

Corporate Accountability:

Tools to Promote Responsible Business Conduct

Report from the Capacity Building Seminar
held 4-6 November 2009 in Bangkok, Thailand

Introduction

Designed as an ancillary event to the UNESCAP Trade and Investment Week held in Bangkok in November 2009, the capacity building program organized by OECD Watch and the Diplomacy Training Program (DTP) entitled "Corporate Accountability: Tools to Promote Responsible Business Conduct," was held from November 4-6, 2009 in Bangkok and was designed to follow up on the issues raised in the UNESCAP conference. 45 participants representing NGOs in 15 countries in the Asia-Pacific region were trained in the use of corporate accountability tools such as the OECD Guidelines for Multinational Enterprises (MNEs) and were provided with practical knowledge on corporate accountability. The participants, benefited from theoretical panel discussions and debate, practical exercises, workshops, and National Contact Point (NCP) role-play, where hypothetical complaints based on participants' experiences were developed and presented to a member of the Dutch NCP who was participating in the event.

Background and context

Globalization and deregulation have led to an increase in the power of MNEs, but without the same growth in protection for individuals and communities. Although the presence of MNEs can be a powerful driver of economic development through job creation and investment, their impact is not always positive because MNEs frequently take advantage of the weak regulatory environments of the countries in which they operate. In 2010 to 2011, the OECD will update its Guidelines for MNEs in order to make them more effective in combating irresponsible business conduct, making the next two years a critical moment in the development of the global corporate accountability landscape.

Synopsis of the OECD Watch/DTP Capacity Building Program

Corporate Accountability: Tools to promote Responsible Business Conduct was the second OECD Watch capacity building program in the Asia-Pacific region. The main aim of the program was to increase participants' knowledge of the mechanisms available to them for holding corporations accountable, with focus on the OECD Guidelines. The participants also benefited from presentations by representatives of a

range of Asia-based stakeholder groups such as NGOs, trade unions, business, government, and international organizations, who provided their perspectives and insights on corporate accountability and CSR.

Presentations by the Trainers

Participants were presented with a broad range of CSR tools such as the ILO decent work agenda, the UN Global Compact, and the framework on business and human rights developed by John Ruggie. Participants were trained in how to prepare, draft and file an OECD Guidelines

complaint. They were also briefed on what the mediation process would look like. The trainers stressed the importance of collaborations between organizations in the host and home country, the balance between confidentiality and transparency during the Specific Instance Procedure, and weighing on other strategies and the importance of company dialogue prior to resorting to the OECD Guidelines.

The NCP Role-play

The NCP role-play was the highlight of the program for many attendees. Participants joined one of five working groups, and each group worked on one hypothetical Specific Instance, which were all based on real scenarios taken from the participants' communities. Each group was then given the opportunity to simulate mediation with one of the trainers playing the role of the corporation and Mr. Herman Mulder, a member

of the Dutch NCP, playing the role of the NCP. Participants were able to put into practice the skills learned in a session on how to use the OECD Guidelines. A trainer from OECD Watch assisted the groups with any procedural questions.

Technical Classes

The final day of the program focused on providing participants with practical skills to compliment theoretical knowledge. Technical classes were held on such topics as how to effectively research a company and its supply chain, media engagement and advocacy, and the legal avenues available to victims of corporate abuse. In addition to the classes, a number of case specific working groups also gave some participants a chance to discuss potential specific instances in detail and work with an experienced trainer to develop and draft a complaint for submission to the NCP.

Key issues for the review of the Guidelines and Participant Discussion

Over the course of the training program, the participants produced a list of issues they felt should be addressed in the 2010-2011 review of the Guidelines. The list was then put before a closing panel that had been invited to debate the future directions for the Guidelines. The panel consisted of Herman Mulder, Marie-France Houde of the OECD Investment Committee Secretariat, and Rosemary Sainty of the UN Global Compact Focal Point for Australia, with CSR expert Paul Hohnen as moderator. The suggestions made by the participants are outlined below.

A The content of the Guidelines

Participants made numerous suggestions for improving the content of the Guidelines. The most pressing issues for many were those relating to the supply chain and the scope of business activities covered by the Guidelines. In the Asia-Pacific region local companies that form part of the supply chain of large multinational corporations are often the perpetrators of human rights abuses. There are difficulties involved in bringing a case against these entities given that these manufacturers are frequently multinationals not based in OECD countries. Current narrow definitions of the



“investment nexus” and supply chain may not allow victims of abuses any recourse under the Guidelines, despite their close trade relationship with companies based in OECD countries.

B The role and functioning of the NCP

Many of issues raised by participants focused on the role and operation of the NCP. Participants suggested that clearer guidance be provided by the OECD on the independence of NCPs from business and government interests, the time frame in which NCPs should handle complaints, the allocation of resources to the NCPs, whether the existence of parallel legal proceedings should affect the NCP's operation. It was also suggested that NCPs be subject to some form of review or monitoring by the OECD Investment Committee or that NCPs become the subject of a public rating system. Participants were also in favour of increasing the powers of NCPs, for example by giving NCPs coercive powers over companies

to ensure that companies take the Specific Instance procedure seriously and abide by NCP recommendations. Participants suggested that NCPs be encouraged to undertake investigations at their own initiative, possibly cooperating among themselves to investigate specific sectors, without needing to receive a complaint.

C The role of governments

Other suggestions of how to improve the functioning of the Guidelines through the upcoming review related to the role of



Left Participants discuss a potential OECD Guidelines case during a breakout session

Top Participants simulate mediation during the NCP role-play

Bottom 45 participants from 15 countries took part in the training

Right Multi-stakeholder panel on "Stakeholder perspectives on Corporate Accountability"

governments in promoting responsible business conduct and adherence to the Guidelines. It was strongly felt that more governments should be encouraged to adhere to the Guidelines, in particular the governments of large economies such as India and China. Alternatively it was suggested that the Guidelines be altered to allow for greater global reach to non-adhering countries as the high number of non-adhering countries in the Asia-Pacific region reduces the instrument's effectiveness in the region. Participants suggested including John Ruggie's principle of the state duty

to protect in the Guidelines, demonstrating there is a demand for confluence between instruments promoting and governing CSR. It was suggested that the state's responsibility to protect could extend to monitoring NCP functionality and the implementation of agreements reached under the Specific Instance Procedure. Some participants felt that governments should seek to elevate the Guidelines to the status of a binding multilateral treaty and/or include references to the Guidelines in bilateral and multilateral trade agreements. It was also felt that governments should do more to promote awareness of the Guidelines and the NCP within their own departments.

D Enforcement mechanisms

Many of the participants' suggestions for a review of the Guidelines focused on ways to make the Guidelines more effective by providing for consequences to be attached to breaches of the Guidelines or failure to engage in the Specific Instance Procedure. That the Guidelines lack 'teeth' is a common criticism, especially given that the effectiveness of the Guidelines in large part depends on the willingness of the company to participate in the process and



implement any agreement reached. Participants felt strongly that any review should look closely at what measures could be introduced to make non-compliance with the Guidelines a more serious matter for both companies and adhering governments. Participants raised the point that the responsibilities of the finance sector in funding projects that breach the Guidelines should be examined more closely, and it was suggested that adherence to the Guidelines could become a requirement for listing on the stock exchange of OECD countries. Participants also believed corporations' responsibility to respect human rights need be elaborated, for example by making it clear to them that human rights refer not only to civil and political rights but also to economic, social and cultural rights and labour rights.

Outcomes

Both participants and guest speakers gave positive feedback on the “Corporate Accountability: Tools to Promote Responsible Business Conduct,” training program. The majority of participants commented that they had greatly increased their working knowledge of the OECD Guidelines and other avenues for promoting corporate accountability. Many of the guest speakers were greatly impressed by the knowledge and passion of the participants and appreciated the opportunity to receive their feedback on the Guidelines and the state of CSR in the region. What emerged from bringing together this diverse group was that multi-stakeholder engagement is necessary to ensure effective implementation of CSR mechanisms.

Throughout the week OECD Watch and DTP received a very strong message from the participants, namely that corporate accountability tools, remedies and access to justice should become more accessible and more effective. Participants’ suggestions for issues to be considered in a review of the Guidelines all had the same aim: to increase the effectiveness of the Guidelines in order to ensure that a positive impact can be seen in the daily lives of people affected by corporate misconduct. OECD Watch supports this aim and will take the participants’ suggestions to the stakeholder consultations at the OECD Investment Committee. Overall, OECD Watch and DTP are proud of the outcomes of this capacity building program and are pleased to have been successful in further advancing the awareness of the importance of corporate accountability in the Asia-Pacific region.

Organisations involved in the seminar as participants

APHEDA
All Arakan Students’ and Youths’ Congress
Alternate Forum for Research in Mindanao
Asia Indigenous Peoples Pact Foundation
Business Watch Indonesia
CFSWF
Cambodian Legal Education Center
CAN_CARE
CARAM Cambodia
CELCOR
Defend Jobs Philippines
ELSHAM Papua
ERA Consumer Malaysia
Faculty of Law, Universitas Airlangga
FNV- Confederation of Dutch Trade Unions
Focus on the Global South
Forum Asia
Friends of Women Foundation
General Workers Union of Timor Leste
Globalization Monitor
Green Day Association

ICEM Thai
Jakarta Legal Aid Institute
Kaisampalad, Inc
Labour Education Centre
Labour Watch Taiwan
Mangyan Mission
MARUAH
Medical Action Group
Migrant Forum Asia
Oxfam International, Sepik program
Participatory Development Initiatives
Philippine Misereor Partnership, Inc
SALIGAN
Shehri – Citizens for a Better Environment
Shwe Gas Movement
Solidarity Center Thailand
Triumph International Thailand Labour Union
Workers Assistance Center Inc
Workers Rights Consortium
Yokohama Action Research Center

Organisations involved as trainers/organisers

Business & Human Rights Resource Centre
Germanwatch
CEDHA

Diplomacy Training Program
OECD Watch/SOMO
Oxfam Australia

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About OECD Watch

OECD Watch is an international network of civil society organisations promoting corporate accountability. For more information please visit www.oecdwatch.org