

Use with caution: The role of the OECD National Contact Points in protecting human rights defenders

Attacks against human rights defenders are increasing worldwide, and activists fighting harmful business activity are particularly at risk. Nearly half of all National Contact Points (NCPs) have handled one or more complaints involving reprisals.¹ NCPs have a vital role to play in the protection of human rights defenders. We call on the OECD, states, and NCPs to join global efforts to prevent and respond to reprisal risks.

Attacks are rising against human rights defenders At least 3,500 killings since 1998²



Killings are rising...³

- **281** in 2016
- **312** in 2017
- **321** in 2018



Women increasingly face gender-specific risks

- public shaming
- attacks on reputation
- sexual violence
- harm to children and family⁴



Majority of defenders killed were protecting land and environment⁵



Who is a human rights defender?

Someone who, alone or with others, acts to promote or protect human rights. Defenders can be workers, unionists, community members, indigenous people, journalists, lawyers, NGO staff, or others. Family members of defenders are also at risk.

How are businesses involved in threats against human rights defenders?

- Businesses can **perpetrate threats**, such as by firing protesting workers, suing activists unjustifiably for defamation, hiring abusive security firms that intimidate activists, and bribing local leaders.
- Businesses can also **be complicit or remain silent when business partners, states, or other actors perpetrate threats or attacks**, by criminalizing protest activity, using police and military to threaten or attack defenders, or denigrating defenders as "anti-development." A business' failure to act in such cases makes it easier for harms to occur.

NCPs are handling cases involving reprisals

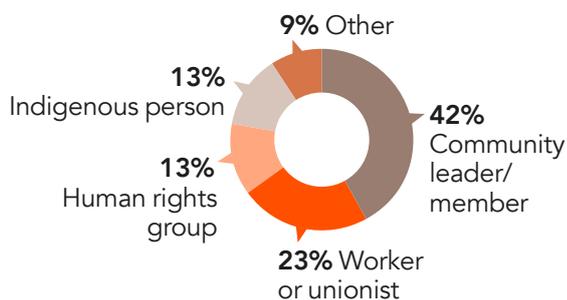
Among 250 specific instances filed by NGOs or communities since 2000⁶, at least **25%** involved reprisals against complainants or others working on the same situations of harmful business activity. This number is likely a very low estimate, as most reprisals are unreported. For defenders and affiliates, filing an NCP case may deepen risk of reprisal by raising company and host-government awareness of defenders' identities and activities.

Facts on reprisals in NCP cases filed by NGOs and communities

64% of reprisals occur in land-intensive extractives and agriculture sectors



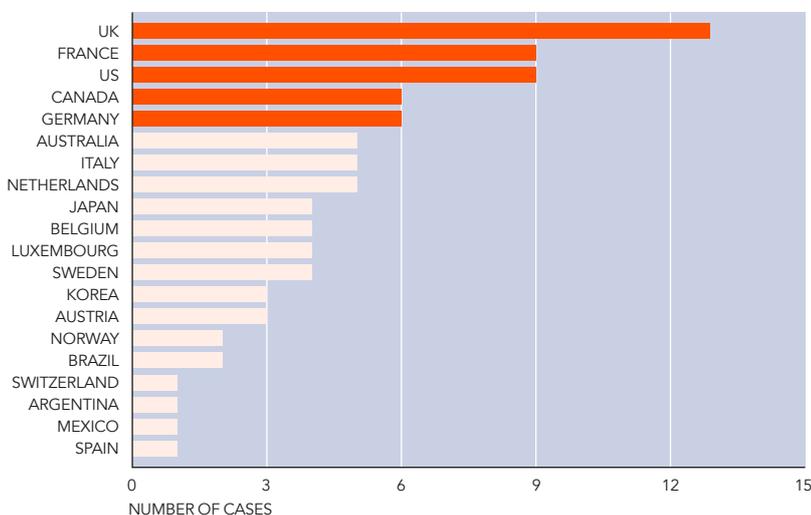
55% of the victims were community members or from indigenous groups



Highest risk regions (according to global data)



At least 20 NCPs have handled cases involving reprisals, and five NCPs have handled six or more of such cases each: UK, France, US, Germany, and Canada



What do we know about the companies involved with these cases?

- The companies are primarily involved in **land-related projects** in the agriculture and extractives sectors.
- Of the companies implicated in reprisals in NCP cases, **23 are “repeat offenders”** linked to other reprisal cases outside the NCP system, documented by the Business & Human Rights Resource Centre. Since 2015, Resource Centre has **tracked** nearly 1,600 attacks against human rights defenders focused on business-related activities, involving more than 440 companies.
- Of those 23 companies, **11 were connected to three or more reprisal cases** on the OECD Watch and Resource Centre databases. These companies are headquartered in France, Luxembourg, the UK, Australia, Canada, South Korea, and Sweden.

Examples of NCPs cases involving reprisals



Reprisals raised in the complaint itself:

- In some complaints – such as one in the garment industry in Indonesia – complainants' primary request is for help addressing past reprisals, such as the unlawful dismissal of workers who had advocated for better working conditions.
- Many complaints mention reprisals in connection with other business impacts. For example, communities fighting land grabs, child labour, and other abuse linked to an agriculture project in Cambodia also cited arbitrary arrests and intimidation of community members engaged in protest.

At least 69% of reprisal cases involve threats or intimidation



Reprisals occurring during the complaint proceedings:

Reprisals also happen to complainants or other activists once the complaint is filed:

- In the Democratic Republic of Congo, the chairman and deputy of an NGO that filed a specific instance against an oil company both had to go into hiding after the deputy was jailed on trumped up charges and both leaders experienced intimidation by local authorities.
- In Latin America, staff of an NGO that filed a specific instance about land grabbing were threatened at gunpoint and told to drop the case.

At least 22% of reprisal cases involve violence



Reprisals occurring after the case is concluded:

- In Ecuador, after a complaint that mentioned reprisal risks was rejected, an indigenous activist became the fourth to be assassinated for protesting a large mining project.
- An NGO whose complaint against a real estate company was rejected was later sued for defamation.

At least 25% of reprisal cases involve lawsuits by companies or government against complainants who speak up about misconduct allegations

What are other grievance mechanisms doing to address reprisals?

- The **UN Human Rights Office** developed a system-wide approach to reprisals, including those against defenders filing complaints to the UN treaty bodies and other mechanisms.
- The Independent **Accountability Mechanism Working Group on Retaliation** commissioned a **"Reprisals Toolkit"** to help the complaint mechanisms of development banks address reprisals.
- A few **NCPs** have taken action, such as by:
 - Seeking embassy support to help address identified risks to defenders in NCP complaints,
 - Holding mediation in a third country to avoid risks for defenders, and
 - Inviting NGOs to speak about reprisal risks during multi-stakeholder engagement events.

Call to action!

To meet the **OECD's core criteria of accessibility and accountability**, NCPs must be prepared to prevent and mitigate reprisals to human rights defenders.

OECD Watch and Business & Human Rights Resource Centre call for the following actions:

Actions for the OECD Secretariat:

- **Conduct research on the incidence and nature of reprisals** occurring within the NCP system.
- **Assess the readiness and ability of NCPs** to prevent or mitigate reprisals to human rights defenders.
- **Seek stakeholder input to develop guidance for NCPs on reprisals** to help NCPs protect defenders and teach businesses to discourage and prevent reprisals.
- **Designate an in-house expert** to handle defender-related questions and emergencies from NCPs and improve coordinated response by both the OECD and NCPs.
- **Recommend actions for member states** to close gaps in NCPs' training, resources, and capacity on safety and protection of defenders.
- **Publicly prioritize protection of defenders** alongside promotion of sustainable investment.

Actions for States and NCPs:

- **Publicly and broadly** condemn reprisals against defenders.
- **Ensure all NCP staff know the risks** in sectors and regions and **appoint designated staff prepared and equipped to respond** to potential and actual attacks.
- **Publish general guidelines to prevent and respond to potential or actual reprisals** against defenders. Every case will require a unique response, such as more or less confidentiality, fast-tracking or delaying of the case, special mediation steps, etc.
- **Raise awareness among MNEs** about how businesses are involved in perpetrating and condoning harms to defenders.
- **Ensure complainants have many secure ways to file complaints** (web, mail, text, phone) and know how to use them.
- **Proactively protect confidentiality** of complainants' identities, unless and until visibility will help protect complainants.
- **Proactively ask complainants about threats** in every case.
- **Consult complainants and defender experts** as soon as risks are identified by a party or NCP; **monitor threats during the case.**
- **Ensure mediation terms** include a no-reprisals clause.
- **Improve intra- and inter-government coordination** to enable speedy and appropriate response to reprisals.
- **Follow-up after complaint process** to check defenders' safety.
- **Help businesses know how to** prevent and respond to threats by their staff, subsidiaries and partners, and host governments.
- **Make human rights due diligence mandatory** to ensure companies identify and respond to risks to defenders.
- **Sanction companies** repeatedly linked to harms to defenders.

OECD Watch

OECD Watch is a global network with over 130 member organisations in more than 50 countries that seeks to hold corporations accountable for their adverse impacts using the OECD Guidelines for Multinational Enterprises.

Business & Human Rights Resource Centre

Business & Human Rights Resource Centre is an independent non-profit organization that promotes greater awareness and informed discussion about human rights issues relating to business. Its website covers over 8000 companies.

1. Reprisals were reported either in complaint filings or during or after complaint proceedings. Reprisals impacted complainants or other defenders working on the same underlying dispute situation.
2. OHCHR, Press statement on the 20th anniversary of the Declaration on Human Rights Defenders, 5 December 2018.
3. Frontline Defenders, reports on situation of human rights defenders from 2016, 2017, and 2018.

4. UN Human Rights Council, 10 January 2019, A/HRC/40/60.
5. Frontline Defenders, 2017 Annual Report.
6. These cases are reported in OECD Watch's database. Approximately 60 additional complaints that were filed anonymously or by individuals were excluded from the dataset, because OECD Watch could not contact these complainants to ask whether or not they had experienced reprisals.