

2009 EU CONFERENCE  
ON CORPORATE SOCIAL RESPONSIBILITY

**Access to Remedies and the OECD Guidelines  
for Multinational Enterprises**

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Presentation by  
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Ambassador Are-Jostein Norheim, Distinguished Representatives of the European Union institutions,  
Distinguished Speakers and Participants,

Good afternoon.

I would like to express our thanks to the Swedish Presidency and the European Commission for inviting the OECD to contribute to the 2009 edition of the European Annual Conference on Corporate Social Responsibility.

The “Protect, Respect and Remedy Framework” developed by Professor Ruggie, Special Representative of the UN Secretary-General on Business and Human Rights, is the driving theme of this Conference. This Framework is consistent with, and in fact supported by, the OECD’s approach to encouraging responsible business conduct.

To quote Professor Ruggie, the [OECD Guidelines for Multinational Enterprises](#) are “the most widely applicable set of government-endorsed standards related to corporate responsibility and human rights”. In light of the experience with the OECD Guidelines and in particular the role of the National Contact Points (NCPs), I have been asked to speak on the third pillar of Professor Ruggie's Framework: Access to Remedies.

But before I say more on this particular function of the NCPs, let me first mention four contributions of the Guidelines to this Framework.

**OECD contribution to the “Protect, Respect and Remedy Framework” for human rights**

Firstly, the Framework goes a long way in putting to rest the protracted debate we carried over for many years as to whether corporate responsibility is to be obligatory or voluntary. It is clearly a combination of both. Enterprises must respect human rights, whether or not they are bound to do so by domestic law, or when human rights are poorly protected by governments. This is why the OECD and the Guidelines use the general term of “responsible business conduct” to define corporate responsibility as consisting of both obeying the law, observing internationally-agreed standards and responding to other societal expectations.

Secondly, the "Protect, Respect and Remedy" Framework makes the case why the state duty to protect human rights, the corporate responsibility to respect human rights and access to remedies are intrinsically linked. Failure to act on one principle inevitably weakens the effectiveness of the other two. Efforts need to be deployed on all fronts. The OECD also takes this comprehensive approach. In 2006 some 60 OECD and non-member countries developed the Policy Framework for Investment in which Chapter 7 sets out the government policies needed to promote responsible business conduct, including respect of human rights. At the same time, the OECD Guidelines set out the standards and principles of such conduct, and conciliation and mediation facility is provided through the National Contact Points.

Thirdly, the Framework recommends that companies should work upstream to prevent the occurrence of human rights abuse. Businesses need to follow with diligence processes to ensure their activities do no harm. Due diligence is the approach advocated in the OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones adopted by the OECD Council in 2006. The OECD has now embarked on the implementation phase of this Tool by developing practical guidance on due diligence for mining companies.

Fourth, the importance of remedies. The Framework underlines the importance of grievance mechanisms to ensure that wrongful acts are not left unpunished. There can be of various kinds of redress, judicial or non-judicial, ombudsman or even company based. The OECD Guidelines provide for a state-based non-judicial remedy mechanism.

So my conclusion is that the principles of the Framework are effectively reflected in the OECD instruments.

Let me now turn to what the Guidelines have to offer in respect of access to remedy.

### **About the OECD Guidelines**

The OECD Guidelines are recommendations addressed by adhering governments to their multinational enterprises wherever they operate. They cover all major areas of business ethics, including human rights. These draw on universally shared values and norms such as those promoted by the Universal Declaration on Human Rights and the ILO Conventions, as well as instruments developed at the OECD, such as the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

Thirty OECD Members, Brazil and ten other non-OECD countries have so far adhered to the Guidelines. The adherence of a forty second country -- Morocco -- is due to take effect at this end of this month.

### **A unique non-judicial redress mechanism**

The Guidelines are well known for their so-called "specific instance" facility.

The "specific instance" facility is a state-based non-judicial mechanism to assist in non-adversarial resolution of issues that arise from the implementation of the Guidelines. It provides the possibility for any interested parties to submit allegations of human rights violation by multinational enterprises to NCPs, which are government agencies established by the adhering countries and charged with promoting the Guidelines.

NCPs must assess the merits of the complaints, offer their good offices to conciliate and mediate good faith allegations of non-observance of the Guidelines and make recommendations as appropriate. NCPs decisions are not binding on the parties. They carry, however, the weight of governments, which companies and interested parties don't usually take on lightly.

### **The record?**

The interest in the "specific instance" facility has been steadily growing over the years. Since the last revision of the Guidelines in 2000, over 150 specific instances have been considered by NCPs, and half of them have been concluded. Most of these cases have dealt with employment and industrial relations issues, but more recently publicised cases have involved violation of human rights.

With time NCPs have become more confident in developing procedures for handling complaints, understanding their good offices for mediation, and formulating recommendations. Some NCPs, like the Dutch and UK NCPs, have also introduced important changes to their institutional arrangements.

Outcomes suggest that the "specific instance" facility can make a difference. Recent examples include:

- In December 2008, G4S, the world's largest security firm and second global private employer reached an exemplary agreement with UNI Global Union, Thanks to mediation of the UK NCP, the agreement commits G4S to improve labour conditions of workers in Malawi, Mozambique, Nepal and the DRC.
- In July 2009, in the complaint filed against Philipinas Shell Petroleum Corporation, the Dutch NCP found that Shell did not apply the best level of health and safety measures in regard to the Pandacan oil depot and recommended that it be attentive to local communities' concerns.
- In September 2009, following the complaint from Survival International against Vedanta Resources plc, the UK NCP found that Vedanta did not respect the rights and freedoms of the Dongria Kondh indigenous community consistent with India's commitments under various human rights instruments.

Another recent development has been the official invitation by the UN Global Compact to its Local Networks in countries adhering to the OECD Guidelines to actively explore collaborative opportunities with the NCPs, including seeking advice and guidance from NCPs regarding follow-up procedures for the OECD Guidelines' implementation (such as the "specific instance" facility).

### **Preparing for an update**

In the wake of the global financial crisis, when the reputation of business has suffered greatly, the private sector needs more than ever a recognised and respected framework for business ethics to guide its actions. At the June 2009 OECD Ministerial Meeting, ministers "welcomed further consultation on the updating of the Guidelines to enhance their relevance and clarify the responsibilities of the private sector". Adhering countries have now agreed on a process for conducting this consultation and on a list of issues covering both content and procedures of the Guidelines.

Let me mention three of these issues which are relevant to the "Protect, Respect and Remedy" Framework for human rights.

First, the reinforcement of the human rights component of the Guidelines. Questions submitted for consultation include whether the existing provisions of the Guidelines provide sufficient guidance to companies in the event of conflicting requirements between internationally-recognized standards on human rights and host country policies, or throughout the supply chain, or in relation to the impact on local communities and indigenous people.

Second, we need to carefully consider under which conditions NCPs should take up specific instances in situations where the matter is subject to parallel legal proceedings, taking into account the expected added-value of a non-judicial redress mechanism. Further guidance to NCPs on how to deal with such situations would be warranted.

Third, NCP performance. It has been argued that differences in NCP institutional arrangements, operational modalities and resources may not be compatible with the functional equivalence standard for NCP performance and affect the credibility and effectiveness of the Guidelines.

As we did for the review of the Guidelines in 2000, the adhering countries count on the business, labor and civil society partners for expertise in the consultation process. They will also be seeking an active involvement of emerging economies that have not yet adhered to the Guidelines. A first special meeting with interested parties will be held in early December, on the occasion of the 2009 Global Forum on International Investment in Paris, to identify the need and options for specific revisions to the Guidelines and its implementation procedures.

We look forward to your contributions to the consultations on an update of the OECD Guidelines.

Thank you very much for your attention.