

MEDIA RELEASE

31 July 2019

EUROPEAN AUTHORITIES REFUSE TO INVESTIGATE APARTHEID'S BANKS

More than one year after submitting a complaint detailing the role of European banks in supporting and profiting from apartheid, CALS and Open Secrets have been informed that authorities in Belgium and Luxembourg are refusing to investigate these economic crimes. With no clear reason for their refusal to engage with our complaint, and after providing a response nine months late, we are forced to question the independence and effectiveness of these mechanisms.

Open Secrets and the Centre for Applied Legal Studies (CALS) share a common goal of holding businesses accountable for their complicity in crimes against humanity. We believe that those who support and profit from the human rights abuses perpetrated under unjust systems like apartheid should be brought to justice and held accountable for their crimes.

Because of this, in April 2018, CALS and Open Secrets laid a complaint with the Organisation for Economic Co-operation and Development or OECD. The OECD is one of the only mechanisms available worldwide for holding businesses accountable for their roles in human rights abuses. Member countries around the world have national contact points which are intended to ensure multi-national corporations based in their countries comply with the business operations and accountability standards in the OECD's Guidelines – and to investigate when they do not.

Our complaint provided detailed evidence gathered by Open Secrets, including opinions from leading experts in the financial sector, against two European banks responsible for sustaining and strengthening the system of apartheid. Belgium's Kredietbank (now known as KBC Group) and its sister bank in Luxembourg (now known as KBL) are responsible for facilitating illicit money flows that allowed the apartheid regime to secretly buy weapons despite mandatory arms sanctions introduced by the United Nations in the 1970s and 1980s.

These weapons were essential in enabling domestic repression, the apartheid state's wars and attempts to destabilise other governments and liberation movements in southern Africa. Not only was the banks' assistance vital to keeping the apartheid government in power, but they also profited from these transactions – building their companies on the suffering of millions of people. Apartheid was not only evil in practice, but has been declared a crime against humanity by the United Nations.

The OECD's national contact points in Belgium and Luxembourg have, however, shown little interest in these crimes. Despite their rules and procedures stating that they should respond within three months as to whether or not they would investigate the banks' conduct, they took over a year.

The process was also undermined by a conflict of interest that was dealt with in a manner contrary to the OECD's own guidelines, as well as the OECD Secretary General's recommendations. The conflict of interest arose because the Belgian contact point's committee which was deciding whether or not the complaint would be heard, included business federations with senior representatives from KBC. In other words, KBC was on the committee deciding whether or not a complaint against them would be investigated. When CALS and Open Secrets exposed this serious conflict of interest within the Belgian contact point, nothing was done to address it.

We have now received final reports from both contact points which, unsurprisingly, decline to investigate the complaint. Neither response has engaged meaningfully with the evidence presented to them, the conflict of interest that they were alerted to, or our extensive and detailed response urging them to consider our evidence or expert opinions. In addition, the national contact points chose to disregard the *amicus* submission by UN Independent Expert, Juan Pablo Bohoslavsky, who emphasised that the banks may be guilty of crimes under international law.

We have today written to the Secretary General of the OECD in Paris again about the conduct of the contact points and their refusal to follow their own guidelines. We fear that the refusal by authorities in Belgium to deal with the conflict of interest threatens public trust in the process and suggests poor governance standards that could enable the cover up of human rights violations. We are committed to holding the banks, and the OECD, accountable for their actions. More broadly, we will continue to advocate for the redress of economic crimes in our work by incorporating what we have learnt through this experience.

"We remain deeply concerned about the flaws that have been exposed in this process. If the OECD is one of the only mechanisms in the world for holding businesses accountable for human rights violations, we may as well say there is no mechanism in place. This is exactly why we need a binding instrument governing business practices internationally," says Tumelo Matlwa.

"There is no good reason for such a point blank refusal to acknowledge the banks' conduct merits further investigation. Given the insistence on defending the corporations and ignoring the conflict of interest, the only logical conclusion to draw is that the OECD is compromised. The action of the OECD has favoured powerful banks and seeks to silence evidence of the human rights abuses they are implicated in," says Tabitha Paine.

OECD Watch, a global network of civil society organisations, has also expressed its disappointment with this process. "Stakeholder confidence is the one of the most important measures of an NCP's effectiveness. We are deeply disappointed that civil society's concerns over conflicts of interest in this case have not been satisfactorily addressed. We continue to believe strongly that NCPs must be structured as independent offices or with representation of all stakeholder groups in their governance. Similarly, we urge NCPs currently lacking a procedural appeal process to establish one to enable redress of procedural problems in NCPs' handling of cases," says Marian Ingrams.

Read the full complaint to the OECD [here](#) or find out more about it [here](#).

European institutions fail to hold Apartheid's Banks Accountable



The **Organisation for Economic Co-operation and Development (OECD)** is an international organisation made up of 36 wealthy member states. The OECD works on establishing international norms and finding evidence-based solutions to a range of social, economic and environmental challenges.

OECD Guidelines for Multinational Corporations

The Guidelines are one of the few **international mechanisms to hold corporations responsible** for human rights abuses. The Guidelines are set of voluntary standards for responsible business conduct in a global context consistent with applicable laws and internationally recognised standards.

Each OECD member state has a **National Contact Point (NCP)** to hear grievances where there has been non-compliance with the Guidelines.

NCP Process

NGOs, individuals & governments can **lodge specific instance complaints** against corporations.

Initial Assessment by NCP to decide whether there is 'sufficient evidence' to warrant further investigation

NCP sends **draft initial assessment** to complainants & respondents

Complainants and respondents respond to draft initial assessment.

After considering responses, the NCP sends out **Final Initial Assessment**

After investigation or dialogue, NCP writes **Final Report** which includes recommendations.

Follow-up to determine if NCP recommendations were followed.

Open Secrets & CALS' Complaint

On the 24th of April 2018, Open Secrets & CALS **lodged a complaint** against KBC Group (KBC) & Kredietbank Luxembourg (KBL) with the NCPs in Belgium & Luxembourg. We asked the NCPs to investigate evidence that the two banks violated the guidelines by assisting the apartheid regime in violating weapons sanctions.

However, what should have been a 3-month process to decide whether to proceed with the investigations, became a 12-month process due to **excessive delays & obfuscation** by the NCPs. OS & CALS also exposed a serious **conflict of interest** within the Belgian NCP & wrote to the NCPs and the OECD General Secretary. The NCPs ignored recommendations made by the General Secretary in contravention of the NCPs Rules and Procedures and guiding principles. Furthermore, the NCPs **failed to engage with evidence** provided to them and, on the 23rd of June 2019, a year after lodging the complaint, the NCPs decided to **not investigate**.

OBSTACLES TO ACCOUNTABILITY

A timeline of how the OECD blocked our complaint

24-26 April
2018

Complaint against KBC & KBL banks **delivered** to Belgium & Luxembourg NCPs 



Open Secrets (OS) discovers & communicates to Belgian NCP about a **conflict of interest** within NCP committee that meant that KBC executives would have a say on the complaint.



In response, Belgian NCP argues that their internal procedures are sufficient.



OS & CALS write to the OECD Secretary General (SG) to ask for intervention.

6 June-12 July
2018

26 July 2018

1st postponement: Claiming that the case is 'complex' the NCPs miss the deadline for the initial assessment & postpone the deadline to September 2018

22 August
2018

Secretary General (SG) responds with recommendations to the Belgian NCP on how to deal with conflict of interest.

28 September
2018

2nd Postponement: NCPs extend their deadline to December 2018

Belgian NCP ignores SG recommendations, **CALS & OS ask the SG to intervene.**



SG replies that it advises NCPs but does not instruct them.



OS raises concerns to SG about lack of oversight over the NCPs.



22 October -26
November 2018

28 September
2018

3rd Postponement: NCPs extend their deadline to 31 March 2019



NCPs miss 31 March Deadline



11 April 2019

OS & CALS write to NCPs about the missed deadline to investigate the complaint & raise concerns about conflict of interest again.



26 April 2019: NCPs send draft initial assessment- they will not investigate complaint

23 May 2019: OS & CALS provide comment/feedback.

24 May 2019: KBC Group & KBL provide comment/feedback.

28 June 2019: Final initial assessment – the NCPs fail to engage with evidence provided and decide to not investigate the complaint.

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CALS

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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. Our vision is to 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. Read more about our work at <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. Read more about our work at <https://www.wits.ac.za/cals/>.