

**The OECD Guidelines for Multinational Enterprises:  
a potentially powerful multi-stakeholder tool for advancing corporate accountability**

**Comments on the OECD Guidelines Formal Complaints Mechanism  
and why it should be used to help reduce bribery and extortion**

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1. The OECD Guidelines for Multinational Enterprises (MNEs) sit between the legal strictures of a formal legally binding convention such as the OECD's Anti-Bribery Convention and voluntary standards, such as TI's Business Principles for Countering Bribery. As such they combine the strengths and some of the weaknesses of both types of anti-corruption instrument impacting business. Specifically they require the 39 signatory countries to appoint the individual(s) holding the position of National Contact Point (NCP) to promote and oversee compliance with the Guidelines, including offering of advice and receiving complaints about corporate behaviour.
2. The key question therefore is whether the NCPs can be used as a pressure point to encourage anti-bribery behaviour in business, by fielding complaints about companies resident in their territory and dealing with these complaints by their own mediation efforts or by passing information to the law enforcement authorities. A further question to pursue is whether civil society can assume a specific role in passing to the NCPs information which they possess, including that received from their international networks.
3. The urgency for active condemnation of unethical behaviour by companies is illustrated by the Oil-for-Food scandal, where 50% of over 4,000 companies had no scruples to go along with the kickback requests of the Iraqi government. Continuing major cases of bribery and corruption by OECD based companies in their transactions in both developing and developed countries confirm that the Oil for Food scandal, unfortunately was not unique exception. While society tends therefore to regard business as untrustworthy and systemically corrupt, the business perspective is to view itself as a victim of corruption. Most corporate leaders complain that they would prefer to put bribery behind them if only they were not subject to extortion by both public and private players and that they must comply in order not to lose an order. In the process of developing the OECD Guidelines for MNEs both societal and business representatives agreed that a formal complaints mechanism could help reduce the incidence of bribery and extortion.
4. The ability of the NCP to fulfil this role has been criticised because of certain noted weaknesses in the system:
  - the OECD Guidelines are still fairly new and most NCPs have as yet little experience;
  - NCPs are public officials and can only react within the context of their ministries and official policies;
  - they are under the requirement to deal with the complaint cases brought to them with justification for their actions taken;
  - differences between countries have been noted in how complaints are handled even to the extent of not being handled at all.

The above matters certainly make the use of NCPs on an international basis less than satisfactory from the civil society and business perspective. An evenness of treatment and the ability to deal with complaints with confidentiality and even anonymity would normally be the prerequisite for companies to feel comfortable in using this instrument as a complaint channel.

5. In spite of these disadvantages given the seriousness of the corporate bribery and corruption problem, the issue is to see how the NCP complaints channel can be used and improved. Several suggestions should be developed further for consideration going forward:
  - all channels should be tried and therefore in principle the NCP complaints avenue should be tested also for bribery and corruption cases, in addition to the employment rights cases which had formed over half of the issues brought to the NCPs to date;
  - where uneven treatment (or refusal to handle) had been noted between different countries, this situation should be highlighted to the OECD and national governments in an attempt to reach common NCP practices which civil society and business could rely on;
  - the OECD Guidelines are still too little known in civil society and in the business world so that advocacy work would be needed by the OECD and the national governments to raise awareness about the detailed recommendations contained in the Guidelines;
  - specifically, within TI an awareness raising campaign with recommendations how the local NCP or where non exists the NCP of the appropriate signatory state can be contacted would help to activate TI chapter members; a TI point person should probably be nominated to drive forward this initiative;
  - TI could assume a role vis a vis other NGOs, such as those combined in the OECD Watch, to ensure they were more aware of the cross cutting nature of bribery and corruption and how it can negatively affect the environmental, human rights and employment issues. Often the cause for non-compliance with environmental or human rights standards lies in an underlying corrupt action, such as a bribe payment to government inspectors to avoid their official reports criticising business practices in these areas.