



Justice from Below: Struggles Against Corporate Misconduct in the National Contact Point System

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Abstract

For victims of corporate harm, accessing justice in the global landscape is fraught with challenges and limitations – but also contestation and conflict. This paper focuses on these issues by directing attention to the National Contact Points (NCPs), a nonjudicial grievance mechanism in this landscape. It explores the puzzle of why complainants, who portray the NCP as a mechanism that is unlikely to provide accountability and redress in specific instances, still file complaints. Drawing on interviews with organizations that have turned to the Swedish NCP, as well as a range of documentary sources, the paper maps out the organizations' reasons for doing so. These include, among others, an ambition to increase visibility of corporate harm and to showcase flaws in the global governance landscape. The paper argues that organizations turn to the NCP to address injustice related to economic, cultural, and political dimensions, but also to challenge existing structures for justice and attempt to transform these structures from below.

Keywords

Corporate Harm, Justice, National Contact Point (NCP), Nonjudicial Mechanisms, Social Struggles

Introduction

Transnational corporate harm is linked to the fundamental structures of the global economy. As corporations are able to exploit the spaces between laws to increase their profitability (Michalowski & Kramer, 1987), nation states trying to attract investment compete by relaxing their regulatory standards, thereby intensifying communities' vulnerability to issues such as labor exploitation and pollution (Whyte, 2018). For victims, then, accessing remedy can be a difficult and costly endeavor (Buhmann, 2023). Structures for justice might be beyond their reach – but at the same time, these structures are themselves sites of contestation (Fraser, 2008). Activists, organizations, and movements have turned to judicial mechanisms to create spaces of their own, in which they can continue struggling for their goals (Bader et al., 2019; Vanhala, 2012). This paper takes an interest in such struggle and contestation by focusing on the complaints filed with the Swedish National Contact Point (NCP): a nonjudicial grievance mechanism established under the OECD Guidelines for Multinational Enterprises, aiming to ensure that “a person(s) affected by negative corporate impacts can obtain some form of redress for their harm” (OECD, 2020, p. 7).

Drawing on critical theory's emphasis on foregrounding the perspective of actors participating in social struggles (Celikates, 2018; Fraser & Jaeggi, 2018), this paper explores

the experiences of organizations that have filed complaints with the NCP, through interviews and document analysis. These interviews highlight a puzzle (Campeau et al., 2021; cf. Vanhala, 2012): the organizations draw attention to the NCP as an unlikely mechanism for accessing accountability and redress – yet they file complaints anyway. This paper explores their reasons for doing so, and draws on Fraser (2008) to discuss how they struggle not only *for* justice in specific instances, but *over* existing structures of justice.

The paper proceeds with discussing the characteristics and challenges of corporate harm in the global context, before turning to the NCPs as a nonjudicial grievance mechanism. The following section considers struggles through judicial mechanisms in order to shed light on ambitions and aspirations that go beyond individual cases of harm. Next, the paper describes the theoretical framework and methodology, followed by the findings, describing the reasons why organizations turn to the NCP. The paper ends with a discussion, which focuses on how organizations struggle to address different forms of injustice (following Fraser, 2008).

Corporate harm: characteristics and challenges

The impacts of corporate harm are often more indirect than those of traditional crime, and tend to lack the intent associated with them. They might therefore be less visible, to criminologists as well as victims (Croall, 2007; Whyte, 2007). Extending these lines of reasoning to environmental harm, Hall (2013) suggests that victims may not be immediately aware of their own victimization – for example, in cases of exposure to toxic waste – and once they are, it could be difficult to know who bears responsibility for it (cf. White, 2011). Harm can thus unfold over time, as slow violence (Davies, 2022), and therefore be challenging to address. Moreover, victims of corporate harm are in a vulnerable position, due to them being subordinate to their employer and relying on work for their livelihood. Accessing redress could thus become difficult due to the fear of losing one's job (Croall, 2007; Whyte, 2007). The victims' social position also shapes their vulnerability to harm. For instance, it is often the most economically vulnerable workers who do high-risk jobs, and women tend to work in more casualized industries (Whyte, 2007). In addition to this, disadvantaged communities tend to be more affected by issues such as pollution and toxic waste (Davies, 2022); thus, "those least responsible for climate change are worst affected by it", such as indigenous communities (White, 2011, p. 115). These vulnerabilities extend to, and are exacerbated in, the global economy. By shifting locations, corporations are able to avoid mechanisms of control by choosing to operate in countries with lax regulatory frameworks. They can thus shift negative impacts to poorer countries, and thereby reinforce existing patterns of inequality (Croall, 2007; Hall, 2013; Whyte, 2018). These vulnerabilities also shape victims' access to redress; as Buhmann (2023) highlights, mechanisms may be poorly designed, inaccessible for local communities, and involve significant costs. Access to justice can thus be understood as distorted by the asymmetrical power and resources of corporations operating in the global context, in relation to that of the victims of their operations (Buhmann, 2023; Whyte, 2018).

The National Contact Points: aims and limitations

This paper focuses on the NCPs, developed under the framework of the OECD Guidelines for Multinational Enterprises. The Guidelines, introduced in 1976, provide voluntary standards for corporations regarding human rights, environment, employment, and more (see Appendix). They are thus not legally binding, but addressed by governments to multinational enterprises operating in or from countries that observe them (OECD, 2023). It has

been suggested that the Guidelines, due to their public and government-backed nature, are located somewhere between purely voluntary and legally binding standards (Sanchez, 2015). It has also been argued, however, that their absence of enforcement mechanisms makes them a “a rather weak form of voluntarism” (Khoury & Whyte, 2017, p. 74).

The Guidelines, then, are supported by “a unique implementation mechanism” – the NCP – which governments adhering to the Guidelines are obliged to establish (OECD, 2023, p. 3). The overarching aim of the NCP, first introduced in 1984, is to further the effectiveness of the Guidelines. The NCPs adhere to four core criteria – accessibility, accountability, transparency, and visibility – but can be organized differently in different contexts. The Swedish NCP has a tripartite structure, with representatives from business organizations, trade unions, and governments. It is embedded within the Ministry of Foreign Affairs, with government representatives working “part time on NCP matters and full time on corporate social responsibility” (OECD, 2022, p. 11; see also OECD, 2020). Since 2000, all NCPs have operated as nonjudicial grievance mechanisms to contribute to resolving issues that arise in regard to the implementation of the Guidelines – instances of alleged noncompliance. Upon receiving complaints, the NCPs consult the parties involved and make an initial assessment of whether the issue demands further examination. If so, the NCP will offer “good offices” to the parties, such as facilitating mediation or conciliation, or seek guidance from similar issues in the past (OECD, 2023, p. 59). At the conclusion of the proceedings, the NCP publishes a final statement or report. In these, the NCP typically describes the issues raised, the positions of the parties involved (including whether or not a consensual agreement on the issues was reached), and – if warranted – recommendations for the future. They can also engage in follow-ups of specific instances (OECD, 2023). The idea, then, is for NCPs to provide “affordable, accessible and flexible forums” to hear issues, which allow them to provide access to remedy for affected individuals, organizations, and communities (OECD, 2020, p. 8). Such remedy could be compensation, reparation, or corporate recognition of guilt. However, due to their nonjudicial character, the NCPs cannot order specific measures (OECD, 2020). At the time of writing, more than 650 cases have been handled by the NCPs (OECD, 2024), with the most common issues relating to human rights, due diligence, and labor relations (OECD, 2020).

Studies of the NCPs

Concerning the effectiveness of the NCPs, Khoury and Whyte (2017, p. 71), studying 136 cases over a ten-year period, found that mutual resolution was the outcome in only 36 cases, meaning that “no more than a couple of cases every year are resolved with mutual agreement of both parties anywhere in the world.” Similarly, OECD Watch (2015) found that out of 250 cases between 2001 and 2015, only 35 saw some beneficial results for claimants, such as a company acknowledging wrongdoing or changing their policies and procedures. In no cases was there compensation for harm. Turning attention instead to the possibilities for achieving successful outcomes, Bhatt and Türkelli (2021) emphasize that the accessibility and independence of the NCP – as well as the publicity surrounding the case – were reasons behind one complaint leading to an agreement to the satisfaction of all parties. Another example is offered by Haines and Macdonald (2020, p. 851), who found that in one case, the NCP’s statement – that a company had violated the Guidelines – was a “reputational blow” that “provoked a strong response” from investors. This, in turn, strengthened civil society mobilization and existing pressures on the company, suggesting that the NCPs can play a role in communities’ struggles alongside other judicial or nonjudicial mechanisms (for instance, turning to courts, see Haines & Macdonald, 2020).

Much existing work, however, maps out the shortcomings and challenges of the NCPs. One such shortcoming is limited access, since complainants may face barriers such as reprisals in the form of threats of violence or legal action (OECD Watch, 2015, 2019). Another challenge is the NCPs' inability to balance the unequal power relations in which corporate harm is embedded, which constrain which voices are heard, what counts as evidence, and who influences decision-making (Balaton-Chrimes & Haines, 2017; cf. Bhatt & Türkelli, 2021). Extending these lines of reasoning, Khoury and Whyte (2017, p. 76) highlight that the NCPs primarily manage complaints rather than provide redress, and that their lack of enforcement allows corporations to simply “walk away or refuse to engage” in proceedings. A final issue concerns the lack of predictability in the NCP system. As shown by Sanchez (2015), while some NCPs perceive offering good offices as being enough – and that the case should be closed without further examination if parties cannot reach an agreement – others conduct independent examinations and offer statements based on these. The NCPs thus appear to interpret their roles and powers differently (cf. Balaton-Chrimes & Haines, 2017; Sanchez, 2015). It is in this context, of shortcomings and limited success, that the present paper is situated.

Turning to law: ambitions and aspirations

Similar puzzles to the one under study here have been explored in previous research on the judicial system. Exploring why environmental NGOs turn to courts, despite facing what they perceive as a hostile legal structure, Vanhala (2012) finds that they do so to strengthen the bargaining power of NGOs and further their access to courts, as well as to highlight systematic shortcomings. Thus, while they may be unsuccessful in solving substantial issues, turning to courts allows the NGOs to actively shape their own legal opportunities (Vanhala, 2012, cf. 2018). A similar puzzle was identified by Campeau et al. (2021), studying why disadvantaged communities call on the police to protect them despite widespread cynicism over their ability to actually do so. Here, the authors interpret calls for police assistance as an aspiration for recognition – for being heard, valued, protected, and understood. Being denied this, as expressed in narratives of legal cynicism, is a denial of the communities' worth and a sign of social exclusion. The law thus promises recognition, and people find themselves in a bind when this promise is not delivered (Campeau et al., 2021).

Returning to corporate harm, a study on transnational human rights litigation suggests that the decision to file a case was not only motivated by the prospect of winning, but by strategic considerations: it was about protesting global economic exploitation, joining forces with others, and rendering corporate harm visible. By filing a case, claimants opened a space for imagining a different social order. Thus, while acknowledging the constraints of law, the authors argue that “strategic legal interventions bear a revolutionary potential” (Bader et al., 2019, p. 171). While legal struggles do not exist outside existing relations of power – making it possible to question the extent to which they are examples of “counter-hegemonic” resistance (Khoury & Whyte, 2017, p. 18) – they can still hold emancipatory potential by being a forum in which actors can make their experiences visible, if only “fragmentarily and in line with the juridical form” (Buckel et al., 2023, p. 14).

Theoretical framework

To understand experiences of the NCP, this paper engages with Fraser's (2008) theory of justice. From this perspective, the challenges and limitations discussed above can be understood as obstacles to justice, conceptualized as participatory parity. Obstacles may concern maldistribution, relating to the economic dimension; misrecognition, relating to

the cultural dimension; and misrepresentation, relating to the political dimension. The corresponding remedies, then, are redistribution, recognition, and representation. These dimensions are conceptually distinct, but can be intertwined in practice – for instance, communities' claims for recognition as original owners of land can be transformed into claims for financial compensation (McKenna, 2016). Moreover, the political dimension is of particular importance, as it “furnishes the stage on which struggles over distribution and recognition are played out” (Fraser, 2008, p. 17). Misrepresentation and misframing occur when members of a political community are denied participation in political arenas, thus hindering their ability to struggle altogether (Fraser, 2008; cf. Broembsen, 2018).

Maldistribution, misrecognition, and misrepresentation are “first-order injustices”, but there are also “meta-level injustices” (Fraser, 2008, p. 25). What is at stake, then, is not only the *what* of justice but also the *who* (the issue of who counts as a subject of justice) and the *how* (how struggles over justice should be resolved). These issues become actualized in the global economy, where nation states may lack resources to allow affected communities to “confront the offshore architects of their dispossession” (Fraser, 2008, p. 146, see also 2010). Instead, struggles could become transnational and be taken to other arenas, such as the NCP. These three nodes of justice – the *what*, the *who*, and the *how* – are thus important for our analysis. At the same time, however, these are sites of contestation and struggle – in Fraser's (2008, p. 15) words, they are “up for grabs.” Similar lines of reasoning have been articulated in victimological research, foregrounding that the questions of what constitutes harm, who is granted victim status, and which interventions are necessary, are all disputed (White, 2011; Whyte, 2007).

Engaging with these insights allows us to consider how turning to the NCP can be part of transnational struggles to address instances of injustice – but it also invites us to consider how complainants are shaping the *who* of justice, by claiming their own or local communities' right as subjects of justice, and the *how* of justice, by demanding arenas where disputes can be resolved. Theorizing can therefore shed light on the complainants' understandings of what possibilities for justice can, or cannot, be created by turning to the NCP (Buckel et al., 2023; cf. Vanhala, 2012), which foregrounds the perspective of the actors themselves.

Methodology

This paper focuses on experiences of the Swedish NCP, whose tripartite structure has been linked to Sweden's tradition of social dialogue. Moreover, as it is embedded within the Ministry of Foreign Affairs – with the Chair being the Swedish CSR (Corporate Social Responsibility) ambassador (OECD, 2022) – it can be seen as following the Swedish approach to CSR, which targets corporate operations in non-domestic markets (see Gjølborg, 2010). The NCP has dealt with a relatively small number of specific instances (nine) over the course of about twenty years;¹ the reasons for why this might be the case will be discussed below. Focusing on the Swedish NCP restricts the empirical scope of this paper; however, since NCPs are organized in different ways, this focus allows for an in-depth exploration of experiences of this NCP in particular.

This paper draws on a variety of empirical sources.² The key empirical source is interviews with representatives of organizations that have filed complaints with the NCP (i.e., the complainants). All organizations were contacted in 2022, and four representatives agreed to be interviewed. Three semi-structured interviews were conducted over Zoom using an interview guide, recorded, and transcribed. In the fourth case, a written interview was done instead, with the interviewee receiving questions from the interview guide formulated in a slightly more open tone. The interviews were conducted in 2022 and 2023, in either

Swedish or English, and for each one, informed consent was obtained and documented. The sample is small, which raises the risk of the analysis becoming too thin (Ryen, 2004); to avoid this as far as possible, the findings highlight common themes and shared narratives of backstage insights (cf. Goffman, 1959) not necessarily visible elsewhere. The interviewees, moreover, have slightly different positions in relation to the complaints. Considering the spatial dimension, the findings highlight experiences from both local and international organizations, meaning that the interviewees' embeddedness in local communities varies. Turning to the temporal dimension, the organizations submitted their complaints at different points in time since the year 2000, meaning that some interviews are more retrospective in nature. This could influence their narratives; as Järvinen (2001) discusses, interviews tend to have a specific plot, as experiences are woven together into a coherent pattern which directs the past into the future. Interviewees are thus telling a story that helps explain how processes lead toward specific results; they have a beginning and an ending. Drawing on these insights, it can be suggested that some of the interviewees' narratives may be more finished, while others may still be in the making.

The findings are structured based on the narratives from the interviews, but they also draw on other empirical sources to complement these narratives. These other sources are the complaints filed with the Swedish NCP (9), collected through OECD Watch's website and the Ministry of Foreign Affairs; articles about the complaints published in Swedish Media, collected through the database Retriever (28); and information about the complaints published by the organizations on their websites (10). To delimit the latter two sources, only documents that explicitly focus on the complaint and the NCP/OECD were included. Moreover, the statements from the Swedish NCP were collected from the Swedish Government's website (12). These statements provide more background into each case, but are not included in the analysis, which focuses on the complainants' experiences.

Thematic analysis, following Braun and Clarke (2006), was used to analyze the material. After careful reading, each source was coded separately in NVivo. It was during this stage that the puzzle explored in this paper emerged, facilitated by working inductively without attempting to fit the interviews in a pre-existing frame (Braun & Clarke, 2006). One of the interviewees deviated slightly from this puzzle, however, by having high rather than low expectations of the NCP – but as these were not fulfilled, this narrative ends up supporting the others. The next analytical stage involved generating themes and reviewing these across the different sources. Some themes were visible across all sources (such as *attack on all fronts*), while others were not (the importance of *visibility*, for instance, was articulated in interviews and media statements). This process thus highlighted how the sources complement and support each other (see Patton, 1999). Throughout the presentation of the findings, much care has been taken to avoid identifying and personal details (such as names and locations), given the size of the sample and the public nature of the complaints. For these reasons, transparency toward the interviewees about ethics and integrity at all stages of communication, as well as providing information both orally and in writing, has been crucial.

The complaints

The complaints filed with the NCP cover different actors, contexts, and alleged violations. Firstly, they draw attention to the structural dimension of corporate harm (see, e.g., White, 2011; Whyte, 2007), as the violations take place in countries often categorized as belonging to the global South, or in indigenous communities, with seven out of nine cases taking place outside of Sweden. Secondly, the complaints target companies from the global

North, primarily Swedish multinational companies. The complainants are mostly non-governmental organizations and voluntary or non-profit associations,³ with different experiences of grappling with global governance structures. Thirdly, the cases primarily concern human rights, the environment, and employment (see Appendix) – often in overlapping ways, illustrating how harms may intersect in this context (cf. Canning & Tombs, 2021).

Findings

Before turning to the reasons why organizations turn to the NCP, two cases in the complaints can be described to illustrate the context in which they do so. One complaint argues that a corporation has violated the Guidelines through its active role in the local mining industry – an industry associated with human rights violations and environmental degradation. It highlights that toxic waste and pollutants have leaked into local communities, which impacts the quality of water resources and farmland, as well as resulting in adverse health impacts for people. Local protestors have been met with force, with little to no compensation having been offered. Pointing out the close collaborations between the local industry and the corporation, the complaint argues that the latter has violated the Guidelines – specifically, the chapters on General Policies, Disclosure, and Environment. In another complaint, it is argued that the establishment of a wind power park on indigenous lands – which has received all necessary permits from the state – violates the human rights of the local community. The park, the complaint argues, risks denying the community access to the environment that provides them with their cultural identity and restricts their ability to pursue traditional livelihoods. Moreover, the community has been denied access to meaningful engagement with the company. The complaint therefore argues that the company fails to live up to the Guidelines, referencing the chapters on General Policies, Human Rights, and Environment.

These cases illustrate the substantive issues in the complaints and how they overlap: environmental impacts harm the health of local communities, while cultural and economic harm stems from being denied access to land and livelihood (cf. Hall, 2013). It is in the wake of these issues, then, that organizations file complaints – and yet, in interviews, they suggest that doing so is unlikely to result in a successful outcome. This puzzle is explored below.

Gaining visibility and setting precedents

One reason for turning to the NCP is to increase the visibility of a particular case, which can extend to the issue of corporate harm in general. One interviewee describes filing a complaint even though it was “guaranteed that we would lose”, because

getting that problem out in the public light in what you hope will be a transparent process where you are at least equally heard, and your issues are brought forward, is a very powerful space to be in, one you're not able to be in if you don't file the case.

In another interview, turning to the NCP is understood as guided by the aim of giving “voice to voiceless victims” of harm; in other words, to render them visible. The NCP can thus be actively used as an arena for bringing issues into the spotlight, locally and internationally: to reveal injustices within the global economy and create opportunities for the voice of affected communities to be heard. Similar narratives emerge in the media material. For one organization, the primary aim of filing a complaint was not to target a specific corporation, but to start a general debate on corporate accountability. For another, filing a complaint was

linked to the ambition of increasing corporate transparency and public awareness. Both of these outcomes extend beyond individual cases of harm. Similar findings are highlighted in Bader et al. (2019), suggesting that transnational human rights litigation is not only about winning a specific case, but part of a wider strategy to visibly protest against and disrupt hegemonic discourses.

A related reason for filing complaints is to use them as opportunities for setting precedents or establishing guidelines. Examples of this can be found in the complaints, where organizations articulate a hope that the outcomes of a specific instance can provide clarity on the extent of corporations' responsibilities, which may prove helpful for future cases. From this perspective, then, it becomes important to find a case that can generate more widespread or general positive effects. One interviewee describes how they were "looking for cases" to "fight for accountability" and show that "we *could* hold them [businesses] accountable through different mechanisms."⁴ Extending these lines of reasoning, another interviewee suggests that if the NCP does not act – for instance, by providing a recommendation or statement of corporate wrongdoing – it offers a "green light to all other companies" to operate in similar ways, which could contribute to further harm in the future. Therefore, the decision to file complaints depends on more than the individual case of harm, and has spatial as well as temporal dimensions; the outcomes, in the form of guidance or precedents, may affect current and future cases across the globe. This directs attention to how the NCP can be used strategically (cf. Balaton-Chrimes & Haines, 2017), which will be discussed again later in the findings.

Attacking on all fronts

Another reason for turning to the NCP is to use it as a part of a "multi-pronged approach" (Vanhala, 2012, p. 544). In several of the cases taken to the Swedish NCP, complainants have also turned to different authorities (domestic or international) and mechanisms (judicial or nonjudicial), and presented their claims to actors in public as well as private sectors. This illustrates the legal and regulatory plurality in the global landscape (cf. Olsen, 2023). One interviewee explains this strategy by referencing the complex and interrelated nature of global governance, highlighting the importance of engaging with its different parts, because

it's all part of an international space in which this issue is now being discussed, and there is an expectation that the actors will act in a certain way and be respectful of certain rights, so it's part of a bigger picture [...] Even though any specific issue or forum may not be a perfect forum to resolve the problems that come up, they would not be the same had we not had this global effort to push in so many different spaces.

From this perspective, turning to the NCP becomes part of a strategy to pursue issues of corporate accountability and remedy in different parts of the global landscape. What is important is thus not necessarily the NCPs *themselves*, but their role in the wider governance structure. What the organizations appear to be doing, then, is finding different 'grappling points' (Haines & Macdonald, 2021), by engaging with different forms of laws and institutions to pursue their goals. This strategy, however, could be dependent on the organizations' ability to operate in such a space, such as their resources and connections.

In other cases, turning to the NCP is not part of a strategy to use the collective resources in global governance. Rather, it becomes an option when other options fail. One complaint outlines how the NCP became an option after the organization's struggles through domestic authorities and courts, whose decisions permitted industry investment and expansion,

proved unsuccessful. In another case, an organization opposing corporate conduct in their local community reached out not only to local authorities but also to the enterprise itself. In the interviewee's words, "we wrote a lot of emails, trying to meet with them and [get them] to come to the table", before filing a complaint with the NCP. This process of trying to establish dialogue took place over several years. Similar experiences – of reaching out to enterprises, raising concerns and awareness of harm but being left without meaningful responses, or without responses at all – are described elsewhere in the material. Turning to the NCP is therefore not always the first option, or part of a coordinated attack, but a means of addressing corporate harm when other options fail (thus again drawing attention to the challenges victims of corporate harm face with respect to accessing justice, see e.g., Buhmann, 2023; Croall, 2007).

Showcasing systemic flaws

A third reason for turning to the NCP relates to an ambition of showing its flaws and shortcomings. This theme is visible in the interviews, but not in the complaints. In the complaints, organizations call upon the NCP to act – for instance, to investigate issues of non-compliance – with the hope of holding corporations accountable for their wrongdoings. In the interviews, awareness of the NCP's flaws and shortcomings is in some cases expressed by interviewees as them having low expectations. Against this background, then, they wish to put the NCP to the test. This is illustrated by one interviewee, who states that they knew the NCP was not "very strong", but decided to turn to it anyway in order to "test, again, the effectiveness of the National Contact Point [...] [I]t is their duty to ensure that multinationals operate in respect to the OECD Guidelines." In a similar vein, another interviewee states that their expectations were "not very high" prior to filing a complaint, which was "confirmed, through this experience." The idea of testing the NCP also appeared in the media statements, but not as being motivated by low expectations – rather, one organization suggests that they wanted to see what would happen by filing a complaint. This highlights the importance of experimentation in struggles for justice: of trying, and learning from, different strategies of contestation (Olsen, 2023).

In the context of these low expectations, some of the interviewees state that turning to the NCP is about bringing the reasons for these expectations to light – to showcase the system's flaws. It is, in other words, about "showing that it [the system] maybe doesn't work, and to have clear examples of where the contact point fails and what needs to be fixed." Extending these lines of reasoning, the interviewee suggests that civil society may ignore the NCP

because you *know* it's ineffective, so then you don't even think about using it, but at the same time, that becomes a problem in itself [...] [M]aybe you could even get the idea that there's not a lot of problems with Swedish companies if no one files complaints.

From this perspective, *not* filing complaints becomes problematic, because then the flaws of the NCP – such as its ineffectiveness – and the harms of corporations are not brought to light, which ties back into the theme of visibility discussed above. Similar lines of reasoning are offered in Vanhala (2012), finding that environmental NGOs turn to international law as a means of showing the limitations of domestic legal structures.

These findings suggest that organizations can file complaints to show the limitations of the NCP – but they also do so to highlight other flaws. In the words of one interviewee, filing a complaint "isn't always about winning [...] [I]t's about highlighting the inconsistencies

that exist, oftentimes the politics in a given country.” References to such inconsistencies, which target a political dimension, can be found throughout the material. For instance, when asked whether they would turn to the NCP again, or if they would rather choose other options, one interviewee responded that they would keep on working on the OECD Guidelines, but

not for remedy issues [...] [T]he NCP doesn't have much power to provide remedy [...] [I]t is only a political structure that is for political issues, not to help communities get remedy.

The NCPs' closeness to politics is also emphasized by another interviewee, who states that since they are part of government – and usually the part promoting foreign investment – they are likely to have “inherent conflicts of interest.” The interviewee explains that no companies fear the NCPs because, since corporations and the NCPs are geared toward achieving the same goals, they are “allies for them”. Therefore

what they're trying to do is deal with an NGO that's complaining and see if they can somehow deactivate the complaint, that's their job really, it's not really to pass judgments or to find a solution to the problem, unfortunately, it should be but it isn't.

These understandings of the NCPs as being less about redress and more about managing complaints echo previous research suggesting that regulation may stabilize, rather than resolve, social struggles (Khoury & Whyte, 2017). Knowing this, and turning to the NCP anyway, thus becomes a matter of showing that the system does *not* work, and that it is made up by inconsistencies at the intersections of political and economic interests; that what “is economic is always political; what is political is always economic” (Michalowski & Kramer, 2006, p. 2).

Strategic choices

Being aware of the limitations and shortcomings of the NCP but turning to it anyway – to increase visibility of corporate harm, attack on all fronts, or showcase systemic flaws – can be understood as a strategic decision on behalf of complainants. Deciding which case to file, however, is dependent on different factors, such as the corporation in question. One interviewee says that they would not file a complaint against a corporation that appears keen to participate in dialogue and learn how to improve. Here, there is no need for the NCP as a forum for dialogue. However, for that same reason, they would also not file complaints against corporations entirely uninterested in listening to criticism – since the NCP lacks formal enforcement strategies, it would not be very effective. This results in a dilemma:

If you don't use them [the NCPs] for the easier cases [where companies are keen to participate in dialogue], so to speak, and you also don't use them for the difficult cases with the ones that don't want to listen, then you can ask yourself okay, but which companies are like in-between [these cases]?

This draws attention to the dark figure of corporate harm. As noted in previous research, cases of corporate crime and harm are rarely processed as that (see, e.g., Whyte, 2007). The above quotation shows how they can fall outside the scope of nonjudicial mechanisms as well. For some corporations, the interviewee suggests, being the subject of an NCP complaint would be like a “piss in the sea”, highlighting the limitations of a mechanism revolving

around dialogue, in which corporations are able to choose not to engage (cf. Khoury & Whyte, 2017).

Another factor to consider is which NCP to file a complaint with, as a single case may concern different entities and countries. This is important, the interviewees argue, because the NCPs operate differently: one is described as “very disappointing”, while another is labeled as “a disaster” to be avoided because complaints would not be handled appropriately. Other NCPs, however, are described as more effective and ambitious, for instance, by conducting independent investigations of their own. Given these differences, the number of complaints an NCP receives should not be taken as an indication of how problematic the corporations in a specific jurisdiction are. Rather, as one interviewee suggests, it is a sign that there is greater potential in filing a complaint there. These discussions on which NCP to choose draw attention to their differences and inconsistencies (cf. Sanchez, 2015).

The final consideration concerns the local communities subjected to harm. The complaints map out how protests against corporate operations have resulted in arrests and abuses, or in workers being dismissed. Taking action may thus result in further harm, which highlights the vulnerability of local communities (see, e.g., Croall, 2007; Whyte, 2018). For organizations, filing complaints therefore requires careful consideration of this – but also of not

creating unrealistic expectations on what you can achieve [by turning to the NCP], because we know from experience that it's not always as effective as one could wish [...] [I]t often involves quite a lot of risk for those reporting it [...] [I]t's not unusual that you've experienced different kinds of threats or reprisals [...] [T]hen it becomes a question of like weighing pros and cons of using the system altogether.

These lines of reasoning also shed light on the different positions of organizations vis-à-vis communities, as the former might be able to take a step back from a situation of corporate harm. This ability, however, could also depend on the position of the organization, as international organizations can remain distant from local communities (cf. Khoury & Whyte, 2017). Navigating these local realities, both with regard to the risks that communities face (see also OECD Watch, 2019) and the expectations they have with regard to the NCP process, thus emerges as a crucial element in turning to the NCP.

Revisiting the puzzle

This final section seeks to nuance the puzzle articulated in this paper. While the interviewees position themselves as knowing that the NCP is unlikely to provide successful outcomes, there is nevertheless optimism in their accounts, visible in them feeling that it is “important to try and help out” in instances of corporate harm, and wanting the NCP to “*act* to help us address this issue.” It might be suggested that despite having low expectations, they were still hoping for more from the NCP – but instead, in the words of one interviewee, “the process confirmed to me that the NCPs, the Swedish NCP, is toothless.”

As noted earlier, one interviewee departs from the main narrative by initially being more optimistic about turning to the NCP, but ultimately being let down. When asked whether the complaint led to what they were hoping for, the interviewee made it clear:

Definitely not! We expected to see justice by turning to the NCP but we saw nothing but bias and injustice.

In this case, the interviewee turned to the NCP “as a means to deliver justice” in a case of corporate harm, but found that the NCP did not take their comments and concerns into account. Instead, they explain that the NCP “heard the company’s voice”, but was “extremely biased and totally blind” to the organization’s account. In this case, then, it is not about having one’s low expectations confirmed, but having one’s high expectations shattered. Similar experiences – of filing complaints with the hope of just resolutions and redress but being left disappointed as the NCP takes the corporation’s side – can be found in the media statements as well. Recalling the discussion on intersecting political and economic interests above, this illustrates how the NCPs may be “more inclined to support business activities” (Černič, 2008, p. 94), due to their nature as government-backed entities.

Discussion

In the context of global corporate harm, this paper has explored the puzzle of organizations turning to a nonjudicial mechanism despite it being unlikely to generate a successful outcome in individual cases. By doing so, it offers insight into how struggles for accountability and redress are experienced in a context where challenges for accessing these things are significant (see, e.g., Buhmann, 2023; Croall, 2007). Moreover, the paper draws attention to the agency of actors that struggle in spite of these challenges, thus highlighting how they seek to shape the structures within which they operate (cf. Vanhala, 2012, 2018).

The findings begin with mapping out the intersecting harms articulated in the complaints. Following Fraser (2008), these can be understood as different forms of injustice relating to economic, cultural, and political dimensions, as they prevent individuals from being recognized as equal partners in social interaction. From this perspective, communities being denied financial compensation for their loss of land or livelihood suffer from distributive injustice, as they are being deprived of material resources that ensure their position of independence. Moreover, communities not being recognized as having a right to land fail to receive respect and social esteem in established hierarchies of cultural value, and are thus subject to misrecognition. Lastly, the complainants highlight the fact that communities and organizations have lacked access to meaningful engagement (and, in some cases, had their protests forcefully restricted). This can be understood as injustice in the form of misrepresentation, as they are being deprived of the opportunity to participate in and influence decisions that directly affect them. These injustices, while conceptually distinct, thus arise together (cf. McKenna, 2016), here operationalized as violations against the Guidelines.

It is against the backdrop of these articulated injustices that organizations turn to the NCP, for different reasons: to increase the visibility of corporate harm by bringing forth debates and changing guidelines; to use the NCP alongside other mechanisms in strategic attacks; and to actively display the shortcomings of global governance structures. Similar reasons have been found in previous research exploring the ambitions of actors turning to courts to struggle against human rights violations and environmental degradation (Bader et al., 2019; Vanhala, 2018). Moreover, the issues raised in each of these themes – such as the system’s lack of enforcement strategies, possible conflicts of interest, and the risks faced by local communities – have also been identified elsewhere (see, e.g., Khoury & Whyte, 2017; OECD, 2022; OECD Watch, 2019). These reasons concern the *what* of justice, in particular regarding its political and cultural dimensions (drawing on Fraser, 2008). Here, descriptions of trying to facilitate dialogue with local authorities, corporations, and NCPs can be understood as a struggle for representation and recognition – which leaves organizations and communities in a bind when they are not heard, as it becomes a sign of their political and cultural exclusion (cf. Campeau et al., 2021). These struggles and aspirations

can be situated in the context of the promises of the NCPs: to operate as forums for dialogue (OECD, 2023).

How can these reasons be interpreted? Fraser (2008, p. 25) suggests that the aim of redressing “first-order injustices” – maldistribution, misrecognition, and misrepresentation – are simultaneously about redressing “meta-level injustices”, concerning not only the *who* of justice but also the *how*. By filing complaints, these organizations are not only claiming their own right to be heard, but also that of local communities – by, for instance, giving “voice to voiceless victims.” They are thus drawing the boundaries for who is a subject of justice, by asserting their own moral standing to challenge corporate harm. This is visible, in particular, in the case of the interviewee whose narrative departs from the others, for whom contact with the NCP resulted in the experience of not being heard (i.e., the injustice of being misrepresented). By understanding this as an example of bias or unfairness, the interviewee simultaneously asserts their own position as a subject of justice. Moreover, by shaping the *who*, the organizations are simultaneously addressing the *how* of justice (Fraser, 2008) by demanding or transforming arenas in which their struggles can be taken. As the findings show, turning to the NCP is simultaneously about attempting to influence or shape the international space in which their issues can be discussed; pushing for change with the means available to them; attempting to shape expectations and guidelines; and drawing attention to the realities of corporate harm. Thus, the organizations are struggling to create “a moment of disruption and visibility” (Bader et al., 2019, p. 170), here understood as an attempt at building or transforming structures for justice from below. These struggles, then, are transnational in scope – and turning to the NCP is often accompanied by measures in the local context, such as turning to domestic courts or authorities, as part of a “multi-pronged” strategy for justice (Vanhala, 2012, p. 544).

Organizations therefore appear to use the NCP to address different levels of injustice that extend beyond individual cases of harm. What is at stake, then, is not only “substantive issues”, but “who is entitled to address claims to whom concerning what”, “where and how such claims should be vetted”, and “who is obliged to redress them, if and when they are vindicated” (Fraser, 2008, p. 53). The findings highlight the strategic element of these struggles – not all cases of corporate harm are suitable for complaints, and not all NCPs are useful mechanisms to further organizational ambitions. Through these considerations, the organizations emerge as active participants in social struggles, seeking to create their own possibilities or spaces for change (Bader et al., 2019; cf. Vanhala, 2012). By turning to the NCP, then, the organizations are drawing attention to collective struggles for justice, and the importance of continued resistance against corporate harm, as well as the political and economic structures that allow it – which could, in itself, be a process in which participants find recognition (see Hörnqvist, 2023). Therefore, while available mechanisms of accessing accountability and redress, judicial as well as nonjudicial, are limited, they are difficult to ignore. As Buckel et al. (2023, p. 14) argue, in “capitalist societies there is no outside struggle” – and using these mechanisms in strategic ways may allow actors to contest the existing social, economic and legal order, and imagine a different one (cf. Bader et al., 2019). The low number of cases might imply that they have limited ability to do so. However, drawing on what has been discussed above, it should be acknowledged that the contestation under study here takes place in different arenas in the global landscape, with different mechanisms being used. Moreover, taking a cue from Scott (1985, p. xvii), the act of filing complaints – “just as millions of anthozoan polyps create, willy-nilly, a coral reef” – may “create political and economic barrier reefs.” Therefore, although the complaints are few and far between, they may still contribute to collective, ongoing struggles against corporate harm.

This final point can be further considered in light of the role that civil society organizations have played in struggling for corporate responsibility, and against transnational harm, throughout the decades (cf. Jönsson, 2024; see also Khoury & Whyte, 2017). The struggles mapped out in this paper can be understood as a continuation of this role. More recently, civil society has played an important part in promoting a hardening of corporate responsibility, visible in binding regulation for due diligence and non-financial disclosure (Macchi & Bright, 2020). Future research could explore in greater detail how organizations navigate non-judicial mechanisms, such as the NCPs, within a landscape where such hardened regimes are becoming more common. Moreover, future research could consider how the organizations' struggles are shaped by their positions in this landscape – for example, by discussing the resources they are able to invest in filing a complaint, which has not been addressed in the present study. Such research may shed further light on how struggles for justice are experienced from different positions in a changing, and contested, regulatory space.

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Competing interests

The author has no competing interests to declare.

Data availability statement

Some of the data used in this study are accessible on public websites, such as the OECD Watch's website (<https://oecdwatch.org/>) and the Swedish government's website (<https://www.regeringen.se/>). However, in order to use these – as well as the other data sources included here – for research purposes, the study had to receive approval from the Swedish Ethical Review Authority.

Notes

1. This can be compared with the number of cases dealt with by other NCPs, for instance, in Denmark (21 cases), Norway (20 cases), and Finland (7 cases, see OECD, 2024). Since this study was conducted, the Swedish NCP has published an initial assessment on a new case, which is not included in this paper (available at Regeringskansliet, 2024).
2. With the approval of the Swedish Ethical Review Authority, reference number 2022-01339-01.
3. These definitions are those most commonly used by the organizations, but there are differences in how they are structured, their specific areas of interest, and how they define themselves. This paper uses 'organization' as a broad term to acknowledge this variety.
4. Interviewees' emphases have been italicized in the quotes.

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Appendix. The OECD Guidelines for Multinational Enterprises

The 2023 Guidelines contain eleven chapters, six of which have been referenced in the complaints under study. Below, these six chapters are emphasized with examples of how companies, according to the complaints, have breached or violated them.

- I. *Concepts and Principles* have been breached when corporations do not fully honor the principles of the Guidelines, and have no reason not to do so (i.e., adhering to the Guidelines would not violate domestic law).
- II. *General Policies* have been breached when corporations threaten local livelihoods or dislocate communities, thus failing to adhere to the general principle of contributing to sustainable development.
- III. *Disclosure* has been breached when enterprises have failed to provide information to stakeholders, such as local communities, and failed to consult with those affected by their operations.
- IV. *Human Rights* have been breached when companies have not compensated communities for loss of land, or not respected the freedom of association of their workers (thus, they have not avoided adverse impacts).
- V. *Employment and Industrial Relations* have been breached when workers' right to establish and join trade unions is not respected, such as when companies arbitrarily suspend or terminate members.
- VI. *Environment* has been breached in cases where corporations fail to identify and assess the environmental impacts of their operations, when these operations result in the contamination and pollution of water and land.
- VII. Combating Bribery and Other Forms of Corruption
- VIII. Consumer Interests
- IX. Science, Technology and Innovation
- X. Competition
- XI. Taxation