

CATALYSING COLLECTIVE ACTION TO COMBAT CORRUPTION IN INFRASTRUCTURE

Accountable and effective
non-judicial grievance mechanisms

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Infrastructure is vital for supporting economic growth, enhancing prosperity and well-being. G7 nations and other partnerships have committed to quality and sustainable infrastructure investments based on high standards and shared values to mobilise public and private investment. Unfortunately, infrastructure remains highly exposed to corruption and other irregular practices and lacks sufficient accountability. New and innovative approaches to tackle corruption are needed to address these challenges. This policy paper focuses on collective action and multi-stakeholder non-judicial grievance mechanisms to support early detection, prevention, and reporting of corruption. It highlights three mechanisms, namely, the National Contact Point for Responsible Business Conduct, the High Level Reporting Mechanism, and the Integrity Pact, which are well-suited to addressing corruption risks across the infrastructure lifecycle. As countries increase infrastructure investment and look to attract private financing, there is an opportunity to harness multi-stakeholder solutions that address corruption, de-risk projects and ensure finance meets its intended purpose.

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Foreword

Infrastructure is vital for supporting economic growth, enhancing prosperity and well-being. G7 nations and other partnerships have committed to quality and sustainable infrastructure investments based on high standards and shared values. A key goal is to mobilise both public and private investment to bridge the large and growing infrastructure investment gap necessary to meet the Sustainable Development Goals, Paris Agreement and to support post-conflict reconstruction.

Unfortunately, infrastructure remains highly exposed to corruption and other irregular practices (human rights violations, lack of enforcement of environmental or labour regulations, etc.). This is due to, *inter alia*, the high value of contracts, the complexity of projects, the multiplicity of public-private actors involved across the infrastructure lifecycle and a lack of accountability of infrastructure development and investments. Recognising that the fight against corruption is not something that can be done alone, recent policy commitments, like the Blue Dot Network, highlight the need for new and innovative approaches to tackle corruption, which build on collective action and multi-stakeholder approaches.

This policy paper focuses on the use of multi-stakeholder non-judicial grievance mechanisms as a means to complement the existing toolbox of measures and approaches that address corruption and other irregular practices in the infrastructure sector. It highlights three mechanisms, namely, the *National Contact Point for Responsible Business Conduct*, the *High Level Reporting Mechanism*, and the *Integrity Pacts* as innovative approaches to addressing bribery and corruption through harnessing the strengths and resources of multiple stakeholders across the infrastructure chain. These mechanisms are, to varying degrees, well adapted to early detection, prevention and reporting of corruption and other irregular practices and are potentially well-suited to addressing risks across the infrastructure lifecycle.

These unique mechanisms have a track record of addressing particular concerns related to irregular practices in infrastructure and have the potential to be scaled up internationally, with the added value of being a strong and visible way to translate commitments into action. As countries increase infrastructure investment and look to attract private financing, there is an opportunity to harness multi-stakeholder solutions that address corruption, de-risk projects and ensure finance meets its intended purpose.

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The OECD Trust in Business Initiative is a public-private platform for leaders to catalyse good corporate conduct, examine market incentives for business decision-making and respond to the expectations of society in meeting current and future challenges.

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1 Introduction

Infrastructure and corruption: High demand, lots of money, too much risk

Quality infrastructure is vital for supporting economic growth, enhancing prosperity and well-being. Quality infrastructure investment has the potential to stimulate the post-COVID-19 economic recovery, support post-conflict reconstruction, catalyse the green energy transition, meet urgent commitments to the Paris Climate Agreement and strengthen democratic values through upholding fair and open market conditions. Despite the urgent need for global infrastructure investment, it is estimated that there is an investment gap of USD 2.5 to 3.5 trillion per year to deliver the Sustainable Development Goals in a manner consistent with Paris Agreement (OECD, 2020^[1]). The public sector and tax payers will not be able to fill this investment gap alone, therefore it will be essential to mobilise private investment into quality infrastructure projects that live up to high standards of integrity and responsible business conduct.

According to numerous studies, the infrastructure sector is plagued with inefficiencies and is vulnerable to corruption. According to the IMF, between 30 to 50% of national infrastructure spending is lost due to inefficiencies. These inefficiencies are linked to weakness in how infrastructure projects are managed, planned, allocated and implemented,¹ making the sector especially vulnerable to corruption (IMF, 2020^[2]). The OECD Foreign Bribery Report has documented that almost 60% of foreign bribery cases occur in the infrastructure sector. (OECD, 2014^[3]) Vulnerability to corruption is accentuated in countries with weak institutional capacity for public investment, and a lack of transparency in procurement practices. It is further facilitated where corrupt officials are not held accountable through engagement with stakeholders. As discussed further below, corruption is a major threat to quality infrastructure since it results in sub-optimal infrastructure projects, skews fair competition and deters private investment due to excessive risks. To make matters worse, corruption often acts as an enabler of serious human rights abuses, and perpetuates lack of enforcement of environmental and labour obligations.

Corruption undermines democratic values and hampers economic growth. It erodes trust in business and government institutions and diverts public resources for private gain. Corruption is also a key driver of political fragmentation, and rising social and economic fragility. (OECD, 2022^[4]) Not only does corruption generate its own economic and social problems it also weakens the collective ability to address global challenges such as tackling climate change and reducing poverty. Fighting corruption is therefore essential for upholding fair and open market conditions that deliver economic and social progress, and ensure quality infrastructure serves the needs of society. (OECD, 2014^[5]) (OECD, 2016^[6])

In recognition of the need for quality infrastructure, G7 nations and other partnerships² have launched infrastructure programs to operationalise commitments to quality and sustainable infrastructure investment based on high standards and shared values. These programmes include the Partnership for Global Infrastructure and Investment (PGII) (The White House, 2022^[7]), the Global Gateway (European Commission, 2022^[8]), and the UK's Clean Green Initiative (UK government, 2021^[9]). A key goal of these programs is to assist in mobilising private investment to supplement public investment in order to help bridge the global infrastructure gap with an emphasis on low- and middle-income countries, where the needs are the greatest. However, it is an unfortunate reality that such contexts, often characterised by high levels of poverty, social inequality and conflict, are also more likely to present

corruption risks. Unless these corruption risks are addressed, international efforts to mobilise private investment will fall short of their ambitions or will not generate the desired positive impacts on livelihoods and economic development.

Initiatives are emerging, exemplified by the Blue Dot Network (OECD, 2022^[10]), **that seek to embed anti-corruption standards and best practices into infrastructure development, and thus contribute to reassuring investors regarding their potential exposure to risks** (Box 1). By promoting and rewarding projects that are aligned with international standards, the Blue Dot Network presents a significant opportunity to level the playing field globally and ensure that corruption does not erode the benefits of infrastructure for all.

Box 1. The Blue Dot Network: A trusted global framework for quality infrastructure investment

The Blue Dot Network certification framework for quality infrastructure seeks to empower stakeholders to make trusted and well-informed infrastructure development decisions that take into account the long-term costs and benefits of proposed projects. The framework synthesises over 80 international quality infrastructure standards, exemplified by the G20 Principles for Quality Infrastructure Investment, the IFC Performance Standards, the Equator Principles, and the OECD Guidelines for Multinational Enterprises, among others, into a single framework to maximise the positive economic, social, environmental and development impact of infrastructure.

The OECD is providing technical support for the development of the Blue Dot Network to ensure that it is impactful and evidence-based. In a survey of stakeholders across the infrastructure ecosystem, the OECD identified corruption and political risks as among the main obstacles to increasing the role of private sector infrastructure investment in emerging economies. The Blue Dot Network certification provides a holistic and evidence based-approach for embedding corruption considerations throughout every stage of the infrastructure life cycle beginning with project preparation and extending through procurement, construction and operations. Recognising that infrastructure projects are complex undertakings involving multiple actors, the Blue Dot Network addresses corruption concerns from the perspective of investors, project developers, governments and civil society.

Note: An overview of the architecture and key features of the certification framework are publicly available as cited below.
Source: OECD (2022^[11]) *OECD and the Blue Dot Network*, <https://www.oecd.org/corporate/oecd-and-the-blue-dot-network.htm>.

In view of global commitments for promoting quality infrastructure investment, the time for innovative solutions, such as collective action, to address corruption has never been higher. This is reflected in renewed international policy commitments taken by governments that inform responsible business conduct, such as the 2021 OECD *Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions*, among others (see Table 1), which calls for anti-bribery collective action initiatives involving the public and private sector, alongside civil society, to address foreign bribery, bribe solicitation.³ An increasing number of national legal frameworks⁴ also recognise the need for multi-stakeholder approaches to deal with corruption.

The rationale for collective action approaches to addressing corruption is that it recognises the need for shared responsibility among stakeholders, while complementing traditional anti-corruption efforts that focus on law enforcement. Anti-corruption Collective Action that is business driven and involves partnering with civil society, as well as appropriate engagement with government, can create effective mechanisms to prevent unfair competition and corruption in infrastructure projects resulting in more transparent procedures and better value for taxpayers in the delivery of such projects. A variety of initiatives⁵ illustrate the role that anti-corruption Collective Action can play in markets where corruption

appears to be entrenched, even in relation to complex infrastructure projects.⁶ (Infrastructure Transparency Initiative (CoST), n.d._[12]; Open Government Partnership, n.d._[13])

To take an example that is based on a real case, if the government requires all bidders in a dam building tender to demonstrate that they have implemented an integrity and anti-corruption compliance programme as a condition to bid, and the conditions further require the bidders to ensure that their suppliers have similarly implemented such programmes, this provides an opportunity for an anti-corruption Collective Action. By carefully managed facilitation by civil society and training of the companies participating in the initiative, it is possible to bring together businesses with their suppliers to identify what an anti-corruption compliance programme entails, and enable companies to support the development and implementation of effective procedures to reduce the risks of corruption. Anti-corruption Collective Action can therefore promote fair competition, level the playing field among competitors, and support approaches that are based on corruption prevention. (OECD, 2018_[14]; Basel Institute on Governance, 2015_[15]; n.d._[16])

Engagement in anti-corruption Collective Action provides an avenue for companies to share their challenges in relation to corruption risks, knowledge of how to address those risks, best practices and tools that can be brought together in order to strengthen corporate compliance, thus contributing to raised standards of business integrity which move beyond compliance. Collective Action initiatives have also resulted in the development of industry standards and guidelines⁷ and, in some cases, have even catalysed legal reforms.⁸ By engaging in Collective Action, larger companies (often multinationals) can demonstrate their values to customers, investors, business partners and employees. These commitments also have the potential to influence supply chains including small and medium-sized businesses that are seeking larger companies as customers, including in complex infrastructure projects.

These actions help to raise transparency and accountability and address systemic corruption in jurisdictions where it remains the status quo by getting actors to coalesce around a “collective good” and rebuilding trust where it may have eroded. Indeed, research on behavioural insights point to the fact that formal enforcement measures may not be enough to cultivate trust among stakeholders, which collective action can help address. At the same time it is acknowledged that anti-corruption efforts need to be tailored to context and a major challenge to address is political will.

Collective action – A case for non-judicial grievance mechanisms

Collective action approaches to address bribery, other forms of corruption or irregular practices, and which promote a level playing field can take multiple forms. This paper will focus on multi-stakeholder non-judicial grievance mechanisms,⁹ given that they offer the potential for effective, trusted and more efficient resolutions to the complainants, while causing less disruption and delay to crucial infrastructure development.

Non-judicial reporting mechanisms play an essential role in complementing and supplementing judicial mechanisms by providing a faster response and early warning system. As noted the UN Guiding Principles for Business and Human Rights, non-judicial grievance mechanisms also help to overcome legal barriers which can prevent legitimate cases from being brought forward and practical and procedural barriers (e.g. costs are prohibitive, etc.). (United Nations Human Rights, 2011_[17]; Asian Development Bank, 2010_[18])

A number of trends have increased the relevance and demand for alternative channels to air corruption related grievances in the infrastructure sector. These can be summarised as follows:

- *Meeting the inflow of financing and urgency of infrastructure investment:* The flow of financing and speed at which infrastructure projects will be mobilised – especially in view of post-conflict reconstruction and in meeting the urgency of climate transition – means that the public sector will lack capacity to anticipate all potential vulnerabilities of large-scale infrastructure projects to

corruption and other irregular practices. Early warning systems, such as non-judicial grievance mechanisms, allow for prevention and early detection of potential issues before they escalate to corruption.

- *Promoting open, transparent and accountable institutions:* Grievance mechanisms are a proactive means to support open, transparent government by building accountability and trust and ensuring that government is responsive to stakeholders' complaints and demands. (OECD, 2017^[19])
- *Building trust in business and government:* The private sector and governments increasingly recognise the importance of restoring trust in the business ecosystem and in the public sector. Businesses, employees and investors increasingly expect high standards of conduct that go well beyond the letter of the law. (OECD, 2019^[20]) For example, stakeholders need assurances that policy decisions that use public resources are taken ethically and promote the public interest. Recent surveys of trust in government demonstrate that public trust in the judiciary and legal system vary considerably across jurisdictions. (OECD, 2022^[4]) Non-judicial grievance mechanisms can offer alternative channels from the judicial system for stakeholders to air grievances and support implementation of best practices.
- *Meeting evolving expectations from stakeholders:* Government and business are facing increasing pressures and expectations from stakeholders to meet high standards of responsible business conduct. Grievance mechanisms allow for business and government to be in tune with stakeholders' expectations, to better calibrate infrastructure projects to stakeholders' needs, and to ensure that any differences or grievances are reconciled between business, government and affected communities. (OECD, 2018^[21])
- *Overcoming siloed approach to corruption in infrastructure:* A siloed approach is often used in the different policy areas that relate to infrastructure and corruption (law enforcement, financial regulation, public contracting/procurement, green or development finance, etc.). By making grievance mechanisms available to stakeholders across the infrastructure value chain, ensuring such processes become open to public scrutiny and create a stronger case for collective responsibility while helping to address blind spots.

Adding a multi-stakeholder approach to grievance mechanisms, through the involvement of civil society, business and industry, labour/trade unions, and affected communities, can reinforce the strength of such mechanisms, maximise their impact and ensure their relevance.

While there are a range of existing grievance mechanisms serving a variety of different contexts (Vermijs, 2008^[22]),¹⁰ this paper will focus on three leading mechanisms: (1) *National Contact Points for Responsible Business Conduct*, (2) *High Level Reporting Mechanisms*, and (3) *Integrity Pacts*. These tools all have their own unique characteristics which recognise the need for practical approaches combined with early warning systems, and alternative and diversified channels for reporting suspected violations of integrity and responsible business conduct.

They have also been selected because have the following characteristics: (1) they can be designed flexibly and can have a multi-jurisdictional element; (2) they are underpinned by a multi-stakeholder approach and allow for relevant stakeholders, such as civil society and the private sector to bring diverse strengths/skills (3) they can address corruption and integrity in both the public and private sectors; (4) they can address *both* the supply and demand side of corruption; and (5) they can cover a wide range of corruption issues that can have adverse impacts related to workers, human rights, the environment, consumers, among other areas.¹¹ (OECD, 2021^[23])

As noted further below, these unique mechanisms have a track record of addressing particular concerns related to irregular practices in infrastructure and have the potential to be scaled up internationally, with the added value of being a strong and visible ways to translate commitments into action. As countries increase infrastructure investment and look to attract private financing, there is an opportunity to harness

multi-stakeholder solutions that address corruption, de-risk projects and ensure finance meets its intended purpose.

The rest of this policy paper will explore particular challenges related to corruption in infrastructure; it will then provide a comparative overview of multi-stakeholder non-judicial grievance mechanisms; and conclude with some final thoughts on how collective action can support anti-corruption efforts in the infrastructure sector.

Table 1. Relevant provisions of international instruments

An increasing number of international standards and recommendations recognise the need for multi-stakeholder initiatives and collective action to address both the supply and demand side of corruption in the public and private sectors

International Instrument/Standard	Relevant provisions	Adherents
<i>OECD Recommendation of the Council on Public Integrity</i>	The Recommendation invites governments to promote a systemic approach to counter corruption and foster public integrity systems through the engagement of relevant stakeholders from civil society and the private sector. It also emphasises the importance of involving the highest political and management levels of the public sector in the fight against corruption, and further calls for high level leadership which is responsive to integrity concerns and calls for clear results and procedures for violations of integrity standards, and alternative challenges for reporting suspected violations of integrity standards including when appropriate the possibility of confidentially reporting to a body with the mandate and capacity to conduct an independent investigation (Recommendation 9).	OECD Members Argentina Peru (40 members)
<i>OECD Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions</i>	Recommendation XII (i-iv) "Consider fostering, facilitating, engaging, or participating in anti-bribery collective action initiatives with private and public sector representatives, as well as civil society organisations, aiming to address foreign bribery and bribe solicitation." The Recommendation also places emphasis on non-trial resolution, and developing diversified channels for the reporting of suspected acts of bribery and related offenses.	OECD Members 6 non members (44 members)
<i>UN Convention Against Corruption</i>	Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organisations and community-based organisations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. (Article 13)	189 parties
<i>OECD Guidelines for Multinational Enterprises</i>	The business community, non-governmental organisations, governments and inter-governmental organisations have all co-operated to strengthen public support for anticorruption measures and to enhance transparency and public awareness of the problems of corruption and bribery (para 75). Private sector and civil society initiatives also help enterprises to design and implement effective anti-bribery policies (para 78). (Chapter VII) Adhering countries shall set up National Contact Points to further the effectiveness of the Guidelines by undertaking promotional activities, handling enquiries and contributing to the resolution of issues that arise relating to the implementation of the Guidelines in specific instances...]. The business community, worker organisations, other non-governmental organisations and other interested parties shall be informed of the availability of such facilities.(Council Decision I)	OECD Members Argentina, Brazil, Bulgaria, Croatia, Egypt, Jordan, Kazakhstan, Morocco, Peru, Romania, Tunisia, Ukraine, Uruguay
Sustainable Development Goals	SDG 16 specifically deals with "Peace, Justice and Strong Institutions," and target 16.5 of this goal is "Substantially reduce corruption and bribery in all their forms." In particular, the target seeks to decrease the "[p]roportion of businesses that had at least one contact with a public official and that paid a bribe to a public official, or were asked for a bribe by those public officials during the previous 12 months."	UN Members
<i>OECD Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises</i>	Stakeholders and other interested parties, including creditors and competitors, should have access to efficient redress through unbiased legal or arbitration processes when they consider that their rights have been violated.	OECD Members
<i>OECD Recommendation on Public Procurement</i>	"foster transparent and effective stakeholder participation" (Principle VI.)	OECD Members

Source: Author. See OECD (n.d.^[24]) Compendium of OECD Legal Instruments, <https://legalinstruments.oecd.org/en/>.

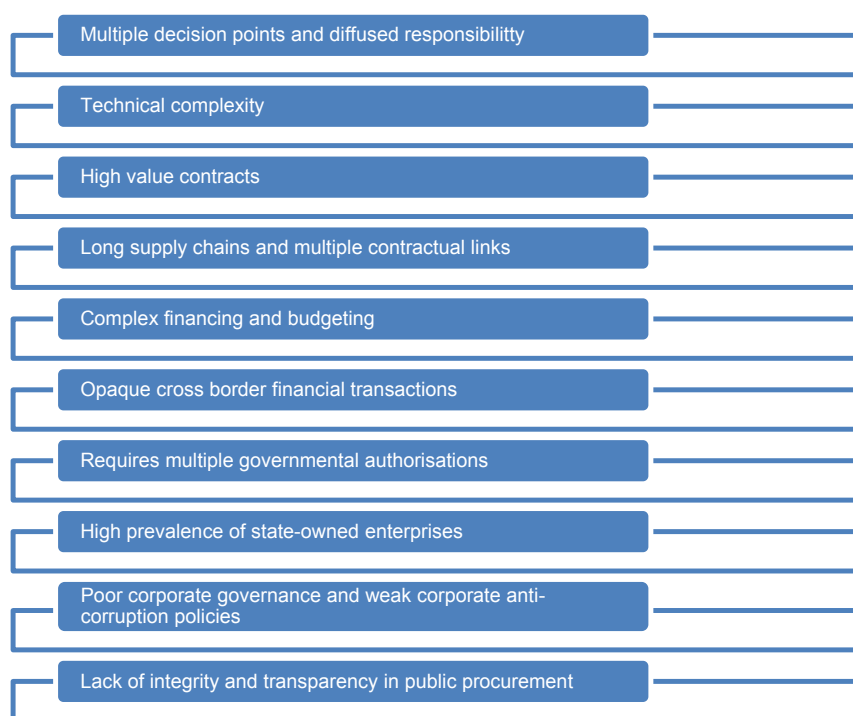
2 Infrastructure and corruption: What are the issues?

Infrastructure investment is central to achieving the Sustainable Development Goals (SDGs) and driving the transition to net zero emissions, and will be at the heart of efforts in post-conflict reconstruction. Unfortunately, infrastructure is one of the most exposed sectors to corruption risks. Almost 60% of foreign bribery cases occur in four sectors related to infrastructure – extractives (19%), construction (15%), transport and storage (15%), information and communication (10%). (OECD, 2016^[25]) Infrastructure has several characteristics that render it more vulnerable than other sectors to corruption risks. Corruption gravitates towards money, and the large sums involved in developing infrastructure projects, often running into the billions of dollars, make it a prime target for corrupt actors. The large size and complexity of most infrastructure projects create multiple opportunities and incentives for unethical acts and also make them easier to conceal. Multiple decision points and nodes diffuse responsibility therefore complicating the fight against corruption as people may not perceive themselves as part of the problem, or at least responsible for it.

Projects typically involve a diverse set of actors, long supply chains and numerous contractual links making monitoring particularly challenging (Figure 1). Infrastructure projects involve multiple financing sources, including potentially opaque cross-border financing arrangements with little transparency around beneficial ownership (G20-Insights, 2018^[26]). Further, comparisons with other projects are often difficult to make because of the heterogeneous nature of many projects, which complicates effort to determine an appropriate budget. These features make it easier to hide corrosive facilitation payments, large bribes, and inflated claims and provide avenues to launder money or facilitate tax evasion. Moreover, not all companies operating in infrastructure implement high standards of corporate governance (e.g. with requisite transparency, disclosure, accounting and auditing practices), and may lack necessary anti-corruption and integrity risk management, internal controls and procedures which can support anti-corruption prevention and detection.

Further, most infrastructure projects involve multiple interactions with governments. Projects subject to public procurement, often require public investment and require several governmental authorisations. In 2017, 83% of the USD 0.5 trillion of infrastructure investment undertaken in emerging and developing economies came from a public source, whether it be government entities or state-owned enterprises (World Bank, 2017^[27]; OECD, 2018^[28]). This creates an environment with numerous potential touchpoints for bribe-taking by public officials – especially where procurement processes lack integrity and transparency. According to the UNODC, an average of 10-25% of a public contract's value may be lost to corruption (UNODC, n.d.^[29]).¹²

Figure 1. Vulnerability of infrastructure to corruption



In effect these risks fuel the global infrastructure gap and lead to lack of quality infrastructure projects. The costs of corruption and their consequences for quality infrastructure are enormous (Table 2). These costs also hinder much-needed private sector investment due to the perception of excessive risk. A recent OECD survey of private sector and civil society actors from across the entire infrastructure ecosystem – from investors through to engineering and construction companies, operators, suppliers, end-users and civil society – confirm these risks when investing or operating in low and middle-income countries. Respondents note that excessive risk combined with weak public governance and a lack of trust in host governments as the principal factors inhibiting private infrastructure investment in low-and middle- income countries. Private sector respondents identify political risk and corruption risk (Figure 2) as the most critical risks for infrastructure in low- and middle-income countries (OECD, 2021^[30])

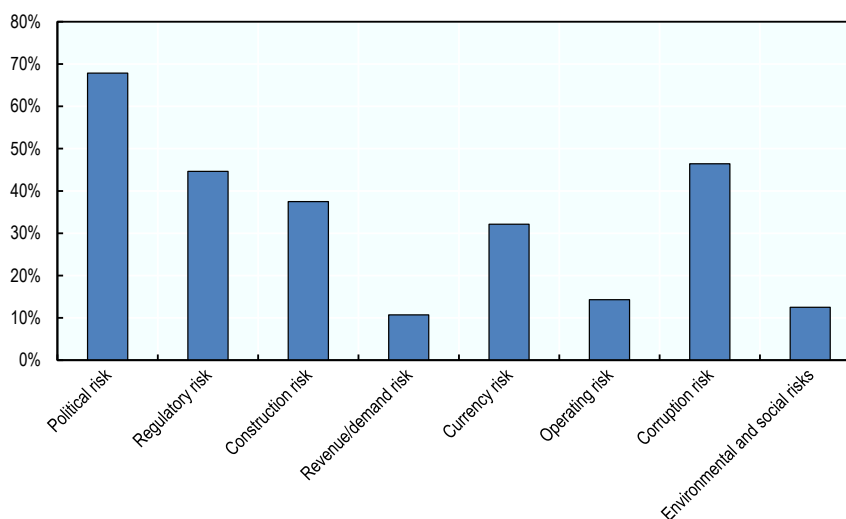
Table 2. Costs of Corruption and consequences for quality infrastructure

Costs of corruption	Consequences for quality of infrastructure
Misallocation of state revenue or diversion of funds all together	Over-investment ("white elephants") and mis-investment in infrastructure facilities, or the infrastructure is not built at all
Wasted resources	Too-expensive subsidies. Over-inflated costs in construction cause losses for taxpayers. Illicit financial flows.
Inflated prices	Bribes demanded for access to water and electricity. More expensive power supply.
Reduced quality	Low-quality roads and other constructions. Poorer utility service provisions (e.g. power cuts)
Scarcity	Network services not necessarily provided to all districts, despite contractual commitments.
Unfair allocation of benefits	Poor segments more exposed if there is government failure behind the provision of electricity, water and sanitation
Environment, health and safety	Environment impact assessments falsified or improperly executed contributing to degradation of landscape and quality of life for citizens. Low quality construction and use sub-standard or toxic materials damages health, and claims lives. Contamination of water supply, food chain and sanitary systems.
Human rights	Bribes to public officials to obtain licenses, permits or expropriation of land or other property can cause violations of human rights (e.g. improper displacement of communities) and harm to vulnerable populations
Workers' rights	Bribes to public officials or trade unions/workers' representatives to overlook labour obligations (e.g. meeting health or safety standards for workers)
Other negative consequences	Tax/accounting-related fraud. Theft of electricity supply. Embezzlement in construction

Source: Author. Adapted from OECD (2016^[25]) Integrity Framework for Public Infrastructure, <https://www.oecd.org/corruption/ethics/Integrity-Framework-For-Public-Infrastructure-Brochure.pdf>.

Figure 2. Which risks are most concerning when investing/operating infrastructure in low and middle-income countries (private sector)?

Excessive political and corruption risks, combined with weak public governance and a lack of trust in host governments are identified as the principal factors inhibiting private infrastructure investment in low- and middle-income countries



Source: OECD (2021^[30]) *Towards a global certification framework for quality infrastructure investment: Private sector and civil society perspectives on the Blue Dot Network – Highlights*, <https://www.oecd.org/daf/Towards-a-global-certification-framework-for-quality-infrastructure-investment-Highlights.pdf>.

Corruption can take many forms, ranging from small bribes to kickbacks, fraud, collusion/bid rigging/price fixing, embezzlement, extortion, influence peddling, and unlawful interest or beneficial ownership. (IMF, 2020^[2]) Infrastructure projects can also be vulnerable to broader integrity risks, and as outlined further below and in Table 3, these vulnerabilities to corruption and irregular behaviour are present throughout the lifecycle of an infrastructure project. While corruption risks may be greatest during the pre-tendering and procurement phases, they are nevertheless present throughout the life cycle. For example, during the planning phases of an infrastructure project, potential corruption risks might relate to poorly designed rules or conditions established at the outset that can unduly restrict competition. The planning of infrastructure can be unduly influenced by special interest groups skewing them towards projects which may lack public interest or economic justification.

During the pre-tendering and procurement phases, contracting procedures can be poorly designed allowing for deviations or circumvention from procedures. The risks multiply when safeguarded mechanisms towards procurement might be circumvented, for example in the case of urgent fast-tracked procurement processes necessitated by circumstances (e.g. national security, conflict zone, post-disaster, pandemic, etc.). Risks are equally present during the construction, operation or maintenance phases of an infrastructure project, for instance, the use of renegotiations of contracts to extract rents. The audit of infrastructure projects are also open to corruption, for example through manipulated audit results, facilitated by false accounting or duplicate invoicing. The risks are numerous and wide ranging, and can stem from both the public and private sector actors involved.

To address some of these vulnerabilities, traditional approaches to criminalise corruption are important but may not be sufficient to deal with the multitude of risks encountered by the sector, especially in jurisdictions with weak legal frameworks. As also noted, in countries with weak governance, capacity constraints or challenges with rule of law, the existing law enforcement mechanisms may not provide avenue for redress. As such enforcement measures must be supplemented with preventative actions that help to shape behaviours, and ultimately bring about a culture of integrity, involving a multi-stakeholder approach to address the complex and sometimes competing concerns of stakeholders. The next section will focus on three case examples of multi-stakeholder non-judicial solutions that can help to address these risks.

Table 3. Integrity or corruption risks in infrastructure lifecycle and potential multi-stakeholder solutions

Infrastructure lifecycle/procurement phase	Integrity or Corruption Risks (non-exhaustive)*	Multi-stakeholder Solutions (non-exhaustive)
Planning	<p>Poorly designed rules, and conditions that restrict competition or do not offer fair access. Interest groups use unethical or corrupt tactics to influence infrastructure planning towards special interests.</p> <p>Sharing or leaking of confidential information on strategic priorities to select group of individuals with special interest.</p> <p>Lack of independent checks on project feasibility or economic justification making them vulnerable to manipulation.</p>	<p>During the planning and tendering stages independent monitors provide feedback to contracting authorities on project feasibility, rules and conditions that are fair and promote competition.</p> <p>Engagement with civil society, business and social partners in the development of procurement frameworks to better understand risks in specific sectors, product categories, supply chains and regions.</p> <p>Public procurement authorities to establish links with oversight bodies and incorporate their expertise when developing and updating frameworks on responsible business conduct objectives in public procurement.</p> <p>Further building capacity within government by awareness raising and training.</p> <p>Whistleblowing and grievance mechanisms to monitor and report undue influence</p>
Project preparation	<p>Technical criteria is too limiting and does not meet project needs.</p> <p>Financial and/or time estimates are not realistic or misleading.</p> <p>Market investigations are not thorough enough to determine accurate value for money estimates</p>	<p>Technical criteria is reviewed by independent experts to ensure they are aligned with project specifications, maximise value for money, quality and project timelines are accurately calibrated.</p> <p>Monitoring to ensure external advisors and consultancy firms hired for project do not have conflicts of interests</p>
Design /Pre-tendering	<p>Contracting procedures are not clear, allowing for deviations or circumvention from procedures, <i>ad hoc</i> changes or undue interference.</p> <p>No clear qualification nor evaluation criteria set up in advance to form a robust basis on which to evaluate bidders (e.g. value for money, timeline, technical requirements).</p> <p>Restrictive, unclear or excessively confusing terms of reference that in practice could lead to the participation of a single competitor in a public tender, beyond what would be reasonably required from a technical perspective.</p> <p>Obstacles imposed for the concession of technical certificates and other documents required to participate in tender procedures</p>	<p>Independent experts to provide opinions and recommendations to ensure legally sound and robust contracting procedures.</p> <p>Reporting channels for alerts of potential issues to be raised through secure, easily accessible channels.</p> <p>Review and reconciliation of tender design upon recommendation of independent expert groups.</p> <p>High level and credible political commitment to ensure fair and competitive procurement.</p>
Procurement/Awarding	<p>Qualification or evaluation criteria were not observed during the contracting process.</p> <p>Open and transparent process circumvented due to special circumstances (e.g. national security, conflict, pandemic) rendering the process more vulnerable to corruption.</p> <p>Confidential information leaked to parties to put them at an advantage.</p> <p>Collusion, bid rigging or price fixing among bidders.</p> <p>Request for a bribe as a precondition for participation or selection in a public tender.</p> <p>Managing or contracting authorities are not transparent about perceived or confirmed conflicts</p>	<p>Transparent, open and fair procurement is supported by a transparent bidding process, with potential involvement of independent observers.</p> <p>Ensure that qualification and evaluation criteria were observed by contracting authorities, according to the established contracting documentation.</p> <p>Enhanced the contracting authorities' capacities to detect conflicts of interests, and proposed mechanisms to manage them and to prevent undue influence.</p> <p>Develop early warning system to find practical solutions to defuse potential</p>

	<p>interests, or there are no established reporting mechanisms to address them. Potential irregularities, fraud or corruption are not signaled to the appropriate authorities or reporting mechanism. There are no established mechanisms for whistleblower to lodge complaints or no adequate whistleblower protections in place.</p>	<p>corruption-related issues before they are taken up by law enforcement. Provide transparent non-judicial grievance mechanism resolution mechanism with powers to expedite dispute resolution, mediation or remedial action. Establish effective and diversified means to report potential irregularities, fraud or corruption, beyond traditional whistleblowing mechanisms. In case of detection of potential fraud and corruption, collaboration with appropriate authorities allowing them to review the case and adjust the contracting project to mitigate the risks.</p>
<p>Construction/Operation Maintenance Decommisioning and Audit/Monitoring and evaluation</p>	<p>Not enough public awareness, scrutiny or community engagement in projects. Lack of grievance mechanisms to report issues with responsible business conduct. Collusion resulting in sub-standard materials or work and increased contract price and poor quality infrastructure. Undue delay in customs clearance of perishable and other goods. Uneven interpretation of regulations, leading to unreasonable difficulties for the attainment or renewal of commercial licenses or the fulfilment of other rights. Requests for overpayment of governmental fees. The use of bribes to extract rents through renegotiations. Changes to tariffs or regulations to favour special interests. Denial or unreasonable delay of value-added tax (VAT) refund. Audit results manipulated, false accounting or duplicate invoicing</p>	<p>Independent third party scrutiny of projects who keep the public informed. Accessible easy-to-follow information on technical decisions in relevant languages, informing affected communities and beneficiaries. Involvement of citizens in monitoring and observation. Ex-post evaluation of contracts for improvement of contracting policies for future projects undertaken by external independent auditors (vetted for conflicts of interest). Ex-post evaluation of project for improvement of regulations, laws and directives. Identification of systemic issues and recommendations to address them.</p>

Note: *This table focused mainly on risks which can be addressed by multi-stakeholder solutions. For comprehensive documentation of corruption/integrity risks in public procurement refer to (OECD, 2016⁽³¹⁾) and (IMF, 2020⁽²⁾)
Source: Author based on OECD (2021⁽³⁰⁾) *Towards a global certification framework for quality infrastructure investment: Private sector and civil society perspectives on the Blue Dot Network – Highlights*, <https://www.oecd.org/daf/towards-a-global-certification-framework-for-quality-infrastructure-investment-highlights.pdf>, Transparency International (2021⁽³²⁾) *Safeguarding EU-Funded Investments with Integrity Pacts: A Decision-Maker's Guide to Collaborative Public Contracting Monitoring*, https://images.transparencycdn.org/images/2021_Safeguarding_EU_funded_investments_with_Integrity_Pacts.pdf, OECD (2020⁽³³⁾) *Integrating Responsible Business Conduct in Public Procurement*, <https://doi.org/10.1787/02682b01-en>, OECD (2018⁽²¹⁾) *Mapping Corruption Complaints Mechanisms in Greece*, <https://www.oecd.org/governance/ethics/mapping-corruption-complaints-mechanisms-greece-en.pdf>, OECD (2016⁽²⁵⁾) *Integrity Framework for Public Infrastructure*, <https://www.oecd.org/corruption/ethics/Integrity-Framework-For-Public-Infrastructure-Brochure.pdf>, and IMF (2020⁽²⁾) *Well Spent: How Strong Infrastructure Governance Can End Waste in Public Investment*, <https://doi.org/10.5089/9781513511818.071>.

3 Infrastructure and corruption: An overview of multi-stakeholder non-judicial grievance mechanisms

Recognising the need for innovative approaches to tackle the challenges related to corruption and integrity in the infrastructure sector, collective action has become prominent in the global anti-bribery landscape. Collective Action initiatives take multiple shapes and forms, and are becoming a more prominent prevention tool. As noted the focus of this paper will be on multi-stakeholder non-judicial grievance mechanisms as a means to provide alternative and diversified channels for efficient reporting and processing of suspected violations of integrity standards.

Non-judicial grievance mechanisms are recognised by the literature to be a critical part of a larger set of measures that promote transparency and accountability (Chene, 2007^[34]). They have been deployed in a wide range of sectors, for example to handle concerns about the delivery of development aid or finance; for business in the form of ombudsmen; in public service delivery; in human rights and environmental protection; to protect worker’s rights; to address corruption risks, among others.

The establishment of a grievance mechanism is a useful “early detection” mechanism to establish a culture of “zero tolerance,” transparency and integrity, which is especially important in infrastructure given that they offer the potential for effective, trusted and speedier resolutions, while causing less disruption and delay to crucial infrastructure development. (OECD, 2018^[21]) When they are effective and have the appropriate capacity, they can act on potential corruption instances or risks, which can avoid potential escalation (e.g. through the courts). Moreover, they can serve as an effective means to map systemic corruption risks, identify sensitive areas or processes that may be vulnerable to corruption, and serve as a feedback loop into diagnosing problems and developing recommendations on how to address them. Another important role that grievance mechanisms play is to empower beneficiaries and ensure that there are multiple channels for recourse, which avoid “last resort solutions” (e.g. courts, escalation, media campaigns, public scandals, etc.) (Chene, 2007^[34]) Finally, establishing grievance mechanisms help to create broader public awareness and demonstrate political will to fight corruption, while helping to restore trust, achieve greater satisfaction with public services and business organisation.

As further detailed below, in order for grievance mechanisms to be effective they will require a number of “essential ingredients,” which will be unique to each mechanism. Broadly speaking, they must inspire trust, confidence and empower parties to come forward, and, as necessary, adequately protect reporting parties from reprisals.¹³ Many grievance mechanisms are not equipped with “enforcement” or “sanctioning” ability, and employ varying degrees of “soft” vs. “hard” measures. Some grievance mechanisms may also have the ability to refer the issue to other instances (e.g. arbitration, courts, law enforcement, etc.) if/as necessitated and work to complement them. (Chene, 2007^[34]) To be effective, grievance mechanisms must also establish “due process,” e.g. to be impartial, equitable, predictable, easy to access, cost-effective, transparent and ensure fairness in the outcome and resolution of the complaint. (United Nations Human Rights, 2011^[17]; OECD, 2018^[21]; Asian Development Bank, 2010^[18]) The procedures should also

ensure that cases are handled with due cause, and not intended to facilitate “economic rivalry” or unfair competition between market participants (OECD, 2021^[35]).¹⁴

As this paper argues, the need for complementary approaches to non-judicial grievance mechanisms as applied to the infrastructure sector stem from the fact that:

- Infrastructure projects need approaches that can address the full life cycle, and different tools will be necessary across the life cycle
- Jurisdictions face different kinds of problems and thus need a broad set of tools that they can customise to their needs (for example HLRM and NCPs have more of a focus on reporting, while IPs places emphasis on detecting)
- Various levels of authority can be involved or invoked under the different approaches
- Flexible frameworks can support better calibration based on project/life cycle needs and complement existing institutional mechanisms
- Implementation ability and capacities will differ greatly across and within jurisdictions and justify multiple and diverse channels to address corruption
- Varying approaches support raised awareness of the issues and provide alternatives to different groups of stakeholders
- Complexity of corruption means that public, private and civil society actors can each make a contribution to addressing corruption risks, while addressing issues from both the supply and demand side
- Diversity of infrastructure contracting projects makes it unlikely that a single solution exists for preventing and addressing mismanagement, fraud and corruption risks
- Judicial mechanisms may come with barriers to access (e.g. courts have strict standing or jurisdictional requirements)
- Timeliness, early-warning detection needs, speed, confidentiality needs, financial sustainability, project-specific or long-term institutional framework needs will differ across projects, sectors and jurisdictions.

The remainder of this section will provide a non-exhaustive comparative overview of complimentary non-judicial grievance or complaints handling mechanisms which are based on multi-stakeholder or collective action approaches. Drawing on three examples that lend themselves well to the infrastructure sector: the National Contact Point for Responsible Business Conduct (NCP), High Level Reporting Mechanism (HLRM), and Integrity Pact (IP). The comparative overview details the characteristics, institutional arrangements, mandate, country coverage, procedures and scope of the mechanisms to deal with prevention and reporting of corruption. It should be noted that while each of these mechanisms are distinct, they can be (and in some cases have been) used together to maximise their impact. For example, a large scale public procurement project with multiple contracts might require an HLRM for the whole process, whereas an Integrity Pact can be formalised between bidders/contracting authorities and civil society organisations during the pre tendering and tendering phase. These mechanisms have also been used in jurisdictions that already have a National Contact Point, which can help to address responsible business conduct concerns such as serious human rights abuses, lack of enforcement of environmental and/or labour obligations which corruption often enables. Thus, while presented comparatively, each of these mechanisms can work in parallel and complementary ways.

Table 4. A comparative overview of multi-stakeholder non-judicial grievance mechanisms

This non-exhaustive overview compares three well-known non-judicial grievance or complaints handling mechanisms which are based on multi-stakeholder or collective action approaches and have been used as corruption prevention, detection and reporting tools for infrastructure projects.

	Characteristics	Institutional arrangement	Mandate	Country Coverage	Procedure	Scope	Who can bring forward grievances	Life cycle
National Contact Point for Responsible Business Conduct	Senior level Flexible but functionally equivalent Multi-stakeholder	Typically a Government agency multi-stakeholder or expert body established by government	Promote MNE Guidelines Facilitate the resolution of issues related the Guidelines' implementation as a non-judicial grievance mechanism.	Cases relating to alleged non-observance of any MNE Guidelines provision by enterprises operating in or from the territories of adherent countries.	3 Phases typically resolved in over 1 year (or more) Initial assessment Good offices (mediation or conciliation) Conclusions and publication of final statement (may contain recommendations)	Corruption set out in the MNE Guidelines' chapter VII: bribery, bribe solicitation and extortion. In practice, only 8% of cases deal with corruption	Any person or organisation with legitimate interest to report alleged non-observance of the MNE Guidelines. Emphasis on reporting.	Available throughout a project lifecycle, and ex-post.
High Level Reporting Mechanism	High-level Rapid Flexible Tailor made Multi-stakeholder	Secretariat High-level-stakeholder committee Independent technical advisors	Resolve specific grievances Identify systemic issues arising from recurring corruption claims. Propose reforms to the government.	Any jurisdiction Project specific	4 step process Typically resolved in a few day or weeks Remediation, Conciliation Recommendations (case related and broadly to address systemic issues)	Tackles implicit or explicit corruption mainly from the demand side: bribery solicitation, suspicious behaviour or collusion between market participants and other similar concerns.	Any company participating to a public contracting tender. Emphasis on prevention, detection and reporting.	Convened throughout project lifecycle.
Integrity Pacts	A Pact Flexible Real time Multi-stakeholder	Collective action initiative, formalised through binding agreement. Multi-stakeholder external monitor	As defined by the contract. It can include sanctions in case of non-compliance with contract terms.	Any jurisdiction Project specific	Adhere to Pact terms. External monitor reviews procurement procedures. Recommend sanctions or remedial action Recommendations (relating to procurement laws)	Corruption, good governance, transparency, business integrity and social accountability in procurement	Any stakeholder involved in the Pact. Emphasis on prevention, detection and reporting.	IP signed at the outset of the procurement process.

National Contact Points

Characteristics

National Contact Points for Responsible Business Conduct (NCP for RBC) are agencies established by governments with the mandate of furthering the effectiveness of the OECD *Guidelines for Multinational Enterprises* (MNE Guidelines).¹⁵ The MNE Guidelines reflect the expectation from governments to businesses on how to act responsibly. All 51 governments adhering to the MNE Guidelines have a legal obligation to set up an NCP. Today, NCPs make up a network and a community of practitioners, dealing with a wide array of issues involving companies either through their operations or their supply chains. The NCPs mandate is two-fold: (1) to promote MNE Guidelines and (2) to handle cases as a non-judicial grievance mechanism by providing access to non-adversarial means to facilitate the resolution of issues related to the implementation of the MNE Guidelines by companies.

The main way through which NCPs seek to resolve such issues is by offering their “good offices” to the parties and seek to facilitate an agreement between the submitter and the company through non-adversarial methods such as mediation or conciliation (see Annex A for details on the procedures).

Institutional arrangements

Countries have flexibility in organising their NCPs. Different possible institutional arrangements include: single agency, interagency, multipartite and expert-based, with hybrid structures possible – the two former models being the most common institutional set-up. An NCP can typically consist of senior representatives from one or more Ministries, a senior government official or a government office headed by a senior official, an interagency group, or a mechanism that involves independent experts (e.g. academics). Most NCPs are not independent from government, nor do the Guidelines require them to be. Yet, whether they are functionally independent or not, NCPs should be capable of fulfilling their mandate to further the effectiveness of the Guidelines without adverse governmental or other influence. (OECD, 2019^[36])

According to the MNE Guidelines Procedural Guidance, the NCPs should gain and maintain the confidence of stakeholders, and to that effect develop and maintain relations with representatives of the business community, worker organisations and other interested parties that are able to contribute to the effective functioning of the MNE Guidelines and the Procedural Guidance also note that governments can establish multi-stakeholder advisory or oversight bodies to assist NCPs in their tasks (Procedural Guidance I.A).

The NCPs are composed and organised such that they provide an effective basis for dealing with the broad range of issues covered by the Guidelines and enable the NCP to operate in an impartial manner while maintaining an adequate level of accountability to the adhering government. At the same time, the diversity in NCP structures and rules of procedures for handling specific instances has led to different approaches and strategies (e.g. on how to implement the requirement of impartiality). (OECD, 2011^[37])

Once the NCP is established, it is intended to remain as a permanent feature of the institutional landscape. NCPs must achieve “functional equivalence” across jurisdictions that are party to the MNE Guidelines. This means that they must function with an equivalent degree of effectiveness. As compared with the HLRM and or IP, the NCP is not invoked on project-specific basis but rather is a permanent mechanism through which grievances in the implementation of the MNE Guidelines by any company operating in or from its country and in any context (infrastructure-related or not) are handled by adhering countries on an on-going basis.

Box 2. Essential ingredients for successful implementation of National Contact Points

Core criteria for functional equivalence:

Visibility: Knowledge of NCPs must be readily available to the public and stakeholders, and adherents should take an active role to promote the MNE Guidelines.

Accessibility: NCPs follow an overall process but can have practical differences in the procedures followed in practice. Each NCP has established their specific rules of procedure. According to their core criteria, NCPs must remain accessible.

Transparency: Clear communication of decisions to parties in line with Procedural Guidance.

Accountability: NCPs should be held accountable in their work and their effectiveness can be assessed by competent bodies.

Guiding principles for functional equivalence:

Impartiality: Enabling the NCP to operate in an impartial manner. NCP institutional arrangements enable them to operate in an impartial manner while maintaining an adequate level of accountability to the adhering government. Different mechanisms exist across institutional set-ups that allow for this (e.g. firewalls, clear roles and responsibilities, isolation from conflicting portfolios, strict confidentiality rules, and transparent nomination and appointment procedures, conflict of interest policies). (OECD, 2022^[38])

Predictability: NCPs should ensure predictability on their role in the resolution of specific instances, including the provision of good offices, the stages of the specific instance process including indicative timeframes, and the potential role they can play in monitoring the implementation of agreements reached between the parties. Timeline for initial assessment should not exceed three months and involve analysis of six criteria used in the procedural guidance.

Compatibility: NCPs should operate in accordance with the principles and standards contained in the Guidelines.

Equitable: NCPs should ensure parties engage on fair and equitable terms (e.g. reasonable access to information sources).

Other institutional requirements:

Resources: Making available necessary human and financial resources.

Expertise: Composing and organising their NCP in a way that provides an effective basis for dealing with the broad range of issues covered by the Guidelines.

Senior leadership: Having senior officials or experts lead the NCP is an important element to ensure its legitimacy and credibility, and supports its institutional clout.

Stakeholder engagement and confidence: Seeking the active support of social partners, developing and maintaining relations with stakeholders and retaining their confidence.

Source: OECD (n.d.^[39]) *How do NCPs handle cases?*, <http://mneguidelines.oecd.org/ncps/how-do-ncps-handle-cases.htm>; OECD (2022^[38]) *Guide for National Contact Points on Building and Maintaining Impartiality*, <http://mneguidelines.oecd.org/guide-for-national-contact-points-on-building-and-maintaining-impartiality.pdf>; OECD (2011^[37]) *OECD Guidelines on Multinational Enterprise*, <https://www.oecd.org/daf/inv/mne/48004323.pdf>.

Mandate

The NCPs' scope is, arguably, broader than the HLRM and the Integrity Pact, insofar as the NCP is mandated to address all aspects covered by the MNE Guidelines and related due diligence guidance: human rights, employment and industrial relations, environment, bribery, bribe solicitation and extortion, consumer interests, science and technology, competition and taxation. To date, NCPs have collectively handled over 620 cases addressing a wide variety of business impacts (OECD, 2022^[40])

To deliver on their mandate in the dynamic field of responsible business conduct, NCPs must constantly build their knowledge and capacity. To assist with this aspect, the OECD is implementing an "Action Plan to Strengthen NCPs." The current action plan is for the period 2022-24 which aims to (1) peer review the NCP mechanism; (2) raise the visibility of the NCP, promote stakeholder engagement with NCPs and thus raise confidence in the mechanism; (3) ensure efficient and effective handling of specific instances. (OECD, 2022^[40])

Coverage

The NCPs are a legal requirement under the MNE Guidelines and operate with a mandate covering all 'enterprises operating in or from their territories' which enables the NCPs to handle cases involving companies headquartered in the NCP country and operating in it; in any other country and operating in the country of the NCP, and in the NCP country and operating in any other country. As such there can be a cross-jurisdictional element to the reach of the NCP and extra territoriality given the above conditions.

That being said, the NCPs scope of action is limited to the MNE Guidelines. As such cases can be rejected if: (1) NCP is incorrect entity to assess the alleged non-observance; (2) case does not contribute to effectiveness of MNE Guidelines; (3) the case is not material or substantiated (most common); (4) there is no link between enterprise activities and issue raised; (5) identities of parties concerned /involved and their interest in the matter is not clear; (6) if there is no relevance of applicable law and procedures including court rulings; or (7) if there are parallel proceedings.¹⁶

Scope to address corruption

As noted above the NCPs address a broad range of matters. Those that touch upon corruption are covered by the MNE Guidelines chapter VII, which calls on enterprises not to directly or indirectly, offer, promise, give, or demand a bribe or other undue advantage to obtain or retain business or other improper advantage. Chapter VII also expects enterprises to resist bribe solicitation and extortion, and to refrain from making illegal contributions to candidates for public office, political parties or other political organisations. To achieve these aims, the chapter underscores the need for enterprises to develop and adopt adequate internal controls, ethics and compliance programmes, or measures for preventing and detecting bribery through risk-based due diligence.

The focus on bribery of both public officials and private sector employees allows NCPs to address the many contexts in which bribery may occur. The focus on transparency, and risk-based internal controls, ethics and compliance programmes enables prevention and detection. However, issues such as lobbying and conflicts of interest, "culture of integrity" in the public or private sector are areas that are not addressed by the existing chapter VII of the MNE Guidelines and thus not covered by the scope of NCP intervention. (OECD, 2021^[41]) A recent survey of cases submitted to NCPs notes that corruption has been invoked in 8% of the total cases since 2011. Moreover, there is a tendency for NCPs to focus their initial assessments and final reports on the other chapters and not comment on issues related to chapter VII. A recent stocktaking evaluating implementation of the MNE Guidelines, attributes this to the fact that (1) bribery is a criminal offence in most jurisdictions; (2) company reluctance to admit to engaging in acts of bribery; (3) the view of corruption as a 'victimless crime' (OECD, 2021^[41])

Box 3. Selected case studies of National Contact Points

Mining in Liberia (2011)

In January 2011 the Netherlands National Contact Point (NCP) received a request for review from the NGOs Friends of the Earth (FoE) and the Sustainable Development Institute (SDI)/FoE Liberia alleging that ArcelorMittal had breached the combatting bribery, and general policies provisions of the Guidelines in Liberia. Among numerous allegations, FoE and SDI's concerns included:

- Arcelor Mittal's donation of 100 pick-up trucks to the Government of Liberia in August 2008
- Misappropriation and misuse of the County Social Development Fund, managed by both ArcelorMittal and the Government of Liberia
- Lack of communication with local communities about the impact of ArcelorMittal's operations
- Potential mining or exploration in the East Nimba Nature Reserve.

ArcelorMittal rejected the allegations made against it. The NCP determined the first allegation to be outside of its mandate but believed FoE provided sufficient information on the remaining allegations and, after completing the initial assessment, it offered to provide mediation assistance to both parties. The parties agreed to mediation by an expert mediator, Dr. Maartje van Putten, with the aim to draft a proposal for improving management of the County Social Development Fund.

Two fact-finding missions took place and the parties met multiple times in 2012 and 2013. The end result was a mutually agreed upon document recommending that the County Social Development Fund be transformed into a Trust or Foundation as an independent body composed of representatives from the government, civil society organisations, and ArcelorMittal. In addition, a 'board for grievances' would be available to hear appeals concerning funded projects.

Society for Threatened Peoples Switzerland & BKW Group (2009)

In January 2009, the NGO Future in Our Hands submitted a specific instance to the Norwegian NCP, alleging that Intex Resources, a company active in the mining and extractives sector, had not observed the MNE Guidelines chapters on General Policies, Environment and Combating Bribery in relation to a nickel project in the Philippines. The issues related to alleged flawed consultations with indigenous populations, bribery and corruption, and impacts of the project on vital water resources of neighbouring villages and agricultural fields.

In 2010, the NCP decided to conduct on-the-ground fact-checking through the Norwegian embassy in Manila, which hired independent experts and a social anthropologist to examine the allegations. On this basis, the NCP offered mediation to the parties, but the company declined. The Norwegian NCP therefore concluded in 2011 that Intex had failed to undertake a systematic assessment of the affected indigenous groups and had not properly consulted the affected groups, and that its environmental impact assessment was insufficient. The NCP made several recommendations to the company in this regard. It found no evidence indicating that Intex was involved in bribery or corruption but recommended that the company establish a solid managerial system to manage such risks.

Source: OECD (2020^[33]) *Integrating Responsible Business Conduct in Public Procurement*, OECD Publishing, Paris, <https://doi.org/10.1787/02682b01-en>; OECD (2021^[41]) *Stocktaking report on the OECD Guidelines of Multinational Enterprises*, <https://mneguidelines.oecd.org/stocktaking-report-on-the-oecd-guidelines-for-multinational-enterprises.pdf>; OECD (2020^[42]) *National Contact Points – Instances*, <http://mneguidelines.oecd.org/database/instances/ch0020.htm>.

High Level Reporting Mechanism

Characteristics

The High-Level Reporting Mechanism (HLRM) is an alternative to traditional judicial and administrative procedures for dispute resolution system for business. The goal is to provide a tool to facilitate the reporting of potential occurrences of bribery and address complaints early on in order to resolve problems before they escalate. HLRM can be used in the context of public procurement procedures, business permitting and licenses or customs and tax disputes to respond to incidences – explicit or implicit – faced by companies in their dealings with public officials. It can also be used to signal irregularities during a public contracting process, for example if there is suspected collusion between market participants, and then used throughout the life cycle of the infrastructure project.

The key defining element of the HLRM is the involvement of the highest levels of government to set the tone-from-the-top and political will to fight corruption and other irregular practices. This feature helps to overcome reluctance from the business side to report corruption solicitations to governmental entities where these take place. On the governmental side, the mechanism helps to overcome bottlenecks and institutional inertia, or where existing administrative channels for complaint's handling are not trusted or lack the clout to produce results.

Another unique feature of the HLRM is the expediency at which complaints should be handled. HLRM is intended to find a rapid, pragmatic and efficient response to resolve anomalies primarily in public procurement processes. Its overall aim is to help reduce the cost of doing business for actors in infrastructure investment, mitigating reputational risk, ensuring project credibility, lowering legal costs, increasing market confidence, and ultimately ensuring quality infrastructure.

As noted in Box 4, one essential ingredient for successful implementation of the HLRM is in its ability to fill a gap within the framework of existing tools. HLRM is particularly relevant as part of the arsenal of existing measures in government in highly complex and technical projects that can arise in procurement, making it particularly well suited for infrastructure projects. HLRM can be designed as a project-specific tool, thus allowing its institutional design and pool of expertise to be fit-for-purpose. It can be called upon when necessary to the project, for instance PPP/concession contracts often involve renegotiations which can create opportunities for corruption. Technical expertise is critical for the credibility of the mechanism (e.g. criminal law, crime identification, public procurement, engineering, finance), which may also evolve over the lifecycle of an infrastructure project. As such, the pool of expertise drawn upon by HLRM can adjust accordingly.

Box 4. Essential ingredients for successful implementation of the High Level Reporting Mechanism

Filling a genuine gap: This tool can fill a gap within the framework of existing tools, such as where the judiciary is ineffective or too slow; or where the existing administrative channels for complaint's handling are not trusted or lack the clout to produce results.

Political will and tone from the top: It is vital for the countries implementing HLRM demonstrate a tone from the top in terms of their willingness to fight corruption and other irregular practices, and to facilitate the work of the Mechanism, not hinder it. Thus strong political will and high-level commitment are essential.

High level and fit-for-purpose design: The mechanisms must be genuinely high-level, but carefully designed and with the appropriate institutional design for it to be successful. As such the design of HLRM is meant to be flexible enough to adapt to the reality and context of the implementing jurisdiction.

Objectivity, integrity and procedural fairness: The HLRM institutional arrangement must ensure there are no potential or actual conflicts of interest, that the HLRM is shielded from undue public or private interference which could impede the ability of the HLRM to interview with objectivity, integrity and procedural fairness.

Expertise: The HLRM should avail itself of the option to consult relevant external expertise as needed, and to fill technical gaps, especially in procurement related to complex infrastructure projects.

Confidentiality: Ensuring that complaints that are handled by the HLRM are handled with confidentiality, and in some cases may additionally require anonymity to encourage reporting of incidents. The design will be largely reflective of the reality and context of the implementing jurisdictions.

Publicity and awareness: The HLRM tool should be widely communicated to stakeholders and its various features, design and institutional arrangements should be clear to the public.

Resourcing: The HLRM should be sufficiently resourced to operate, at the same time its design and implementation can be time-bound and established on a project specific basis to ensure the costs/resources allocated are proportionate to the scale of the infrastructure project. Nevertheless, the HLRM can remain a potential tool throughout the life cycle of a project. The funding arrangements should ensure that it can operate independently without undue influence or potential/actual conflicts of interest.

Additional aspects: The design of the HLRM might allow for other stakeholders to lodge complaints, beyond companies involved in a tender. The design of the HLRM may or may not require a legal basis which will be dependent on the reality and context of the implementing jurisdiction.

Source: OECD (2020^[42]) *National Contact Points – Instances*, <http://mneguidelines.oecd.org/database/instances/ch0020.htm>.

Institutional arrangements

HLRM is not a one-size-fits-all approach. It is designed by representatives of the public sector, business, civil society and other stakeholders to accommodate the needs and situation of a jurisdiction or a given project. Its institutional design is tailored to the implementing jurisdiction, and should complement as an informal alternative to formal dispute resolution mechanisms (e.g. courts). In some jurisdictions, where a HLRM may not be suitable to the institutional context, such a grievance mechanism can be established as a separate business ombudsman.¹⁷

The HLRM usually consists of a Secretariat and an oversight body (e.g. supervisory board or multi-stakeholder committee):

- The Secretariat is comprised of a group of technical experts, receives and screens complaints according to pre-established requirements. Once the complaints are substantiated, a thorough analysis is made to assess concerns. Where identified, these are brought by the experts to the Head of the HLRM. The latter then issues recommendations to the relevant public entities, to discuss results found and to reach agreement on initiatives to effectively address concerns.
- An oversight body, such as a multi-stakeholder committee or supervisory board, is intended to provide a system of checks and balances and ensure the HLRM is effective and fulfils its mandate. This body could review reports and recommendations issued by the Mechanism, monitor results, and provide strategic guidance and suggestions for improvement. Its composition could include persons of standing and integrity from government, private sector, financial institutions, international organisations and civil society. (G., 2018^[34])

The HLRM is a mechanism that intervenes early on to avoid escalation and aims to address problems at their root. It is also established on a flexible basis and can be applied to an entire sector or on a single project basis. Institutional arrangements are not intended to be fixed – if not necessitated. For example, a single HLRM can respond to a broad cross-section of industries, or it can be tailored to a specific industrial sector (e.g. maritime sector), or serve the requirements of business in relation to a particular public process (e.g. business licensing, customs/tax clearance, public procurement). A HLRM can also start out on a small scale as a pilot, before being rolled out more broadly. (OECD/Basel Institute on Governance, 2019^[44]) Alternatively, the HLRM can be anchored through incorporation in legal provisions, which might facilitate the allocation of public funds for its operations and shield the HLRM from undue political interference. To ensure that the HLRM functions efficiently and visibly, it is recommended to be financed to operate ideally for a minimum period of five years. Technical capacity could be tackled through specific budget provisions, to further enhance the stability of the Mechanism and prevent it from being subject to changes in administration. (OECD/Basel Institute on Governance, 2019^[44])

Mandate

The HLRM is not a legal mechanism, and functions alongside law enforcement institutions. The mandate of an HLRM is to address bribery solicitation, suspicious behaviour, irregular and unfair business practices and other similar concerns at the national level and thereby prevent corrupt practices. Its intention is to bring together the public and the private sectors to tackle bribery solicitation from the demand side. A by-product of the HLRM is that it can help to identify systemic issues arising from recurring corruption claims and propose reforms to the government.

This kind of mechanism is all the more critical in countries characterised by (1) weak governance structures, (2) inadequate judiciary due to concerns about the efficiency or independence of these institutions, and (3) where existing reporting mechanisms have failed to provide rapid, impartial and constructive responses that are needed by businesses when faced with extortion or they are treated unfairly.

The use of HLRM does not inhibit access to judicial recourse or other accountability mechanisms. Businesses must be clearly informed of their rights to use alternative remedies if they choose to do so without turning to the HLRM or if they are not content with its response. For the same reason, it should be made clear that any grounded suspicion of bribery or other criminal, administrative matters will be referred to the authorities by the HLRM.

Coverage

A HLRM may consider complaints from directly affected companies only or from third parties such as business associations, NGOs or individuals who may be aware of improprieties. In all cases, the HLRM should be available to all businesses, domestic and foreign operating in the jurisdiction of the HLRM.

A HLRM may be established by any country that is interested to deploy such a mechanism. It is not necessary to be affiliated or party to an international agreement or instrument to put in place such a mechanism. Each HLRM has a jurisdiction in the country where it is set up. It is now also recommended to be included as a “Best-in-Class” requirement under the Blue Dot Network certification programme and as such has the potential to be deployed more extensively.

The Basel Institute on Governance and OECD offer support to governments to ensure an efficient approach to developing HLRMs which may include identifying relevant domestic stakeholders, evaluating different institutional and legal options in a given jurisdiction, as well as accompanying the development, implementation and monitoring of the HLRM to get it up and running in a reasonable time frame.

Scope to address corruption

The HLRM is an early warning system to address risks of corruption from the demand side: explicit or implicit bribery solicitation, suspicious behaviour and other irregular practices for example in the context of public procurement procedures, business permits and licences or tax audits.

It can also address other types of unfair business practices relating to the public contracting process, for example in cases of suspected collusion between market participants, overly limiting specifications identified in a tender; potential or actual conflicts of interest of persons involved in the public contracting process, etc.

HLRM’s scope to address corruption will also be tailored to a specific country’s judicial system. If there are reasonable grounds to suspect a violation of the law, deferral to the competent enforcement authorities is likely to be necessary. Temporary corrective actions may be necessary in the meantime until a thorough assessment is received from the competent authorities and should not impact/prejudice any ongoing work by the competent authorities.

Box 5. Selected case studies of High Level Reporting Mechanism

Columbia – 4 G Roads Project

“4G Roads” Project used the HLRM with the aim of producing early warnings of corruption before an investigation or prosecution would be needed. The HLRM was implemented in eight projects for which National Infrastructure Agency (ANI) solicited tenders. The HLRM of the 4G Project included three major characteristics, involvement at the highest level of government (President of Colombia), an ad-hoc, pilot mechanism; and involvement of technical experts who would give technical advice to the high level authority before any decision was to be taken with regards to the procurement process. In the pre-tendering phase, the HLRM was coupled with an Integrity Pact (anti-corruption declaration) to commit all parties (contracting authorities and bidders) to anti-corruption provisions, and which also referred to the HLRM as a grievance mechanism.

Of the eight projects that had been tendered only one report was received through the mechanism. A consortium participating in the tender inquired about the modification by ANI of technical specifications for a tunnel, notably a location for drilling. After examining the report, the experts concluded that, instead of corruption, this may have been a case of a lack of information provided by ANI. A public hearing was convened to fill the information gaps with all involved parties and the process moved forward as planned. The resolution of the grievance took approximately two weeks, including communicating with the companies, producing the written report and the final public hearing with the pre-qualified bidders.

Source: OECD (2020^[42]) *National Contact Points – Instances*, <http://mneguidelines.oecd.org/database/instances/ch0020.htm>; G., S. (2018^[43]) *High Level Reporting Mechanisms: A Comparative Analysis*, https://baselgovernance.org/sites/default/files/2019-06/190_613_HLRM%20working%20paper%20No%2025_FINAL_issn-number.pdf; OECD (2021^[35]) *Non judicial mechanisms for remedying solicitation, bribery and corruption*, <https://www.youtube.com/watch?v=EOXHka2lycE>; Basel Institute on Governance (n.d.^[45]) *Maritime Anti-Corruption Network Nigeria*, <https://collective-action.com/explore/initiatives/1583/>.

Integrity Pact

Characteristics

An Integrity Pact (IP) is a collective action initiative through which public contracting authorities, civil society and businesses commit to enhance transparency and accountability in a public procurement process. An independent monitoring mechanism led or co-ordinated by civil society and with lines of accountability to affected communities / beneficiaries monitors adherence to the Pact. The IP provides for mechanisms to report and address corruption, irregularities, and breaches to the IP. At the core of the IP structure are two elements: explicit and specific commitments to respect standards of integrity during a tender process, and independent monitoring. Political will is a necessary condition for the IP to be successful.

The IP usually takes the form of a binding document formalising the relationship between a contracting authority, bidders and an independent monitor. Commitments and activities are related to corruption prevention and detection, good governance, transparency and data disclosure, business integrity, and social accountability and allows the external monitor to make sure this happens.

The overall purpose of the IP is to ensure the public contracting process is run as planned. For example, bidding documents were observed; contractual agreements were upheld and enforced, the project was successfully concluded. The IP ensures that the project was visible, transparent and accountable, and that adequate information has been shared with the public. The IP establishes a mechanism through which the participation of stakeholders can be possible and effective. In case of conflicts, complaints related to the

bidding process and contract execution can be minimised or adequately managed. Overall, the mechanism is focused on corruption prevention, risk mitigation and creating an environment of accountability. Real-time early detection of potential corruption is crucial, although in practice it will depend on the capacities of the independent monitor to address. Overall the purpose of the IP is to ensure savings, increased competition and prevention of damage to the reputation of the project (Coralie Pring et al, 2022^[46]).

Box 6. Essential ingredients for successful implementation of Integrity Pacts

Assess relevance and opportunity: IP target projects with public investments exposed to risks. IP should be implemented in projects that hold a strategic value to maximise efficiency.

Qualitative information and data: The flow of information and data both prior to IP implementation (legal, political and economic conditions at hand; study of other stakeholders involved, corruption risks involved in the procurement) and during (monitoring, contracting data capacity) is essential for the monitor to be efficient.

Credibility: Strong political will is essential to the implementation of an IP to avoid window dressing.

Citizen engagement: Informing and involving citizens, particularly direct beneficiaries, is one of the most powerful incentives for abiding by the law and fostering collaboration among parties. Communication should be accessible, regular and inclusive.

Adequate resources: The resources should be adapted to monitoring needs of the project and their implication both in terms of funding and human resources (technical expertise and number of monitors adapted to the complexity of the project).

Independent monitor: The organisation acting as monitor should not be a politically affiliated organisation, a business or media actor, or any other for-profit entity and must have a clear governance structure.

Expert monitor: The skills of the monitor(s) need to accommodate the project, ranges from technical expertise and project management to communications and stakeholder management.

Source: Basel Institute on Governance (2015^[47]) *Learning Review: Transparency International's Integrity Pacts for Public Procurement*, https://www.transparency.org/files/content/ouraccountability/2015_IntegrityPacts_LearningReview_EN.pdf; Basel Institute on Governance (n.d.^[48]) *Essential Elements of an Integrity Pact*, <https://collective-action.com/explore/integrity-pacts/about/essential-elements/>.

Institutional arrangements

There is considerable flexibility in the design of an Integrity Pact and the application and implementation practices may vary according to the context and depending on the specifics of the contract used (e.g. monitoring mechanisms, commitments, and the reporting and dispute resolution mechanisms pre-identified). One application of the IP is where a government commits to using an IP in a specific contracting process, bidders sign the IP and an independent external monitor is appointed to oversee the process. Another variation is to institutionalise the IP whereby national regulations mandate the use of IPs under certain conditions. In other cases, the independent external monitor can be supplemented with a new or existing reporting channel for stakeholders to submit concerns about compliance with the commitments. Signature of the IP is usually mandatory for bidders, however it should be noted that in some jurisdictions the signature can be voluntary. This ensures a level playing field and encourages ownership and commitment to the processes. In some cases, the stakeholders deliberately chose a constructive rather than authoritative approach, making the signing a voluntary act to ensure meaningful participation

by bidders who are committed to the Pact (e.g. in the Bulgarian case signature is voluntary and bidders who join are recorded in “Whitelist”).

Monitors follow the whole procurement process – from design to implementation and must have access (within limits of the law) to confidential information and communications about the procurement process, for example draft technical specifications, committee meetings, etc. Monitors commit to maximum transparency and all monitoring reports and results are made available to the public on an ongoing basis. Moreover, many IP projects also endeavour to engage with communities, social groups and professional associations directly affected by a specific public contract. This might include, for example, affected communities who live near to where a flood reservoir, highway, hospital or other facility is being built.

Mandate

The IPs are formalised through legally binding contracts to ensure civic monitoring: signed commitments between public authorities, companies bidding for a contract and civil society. Breaches of the Pact trigger an array of appropriate sanctions, including loss of contract, financial compensation and debarment from future tenders. (Basel Institute on Governance, 2015^[15]) Civil society monitors will not impose sanctions. Rather, these powers remain with the contracting authority, or corresponding dispute resolution body (pre-existing special tribunals or judicial authorities can also replace a dedicated dispute resolution body). It should be noted that not all IPs prescribe special sanctions but will rather refer to those already included in the law.

An IP may be suitable during some or all stages of the project. Ideally, it should be applied to the full range of project activities and should cover all the phases of each contracting process. At the absolute minimum, the IP should start during the pre-bidding stage of a contracting process and continue until contract signature to ensure that government officials and companies participating in a public procurement/investment/contracting process adhere to ethical standards. (Transparency International, 2013^[49])

Coverage

Integrity Pacts can be designed flexibly and thus implemented in any jurisdiction. It has been implemented to date, in different shapes and forms, in almost 30 countries and 300 separate situations since the 1990s by the Transparency International movement. A recent pilot project implemented by the European Commission and Transparency International from 2015-21 has applied the IP systematically to 18 projects co-funded with EU cohesion policy funding which were completed in 11 EU jurisdictions. In the latter, Transparency International’s Secretariat ensured the overall project co-ordination and engaged with the civil society organisations in performing the role of IP monitor, quality assurance of project implementation, etc. (Coralie Pring et al, 2022^[46]) Integrity Pacts have also been implemented independent of Transparency International in some jurisdictions.

As Integrity Pacts should be tailored to each country and procurement process, there are numerous ways that stakeholders can become involved. An Integrity Pact involves a contracting authority which designs and implements the Integrity Pact and businesses bidding for the contract. Civil society organisations monitor the process and can get involved in a number of ways. Technical experts provide inputs to evaluate any anti-corruption or fair competition concerns during the tender and/or project implementation. Other government bodies are involved by demonstrating their high-level commitment to the use of Integrity Pacts. Other stakeholders may initiate the process. In some cases, the IP may also involve a managing authority who oversees the contracting authority/procurement (e.g. as piloted in EU economies) (see Annex C).

Importantly, there are at least three formal parties to the Integrity Pact. The first is the contracting authority/procurement agency; the second are the businesses bidding for the contract, and subsequently the winning bidders. The participating companies may also be asked to provide input to the IP during the

pre-tender phase, however this rarely the case although recommended. The third formal party to the IP is the external monitoring mechanism led by civil society organisations. The role of the civil society organisation as an independent external monitor is essential to the functioning of the Integrity Pact, since it allows for a mechanism to receive and handle grievance reports, as per the dedicated channels and processes established by the IP. Similar to the HLRM, the added benefit of having the IP is that the mechanism can help avoid delays in project implementation, can reinforce public and private investment are ensuring value for money, and secure reputational benefits for bidding companies.

Scope to address corruption

By nature IPs apply in priority to public procurement projects that are subject to high risk (see earlier section for an outline of the nature of these risks). As most infrastructure projects are funded by public funds and the sector is highly exposed to corruption and inefficiencies, the majority of cases relate to public works and infrastructure (e.g. health, education, water, or transport infrastructure). IPs were also frequently used in sectors like waste management procurement, cultural heritage preservation and defence spending.

An IP clarifies the rules of the game for bidders, establishing a level playing field by enabling companies to abstain from bribery through providing assurances to them that their competitors will also refrain from bribery, and that government procurement, privatisation or licensing agencies will commit to preventing corruption (including extortion) by their officials, and to following transparent procedures. (Transparency International, 2013^[49])

Box 7. Selected cases studies of Integrity Pacts

Riga Tram System, Latvia, 2016-19

An Integrity Pact was used in the context of the Riga tram system, involving the Riga Transport Authority and Transparency International-Latvia (Delna) to monitor the tender and contract implementation of various aspects of a public works project to extend the Riga tram system. Delna discovered, reported on, alerted the authorities, and made recommendations regarding numerous irregularities in the tender and contract process from the outset of its monitoring activities. In August 2019, the Central Finance and Contracting Agency of the Republic of Latvia terminated the agreement with the Riga Transport Authority withdrawing funding and cancelling the Riga tram extension project due to suspicions of fraudulent activity and high corruption risks in the project.

Construction of the Zheleznitsa Tunnel, Bulgaria, 2018

The construction and modernisation of the Struma motorway is a key project for Bulgaria's connectivity. Recognizing the widespread risk of corruption in Bulgaria and the strategic importance of the project, the Road Infrastructure Agency entered into an Integrity Pact with Transparency International Bulgaria to monitor the construction of a two-kilometre tunnel between the municipalities of Blagoevgrad and Simitli. The monitoring, by a team of legal, social and engineering specialists, started in the pre-tender stage in 2015 and continued during all phases of the project until implementation in 2021. The Integrity Pact promoted citizen engagement through an online platform, highlighted risks in the implementation of the public procurement and recommended mitigation strategies. The Integrity Pact also led to the submission of a recommendation to amend public procurement legislation, although the outcome of this is not known yet.

Digitalisation of Library of Romania, 2018

In 2018, the Romanian Government planned a procurement process to digitalise over 550 000 Romanian cultural items and democratise the access to culture. The project was broken down into five

different procurement procedures, amounting to a total of 11.5 million euros. The ministry signed an IP with two civil society organisations, Transparency International Romania and the Institute for Public Policy, which spanned from pre-tendering to implementation. Both organisations provided staff to constitute the monitoring team. They were joined by external experts with specific qualifications namely in procurement, IT and culture. The monitor evaluated the relevance of the project and provided recommendations to refine the tender documentation. They also played an important role as mediator in the implementation phase, when a conflict arose between the ministry and the contractor around the issue of time overruns. As a result of the mediator's intervention, the parties agreed to a no-cost extension to finalise and deliver the services, a solution which protected the public's interest.

Greater Karachi Water Supply Scheme, Pakistan, 2002

In 2002, the Karachi Water and Sewage Board entered into an Integrity Pact with Transparency International Pakistan regarding a major public works water project, namely the Greater Karachi Water Supply Scheme, Phase-V, Stage-II, 2nd 100 MGC, K-III project. This decision fit into the broader commitment of the then-government to tackle corruption and reform public procurement procedures. The Pact consisted in a binding commitment from all parties to not bribe, accept bribes, collude with other bidders, to disclose all payments and report violation of this agreement. In addition, it required the adoption of a no-bribery policy and anti-corruption programme as a pre-requisite to enter the bidding process. The agreement also included a set of sanctions in case of non-compliance. The Integrity Pact's success had long-term implications as the Government of Pakistan decided to scale up the use of Integrity Pacts by endorsing them in their National Anti-Corruption Strategy in 2002. It also contributed to raising awareness on the need for anti-bribery policies and compliance systems.

Source: Basel Institute on Governance (n.d.^[16]) *Collective Action Initiatives – Database*, <https://collective-action.com/explore/initiatives>; Transparency International (2022^[50]) *Monitoring Public Contracting: Experience from 18 Integrity Pacts in the EU*, https://images.transparencycdn.org/images/IP_monitoring-public-contracting_ENG_20220406.pdf.

4 Conclusions – Positioning collective action as an effective anti-corruption tool

Infrastructure is vital for supporting economic growth, enhancing prosperity and well-being. G7 nations and other partnerships have committed to quality and sustainable infrastructure investments based on high standards and shared values. A key goal is to mobilise both public and private investment to bridge the large and growing infrastructure investment gap necessary to meet the Sustainable Development Goals, Paris Agreement and to support post-conflict reconstruction.

Unfortunately, infrastructure remains highly exposed to corruption and other irregular practices (human rights violations, lack of enforcement of environmental or labour regulations, etc.), due to, *inter alia*, the high value of contracts, the complexity of such projects and multiplicity of public-private actors involved across the infrastructure lifecycle. Recognising that the fight against corruption is not something that can be done alone, recent policy commitments have highlighted the need for new and innovative approaches to tackle corruption, which build on collective action and multi-stakeholder approaches.

The three multi-stakeholder non-judicial grievance mechanisms covered by this policy paper – namely, the *National Contact Point for Responsible Business Conduct*, the *High Level Reporting Mechanism*, and the *Integrity Pacts* – are innovative tools underpinned by the principles of collective action. They complement the existing toolbox of traditional measures and approaches that address corruption and other irregular practices in the infrastructure sector. The three mechanisms are complementary and can each be implemented at different stages of the infrastructure lifecycle. As noted above, in order to be successful, these mechanisms require political will and a high level of commitment from all stakeholders that are involved.

With the inclusion of non-judicial grievance mechanisms in the requirements of the Blue Dot Network and other quality infrastructure certification methodologies, these mechanisms have the potential to be scaled up internationally, with the added value of being a strong and visible ways to translate commitments into action. As countries increase infrastructure investment and look to attract private financing, there is an opportunity to harness multi-stakeholder solutions that address corruption, de-risk projects and ensure finance meets its intended purpose.

The business case for collective action is strong. For business, collective action can support companies to meet the expectations and commitments that they have made to act according to high standards of responsible business conduct. They create an opportunity for stakeholders to engage with each other, motivate change and help cross fertilise good practise across industry players and throughout the supply chain, to ensure a race-to-the-top. Collective action supports fairer, cleaner business environment in which companies can compete on a level playing field. Finally, collective action helps companies mitigate and manage risks and find solutions that are tailored to context and sectors of operation.

For the public sector, the deployment of such mechanisms can help governments to demonstrate leadership and be proactive in the pursuit of a more inclusive and innovative way to fight corruption. With

a focus on prevention, such mechanisms demonstrate a willingness to work with civil society, labour/trade unions, and business to tackle common problems. While not a silver bullet, such mechanisms can support enhanced credibility in the fight against corruption and raise trust in institutions, while ensuring that infrastructure projects are serving the best public interest.

The benefits for society are to uphold democratic values, high standards of integrity and fair market conditions. The results will benefit society through quality infrastructure critical for the delivery of public services, reducing poverty and enhanced competitiveness. Quality infrastructure will be necessary to support the green energy transition, to meet the goals of the SDGs and Paris Agreement, and to ensure that a post-pandemic and post-conflict world is built back stronger.

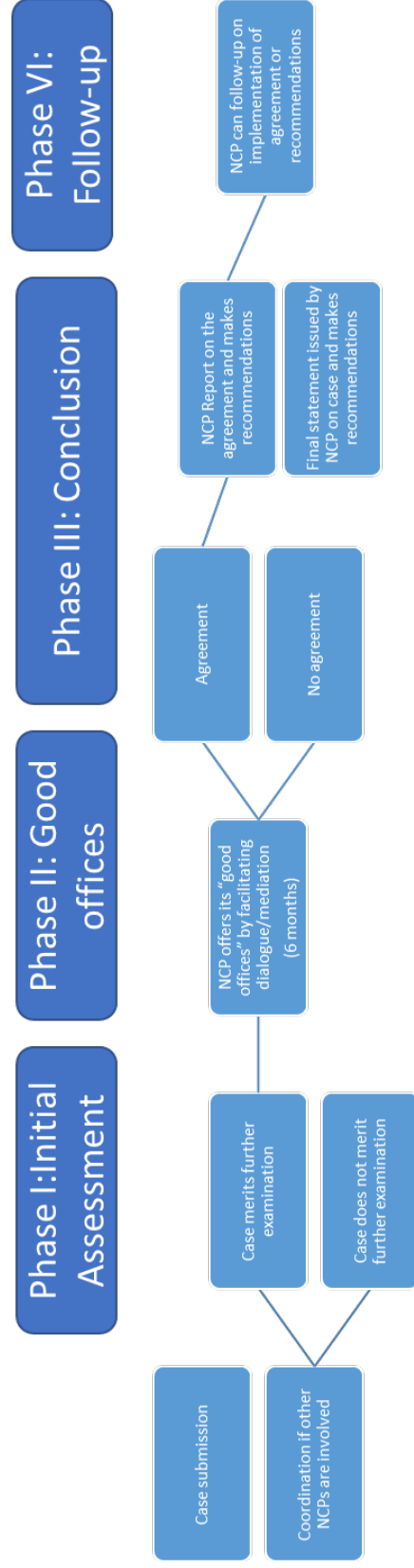
Annex A. National Contact Point for Responsible Business Conduct – Grievance handling procedure

Procedure

Complaints can be brought forward to the grievance mechanism at any time, and there are no time limits to bringing cases if harms were not remedied. NCPs follow a four-step process outlined in Figure 3 and as follows:

- Step 1 involves case submission and an initial assessment of the case (Phase I) which will determine if the case merits further examination.¹⁸ If not the case moves to conclusion (Phase III).
- Step 2: If the case merits further examination, the NCP offers its “good offices” to the parties involved and facilitates dialogue, conciliation and/or mediation with a view to help parties reach an agreement (Phase II).
- Step 3: The third phase concludes the process, which can either end in agreement or not between the parties. The NCP will report on the agreement, or issue a final statement in case agreement has not been reached. In both cases, the NCP can make recommendations to the company with respect to the Guidelines.
- Some NCPs also make explicit determinations as to whether a company has observed the Guidelines or not in the case at hand. Recommendations set out may go beyond domestic law (for example enterprises have a responsibility to respect human rights regardless of whether States are adequately protecting them). In this context, NCPs should assess the materiality of issues raised against the recommendations and standards of the Guidelines, rather than against domestic legal frameworks. While NCPs have no enforcement powers, NCPs have been able to facilitate remedies such as monetary compensation, in-kind reparation, changes in company policy, etc.
- Step 4: At the final phase (Phase IV), the NCP may follow-up after the conclusion of the case on the implementation of the agreement and/or recommendations made by the NCP. While there is no confidentiality requirement, NCPs can take measures to protect the identity of claimants in case of undue pressures or adverse consequences. (OECD, n.d.[39])

Figure 3. NCPs grievance handling procedure



Source: Adapted from OECD (n.d.^[99]) *How do NCPs handle cases?*, <http://mneguidelines.oecd.org/ncps/how-do-ncps-handle-cases.htm>.

Annex B. High-level reporting mechanism – Grievance handling procedure

Procedure

The most basic HLRM procedure follows four main steps: i) receiving and screening the complaint; (ii) assessing the complaint; (iii) selecting a resolution approach; and (iv) settling the issue. During the Screening process, complaints will be evaluated for their eligibility. The criteria for eligibility may include those where the complaint pertains to the project; the complainant has standing to file; the complaint falls within the scope of issues the HLRM has authority to address (Figure 4)

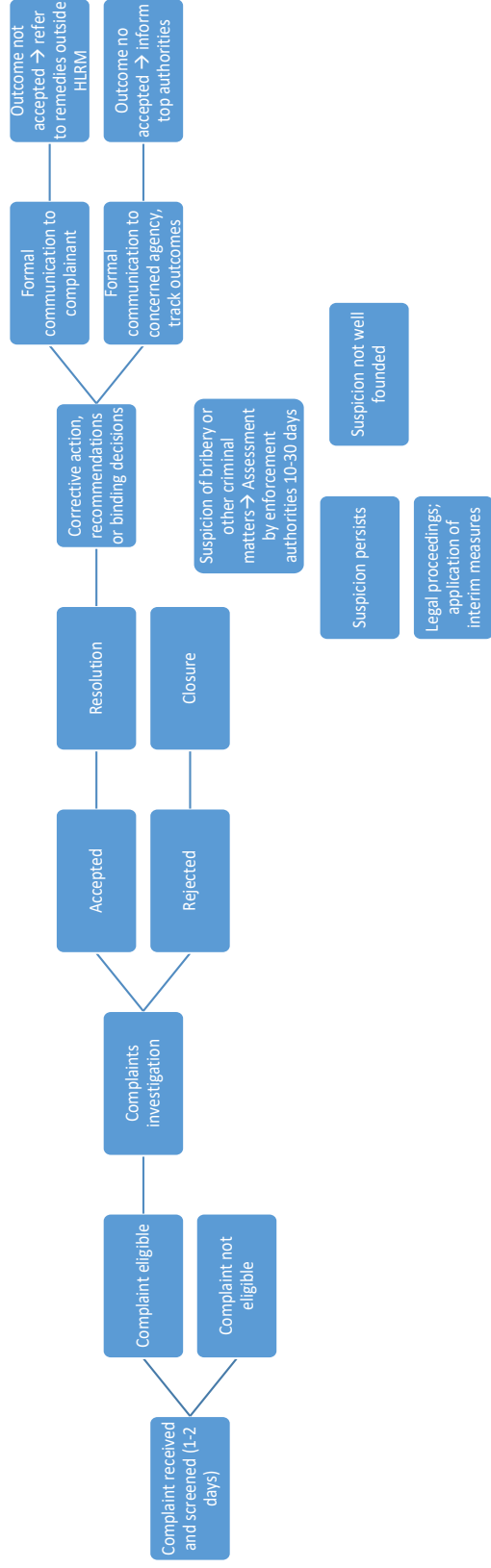
During the assessment phase, complaints handled should be addressed swiftly. For example, in the case of bidding, the timing of the Mechanism should allow resolution prior to the awarding of the tender. The process may also involve dialogue and engagement with managers from the departments/agencies whose activities have resulted in claims. Such inclusion may serve as a basis for the concerned agency's prompt response, or for a set of recommendations or a decision – which can be binding or non-binding- issued by HLRM senior managers.

If there are reasonable grounds to suspect a violation of the law, deferral to a competent enforcement authorities is likely to be necessary. Temporary corrective actions may be necessary in the meantime until a thorough assessment is received from the competent authorities. Wherever possible, the identity of the complainants – as known to the HLRM – should be made anonymous in the report filed with the authorities. In any event, complainants should have an opportunity to make an informed decision about how they wish to proceed.

Remedies may include altering or halting harmful activities through, for example, moving the public official whose behaviour is suspicious, delaying the awarding of a public contract, amending the requirements for customs clearance, or revising the concerned agency's policy.

Promotion of transparency and awareness of the HLRM, as well as engagement of potential complainants, is essential for the success of the Mechanism. Maintaining a dedicated website with information on the functioning of the HLRM, its procedures, outcomes of past complaints, and statistics is therefore recommended.

Figure 4. HLRM reports handling procedure (model procedure)



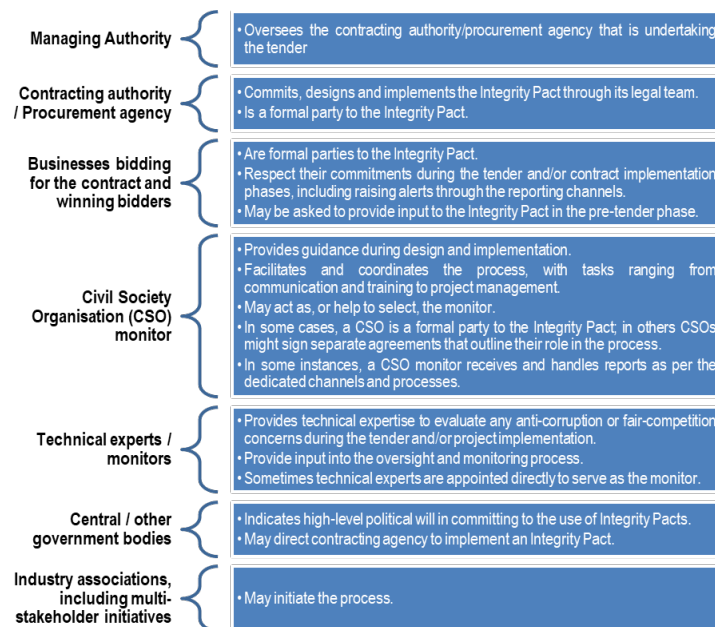
Source: Adapted from G., S. (2018^[43]) *High Level Reporting Mechanisms: A Comparative Analysis*, https://basegovernance.org/sites/default/files/2019-06/190_613_HLRM%20working%20paper%20No%2025_FINAL_issn-number.pdf.

Annex C. Integrity Pact – Grievance handling procedure

IPs will vary in terms of how they deal with resolution of disputes and sanctions, but in practice have been less implemented across IPs. As noted above, not all IPs integrate sanctioning powers. In one clear-cut case relating to an infrastructure procurement project,¹⁹ a case may be handled as such: a breach of the IP has been flagged by the monitor, and communicated to the appropriate authorities who should then endeavour to clarify or correct the situation. It may take corrective actions such as excluding a bidder from the bidding process; cancelling the awarded contract if the winner was responsible; and debarring the noncompliant bidder/contractor from future participation in contracts. If there are clear indications that corruption has occurred, the monitor will report the issue directly to the prosecuting authorities. (Transparency International, 2013^[51])

Figure 5. Integrity Pact: Main actors and their roles

Integrity Pacts can be tailored to each country and procurement process. The main actors, types of stakeholders and potential roles will vary. The formal parties to the IP will be the contracting authority and businesses bidding (and winning) the tender, and potentially civil society organisations depending on how the IP is organised



Source: Adapted from Basel Institute on Governance (n.d.^[52]) *Collective Action Initiatives – Database*, <https://collective-action.com/explore/initiatives>.

Many IPs use arbitration (national or international) as a dispute resolution mechanism if international companies are involved, to speed up the conflict resolution process (e.g. out of courts). As such, the HLRM and National Contact Point for Responsible Business Conduct can prove to be an important addition to the use of IPs.

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Notes

¹ Some examples include: Cost overruns, and poorly-informed or overly optimistic decisions-making, and poor planning. Public investment projects suffer from weak institutional co-ordination, political interference, unrealistic budgeting, and challenges in the procurement and project implementation – notably corruption.

² For example, while not solely focused on infrastructure, the Ministerial Statement for Pillar IV (Fair Economy) of the Indo-Pacific Economic Framework for Prosperity identifies the need for innovative approaches, among other areas, to implement and accelerate progress on anti-corruption and tax measures. Under anti-corruption focus, the statement, notes the need to “establish and maintain systems for confidential and protected domestic reporting on corruption offenses.”

³ Other international instruments reinforce this call to action, including the OECD *Recommendation of the Council on Public Integrity*, and the *UN Convention Against Corruption*. Collective action is also promoted under responsible business conduct and sustainable development commitments, including *inter alia* the *OECD Guidelines for Multinational Enterprise* and the *Sustainable Development Goals*.

⁴ An increasing number of National Anti-Corruption Strategies place emphasis on multi-stakeholder approaches towards dealing with corruption. The US Strategy on Countering Corruption identifies new mechanisms and partnerships to include private sector actors, civil society and others to undertake collective actions. The Sapin II Law in France notes that the fight against corruption is not just reserved for law enforcement authorities but is a shared responsibility with companies and industry bodies. The French Anti-Corruption Agency has developed guidelines and practical guidance help companies to adapt and improve their compliance programmes to their specific industry-related context. In the UK Bribery Act Guidance, anti-corruption Collective Action is identified as a way for companies to demonstrate ‘adequate procedures and tone from the top’ when implementing their compliance programme. Malawi’s National Anti-Corruption Strategy (2019) includes the development of Collective Action initiatives with a role for the Anti-Corruption Bureau to develop Integrity Pacts and the High Level Reporting Mechanism. Also see (Basel Institute on Governance, June 2022^[56]; The White House, 2021^[58])

⁵ For an overview of Collective Action initiatives that address corruption, see the initiatives database on the B20 Collective Action Hub at collective-action.com/explore/initiatives.

⁶ The Infrastructure Transparency Initiative (CoST) as well as the Open Government (Open Contracting) Partnership are both well-established Collective Action approaches that have worked in a wide range of countries and provide evidence of the advantages of multi-stakeholder approaches to tackling corruption risks in infrastructure.

⁷ For example, the standards and guidelines developed by The Wolfsberg Group (Wolfsberg Group, n.d._[62]).

⁸ For example, the Maritime Anti-Corruption Network case study on Argentina. (MACN, n.d._[63]).

⁹ This paper defines a grievance mechanism a state or non-state based non-judicial process through which corruption-related grievances in the infrastructure sector can be raised and remedy can be sought. This paper notes the other definitions laid out for example in chapter III of the UN Guiding Principles for Business and Human Rights (United Nations Human Rights, 2011_[17]) or those used by other organisations for example by the Asian Development Bank (Asian Development Bank, 2010_[18]).

¹⁰ As noted by (Vermijs, 2008_[22]), there are a range of existing state and non-state non-judicial grievance mechanisms from a variety of different contexts, whether industry or multi-industry, national, regional or international, private or public, based on law or voluntary standards. Some grievance mechanisms, such as the National Contact Points for Responsible Business Conduct, which are located at the national level, may have a multilateral dimension given that they are linked to implementation of the OECD Guidelines on Multinational Enterprises, and furthermore have the ability to address grievances beyond the host country.

¹¹ As noted in (OECD, 2021_[23]), corruption often acts as an enabler of serious human rights abuses and lack of enforcement of environmental and labour obligations.

¹² IMF cite even higher figures: up to 20 to 30% of project value is lost through corruption. (IMF, 2020_[2])

¹³ This paper notes an important distinction between grievance and whistleblowing mechanisms, as complementary but different tools. A grievance mechanism is a complaint process made available to affected persons, communities, businesses, groups when they are negatively affected by certain activities or actions; further to a complaint it is expected that grievances are investigated and should a grievance be substantiated, remedial actions should be put in place. A whistle-blower can be any person (whether or not they suffered the grievance) who reports suspicions of corruption or other irregular practices in the public sector, an employee who reports internally to the company, or third persons who report to law enforcement or the media. A whistleblowing mechanism is intended to empower persons to speak up without the fear of reprisal, which is why whistleblowing mechanisms should provide protections for the reporting person. Whistleblowing mechanisms can be used in both public and private sector. (OECD, 2017_[60]; OECD, 2016_[64])

¹⁴ The UN Guiding Principles for Business and Human Rights establishes eight criteria for effective grievance mechanisms: legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source for continuous learning and based on engagement and dialogue. (United Nations Human Rights, 2011_[17])

¹⁵ See <http://mneguidelines.oecd.org/ncps/>.

¹⁶ On average, 43% cases from 2011-18 were not accepted annually due to these or similar causes.

¹⁷ For example, in the context of Ukraine, a business ombudsman was established as an alternative to the high level reporting mechanism due to perceived levels of corruption at high levels of government (among other reasons). See (OECD, 2020_[53]) The Business Ombudsman is an independent body that aims to

address unfair treatment to businesses on a broad range of issues such as taxation, law enforcement, and gaps in regulations.

¹⁸ The timeline for initial assessment should not exceed three months and involve analysis of six criteria used in the procedural guidance. According to a recent study on initial assessment over two-thirds of initial assessments are dealt with within three months (68% of the time), but the remainder often take six months or more to complete initial reviews.

¹⁹ Refer to Berlin Airport Project in (Transparency International, 2013^[49])

