

Joint press release by Open Secrets and CALS
07 June 2018

UPDATE: BLOW TO APARTHEID'S BANKS

UN Independent Expert weighs in on OECD complaint, and NGOs challenge conflicts of interest in Belgian decision-making body

A heavy blow has been dealt to two European banks at the centre of the apartheid-era international arms money machine. The implicated banks are KBC Group (previously Kredietbank) and Kredietbank Luxembourg (KBL). Evidence in the possession of Open Secrets shows that the banks were responsible for channelling billions of dollars through a global money-laundering scheme used to secretly buy weapons. This, despite mandatory UN arms sanctions against apartheid South Africa at the time. The impact of this action was to prolong the apartheid regime and effectively support a crime against humanity.

UN expert weighs in

On 28 May 2018, UN Independent Expert on the effects of foreign debt, Mr. Juan Pablo Bohoslavsky, submitted an amicus application to the Belgium and Luxembourg OECD National Contact Points (NCPs) in support of the complaint lodged by Open Secrets and CALS in April this year. This complaint uses the OECD Guidelines, one of the few international accountability mechanisms available, to attempt to hold the banks accountable for decades of impunity.

Bohoslavsky's independent submission provides valuable evidence of the extensive role of financial institutions in supporting regimes that commit human rights violations. Importantly, he provides support for our argument that economic assistance by private actors to such regimes is potentially criminal conduct under international law. Bohoslavsky argues that, "This case is about learning the truth relating to financial contributions to a criminal regime that violated *jus cogens* [the norms of international law] and how these actors have helped in the consolidation of it."

This amicus intervention strengthens our complaint by underscoring the link between economic crimes and human rights. It highlights the importance of holding private sector actors accountable for their complicity in grave injustices, past and present.

Belgian conflicts of interest exposed

On 06 June 2018, Open Secrets and CALS sent a letter to the Belgian and Luxembourg authorities alerting them to serious conflicts of interest that we have

identified within the body that will consider our complaint in Belgium. We have requested the recusal of powerful conflicted parties whose participation we fear could derail the legitimacy of this process. The Belgian NCP is a tripartite structure that includes government, trade unions, and employers' associations. Crucially, we have identified the Federation of Enterprises in Belgium (FEB) playing a key role as one of the employers' federations. The president, CEO, and director of KBC Group, the bank against whom the complaint was brought, all sit on the FEB's strategy committee, which plays a key role in the FEB's decision making. Other senior KBC executives hold similarly influential positions within the FEB. In addition, Comeos, a subsidiary association of the FEB that is independently represented on the NCP, has a stated structural partnership with KBC Group.

These individuals and bodies have a clear and direct interest in downplaying the seriousness or dismissing the OECD complaint. It is in the interests of fairness and transparency that they be immediately recused from any involvement in this matter. Challenging KBC's influence over the consideration of this complaint is a critical step toward genuine accountability and a just outcome. We have sent a copy of this letter to officials from the Belgium and Luxembourg NCPs who are meeting with the OECD in Paris today, and expect them to treat this matter with the seriousness it deserves.

Read the OECD complaint [here](#), and Mr. Juan Pablo Bohoslavsky's amicus application [here](#).

To find out more about the complaint and the next steps in the process, see the factsheet and timeline below.

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ABOUT OPEN SECRETS

Open Secrets is an independent non-profit with a mission to promote private sector accountability for economic crime and related human rights violations in Southern Africa. We promote the right to truth and contribute towards social justice by using research, advocacy and litigation to hold powerful private actors to account for violations of human rights. <https://www.opensecrets.org.za/>.

ABOUT CALS

The Centre for Applied Legal Studies (CALS) is a public interest law organisation based at the School of Law at the University of the Witwatersrand. Founded in 1978 by Professor John Dugard, CALS continues to use a combination of research, advocacy and litigation to advance human rights and social justice. <https://www.wits.ac.za/cals/>.

HOLDING APARTHEID'S BANKS ACCOUNTABLE



Open Secrets and the Centre for Applied Legal Studies (CALS) are South African NGOs working towards corporate accountability for human rights violations. We are taking this fight to the doorstep of two European banks who aided and abetted the apartheid regime in South Africa.

WHO ARE THE BANKS? WHAT DID THEY DO?



KREDIETBANK



KREDIETBANK
LUXEMBOURG

Between 1977 and 1994, Belgium-based Kredietbank (now KBC Group) and its sister company Kredietbank Luxembourg (KBL) colluded with South African state-owned arms company Armscor to establish a global money laundering network of secret bank accounts and shell companies to break the UN arms embargo. According to research by Open Secrets, approximately 70% of these illegal arms transactions went through Kredietbank and KBL, making these banks the most significant international sanctions-busting collaborators with the apartheid regime.

WHY HAVE THEY GOTTEN AWAY WITH IT?

Since the end of apartheid there has been a failure to investigate and hold corporations that aided the regime to account. Some of the same businesses are still doing business with the new democratic government.



WHY DOES THIS STILL MATTER?

The lack of justice for historic private sector crimes has undermined efforts to make South Africa a more just and equitable society. Not only has money not been recovered, nor reparations paid, but South Africa has to pay back this odious debt while corporations continue to commit economic crimes.

WHAT ARE WE DOING ABOUT IT?

The Organisation for Economic Development (OECD) Guidelines for Multinational Enterprises (MNEs) sets out standards to prevent MNEs from contributing to human rights violations, and is one of the few international mechanisms available to regulate and hold businesses accountable. Open Secrets and CALS have laid complaints against KBC and KBL at the Belgium and Luxembourg OECD National Contact Points (NCPs), asking them to make findings on the conduct of both banks.

WHAT DO WE HOPE TO ACHIEVE?

Findings by the NCPs that KBC and KBL violated provisions of the OECD Guidelines through their support for apartheid, and that a public apology should be issued to the South African government and people.

Recommendations by the NCPs for more effective, binding mechanisms to hold financial institutions responsible for their conduct.

A public challenge to European authorities to grapple with the conduct and harm perpetrated by corporations within their jurisdictions.

TRACKING THE COMPLAINT

A TIMELINE FOR ACCOUNTABILITY



24-26 APRIL 2018

- Complaint against KBC and KBL **delivered** to Belgium and Luxembourg NCPs, as well as the banks themselves.
- **Acknowledgement of receipt** by both NCPs and the banks.
- Meetings with the secretariats of the Belgium and Luxembourg NCPs independently to discuss procedures and timelines.



7 JUNE 2018

- **Meeting** of all OECD member countries' NCPs in Paris.
- Belgium and Luxembourg NCPs to discuss complaint with relevant parties to determine whether an ad-hoc working group for conducting further research should be formed.
- Belgium and Luxembourg NCPs to decide whether the complaint will be jointly handled by both NCPs, or whether one will take the lead.
- **Before this date**, both parties may **submit further documents** either supporting the complaint or raising procedural concerns.



BY SEPTEMBER 2018

- Initial assessment to be completed by the NCPs **within three months** of the Paris meeting.
- The NCPs will indicate whether they **accept or reject** the complaint.



BY JUNE 2019

- **Within nine months** of the initial assessment, the NCPs will investigate the facts of the case and liaise with the banks and other relevant parties to properly **consider the merits** of the complaint.



BY SEPTEMBER 2019

- **Final statement** to be issued **within three months** of the completion of the investigation.