



OECD Guidelines for Multinational Enterprises

National Contact Point Peer Reviews

PERU



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Foreword

The OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (the 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 Guidelines are the only multilaterally agreed and comprehensive code of responsible business conduct that governments have committed to promoting.

Adhering governments to the Guidelines are required to set up a National Contact Point for Responsible Business Conduct (NCP) that operates in a manner that is visible, accessible, transparent, accountable, impartial and equitable, predictable, and compatible with the Guidelines. During the 2011 update of the Guidelines, NCPs agreed to reinforce their joint peer learning activities, in particular with respect to conducting voluntary peer reviews. The 2023 update of the Guidelines reinforced peer reviews of NCPs by making them mandatory and periodic, subject to modalities to be approved by the Working Party on Responsible Business Conduct (WPRBC). The commitment to undergo this peer review was made by Peru while the 2011 version of the Procedures was in effect. The basis for this peer review is the 2011 version of the Guidelines (including the Implementation Procedures).

The peer reviews are led by representatives of two to four 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 can be found online at <https://mneguidelines.oecd.org/ncppeerreviews.htm>.

This document is the peer review report of the Peru NCP. This report was prepared by a peer review team consisting of reviewers from the NCPs of Norway and Portugal with the support of the OECD Secretariat. The NCP of Norway was represented by Beate Ekeløve-Slydal. The NCP of Portugal was represented by Pedro Marques. The OECD Centre for Responsible Business Conduct was represented by Nicolas Hachez and Maria Xernou. The report was informed by dialogue between the peer review team, the NCP of Peru and relevant stakeholders during an in-person fact-finding mission on 22-24 November 2022. The peer review team wishes to acknowledge the NCP for its efforts to ensure broad participation and open exchanges at the on-site visit, and the delivery of the requested material throughout the peer review process in a challenging national context. The NCP of Peru was represented by Lisbeth Loja Arroyo, Alexander Salvador, and Jorge Alberto Cordova Piana. This report also benefited from comments by delegates to the WPRBC and institutional stakeholders (BIAC, OECD Watch, TUAC). It was discussed by the WPRBC at its 19-20 June 2023 meeting and declassified by the Investment Committee on 1st August 2023.

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Key findings and recommendations

Institutional arrangements

The NCP has a single-agency structure. It is hosted by the Private Investment Promotion Agency of Peru (ProInversión), which is attached to the Ministry of Economy and Finance.¹ Three ProInversión entities are responsible for activities related to the NCP: the Steering Committee of ProInversión, the Executive Director of ProInversión and the Investor Services Directorate of ProInversión (DSI) providing the Technical Secretariat for the NCP. An agreement of the Steering Committee of ProInversión established the NCP in its current form in July 2009.² The Steering Committee consists of five Ministers. In practice, it has not involved itself in the NCP's work. The Executive Director of ProInversión supervises the Technical Secretariat. The Technical Secretariat is composed of the Director of the ProInversión Investor Services Directorate (DSI), and three additional part-time staff.

The NCP does not have an advisory or an oversight body. During the peer review, the NCP noted its plans to establish a Government Advisory Council and to report to the Parliament for the first time in 2023.

Stakeholders overall shared concerns with regard to the location of the NCP, and notably the fact that it is not set up as a distinct unit within ProInversión, making it difficult to distinguish the NCP's mandate from investment promotion functions. The NCP itself notes the perception of the NCP by stakeholders in view of its location as one of the most significant challenges.

Stakeholders further noted the need to provide more publicly available information on the operating rules of the NCP and guarantees of impartiality. Official documentation does not i) specify the duties and role of the NCP entities; ii) provide information on the NCP's meeting and decision-making processes; iii) cover guarantees of impartiality and procedures to report conflicts of interests.

Although key stakeholders, including civil society organisations (CSOs) and trade unions, are aware of the NCP's existence, both groups noted limited engagement in the past. They welcomed recent efforts by the NCP to strengthen its relationships with external stakeholders, notably by traveling to regions. Several stakeholders noted the need for additional human and financial resources and capacity-building for the NCP staff on RBC-related issues to strengthen its visibility. They also noted opportunities to strengthen the NCP's access to expertise on RBC issues through more structured engagement with stakeholder groups. Structured engagement with other government agencies would also support this objective.

¹ See ProInversión: [National Contact Point of Peru](#).

² See ProInversión (2009). *Agreement of the Board of Directors No. 294-01-2009*. Available at: https://www.investinperu.pe/RepositorioAPS/1/0/JER/PERU_OECD/Agreement.pdf

	Finding	Recommendation
1.1	The establishment of the NCP through official documentation represents an opportunity for the NCP's visibility and transparency. However, such documentation currently does not (i) describe the structure and mandate of the NCP; (ii) define the roles of NCP entities in such mandate. This does not allow to clearly distinguish the NCP's role from the broader functions of ProInversión. Stakeholders requested clear information on the NCP's structure.	Peru should establish the NCP as a distinct unit. The roles of the bodies within the NCP's structure should be clearly defined and distinguished from their roles in ProInversión. The NCP's mandate, structure and functioning should be clarified, described and communicated in a public document.
1.2	Stakeholders raise concerns regarding their perception of the NCP's impartiality, notably in view of the NCP's location in an investment promotion agency. Official documentation does not provide information on the NCP's processes for meeting, decision-making, and addressing conflicts of interest.	The NCP should address concerns related to its impartiality through substantive changes and communication on the NCP's structure and operating rules. This could be notably accomplished through updated official documentation clarifying meeting and decision-making rules, and provisions on conflict of interests.
1.3	The NCP maintains constructive relations with other parts of government and stakeholders and aims to further strengthen them, notably as a way to strengthen its access to expertise. The NCP plans to establish an intergovernmental advisory body. Stakeholders however noted the need to protect the NCP from changes in government and requested structured engagement with all stakeholder groups. In practice, the Steering Committee of ProInversión has also not been involved in its work.	The NCP should : • continue with its plans for a future intergovernmental advisory body, which should be composed of representatives that have expertise in the different thematic areas covered under the Guidelines; • further its efforts to improve relationships with stakeholders by integrating stakeholder perspectives into its structures, establishing channels for regular and meaningful engagement with stakeholders, and considering the possibility of including stakeholder representatives in an advisory body in the future.
1.4	The NCP's Technical Secretariat staff has slightly increased in the past five years. Its expertise focuses on investment-related issues. Stakeholders note that a bigger team would be needed in view of the important RBC-related challenges that Peru is facing. They further note a preference to involving RBC experts in the NCP's work. The RBC Policy Review of Peru also recommended that Peru ensure sufficient resources and capacity for the NCP.	Staff resources of the NCP should be reinforced, to provide for example one full-time member. Peru should ensure that the NCP has sufficient resources and capacity, notably through regular specialised training on key RBC issues, to be able to fulfil its mandate.

Promotional activities

The NCP has a dedicated and recently updated webpage on the ProInversión website since 2015. The webpage is available in Spanish and English. The NCP organised two promotional events per year on average with a decrease in the past few years due to budgetary restrictions. The NCP also participates in promotional events organised by others, including events organised in the context of the Responsible

Business Conduct in Latin America and the Caribbean project (RBC LAC project) and in the process for the elaboration and implementation of the National Action Plan on Business and Human Rights (NAP).

The NCP adopted a promotional plan for 2022. It consists of a monthly list of promotional activities and meetings. The plan is not publicly available. The NCP reported planning to issue a more detailed promotional plan and to translate promotional material covering the Guidelines and due diligence guidances into indigenous peoples' languages.

In a challenging national context, the overall visibility of the NCP is low. Although these initiatives have allowed to increase visibility, overall awareness of the existence and mandate of the NCP, the specific instance process, and sectoral due diligence guidance could be further strengthened. Stakeholders recognise recent efforts and note the need for a proactive approach to promotion and identification of priority topics.

On policy coherence, the NCP operates in a context of growing activity on RBC by other governmental agencies and state-based non-judicial grievance mechanisms. The RBC Policy Review of Peru found that the role of the NCP as an agent of policy coherence needs to be further reinforced through specific actions and dedicated resources. The NCP recently participated in several activities involving stakeholders at regional level in the framework of the NAP's implementation. Stakeholders and government representatives welcome these initiatives as an opportunity to become familiar with the NCP and its mandate.

	Finding	Recommendation
2.1	The visibility and accessibility of the NCP could be further strengthened. The recent engagement with stakeholders in the context of implementation of the National Action Plan for Business and Human Rights (NAP) has increased the NCP's visibility at regional level. However, stakeholders note the need for increased promotion and engagement with all stakeholder groups, including trade unions and CSOs.	The NCP should increase its promotional activities in order to strengthen its visibility and accessibility. This can be done through i) a promotional plan that includes a broad stakeholder mapping, identification of priority sectors for promotion, and topics of interest for different stakeholder groups, including CSOs, academia, trade unions and business associations; ii) the update of promotional material for dissemination covering the specific instance process; iii) active social media presence. The promotional plan should leverage key actors and relationships, including media and stakeholder networks active at regional level, and diplomatic staff posted abroad.
2.2	The NCP operates in a context of growing activity on RBC by other governmental agencies and state-based non-judicial grievance mechanisms. The RBC Policy Review of Peru noted that the Peruvian NCP can play an important role to strengthen the coherence of RBC policies.	The NCP should take a proactive role as agent of policy coherence and promoter of RBC across government. This could notably be achieved by i) leading on issues related to the Guidelines in the implementation of the NAP; ii) seeking synergies with other state-based non-judicial grievance mechanisms; iii) consistently informing government agencies and bodies of its statements and reports; and iv) establishing links among parts of the government with different sectoral and thematic expertise on RBC issues.

Specific instances

Since its establishment in 2009, the NCP has received five specific instances. At the time of the on-site visit, four of those had been concluded by the NCP, and one had not been accepted. No case had led to agreement between the parties.

The Rules of Procedure (RoP) of the NCP were adopted by the Steering Committee in 2015. An overview of the process is also available on the NCP's website in both Spanish and English. The RoP present some inconsistencies with the Procedural Guidance and do not contain provisions on addressing potential conflicts of interests. During the peer review, the NCP noted its plans to review its RoP. At the time of the on-site visit, a first draft had been shared with stakeholder representatives for their comments.

Stakeholders welcome the availability and responsiveness of the Technical Secretariat. They called for more predictability and equitability in the specific instance process. They further pointed to some issues regarding high formal requirements to submit a specific instance, communication with the parties, access to documentation, and need for more clarity on confidentiality and anonymity criteria.

To further build trust with potential submitters and parties in the specific instance process, the NCP could strengthen its transparency and impartiality of the process. In view of its location, the NCP could notably ensure a clear process dedicated to the NCP to prevent, detect, and address conflict of interests.

	Finding	Recommendation
3.1	The NCP has a detailed and elaborate set of RoP. Practice has evidenced that certain aspects could be revised to enhance its accessibility and compatibility of the process with the Guidelines. Such issues include requirements when filing a complaint, consultations with the parties, criteria for anonymity of the parties, and conflict of interests. The NCP has noted its plans to review its Rules of Procedure and has shared a draft proposal with stakeholder representatives for their input.	When undertaking its review of the Rules of Procedure, the NCP should focus on: - lowering formal requirements to file a complaint, notably to reflect due regard for the choice of representatives by indigenous peoples; - consulting the parties on the draft initial assessments; - providing for the possibility of follow-up; - establishing criteria for treating information as confidential; - establishing criteria for granting anonymity of the parties; - clarifying the applicable provisions on conflict of interests and abstention.
3.2	Stakeholders agree on the need to strengthen trust with potential submitters and parties to specific instances in view of the NCP's location. The NCP has faced challenges on conflict of interests in a closed specific instance. Stakeholders would also value clear communication on access to documents.	In order to further strengthen the predictability and equitability of the specific instance process, the NCP should - ensure clear communication with the parties on access to documents; - consider establishing a process dedicated to the NCP to prevent, detect and address conflict of interests.

3.3	Stakeholders agree that the specific instance process could be supported by more technical expertise on i) mediation and facilitation of dialogue; and ii) substantive RBC issues, including indigenous peoples' rights. They further note a preference to involving independent mediators.	The NCP should receive training on mediation, as well as on relevant substantive RBC issues. It should also consider engaging independent mediators in the specific instance process as needed.
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1 Introduction

The Peruvian NCP at a glance

Established: 2009

Structure: Single agency with a secretariat located in the Private Investment Promotion Agency of Peru (ProInversión) and no stakeholder advisory body.

Location: Private Investment Promotion Agency of Peru (IPA) (ProInversión)

Staffing: 3 part-time staff

Webpage: <https://info.proinversion.gob.pe/punto-nacional-contacto/> [Spanish];
<https://info.proinversion.gob.pe/ncp-peru/> [English]

Specific instances received as of the dates of the on-site visit: five, four concluded and one non-accepted

The implementation procedures of the Guidelines require NCPs to operate in accordance with the core criteria of visibility, accessibility, transparency and accountability. In addition, the guiding principles for specific instances recommend that NCPs deal with specific instances in a manner that is impartial, predictable, equitable and compatible with the Guidelines. This report assesses conformity of the Peru NCP with the core criteria and with the Procedural Guidance contained in the implementation procedures.

Peru adhered to the OECD Declaration on International Investment and Multinational Enterprises (Investment Declaration) in 2008. The OECD Guidelines for Multinational Enterprises (the Guidelines) are part of the Investment Declaration. The Guidelines are recommendations on responsible business conduct (RBC) addressed by governments to multinational enterprises operating in or from adhering countries. The Guidelines have been updated five times since 1976; the most recent revision took place in 2011.

Countries that adhere to the Investment Declaration are required to establish National Contact Points (NCPs). NCPs are set up to further the effectiveness of the Guidelines and adhering countries are required to make human and financial resources available to their NCPs so they can effectively fulfil their responsibilities, taking into account internal budget priorities and practices.³

NCPs are “agencies established by adhering governments to promote and implement the Guidelines. The 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.”⁴

The Procedural Guidance covers the role and functions of NCPs in four parts: institutional arrangements, information and promotion, implementation in specific instances and reporting. In 2011, the Procedural Guidance was strengthened. In particular, a new provision was added to invite the OECD Investment

³ Amendment of the Decision of the Council on the OECD Guidelines for Multinational Enterprises, para I(4).

⁴ OECD Guidelines for Multinational Enterprises (2011), Foreword.

Committee to facilitate voluntary peer evaluations. In the commentary to the Procedural Guidance, NCPs are encouraged to engage in such evaluations.

The objectives of peer reviews as set out in the “Revised core template for voluntary peer reviews of NCPs”⁵ are to assess that the NCP is functioning and operating in accordance with the core criteria set out in the implementation procedures; to identify the NCP’s strengths and possibilities for improvement; to make recommendations for improvement; and to serve as a learning tool for all NCPs involved.

The peer review of the NCP was conducted by a peer review team made up of reviewers from the NCPs of Norway and Portugal, along with representatives of the OECD Secretariat. The peer review included an on-site fact-finding mission which took place on 22-24 November 2022. This visit included interviews with the NCP, other relevant government representatives and stakeholders. A list of organisations that participated in the virtual visit is set out in Annex B.

This report was prepared based on information provided by the NCP and in particular, its responses to the NCP questionnaire set out in the revised core template⁶ as well as responses to requests for additional information. The report also draws on responses to the stakeholder questionnaire which was completed by 9 organisations representing government agencies, enterprises, trade unions, civil society and academic institutions (see Annex A for a complete list of stakeholders who submitted written feedback) and information provided during the on-site visit.

Peru underwent its RBC Policy Review OECD Responsible Business Conduct (RBC Policy Review of Peru) in the framework of the regional project on Responsible Business Conduct in Latin America and the Caribbean (RBC LAC).⁷ The RBC Policy Review of Peru was prepared by the OECD Centre for Responsible Business Conduct. It includes a cross-cutting analysis of the situation of the Peruvian NCP and puts forth actions to strengthen its functioning. Through different recommendations, the RBC Policy Review aims to ensure that the NCP can fulfil its mandate but also play a key role in the design and implementation of RBC-related policies and act as a promoter of policy coherence for RBC across government. Based on the recommendations of the RBC Policy Review of Peru, the NCP has identified a number of actions which are currently ongoing and that are reflected in this report.

The peer review team wishes to acknowledge the NCP for its efforts to ensure broad participation and open exchanges at the on-site visit, and the delivery of the requested material throughout the peer review process in a challenging national context. The peer review team also welcomes the NCP’s efforts to facilitate deep dive sessions with parties to closed specific instances. Unfortunately, the peer review team was able to meet only with one party to one case.

The basis for this peer review is the 2011 version of the Guidelines. The specific instances considered during the peer review date back to 2003. The methodology for the peer review is that set out in the core template.⁸ The information contained in this Report is current as of November 2022.

⁵ OECD, Core Template For Voluntary Peer Reviews Of National Contact Points (2019), [DAF/INV/RBC(2019)4/FINAL]

⁶ *Ibid.*

⁷ OECD (2020), [OECD Responsible Business Conduct Policy Reviews: Peru](#), OECD Paris. The information in the Review is current as of 1 June 2020.

⁸ OECD (2019), Revised Core Template For Voluntary Peer Reviews Of National Contact Points, [DAF/INV/RBC(2019)4/FINAL].

Economic context

Peru's formal economy is dominated by the service sector, representing 84% of GDP. Regarding foreign direct investment (FDI), the inward stock of FDI, which represents the accumulated value of FDI in Peru's economy over time, was USD 124 billion in 2021, equivalent to 55 percent of Peru's GDP. The outward stock of FDI was USD 16 billion in 2021, representing 7 percent of Peru's GDP. In 2021, Peru's exports of goods were USD 63 billion and exports of services were USD 3 billion while imports of goods were USD 35 billion and imports of services were USD 10 billion.

As highlighted also in the OECD RBC Policy Review of Peru, the country's economy is mainly characterised by high and persistent levels of informality. The country's extent of informality is among the highest in the LAC region. According to the latest National Household Survey, more than three quarters of all jobs are informal, while nearly half of all private sector employees have no contract.⁹

More than 50% of Peru's exports and 48% of imports are with OECD Members. The most important partner countries for exports of goods are the People's Republic of China (hereafter 'China'), the United States, Korea, Japan, and Canada while the most important source countries for imports of goods are China, the United States, Brazil, Argentina and Mexico.

⁹ INEI (2019). National Household Survey (ENAHU). Technical report, Instituto Nacional de Estadística e Informática, Lima, Peru.

2 Institutional arrangements

Under the Procedural Guidance of the Guidelines, Section I (A): “Since governments are according flexibility in the way they organise NCPs, NCPs should function in a visible, accessible, transparent and accountable manner.”

Legal basis

Peru adhered to the OECD Investment Declaration in 2008. The Peruvian NCP was formally established in 2009.

The NCP was established through an agreement of the Steering Committee of the Private Investment Promotion Agency of Peru (IPA) (ProInversión) (Agreement N°294-01-2009 of the Steering Committee, 1 July 2009) (the Agreement). The letter containing the Agreement is available on the NCP webpage.¹⁰ During the peer review, the NCP shared its plans to adopt a legal instrument describing the missions, functioning, and relations with stakeholders of the NCP.

NCP Structure

The NCP has a single-agency structure whereby ProInversión carries out the NCP’s functions. ProInversión is a specialised governmental agency attached to the Ministry of Economy and Finance. It is in charge of promoting private investment through public-private parentships and projects in assets for their incorporation in public services, public infrastructure, and state-owned enterprises. The NCP does not have an advisory or an oversight body. During the peer review, the NCP noted initial discussions on the possibility to establish the NCP as a separate unit within ProInversión and plans to create a Government Advisory Council.

Composition

Three ProInversión entities are responsible for carrying out the functions of the NCP: the Steering Committee of ProInversión, the Executive Director of ProInversión and the Technical Secretariat. Under the Agreement, as reflected in an official letter addressed in July 2009 from the then Secretary General of ProInversión to the then Director of Investment Facilitation and Promotion, based on the then ongoing process for Peru’s adherence to the Investment Declaration, i) the Steering Committee (referred to as the Board of Directors) has the final authority over the NCP (para. 2 of the Agreement); ii) the ProInversión Executive Directorate is responsible for the Technical Secretariat of the NCP and is tasked with developing NCP activities; iii) the ProInversión Investor Services Directorate (DSI) (former Directorate of Investment Facilitation and Promotion) is in charge of providing the Technical Secretariat for the NCP.

The Steering Committee of ProInversión currently consists of five Ministers:

- the Minister of Economy and Finance;

¹⁰ [Official Letter N° 690/2009/SG/PROINVERSIÓN](#).

- the Minister of Transportation and Communications;
- the Minister of Energy and Mining;
- the Minister of Housing, Construction, and Sanitation; and
- the Minister of Production.

The Steering Committee of ProInversión is the highest authority for all activities carried out by ProInversión, including the NCP's role. In the past, the number of Steering Committee members varied based on the structure of the government. Prior to its current composition, the Steering Committee consisted of three Ministers in 2017. It also included the Minister of Agriculture in 2015-2016. Ministers become automatically members of the Steering Committee upon their appointment. Official documentation does not provide for technical-level representatives and alternate members.

The Executive Director is appointed by the President of Peru, on the proposal of the Minister of Economy and Finance. The current Executive Director was appointed in December 2022, *i.e.* after the peer review on-site visit. His predecessor had been appointed in December 2019.

A team of three part-time staff of the DSI of ProInversión led by the DSI Director carries out the activities of the Technical Secretariat of the NCP.

Functions and operations

The missions of the Technical Secretariat and the Executive Director are not defined in ProInversión's Steering Committee Agreement of 2009 (the Agreement). Based on the preliminary draft legal instrument shared by the Peruvian NCP, the NCP's missions would be described as follows:

- disseminating the Guidelines, the OECD Due Diligence Guidance and the sectoral due diligence guidance and related instruments within the government and across stakeholder groups;
- cooperating with individual stakeholders and organisations, including business, trade unions, governments, to raise awareness on the Guidelines, RBC and due diligence;
- supporting the promotion of effective observance by companies of the principles and standards contained in the Guidelines;
- responding to enquiries on issues related to the NCP and the Guidelines;
- participating in peer learning activities;
- participating in, among others, NCP network and regional network meetings;
- providing information on the specific instance process and facilitating good offices where requested;
- ensuring the institutional memory of the NCP through documentation and information.

The Steering Committee of ProInversión is the decision-making body of the NCP according to the Agreement. However, the Steering Committee has not considered NCP-related issues in any of its three meetings held in the past two years and does not actually participate in the decisions made by the NCP.

The role of the Executive Director is not specified in official documentation. In practice, the Executive Director i) oversees the Technical Secretariat, notably by approving the draft statements in specific instances and promotional plans, and ii) approves the authorised budget for ProInversión, including NCP activities (see also below).

The missions and duties of the Technical Secretariat are not specified in official documentation. In practice, the Secretariat is in charge of i) carrying out the NCP's promotional activities; ii) coordinating within government, as well as with the private sector and civil society organisations; iii) coordinating with other NCPs and representing Peru in the Working Party on Responsible Business Conduct; iv) carrying out activities related to specific instances. The Technical Secretariat organises and leads on exchanges with the parties, and prepares draft documentation. The DSI Director is tasked with leading the Technical

Secretariat, but due to heavy workload on other duties, dedicates limited time to NCP-related activities. In practice, the DSI Director delegates duties to the other members of the Technical Secretariat. Stakeholders welcome the professionalism and fluid communications with the Technical Secretariat.

The official documentation does not provide information on the NCP's meeting and decision-making processes.

ProInversión offers a well-positioned platform for bringing together diverse sets of views and promoting policy coherence for RBC. However, the network of the Steering Committee has not been leveraged. Moreover, regular meetings of the NCP with other governmental agencies, organised in the past, have stopped since the outbreak of the pandemic and could be resumed. Stakeholders highlight opportunities to strengthen the NCP's visibility through links with Ministries and authorities with expertise in RBC-related issues, including the Ministry of Labour and Employment Promotion (MTPE) or the Ministry of Justice and Human Rights (MINJUSDH), which is in charge of the implementation of the National Action Plan on Business and Human Rights (see also para. 74 below). Stakeholders further note clear opportunities of collaboration with the Ombudsman's Office, especially considering the nature of both as state-based non-judicial grievance mechanisms. The NCP could also strengthen its links with diplomatic staff posted abroad.

The lack of visibility of the NCP within ProInversión, which is not set up as a distinct unit, does not allow for a clear understanding of the NCP structure by stakeholders. This is compounded by the fact that official documents such as the Agreement or the Rules of Procedure (RoP) of the NCP do not distinguish the Peru NCP and ProInversión. One trade union representative notes in this regard that the NCP is presented as part of ProInversión's operations and activities.

The NCP notes *perception of its impartiality* by stakeholders in view of the NCP's location as one of the most significant challenges (see also Chapter below on Specific Instances). As mentioned above, ProInversión's missions cover promotion of investment and negotiation of trade and investment agreements. Stakeholders note risks linked to ProInversión's focus on promoting private investment and managing related national projects, and the ensuing strong links and common mind-set with business and investors. In particular, some stakeholders noted that the overlap between responsibilities of NCP staff with promotion of international trade and investment raises the need for guarantees of impartiality. For example, aside from leading the Technical Secretariat of the NCP, the DSI Director focuses on private investment promotion and covers matters related to the Working Party on Responsible Business Conduct and the Investment Committee. Stakeholders would therefore welcome more communications on the NCP as a separate entity isolated from other agendas. The NCP reports that general rules on conflict of interests for public officials apply to NCP members (Law N° 27815 - Code of Ethics of the Public Function; Supreme Decree N° 004-2019- JUS). However, the official documentation on the NCP does not specify the applicable provisions and relevant process.

In this regard, it may be useful for the NCP to integrate in official documentation and publicise details on guarantees of impartiality. Updated official documentation could include in particular i) meeting and decision-making rules of the NCP; ii) applicable regulations on conflict of interests; iii) a process to report conflicts of interest specific to the NCP (see also Chapter below on Specific Instances).

The current NCP structure may also limit *access to expertise*. In this regard, the NCP has recently organised workshops and meetings with governmental authorities on consumer protection and anti-corruption issues. However, the expertise of the Executive Director and the Technical Secretariat currently focus on investment promotion and negotiation. Stakeholders note the need to strengthen the NCP's expertise in mediation and conflict resolution, as well as beyond investment-related issues. The RBC Policy Review of Peru also recommended strengthening the NCP's capacity through trainings on mediation and

substantive issues covered by the Guidelines, including on key topics and sectors (e.g. indigenous peoples' rights, informal workers, due diligence in the extractive sector).¹¹

The NCP plans in this regard to establish a Government Advisory Council composed of five Ministries with expertise on RBC-related issues and key sectors. The aim of the body would be to support the NCP in the specific instance process and on policy coherence. Stakeholders however noted the need to protect the NCP from changes in government. To ensure effective engagement in the NCP's work and access to expertise on RBC issues, the appointment of representatives Government Advisory Council should be based on expertise in the different thematic areas covered under the Guidelines.

The *accessibility and transparency* of the NCP are ensured through publication of information on its webpage and communications with stakeholders. Indicatively, the NCP's webpage includes the annual reports to the OECD Investment Committee since 2013. The webpage also includes the Agreement, and the Rules of Procedure on the specific instance process. It outlines the NCP's mandate and the core criteria for functional equivalence in both Spanish and English. Moreover, the NCP responds regularly to enquiries and provides the possibility of access to its documentation. It reports that under the applicable legislation all public entities are obliged to provide free of charge access to their databases and records (Art. 46, Supreme Decree N° 004-2019- JUS) and that public officials must facilitate provision of reliable, complete and timely information on the performance of their duties (Art. 7.2, Law N° 27815 - Code of Ethics of the Public Function). Exceptions to the exercise of the right of access to public information cover information protected by banking, tax, commercial, industrial, technological and stock market secrecy (Art. 17 para. 2, Law No 27806 on Transparency and Access to Public Information, Supreme Decree No 021-2019-JUS), and protection of personal and family privacy (*Ibid*, Art. 17 para. 5).

During the peer review, in addition to the abovementioned Government Advisory Board, the NCP noted initial discussions on the possibility to establish the NCP as a distinct unit located in ProInversión, and its plans to tackle some of the above challenges by also introducing a legal instrument establishing i) the Executive Director of ProInversión instead of the Steering Committee as the Head of the NCP and final authority; ii) the DSI Director as head of the Technical Secretariat; iii) specific responsibilities of the Executive Director, DSI Director and the Technical Secretariat; and iv) clear operating rules. At the time of the on-site visit, submission of the relevant proposal to the Steering Committee for approval was pending. Since the draft legal instrument establishes the Executive Director as the supervising authority, sufficient time should be dedicated by the latter to discharge this responsibility effectively.

The NCP maintains constructive *relations with stakeholders* and aims to further strengthen them. The RBC Policy Review of Peru found that the private sector is aware of the existence of the NCP. It also noted the increasing collaboration between the NCP, the National Confederation of Private Business Institutions (CONFIEP), and other business associations.¹² Stakeholders overall agree on the need to strengthen the NCP's engagement with stakeholder groups. They ask for structured engagement, notably with civil society organisations. Stakeholders also note opportunities to strengthen the NCP's access to expertise on human rights issues through links with experienced stakeholders. In practice, the NCP engages through promotional activities and intensified exchanges during the last year (see below Chapter on Promotion of the Guidelines). It is also able to reach out to stakeholders at regional level through other governmental authorities, including the MINJUSDH, and organises virtual meetings with stakeholders (see also para. 74 below). In addition to these existing links, the NCP notes opportunities to raise its visibility across business at sectoral level. Structured engagement with all stakeholder groups would further strengthen the NCP's visibility.

¹¹ RBC Policy Review of Peru, p. 76.

¹² *Ibid*, p. 22.

Resources

The NCP Technical Secretariat staff has slightly increased in the past five years. Between 2019 and 2021, the NCP staff increased from two part-time staff until 2019 to three part-time staff in 2020-2022. For nearly a year in 2020-2021, the Technical Secretariat consisted of four part-time staff. The time jointly allocated by all staff to NCP-related activities increased from 80% of a full-time equivalent (FTE) staff in 2019 to 120% FTE overall in 2020-2021. Although the number of staff increased by one between 2020 and 2021, the overall amount of time allocated to the NCP remained stable. The NCP Technical Secretariat staff currently include the Executive Director (5%), the DSI Director (5%), two investment specialists, and one legal and technical specialist. The three specialists overall allocate 40% of their time to NCP-related activities. Other duties of staff include i) investment promotion and negotiation of investment treaties for the investment specialist; ii) investment promotion and support; iii) legal advice on investment-related issues. The staff previously divided responsibilities on promotion and specific instances. It currently follows a different, horizontal approach with all staff involved in the different aspects of the NCP's mandate, including policy coherence. Stakeholders note that a bigger team would be needed in view of the important RBC-related challenges that Peru is facing. They overall agree on the need for full-time personnel for the NCP. The RBC Policy Review of Peru also recommended that Peru ensure sufficient resources.¹³

The Technical Secretariat has experienced turnover recently. In 2022, one staff member in office since 2009 left. Between 2009 and mid-2017, another legal adviser collaborated with the NCP, who left in 2017. New staff joined the Technical Secretariat in 2018, 2020, and 2021. Moreover, the DSI Director, who leads the Technical Secretariat, joined in December 2022, whereas her predecessor had joined in May 2022. The Executive Director also changed recently. Staff leaving the Technical Secretariat are requested to report on pending activities, status of ongoing affairs, location of information, and next steps. The NCP notably ensures its institutional memory through information available on its webpage regarding its activities. The NCP maintains an internal filing system for specific instances only. However, continuity in the Technical Secretariat has been undermined lately by turnover and recent changes in government.

The NCP does not have a dedicated budget. Since at least 2013, it receives financial resources under the DSI's general annual budget. The resources cover activities related to both promotion and specific instances, including travel and other logistical expenses. They are not allocated to the NCP separately. They are rather allocated as OECD-related expenses. In its annual reports to the OECD Investment Committee, the NCP reported sufficient financial resources until 2018. Since 2019, the NCP reports that limited budget does not allow for attendance to events organised by other NCPs, payment of professional or in-house mediator fees, or organising fact-finding missions in specific instances. The financial resources of the NCP decreased in the past five years due to budgetary restrictions. The NCP reports that its resources are not sufficient to fulfil its mandate and notes opportunities to increase staff and budget, in particular for in person meetings. Stakeholders also highlight the need to strengthen the NCP's human and financial resources.

Reporting

The NCP has regularly submitted its annual report to the OECD Investment Committee since at least 2013 and makes its reports publicly available. The NCP does not report to Parliament and does not have a dedicated oversight body. The NCP reports that the Parliament requested in the past few years a report from the NCP on its role and activities. The NCP notes its plans to report to the Parliament through a new reporting template. Indicatively, the template for 2023 covers i) an introduction on the Guidelines and the NCP's role; ii) the NCP's activities during the previous year; iii) upcoming actions, including the promotional plan and implementation of the recommendations under the peer review; and iv) recommendations for

¹³ Peru RBC Policy Review, p. 76.

future action, notably on policy coherence. At the time of the on-site visit, the NCP was planning to report to the Parliament in January 2023.

The NCP reports regularly to the government. It reports to the Ministry of Economy and Finance, as part of reports on institutional activities and the annual operational plan of the DSI. The frequency of reporting varies from more than three times a year in 2016-2017 to twice a year in 2019. The frequency was not specified previously and in 2020-2021. The NCP notes no request from other governmental entities so far for NCP-related updates.

	Finding	Recommendation
1.1	The establishment of the NCP through official documentation represents an opportunity for the NCP's visibility and transparency. However, such documentation currently does not (i) describe the structure and mandate of the NCP; (ii) define the roles of NCP entities in such mandate. This does not allow to clearly distinguish the NCP's role from the broader functions of ProInversión. Stakeholders requested clear information on the NCP's structure.	Peru should establish the NCP as a distinct unit. The roles of the bodies within the NCP's structure should be clearly defined and distinguished from their roles in ProInversión. The NCP's mandate, structure and functioning should be clarified, described and communicated in a public document.
1.2	Stakeholders raise concerns regarding their perception of the NCP's impartiality, notably in view of the NCP's location in an investment promotion agency. Official documentation does not provide information on the NCP's processes for meeting, decision-making, and addressing conflicts of interest.	The NCP should address concerns related to its impartiality through substantive changes and communication on the NCP's structure and operating rules. This could be notably accomplished through updated official documentation clarifying meeting and decision-making rules, and provisions on conflict of interests.
1.3	The NCP maintains constructive relations with other parts of government and stakeholders and aims to further strengthen them, notably as a way to strengthen its access to expertise. The NCP plans to establish an intergovernmental advisory body. Stakeholders however noted the need to protect the NCP from changes in government and requested structured engagement with all stakeholder groups. In practice, the Steering Committee of ProInversión has also not been involved in its work.	The NCP should : • continue with its plans for a future intergovernmental advisory body, which should be composed of representatives that have expertise in the different thematic areas covered under the Guidelines; • further its efforts to improve relationships with stakeholders by integrating stakeholder perspectives into its structures, establishing channels for regular and meaningful engagement with stakeholders, and considering the possibility of including stakeholder representatives in an advisory body in the future.
1.4	The NCP's Technical Secretariat staff has slightly increased in the past five years. Its expertise focuses on investment-related issues. Stakeholders note that a bigger team would be needed in view of the important RBC-related challenges that Peru is facing. They further note a preference to involving RBC experts in the NCP's work. The RBC Policy Review of Peru also recommended that Peru ensure sufficient resources and capacity for the NCP.	Staff resources of the NCP should be reinforced, to provide for example one full-time member. Peru should ensure that the NCP has sufficient resources and capacity, notably through regular specialised training on key RBC issues, to be able to fulfil its mandate.

3 Promotion of the Guidelines

Promotional plan

The NCP has not so far publicised a promotional plan. It adopted a promotional plan for 2022 providing a monthly list of promotional activities and meetings. The NCP reported planning to issue a more detailed, participatory promotional plan for the coming years. The NCP is encouraged to develop such strategic promotional plan to target particular sectors or stakeholder groups in order to optimise promotion.

The NCP has not monitored its visibility so far. However, the NCP monitors the use of its webpage (see also Section on Webpage below). The NCP's webpage also includes a link to the results of the OECD 2020 Responsible Business Conduct Survey in LAC¹⁴ in Spanish.¹⁵ Likewise, a study conducted by CONFIEP in 2019 on human rights corporate practices in Peru, found that 45% of 262 companies had adopted human rights commitment. The remainder had complementary policies in other areas relevant to RBC.¹⁶ According to the RBC Policy Review of Peru, although civil society organisations (CSOs) and trade unions are aware of the existence of the Peruvian NCP, there is agreement that it needs to increase its visibility.¹⁷ Although the NCP has recently stepped up its efforts to promote the Guidelines and related due diligence guidance, as well as inform stakeholders on its mandate, stakeholders overall agree on the need to strengthen its visibility.

The NCP reports efforts to promote the OECD Due Diligence Guidance for RBC and sectoral guidance with the private sector. It has identified the mining and agricultural sectors as priority. It notably recently engaged in the development of due diligence processes of extractive companies through participation in i) closed sessions organised by business organisations and chambers of commerce interested in the issue; ii) the process launched by one business organisation in the energy sector to implement human rights due diligence standards. However, interest from the private sector in the NCP's initiative varies. Business representatives requested more capacity-building on the implementation of sectoral due diligence guidance. The RBC Policy Review of Peru also recommended that Peru ensure that the NCP participate in efforts to promote due diligence and receive sufficient resources to prioritise promotion among companies.¹⁸

Stakeholders note the need to raise awareness about the NCP's double mandate, the specific instance process, and its potential benefits. Academia and CSO representatives view the NCP as a valuable grievance mechanism to complement national institutions. Stakeholders note that the low number of specific instances received by the NCP so far is linked, among others, to the use of other non-judicial grievance mechanisms in Peru, including state-based and at operational level. They note the importance

¹⁴ OECD (2021) [Business Survey Results on Responsible Business Conduct in Latin America and the Caribbean](#).

¹⁵ *Ibid.*

¹⁶ CONFIEP (2019), Press release "[Así es como CONFIEP apoya a las empresas formales para enfrentar el futuro del trabajo](#)".

¹⁷ RBC Policy Review of Peru, p. 23.

¹⁸ *Ibid.*, p. 32.

of reaching out to potential submitters and providing information to companies on the risk assessment of their activities.

The NCP recognises the need to further engage with all stakeholder groups in promotional efforts. It aims to engage in a more targeted way with academia and CSO representatives. Stakeholders also agree on the need for a proactive approach to outreach to government and stakeholders to increase the NCP's visibility. The NCP could consider promotional activities which would require limited resources, by identifying synergies with key partners to participate in strategic events. Relevant opportunities exist in the context of implementation of the National Action Plan for Business and Human Rights (NAP) (see below Policy Coherence). Additional opportunities include i) formalised cooperation with key stakeholders who can act as 'multiplier actors' (e.g. Chambers of Commerce); ii) stakeholders with regional antennas (e.g. CSOs active at province level); iii) governmental agencies, including state-based non-judicial grievance mechanisms active at regional level (e.g. Ombudsman's Office).

Information and promotional materials

The NCP disseminates information on the Guidelines through a brochure. More specifically, the NCP developed and published a brochure in 2015 entitled "Peru strengthening an investment climate that promotes growth and the OECD Guidelines for Multinational Enterprises". In 2015-2019, the brochure was distributed to participants of meetings and investment promotion events organised by ProInversión. The public of these events included businesses, investors, and public officials. Indicatively, in 2015, the NCP distributed 1 886 brochures in Spanish and 1 506 in English. A digital version of the brochure is currently not available. During the peer review, the NCP noted its plans to update the promotional materials and further focus their content on the NCP and the specific instance process in different language versions, including indigenous peoples' languages.

Promotional events

The NCP organised and co-organised promotional events in the past few years (see Annex C Promotional Events). The NCP notes that in the past, it organised two promotional events per year on average. Due to budgetary restrictions, during the past few years, the number of events however decreased to one per year. In 2021, the NCP co-organised a workshop on the Guidelines and the National Action Plan on Business and Human Rights 2021-2024 with the Ministry of Justice and Human Rights (MINJUSDH). Participants consisted mainly of government representatives. In 2015, the NCP organised an event on 'the Investment Climate and the OECD Guidelines for Multinational Enterprises' in the ProInversión offices. Participants included 30 business, ten government, and ten academic representatives. In its annual reports to the OECD, the NCP notes that it promoted the Guidelines among i) business consistently since 2016, ii) government agencies until 2019, iii) embassies in 2017-2018, iv) CSOs in 2019. The NCP also organised training for companies in 2017.

The NCP participates in promotional events organised by others. Its interventions cover the NCP's mandate and due diligence procedures and standards. The NCP notes that events organised in the context of the Responsible Business Conduct in Latin America and the Caribbean project (RBC LAC project) and the process for the elaboration of the National Action Plan on Business and Human Rights offered opportunities to promote the NCP, the Guidelines and due diligence guidance. Virtual meetings and a workshop organised by the RBC LAC project contributed to raising awareness on the NCP among CSOs. In the past few years, the NCP participated in events focusing on due diligence in the mining or agriculture sectors, and events organised by Peru's association of Exporters and the Chamber of Commerce in Lima. The NCP also notes cooperation with the National Society of Mining, Petroleum and Energy in promoting the Guidelines and due diligence guidance at national level. In 2015, the NCP participated in an event

organised by the Ministry of Labour and Employment Promotion on corporate social responsibility on labour issues. In 2014, the NCP participated in a “Workshop of Mediation and the Role of the NCP in the Latin American Region” in Chile.

Webpage

The NCP has a dedicated webpage on the ProInversión website since 2015. The webpage is available in Spanish and English.¹⁹ It is easily identified through online search engines. The webpage was recently updated to be easily identifiable. It aligns with the structure of governmental webpages. Stakeholders welcome the recent update of the webpage and inclusion of additional information. They further note that it is easily accessible.

Information available on the NCP webpage is comprehensive. It covers:

- a main page with links to thematic sections and a box for submission of enquiries;
- an overview of the NCP, including i) a description of its mandate and the core criteria; ii) a link to the Agreement;
- a section on the Guidelines, including a broad description of the Chapters and a link to the full text of the Guidelines;
- a section on the OECD Due Diligence Guidance for RBC and the sectoral guidances;
- a section on the annual reports of the NCP to the OECD since 2013;
- a section on specific instances, including i) a description of the role of the NCP in the specific instance process; ii) the submission process and means (see also Chapter on Specific Instances below); iii) the elements to be included in the submission; iv) indicative timelines for the three stages of the process; v) links to the statements and closing notes, where available, for concluded specific instances;
- a section on recent activities, including links to the NCP's participation in recent events;
- a section on supporting informative material.

The NCP monitored use of its webpage as a means of identifying interest in its work in the second half of 2022. The interest of users focused on the Spanish version. Users also visited the previous version of the webpage for information on the NCP and its promotional activities in particular. The NCP webpage could also be updated to reflect the most up to date information, including contact information and recently adopted instruments, resources and materials.

The NCP does not maintain social media accounts. Stakeholders ask for updates through social media on the NCP.

Promotion of policy coherence

RBC has progressively emerged as a topic of interest in Peru.²⁰ Major government initiatives, including Peru's National Development Plan (*Plan Bicentenario*) and the National Plan for Competitiveness and Productivity (*Plan Nacional de Competitividad y Productividad*, PNCP)²¹ notably recognise the role of the private sector in promoting sustainability and provide entry points for strengthening RBC.²²

¹⁹ <https://info.proinversion.gob.pe/punto-nacional-contacto/> [Spanish]; <https://info.proinversion.gob.pe/ncp-peru/> [English]

²⁰ For a detailed overview of RBC initiatives in Peru, see RBC Policy Review of Peru.

²¹ Gobierno del Peru, Plan Nacional de Competitividad y Productividad: Documento Resumen, 2019-2030.

²² RBC Policy Review of Peru, p. 21.

Peru has also adopted National Plans on Human Rights since 2006. National Plans on Human Rights so far have covered the periods 2006-2011, 2014-2016, and 2018-2021. Through its 2018-2021 National Plan on Human Rights, Peru i) highlighted the importance of promoting international standards on Business and Human Rights; ii) committed to develop a National Action Plan on Business and Human Rights (NAP) to promote business respect of human rights. The Ministry of Justice and Human Rights (MINJUSDH) was in charge of developing the NAP. The RBC Policy Review of Peru recommended that the NCP be involved in the development of the NAP and be allocated a clear and key role in the implementation of NAP objectives linked to the Guidelines and the OECD Due Diligence Guidance.²³ The 2021-2025 NAP was published in June 2021.²⁴ The NAP sets specific roles for the NCP, including on i) the development of a capacity-building programme on RBC (Objective 1.1); reinforcing the capacities of the NCP, the Ombudsman's Office and other national institutions (Objective 3.17); and iii) leveraging the role NCP on mediation in promoting access to remedy for victims (Objective 1.90).²⁵

The implementation of the NAP has provided opportunities to raise the NCP's visibility within government and among stakeholders. The MINJUSDH is in charge of the NAP's implementation with an operational plan focusing on activities at regional level. The NCP reports a good working relationship with the MINJUSDH. Some stakeholders requested more active participation of the NCP in the NAP implementation process. The NCP recently participated in several activities involving stakeholders at regional level in the framework of the NAP. Stakeholders and government representatives welcome these initiatives as an opportunity to meet at central and municipal level and become familiar with the NCP and its mandate. The NCP will also be involved in the indicator foreseen by the NAP on voluntary registration of corporate due diligence plans and procedures.

Peru has set up different non-judicial grievance mechanisms covering RBC issues. The Office of Social Management and Dialogue (*Secretaría de Gestión Social y Diálogo*, SGSD) notably deals with social conflicts, including those arising from corporate activity and projects. Specialised offices are also set up in different ministries. The Ombudsman's Office, an autonomous body with 38 offices across Peru, also has experience in assessment of public policies on RBC-related issues and mediation in cases concerning violations of human rights by private companies that provide public services. The Ombudsman's Office also coordinates with other governmental authorities to facilitate dialogue in such cases. In addition to the SGSD and the office of the Ombudsman's Office, some ministries have also created specialised offices in charge of handling and preventing social conflicts in their respective sectors. In 2009, a General Office of Social Affairs (*Oficina General de Gestión Social*, OGGS) was also established within the Ministry of Energy and Mines (MINEM) in order to, among others, promote dialogue and consultation mechanisms between companies and local communities, and act as mediator in some cases. The RBC Policy Review of Peru recommended that i) the Ombudsman's Office and the NCP cooperate and build synergies, and ii) the NCP explore the possibility of cooperating with other non-judicial grievance mechanisms, including under the SGSD.²⁶ Stakeholders note the need to further strengthen synergies among these mechanisms.

From a regulatory point of view, principles governing public procurement processes and policies include, among others, the principle of "environmental and social sustainability".²⁷ Under the model tender documentation for procurement work issued by the *Organismo Supervisor de las Contrataciones del Estado* (OSCE), the procuring entity can consider "environmental and social sustainability", "social protection and human development", and "integrity in public procurement".²⁸ The Peruvian corporation of

²³ *Ibid.*

²⁴ For more information on the NAP development process, see Global [NAPs, Peru](#).

²⁵ [Plan Nacional de Acción sobre Empresas y Derechos Humanos](#) (PNA) 2021-2025.

²⁶ *Ibid.*, p. 30.

²⁷ Law No. 30225 of 2014 on Public Procurement, Article 2.

²⁸ Government of Peru (2019), Model tender documentation for the procurement of goods approved by Directive No. 001-2019- OSCE/CD and Government of Peru (2019).

state-owned enterprises (*Fondo de Financiamiento de la Actividad Empresarial del Estado*, FONAFE) also considers RBC standards.²⁹ The NCP is not involved in these initiatives.

The NCP interacts with other governmental agencies through its location. Since 2015, and as part of ProInversión's investment guidance services, foreign investors interested in engaging in Peru receive information on Peru's adherence to the Declaration and the Guidelines. In 2017, the NCP reported that the Investment Chapter of a commercial agreement concluded with the Pacific Alliance referred to the Guidelines.³⁰ Moreover, the NCP reports that it coordinates since 2015 with other governmental entities to organise joint events on RBC. In the past few years, the NCP collaborated with the Ministry of Labour, the Ministry of Foreign Affairs, and other public agencies. Building on these efforts and synergies, the RBC Policy Review of Peru found that the role of the NCP as an agent of policy coherence could be further reinforced through specific actions and dedicated resources.³¹

The NCP could be more proactive in facilitating cooperation with other governmental agencies, and position itself more affirmatively in the broader RBC framework in Peru.³² Stakeholders and government representatives note opportunities in the current context for the NCP to play a role in establishing links across government. One governmental agency expressed interest in cooperating with the NCP to reach out to multinational enterprises on issues related to consumers' interests. Representatives of Ministries and agencies with strong stakeholder links were open to sharing their networks with the NCP. Government representatives also note opportunities for the NCP to facilitate tripartite social dialogue.

Requests for information

The NCP has their contact details listed on the webpage (email and telephone). It invites users to contact for any enquiries. Since 2015, the NCP reports incoming enquiries from business, CSOs and other stakeholders.

Cooperation amongst NCPs

The NCP engages with other NCPs through multilateral and bilateral meetings. The NCP Coordinator also participated in an event organised by another NCP in 2021. The NCP also participated in the sub-regional project "Strengthening non-judicial state mechanisms for access to reparation in business and human rights" developed by the Danish Institute for Human Rights in the framework of the RBC LAC project.³³

It has also been an active participant in the meetings of the regional network of NCPs in the LAC region.

The NCP has also participated in NCP network meetings in the OECD. Regular participation of the NCP in these meetings provides the Technical Secretariat with opportunities to strengthen its expertise on key RBC issues (see also Finding and Recommendation 1.4) and cooperate across the network.

²⁹ FONAFE (2019), [Lineamientos de Responsabilidad Social Corporativa de FONAFE](#).

³⁰ Art. 10.30, para. 3, Chapter 10, [Trade agreement with the Pacific Alliance](#).

³¹ *Ibid.* p. 76.

³² Which is strongly suggested in the recently adopted OECD Recommendation on the Role of Government in Promoting Responsible Business Conduct. See [OECD/LEGAL/0486](#). Available at <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0486>

³³ [Peruvian NCP participates in meetings with NCPs and NHRIs of Latin America and the Caribbean and in VII Regional Forum on Business and Human Rights for Latin America and the Caribbean](#), 11-15 July 2022; [Non-judicial remedy mechanisms in Peru and Colombia National Human Rights Institute and OECD National Contact Point](#), 24 May 2022.

	Finding	Recommendation
2.1	The visibility and accessibility of the NCP could be further strengthened. The recent engagement with stakeholders in the context of implementation of the National Action Plan for Business and Human Rights (NAP) has increased the NCP's visibility at regional level. However, stakeholders note the need for increased promotion and engagement with all stakeholder groups, including trade unions and CSOs.	The NCP should increase its promotional activities in order to strengthen its visibility and accessibility. This can be done through (i) a promotional plan that includes a broad stakeholder mapping, identification of priority sectors for promotion, and topics of interest for different stakeholder groups, including CSOs, academia, trade unions and business associations; (ii) the update of promotional material for dissemination covering the specific instance process; (iii) active social media presence. The promotional plan should leverage key actors and relationships, including media and stakeholder networks active at regional level, and diplomatic staff posted abroad.
2.2	The NCP operates in a context of growing activity on RBC by other governmental agencies and state-based non-judicial grievance mechanisms. The RBC Policy Review of Peru noted that the Peruvian NCP can play an important role to strengthen the coherence of RBC policies.	The NCP should take a proactive role as agent of policy coherence and promoter of RBC across government. This could notably be achieved by i) leading on issues related to the Guidelines in the implementation of the NAP; ii) seeking synergies with other state-based non-judicial grievance mechanisms; iii) consistently informing government agencies and bodies of its statements and reports; and iv) establishing links among parts of the government with different sectoral and thematic expertise on RBC issues.

4 Specific instances

Overview

At the time of the on-site visit, the NCP had received five specific instances in total (including three since 2011). In total, four specific instances have been concluded by the NCP, and one was not accepted.

Among the closed cases:

- four specific instances were concluded without agreement and without recommendations:
 - in view of ongoing parallel proceedings and refusal of the company to enter good offices. The NCP also found that some issues were not material and substantiated and they did not fall under its mandate;³⁴
 - following the company's refusal to enter good offices³⁵ or lack of communication;³⁶
 - following the lack of response by the parties on the offer of good offices;³⁷
- in one case which was not accepted, the NCP found that issues were not material and substantiated. The NCP also found lack of link between the company's activities and the issues raised.³⁸

The main sectors concerned by specific instances handled by the NCP are mining (two cases), tourism (one case), aviation (one case), as well as telecommunications (one case). In terms of submitters, trade unions and CSOs have submitted two out of five cases each (40%). They are followed by individuals (one case, 20%).

The most frequently raised chapters of the Guidelines in cases handled by the NCP are the chapters on General Principles (four cases), Disclosure of information (Chapter III) (three cases), Human Rights (Chapter IV) (three cases), Employment and Industrial Relations (Chapter V) (two cases), Environment (Chapter VI) (two cases), and Combatting Bribery, Bribe Solicitation and Extortion Chapter (VII).

An overview of all cases handled by the NCP is available in Annex D.

³⁴ Specific instance 1 regarding issues in an ore mine.

³⁵ Specific instance 2 involving a telecommunications company.

³⁶ Specific instance 5 involving an aviation company.

³⁷ Specific instance 3 regarding issues in a metallurgical complex.

³⁸ Specific instance 4 involving a company in the hotel industry.

Rules of Procedure

Overview

The Rules of Procedure (RoP) of the NCP are available on the NCP's webpage in both Spanish³⁹ and English.⁴⁰ The RoP were adopted in 2015 by the Steering Committee through Directive N° 003-2015-PROINVERSIÓN. The NCP webpage was recently updated to describe in more detail the specific instance process and strengthen its accessibility. It now outlines the three steps of the specific instance process and indicative timelines. It also includes a message box for queries on the process.

During the peer review, the NCP noted its plans to review its RoP. At the time of the on-site visit, a first draft was shared with stakeholder representatives for their comments. It aimed, among others to reflect planned changes in the NCP's structure and strengthen the accessibility and transparency of the specific instance process. Where relevant, the content of the draft revised RoP is mentioned below.

The RoP open with a presentation of their objective and scope, the legal basis for the procedures (i.e. the Guidelines and the Agreement, Section 4), and the respective responsibilities of the DSI as Technical Secretariat and the Executive Directorate in overseeing the Secretariat. The responsibilities of the DSI cover i) the issuance of notifications to submitters about receipt and admission of the request; ii) the initial evaluation of the submission; iii) the issuance and publication of an initial evaluation report; iv) the facilitation of dialogue between the parties; v) the elaboration of Terms of Reference for the dialogue between the parties; vi) the participation in the meetings during the good offices phase in accordance with the agreed Terms of Reference; vii) as appropriate, coordination with the corresponding national organizations and/or internationally with the OECD and/or other NCPs that may be relevant for the Specific instance; viii) as appropriate, the issuance and publication of a final evaluation report. The Executive Directorate is responsible to approve and send the initial and final evaluation reports to the parties (Section 3 RoP).

The RoP also include a glossary of key terms, which can be found below in Table 1. They further lay out certain general provisions on transparency (see also below), expertise, and coordination with NCPs (see also below).

Table 1. Definitions in the RoP

Term	Definition
OECD	The Organization for Economic Co-operation and Development, which includes 34 member countries and 12 adherent countries, among which is Peru. The mission of this organization is to promote politics that improve the economic and social welfare of people around the world.
Guidelines	The OECD Guidelines for Multinational Enterprises
NCP	This is the entity responsible for promoting and implementing OECD Guidelines for Multinational Enterprises and for addressing the Specific instances relating to the implementation of the Guidelines. In case of Peru, it refers to the Private Investment Promotion Agency-PROINVERSIÓN.
Specific instance	It refers to the request raised before the NCP related to the alleged breach of OECD Guidelines by a multinational enterprise

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https://www.investinperu.pe/RepositorioAPS/0/0/JER/PERU_OECD/Procedimiento%20NCP%20Peru%20para%20instancias%20especificas%20OCDE-%20Directiva%20PROINVERSION%20N%20003-2015.pdf [Spanish]

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[https://www.investinperu.pe/RepositorioAPS/1/0/JER/PERU_OECD/2017/Peru%20NCP%20Procedures%20to%20specific%20instances%20OECD%20\(%20english%20translation\).pdf](https://www.investinperu.pe/RepositorioAPS/1/0/JER/PERU_OECD/2017/Peru%20NCP%20Procedures%20to%20specific%20instances%20OECD%20(%20english%20translation).pdf) [English]

Source:

[https://www.investinperu.pe/RepositorioAPS/1/0/JER/PERU_OECD/2017/Peru%20NCP%20Procedures%20to%20specific%20instances%20OECD%20\(%20english%20translation\).pdf](https://www.investinperu.pe/RepositorioAPS/1/0/JER/PERU_OECD/2017/Peru%20NCP%20Procedures%20to%20specific%20instances%20OECD%20(%20english%20translation).pdf)

The RoP are organised around three key phases:

1. Presentation of the specific instance and initial evaluation stage (Section 7.1)
2. Assistance to the parties and good offices offering (Section 7.2)
3. Specific instance final evaluation report (Section 7.3)

Filing a complaint

Section 7.1 of the RoP deals with the filing of a case and its admissibility. It opens by stating that any natural legal person who feels affected, directly or indirectly, by a Company's alleged breach of the Guidelines, may submit a specific instance. The submission should be addressed to the IPA's Executive Director and presented at the ProInversión's Reception Desk. A submission form is available on the NCP's webpage in Spanish.⁴¹ The RoP and submission form do not specify whether a specific instance can be submitted by email or phone. However, the NCP webpage provides the possibility of submitting a specific instance in person, by mail, and email.⁴² The draft revised RoP clarify that specific instances can be submitted by email, letter, or through the NCP webpage. Stakeholders welcome the availability of information on the NCP webpage and dissemination of information on the submission process through presentations of the NCP. They ask for an easily accessible online submission channel.

The information which should be contained in a submission to be deemed admissible is specified in Section 7.1.1 and reflected in the submission form:

- the submitter's full identity and contact details, including ID card number. If submitting on behalf of someone else, the submitter should also include a power of attorney;
- explanation of the submitter's specific interest in submitting the specific instance;
- the name and address of the concerned company, and information about its organisational structure if relevant for the case;
- description and location of the issues, and supporting documents;
- provision(s) of the Guidelines allegedly breached and supporting declarations;
- actions which the concerned company should take to address the issues and end the breach according to the submitter. The submission form specifies that i) the NCP is a non-judicial mechanism and as such, it cannot impose civil, criminal or administrative sanctions, attribute direct compensation or oblige the parties to accept its good offices; ii) the resolution of issues is consensual and aims to identify constructive solutions and mutual agreements between the parties.
- the 'purpose and reasons' for the submission;
- an indication of any parallel proceedings relating to the same issues or facts.
- a declaration of intention to pursue a solution to the issues in accordance with the Guidelines and the RoP;
- any additional information.

After the file is considered complete, the NCP will

- acknowledge receipt and begin the initial assessment;

⁴¹ <https://info.proinversion.gob.pe/instancias-especificas/>

⁴² *Ibid.*

- if the file is not considered complete, notify the submitter and request the missing information within ten business days, failing which the case will be deemed inadmissible (Section 7.1.2);
- if the case is considered complete and the possible coordination with other NCPs has taken place, contact the concerned company within ten business days and request that it responds with a written statement about the issues within 20 business days (Section 7.1.3).

CSO and trade union representatives note that some of the requirements may set a high evidentiary threshold. In particular, description of a company's organisational structure may deter potential submitters. Moreover, they note that i) requiring a power of attorney limits the accessibility of the process for individuals; and ii) accreditation of formal representation of submitters further raises the threshold, in particular for workers and indigenous peoples. The NCP acknowledged the issue and indicated its intention to address it in its revised RoP. The draft RoP i) replace the power of attorney with an affidavit to simplify the process of representation by a third party; and ii) do not include the 'purpose and reasons' for the submission as a submission element.

The NCP has a practice of requesting information on the organisational structure of the company involved and conducting additional research as needed on this issue. The NCP noted that such information aims to facilitate the identification of a multinational enterprise.

Initial assessment

Section 7.1.6 of the RoP specifies the elements taken into consideration by the NCP to decide whether the specific instance merits further examination. The NCP makes its decision based on the initial evaluation criteria defined in the Guidelines (with reference to paras. 25 and 26 of the Commentary to the Procedural Guidance), as well as on 'the Guidelines terms, among others that the NCP deems convenient' (Section 7.1.6). The RoP do not further specify the criteria considered by the NCP in making its decision.

Under the RoP, the NCP will issue and publish its initial assessment on its webpage for both accepted and non-accepted cases (Section 7.1.7). If a case is accepted, the initial assessment mentions the identity of the parties and specifies that acceptance of the case does not entail a finding of non-observance of the Guidelines. If a case is not accepted, the initial assessment will protect the identity of the parties. The NCP may also decide to partially accept cases. If the parties reach agreement and the submitter withdraws the case before the NCP completes its initial assessment, the NCP will close the case without disclosing the parties' identity, except if there is an agreement in this regard (Section 7.1.8).

The RoP do not provide that the NCP will consult the parties on the draft initial assessment statement, which is not in line with Commentary para. 36 to the Procedural Guidance. The NCP has also not shared the draft statement with the parties in the non-accepted specific instance (see also Box 5.1.).

Good offices

Section 7.2 of the RoP describes the good offices phase, including the nature and steps of the procedure, and discussions with the parties. Once the case is accepted, the NCP offers its good offices and provides a platform for dialogue to enable the parties to reach an agreement (Section 7.2.1; see also submission form content above).

As part of the good offices, the NCP will (Section 7.2.2.):

- initiate confidential discussions between the parties and act as a facilitator. The NCP provides the parties with a dialogue and negotiation forum;
- facilitate mediation itself or access to external mediation by professional mediators. If parties enter external mediation, the NCP will suspend its analysis of the case and determine a timeline for the mediation. If the mediation does not lead to an agreement, the NCP will consult the parties about the

added value of continuing to provide good offices. If the parties' response is negative, the NCP will conclude the case. If the parties' response is positive, the NCP will resume its facilitation.

Facilitation of dialogue by the NCP entails meeting with the parties to discuss the procedure, and define the main topics and ground rules for discussion (Section 7.2.3). In those meetings, the NCP will aim to facilitate dialogue between the parties and proposes potential solutions. However, the RoP specify that the NCP does not act as a conciliator or mediator in the procedure (Section 7.2.3.b).

When faced with complex issues, the NCP makes use of expertise through partnerships and the NCP network. The NCP can notably i) request the opinion of governmental experts; ii) consult any public institution, other NCP or experts on a topic (Section 6.2). The NCP notably reports challenges related to indigenous peoples and the differentiation between representation and self-identification, as well as cultural sites. In one case,⁴³ the NCP requested the opinion of the Ministry of Culture.

The NCP has not used external support from professional conciliators or mediators in the specific instance process so far.

Conclusion of the specific instance

Sections 7.2.3.d-e and 7.3 of the RoP address the stage of drafting a final statement (called 'Final Evaluation Report') or agreement. At the end of the process:

- if the parties reach an agreement, the NCP assists them in drafting it. The parties then decide whether the NCP should publish the agreement in full or only in summary.
- if the parties do not reach agreement or reach only partial agreement, the NCP examines the issues to the extent not covered by the agreement. If the agreement covers most of the issues, the parties may request the NCP not to examine the pending issues (Section 7.2.3.d-3).

The final statement will include (Section 7.3.2):

- the identity of the parties;
- a summary of the issues and the provisions of the Guidelines allegedly breached;
- actions performed by the NCP and parties during the process;
- the final result of the process.

The NCP consults the parties on the draft final statement. In particular, the NCP submits a draft for factual verification to the parties prior to publication. Parties then have 10 business days to respond. The NCP has discretion as to whether to take the parties' comments on board. The NCP then sends the final version to the parties and publishes it on its website (Sections 7.3.3 and 7.3.4).

The RoP provides the possibility of issuing recommendations in both accepted and non-accepted specific instances (Section 7.3.1). It does not refer to the possibility for the NCP to make determinations. The NCP has not made any recommendations. It recently made one determination in one concluded specific instance.⁴⁴

Case follow-up

The RoP do not mention the possibility for the NCP to follow-up on specific instances. The NCP notes that it may conduct follow-up in line with the Procedural Guidance. In practice, the NCP has not conducted follow-up so far.

⁴³ Specific instance 4 involving a company in the hotel industry.

⁴⁴ Specific instance 5 involving an aviation company.

Analysis of NCP statements

Non-accepted cases

One out of five specific instances received has not been accepted by the NCP.⁴⁵ This was the first case received by the NCP in an indigenous language (Quechua) in addition to Spanish.

The NCP published its Initial Assessment Report⁴⁶ and a closing note⁴⁷ in this case. The Initial Assessment Report provides a detailed overview of the facts, issues raised, procedure followed, meetings, and exchanges, parallel proceedings, as well as reasons that led to the NCP's decision. It also covers clarifications on the roles of the NCP and the nature of the specific instance process, details on parallel proceedings, and self-identification of the submitters. The closing note provides a summary of these elements.

In this case, the NCP dealt with

- the issue of representation of a submitter by a third party: the NCP did not recognise the organisation which initially submitted the case as party due to lack of publicly available or official information on its establishment, mandate, and objectives.⁴⁸
- the issue of representation of indigenous peoples: the NCP consulted the Peruvian Ministry of Culture. It also considered the relevant international framework of the Indigenous and Tribal Peoples Convention of the International Labour Organisation (ILO 169 Convention). The NCP considered the case as submitted by the three individuals represented by the submitting organisation. The three individuals self-identified as Quechua people. The NCP decided that submitters did not provide sufficient evidence to be considered as representing the Quechua people.

The submitter is identified and the companies involved are anonymised. A CSO publication on the case after its conclusion identifies the concerned multinational enterprise.⁴⁹ The publication criticised the NCP's decision noting, among others that i) the requirement of documentary proof that the submitters received a power of attorney was overly onerous; ii) that the NCP's conclusion that the Quechuas do not have a religious belief amounted to discrimination against them.

Stakeholders noted the need to strengthen trust with indigenous communities and CSOs which support them. They highlighted difficulties for indigenous peoples in accessing the NCP due to lack of familiarity with state-based non-judicial grievance mechanisms.

The NCP could strengthen its accessibility by addressing representation of indigenous peoples with due regard for their own decision-making processes. When determining the interest of the submitter in respect of group rights at the initial assessment phase, the NCP should engage with indigenous people through the representatives chosen by them. In the absence of a decision taken by the people regarding suitable representation, the NCP needs to ensure an inclusive process with equal opportunities to contribute for different members.⁵⁰

The accessibility of the NCP for indigenous peoples could thus be strengthened by i) reflecting due regard for the choice of representatives by indigenous peoples in the draft revised RoP; ii) providing capacity-

⁴⁵ Specific instance 4 involving a company in the hotel industry.

⁴⁶ https://www.investinperu.pe/RepositorioAPS/0/0/JER/PERU_OECD/Informe-evaluacion-Empresa-multinacional-EEUU-hotel-220.pdf

⁴⁷ https://www.investinperu.pe/RepositorioAPS/0/0/JER/PERU_OECD/Nota-sobre-%20empresa-multinacional-EEUU-hotel.pdf

⁴⁸ Specific instance 4 involving a company in the hotel industry, Initial Assessment Report, para. 86.

⁴⁹ OECD Watch, [Quechua indigenous group vs. Marriott International](#).

⁵⁰ OECD (2022), [Guide for National Contact Points on the Rights of Indigenous Peoples when handling Specific Instances](#), pp. 17-18.

building to the NCP on mobilising indigenous peoples in the specific instance process; and iii) strengthening trust with CSOs and local authorities which may accompany indigenous peoples in the process.

Box 1. Specific instance 4 involving a company in the hotel industry

On 18 December 2018, the Peruvian NCP received a specific instance from Fundacion Luz Marina on behalf of three citizens who identified as part of the Quechua indigenous people alleging that the conduct of a multinational enterprise active in the hotel industry, a Peruvian hotel company, a Peruvian real estate company, and a Peruvian construction company did not align with Chapter II (General Policies), Chapter IV (Human Rights), and Chapter VII (Combating Bribery, Bribe Solicitation and Extortion) of the Guidelines. The submitter alleged in particular that as part of a hotel construction project in the city of Cusco, the companies were involved in i) the demolition of walls of the Huacapuncu temple which constitute cultural heritage of the Quechua people; ii) the desecration of graves in the temple which constitute a place of religious practice; and iii) the offer of undue pecuniary advantages to a public official to ensure a financial benefit. The submitters requested cancellation of the project and reconstruction of the temple.

The NCP coordinated with the US NCP where the multinational enterprise was based, including through calls and email exchanges. US-based trade union UNITE HERE also exchanged with the US NCP on this case. The NCP held meetings with the submitter, received written submissions from both parties, and visited the location of the project. The NCP also consulted the Ministry of Culture on the issue of representation of indigenous peoples and the location and area of the construction project.

In its initial assessment on 15 November 2019, the NCP decided not to accept the case. It limited the involved companies to the multinational enterprise and the Peruvian real estate company. The Peruvian hotel company was no longer operating. The NCP did not find a link between the alleged facts and the Peruvian construction company. The NCP decided not to accept the case notably because i) the issues, including the existence of a temple or sacred place, and the inclusion of the temple in the area of the construction project, had not been substantiated; ii) the link between the multinational enterprise's activities and the issues raised had not been substantiated; iii) the evidence on payments to a public official and the grant of undue financial benefit for the multinational enterprise was insufficient. The NCP did not make recommendations.

Positive experiences in the process included the possibility to submit a case in the Quechua language, and to address impacts of corporate activities through a non-judicial grievance mechanism. Challenges related to limits to the accessibility of the NCP, notably due to long exchanges on the representation of the submitter and of the Quechua people. Concerns were also raised regarding the NCP's awareness and reactivity on potential conflict of interests in view of alleged links between its location and the companies involved in the case. Challenges also related to requests for better understanding of the cultural heritage and religious practice of the Quechua people, and transparency, including access to documents submitted by the parties and grounds justifying confidentiality.

Accepted cases

Out of five cases received so far, four have been concluded. The four cases were concluded without agreement and without recommendations. In particular:

- one case was concluded in view of ongoing parallel proceedings. The NCP also found that some issues were not material and substantiated and they did not fall under its mandate:⁵¹ the NCP offered its good offices while judicial proceedings were ongoing. After several meetings, the parties were not able to reach an agreement;
- two cases were concluded due to the company's lack of willingness to enter good offices:
 - in one case,⁵² the NCP held several meetings with the parties involved and also with the Ministry of Labour and Employment Promotion (MTPE) and offered its good offices. The concerned company indicated that it would prefer to deal with the issues raised directly through the dialogue processes offered by the MTPE;
 - in one case,⁵³ the companies involved stopped engaging. At the time, they were under liquidation and restructuration. During the initial assessment phase, the companies indicated that their practices aligned with the Guidelines and requested the closure of the specific instance. They provided no response upon receipt of the Initial Assessment Report by the NCP. The NCP also found that the submission was not material and substantiated regarding non-observance of Chapter IV on Human Rights.
- one case was concluded following the lack of response by the parties on the offer of good offices:⁵⁴ the parties stopped communication with the NCP, due to their participation in other parallel proceedings. In this case, eight years elapsed between acceptance and conclusion of the case.

The NCP has not facilitated mediation or conciliation so far in practice. The NCP has offered its good offices in three out of four concluded specific instances. In one specific instance,⁵⁵ the NCP did not offer its good offices based on the lack of response of the company for a period of seven months since receipt of the draft Initial Assessment Report. One trade union representative noted that in two out of four concluded cases, the NCP relied on the response of the company and did not act proactively to facilitate dialogue.⁵⁶ Stakeholders agreed on the need to strengthen the NCP's expertise in mediation and facilitation of dialogue.

The NCP has published final statements in all accepted cases. In the most recently concluded specific instance,⁵⁷ the NCP published both a final statement and a closing note. The level of detail of final statements varies. The most recent final statements are more detailed than previous ones. Overall, final statements provide an extensive description of meetings and exchanges with the parties, clarifications on the nature of the specific instance process and the role of the NCP, and analysis of the information submitted by the parties.

Stakeholders welcome the open communications between the NCP and the parties in closed specific instances. They note the need for successful outcomes in specific instances to raise awareness on the process. They further note that the outcomes of concluded specific instances so far have not contributed to positive developments. One CSO representative further requested more communications on the added value and constructive role of the NCP in the process. Stakeholders noted that public information tends to limit the NCP to a passive role in the good offices phase. They further noted the potential of the NCP as an alternative to judicial proceedings, which are still the first option of many potential submitters in Peru. Stakeholders highlighted the need to raise the visibility of the NCP in view of low awareness of non-judicial

⁵¹ Specific instance 1 regarding issues in an ore mine.

⁵² Specific instance 2 involving a telecommunications company.

⁵³ Specific instance 5 involving an aviation company.

⁵⁴ Specific instance 3 regarding issues in a metallurgical complex.

⁵⁵ Specific instance 5 involving an aviation company.

⁵⁶ Specific instance 1 regarding issues in an ore mine, Specific instance 2 involving a telecommunications company.

⁵⁷ Specific instance 5 involving an aviation company.

grievance mechanisms at national level and submitters' perceived preference for mechanisms with legally binding outcomes.

The NCP notes the need to strengthen its mediation skills to facilitate exchanges between the parties. It further notes difficulties in bringing the parties to the table. Illustratively, one or both parties refused to engage in good offices or did not follow-up on communication by the NCP in all concluded cases. Stakeholders agreed on the need to build trust with potential submitters and with the private sector. In view of broader challenges regarding trust in government, and proliferation of state-based grievance mechanisms, stakeholders highlighted the importance of raising visibility of the NCP as a separate unit and capacity-building on mediation skills and RBC-related issues. The NCP also recognises the added value of engaging a professional mediator in the future.

Follow-up

The RoP do not provide for the possibility of following up on specific instances, nor has the NCP conducted follow-up in any of the cases it handled.

Timeliness

The NCP webpage sets indicative timelines for the different steps in the process in line with para. 44 of the Commentary to the Procedural Guidance:⁵⁸

- three months for the initial assessment phase;
- six months for the good offices phase; and
- three months for the final assessment and conclusion of the case.

These timelines are not reflected in the RoP. The RoP specify that publication of the final statement should take place within three months of the end of the good offices stage, and that it will strive to conclude the entire procedure within 12 months, in accordance with the Guidelines (Section 7.3.5).

In addition, the RoP set intermediary deadlines:

- if additional information is required by the submitter to accept the case, the NCP informs the submitter within ten working days from the review of the information (Section 7.1.2). The deadline for additional information is defined in an ad hoc manner;
- the NCP notifies the concerned company within ten working days from its acceptance. The company is then expected to provide a written statement and evidence within 20 working days (Section 7.1.3);
- prior to publication, the NCP submits the draft final statement for factual verification to the parties and provides ten working days for their responses (Section 7.3.3).

The NCP has exceeded the indicative timelines in both accepted and non-accepted cases. The average overall duration of cases concluded by the NCP is 775 days, *i.e.* two years and two months. One accepted case⁵⁹ took more than eight years to be concluded. The duration of the non-accepted case was 301 days, *i.e.* ten months. The average duration of the initial assessment phase for accepted cases was 131 days, *i.e.* approximately four months. The duration thus aligned more closely with the indicative timeline in this case. The NCP notes that delays were linked to lack of response or delays by the parties and reluctance of the NCP to close the case. The NCP further notes that the lack of clear deadlines for information from parties led to delays in drafting statements. The draft revised RoP set detailed intermediary deadlines and shorten the period of the company's notification from ten to two days.

⁵⁸ <https://info.proinversion.gob.pe/instancias-especificas/>

⁵⁹ Specific instance 3 regarding issues in a metallurgical complex.

Stakeholders agree that the long timelines in practice limit the predictability of the specific instance process. One CSO representative notes in particular the eight-year timeline in case and unclear timelines in other cases. One trade union representative noted that intermediary deadlines in the initial assessment phase exceed the three-month timeline. One CSO representative welcomed communication by the NCP on the timelines and flexibility on the deadlines when needed.

Confidentiality and transparency

The RoP deal with confidentiality and transparency in the general provisions and in the different steps of the process. They provide that:

- as a principle, materials sent by one party will be shared with the other party, unless the party providing the information identifies certain information as confidential as an exception and provides explanations (Section 6.1);
- initial discussions at the good offices phase between the parties and the NCP as facilitator are confidential (Section 7.2.2);
- regarding statements,
 - for non-accepted specific instances, the Initial Assessment Report will protect the parties' identities (Section 7.1.7);
 - for cases resulting in agreement, the parties decide whether to publish the agreement or a summary (Section 7.2.3.c).

The RoP do not specify:

- whether the NCP may refuse to keep that information confidential and on what grounds. One CSO representative requests more information on the criteria and types of information that may be considered confidential. The NCP notes that the definition of confidential information under the Constitution and domestic legislation applies in practice. Legislation notably covers information protected by banking, tax, commercial, patent, and stock market secrecy (Art. 2 para. 5 of the Constitution, Supreme Decree No 021-2019-JUS).
- how confidentiality is ensured with external parties (e.g. experts) involved in the procedure.

Stakeholders agreed on the need to strengthen transparency of the process. The draft revised RoP include more detailed language on transparency and confidentiality in the general provisions. They notably i) refer to the principle of good faith, ii) clarify that parties may not disclose non-publicly available information or documents provided in an ongoing specific instance process, iii) identify a list of campaigning activities, and iv) mention that statements and closing notes strengthen transparency of the process.

Under the current RoP, the party requesting that information be treated confidentially is not obliged to provide the NCP with a public version of the information. In principle, the NCP should share information provided by one party with the other party, and where it determines that sensitive information should be kept confidential, it should consider giving an overview of the substance of exchanges and documentation to each of the parties. The NCP reports that under the applicable legislation, parties to proceedings can access any information contained in the relevant files and obtain copies of the documents subject to specific exceptions (Art. 66 para. 3, Law N° 27815 - Code of Ethics of the Public Function / Supreme Decree N° 004-2019- JUS). However, challenges in one case⁶⁰ concerned access to documents and lack of justification on confidential treatment (see Box 5.1).

The RoP do not establish criteria for anonymity of the parties in non-accepted specific instances. In practice, as mentioned above, the identity of the concerned company in the non-accepted specific instance

⁶⁰ Specific instance 4 involving a company in the hotel industry.

remained confidential in the Initial Assessment Report.⁶¹ The company was however identified in a CSO publication on the case.⁶² The NCP could strengthen transparency of the process by establishing criteria for granting anonymity of the parties in statements.

The NCP has not experienced a breach of its confidentiality policy by a party so far. The NCP notes that in practice it ensures transparency of the process through its webpage, publication of statements, email exchanges, and communication with the parties.

Impartiality and avoidance of conflict of interests in the handling of specific instances

The RoP do not address impartiality and conflicts of interest that NCP members may face in specific instances. The NCP notes that domestic legislation on the duty of public officials to abstain from decision-making procedures in case of conflict of interest would apply on NCP members (Law N° 27815 - Code of Ethics of the Public Function). Public authorities should refrain from participating in matters within their competence in cases of conflict of interests (Art. 99, Supreme Decree N° 004-2019-JUS). Public officials are obliged to refrain from their activities in the following cases of conflicts of interest:

- blood relationship up to the fourth degree or kinship up to the second degree with any representative, agent, or company administrator;
- intervention as adviser, expert or witness in the proceedings in question, or expression of previous opinion, with specific exceptions;
- personal interest of the public official or relatives in the issues which may influence decision making;
- intimate friendship, manifest enmity or objective conflict of interest with any person involved in the process.

The process for abstention or discussion on such issues by the NCP is not specified in official documentation. The NCP notes that a reporting process dedicated to the NCP could be established.

Regarding communications with the parties, the NCP notes that it engages with both parties in an equitable manner and explains the process and potential outcomes. The NCP also ensures that all information is shared with both parties, unless a party provides specific justification.

Despite these guarantees and practices, stakeholders agree that the NCP's location and close links with the business community may impact the NCP's decisions in the specific instance process (see also para. xx above). They further note that perception of impartiality among workers and indigenous peoples needs to be strengthened. The CSO publication on one case,⁶³ noted that the NCP's approach was not impartial. The publication further noted that i) ProInversión had signed an agreement with the developer of the hotel; ii) the NCP Executive Director at the time had previous professional links with the bank financing the project; and iii) the father of the NCP Executive Director at the time had made a press statement in favour of the hotel.⁶⁴ Organisations that participated in the peer review process and parties to closed cases (see also Box 5.1) have raised concerns regarding impartiality of the process and conflict of interests. The NCP needs to ensure a proactive approach to preventing, detecting, and addressing conflict of interests.

⁶¹ Specific instance 4 involving a company in the hotel industry.

⁶² OECD Watch, [Quechua indigenous group vs. Marriott International](#).

⁶³ Specific instance 4 involving a company in the hotel industry.

⁶⁴ OECD Watch, [Quechua indigenous group vs. Marriott International](#).

Parallel proceedings

The NCP requires information from the submitter about parallel proceedings as part of the submission form. Parallel proceedings are not an obstacle to submitting a specific instance with the NCP. In its decision to accept a specific instance, the NCP considers the relevance of judicial decisions and parallel proceedings in line with para. 25 of the Commentary to the Procedural Guidance.

All closed specific instances involved parallel judicial or administrative proceedings. In practice, the NCP reports one case where the submitter used the final statement as evidence in parallel judicial proceedings.⁶⁵ The NCP issued a closing note specifying the nature of the specific instance process and the role of the NCP. One specific instance was also concluded notably in view of ongoing parallel proceedings (see also above Accepted cases).⁶⁶

Cooperation among NCPs

The RoP provide that the NCP coordinates with other NCPs concerned, at any stage of the process (Section 6.1). The RoP further note that the NCP notifies the company following potential coordination with other NCPs concerned (Section 7.1.3).

To date, the NCP has coordinated with other NCPs in at least four cases (Table 2). The NCP has also provided information to other NCPs, e.g. on companies headquartered or events taking place in Peru.

One NCP provided feedback on its cooperation with the Peruvian NCP. The NCPs had coordinated in the context of one specific instance as lead and supporting NCPs. The NCP noted constructive and timely cooperation and welcomed fluid communication, including through comments on a draft initial assessment.

The NCP also participates regularly in the meetings of the NCP network.

Table 2. Specific instances where the Peruvian NCP has coordinated with other NCPs

Specific instance	Lead NCP	Supporting NCPs
Indigenous federations from Peru et al.	Netherlands	Peru
Specific instance 4 involving a company in the hotel industry	Peru	US
Specific instance 3 regarding issues in a metallurgical complex	Peru	US
Specific instance 1 regarding issues in an ore mine	Peru	Switzerland

Source: OECD NCP Database (2022)

Request for clarification

To date, the NCP has not submitted requests clarification from the Investment Committee or the Working Party on Responsible Business Conduct.

⁶⁵ Specific instance 5 involving an aviation company.

⁶⁶ Specific instance 1 regarding issues in an ore mine.

	Finding	Recommendation
3.1	The NCP has a detailed and elaborate set of RoP. Practice has evidenced that certain aspects could be revised to enhance its accessibility and compatibility of the process with the Guidelines. Such issues include requirements when filing a complaint, consultations with the parties, criteria for anonymity of the parties, and conflict of interests. The NCP has noted its plans to review its Rules of Procedure and has shared a draft proposal with stakeholder representatives for their input.	When undertaking its review of the Rules of Procedure, the NCP should focus on: • lowering formal requirements to file a complaint, notably to reflect due regard for the choice of representatives by indigenous peoples; • consulting the parties on the draft initial assessments; • providing for the possibility of follow-up; • establishing criteria for treating information as confidential; • establishing criteria for granting anonymity of the parties; • clarifying the applicable provisions on conflict of interests and abstention.
3.2	Stakeholders agree on the need to strengthen trust with potential submitters and parties to specific instances in view of the NCP's location. The NCP has faced challenges on conflict of interests in a closed specific instance. Stakeholders would also value clear communication on access to documents.	In order to further strengthen the predictability and equitability of the specific instance process, the NCP should • ensure clear communication with the parties on access to documents; • consider establishing a process dedicated to the NCP to prevent, detect and address conflict of interests.
3.3	Stakeholders agree that the specific instance process could be supported by more technical expertise on i) mediation and facilitation of dialogue; and ii) substantive RBC issues, including indigenous peoples' rights. They further note a preference to involving independent mediators.	The NCP should receive training on mediation, as well as on relevant substantive RBC issues. It should also consider engaging independent mediators in the specific instance process as needed.

Annex Documents

- A. List of organisations submitting responses to the NCP peer review questionnaire
- B. List of organisations that participated in the NCP peer review on-site visit
- C. Promotional events
- D. Overview of specific instances handled by the NCP as the leading NCP

Annex A. List of organisations that submitted a response to the NCP peer review questionnaire

Table A 1. Questionnaire submitters for the Peruvian NCP peer review by stakeholder group

Academia
CENTRUM Católica
Instituto Peruano de Empresas y Derechos Humanos (IPEDHU)
CSOs
Oxfam Perú - Program of land rights and extractive industries
Programa Laboral de Desarrollo – Labour Development Programme (Plades)
Business
Anonymous
Human Rights and Social Management - Mining and Energy Sector (SNMPE)
Trade Unions
Central Autónoma de Trabajadores del Perú (CATP)
Confederación General de Trabajadores del Perú (CGTP)
Central Única de Trabajadores (CUT)
TUAC
NCP
Netherlands

Annex B. List of organisations that participated in the NCP peer review on-site visit

Table A 2. Participants of the Peruvian NCP peer review by stakeholder group

Organisation	Sector
Private Investment Promotion Agency of Peru (IPA) (ProInversión)	Government, NCP
NCP Executive Director of ProInversión	Government, NCP
Director of the Investment Services Directorate	Government, NCP
Ministry of Justice and Human Rights (MINJUSDH)	Government
Ministry of Energy and Mines (MINEM)	Government
Environmental Assessment and Enforcement Agency (OEFA)	Government
National Institute for the Defense of Competition and the Protection of Intellectual Property (INDECOPI)	Government
Environment Ministry (MINAM)	Government
Ministry of Foreign Affairs (MRE)	Government
Presidency of the Council of Ministers (PCM)	Government
National Fund for Financing State Business Activity (FONAFE)	Government
Labor and Employment Promotion Ministry (MTPE)	Government
Foreign Trade and Tourism Ministry (MINCETUR)	Government
Agricultural guilds, producers and exportes of Peru Association (AGAP)	Business Association
Ica region Chamber of Commerce	Chamber of Commerce
Environmental Resources Management (ERM Perú)	Business
MINSUR	Business
Uros Energy	Business
National society of oil mining and energy (SNMPE)	Business
Sunfruits Exports	Business
Central Autónoma de trabajadores del Perú (CATP)	Trade union
Confederación General de Trabajadores del Perú (CGTP)	Trade union
Central Unitaria de Trabajadores (CUT)	Trade union
Federación de Trabajadores del Agua Potable y Alcantarillado (FENTAP)	Trade union
OXFAM	CSO
Peruvian Institute of Business and Human Rights (IPEDHU)	CSO
Perú Equidad	CSO
Cooperación	CSO
Ombudsman's Office	Independent body
John Carmona	Lawyer, Individual

Annex C. Promotional events

Table A 3. Promotional activities in 2021 organised by the NCP

Title	Date	Location	Size of audience	Organised or co-organised	Targeted audience
Workshop: the OECD Guidelines and the National Action Plan on Business and Human Rights 2021-2025 and its role in promoting Responsible Business	29 October 2022	Online	50-100	Co-organised	Government representatives

Source: National Contact Point Reporting Questionnaire (2021)

Table A 4. Events in 2021 participated in by the NCP

Title	Date	Location	Size of Audience	Targeted Audience
International Forum for the presentation of the Peru's National Action Plan for Business and Human Rights 2021-2025	25 June 2022	Online	>100	Business representatives, NGOs, Trade unions, Academia, General public, Government representatives, etc.

Source: National Contact Point Reporting Questionnaire (2021)

Table A 5. Promotional activities in 2020 organised by the NCP

Title	Date	Location	Size of audience	Organised or co-organised	Targeted audience
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OECD Guidelines for Responsible Business Conduct and Good Practices in Due Diligence to Mining Companies	17 December 2020	Online	>100	Organised	Government representatives, Business representatives, academia, NGOs, General public
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Source: National Contact Point Reporting Questionnaire (2020)

Table A 6. Promotional activities in 2019 organised by the NCP

Title	Date	Location	Size of audience	Organised or co-organised	Targeted audience
The Investment climate and the OECD Guidelines for Multinational Enterprises	12 September 2019	Trujillo City	50-1000	Organised	Business representatives, NGOs, Trade unions, Academia, General public, Government representatives

Source: National Contact Point Reporting Questionnaire (2019)

Table A 7. Events in 2019 participated in by the NCP

Title	Date	Location	Size of Audience	Targeted Audience
International Trends in Corporate Responsibility and Sustainability in Peru	7 March 2019	Lima	>100	Business representatives, NGOs, Trade unions, Academia, General public, Government
EXPOALIMENTARIA	23 September 2019	Lima	>100	Business representatives, NGOs, Trade unions, Academia, General public, Government

Source: National Contact Point Reporting Questionnaire (2019)

Annex D. Overview of specific instances handled by the Peruvian NCP as the lead NCP

Enterprise/ Specific instance number	Submitter	Host Country	Chapter (s) of the Guidelines	Date of Submission	Date of Acceptance	Date of Conclusion	Outcome	Description	Follow- up	Review
Glencore Mineral A.G./Perubar S.A. Specific instance 1 regarding issues in an ore mine	Central Única de Trabajadores del Perú (CUT)	Peru	General Policies (II), Disclosure (III), Human Rights (IV), Employment and Industrial Relations (V), Taxation (XI)	21/04/09	18/06/09	16/06/16	Concluded Without agreement Without recommendations	The NCP decided to conclude the case i) in view of ongoing parallel proceedings; ii) refusal of the company to enter good offices; and iii) due to lack of sufficient evidence to demonstrate non- observance of the Guidelines.	-	-
Telefonica del Peru Group Specific instance 2 involving a telecommunicati	Central Única de Trabajadores del Perú (CUT), Trade Union of the Telecommunicat	Peru	General Policies (II), Employment and Industrial Relations (IV)	17/11/10	03/01/11	17/07/17	Concluded Without agreement Without recommendations	The NCP decided to conclude the case following the company's refusal to enter good offices.	-	-

ons company	ions activity, SITENEL trade union, Programa Laboral de Desarrollo (Plades)									
Doe Run Peru SRL/Renco Group Inc. Specific instance 3 regarding issues in a metallurgical complex	Group of CSOs: Cooperacion, Movimiento por la Salud de la Oroya, Forum Solidaridad, Red Uniendo Manos Peru, Oxfam America, Peru and Oxfam America, Washington	Peru	General Policies (II), Disclosure (III), Environment (V)	24/02/11	22/07/11	18/09/19	Concluded Without agreement Without recommendations	The NCP decided to conclude the case due to the lack of follow-up by the parties on its offer of good offices.	-	-
Multinational enterprise in the hotel industry sector and three Peruvian companies (Unnamed) Specific instance 4 involving a company in the hotel industry	Fundacion Luz Marina, on behalf of three citizens identifying as members of an indigenous people's group	Peru	General Policies (II), Human Rights (IV), Combatting Bribery, Bribe Solicitation and Extortion (VII)	18/12/18	15/10/19	-	Not accepted	The NCP did not accept the specific instance due to a lack of substantiation and because the non- observance of the Guidelines was not attributable to the multinational enterprise.	-	-
Avianca Peru S.A. Specific instance	197 former employees		Human Rights (IV), Employment and Industrial	24/07/20	19/04/21	09/11/21	Concluded Without agreement Without	The NCP decided to conclude the specific instance in view of the lack	-	-

5 involving an aviation company			Relations (V)				recommendations With determination	of communication by the Company following the initial assessment report.		
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National Contact Point Peer Reviews: Peru

Governments adhering 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.

This report contains a peer review of the Peruvian NCP, mapping its strengths and accomplishments and also identifying opportunities for improvement.

