
CORPORATE ACCOUNTABILITY FOR HUMAN RIGHTS:

Using the OECD Guidelines for Multinational Enterprises as a Tool

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The ever-growing influence of huge multinational corporations, and their potential impact upon human rights is an increasing cause for concern by human rights observers. There is no clearly defined legal framework by which business can be held accountable for their influence on human rights, particularly in the developing world. However, there are a number of tools including business codes of conduct, civil claims and international instruments, which are being used in pursuing corporate accountability for human rights.

The following contribution examines one of these tools, the OECD Guidelines for Multinational Enterprises. Each country which adheres to the Guidelines is required to provide a National Contact Point, whose role it is to promote the Guidelines and investigate any complaints or issues raised (known as “specific instances”).

Drawing upon case studies of these specific instances, including the recent Corrib gas pipeline complaint, this article makes some assessment of the success and potential of the Guidelines, including some recommendations for the future.

Introduction

In 2002, the United Nations Conference on Trade and Development (UNCTAD) reported that 29 of the world's 100 largest economies were transnational corporations (TNCs).¹ It follows that businesses can and do have a huge impact on human lives, including affecting human rights.

However, the law, particularly with regard to human rights, has evolved comparatively little to accommodate the greatly increased role of transnational business. States are considered the primary duty-bearers under international human rights law, with a duty to ensure that there is no interference with the enjoyment of human rights by everyone in their jurisdiction. But what happens, for example, when a multinational enterprise operates in a state which is unwilling or unable to protect human rights?

There are various methods by which interested parties – including states, non-governmental organisations (NGOs), victims and even the businesses themselves – have attempted to hold corporations to account for their actions. These include: voluntary codes of conduct espoused by businesses themselves to reassure consumers and other stakeholders; civil action, in particular the Alien Torts Claims Act in the United States of America (USA); and international guidelines and principles, such as the United Nations Draft Norms on the Responsibility of Transnational Corporations and Other Business Enterprises with Regard to Human Rights.²

This study examines one of these evolving sources, the Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises. These are the product of an international organisation comprising 30 of the richest states in the world, the OECD. It is therefore a state-centred instrument, jointly addressed to multinational enterprises but ultimately holding the state responsible for corporations operating in – and, crucially, from – their territory. It is non-binding, which brings its own obstacles but also advantages.

One of the unique features of the Guidelines is that, unlike many of the other soft law instruments and codes of conduct surrounding business activity, they provide a mechanism for complaints and potential remedies. Each country which adheres to the Guidelines is required to provide a national contact point (NCP), whose role it is to promote the Guidelines and investigate any complaints or issues raised (known as “specific instances”).³

The Guidelines have been revised several times since their establishment in 1976, most recently in 2000, where a reference

to human rights was added. It is this addition which has allowed NGOs and other interested parties to raise a series of cases relating to potential abuses of human rights by corporations.

This article draws on a larger study completed in 2008 which examines the 69 specific instances concerning human rights from 2000-2008, in an attempt to assess the Guidelines' impact and their potential.⁴ Some of the conclusions are described briefly below. Secondly, a few comments are made on the first specific instance to be raised with the Irish OECD NCP, relating to the Corrib gas pipeline. Some indications as to how the NCP system can best be used are given in case studies of specific instances from Australia and the UK. And finally, the structure of the OECD NCPs is discussed, in light of the potential upcoming review of the Guidelines.

Scope of the Guidelines

With only 30 OECD member countries it follows that the OECD Guidelines can never be a comprehensive instrument in the field of corporate accountability. Nonetheless, according to the 2005 Annual Report on the OECD Guidelines, 97 out of the world's top 100 multinationals operate out of adherent countries.⁵ An additional 11 non-OECD countries have become parties to the Guidelines, further widening the scope.⁶ On July 2007, Egypt became the first African, and the first Arab country to become party to the OECD Guidelines.

The Guidelines also have an influence beyond the borders of adherent states. To quote them directly: "Since the operations of multinational enterprises extend throughout the world, international co-operation in this field should extend to all countries. Governments adhering to the Guidelines encourage the enterprises operating on their territories to observe the Guidelines wherever they operate, while taking into account the particular circumstances of each host country."⁷ This is where the Guidelines have the potential to make the most impact.

Much of the debate surrounding corporate accountability focuses on holding corporations responsible when their host states are unwilling or unable to do so. Of 69 specific instances concerning human rights filed by NGOs from 2000-2008, 54 relate to the activities of corporations in non-adherent countries.⁸ By way of illustration, an early success story was the specific instance filed by Oxfam Canada in relation to First Quantum, a Canadian mining company which together with Swiss company

Greencore owned a 90% stake in Mopani, a Zambian copper mine.⁹ Mopani were in a dispute with ex-miners squatting on mine land and had threatened to evict the settlers by force.¹⁰ The case was resolved after the company met with groups from the affected communities, with the Canadian NCP acting as facilitator.¹¹ The resolution ensured that the evictions would stop, that Mopani and First Quantum would co-operate with the local authorities to resettle the squatters on land they could own and that there would be continued co-operation between the company and civil society.

However, the Guidelines also have many flaws. The structure of the NCPs differs hugely, from a single civil servant in a trade ministry (as is the case in Ireland) to a cross-departmental function overseen by an independent steering group of stakeholders (as in the UK). There is little clarity about the procedures, with any progress dependent very much on the variable efforts of the individual NCP. Professor John Ruggie, currently United Nations Special Rapporteur on business and human rights, has concluded that NCPs “appear to come up short”¹² when measured against his six conditions for effective non-judicial grievance mechanisms for human rights victims.

It is unlikely that the Guidelines will ever become a viable channel for real compensation for victims of corporate human rights abuses. On the other hand, it should be possible to link the recommendations of the NCPs with other governmental sanctions. Each year, the NCP annual report provides a list of the adherent states which link the OECD Guidelines to export credit agreements, overseas investment guarantee and inward investment programmes. Although 29 states report doing so, only two (Netherlands and the Slovak Republic) actually make observance of the Guidelines a condition for receiving state funding. The vast majority “promote” or “reference” the Guidelines, or simply have information about the Guidelines on their websites.¹³

If more states undertook to strengthen the connection between export credit guarantees and observance of the Guidelines and in particular, to penalise any companies found in contravention of the Guidelines, it could make them a much more powerful force for corporate accountability.

But perhaps the most powerful application of the Guidelines is as a way for NGOs to channel public opinion and to work with a government body to implement change. Rees describes non-judicial grievance mechanisms as “approaches that lie between the formality of litigation and the ‘ad hocery’ of public campaigns”.¹⁴ At its best, the OECD NCP system provides, at

relatively little cost, an avenue for NGOs to leverage their public campaigns in order to enter into dialogue with a company, or at least prompt an official reaction from government.

With this in mind, we will turn now to examine the first specific instance to be raised with the Irish NCP, on the Corrib gas pipeline, which is still ongoing. While it is too early to judge the outcome of this complaint, a few preliminary observations can be made.

Ireland's first NCP case

In August 2006, simultaneous complaints were submitted to the OECD National Contact Points in Ireland and the Netherlands with regard to the Corrib gas pipeline project in Co. Mayo. The complaints were filed by Pobal Chill Chomain, with the support of Irish development organisation Afri and French NGO Association Sherpa.¹⁵ The laying of the Corrib Gas pipeline to exploit a large natural gas deposit off the northwest coast of Ireland has provoked concerns on the health, safety and environmental impact, as well as with the manner of consultation and implementation of the project. It is a complex, ongoing issue and, as with any other complaints to the OECD NCPs, this case is just one of the avenues pursued by local community groups and NGOs attempting to raise and resolve it. This brief analysis, therefore, does not seek to make any discussion on the case itself, but rather the implications of the complaint raised with the OECD NCP, as the first of its kind in Ireland.

When the specific instance was first raised with the NCP, several legal proceedings relating to the pipeline project were also underway, meaning that the first issue that arose was the question of whether the NCP should tackle a case that is also the subject of parallel legal proceedings.¹⁶

There is no consensus as to whether or not OECD NCPs should deal with cases that are also the subject of ongoing legal proceedings – some NCPs refuse to examine such cases, on the grounds that it might prejudice the outcome. However, the role of the OECD NCP is to provide an alternative to legal disputes and many NCPs recognise the value of the mediatory role they can play in this regard. The first step taken by the Irish NCP, therefore, was to seek a legal opinion as to whether they could examine the case, despite the legal proceedings. While this delayed the proceedings, the opinion returned in March 2009 was positive, deeming the case admissible.

This is a considerable step forward. With other NCPs, cases have been stalled for years pending parallel legal action, so it is encouraging that the Irish NCP has taken a more open approach. The fact that a positive legal opinion has been returned in this first case should also expedite matters for any future instances that may be raised. On the international level, this decision of the Irish NCP may also encourage other NCPs to adopt a similar position.

The OECD NCPs then offered to mediate between the community groups and Shell. This was deferred, however, when community groups were invited to participate in direct discussions with Shell as part of the Northwest Forum established by Minister for Communications, Energy and Natural Resources, Eamon Ryan and Minister for Community, Rural and Gaeltacht Affairs, Éamon Ó Cuív. When these talks broke down, the OECD NCPs hosted a day of separate meetings with the two parties at the end of April 2009.

It is clear that there were no immediate wins from the meeting, which is perhaps inevitable given the decision to meet with the parties separately – although the recent breakdown of direct talks may have excluded that possibility. Nonetheless, the NCPs have indicated that they intend to issue a final statement on the specific instance, in line with OECD Guidelines’ best practice.¹⁷ The fact that a final statement has yet to be issued at the time of writing is cause for some concern. Without such a statement there is the risk of complacency on the part of the company, leaving the impression that by presenting themselves to the discussions, they have completely fulfilled all their obligations with regard to the Guidelines.

The final statement can help to clarify these obligations for companies and in the hands of a courageous NCP, as we shall see in the case studies below, it can be a useful tool for furthering the principles of Corporate Social Responsibility (CSR).

Some commentators go further, stating that the OECD Guidelines and NCP statements have the potential to set norms of international law. In their specific instance to the Irish NCP, Pobal Chill Chomain was supported by the French NGO, Sherpa. It has long taken an interest in the OECD Guidelines and in a paper presented in 2007 argued that the Guidelines are entering into customary international law.¹⁸ Custom is one of the primary sources of international law and though opinions differ as to how customary law is formed, if a custom is accepted by an overwhelming majority of states, it may be considered binding under customary law, even if it is not explicitly written down as

such. Sherpa's argument in relation to the OECD Guidelines is based first, on the widely accepted nature of the content and second, on the non-binding but deterrent effect of possible public condemnation of violation of the Guidelines.

However, the Sherpa paper prefaces this by saying that "before attempting to show how the Guidelines enter into customary international law, it is worth detailing the reasons for such an initiative". These reasons are "the relative failure of NCPs" and the improbability that OECD member states will "explicitly ascribe compelling force to the NCPs".¹⁹ This is an extremely faulty premise. International customary law evolves from the practice of states.²⁰ Thus, the failure of NCPs and the unwillingness of states to ascribe force actually militate very strongly against the entry of the Guidelines into customary law.

Yet the Sherpa paper does make a useful contribution to the debate on the OECD Guidelines. It states that: "The significant fact remains that unlike other existing instruments, the Guidelines... enable the emergence of legal precedent relating to CSR..."²¹ Notwithstanding the dubious use of the word "legal" here, the sentiment is correct. Holding corporations accountable for human rights is relatively uncharted territory and despite its non-judicial nature the OECD National Contact System can help to explore this field.

The following are three case studies from Australia, Norway and the UK which show how, in certain instances, using the NCP process can both help resolve a particular issue and further our understanding of CSR.

Global Solutions – Australia

The Australian government contracted Global Solutions Pty Ltd (GSL) to run a number of detention camps for illegal immigrants. In 2005, a specific instance was submitted to the Australian NCP concerning Global Solutions with regard to human rights conditions in the camps, including the failure to provide adequate medical and psychiatric care and holding several children in the detention centres with adults without respect for their particular vulnerability.²²

The specific instance was not the only attempt to call attention to these abuses committed under the auspices of government policy. The wrongful detention of an Australian citizen, Cornelia Rau, led to the launch of an investigation into detention in Australia, the Palmer Enquiry.²³ However, using the OECD

NCP route had certain advantages. The NGOs concerned had failed in several attempts to engage directly with GSL on these matters, and by going to the NCP they were able to involve government in the process.²⁴ They also lacked the resources for a court action.²⁵ Finally, by presenting the specific instance at the annual meeting of the NCPs, they also engaged a global audience.

Their complaint met with instant reaction: within two days the Australian government removed all families with children from the detention centres to more appropriate community centres. No doubt this occurred as a result of accumulated pressure on the domestic front, but the filing of the specific instance may well have accelerated the process.

To resolve the other issues raised by the complainants, the NCP met separately with them and the company and in February 2006 facilitated a joint meeting. Through mediation, the parties agreed upon 34 practical outcomes and GSL pledged to embed respect for human rights throughout its operations. Thus, using the OECD Guidelines as the framework for improving the detention system also gave the concerned NGOs an active role in influencing the improvement of the detention system.

Interestingly, one of the factors cited by the NGOs concerned in the GSL case as key to the successful outcome of the specific instance, was that the Managing Director of GSL himself, rather than a corporate lawyer, took the lead in the entire process, thus facilitating the search for genuine solutions.²⁶

The fact that legal representation is neither required nor encouraged has been a great advantage to NGOs and clearly implies financial savings. The majority of specific instances are raised simply through addressing a letter to the NCP and if the case is accepted, the NGO generally takes part directly in the proceedings. Furthermore, NGOs have found that through the NCPs they can sometimes engage directly with company directors in a meaningful manner, without a legal intermediary. And, as illustrated above, they can then have a direct influence on achieving resolution or remedy.

Aker Kværner – Norway

The specific instance relating to the Norwegian firm Aker Kværner again illustrates the NCP system as a method of mobilising the momentum created by public opinion.²⁷ As in the Global Solutions instance above, the link with activities that

might amount to torture, one of the absolute prohibitions under international law, provided a particularly powerful impetus for action.

A USA subsidiary of Aker Kværner has provided maintenance work at the USA Marine Base in Guantanamo Bay since 1993. Following 11 September 2001, a second camp, now notorious throughout the world, was built to intern and interrogate terrorist suspects. While Aker Kværner was never directly responsible for maintenance in the second camp it did on occasion assist with maintenance there as requested.

From 2004 Amnesty International Norway called upon Aker Kværner to withdraw from Guantanamo.²⁸ However, it was not until the following year, when Norwegian NGO ForUM raised an enquiry with the Norwegian NCP that action was taken. The company responded to the NCP: “Aker Kværner states that it has considered on an ongoing basis the ethical issues these activities raise, but has not found them to weigh heavily enough to discontinue its work”.²⁹

The NCP, however, condemned Aker Kvaerner’s decision. It stopped short of declaring Aker Kvaerner in contravention of the Guidelines – as to do so would amount to a governmental condemnation of USA activities, which is not within the remit of the NCP. However, it cited “a number of reports from international organisations and bodies that express serious concern about the operation of the detention facilities at Guantanamo Bay being in violation of human rights”.³⁰ It continued:

The Guidelines state that the company should, “respect the human rights of those affected by [its] activities”. It is the NCP’s opinion that the activities carried out by the company at least in part can be considered to have affected the inmates of the prison.... The provision of goods or services in situations such as those at Guantanamo requires particular vigilance with respect to corporate social responsibility.³¹

It is difficult to know, however, how much the final statement influenced Aker Kværner’s behaviour. At the time of the enquiry, Aker Kværner was already due to withdraw from Guantanamo in March/April 2006, having failed to secure a renewed tender for the maintenance work. The statement may have hastened their departure as, in the event, they withdrew in January 2006.

De Beers, DAS Air and Afrimex – UK

As can be seen from the phrasing of the final statement on Aker Kværner discussed above, NCPs are very wary about finding an actual contravention of the Guidelines by any particular company. In 2008, the UK NCP became the first one to do so in two separate statements on companies DAS Air and Afrimex, with regard to their operations in the Democratic Republic of Congo (DRC). These statements have a particular historical context which is worth explaining briefly here.

It is not just unhappy coincidence that although the DRC is one of the richest countries in natural resources in the world, its people are among the poorest. Its gold and diamonds have provided both motive and funding for prolonged conflicts. In 2000, the UN Security Council established a Panel of Experts to investigate the links between the exploitation of wealth in the DRC and the continued conflict and to collect information on all forms of illegal exploitation.³²

When presenting its report in October 2002, the Panel of Experts on the DRC took the unprecedented step of listing 85 companies whom they believed to be in violation of the OECD Guidelines.³³ The fact that the Panel chose to rely on the Guidelines and the NCPs as a grievance mechanism is further proof of the unique nature of the OECD NCPs. However, it appears to have been something of a hasty move. The report caused an outcry from both companies and governments, who demanded that the allegations be fully substantiated. It appears also that the Panel of Experts did not consult the OECD Investment Committee before invoking the Guidelines, which seems an unfortunate oversight.³⁴ The Panel's mandate was renewed until October 2003 during which time the Panel met with governments and companies to discuss the allegations. When the final report appeared, the vast majority of allegations against the companies were declared to be resolved, with very little explanation of how this resolution had happened.³⁵

Some NCPs did follow up on the allegations, either of their own accord, or on foot of specific instances filed by NGOs dissatisfied with the results of the Panel's investigation. The results were largely underwhelming. In several instances in France, Germany and Belgium, investigations were terminated for lack of evidence.³⁶

In the UK, a specific instance relating to diamond company De Beers was actually raised by the company itself, unhappy with having unresolved allegations listed against it in the final report by the Panel of Exports.

The allegations turned on the possibility that De Beers' sightholders – authorised purchasers of rough diamonds – might also be buying diamonds from conflict areas. De Beers had influence over these suppliers through its Diamond Best Practice Principles, and as such, might be held partially responsible. The company explained that it had attempted to impose its Best Practice Principles on its stakeholders contractually, but was delayed for three years by EC competition law, which held that the initiative might give De Beers the power to restrict their suppliers' commercial behaviour.³⁷

This would have been an excellent opportunity, as suggested by UK NGO RAID (Rights and Accountability in Development) to examine “the degree to which EC competition law prevented and may still prevent compliance with a company's own due diligence principles and, ultimately, the supply chain provision of the Guidelines”.³⁸ Instead, the NCP stated firstly that the relationship between the sightholders and De Beers was such that the activities of the sightholders were outside the remit of the UK NCP, and that second, the quality of the information provided by the Panel of Experts was so poor that the allegations were unsubstantiated.³⁹ This patent lack of will to engage with the case must have been as disappointing to the company itself as it was to human rights observers.

In fact, the response by the UK NCP to De Beers' and other enquiries was so poor that it attracted the attention of the the All Party Parliamentary Group (APPG) on the Great Lakes region and genocide protection, established by Oona King MP following a visit to Rwanda in 1998.⁴⁰ This group took a keen interest in the publication of the UN Panel of Experts' report on the DRC and its invocation of the OECD Guidelines.

In 2005, the APPG Group published an extremely critical report of the UK NCP's delayed and inadequate response to the allegations against UK companies. Coupled with ongoing pressure from NGOs, the UK government moved for change. A large scale consultation process finally resulted in a substantial reform of the UK procedure in September 2007.

As something of a test case, Global Witness submitted a complaint under the new government procedures, on Afrimex, another of the companies mentioned as violating the Guidelines in the Panel of Experts' report.⁴¹

The resultant statement issued by the UK NCP in 2008 is extremely forceful. It concluded that Afrimex had failed to contribute to sustainable development in the region and to respect human rights. The NCP also stated that Afrimex applied

insufficient due diligence to the supply chain, sourcing minerals from mines that used child and forced labour. This was only the second statement in which an NCP had explicitly found a company in violation of the OECD Guidelines – the first, also issued by the UK NCP the previous month in respect of DAS Air was less momentous, in that DAS Air has already gone into liquidation.

In the Afrimex statement, the NCP has not only laid out steps which Afrimex should take to respect human rights, and stressed the importance of “a subsequent change in behaviour” without which any corporate responsibility policy “would merely create a worthless piece of paper”.⁴²

The Afrimex statement highlights both the strengths and weaknesses of the NCP system.⁴³ On the one hand, despite this rhetoric, little progress seems to have been made, at least publicly, in ensuring that Afrimex complies with the recommendations, highlighting the lack of real power of the NCP to enforce its decisions.

On the one hand, the Afrimex statement has helped to clarify the steps companies must take to avoid complicity in human rights abuses. It has also helped to give momentum to the ongoing debate on corporate accountability for human rights in the UK, currently the subject of a major enquiry by a Joint Parliamentary Committee on Human Rights. It has also ensured that the UK is at the forefront of debate on reform of the OECD Guidelines, and of the NCPs.

Reform of the OECD Guidelines

At the annual meeting of the OECD NCPs in June 2009, it was confirmed that the states adhering to the Guidelines were considering the possibility of a review of those Guidelines.⁴⁴ Hopefully this will strengthen the Guidelines on human rights, in particular by expanding the current reference to “respect the human rights of those affected by their activities, consistent with the *host* government’s international obligations”,⁴⁵ to include the international obligations of both host and home. However, it is also an opportunity for the OECD to strengthen and clarify the role and function of the NCPs. As mentioned at the outset, there is considerable variance in the functioning and efficacy of the NCPs. This final section discusses and provides some suggestion for reform of one aspect of the NCPs, namely their structure.

In Ireland, the role of the NCP is assumed by the Director of Bilateral Trade, within the Department of Enterprise, Trade and

Employment. This presents two problems. Firstly, the NCP is only one of a large portfolio of roles and activities undertaken by that director. If further specific instances are to be raised in Ireland, this may have a serious impact on the ability to examine a specific instance in good time. And secondly, there is a clear difficulty with asking the NCP to make a judgment on whether or not a corporation has violated the Guidelines, when the NCP is not independent but directly responsible to government and also based in a department with responsibility for promoting trade.

This structure is not unique to Ireland. Of the 39 functioning NCPs,⁴⁶ twenty consist of single government departments and 6 more involve multiple government departments. The remaining 13 involve external stakeholders, including business representatives in all cases, trade unions in all but one, and NGOs in just two.⁴⁷ However, there have been moves recently towards reforming the structure away from a single government department, most notably in the UK and in the Netherlands.

The UK NCP was originally based within a single department, the Department for Business, Enterprise and Regulatory Reform (BERR). Following a large scale consultation, prompted by the events outlined above, a significant reform occurred in 2007. The Department of International Development now works with BERR representatives, which allows better communication with embassies in host countries and access to overseas expertise. A newly created Steering Board oversees the work of this enlarged body, chaired by BERR and made up of officials from 8 other ministries and 4 external members, representing business, trade unions, NGOs and parliament.⁴⁸

The Dutch reform is even more innovative. While the secretariat of the Dutch NCP remains within the Ministry of Economic Affairs, the NCP itself consists of four independent experts chosen for their high profile knowledge of corporate responsibility concerns, together with advisors from four government departments. While in the UK model the government retains decision-making power, subject to oversight by the independent Steering Board, the Dutch model gives decision-making power to the four independent experts, assisted by the four government advisors.⁴⁹

The Dutch reform was no doubt prompted by a desire to be seen as a forerunner in the field. The Dutch government has been active in terms of holding corporations accountable⁵⁰ and CSR is in some ways the comparative advantage of Dutch companies.⁵¹ This is despite – or perhaps because of – the

involvement of an Anglo-Dutch corporation, Royal Dutch Shell, in one of the worst corporate human rights scandals in the 1990s in Nigeria.⁵²

Both of these reforms are held up as examples of best practice, despite being very different. This is a little confusing for NCPs hoping to follow their lead, or for NGOs urging reform. However, the key common characteristic is that they both combine elements of government involvement with independent input. It is suggested below that perhaps the simplest and the best form for an NCP to take would be structured along the lines of a government ombudsman.

NCP as ombudsman

In their response to the consultation issued by the British government in the quest for reform, the British NGOs RAID and the Corner House recommended that “the NCP should be independent of any government department to guarantee impartiality and given the status of an ombudsman, with responsibility for both mediation and determining compliance”.⁵³

The notion of the NCP as an ombudsman has been discussed in some detail in Canada. In 2005-2006 a combination of NGO and parliamentary pressure with regard to human rights violations in the extractive industry, led to the government hosting a series of roundtables with the extractive industry and civil society groups. The outcome was a report suggesting an enhanced mediation role for the NCP and a separate ombudsman office for the extractive industry.⁵⁴

This report is all the more remarkable for being a consensus agreed between all stakeholders. Unfortunately, however, the gathered momentum came to an abrupt halt. A change of government resulted in new priorities and a two year delay in responding to the recommendations. In March 2009 the Canadian government finally published its CSR policy. The ombudsman role has been downgraded to a CSR counsellor who will report to the Ministry of Trade and will have no formal decision-making powers.⁵⁵

Despite this setback, the concept of an ombudsman for corporate accountability is gaining increasing currency in the human rights world. Consideration was also given to the concept of a global ombudsman for business and human rights at the Harvard Workshop on Dispute Resolution.⁵⁶

An ombudsman style approach, whereby the body has sufficient independence from government to make impartial judgments, but sufficient connections to command respect, would be an optimal structure for the NCPs.

Conclusion

Instances such as Aker Kværner, Global Solutions and Afrimex illustrate the force for positive change a committed and innovative NCP can wield. They can set precedent and help to clarify the Guidelines for multinationals trying to adhere to them. Unfortunately, such cases remain the exception, rather than the rule, and are very much dependent on the good will and independence of function of the individual NCPs.

The moves towards reform nationally by some of the NCPs are an encouraging sign, and are providing some momentum towards general reform internationally by the OECD. If at least some element of independence or oversight could be introduced as a mandatory level, that would constitute a huge step forward.

Endnotes

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