

OECD WATCH

Review of National Contact Points

June 2002 - June 2003

No. 02: 20 June 2003

The Steering Committee of OECD Watch invited NGOs to submit reports on the functioning of their National Contact Points (NCPs) over the past year¹. This is the first time such an inventory of NCP activities has taken place from the NGO perspective. As time and resources are limited, OECD Watch has not been able to collect information about all NCPs. There are important gaps in the reports, which omit references to developments in countries in Central and Eastern Europe and Asia. There are different reasons for these omissions: there may be no NGOs associated with OECD Watch in these countries; the NGOs may not have had time to respond to OECD Watch's questionnaire; or the NCPs may not be active. But as interest in the potential of the OECD Guidelines for Multinational Enterprises increases we anticipate a more comprehensive response in the future.

Detailed reports were received about the work of the following NCPs: Argentina, Australia, Austria, Brazil, Chile, Denmark, Germany, The Netherlands, Sweden, Switzerland, Mexico, United Kingdom and the United States. African NGOs also provided their views on the effectiveness of the *Guidelines*. The NGOs were asked to assess the activities of their NCPs against the core criteria set out in the Procedural Guidance of the Committee on International Investment and Multinational Enterprises (CIME) for the NCPs: visibility, accessibility, transparency and accountability. Problems with the Implementation Procedures are analysed; the promotional activities undertaken by NGOs over the past year are summarised. In an Annex there is a brief update prepared by SOMO on specific instances filed by NGOs. The review concludes with recommendations addressed to NCPs about how to improve their performance. The findings and recommendations of the NGO review will be presented to the Annual Meeting of NCPs in Paris on 23-24 June 2003.

Visibility

References in the final communiqués of the G8 Evian Summit (June 2003) and the G8 Finance Ministers Deauville Meeting (May 2003) help to increase the profile and the status of the *OECD Guidelines for Multinational Enterprises*. But what counts in making this an effective instrument are the resources governments are willing to put into building the capacity of the NCPs and the degree to which they promote the *Guidelines* across government departments and within the business community. In many countries there is a failure to integrate the NCPs into wider discussions about corporate accountability and there is confusion, reflected in the NCPs' own reports, about the place of the *Guidelines* in the burgeoning area of international and national corporate responsibility initiatives. In Switzerland, for example, "it seems that some government departments are promoting the

¹ OECD Watch – the provisional name for a body to help facilitate NGO activities around the OECD Guidelines and the work of the Committee on International Investment and Multinational Enterprises (CIME) – was established at a meeting in Amersfoort, the Netherlands on 20-22 March 2003 organised by FOE Netherlands, IRENE and EED (with support from SOMO, Germanwatch and Novib) and with 50 NGO and trade union participants from about 20 developing and developed countries.

UN Global Compact, others the *OECD Guidelines* while others are intensively following the development in the UN Sub-Commission of Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights". The Swedish Partnership for Global Responsibility (SPGR), which has the backing of the Swedish Prime Minister, offers a model for other governments. The SPGR, which brings together the UN Global Compact and the *OECD Guidelines*, encourages companies to support and implement both. The *Guidelines* cannot stand still and it will be necessary as the UN adopts new standards such as the Draft Norms on the Responsibilities of Transnational Corporations for these to be used by NCPs to interpret the relevant provisions possibly through their incorporation into the Commentary.

Most NGO respondents stated that the location, identity and contact details of the NCPs were now readily available. In adhering countries in Latin America significant progress has been made in raising the profile of the NCPs. In Brazil, however, it was a trade union filing a complaint in May 2003 to the NCP, who had been nominally in charge of the *Guidelines* since 2000, which finally prompted the Minister of Finance to issue (some two weeks later) the decree formally establishing the post. But it is clear that even with longer established NCPs more could have been done over the past year to promote the *Guidelines*, up-date or improve the materials available on websites and engage in wider promotional activities with civil society, including organising seminars on issues of relevance to the *Guidelines*. Too many NCPs have adopted a passive stance. "The Swiss NCP is acting very timidly and doesn't seem to have a strategy for promoting the *Guidelines*". Although the Australian NCP stands out as one of the most effective in making a wide range of documents available "You would have to know about the *Guidelines* and the NCP website before you could find out about activities." In the USA, one of the least visible NCPs, the only promotional activity noted is a link on the Department of State's website that appeared in late 2002.

But with more active NGO engagement things can improve. According to Fundación SES the Argentinean NCP has responded positively to suggestions about ways of jointly promoting the *Guidelines* among NGOs and the media. In Chile, Centro Ecoceanos associates the reluctance of the NCP to disseminate the *Guidelines* with a concern that it might lead to more cases being raised. Germanwatch too noted that the promotional literature produced by the German NCP gives little information on how to raise a case. The UK NCP, bucking the trend, began consultations in May on how to improve procedures.

In most countries, outreach by NCPs to elected representatives has been lacking. This should be addressed in the coming year. "It is realistic to assume that most members of Congress know very little – if anything – of the *Guidelines*." (FoE-US).

Greater attempts to improve the outreach of the NCPs through the embassies in non-adhering countries should be a priority, particularly in Africa. The Zambian NGO, Citizens for a Better Environment (CBE), regretted the failure of the UK NCP to acknowledge in its Annual Report the engagement of NGOs from non-adhering countries. African NGOs are anxious to know what plans NCPs have to reach out to civil society and corporations operating in non-adhering countries to help ensure compliance with the *Guidelines*. Seminars could be organised by commercial attachés for local business, government, academics and NGOs. Embassies should be prepared to advise on how to file complaints and be instructed to forward any complaints to their NCPs.

The NGO community is playing an active part in promoting the *Guidelines* and the Implementation Procedures. Since its formation OECD Watch has already made a positive contribution. The dedicated workshop on the *Guidelines* organised last March by IRENE, FoE-NI and EED as well as presentations by OECD Watch members at different meetings including in the Democratic Republic of Congo and Thailand in March and June respectively has already led to demands for more information from NGOs around the world.

Accessibility

Performance has varied widely. Some NGOs reported that they were in regular contact by email and phone with their NCPs. In Australia, for example, at least twice a year the NCP holds community consultation sessions in three of Australia's major cities, Sydney, Canberra and Melbourne. These sessions are open to all interested stakeholders and participants can contribute to the agenda.

In countries like Austria and Germany an Advisory Committee or Working Party on the *OECD Guidelines* has been established with representatives of NGOs, trade unions and business. In The Netherlands the NCP holds quarterly meetings with social partners but there is no concrete structure, nor rules nor procedures. "It is totally unclear what the NCP does with NGO comments both in terms of the NCP's own functioning and the official position that The Netherlands adopts at the CIME". Few NCPs report back to NGOs after CIME meetings. NCPs often have a divide and rule policy and insist on meeting trade unions, business and NGOs separately. Generally NGOs feel that they have little influence over decisions taken by the NCPs who in the worst cases are a law unto themselves. But there can be benefits from a more formal structure: at the urging of the NGOs on the Chilean Advisory Committee, the NCP agreed to consult communities affected by Nutreco's commercial salmon farming.

Some NGOs report that despite their best efforts to engage their NCPs they have not been able to make much progress. This is true of the USA, where the NCP has done little more than acknowledge letters but has not invited NGOs for consultations on the problems raised.

Transparency

There has been little progress in most NCPs to improve the level of transparency with the Dutch NCP (who also Chairs the CIME) being a notable exception. "In The Netherlands there is a proper website, which includes statements of cases being finalised and the Annual Reports". The Mexican NCP has never published any kind of public report on its activities and in April 2003 even failed to attend a seminar organised by the Friedrich Ebert Foundation and TUAC on the OECD Guidelines in Mexico. The NCP in Argentina is unable to participate in the CIME meetings because of budgetary constraints but nevertheless it is of concern that the post holder was not aware of the Annual Meeting of NCPs and seemingly only learnt about it through NGOs.

In a surprisingly large number of countries, the NCP does not make its Annual Report available: in the USA the Annual Reports are not placed on the State Department's website, nor is there any public notification on the website when a specific instance has been filed. The Mexican NCP has never published any kind of public report on its activities and does not maintain a website. In Argentina, last year's Annual Report was "a mere formality" and more widely read in Paris than in the country. In most European countries (such as Germany and

the Netherlands), and in Australia not only are the Annual Reports made public but also NGOs are normally invited to comment on the draft. But this is not the case in Sweden, where “NGOs have never seen drafts of the Annual Reports of the Swedish NCP, not even the final report that is sent to CIME”. In the United Kingdom, “Although the formalities of keeping Parliament informed have been observed, simply placing the Annual Reports and other documents in parliamentary libraries is of little use if MPs are unaware of their existence”. In only one of the countries surveyed, The Netherlands, is there any attempt to present the Annual Reports to parliaments or national legislatures for debate.

But, of course, one of the main problems is the absence of detailed information in most NCP reports. Again there are exceptions, “the Dutch NCP is becoming more and more transparent in terms of the reporting about the cases raised by NGOs and trade unions”.

Accountability

Apart from issues to do with the formal accountability of NCPs to government, parliament and the general public, the main obstacle to accountability is the lack of adequate information provided by most NCPs, which might allow the way that they handle complaints to be monitored. Ultimately greater transparency in reporting will have to become the norm if the procedure is to inspire confidence.

Many NCPs treat complainants as if they had no rights once they have filed a case. Although simple queries are usually answered promptly, NCPs can keep NGOs and trade unions waiting for months for replies on cases that have been submitted. In one German case it took ten months to obtain an answer from the NCP. In Austria cases have been transferred from one NCP to another without prior discussion with the NGOs. Once the case has been transferred, the NGOs who presented the complaint can find themselves left out of the process entirely. The NCP who transfers such cases should remain involved in the process and take over responsibility for keeping the original complainants informed.

The procedures have also been bedevilled by discontinuity. In 2002, when the officials responsible for the *Guidelines* were replaced in Mexico and in the United Kingdom, NGOs and other interested parties were not informed. The lack of continuity in handling complaints, compounded in Mexico, where all relevant information was mislaid, has resulted in excessive delays in concluding cases.

There are concerns about the NCPs’ reluctance or lack of capacity to investigate specific instances. In Austria, the NCP has informed NGOs that all the information would have to be supplied by the complainants and the company, which seems like a recipe for a stalemate. Outside sources from independent experts, UN bodies, academics, journalists and the embassy staff should all be drawn on by the NCPs when assessing cases. A fact recognised by the more enlightened members of CIME.

The Scope of the Guidelines and the Supply Chain

The attempt by some NCPs to re-interpret unilaterally the *Guidelines* to exclude supply chain cases on the grounds that they lack an “investment nexus” has been the subject of much discussion among NGOs. Greenpeace in Germany had filed a complaint in April 2002 accusing a company that was processing oil from Russia of environmental damage. The German NGOs argue that there is a close relationship between the producer of oil and the

company (TotalFinaElf) in Germany that owns the Leuna refinery: there is only one pipeline, the contract is for a lengthy period (20 years) and the refinery acquires about 70 per cent of its oil from this source. Nevertheless, the German NCP, although he has offered to facilitate meetings between the NGO and the company, refused to deal with the case within the framework of the *Guidelines*.

On 8 April 2003 OECD Watch outlined NGO concerns in a letter to the CIME. In the Preface to the revised *Guidelines* there is an acknowledgement of “the far-reaching structural change” that international business has experienced. The Preface continues, “Strategic alliances and closer relations with suppliers and contractors tend to blur the boundaries of the enterprise”.² While NGOs recognise that there may at times be practical limitations to the ability of enterprises to influence the conduct of their business partners, they share Serena Lillywhite’s views that “There is no distinction in terms of applying the *Guidelines* and the concept of an investment nexus is confusing and not appropriate. The *Guidelines* are designed to have the widest possible coverage to promote corporate social responsibility in all aspects of global business. The key issue is one of transparency. Unless enterprises are open and transparent about the global dimensions of their business, including in which countries they invest, produce and source in, then it is extremely difficult to promote corporate social responsibility with the assistance of the *Guidelines*”. (Brotherhood of Saint Lawrence, Australia)

The draft statement prepared by CIME on the scope of the *Guidelines* appears to endorse the broader interpretation of the supply chain issue. “*Although the Guidelines have been developed in the specific context of international investment by multinational enterprises ...when considering the application of the Guidelines flexibility is required.*”³ The CIME recommends “a case-by-case approach” noting that the OECD Declaration does not provide precise definitions of international investment and multinational enterprises.

The UN Panel of Experts Report on the Democratic Republic of Congo

NGOs in many countries raised their concerns with NCPs about the findings of the UN Panel of Experts in October 2002 that the activities of over 50 OECD registered companies had breached the *Guidelines* and directly or indirectly helped prolong the civil war in the Congo. Although there has been considerable frustration over delays in getting responses from individual NCPs, dialogue with NGOs has improved. In the UK the NCP is now working closely with the Foreign Office Contact Point and the decision of the CIME to work jointly on the information that is to be sent to NCPs from the UN Panel is innovative. It is regrettable that communication between the Expert Panel and the NCPs is so slow. Congolese NGOs have called on OECD governments to ensure that their multinationals adhere to the *Guidelines*. In the USA a group of Congressmen have written to the NCP asking to be kept informed of investigations into the companies listed in the UN report. Members of Parliament in the UK who have spoken in debates about the situation in the DRC have expressed concern that the NCP has not kept them informed about actions taken. Only a few NCPs, notably the Swedish, initiated any inquiries in response to the UN Security Council Report.

² OECD Guidelines for Multinational Enterprises (2000), Preface paragraph 2

³OECD DAFFE/IME/NCP (2003)1 Draft Report – Overview and Summary of Information Contained in NCP Reports 12 June 2003

Procedural Issues

The NGOs that responded to the questionnaire gave a number of important insights into the ways different NCPs handle complaints, *specific instances*. CIME has also recently conducted its own survey of NCP Procedures after noting differences in the NCPs' approaches to their responsibilities.⁴ Responses to the questionnaire revealed a wide variation in the way NCPs balance the competing demands of confidentiality and transparency when dealing with complaints. NCP practices also differ as regards disclosure of information both before and after the conclusion of a case. There is said to be broad agreement among NCPs on a few key principles such as: the importance of timeliness in handling specific instances; the primary responsibility of the complainants to provide information; and the importance of transparency. But in practice as the NGO review makes clear NCPs diverge. The much-vaunted CIME principle of "functional equivalence" seems elusive even when it comes to the seemingly routine bureaucratic procedure of acknowledging receipt of a complaint. One NCP explained that policy on this was "under construction".

There is little agreement about the role of the *Guidelines* in relation to the existing legal, regulatory or administrative procedures of the host countries. The NCP responses show that it is quite common to use the specific instances procedure in parallel with legal, regulatory or administrative procedures. It would be important for CIME to consider to what extent this situation has occurred because of frustration on the part of the complainants about the NCPs' inordinate delays, as in the Euskadi case in Mexico, in dealing with complaints. These delays undermine the potential benefit of the procedures as an alternative dispute mechanism.

There is no consistent behaviour among the NCPs about informing parties of progress in handling cases; providing information to third parties; making public the fact that a case has been filed; issuing statements while a matter is still under consideration; making public the reasons for not proceeding with consideration of a case; and whether to name the parties in a specific instance.

One does not have to search far for an explanation as to why there is little evidence of a predictable, consistent approach to handling cases; a minority of NCPs seem determined to block the procedures entirely and most NCPs are reluctant to exchange information on specific instances. NGOs welcome this attempt by CIME to standardize procedures and to identify training needs as long as it does not end in the lowest common denominator.

Recommendations

1. NCPs should increase their outreach so that elected representatives and relevant parliamentary committees can develop a better understanding of their work.
2. Efforts to inform non-adhering countries about the *Guidelines* and the Implementation Procedures should continue. Particular attention should be paid to Africa. NCPs should devise ways of reaching out to African civil society organisations.

⁴ The results can be found in: "Background Paper on NCP Procedures", DAF/IME/NCP(2003)1

3. Embassies of adhering countries should be playing a stronger role in disseminating the *Guidelines* and advising NGOs and others who wish to bring complaints about the procedures. Embassies should monitor compliance of multinational enterprises in non-OECD countries with the *Guidelines*.
4. If an individual NCP is in doubt about the interpretation of the *Guidelines* in a specific instance, CIME should be able to clarify the issue at short notice - including at the request of the complainants - in order to resolve cases satisfactorily and in a timely manner.
5. CIME should issue a clarification concerning the relevance of the *Guidelines* to situations of gross human rights violations and conflict.
6. NCPs should move towards greater transparency in their reporting to increase confidence in the procedures. NCPs should bear in mind the legitimate expectations of NGOs and trade unions when they file complaints:
 - They should be kept informed at regular intervals of progress with the case or reasons for delays;
 - They should be told if a meeting has taken place between the NCP and the other party;
 - Information on the case, assessments by experts or other government departments should be shared;
 - If a case is transferred to another NCP they should be informed and the original NCP should continue to monitor the case and keep the complainants informed
 - Changes in the staffing of the NCP should not lead to disruption of procedures
7. NCP reports should at least contain information about who are the originators of complaints; which sectors are involved and which provisions of the Guidelines have been invoked.
8. NCPs should adopt a target period of six months for concluding cases.
9. NCPs should draw on expert opinion in cases where reconciliation is not possible to ascertain the facts of particular cases, including foreign embassy officials, academics, and journalists.
10. NCPs should be pro-active and in exceptional cases - such as the allegations about the conduct of OECD companies in the Democratic Republic of Congo - take steps to investigate serious allegations whether or not a formal complaint has been filed.

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CASE	PERIOD	NGO(s)	COMPANY	NCP	ISSUE	OECD Guidelines	ACTIONS	STATUS/OUTCOME
1	June 2001 - December 2002	India Committee of the Netherlands (ICN)	Adidas Netherlands & Kubbinga importer	Netherlands	Labour issues in football supply chain in India	Chapter IV, para 1a, 2a, 1b, 4b, & chapt 2, intro, para 10	NCP arranged meetings between parties, joint statement between ICN & Adidas	finalised, some agreement on need for monitoring of codes of conduct
2	July 2001- February 2002	Oxfam Canada, RAID (UK), Afronet, Decop (Zambia)	First Quantum Mining (Canada) & Glencore Int. AG (Switzerland) & Mopani (Zambia)	Canada	Resettlement of tenant communities in Zambia	Chapt. 2, para 2, para 7 & Chapt 5, para 2	meetings between company, Oxfam and local NGOs in Zambia	Company withdrew threat of eviction, set aside land for tenants, agreed on joint survey
3	May 2001- pending	RAID (UK), Afronet (Zambia)	Binani (UK/India), Ramco (Zambia)	UK	Corruption and bad management in copper mines in Zambia	Chapt. 6	NGOs wrote to the company. Discussion on OECD Bribery Convention, after 9 months back at NCP	Binani re-acquired Zambian mine in Feb 2003, case will be pursued
4	February 2002- pending	RAID (UK), Citizens for Better Environment (CBE), Afronet (Zambia)	Anglo American, Congola Copper Mines (KCM)	UK	Unfair privatisation, resettlement issues in mining in Zambia	Chapt 2	Initial assessment completed October 2002	NCP expected shortly to approach both parties and offer mediation if agreement cannot be reached.
5	April 2002 - pending	Greenpeace Germany	TotalFinaElf and oil supplier in Russia	Germany	Pollution of environment in Russia	Chapt. 2 & Chapt. 5	NCP very inactive: 1st meeting April 2003 (after one year) between NCP, TotalfinaElf, Greenpeace	TotalFinaElf does not deny – but NCP does... denies responsibility in supply chain. Discussion investment nexus, NCP unclear position – NCP clear position that it is no case for the Guidelines, but not accepted by NGOs, but NCP seemed to feel responsible and invited for a meeting in April – but outside the OECD-Guidelines

CASE	PERIOD	NGO(s)	COMPANY	NCP	ISSUE	OECD Guidelines	ACTIONS	STATUS/OUTCOME
6	May 2002- pending	Germanwatch, SNRTE (mexican Trade Union)	Continental AG (Germany) & Euzkadi (Mexico)	Filed in Germany transferred to Mexico	Closure of factory without proper prior notice to employees and trade unions	Chapt. 4, para 1a, para 6, para 7 & Chapt 2, para 2	Case transfered to Mexican NCP in June 2002, in January 2003 German NCP asked MNE for written statement, meeting held with Mex. TU, Mex. Embassy, company and NGOs and German TU in Berlin, NCP in Mexico very inactive, for some month it was not working at all, new representative didn't know anything about the case	Mexican trade union started a lawsuit before a court in Mexico. After case was raised in Germany Euzkadi agreed to reopen the talks with the trade unions.
7	September 2002 - pending	Clean Clothes Campaign (CCC) Austria, CCC Germany & Global Exchange (US)	Adidas & Nike	Filed in Austria, transferred to Germany & US	Labour conditions in supply chain in Indonesia	Chapt. 2, para 10, Chapt. 4	Austrian NCP transferred case. No action in US yet, in Germany NCP asked companies for statement, discussion in Working Group, meeting with NCP, company and NGOs on 28- 05-03	Adidas responded to German NCP stating they took corrective action measures. CCC still upholds case. NCP is requesting more information from Adidas
8	October 2002- January 2003	CCC Austria in support of a coalition of trade unions	Brylane inc, subsidiary of Pinault-Printemps- Redoute (PPR)	Austria, US, France, Netherlands	Right to organise and harrassment	Chapt. 4	Austrian NCP said the case was not admissible in Austria	UNITE withdrew the case after it had reached an agreement with Brylane
9	October 2002- pending	Milieudefensie (FOE- Netherlands) & Centro Ecoceonos (Chile)	Nutreco and daugther company Marine Harvest Chile	Netherlands transferred to Chile	Environmental damage in salmon farms in Chile, no contact with stakeholders	Chapter V, para 2a, para 4, Chapt. 2, para 7, para 10, Chapt. 4	NCP Netherlands transferred case to Chile, Milieudefensie protested against decision. Dutch NCP follows process. Meeting with Ecoceanos, Mileudefensie & Nutreco in March 2003	Chilean daugther company Marine Harvest is prepared to talk with NGO, but not with NCP present. Further developments unclear

CASE	PERIOD	NGO(s)	COMPANY	NCP	ISSUE	OECD Guidelines	ACTIONS	STATUS/OUTCOME
10	April 2003- pending	Campagna per la Riforma della Banca Mondiale - Cornerhouse - FERN - FOE- EWNI, France, NL, US- Platform - Urgewald - WEED - Germanwatch - BUND	BP and its consortium partners in the proposed Baku-Tbilisi-Ceyhan (BTC)	UK & US	Seeking tax and law exemptions and influencing governments in construction of Pipeline in Georgia and Turkey	Chapt. 2 , para 5, Chapt. 5, para 1, para 2a, 2b, para 4 Chapt 3, para 1	Not known yet	Not known yet
11	February 2003- pending	Attac Sweden & Friends of the Earth Sweden	Sandviken & Atlas Copco (Sweden)	Sweden	pollution and human rights violations in goldmining in Ghana	Chapt 2 & Chapt 5	NCP held separate meeting with NGOs and companies. April 2003: information meeting with both parties and NCP	No new date set for next meeting, no statement from NCP. NGOs do not know status of case. Asked NCP for clarification
12	May 2003	Greenpeace Germany	WestLB	Germany	Financing for an Pipeline in Ecuador, that is violating environmental and human rights	Chapt 2 and Chapt 5	Not known yet	Not known yet