

## RESPONSES TO THE CONSULTATION PAPER ON THE REVIEW OF THE OECD ANTI-BRIBERY INSTRUMENTS

### Comments from Open Democracy Advice Centre (South Africa)

Thank you for the opportunity to comment on the Consultation Paper, reviewing the OECD Instruments on combating bribery of foreign public officials in international business transactions, ten years after adoption.

The Open Democracy Advice Centre is a South African Non Profit Organisation which focuses on whistleblowing and access to information law. We would argue that right to know laws, involving whistleblowing and access to information, have been a key response by the South African government to corruption, in both the public and private sector. Unusually, the South African law covers both sectors.

We would therefore agree with, and emphasize the comments in paragraph 90 of the paper, and recommend that the introduction of whistleblower protection legislation is key in fighting corruption, and combating bribery. Full and effective protection is essential. As mentioned in paragraph 102, these provisions, where they exist, often do not extend to the private sector. This is inadequate, and we would urge reform in this regard.

South Africa took a key policy decision in this regard when our whistleblowing law was introduced, and whistleblowers in the public and private sector are both protected by the law. 2007 saw many whistleblowers come to the fore in South Africa. A number of them succeeded in obtaining protection Labour Court. Corruption is most frequently discovered and reported by whistleblowers, as opposed to other means of fighting corruption, such as independent audits.

Imrhaan Mukaddam, a bread distributor, has been hailed as the whistleblower of the poor in South Africa for blowing the whistle on price fixing among the large bread producers. This has been a good whistleblowing story for 2007 – wrongdoing was reported, the Competitions Commission investigated the price fixing, imposed fines and now it seems that the employees implicated are being disciplined and the whistleblower is going about his business as before.

This is not to suggest the South African can be used as a model, without considering key issues around the damages that can be claimed, and the categories of worker that are covered. ODAC has been working actively to lobby for improvements to the Protected Disclosures Act, line with the following resolution of the Second National Anti Corruption Summit;

The shortcomings of the Protected Disclosure Act should be addressed and resolved by the Law Commission and a report to be provided to the Parliamentary Committees on Justice by the end of 2005.

The African Peer Review Mechanism Country Review Report highlights the need for strengthened whistleblower protection legislation and calls for a review of the Protected Disclosures Act.

Whistleblowing protections must not only cover the private and public sector, but also ensure effective mechanisms to protect whistleblowers in the workplace.

A second initiative in South Africa, introduced in part to deal with the apartheid history of secrecy, is the right to access to information. This forms part of the platform of measures that can combat bribery. Access to information law covers both the public and private sectors.

Access to information is not a focus in the review paper, but has certainly featured in a number of anti corruption initiatives, For example, the call for companies to “*publish what you pay*” is a necessary first step towards a more accountable system for the management of natural resource revenues paid by extractive industry companies to governments in resource-rich developing countries. There is also a need

for governments to “*publish what you earn*”. If companies disclose what they pay in revenues, and governments disclose their receipts of such revenues, then members of civil society will be able to compare the two and thus hold their governments accountable for the management of revenues. This will also help civil society groups to work towards a democratic debate over the use and distribution of resource revenues. (<http://www.publishwhatyoupay.org/english/objectives/index.shtml>)

Criminalising bribery is inadequate in the context of states which refuse to adequately disclose their budgets and spending.

Access to information also combats bribe payments at a local government level. Despite many significant strides by the current government to deliver services to the poor, the legacy of apartheid remains stark. It is in this context that access to information becomes critical for more than just the right to freedom of expression, a traditional way of categorizing the right. It is clear from our experience and the experience of other projects such as MKSS in India that access to information is a leverage right, allowing communities to effectively participate in governance, challenge corruption, advocate for the changes that mean most to them, and hold government accountable.

We would recommend that issue of transparency be considered more thoroughly in the paper, and not just in the context of part political funding.

Thank you for the opportunity to contribute to this important paper.