark the issue and procedure that was followed and final recommendations. It is important to notice however, that the recommendations of the NCP are not legally enforceable and that legal action might be needed.

This research paper focuses its attention on cases of alleged breach of provisions of the OECD guidelines to Multi-National Enterprises that have been officially reported

to different countries' NCPs. These cases can be found on the online OECD database on specific instances. The database gives the possibility to look on specific instances based on a series of categories and restrictions, some examples can be country, sector (mining, manufacturing, retailing etc.), provisions (general policies, disclosure, environment etc.), and year. For each case the OECD database provides a series of information: country whose enterprise has been accused of breaching the guidelines, country where the alleged violation took place (referred to as host country), industrial sector in which the case occurred, the party which reported the case (i.e. NGO, individuals etc.), current status of the case (if concluded or in progress), a description of the issue and links to initial and final statements, and provisions supposedly breached which were reported in the case. The primary focus of this paper is the analysis of cases that allegedly breached the human rights provision of the Guidelines. In order to find these cases and analyze them with our own systems we restricted the data range only to cases supposedly breaching human rights using the restriction on the specific provision for each country in the database, and then the cases have been transferred to our spreadsheets for deeper analysis.

It is important to notice before beginning our discussion on the results of the analysis that all the cases taken into consideration allegedly breached the human rights provision of the Guidelines, and this is due to the restriction used in the database in order to retrieve the data. It can be noticed that almost all the cases found by including this restriction, breach also other provisions of the guidelines and for this reason in some charts and graphs the number of provisions breached will be higher than the number of cases (this is an important inference to keep in mind in order to avoid confusion and understand better some conclusions). It should also be brought to attention that not all cases reported in the database are eventually recognized by the NCPs as breaching provisions of the Guidelines. This is due to the procedure

followed by the contact points that was summarized earlier, so not all the claims turn out to be valid however a case might be found to breach at least some of the provisions implied in the report.

The analysis of the data can start by comparing the number of provisions allegedly breached by countries' enterprises. By adding all the provisions of cases per each country we can have an idea of what countries' businesses have a supposedly more negative impact on societies in which they operate.

Provisions per Country and Region
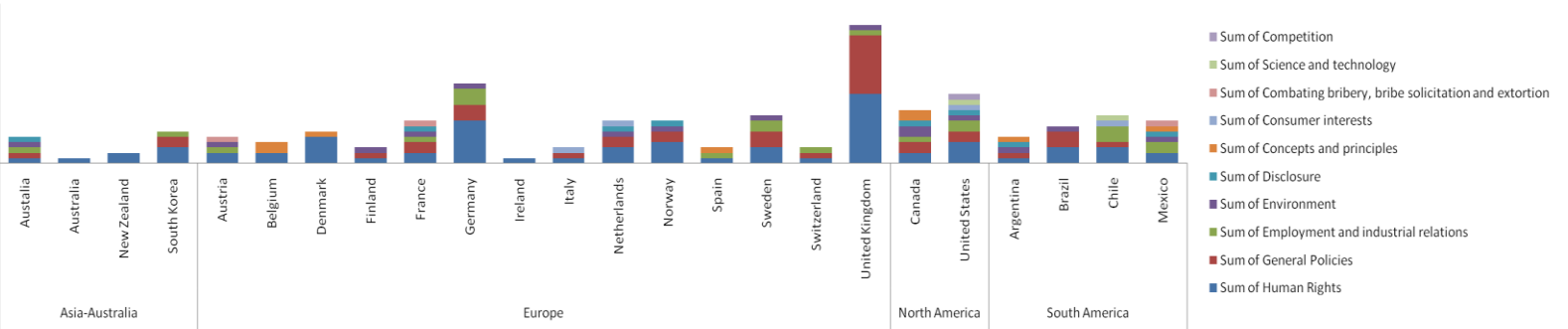
From this first chart we can see that the number of allegedly breached provisions varies considerably from country to country. The nation with the highest number of breaches is surprisingly high the United Kingdom with over twenty-five breaches, followed by Germany with fifteen breaches and the United States with thirteen.

Another unexpected result is the high number of provisions in Sweden (nine) and in other Northern European countries in comparison to the size of their economy.

After seeing all the provision taken together the chart gives also the possibility to conduct an analysis of the specific kinds of provisions allegedly breached per country but also classifying countries based on their region. In Europe the United Kingdom, as just mentioned, is the country with the highest number of breaches but from this chart it can also be seen the different types. Taking the UK as an example, and by counting the human rights breaches we can find the number of cases per country (because of the restriction we used to create this second database each case breaches at least human rights).

By checking the graph we can see (in the case of the UK) that of these cases dealing with human right, several breached also the general policy provision of the Guidelines, and a few breaches of the environment, employment and industrial relation and disclosure provision. From this chart it can be seen which breaches are more likely to take place along with human rights. To give some examples, the chart shows that from the UK almost 80% of the cases breaching human rights breached also general policies; from Sweden every case breached both human rights and general policy; and in Germany one case breaching human rights out of two breaches also the employment relations provision. Similar results are found also in other continents, for instance in Canada every case breaching the human rights provision breaches also environment and general policies, almost every case in Brazil, Argentina, Japan, and Australia breaches both human rights and general policies and in Chile and Mexico every case breaches employment relations and human rights provisions. As a general conclusion from these charts (not all shown in the paper but easily seen in the corresponding presentation) we can see that human rights are breached usually along

general policies, employment relations and environment provisions and we can underline a high relation between these provisions.

After a look to specific continents, countries, number and relation between breaches it would be interesting to also have an idea of the whole number of breaches per continent. Chart six shows how Europe is the region whose companies breach the highest number of provisions with almost 68% of the overall number of breaches. Surprisingly even here there is a very low number in North America compared to the number and size of companies which operate in the region 9%, 13% in South America and 10% in Australasia.
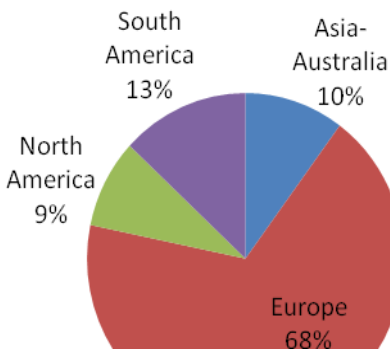
% of cases per region
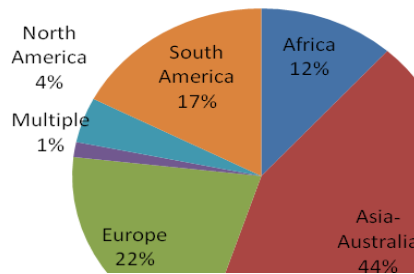
It would be interesting to compare this last chart of countries whose businesses are accused of breaching provisions of the OECD guidelines, with a chart showing regions were cases and the impacts of corporate operations take place.

From chart seven it can be easily noticed that the majority of the cases takes place in Asia (about 44%). This is probably caused by a series of reasons, for instance the size of the continent and the high level of economic activity and trade. From the analysis,

as it will be shown, countries like India, China, Bangladesh and Bahrain have been found hosting a great number of violations and they are all located in Asia, this caused its share in the chart to be so large.

It can be also noticed a not impressively high number of cases in Africa, which is interesting because it is often considered probably the continent more vulnerable to international corporations. However, it might just be caused by a lower production industry in the continent (since most of the global trade takes place in Asia) as opposed to the extractive sector, which even if large is not comparable to the size of the Asian productive capacity. Other interesting information that can be found in the chart regards the number of cases reported in western regions. Europe, which as it was pointed out earlier is the region whose enterprises are the most reported to NCPs for alleged breach of the Guidelines provisions, has also a relatively high number of cases which took place within its boundaries. On the other hand, only 4% of the reported cases took place in North America.

After an overview of regions where cases where reported, the analysis can continue by giving a look to the cases reported by each country in chart eight. The results shown in this chart confirm the findings of chart seven but it provides information on individual countries.

Cases per host country
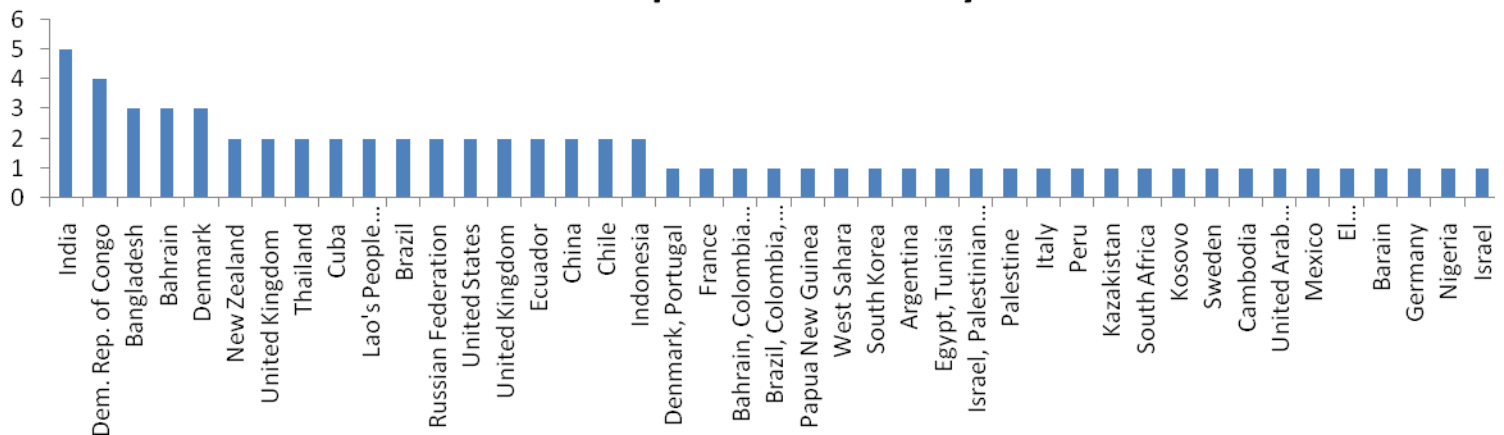
As it can be easily found, India is the country with the highest number of cases reported to NCPs with six cases. It is followed by the Democratic Republic of Congo, which with its large mining sector, hosted four cases allegedly breaching the Guidelines. Other countries that stand out are Bahrain, Bangladesh, China, Indonesia, Denmark and Brazil, all of them with three reported cases. Now we can see more easily how Asia was found as the continent hosting the highest number of violations; India, Bahrain, Bangladesh, Indonesia and China taken together already count for fifteen cases (out of the overall sixty-nine analyzed). A surprising result in this chart is also Denmark with its three cases reported; it is interesting due to the demographical and economical size of the country. A final consideration that should be made regarding what is presented by this chart is that we can see several European countries having cases reported domestically (United Kingdom, France, Italy, Norway, Sweden, Portugal and others), and this is probably one of the reasons why in the two previous pie charts Europe had a high share in both countries breaching the Guidelines and hosting cases.

So far we have focused on countries involved in cases reported to NCPs, both accused and denouncing the enterprises. However, deeper analysis can be conducted with

regards to the characteristics of cases such as the provisions listed and allegedly violated, the typology and many others. By looking at the cases under this different focus we can have a deeper understanding of some dynamics.

The first chart presented regards the number of alleged breaches in all the cases reported in the analysis. It is important to remind again that each case breaches more than one provision of the guidelines (i.e. general policies, environment, disclosure, human rights etc.), however each case taken in this analysis breaches at least the human rights provision of the guidelines. So by adding all the provisions together we can see the correlation between breaches of some provisions (this time over all the cases and not specific countries).
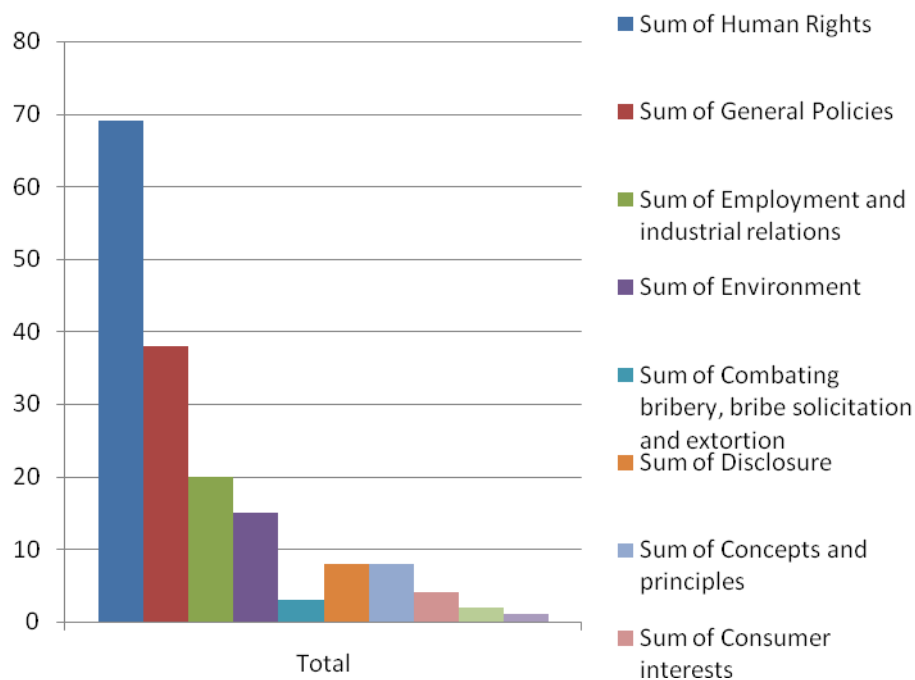
By counting the number of breaches in human rights we can see the number of all the cases in this analysis, fifty. Chart 9 shows all the breaches of each provision and we can see that after human rights (which is logically the highest in this chart since after the restriction in the OECD database each case has to allegedly breach it), general policies is the second most breached provision, followed by employment and industrial relations, and environment. Thus, these allegedly breached provisions must be involved at some degree with human rights violations, and it can be easily imagined how in the examples of employment relations (where employees are a the center of the provision) and environment (where lives of individuals might be affected by impact on the environment in which they live or the working process itself causes working conditions to violate human rights along the environment). In other kinds of provision this explanation might be less direct but still existent (for instance disclosure, consumer's interest, competition etc.).

Each case brought to NCPs is a complaint by some party (which could be an NGO, trade union, individual or anyone affected) regarding negative business impacts on the society and presumably breaching some provisions of the OECD guidelines. Enterprises involved in cases come from a variety f different sectors and industries for this reason it would be interesting and important to understand in which sectors most of the human rights breaches of the guidelines occur in order to try to try to prevent negative impacts in the most accused sectors by increasing the focus and monitoring. In order to have an idea of which industrial sectors are more involved in cases, we

created a pie chart based on the sector of each violation. Chart eleven gives a representation of such information.

Total
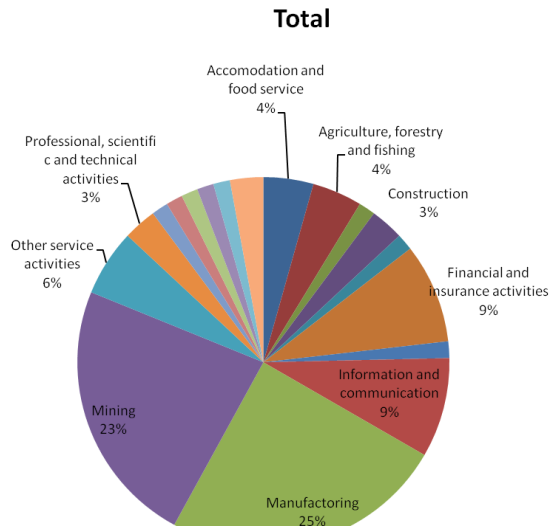
From this chart it can be seen how the sectors that are more involved in cases reported to NCPs are manufacturing (with almost 25% of the cases) and mining (with 23% of the cases). This result is not very surprising due to the high level of physical labor involved directly in such production activities. Human rights could be violated in

these industries for a variety of reasons, for instance working conditions, especially in the mining sector, which utilizes labor in sites that are highly cramped. But also in manufacturing where employees could be asked to work in inappropriate conditions in order to cut costs. Another example could be time of working shifts that enterprises might require. Moreover, these two sectors can be (especially mining) also vary dangerous if some precautions are not taken. These are only some examples of possible human rights violations that can occur in these two sectors however there are also many others than could be brought to attention. Besides mining and manufacturing (which together count for about half of all the cases), there are also other sectors that are involved in human rights issues and some of them more unexpectedly. Such sectors are for instance financial and insurance activities (9%), information and communication (9%), and accommodation and food service (4%) among others. It could be less straight forward to identify possible causes of breaches of human rights provision of the guidelines in these industries however they are still present and might involve unfair treatment of customers or employees. A series of other sectors are shown in the chart as well but with less significant share of the cases. A final consideration to be taken regards the fact that companies might not have a negative impact only employees and customers, but also on stakeholders in general, and their operations might cause human rights issues also on third parties.

Cases can be brought to attention of National Contact Points by anyone, for this reason it is possible to analyze also the parties that took the initiative to denounce cases of alleged breach of provisions of the OECD guidelines.
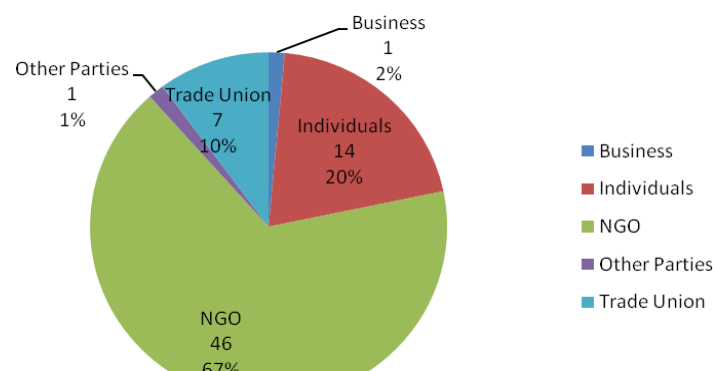
From this pie chart twelve we can easily see the parties that are more active in reporting cases regarding possible human rights violations. As clearly shown, Non-Governmental Organizations (NGOs) are the most involved in reporting cases (about 67% of all reports breaching human rights) and its might be due to their high interest in issues treated by the guidelines (and probably especially human rights), indeed the focus on some of these issues is the primary reason of their daily operations (at least for most of them). NGOs are followed by Individuals (who reported about 20% of the cases in this analysis) and Trade Unions (which reported almost 10%) of the cases. The reasons that lead individuals to reporting could be simply their involvement in cases, trade unions on the other hand might have reported cases in order to advocate the rights of their members. We can also see a small percentage of cases reported by businesses (2%).

In the beginning of this research paper it was explained the procedure followed by NCPs in evaluating reports until the conclusion. From the OECD database it was also possible to check the status of a case, whether it is concluded or still currently in progress. The next chart thirteen shows this current state of reported cases dealing with alleged breach of human rights.

in progress
38%

concluded

in progress

At the moment we can see that most of the cases (62%) have been concluded, meaning that the NCP, expressed a final statement underlining either the agreement reached by the parties during the mediation or the recommendations in case the mediation failed and parties did not meet a consensual solution. It is important t notice that a case is considered concluded also when the NCP doesn't find it to be breaching the guidelines provisions. On the other hand, from the chart it can be see now 38% of the cases are still in progress, meaning that the NCP process hasn't come yet to a conclusion and there are still some stages to be completed.

The last chart fourteen of this research paper shows the trend of reports to NCPs in the last years. As it was explained at the beginning the guidelines have gone through five revisions and the last one was made in 2011, this factor might also have influenced the trend over the years.
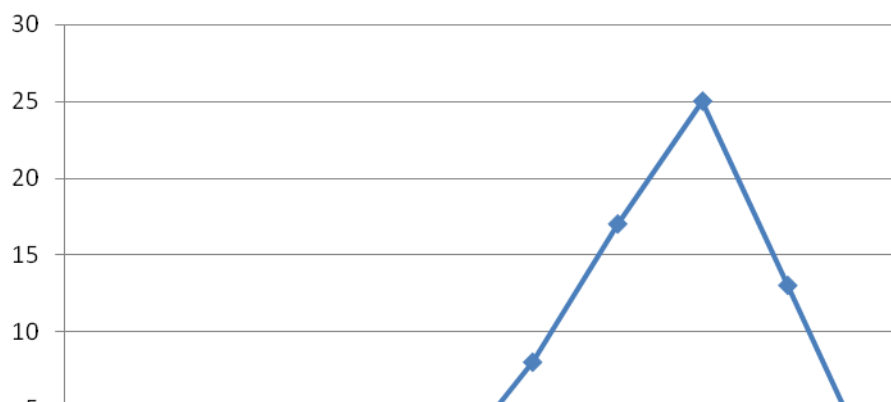
As it can be seen there have been almost no cases reported (with regards to the human right provision) before 2011. This might indicate the last revision has been very effective in increasing the number of reports and improving the mechanism of enforcement of the guidelines through the mean of National Contact Points. By looking at the graph we can notice a sharp increase in cases reported (from 0 cases reported in 2010 to 25 cases in 2013). It is also clearly visible a drop in cases in 2014 (passing from 25 to 13 a year) and only one in 2015. The reason for this drop is not clear however, it is probably due to a delay in reporting cases officially on the OECD database, in fact during the period of our research we have seen the number of cases changing during months.

The last two charts together can give us an approximate idea of the length of the NCP process in dealing with cases. Since as we saw in chart thirteen, 63% of the cases are concluded, and as shown in this last chart almost all the cases reported have been

filed in the last four years, we can say that it doesn't take long for an NCP to conclude cases but only few years in most of the cases.

There are a number of findings that emerge from this analysis and charts, some of them have already been pointed out previously in the comments of graphs however they can be clearer after having given a look to the big picture through different charts. A first finding regards the amount of cases filed to NCPs in Europe, which is much higher than any other region, but especially of North America. This difference is surprising due to the similar dimensions of the two regions' economies and the same industrial and technological advancement. This point is also reflected on a country level, it was shown in the first chart that the United Kingdom has the highest number of provisions breaches reported to its NCPs, followed by Germany and the United States. It is important to notice that this ranking is made with regards to the number of provisions, considering the number of cases the UK and Germany would still be at the top, but the third country with most cases would be Norway (a quite surprising result), and a series of countries (amongst them the US) would follow with three cases reported. The reasons behind this difference between the two industrialized regions are not easy to determine, it can be due to a series of factors that influence reports to NCPs, for instance a higher use of alternative ways of complaint (such as formal law suits etc.), a different attitude towards the mechanism (disclosure policy), more severe screening of cases by North American NCPs, and many possible others. As for the countries hosting cases, it was shown how Asia hosts the highest number of cases, mostly due to countries that report many cases such as India (which with nine cases is the country that hosts the highest number). In the pie chart is was also surprisingly found that a relatively high number of cases was hosted also in Europe, especially in the UK and Northern European countries, this might be another reason of the just shown differential in cases between North America and Europe (since most of the

companies accused in cases hosted in Europe are also European). A final consideration about host regions and countries regards the not impressively high number of cases shown in Africa, a continent that is often regarded as maybe the most exploited in the world. Other interesting findings can be seen in the types of provisions allegedly breached; it was shown how cases dealing with human rights are related also to breaches of general policies, employment and industrial relations and environment provisions. This correlation gives an idea of what areas often involve presumably human rights violations. By looking at sectors, on the other hand, it is shown how the vast majority of cases take place in the mining and manufacturing industries, which as mentioned earlier, is not quite surprising due to the nature of the operations and physical labor involved. It could be seen how an impressively high percentage of cases is reported by NGOs and that most of these cases have been reported in the last few years. The reason of this large increase is not easy to determine but it highlights the importance of the last revisions of the guidelines in 2011.

A final consideration that should be made regards the different transparency that was found on the NCPs websites, since some of them were clear in describing the cases they deal with while others were more confusing. Such differences regarded also the whole layout of websites and the language, which in some cases was a barrier since it didn't provide a translation in English (or any language other than the native). This point regarding transparency was also stressed by the European Center for Constitutional and Human Rights in their "Open Letter to EU Special Representative" and "Report, Cotton Campaign", which can both be found on the internet. Further critics were also exposed by the NGO Alliance South describing a classification of transparency based on NCPs' independence, local investigation and naming breaches criteria.

The research showed a series of information regarding cases reported to the National Contact Points. It showed which provisions were breached along with human rights, countries and regions whose enterprises breached the guidelines, countries and regions that hosted cases, the sector in which issues have occurred, current completion status of the case, party that reported to the NCP and year of the reports. All this data was presented through different types of chart to ease visualization and understanding. All this information can be used in order to decrease the number of cases reported in the coming years and enhance a positive corporate impact on societies.

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