

WORKING TOGETHER:

National Human Rights Institutions and the OECD Guidelines for Multinational Enterprises

This Fact Sheet aims to: explain what national human rights institutions (NHRIs) are to stakeholders in the OECD Guidelines for Multinational Enterprises (MNEs), including National Contact Points (NCPs); explain what the OECD Guidelines and NCPs are to NHRIs; and help NCPs, NHRIs and other stakeholders identify synergies and opportunities for promoting business respect and support for human rights in line with the OECD Guidelines and UN Guiding Principles on Business and Human Rights.

› A Shared Vision: Promoting business respect for human rights

The OECD Guidelines for Multinational Enterprises are an important instrument that can contribute to strengthening and promoting business respect and support for human rights.

NHRIs and stakeholders in the OECD Guidelines – including governments, rights-holders, business, labour and CSOs – share a common aim of helping business to understand, and give effect to, their human rights responsibilities and commitments.

NCPs provide an important forum for communications and addressing issues regarding business responsibilities for human rights. NHRIs and other stakeholders, including NCPs themselves, can cooperate towards ensuring access to remedy where complaints to NCPs allege corporate human rights abuses.

The global network of over 70 A-status NHRIs offers rights-holders, NCPs and other stakeholders with a unique source of authoritative expertise and assistance on human rights at national level.

NHRIs: Working with business

In October 2010, NHRIs adopted the *Edinburgh Declaration on Business and Human rights*. This Declaration clearly signals NHRIs' joint commitment to supporting better understanding and respect for human rights in business operations. In particular, the *Declaration* encourages NHRIs to consider partnerships between NHRIs and GCLNs, and outreach to government, businesses and civil society.

Read the *Edinburgh Declaration*: http://www.ohchr.org/Documents/AboutUs/NHRI/Edinburgh_Declaration_en.pdf

In addition, regional networks of NHRIs have committed to taking action to support implementing of human rights in the business sphere:

- Network of African National Human Rights Institutions
- Asia Pacific Forum of NHRIs
- European Group of National Human Rights Institutions
- Network of NHRIs of the Americas

Access information on the regional action plans on business and human rights here: <http://nhri.ohchr.org/EN/Themes/BusinessHR/Pages/Capacity%20Building.aspx>

UN General Assembly Resolution on National institutions for the promotion and protection of human rights: <http://www.un.org/Docs/journal/asp/ws.asp?m=A/C.3/66/L.49/Rev.1>

Chapter IV of the OECD Guidelines for Multinational Enterprises states that companies should respect human rights. This includes acting with due diligence to avoid causing or contributing to actions which breach human rights.

The OECD Guidelines for Multinational Enterprises can be accessed here: <http://www.oecd.org/daf/internationalinvestment/guidelinesformultinationalenterprises/oecdguidelinesformultinationalenterprises.htm>

Introducing the OECD Guidelines for MNEs and NCPs

› What are the OECD Guidelines for MNEs

The OECD Guidelines for MNEs are recommendations from governments to companies aimed at ensuring responsible global business conduct. The Guidelines provide voluntary principles and standards in areas such as employment and industrial relations, human rights, environment, information disclosure, combating bribery, consumer interests, science and technology, competition, and taxation. Since 2011, the OECD Guidelines for MNEs include a human rights chapter consistent with the UN “Protect, Respect and Remedy” framework and UN Guiding Principles on Business and Human Rights. NCPs play a vital role in ensuring effective implementation of the OECD Guidelines.

› What are NCPs?

Having a NCP is a formal obligation that the OECD Guidelines for MNEs entail for adhering countries. While the OECD Guidelines provide far-reaching recommendations for companies in areas such as employment, human rights and environment, depends on the activities of the NCP’s.

› What do NCPs do?

NCPs are tasked to promote knowledge and observance of the OECD Guidelines by businesses operating in or from an adhering country. NCPs provide a platform for mediation, conciliation and resolution of issues that may arise regarding failures to observe the Guidelines by such businesses. Through their regular contacts with business, they play a preventive role by giving advice on the challenges faced by enterprises in meeting the Guidelines’ expectations regarding corporate conduct.

Enterprises should, within the framework of internationally recognized human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:

- 1) Respect human rights which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.
- 2) Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.
- 3) Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.
- 4) Have a policy commitment to respect human rights.
- 5) Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.
- 6) Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.

From the OECD Guidelines for Multinational Enterprises, 2011 edition

At the beginning of 2013, there were 44 adhering to the OECD Guidelines for Multinational Enterprises and thus 44 NCPs. This includes the 34 OECD member states and 8 non-OECD countries: Argentina, Brazil, Egypt, Latvia, Lithuania, Morocco, Peru and Romania.

The OECD describes various activities and procedures to be followed by NCPs. For example, NCPs meet periodically to share their experiences and to report to the OECD Investment Committee. This provides NCPs with an opportunity to submit annual reports; discuss activities to promote the Guidelines and on the proactive agenda; engage in peer learning evaluations; compare lessons learned on specific issues; strengthen collaborative efforts and hold consultations with representatives of business, labour unions, NGOs, international organisations and NHRIs.

› Why should companies engage with the NCPs?

Companies should be aware of the role of NCPs in the furthering of implementation of the OECD Guidelines. NCPs provide a forum through which companies can:

- Gain guidance and support in implementing the OECD Guidelines for MNEs and meeting related challenges
- Participate in dialogue with potentially aggrieved parties in connection to alleged failures to observe the OECD Guidelines
- Receive advice on how to remedy situations to which the company is alleged to have contributed.

For more information on NCPs, please see: <http://www.oecd.org/daf/internationalinvestment/guidelinesformultinationalenterprises/nationalcontactpointsfortheoecdguidelinesformultinationalenterprises.htm>

Introducing National Human Rights Institutions

› What are NHRIs?

NHRIs are independent public institutions established through national laws or Constitutions. NHRIs have a legal mandate to promote and protect human rights, including via monitoring, advice, reporting, research, outreach and human rights education. NHRIs are not NGOs (non-government organisations). They are public bodies, part of the State but independent of the national government. NHRIs are subject to periodic peer review and accreditation to evaluate their continued compliance with the *Paris Principles*.

› NHRIs: Building corporate respect for human rights

In 2011, the UN Human Rights Council welcomed NHRIs' roles in relation to human rights and business, and encouraged them to build their capacity on business and human rights. The 2011 *UN Guiding Principles on Business and Human Rights* also highlight NHRIs' role across the UN "Protect, Respect, Remedy" framework on business and human rights:

ICC and OECD Memorandum of Understanding



From right: Dr Mousa Burayzat , Chair, ICC of NHRIs and Chair, Jordan National Centre for Human Rights, Marie-France Houde, OECD Senior Economist, Claire Methven O'Brien, Danish Institute for Human Rights, David Langtry, Acting Chief Commissioner, Canadian Human Rights Commission.

"I warmly welcome this agreement. The Guidelines are a 'crown jewel for the OECD' and the ICC plays a leadership role on human rights in the world. The cooperation between the OECD and ICC is key to the successful implementation of new human rights chapter of the Guidelines." Prof. Dr. Roel Nieuwenkamp, Chair of the Working Party of the OECD Investment Committee

- **Pillar 1:** NHRIs can help to align national law and regulations on business with human rights
- **Pillar 2:** NHRIs can provide expert, independent advice to business on human rights issues
- **Pillar 3:** NHRIs can facilitate mediation or conciliation of complaints about human rights and business issues

› NHRIs and the OECD

In 2012 the OECD and the ICC signed a Memorandum of Understanding in Amman, Jordan, at the ICC's 11th Biennial Conference.

The purpose of the MOU is to establish a programme of cooperation to promote greater understanding, visibility and use of the OECD MNE Guidelines together with the NHRI Paris Principles Mandate, towards greater respect for human rights in the sphere of business activities. This includes using the synergies between the OECD and NCPs, on one hand, and the ICC and NHRIs, on the other, for instance, by: cross-referencing each other's relevant instruments, functions and work; cross-participation in global relation events; experience-sharing and capacity building amongst NCPs and NHRIs; human rights expertise and due diligence; and continuing dialogue.

The full text of the MOU can be accessed (in English, French, Spanish and Arabic) here: <http://www.oecd.org/investment/guidelinesformultinationalenterprises/OECDandNationalHumanRightsInstitutionsjoinforces.htm>.

The 2012 Annual Report on the Guidelines is available here: <http://www.oecd.org/daf/internationalinvestment/guidelinesformultinationalenterprises/2012annualreportontheguidelinesformnes.htm>

For more information on NHRIs, visit the ICC website: <http://nhri.ohchr.org/EN/Pages/default.aspx>

WORKING TOGETHER: OPPORTUNITY MAP



› **Experience sharing and capacity building**

NCPs and NHRIs may have complementary knowledge relevant to promoting business respect for human rights. NCPs are responsible for the OECD Guidelines and the implementation of their provisions relating to human rights. NHRIs possess expertise on national human rights standards and local human rights situations and risks. NCPs and NHRIs can partner on organizing e.g. training or multi-stakeholder dialogue around key human rights and business issues.

› **Human rights due diligence guidance**

Home-state NHRIs can contribute to NCP actions to promote learning at national level among businesses and other stakeholders on the OECD Guidelines. Some NHRIs are experts in specific business and human rights topics, e.g. human rights impact assessment, achieving non-discrimination in the workplace, socially responsible public procurement, or labour rights. Maintaining regular dialogue between NCPs and NHRIs will promote sharing of information relevant to defining due diligence in given contexts. NCPs are currently actively involved in the OECD Investment Committee’s “proactive agenda” projects on due diligence in the financial sector and stakeholder engagement in the extractive industry.

› **Addressing complaints**

NCPs are not judicial bodies. However, they do have a function to address substantiated non-observance of the OECD Guidelines for MNEs. Where such issues are raised, NCPs will address the parties involved, for instance through conciliation or mediation. This procedure involves a chance to inform companies of their responsibilities to respect human rights, to assess related challenges and contribute to the resolution of issues. NHRIs may have formal legal powers in their countries to undertake complaint-handling, mediation, conciliation or investigation of alleged human rights abuses, depending on their founding legislation. NCPs and NHRIs should be aware of each others’ mandates on complaints and explore coordination.

› **Benefiting from expertise**

NHRIs are required by the UN Paris Principles to monitor and report to international organisations on human rights situations, and to evaluate the consistency of national laws and practices with human rights standards. NCPs can draw on the expertise of NHRIs in the area of human rights, e.g. by seeking expert inputs from a host-country NHRI during handling or investigating specific instances.

› **Information, education, and awareness-raising**

One of NHRIs’ core functions is to undertake human rights education, including to business and professional organisations, as well as to rights-holders. NCPs are tasked with disseminating the OECD Guidelines among multinational enterprises. NHRIs and NCPs can therefore collaborate to develop platforms to provide information, publications, and tools on business and human rights issues for companies as well as other stakeholders. They can also co-host public events to stimulate awareness and engagement by business and communities on sustainability issues

Partners in Promoting Human Rights

GLOBAL CASE STUDIES

› NCPs and NHRIs: Investigating business-related human rights abuses

OECD NCPs and NHRIs: Investigating business-related human rights abuses, Norway's NCP was re-established as independent from the government in 2011. In 2009, the NCP received a complaint from the Future in Our Hands (FIOH) with support from Philippine Indigenous Peoples Links and Alamin, regarding the Norwegian-owned Mindoro Nickel Project in the Philippines. Following an investigation, in November 2011 the Norwegian NCP issued a final statement. The NCP concluded that the OECD Guidelines are applicable in the planning phase of a project, and found that the company had violated the human rights provisions of the Guidelines by not consulting broadly enough with indigenous peoples. The NCP also found that the company had not shared easily understandable Environmental Impact Assessments (EIA).

The NCP recommended that the company: conduct due diligence in relation to the entire project impact area; consult all indigenous peoples affected by the mine and associated infrastructure; that the draft EIA be in line with the International Finance Corporation Performance Standards, made publicly available in local languages, finalised in dialogue with all relevant groups, and reviewed by an independent third party. In addition, the NCP advised the company to establish a grievance management system in accordance with the UN Guiding Principles on Business and Human Rights and covering the range of possible grievances including environmental health and safety, labour rights, and community grievances. The NCP report is available on www.responsiblebusiness.no. Find a short film explaining the role and activities of the Norwegian NCP here: <http://www.youtube.com/watch?v=7GbQwKHkYT0&feature=youtu>

› Denmark: Cooperation on the OECD Guidelines and a new NCP

The Danish Institute for Human Rights (DIHR) is Denmark's National Human Rights Institution. In 2011, during Denmark's appearance in the First Cycle of the Universal Periodic Review before the UN Human Rights Council, DIHR recommended that Denmark should review arrangements relating to the NCP and "Ensure that the Danish NCP meets all core criteria for NCPs under the OECD Guidelines, and all criteria for non-judicial grievance mechanisms under the UN Draft Guiding Principles on Business and Human Rights". In October 2011, Denmark's Council on Corporate Social Responsibility published a set of recommendations calling for the establishment of a mediation and complaints mechanism for responsible business conduct. In 2012, the Danish Government tabled legislation broadly in line with the CSR Council's recommendations, and also reflecting the results of a review of NCPs of the Netherlands, UK and Norway.

The new Danish law establishing a mediation and complaint-handling institution for responsible business conduct, which also serves as Denmark's NCP, took effect from 1 November 2012. Denmark's new NCP has competence to receive complaints regarding the activities of Danish private or public enterprises or organizations, as well as of public authorities, at state or municipal level, at home or abroad, and regarding the activities of their business partners. The NCP comprises a Chairman, three sector representatives (nominated by business, labour unions and civil society organisations, respectively) and an expert member. The Chairman and expert members are appointed by the Minister for Business and Growth, based on criteria including knowledge concerning the OECD Guidelines for Multinational Enterprises and personal integrity. The Chairman is Mads Øvlisen, former chair of the CSR Council, and the Director of DIHR, Jonas Christoffersen, was appointed as the NCPs' expert member.

For more information on Denmark's NCP, visit:
www.businessconduct.dk

For more information on DIHR's work on business and human rights, see:
www.humanrightsbusiness.org

This shows the role NCPs can play in facilitating resolution of situations of human rights abuses between companies and local communities. Many NHRIs are also able to undertake formal investigations into alleged situations of human rights abuses.

For example, in 2012, the Human Rights Commission of Sierra Leone undertook a formal investigation into human rights abuses connected to police force against striking personnel of African Minerals Ltd. (AML) and other individuals in the city of Bumbuna, located in Sierra Leon's Northern Province.

The investigation by the Human Rights Commission consisted of a literature and document review, oral and written statements from affected individuals and expert opinions as well as focus group meetings and a public hearing. Citing the UN Guiding Principles on Business and Human Rights, the Inquiry found that AML had left worker concerns unaddressed for far too long. The final report, issued by the Commission also concludes that the Government and all other state bodies should improve systematic issues leading to situations such as this, which will go a long way in combating violence and impunity and safeguarding human rights in the mining communities going forward. Read more here: <http://cfnhri.org/sierra-leone-inquiry-into-events-at-bumbuna-finds-gap-in-policing/>.

NCPs and NHRIs could in future coordinate in relation to the conduct of such cases as those mentioned above: for instance, NHRIs could refer or assist complainants in raising specific instances to NCPs. NCPs, on the other hand, could consult the host-country NHRIs on application and interpretation of relevant legal standards or other standards to apply, and development of conclusions or recommendations.

› **Uganda: NHRI handles complaints on labour issues**

The Uganda Human Rights Commission undertakes dispute resolution processes, such as mediation, to resolve labour complaints it receives. The mediation process normally results in the signing of a memorandum of understanding between the parties to the complaint, stipulating the remedy or redress to be given to the victim, including monetary compensation; apology; and re-instatement to work in case of wrongful or unfair dismissal. In some cases, however, the complaints are referred to other bodies, such as the Labour Office, for more effective management. The Commission also undertakes follow up to discover whether agreed steps in an MOU have been implemented and to track progress of complaints referred to other bodies for better management.

In 2012, the African Commission on Human and Peoples' Rights awarded the Uganda Human Rights Commission as the best National Human Rights Institution in Africa.

Access the Uganda Human Rights Commission's paper on the ICC website: <http://nhri.ohchr.org/EN/Themes/BusinessHR/Pages/10th%20%20Biennial%20Conference%20of%20the%20ICC.aspx>

› **Qatar: NHRI engaged in the development of Workers Rights Handbook**

The Human Rights Committee of Qatar (NHRC) has produced a booklet on "Workers' Rights in Qatar" based on the Qatari Labour Law and other relevant legislation. The work of the NHRC can serve as a source of inspiration to other NHRIs on how to actively engage in dealing with specific areas of concern as mentioned under the OECD Guidelines. The booklet was written in Arabic and has been translated into English, Farsi, Hindi, Indonesian, Tagalog and Nepalese. Together with partners from the American Centre for International Labour Solidarity the NHRC has conducted Train the Trainers seminars on labor rights and obligations in Qatar, reaching over 2000 people.

Due to increased concerns around the rights of migrant workers working in Qatar, the NHRC has been actively engaged in awareness raising activities with human rights and trade union organizations in the countries of origin of the

migrant workers. This awareness raising work has included visits to India, Sri Lanka, Philippines and Nepal to distribute the handbook, as well as meetings with Government representatives from Nepal, Sri Lanka and Philippines in Qatar. The aim of the NHRC is that migrant workers or provided with training on their rights prior to their departure.

Access the Worker Rights Handbook in English here: <http://www.nhrc-qa.org/resources/userfiles/NHRCWorkersRightsBook%20E.pdf>

Find National Human Rights Institutions and NCPs

Directory of National human rights institutions:
<http://nhri.ohchr.org/EN/Contact/NHRIs/Pages/default.aspx>

OECD National Contact Points:
<http://www.oecd.org/daf/internationalinvestment/guidelinesformultinationalenterprises/nationalcontactpointsfortheoecdguidelinesformultinationalenterprises.htm>

Other Resources

BIAC

- The Business and Industry Advisory Committee to the OECD: <http://www.biac.org/>

TUAC

- The Trade Union Advisory Committee to the OECD: <http://www.tuac.org/>

> Working with civil society: Who is OECD Watch?

OECD Watch is an international network of civil society organizations (CSOs) from across the world promoting corporate accountability and responsibility. OECD Watch recognizes the OECD Guidelines and other internationally agreed standards, principles and guidelines (such as the ILO Conventions and Declarations and The International Bill of Human Rights) as a supplement to legal instruments that can provide adversely impacted individuals, communities, and civil society organizations with some additional options for addressing irresponsible corporate behavior.

OECD Watch has a formal status, alongside BIAC and TUAC, within the proceedings of the OECD Investment Committee in relation to the OECD Guidelines for MNEs. The OECD Investment Committee has acknowledged OECD Watch's contributions to the Committee's work and consults with OECD Watch on interpreting the Guidelines and on requests for clarification from NCPs.

According to OECD Watch, NCPs constitute unique mechanisms for resolving problems arising from irresponsible corporate behavior. OECD Watch engages directly with NCPs and conducts annual reviews of the functioning of NCPs. OECD Watch, OECD Watch member organisations, and NHRIs can work together, and along with other stakeholders in the Guidelines, to promote awareness, knowledge, understanding, implementation and use of the OECD Guidelines and the NCP mechanism, for example, through:

- Referring victims of human rights abuses to each other for advice, assistance and support in seeking access to remedies, as appropriate
- Engaging in joint internal capacity development activities on human rights issues relevant to the Guidelines
- Developing materials with reference to human rights and OECD Guidelines issues in the national context.

Access the OECD Watch website here:
<http://oecdwatch.org/>