**OECD contribution:**

**Connecting the business and human rights and anti-corruption agendas**

The OECD welcomes the initiative of the UN Working Group on the issue of human rights and transnational corporations and other business enterprises to focus on the topic of “Connecting the business and human rights and anti-corruption agendas”. The OECD appreciates the opportunity to provide written inputs to this work.

Corruption and human rights violations are manifestations of many of the same root causes: weak institutions, low levels of development and poverty among other factors. Countries with high levels of corruption often have poor human rights records. Some of the key sectors where corruption may lead to human rights abuses with a business nexus include government procurement, small and large-scale land acquisitions, extractive sector, textile and garment sector, State-Owned Enterprises and infrastructure.

In addition, empirical evidence shows that corruption and terrorism, and associated human rights violations, are intrinsically linked. Four main types of connection can be identified: corruption and poor governance hamper countries’ ability to fight terrorism; corruption facilitates international terror attacks; corruption helps cross-border terrorist financing; corruption and terrorist financing share methods to hide money.

Corruption disproportionately affects the poor and vulnerable by diverting resources from essential public services such as health care, education, transportation and water sanitation. While it is difficult to quantify the impact of corruption on human rights and sustainable development, OECD data indicates that, for example:

* Corruption has a direct specific impact on the cost of projects both for business and the public sector, for example causing higher prices for medicine, health services, textbooks, utility services, infrastructure; and extra payments on the import and inputs needed for petroleum production or mining.[[1]](#footnote-1)
* Corruption may also have an impact on investment flows hence less opportunities for growth and development: OECDanalysis shows that foreign direct investment (FDI) from OECD Anti-Bribery Convention country companies decline as perceived corruption in the destination jurisdictions rises.[[2]](#footnote-2)
* Risk-management strategies and preventative approaches to corruption could help ensure fairer, more efficient returns on investment, based on empirical data linking lower (higher) levels of corruption with a higher (lower) productivity levels.[[3]](#footnote-3)

The above-mentioned empirical evidence shows the relevance of connecting the business, human rights and anti-corruption agendas. Corruption prevents countries from meeting their obligations to respect, fulfil and protect the human rights of its citizens and at the same time distorts the capability of companies to respect them. Corruption acts as a gateway to diverse human rights violations.

***Corporate compliance measures to fight corruption and protect human rights***

Combatting corruption is therefore an important part of the broader effort to ensure sustainable development. Governments and business share equally the obligation to fight corruption. Business enterprises are often implicated in serious and sophisticated corruption. Holding them liable through corporate liability laws is thus key. Corporate liability can also incentivise companies to set up compliance programmes and cooperate with law enforcement, thereby enhancing the detection, prevention, and investigation of corruption[[4]](#footnote-4).

Since 2011, the alignment of the UN Guiding Principles on Business and Human Rights (UNGPs) and the OECD Guidelines for Multinational Enterprises (MNE Guidelines) have reinforced the international consensus on the business responsibility to respect human rights. The MNE Guidelines are the only multilaterally agreed and comprehensive code of responsible business conduct that governments have committed to promoting. In practice, the Guidelines provide that enterprises should implement all their recommendations, including on human rights and corruption, by putting in place due diligence processes, thereby aligning with the UNGPs.

The multiplication of mandatory regulations on responsible business conduct in global supply chains (in the US, the EU, the UK, France, Australia, etc.) are a demonstration that governments proactively promote inclusion of human rights considerations into corporate compliance provisions. In this respect, corporate compliance is increasingly becoming an important vehicle to promote protection of human rights by companies. Companies can work further on their existing compliance programmes to develop a system to ensure a horizontal and holistic integration of human rights issues.

This would include aligning anti-bribery commitments with human rights protection in codes of conduct and contract clauses including with intermediaries, integrating human rights considerations in staff training, in reporting and auditing procedures. Conversely, the due diligence process, which is used by companies to identify, prevent or mitigate human rights risks, can in many ways be used by companies to develop processes aimed at addressing the risk of corruption. An illustration of this is the fact that the OECD Due Diligence Guidance for Responsible Business Conduct applies to human rights risks as well as to risks linked to corruption (in addition to risks linked to disclosure, workers’ rights, environment and consumer relations).

***Promoting a coherent approach to anti-corruption and business integrity***

The OECD has been one of the main advocates for policy coherence, including by fostering discussion with experts from different fields and countries to debate about the future and challenges in the field. For many years, the annual OECD Global Anti-Corruption and Integrity Forum has been the premier platform to generate these discussions. This year in particular, in the framework of OECD Integrity Week, the OECD will host a Business Integrity Roundtable where the topic of human rights, businesses and corruption will be discussed in a specific session. This session will therefore explore the importance of an integrated approach to business integrity. In addition, a side session focused on the National Contact Points for Responsible Business Conduct will take place during the OECD Global Anti-Corruption and Integrity Forum. Likewise, the 14th OECD Forum on responsible supply chains of minerals will include a session dedicated to detection of corruption instances in mineral supply chains, and options for mitigation / remedy.

Further, States can support companies in mainstreaming public integrity compliance programmes into core business operations by incorporating an “integrity culture” perspective into relevant legislation, recommendations, guidance, standards or other policy instruments. This not only covers anti-corruption measures, but also includes responsible business conduct, such as protecting human rights, thus ensuring greater policy coherence. The OECD Recommendation on Public Integrity and the OECD Public Integrity Handbook (in particular Chapter 5) provide practical guidance for upholding public integrity values.

Public integrity requires that anti-corruption efforts and responsible business conduct are seen as mutually supportive and aligned. Many tools are at the disposal of governments to address risks that may be generated by companies with regards human rights. In addition to specific requirements related to public procurement, governments can provide incentives through licencing processes; providing export credits or economic diplomacy services (e.g. joining state economic missions or having recourse to an embassy’s local economic networks) to companies which have compliance programmes in place tailored to the specific challenges and operating environment; offering tax incentives to companies with strong due diligence approaches; restricting imports of goods suspected to have been manufactured using forced labour, etc. More innovative approaches could be considered such as including provisions related to human rights protection in legislation dealing with political party financing or lobbying (i.e. such companies would be barred from engaging in such activities).The OECD has published several relevant instruments that States could use to facilitate greater policy coherence across the responsible business conduct, anti-corruption, and integrity agendas, namely:

* The OECD Guidelines on Multinational Enterprises and related due diligence guidance instruments;
* The OECD Good Practice Guidance on Internal Controls, Ethics and Compliance;
* The OECD Recommendation on Public Integrity; and
* The OECD Principles for Transparency and Integrity in Lobbying.

To support government action, financial institutions and private investors are increasingly incorporating human rights into the environmental, social and governance standards now influencing investment. Financial institutions and private investors increasingly apply pressure on companies they are providing funds to, to ensure they are implementing due diligence along their operations as expected by international standards (i.e. the various OECD sectoral guidance).

***Policy alignment for whistle-blower protection and access to remedy***

Greater policy alignment in the area of whistle-blower protection could benefit both the business human rights and anti-corruption agendas.

Illegal, unethical or dangerous activities, including violations of human rights and corruption, often go unchallenged when those who witness them do not speak out. Encouraging and protecting reporting is critical to detect and address timely and effectively these activities. The effective protection of whistle-blowers is central to promoting business integrity. Whistle-blowers can play a significant role in revealing information that would otherwise go undetected, leading to improvements in the prevention, detection, investigation and prosecution of corruption and human rights violations.

The need for effective protection of whistle-blowers is recognised in most international anti-corruption legal instruments. Many business and professional associations and civil society organisations have issued standards, studies and guidance on the protection of whistle-blowers. However, implementation of these standards varies significantly. Greater policy alignment for whistle-blower protection could help raise awareness, function as a catalyst towards developing and implementing effective whistle-blower frameworks, and close implementation gaps.

The OECD has developed standards and good practices on whistle-blower protection mechanisms and their implementation, particularly through the OECD Recommendation on Public Integrity and the OECD Public Integrity Handbook (in particular Chapter 9 on openness).

Moreover, corruption in the judiciary, and more broadly the absence of public integrity, impacts the ability of victims to seek redress. Governments have an important role to play in this respect by ensuring the consistent alignment of, and adherence to shared ethical values in both the private and public sectors. The OECD MNE Guidelines include an implementation mechanism, the National Contact Points for Responsible Business Conduct, in charge of promoting the Guidelines and handling cases of alleged non-observance of the Guidelines which could involve human rights or corruption impacts, or both. The OECD Guidelines, related OECD due diligence guidance instruments, and the NCP mechanism, therefore provide an integrated framework for addressing related corruption and human rights issues.

NCPs can also help victims seek remedy, and could be promoted in certain countries to help circumvent corruption in the judiciary. For example, when corrupt practices hinder access to remedy in a country that does not have an NCP, but the human rights impacts can be linked to an enterprise operating from a country that has an NCP, the NCP of that country can be an avenue through which grievances related to such impacts can be pursued. Governments of countries that do not have an NCP may also consider establishing non-judicial grievance mechanisms as alternative processes.

Both internal (corporate) anti-corruption reporting mechanisms and external reporting (to public authorities) should allow for the reporting of instances of corruption with human rights impacts. Given their potential to act as grievance mechanisms to address corruption and human rights impacts, countries with NCPs should ensure that their NCP is fully functional (and meets the functional equivalence criteria of visibility, accessibility, transparency and accountability). The NCP should be provided with an adequate level of human and financial resources to enable it to discharge its mandate, in particular to handle cases in an efficient and timely manner, and in a manner that is impartial, predictable, equitable and compatible with the Guidelines. NCPs should also build capacity on the issue of corruption and its links to human rights.

Finally, governments should also target enforcement of anti-corruption regulations on sectors where the risks of human rights violations are high (e.g. extractive sector).

***Involving United Nations bodies such as OHCHR and the UN Office on Drugs and Crime***

One area to explore is whether UNODC and other relevant UN bodies could develop targeted approaches and programmes looking at corruption in specific areas (for instance, tackling corruption in the procurement of military equipment which can often lead to ends regular armed forces being defeated by better equipped non-state armed groups, leading to subsequent massive human rights violations).

More broadly, States might want to set up working groups with representatives from public administrations (with functions such as procurement, investment promotion, export credit, etc.), business (ethics and compliance officers, safety and operations departments for example) and civil society organisations to work together to ensure a horizontal and holistic integration of these issues. The NCPs can act as facilitators of these discussions by promoting policy coherence among anti-corruption and human rights professionals across government, and by mobilising stakeholders forming part of their network (e.g. organisations present on NCP advisory bodies). The OECD can also support the development of multi-stakeholder platforms for an informed policy dialogue, for example by using the Network of NCPs and the Global Forum on Responsible Business Conduct for such discussions.

1. . OECD (2015), *Consequences of Corruption at the Sector Level and Implications for Economic Growth and Development*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264230781-en>. [↑](#footnote-ref-1)
2. . Blundell-Wignall, A. and C. Roulet (2017), "Foreign direct investment, corruption and the OECD Anti-Bribery Convention", *OECD Working Papers on International Investment*, No. 2017/01, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9cb3690c-en>. [↑](#footnote-ref-2)
3. . Balázs Égert, 2017. "Regulation, institutions and productivity: New macroeconomic evidence from OECD countries," OECD Economics Department Working Papers 1393, OECD Publishing. <https://ideas.repec.org/p/oec/ecoaaa/1393-en.html> [↑](#footnote-ref-3)
4. The OECD Anti-Bribery Convention accordingly requires under Article 2 “[e]each Party … to establish the liability of legal persons for foreign bribery” and to impose “effective, proportionate and dissuasive” penalties for this crime. To help business manage and address corruption risks the 2009 Anti-Bribery Recommendation Annex II sets out a comprehensive Good Practice Guidance on Internal Controls, Ethics, and Compliance <https://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf> [↑](#footnote-ref-4)