



TRADE UNION ADVISORY COMMITTEE
TO THE ORGANISATION FOR ECONOMIC
COOPERATION AND DEVELOPMENT
COMMISSION SYNDICALE CONSULTATIVE
AUPRÈS DE L'ORGANISATION DE COOPÉRATION
ET DE DÉVELOPPEMENT ÉCONOMIQUES

The OECD Guidelines for Multinational Enterprises
Recommendations for Responsible Business Conduct in a Global Context
TUAC Submission to the Working Party on Responsible Business Conduct
20 March 2015

1. Introduction

1. TUAC welcomes this opportunity to make a submission to the Working Party on Responsible Business Conduct (WPRBC). The remainder of this submission is structured as follows:

- *Section 2*: Compensating the Victims of Rana Plaza;
- *Section 3*: Norwegian National Contact Point;
- *Section 4*: Facilitating wider adherence to the OECD Guidelines for Multinational Enterprises;
- *Section 5*: National Contact Points;
- *Section 6*: RBC long-term agenda;
- *Section 7*: 2015 Global Forum on Responsible Business Conduct;
- *Section 8*: Funding Requirements;
- *Section 9*: TUAC Activities.

2. Compensating the Victims of Rana Plaza

2. After the 24th March 2015, there will be just one month in which to raise the **missing USD9 million** for the Rana Plaza Donors Trust Fund, and close the Rana Plaza compensation scheme, *before the two-year anniversary on the 24 April 2015*.

3. In line with the Ministerial Statement signed on the occasion of the OECD informal Ministerial on Responsible Business Conduct (June 2014) and the “*Draft Strategy of the ‘Declaration Group Plus Group’*” (February 2015)¹, ***home governments should use their collective leverage and:***

- Call on the CEOs of brands that have confirmed links to Rana Plaza and/or significant ties to Bangladesh, which have not yet made a donation to make a significant contribution to the Trust Fund and to publicly disclose this contribution on the Rana Plaza Arrangement web site;
- Meet with the CEOs of brands that have confirmed links to Rana Plaza and/or significant ties to Bangladesh, which have already made a donation to request that they increase their financial contribution to the Trust Fund and publicly disclose this contribution on the Rana Plaza Arrangement web site,

¹ Closing the Funding Gap for Compensating the Victims of Rana Plaza – a Collective Strategy, The Declaration Plus Group, February 2015.

- Call on the **Alliance Fund** to pay **USD 4 million** to the Trust Fund, ahead of the two-year anniversary on the 24th April 2015;
- Call on **Accord members** to follow with a **USD 1 million** payment to the Trust Fund, ahead of the two-year anniversary on the 24th April 2015;
- **Send a joint letter to the Government of Bangladesh**, urging it to make a significant contribution (**USD 3 million**) from the Prime Minister's Fund to the Trust Fund, ahead of the two-year anniversary on the 24th April 2015;

BOX 1: RANA PLAZA: GOVERNMENTS SHOULD USE LEVERAGE²

Nearly one month away from the 2nd anniversary of the collapse of the Rana Plaza building, which killed 1134 workers and injured hundreds more, there is a \$9 million deficit in the Rana Plaza Donors Trust Fund. This means that:

- victims will only get 70% of their compensation award;
- lowest paid workers will not receive agreed supplementary payments;
- long-term injured will not receive agreed payments to cover their medical costs.

3. Norwegian National Contact Point

“Norway’s National Contact Point (NCP) for the OECD Guidelines on Multinational Enterprises (the Guidelines) is recognized as a leader among its peer NCP institutions.”³

4. A key finding of the peer review of the Norwegian NCP, carried out in 2013, was that the Norwegian NCP is a leading NCP, and a global champion for the OECD Guidelines. Since the peer review, there have been a series of developments that TUAC has followed with growing concern. In this context, TUAC is seeking reassurance from the Norwegian Government that the strength, impartiality and independence of the Norwegian NCP are being maintained.

5. TUAC’s concerns relate in particular to:

- delays in appointing the new members of the NCP;
- delays in handling a trade union case against NBIM (submitted November 2014);
- changes to the mandate of the NCP (see *ANNEX I*), which reduce the strength of the NCP’s procedures and its independence:
 - not able to determine that an enterprise has breached the Guidelines, in the event that mediation fails – this is a significant backward step (see *BOX 4*);
 - requirement to refer issues of interpretation/clarification to the Government (see *BOX 5*);
 - changes to how the NCP is resourced (see *ANNEX I*).

² In Pakistan, there has similarly been no settlement for the victims of Ali Enterprise.

³ NORWAY NATIONAL CONTACT POINT PEER REVIEW REPORT, p1, 19 February 2014

BOX 2: NORWAY NCP PEER REVIEW: KEY FINDINGS⁴

“The overall message from the peer review is that the Norway NCP is highly effective at fulfilling its mandate pursuant to the Guidelines... The feedback from stakeholders was overwhelmingly positive and highlighted the following factors: the individual credibility and institutional independence of the members of the NCP’s Expert Panel the dedicated financial resources that support the NCP’s various activities; and, the dedicated human resources for the NCP’s Secretariat.”

BOX 3: NORWAY NCP PEER REVIEW: STAKEHOLDER FUTURE CONFIDENCE⁵

“The improved performance of the NCP is as much a result of the composition of the independent expert panel, and the integrity, credibility and skill of the individual members... In particular, stakeholders highlighted the role of the Chair in setting the tone and giving profile to the NCP. Stakeholders noted that the mandates of three members of the NCP are expiring in 2014, raising questions about continuity, succession strategies, as well as the expertise and affiliations of future members. At the same time, stakeholders expressed confidence in the Norwegian tradition of non-political appointments and tripartite management of public institutions.”

BOX 4: NORWAY NCP NEW MANDATE: NO ‘BREACH’ OF THE GUIDELINES⁶

“In the preparation of the new mandate it is taken into account that the OECD Guidelines are mainly recommendations. It is in principle up to the individual company to consider whether and how the Guidelines can be adopted and applied for CSR purposes. **The Guidelines therefore have no requirement for compliance in legal terms, and one should thus not use such terms as "breaches "**,⁷ if one were to consider that the recommendations are not followed. It is at the same time a clear expectation from the authorities that the businesses follow the Guidelines.”

BOX 5: NORWAY NCP NEW MANDATE: GOVERNMENT CLARIFICATION⁸

“If there is doubt about the Guidelines relevance or other issues related to the interpretation of the guidelines, the **NCP shall consult Norwegian authorities before the issue is forwarded jointly to the Investment Committee.**

4. Facilitating wider adherence to the OECD Guidelines for Multinational Enterprises

6. TUAC understands the arguments put forward by the OECD Secretariat for opening to non-Members the possibility of adhering to the Guidelines only. However, it considers that there is a need for caution. Fifteen years after the 2000 review, the overall performance of NCPs is uneven and in all too many cases poor. Extending the network of NCPs, before first achieving a significant improvement in the existing stock of NCPs, could severely undermine the credibility of the NCP system and the instrument as a whole.

⁴ NORWAY NATIONAL CONTACT POINT PEER REVIEW REPORT, p.1, 19 February 2014.

⁵ NORWAY NATIONAL CONTACT POINT PEER REVIEW REPORT, p. 35, 19 February 2014

⁶⁶ See ANNEX I.

⁷ Emphasis added.

⁸ See ANNEX I.

7. TUAC could not support such a de-linking unless there is a significant improvement in the performance of existing NCPs, together with sufficient checks and balances for assessing new NCPs. Specifically TUAC would recommend:

- implementing suggested measures (see Section 5.1) for improving the performance of existing NCPs together with *mandatory peer review*;
- conducting rigorous, transparent and participatory *ex ante* review process to assess potential adherents to the Guidelines;
- making *ex post* peer review mandatory for all new NCPs;
- increased financial resources for the secretariat;
- changes to the rules for handling cases such that “*Issues will be dealt with by the home NCP in cooperation with the host country NCP*” (#23 of the Commentary on the Procedural Guidance).

5. National Contact Points – Performance, Reporting, Peer Review

5.1 Addressing issues relating to the functioning and performance of NCPs

8. TUAC welcomes the paper on “*Addressing issues relating to the functioning and performance of NCPs*” including the suggestions in *paragraphs 12 and 13* on the steps to be taken when governments fail to meet their legal obligations with regard to the functioning of their NCP. Using the Annual reports of the WPRBC to the Investment Committee and the Investment Committee to the Council respectively are important steps to be taken. However, TUAC considers that there is a need to consider other measures, including:

- *OECD fact-finding missions*: red flags (*not visible or accessible; does not meet its obligations of providing information on and promoting the Guidelines; is not represented at NCP meetings*), would trigger an OECD mission to the NCP in-country. The mission delegation would comprise members of the secretariat and members of the Investment Committee. Fact-finding missions are regularly used by the OECD in the context of country reviews, or in the Accession processes. They should similarly be able to be used when governments are in breach of binding obligations.

9. TUAC welcomes the proposed measures to increase the quality and value of NCP reporting, but suggests that this could be further strengthened by:

- “Shadow” reports or “Alternative” reports (see *BOXES 6 and 7*) submitted by external stakeholders – this system of verification is used by the UN Treaty Bodies;
- *Verification by external stakeholders*: having a system of verification of the final NCP report by external stakeholders. This would play the dual role of improving the quality of the report, and institutionalising consultation and dialogue processes around the production of the report.

BOX 6: SHADOW REPORTS AND “ALTERNATIVE REPORTS”

“Shadow reports are a method through which NGOs can supplement or provide an alternative point of view to governmental reports that states are required to submit under international treaties. The shadow report is **officially published after or in response to the government report**. It can contain an analysis of the content of the state report from a civil society perspective and point out possible blindspots, weaknesses or additional points on the identified issues....”

“An “Alternative report” refers to a report that is submitted to the particular committee before the official governmental report has been made available. An NGO might not have access to the information (on time) of the government report and decide to publish a report nonetheless to ensure certain issues are highlighted to the Treaty Body Committee.”

BOX 7: SHADOW REPORTING: CONVENTION TO ELIMINATE ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)⁹

“The CEDAW Committee asks governments whether they have involved NGOs in preparing the government report. The Committee invites direct NGO input, in the form of independent or “shadow” reports and oral presentations.”

“The CEDAW Committee recognizes that even where the NGOs have been consulted in preparation of the official report, the final version may omit their point of view. Therefore, it is important for NGOs to submit their own materials to complete the record.”

5.2. Outline of publication: Promoting Responsible Business Conduct through National Contact Points - Taking Stock of 15 Years of NCPs

10. TUAC welcomes the constructive but critical approach set out in the outline of the publication to mark 15 years of the NCPs. TUAC is willing to contribute to “*drawing lessons and providing constructive suggestions*”, as well to provide information on trade union issues, perspectives and cases.

11. TUAC notes that the number of cases recorded by the OECD is significantly lower for some countries than the number of trade union cases recorded on the TUAC web site (see *TABLE 1* and *ANNEX 1*). Given that the total number of cases submitted by NGOs exceeds the number submitted by trade unions, then it is clear that a large number of cases are missing from the OECD database. There is no reason for the OECD secretariat to rely on NCPs as their sole source of information on cases. TUAC and OECD Watch for the vast majority of cases would be able to provide the original submissions.

TABLE 1: NUMBER OF TRADE UNION CASES EXCEEDS TOTAL NUMBER OF CASES IN OECD DATABASE

NCP	NO. TRADE UNION CASES	NO. CASES RECORDED BY THE OECD
South Korea NCP	15	7
Mexico NCP	6	5
Japan NCP	6	4
Turkey	3	2

⁹ <http://www1.umn.edu/humanrts/iwraw/proceduralguide-08.html>

5.3. Trade Union Submission on G7 Peer Review

12. Under the German Presidency, the G7 is prioritising decent work and supply chains. TUAC has prepared a position paper which calls for G7 governments to undertake a peer review programme which should be followed by a revision of the Procedural Guidance, in order that the findings of the peer review programme are translated into the future rules of the Guidelines (see *BOX 8 overleaf*).

6. RBC Long-term agenda

13. TUAC's long-term vision on the OECD Guidelines is to have well-functioning NCPs. More broadly, in terms of global public policy goals, TUAC was disappointed that the OECD did not put sustainable development at the heart of its revision of the Policy Framework for Investment. The lens for the revision of the PFI was stated as being the investment climate and the investor. While significant improvements were made to the text during the drafting process, the starting point should have been sustainable development and making the PFI consistent with the UN Guiding Principles on Business and Human Rights (UNGPs) (the State Duty to Protect) and the OECD Guidelines for Multinational Enterprises.

7. 2015 Global Forum on Responsible Business Conduct

14. TUAC welcomes the outline programme for the 2015 Global Forum and strongly supports the holding of a pre-Forum on the development of National Action Plans. It considers that:

- *Moderators/Chairs*: all chairs/moderators should be engaged in/knowledgeable of the current policy agenda of all the relevant institutions (OECD, UN, EC) so that they are able to steer the discussion in a useful direction;
- *Balance of constituencies and gender*: there should be a balance in the representation of the external stakeholders represented on the panel as well as of gender;
- *Small panels*: panels should be small so as to have time for discussion.

8. Funding Requirements

15. TUAC requests an update on the request for long-term reallocation of the Budget on the 2015-2016 Programme of Work and Budget to fund in particular the work on the NCPs.

9. TUAC 2015 Activities

16. TUAC has undertaken or planned the following activities in 2015:

- *Training Event*: Capacity-building Workshop: Mexico City: 23- 24 April 2015.
- *Trade Union Guide to the OECD Guidelines for Multinational Enterprises*
 - *Just Published* (January 2015): Chinese and Arabic;
 - *Forthcoming* (2015): Portuguese and Russian.

BOX 8: G7 COUNTRIES: TRADE UNION CALL FOR MANDATORY PEER REVIEW¹⁰

“8. Trade unions call on G7 governments to strengthen the “peer review” system of the OECD Guidelines. The current system is not only voluntary but slow – the upcoming peer review of Denmark is only the third to be held since the Update of the Guidelines in 2011.

9. G7 commitment to a coordinated and accelerated peer review programme would send a signal of strong political support as well as producing a body of evidence that could be used to support improvements across all NCPs.

Analysis of Cases

10. As part of the peer review exercise, in addition to an examination of structures and procedures, it would be necessary to include an **analysis of completed cases**, in order to identify the factors of success/ failure in the handling of cases by G7 NCPs.

Policy Coherence

11. A further essential element would be to undertake a **review of policy coherence**: how other public policies – trade and investment agreements, private sector development, public procurement, export credits – strengthen compliance with the OECD Guidelines. The refusal of some companies to participate in NCP processes underlines the urgent need to strengthen coherence. One recent example is Canada’s position of withdrawing “economic diplomacy” from companies that refuse NCP-led or other dispute resolution processes.

Peer Review Modalities

12. The Peer Review should have the following characteristics, based on OECD best practice³:

- coordinated by the OECD Secretariat to the Working Party for Responsible Business Conduct: the OECD secretariat should play a central coordinating role so as to ensure continuity and consistency across reviews and to build institutional capacity;
- standard methodology: use a standard and country specific questionnaire;
- comprehensive: examine structure and procedures; cases; and other policy measures;
- participatory: involve the social partners, as well as other relevant external stakeholders;
- transparent: publish a report with recommendations;
- follow-up: follow-up of measures within set timescales.

13. The G7 should also consider whether to revise the Procedural Guidance of the OECD Guidelines, in a limited revision, so that the findings and recommendations from the peer review can form part of the rules governing the functioning of NCPs.”

¹⁰ This is an excerpt from the TUAC, ITUC, DGB position paper on Decent Work and Supply Chains submitted to the G7, 10 March 2015.

ANNEX I: NORWEGIAN NCP: NEW MANDATE ¹¹

MISSION¹²

OECD Guidelines for Multinational Enterprises, hereafter just "Guidelines", expresses voluntary and non-legal advice on how Multinational Enterprises are expected to respect CSR. Which businesses guidelines can be applied is not specifically defined – as the Guidelines is said to be merely recommendations. In the preparation of the new mandate it is taken into account that the OECD Guidelines are mainly recommendations. **It is in principle up to the individual company to consider whether and how the Guidelines can be adopted and applied for CSR purposes. The Guidelines therefore have no requirement for compliance in legal terms, and one should thus not use such terms as "breaches ", if one were to consider that the recommendations are not followed.** It is at the same time a clear expectation from the authorities that the businesses follow the Guidelines.

All OECD countries have committed themselves to implement the Guidelines and to establish a National Contact Point in each country which will contribute to it.

The Norwegian OECD National Contact Point (NCP) is established as a professionally independent advisory body to assist the Norwegian authorities in promoting the Guidelines and to advise and provide guidance in individual cases, but is not a supervisory or executive body. The procedure for NCPs, as specified in the Guidelines, shall provide the basis for executing the work.

The NCP has three main tasks:

- 1) assist the Norwegian authorities in promoting the OECD Guidelines
- 2) **provide advice and guidance** in individual cases
- 3) contribute to the best possible function of the contact point, amongst other through close cooperation with other contact points aimed at the most equal treatment, ("level playing field") of businesses in different countries subject to the advice and guidance in individual cases - through **close cooperation with other contact points**

The NCP shall in their work be visible, accessible and impartial and emphasize transparency in accordance with the OECD procedures. The NCP must also strive to follow the principles of non-judicial grievance mechanisms and dialogue mechanisms formulated in the UN Guiding Principles on Business and Human Rights and on trade (principle 31).

APPOINTMENT

NCP has four members who are appointed on the basis of professional expertise. The Chair is appointed for four years, the other three members for three years.

The NCP members are appointed by the Ministry of Foreign Affairs and Ministry of Trade, Industry and Fisheries jointly. The social partners and civil society, represented by the NHO, LO and Forum for Environment and Development, are invited to nominate candidates.

¹¹ All emphasis is added.

¹² This is not an official translation.

ADMINISTRATION

The scheme is administered by the Ministry of Foreign Affairs. **The NCP reports financially and administratively to the Ministry of Foreign Affairs who allocates budget and approves priorities for the work based on the NCP's annual business plan.**

The Ministry of Foreign Affairs provides a secretariat with two employees for NCP. The secretariat is administered by the Ministry of Foreign Affairs.

An annual meeting is held with the NCP members, the Secretariat and the Ministry of Foreign Affairs. The Ministry of Foreign Affairs and the Secretariat have a bi-annual meeting on administrative issues and have an ongoing dialogue on the progress of efforts to promote the guidelines.

The NCP should have its own website, own archive and private mail records regardless of The Ministry of Foreign Affairs. The NCP should follow FOIA.

In addition to the annual reporting to the Investment Committee, the NCP reports on its activities to The Ministry of Foreign Affairs in accordance with the implementation of the Activity Plan and budget allocation.

RESPONSIBILITIES

• *Promoting the OECD Guidelines*

An important task for NCP is to inform and distribute the OECD Guidelines to Norwegian companies, primarily multinational firms.

The NCP shall particularly give priority to developing and maintaining good relations with Norwegian businesses, especially businesses with operations in fragile states where there is a greater risk that companies may be involved in undesirable behaviour.

Additionally, the NCP should develop and maintain connections with the social partners and other stakeholders to contribute to the broadest possible application of the Guidelines.

If there is doubt about the Guidelines relevance or other issues related to the interpretation of the Guidelines, the NCP shall consult Norwegian authorities before the issue is forwarded jointly to the Investment Committee.

• *Dealing with specific instances*

The NCP shall on the basis of individual inquiries consider issues relating to businesses activity in relation to the OECD Guidelines. If the case is considered to be relevant, the NCP will offer the parties advice and guidance aimed at solving the case.

The scheme, as this is established by the OECD, is a non-judicial mechanism for solving questions related to the practice of the OECD guidelines. In such cases the NCP shall act impartially, be predictable, non-discriminatory and handle matters in a way that is consistent with the principles and standards enshrined in the OECD Guidelines.

The decisive factor will be to develop a trustworthy relationship with the parties in conflict cases. The NCP shall exercise proper and necessary caution when dealing with commercially sensitive information.

The Norwegian NCP processes specific instances and provides recommendations on follow-up, regardless of the Norwegian authorities.

In individual cases affecting contact points in different countries the involved contact points seek to agree on which should take the lead in efforts to provide advice and guidance. It must be assumed that the contact point in the home country of the company concerned is closest to take the lead in the case.

• *Other Tasks*

The NCP also has a role in contributing to the actual point of contact arrangement works best (functional equivalence). The NCP is therefore encouraged to have close contact with other countries contact points and the OECD and to participate actively in efforts to promote the guidelines.

PARTICIPATION AT OECD-MEETINGS

NCP is required to meet the OECD forums for contact points and any joint meetings where NCP is invited.

The Ministry of Foreign Affairs determines participation in the Norwegian delegation to multilateral meetings in the OECD, and registration to meetings via the Norwegian OECD delegation shall be made through the Ministry of Foreign Affairs. The NCP may be invited as observer in the Norwegian delegation to meetings of Investment Committee and underlying workgroups.

ANNEX II: TRADE UNION CASES BY NCP

NCP	NCP Type	No of Trade Union Cases	OECD Figures
US NCP	Single Department with Interagency Working Group	29	36
Brazil NCP	Interministerial Body	20	20
South Korea NCP	Independent Expert Body	15	7
UK NCP	Bi-ministerial plus Multi-stakeholder Independent Board	15	41
France NCP	Tripartite (involving several government departments and the social partners)	11	17
Netherlands NCP	Independent Expert Body	11	23
Switzerland NCP	Single Government Department	6	10
Mexico NCP	Single Government Department	6	5
Japan NCP	Interministerial Body	6	4
Chile NCP	Single Government Department	6	7
Germany NCP	Single Department with Interagency Working Group	5	16
Belgium NCP	Tripartite (involving several government departments and the social partners)	4	16
Czech Republic NCP	Single Government Department	4	5
Canada NCP	Interdepartmental Committee	4	12
Argentina NCP	Single Government Department	3	
Italy NCP	Single Government Department with NCP Committee	3	10
Poland NCP	Single Government Department	3	2
Turkey NCP	Single Government Department	3	2
Norway NCP	Independent Expert Body	3	9
Austria NCP	Single Government Department	2	5
Peru NCP	Single Government Department	2	3
Finland NCP	Quadripartite (involving several Ministries, the social partners and NGOs)	1	3
Australia NCP	Single Government Department	1	5
Spain NCP	Single Government Department	1	2
New Zealand NCP	Single Department with Multi-stakeholder Advisory Board	1	1
Romania NCP	Bipartite	1	0
Denmark NCP	Independent Expert Body	1	12
Egypt NCP	Single Government Department	0	0
Estonia NCP	Quadripartite (involving several	0	0

NCP	NCP Type	No of Trade Union Cases	OECD Figures
	Ministries, the social partners and NGOs)		
Greece NCP	Single Government Department	0	0
Hungary NCP	Single Government Department	0	1
Ireland NCP	Single Government Department	0	1