



*Report Series*

# How Home Governments Can Incentivise Responsible Business Conduct of Extractive Companies Operating Abroad

1. Overview of the Key  
International Standards



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a pact for responsible business

*Report Series*

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## 1. Overview of the Key International Standards

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# About this Report Series

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Creating an accountable marketplace in a widely interconnected world is a necessary corollary to globalisation, in which governments, companies and civil society play important roles. In a world where business activities and value chains span across many countries, finding the right types of measures to incentivise responsible business conduct (RBC) that crosses borders can be a challenge for states. The primary duty to protect human rights is with states, but companies too have a responsibility - a responsibility to respect human rights, as set out in the UN Guiding Principles for Business and Human Rights (UN Guiding Principles).<sup>1</sup> The Institute for Human Rights and Business (IHRB) has examined the role of states in advancing the protection of human rights in relation to business activities in its “State of Play” report on Human Rights in the Political Economy of States which highlighted examples from 70 countries of recent action.<sup>2</sup>

This series of Reports (the Reports) build on this line of work and IHRB’s activities in East Africa<sup>3</sup> on the extractive sector (oil, gas and mining) under the “Nairobi Process.”<sup>4</sup> The newly emerging East African producer nations as “host states” to extractive activities, bear the primary responsibility for regulating business activities within their territories. Generally, there are limits on states adopting laws that will take effect on the territory of another state. Nonetheless, the principle of sovereignty does not prevent the “home states” of extractive sector companies, large and small, from exploration companies to supermajors in the oil, gas and mining sectors, from setting clear expectations and legal requirements addressing how businesses domiciled in their jurisdiction should operate abroad. Many of the home states reviewed in these Reports have extractive companies domiciled in their jurisdictions currently operating in or considering operations in East Africa. These Reports are addressed to those home states to serve as inspiration for creating clear incentives and disincentives for responsible business conduct by “their” extractive companies while operating in East Africa and in other emerging producer nations.

The extractive sector is crucial to the development of both developing and industrialised countries, but it remains a high-risk sector with often significant human rights, environmental and social impacts.<sup>5</sup> Extractive companies are more likely to operate in fragile and conflict-affected situations than other businesses<sup>6</sup> and states where there may be limited regulation of

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1 Office of the UN High Commissioner for Human Rights, “UN Guiding Principles on Business and Human Rights: Implementing the ‘Protect, Respect, Remedy’ Framework” (2011), at: [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

2 IHRB, ‘State of Play 3: Human Rights in the Political Economy of States: Avenues for Application’ (2014) p. 21. Available at: [https://www.ihrb.org/uploads/reports/2014-03-18%2C\\_Report%2C\\_State\\_of\\_Play\\_-\\_Human\\_Rights\\_With\\_in\\_the\\_Political\\_Economy\\_of\\_States\\_-\\_Full\\_Report.pdf](https://www.ihrb.org/uploads/reports/2014-03-18%2C_Report%2C_State_of_Play_-_Human_Rights_With_in_the_Political_Economy_of_States_-_Full_Report.pdf) (IHRB State of Play 3)

3 In particular, Kenya, Tanzania, Uganda, Ethiopia, South Sudan.

4 <https://business-humanrights.org/sites/default/files/reports-and-materials/Ruggie-2-addendum-23-May-2008.pdf>

5 See Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Addendum, “Corporations and human rights: a survey of the scope and patterns – of alleged corporate-related human rights abuse” (2008) highlighting human rights impacts in the extractive sector at the start of his mandate <https://business-humanrights.org/sites/default/files/reports-and-materials/Ruggie-2-addendum-23-May-2008.pdf>, the work done since then on human rights by some of the main international industry associations – the International Council of Mining & Metals: <https://www.icmm.com/en-gb/society-and-the-economy/mining-and-communities/human-rights> and IPIECA (global oil and gas industry association for environmental and social issues): <http://www.ipieca.org/our-work/social/human-rights/> as well as the active attention by civil society in documenting and addressing human rights impacts of the oil, gas and coal sectors: <https://business-humanrights.org/en/sectors/natural-resources/oil-gas-coal> and mining sector: <https://business-humanrights.org/en/sectors/natural-resources/mining>

6 World Bank Group, ‘Investment Climate in Practice: Promoting Foreign Investment in Fragile and Conflict-Af-

human rights, environmental or social impacts or where existing standards are not rigorously enforced. And while there has been significant developments among some of the major international extractive sector companies in developing policies and practices to implement the UN Guiding Principles, supported by work at the industry association level, these measures have been challenging to put into practice. These experiences are nonetheless important in demonstrating that these issues are relevant and are being addressed to the far wider group of extractive companies large and small that have not yet started to address these issues or are resolutely ignoring RBC developments.

In the meantime, several East African countries are working to upgrade their nascent national legal and regulatory frameworks to address these increasingly important sectors but face many challenges.<sup>7</sup> Managing the extractive sector in a way that contributes to sustainable development and economic prosperity is an imperative. The African continent is all too familiar with the cost of getting it wrong.

While host states have the primary responsibility for shaping their own approach and regulation of the extractive sector, home states can play an important role in supporting a sustainable, accountable sector. The UN Working Group on Business and Human Rights has recommended that countries should set clear expectations for business and “take into account extraterritorial implications of business enterprises domiciled in their territory in accordance with the UN Guiding Principles.”<sup>8</sup> This series of Reports seeks to highlight what home states are doing and what more they can do in supporting that vision.

Under the UN Guiding Principles, home states have a role to play in setting clear expectations that all businesses domiciled in their territory and/or jurisdiction respect human rights throughout their operations.<sup>9</sup> In addition, in conflict-affected areas, (a characterisation that can be applied to South Sudan and parts of Uganda in the Eastern African region) in which “the ‘host’ State may be unable to protect human rights adequately due to a lack of effective control,” home states of multinationals have roles to play in assisting both the businesses and the host state in ensuring that businesses are not involved in human rights abuse, particularly gross human rights abuses. A home state’s duties vis-à-vis its often significant state owned enterprises in the extractive sector has recently been addressed by the UN Working Group on Business and Human Rights.<sup>10</sup>

## Terminology

- The **“home state”** refers to the country where a company is legally registered.
- The **“host state”** refers to the country where a company operates.

affected Situations’ (April 2014) p. 3. Available at: [https://www.wbginvestmentclimate.org/advisory-services/investment-generation/investment-policy-and-promotion/upload/In\\_Practice\\_Note\\_No\\_22.pdf](https://www.wbginvestmentclimate.org/advisory-services/investment-generation/investment-policy-and-promotion/upload/In_Practice_Note_No_22.pdf)

<sup>7</sup> See Institute for Human Rights and Business, “Human Rights in Kenya’s Extractive Sector: Exploring the Terrain” (2016) at: <https://www.ihrb.org/focus-areas/commodities/human-rights-in-kenyas-extractive-sector-exploring-the-terrain> and Institute for Human Rights and Business, “Human Rights in Tanzania’s Extractive Sector: Exploring the Terrain” (2016) at: <https://www.ihrb.org/focus-areas/commodities/human-rights-in-tanzanias-extractive-sector-exploring-the-terrain>.

<sup>8</sup> UN Working Group on Business and Human Rights, “Guidance on National Action Plans on Business and Human Rights, (2015), p. 12, available at: [http://www.ohchr.org/Documents/Issues/Business/UNWG\\_%20NAPGuidance](http://www.ohchr.org/Documents/Issues/Business/UNWG_%20NAPGuidance)

<sup>9</sup> UN Guiding Principles on Business and Human Rights, Principle 2.

<sup>10</sup> Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, “On the duty of States to protect against human rights abuses involving those business enterprises that they own or control, which are generally referred to as State-owned enterprises,” A/HRC/32/45 (4 May 2016).

Where a company operates solely in its domestic market, the country is the home and host country at the same time. When a company operates abroad, host and home countries are distinct. Both home and host states have different tools at their disposal to incentivise RBC of companies and disincentivise irresponsible conduct.

The series of Reports is published in five parts:

1. Overview of the key international standards
2. Multi-stakeholder initiatives
3. Reporting requirements
4. Innovative new approaches
5. The role of capital markets

Each Report draws the spotlight to particular legislative, regulatory or engagement tools that home countries can use to incentivise RBC among extractive companies operating abroad. Each Report will also provide a direct country-by-country comparison and identify trends.

The Reports examine how a select number of home states seek to meet UN Guiding Principles expectations and incentivise the RBC of extractive companies when operating abroad. The analysis focuses on eight Organisation of Economic Cooperation and Development (OECD) countries with significant extractive sector companies (Australia, Canada, France, Germany, the Netherlands, Norway, the United Kingdom and the United States), the European Union (EU) and five BRICs countries (Brazil, Russia, India, China, and South Africa). The topics covered highlight measures available to home states to set expectations, if not legal requirements, applicable to extractive companies based in their countries and operating abroad. These examples can serve as models for other sectors that have drawn less attention but which may have increasingly significant human rights impacts when operating abroad. Also of importance, the examples discussed provide input to civil society and other stakeholders as part of the broader toolkit for promoting greater accountability, and should stimulate further debate on the efficiency and effectiveness of such measures.<sup>11</sup>

There are more tools and approaches that could be highlighted in a more in-depth study. For example, the extraterritorial application of home country laws is the subject of extensive and on-going studies in the business and human rights space. Further research on the economic incentives certain home states provide to their extractive companies operating abroad would provide an interesting comparison to the efforts put into the kinds of RBC measures highlighted in this set of Reports. Further coherence between economic diplomacy and RBC diplomacy opens interesting possibilities for leveraging further action in the future.

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<sup>11</sup> Given the broad scope of the task, the Reports do not attempt to evaluate the effectiveness of the measures. IHRB acknowledges that monitoring and evaluation of the various initiatives and tools discussed in this series would be important to track the impact and assess progress made, particularly at the host country-level. However it does seek to compare countries' engagement as an indicator for the relevance and range of the various incentives.

# Executive Summary



This Report is the first in a series that review measures that home governments can use to incentivise responsible business conduct (RBC) and disincentivise irresponsible conduct of extractive companies operating abroad. It reviews how select countries in the Organisation of Economic Cooperation and Development (OECD), as well as Brazil, Russia, India, China and South Africa (BRICS) countries and the European Union (EU) have used the implementation of the UN Guiding Principles on Business and Human Rights (UN Guiding Principles)<sup>12</sup> and the OECD Guidelines for Multinational Enterprises (OECD Guidelines)<sup>13</sup> for this purpose. The analysis is based on the data set out in the tables in the Annex.<sup>14</sup>

Of the 13 countries plus the EU reviewed only three have adopted a national action plan on business and human rights (NAP) to implement the UN Guiding Principles, while all but three have publicly endorsed the UN Guiding Principles in some way. Among the government measures or endorsements of the UN Guiding Principles, only two countries referenced extraterritoriality and five of 13 referenced the extractive sector. The slow progress of incorporating the UN Guiding Principles into home government policies is reflected in the low level of NAPs, five years on from the adoption of the UN Guiding Principles.<sup>15</sup> In particular, the UN Guiding Principles implementation processes are not being leveraged to address the business conduct of extractive companies operating abroad.

All but three countries of the 13 researched adhere to the OECD Guidelines. These Guidelines have a unique implementation mechanism – National Contact Points (NCPs) that provide a mediation and conciliation platform for resolving practical issues that may arise with the implementation of the Guidelines.<sup>16</sup> The total of specific instances heard by NCPs per country, as well those related to the extractive sector varies greatly. In some countries, like France, extractive sector cases represent only 5% of the cases heard. In other countries, like Canada, extractive cases constitute a large majority of the cases. Further peer learning among OECD NCP representatives on extractive sector issues and specific instances could help strengthen consistency and robustness of specific instances procedures.

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12 Office of the UN High Commissioner for Human Rights, “UN Guiding Principles on Business and Human Rights: Implementing the ‘Protect, Respect, Remedy’ Framework” (2011), at: [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

13 The Guidelines are an annex to the OECD Declaration and Decisions on International Investment and Multinational Enterprises. Available at: <http://www.oecd.org/daf/inv/mne/48004323.pdf> (OECD Guidelines)

14 The tables were updated as of May 2016.

15 See: Business and Human Rights Resource Centre, National Action Plan page. Available at: <https://www.business-humanrights.org/en/un-guiding-principles/implementation-tools-examples/implementation-by-governments/by-type-of-initiative/national-action-plans>

16 <http://www.oecd.org/daf/inv/mne/ncps.htm>

# 1.1 The Standards

The UN Guiding Principles are an authoritative global standard that set out international expectations across a three-pillar 'Protect, Respect and Remedy' framework. The Framework recognises the complementary but distinct obligations that States and businesses have in protecting and respecting human rights, as well as in providing effective remedy mechanisms. The UN Guiding Principles are built on three pillars:

**Pillar I:** States' duty to protect human rights against abuse by third parties, including business, through a mix of policies, regulation and adjudication.

**Pillar II:** Companies' responsibility to respect human rights by avoiding infringing on the rights of others and address any harm to rights with which they are involved.

**Pillar III:** Access to effective remedy where people's human rights are harmed through judicial, non-judicial or other means.

The OECD Guidelines were developed in 1976 and have been revised five times, most recently in 2011.<sup>17</sup> They reflect recommendations by governments to businesses, covering all major areas of business responsibility - human rights, employment relations, environment, information disclosure, anti-corruption, and consumer interests<sup>18</sup> including corporate steps to obey the law, observation of internationally-recognized standards and responses to other societal expectations.<sup>19</sup> They "are the only multilaterally agreed and comprehensive code of responsible business conduct that governments have committed to promoting."<sup>20</sup> The responsibilities of the Guidelines follow companies wherever they operate including abroad, outside their home territory. The updated Guidelines of 2011 include a new human rights chapter that is consistent with the UN Guiding Principles.<sup>21</sup> They are supported by the NCPs, making the Guidelines the only government backed international instrument for responsible business conduct with a built in non-judicial grievance mechanism.<sup>22</sup>

17 OECD, "2011 Update of the OECD Guidelines for Multinational Enterprises," (2011). Available at: <http://www.oecd.org/daf/inv/mne/48004323.pdf>

18 OECD, "15 Years of the National Contact Points Highlights" (2016), p.1. Available at: <http://www.oecd.org/daf/inv/mne/48004323.pdf>

19 Ibid.

20 See: <https://mneguidelines.oecd.org/guidelines/>

21 OECD Guidelines, Foreword, p. 3, available at <http://www.oecd.org/daf/inv/mne/48004323.pdf>

22 OECD, "Implementing the OECD Guidelines for Multinational Enterprises: The National Contact Points from 2000 to 2015" (2016). Available at: <http://mneguidelines.oecd.org/OECD-report-15-years-National-Contact-Points.pdf>

# The UN Guiding Principles on Business and Human Rights

# 2

The national implementation of the UN Guiding Principles can constitute an important step in stimulating the development of RBC. Table A in the Annex shows how home states have used the implementation of UN Guiding Principles to influence the activities of extractive businesses in their global operations.

## 2.1 Setting Expectations and Regulating Operations Abroad

As an important step in implementing the UN Guiding Principles, countries have been encouraged to develop a “national action plan” on business and human rights (NAP). A NAP provides the opportunity for states to assess actions taken to address business and human rights, taking a whole of government approach, and importantly, to set a clear path of actions going forward to set expectations for, support and regulate business and provide access to remedy for victims of human rights abuses.<sup>23</sup>

There is no international legal requirement, nor is there a prohibition, on extraterritorial regulation of business operations by home countries, and the UN Guiding Principles acknowledges this lack of clarity.<sup>24</sup> The UN Guiding Principles commentary points to a variety of approaches taken towards extraterritorial application of human rights law, ranging from direct extraterritorial legislation to none at all.<sup>25</sup> The UN Working Group on Business and Human Rights published guidance on creating NAPs, and recommended that countries “take into account extraterritorial implications of business enterprises domiciled in their territory.”<sup>26</sup> The guidance goes on to provide examples of how countries should directly consider extraterritoriality, both in terms of law-making as well as access to remedy:

23 See: The Danish Institute for Human Rights and the International Corporate Accountability Roundtable, “National action plans on business and human rights: A Toolkit for the Development, Implementation, and Review of State Commitments to Business and Human Rights Frameworks” (2014). Available at: <http://www.humanrights.dk/publications/national-action-plans-business-human-rights>

24 UN Guiding Principle. 2, Commentary, p. 3. Available at: <http://www.humanrights.dk/publications/national-action-plans-business-human-rights> [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

25 UN Guiding Principle. 2, Commentary, p. 4.

26 UN Working Group on Business and Human Rights, “Guidance on National Action Plans on Business and human Rights”, (2015), p.12. Available at: [http://business-humanrights.org/sites/default/files/documents/UNWG\\_NAPGuidance\\_Version2%200\\_final\\_print\\_09112015.pdf](http://business-humanrights.org/sites/default/files/documents/UNWG_NAPGuidance_Version2%200_final_print_09112015.pdf).

implementing measures with extraterritorial implications; passing direct extraterritorial legislation; and providing resources for thorough investigations of extraterritorial corporate involvement in human rights issues, among others.<sup>27</sup> Recent guidance on NAPs from civil society organisations suggests that “a NAP that is serious about protecting human rights must tackle the risks facing all those who defend these rights, not just those domiciled within the State.”<sup>28</sup>

While the UN Guiding Principles make no explicit mention of regulating particular sectors, the introduction to the UN Guiding Principles note that they apply to “all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure.”<sup>29</sup> In addition, Principle 21 recognizes that “sector-specific indicators can provide helpful additional detail” in determining reporting requirements.<sup>30</sup> Guidance for NAPs from the UN Working Group on Business and Human Rights recommended “developing practical sector-specific guidance” for sectors like “resource extraction.”<sup>31</sup>

## 2.2 No Singular Approach to Implementation

There is wide variation in the steps countries have taken to express their support for and implementation of the UN Guiding Principles, from developing specific NAPs, to implementing other effective measures besides a NAP, to simply endorsing the UN Guiding Principles publicly without further action. Table A, found in the Annex, illustrates these different approaches to implementing the UN Guiding Principles.

In a review of 13 countries and the EU, three countries developed a NAP, four were in the process of developing a NAP, six governments had taken other measures to implement the UN Guiding Principles, and all but three had publicly endorsed the UN Guiding Principles in some capacity.<sup>32</sup> Many countries relied on the language of the UN Guiding Principles to guide the development of their NAPs or state-level CSR plans that also addressed business and human rights. The UN Working Group on Business and Human Rights specifically encouraged countries to develop NAPs to more effectively and specially implement the UN Guiding Principles.<sup>33</sup> In principle, those countries that have developed a NAP should be more effective at implementing the goals of the UN Guiding Principles because they have often gone through a consultative, cross-ministerial exercise to assess what the country has done on business and human rights and where it plans to focus its efforts. However, as has been noted in a number of commentaries, the scope of NAPs implementation has varied widely.<sup>34</sup>

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27 “Guidance on National Action Plans on Business and Human Rights”, pp.18, 30, *ibid*.

28 International Service for Human Rights (ISHR) & International Corporate Accountability Roundtable (ICAR), “Human Rights Defenders in National Action Plans (NAPs) on Business and Human Rights”, (2016), p.9. Available at: [https://www.ishr.ch/sites/default/files/documents/ishr\\_icar\\_hrds\\_in\\_naps\\_guidance\\_eng.pdf](https://www.ishr.ch/sites/default/files/documents/ishr_icar_hrds_in_naps_guidance_eng.pdf).

29 UN Guiding Principle No. 18, Commentary, p. 1, *ibid*.

30 UN Guiding Principle No. 21, p. 23, *ibid*.

31 UN Working Group on Business and Human Rights, “Guidance on National Action Plans on Business and Human Rights”, (2015), p.20. Available at: [http://business-humanrights.org/sites/default/files/documents/UNWG\\_NAPGuidance\\_Version2%200\\_final\\_print\\_09112015.pdf](http://business-humanrights.org/sites/default/files/documents/UNWG_NAPGuidance_Version2%200_final_print_09112015.pdf).

32 See Table A, Annex.

33 United Nations Working Group on Business and Human Rights, “State national action plans.” Available at: <http://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx>

34 See for example, C. O’Brien, A. Mehra, S. Blackwell, C. Bloch Poulsen Hansen, “National Action Plans: Current

## 2.3 Sector Specificity in National Action Plans

The Norway NAP incorporates some extractive sector-specific references, highlighting existing legislation that requires companies in the extractive industry to publish an annual report on their activities under the country-by-country reporting regulations<sup>35</sup> and under its Minerals Act. The NAP identified a forthcoming review of the amendments to the Minerals Act proposed by the Sami Rights Commission, but otherwise simply noted that each relevant ministry will continue to be responsible for assessing the need for legislative amendments and other measures in its area of expertise.<sup>36</sup>

The UK NAP, the first NAP to be published in 2013, lacked sector-specific guidance but recommended that guidance should be included in its update.<sup>37</sup> However, the updated UK NAP, which was published in 2016, simply contains four different case studies focused on cross-sector collaborative efforts related to business and human rights. One of the case studies is the *Extractive Sector Forum*, a multi-stakeholder initiative dedicated to promoting RBC in the extractive sector in Kenya led by IHRB and the Institute for Environmental Law and Governance.<sup>38</sup> The NAP reiterates UK support for the Voluntary Principles on Security and Human Rights, a multistakeholder initiative involving the extractive sector.<sup>39</sup> The Dutch NAP refers to its participation in an OECD proactive agenda project on the extractive sector, but nothing in the NAP discusses in detail whether the Netherlands is taking particular action related to the extractive sector.<sup>40</sup>

The U.S. has organized several national consultations on UN Guiding Principles implementation since President Obama's 2014 declaration to develop a NAP, but no plan has been put in place. The public statements about the consultations are generally silent on extraterritoriality and the extractive sector. The US implementation discussions referenced existing efforts such as the Extractive Industries Transparency Initiative (EITI)<sup>41</sup> and the Voluntary Principles on Security and Human Rights, but no additional actions in order to promote implementation of the UN Guiding Principles in the extractive sector.<sup>42</sup>

The German intermediate NAP only references mining and the oil and gas industries through a case study on "the use of private security staff" rather than a sector in need of specific

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Status and Future Prospects for a New Business and Human Rights Governance Tool," (2015). Available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2627568](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2627568)

35 Norwegian Ministry of Foreign Affairs, Business and Human Rights, "National Action Plan for the implementation of the UN Guiding Principles," (2015), p. 19. Available at: [https://www.regjeringen.no/globalassets/departementene/ud/vedlegg/mr/business\\_hr\\_b.pdf](https://www.regjeringen.no/globalassets/departementene/ud/vedlegg/mr/business_hr_b.pdf) (Norwegian NAP)

36 Norwegian NAP, p. 20.

37 Secretary of State for Foreign and Commonwealth Affairs, "Good Business: Implementing the UN Guiding Principles on Business and Human Rights", (2013). Available at: <https://www.gov.uk/government/news/uk-first-to-launch-action-plan-on-business-and-human-rights> (UK NAP 2013)

38 Ibid., Government Commitments, Good Business Implementing the UN Guiding Principles on Business and Human Rights - Updated May 2016, pp.11-13. Available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/522805/Good\\_Business\\_Implementing\\_the\\_UN\\_Guiding\\_Principles\\_on\\_Business\\_and\\_Human\\_Rights\\_updated\\_May\\_2016.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/522805/Good_Business_Implementing_the_UN_Guiding_Principles_on_Business_and_Human_Rights_updated_May_2016.pdf). (UK NAP Update 2016)

39 See: <http://www.voluntaryprinciples.org/>

40 Netherlands Ministry of Foreign Affairs, National Action Plan on Business and Human Rights, p. 15. Available at: <https://business-humanrights.org/sites/default/files/documents/netherlands-national-action-plan.pdf> (Dutch NAP)

41 See <https://eiti.org/>

42 Otero, Maria, Under Secretary for Civilian Security, Democracy and Human Rights, "Implementation Workshop on the Guiding Principles on Business and Human Rights," (remarks made 30 April 2012) Available at: <http://www.state.gov/j/189052.htm>.

guidance or consideration.<sup>43</sup> France is currently developing a NAP, and the French civil society organization CNCDH is setting up a working group to evaluate UN Guiding Principles implementation.<sup>44</sup> The preparatory document published by the French government directly states that France “supports firmly” new legislation and regulations on transparency in the extractive sector and notes its support of due diligence and non-financial reporting for the extractive sector.<sup>45</sup>

The EU’s 2011 Communication on Corporate Social Responsibility contained a clear expectation that it “expects all European enterprises to meet the corporate responsibility to respect human rights, as defined in the UN Guiding Principles”<sup>46</sup> without any further qualification limiting the territorial scope of application. Instead, several actions under the Communication clearly indicate the intention to cover global operations, applying global standards. It has specifically adopted or is adopting legislation that cover the operations of extractive companies operating abroad: the Country-by-Country Reporting Directive places responsibility on extractive businesses to disclose payments to host governments<sup>47</sup> (See the Report on reporting) and on conflict minerals.<sup>48</sup> Although the Communication does not specifically address the extractive sector, one of the actions identified in the 2011 CSR Communication to support implementation of the UN Guiding Principles was the development of sector specific guidance on the corporate responsibility to respect human rights. One of the European Commission guides is on the oil and gas sector and is meant to be applied globally.<sup>49</sup>

## 2.4 Extraterritorial Regulation of Business Behaviour is a Rarity

Even if certain NAPs reference extraterritoriality or the extractive sector, it is rarely discussed in depth. The Norwegian NAP notes that if Norwegian companies become involved with human rights concerns “in the host country,” a case may be brought against them in a Norwegian court. This is qualified, however, by national legislation requiring a “sufficiently

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43 Available at: [http://www.globalcompact.de/wAssets/docs/Menschenrechte/Publikationen/respecting\\_human\\_rights-an\\_introduutory\\_guide\\_for\\_business.pdf](http://www.globalcompact.de/wAssets/docs/Menschenrechte/Publikationen/respecting_human_rights-an_introduutory_guide_for_business.pdf). p. 46.

44 In January 2013, the French Government released the “Document Préparatoire au Plan National Français De Développement De la Responsabilité Societale Des Entreprises” (RSE), a National Plan that clarifies the commitment of the government to the promotion of responsible business behaviour. French Government, “Document Préparatoire au Plan National Français De Développement De la Responsabilité Societale Des Entreprises”, (2013). Available at: [http://www.developpement-durable.gouv.fr/IMG/pdf/document\\_preparatoire\\_au\\_plan\\_national\\_francais\\_de\\_developpement\\_de\\_la\\_responsabilite\\_societale\\_des\\_entreprises\\_janvier\\_2013\\_.pdf](http://www.developpement-durable.gouv.fr/IMG/pdf/document_preparatoire_au_plan_national_francais_de_developpement_de_la_responsabilite_societale_des_entreprises_janvier_2013_.pdf).

45 Ibid. p. 7, 39.

46 While the EU could not develop a NAP as a single legal entity, it invited all EU Member States to develop a NAP to implement the UN Guiding Principles as part of its Communication, “A renewed EU strategy 2011-14 for Corporate Social Responsibility,” (2011) P. 14. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52011DC0681>. To support its Member States, the EU has supported peer reviews and exchanges among the Member States working on NAPs, see: Council of the European Union, Commission Staff Working Document, “Implementing the UN Guiding Principles on Business and Human Rights - State of Play, SWD(2015) 144 final,” (2015), p.7. Available at: <http://data.consilium.europa.eu/doc/document/ST-10947-2015-INIT/en/pdf>

47 Directive 2013/34/EU of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings. Available at: [http://ec.europa.eu/finance/company-reporting/country-by-country-reporting/index\\_en.htm#cbcr-payments-framework](http://ec.europa.eu/finance/company-reporting/country-by-country-reporting/index_en.htm#cbcr-payments-framework)

48 <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1510>

49 European Commission, “Oil & Gas Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights,” (2014) Available at: [https://www.ihrb.org/uploads/reports/EC-Guide\\_OG.pdf](https://www.ihrb.org/uploads/reports/EC-Guide_OG.pdf)

strong connection” to Norway.<sup>50</sup> The NAP does not provide a direct means of determining this connection, but rather notes that an “overall evaluation” will be made in consideration of all circumstances in a given case.<sup>51</sup> The NAP discussion on remedy highlights the conditions for victims of abuses by Norwegian companies abroad to access Norwegian courts and notes that the Government will actively follow international efforts to strengthen access to judicial grievance mechanisms at the national level but makes no further specific commitments.<sup>52</sup>

The NAPs of both the UK and the Netherlands address extraterritorial application. Specifically, the Netherlands NAP notes that it was unconvinced that extraterritorial legislation would “contribute to preventing human rights abuses by foreign companies in the countries in which they are active” and that “there is also too little international support for an international, legally-binding instrument.”<sup>53</sup> It noted a difference of opinion on the question of whether the Dutch court system should be open to civil or criminal law proceedings against Dutch companies in the event of alleged human rights abuses on the part of their foreign subsidiaries.<sup>54</sup>

The UK simply stated that there “is no general requirement for States to regulate the extraterritorial activities of business enterprises domiciled in their jurisdiction, although there are limited exceptions to this, for instance under treaty regimes. The UK may also choose as a matter of policy in certain instances to regulate the overseas conduct of British businesses.”<sup>55</sup> None of the documents or dialogues discussing NAP development in the US, or Germany reference extraterritoriality.

## 2.5 Public Endorsements Rarely Lead to Specific Consideration of Extractives

Other governments have endorsed the UN Guiding Principles, but have yet to take active steps toward their implementation through a NAP or other type of national plan. Within many of these countries, such as South Africa and Brazil, civil society organisations and academic experts have emphasised the need for governmental action as it relates to the UN Guiding Principles. For example, South African civil society organisations developed a “shadow” national baseline assessment to press the government to create a NAP.<sup>56</sup> The assessment noted that the extractive industry is a high-risk sector for human rights in South Africa, and needed to be more directly regulated. This work led the National Human Rights

50 This is explained in the footnote to the NAP as follows: “Section 4-3, first paragraph, see Rt. 2010-1197, paragraph 41. There are a number of exceptions to this provision. Exceptions may be made under special legislation, or there may be limitations that follow from international law, cf. section 1-2 of the Dispute Act. Of practical importance is the fact that the provisions of the Lugano Convention concerning local jurisdiction take precedence in cases that come within the scope of the convention, cf. Rt. 2012-57, paragraph 18.” (In Norwegian). Norwegian NAP, p. 40.

51 Norwegian NAP, p. 40.

52 Norwegian NAP, p. 40.

53 Dutch NAP, p. 39.

54 Dutch NAP, p. 39.

55 UK 2013 NAP, p. 6.

56 The South African government has made no commitment to developing a NAP to implement the UN Guiding Principles, but a “shadow” national baseline assessment (NBA) was developed by civil society organisations. The Centre for Human Rights, University of Pretoria, and International Corporate Accountability Roundtable, “National Baseline Assessment of Current Implementation of Business and Human Rights Frameworks”, (2016). Available at: <http://icar.ngo/wp-content/uploads/2016/04/Shadow-SA-NBA-Final.pdf>.

Institution of South Africa to begin to take first steps towards creating a NAP. However, clear governmental action towards the adoption of a NAP is still outstanding.<sup>57</sup> In other countries, such as Brazil and China, civil society organisations and the academic community hope to similarly influence their respective governments to make more formal commitments to the UN Guiding Principles. While Australia has not developed a NAP, in early 2016 it committed to public consultations around implementation of the UN Guiding Principles.<sup>58</sup> The matter will also be discussed at the forthcoming annual Australian Dialogue on Business and Human Rights co-convened by the Global Compact Network Australia and the Australian Human Rights Commission.<sup>59</sup>

## 2.6 Despite Near-Universal ‘Support’, Implementation Still Has a Way to Go

Even though the UN Guiding Principles have been welcomed as an important step towards an international consensus on human rights and business, much remains to be done on implementation. Critics point to existing NAPs as an example of this deficit, in that most simply reference existing measures rather than outline future action.<sup>60</sup> Many argue that their language could and must be stronger in defining obligations of home states with regard to extraterritorial application of the UN Guiding Principles by corporations originating from their countries<sup>61</sup> -- covering domestic and extraterritorial concerns and sector-specific human rights issues for sectors that are relevant to the country, something which many NAPs currently do not do.<sup>62</sup>

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57 The National Human Rights Institution of South Africa has begun to take steps towards creating a NAP. OHCHR, “State national action plans.” Available at: <http://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx>, last accessed 31 May 2016. The South African government is also currently “prioritizing the process around a treaty on business and human rights at the UN level.” Shadow NBA for South Africa, p. 2, *Ibid*.

58 See: [http://lib.ohchr.org/HRBodies/UPR/Documents/Session23/AU/A.HRC.31.14.Add.1\\_AV-Australia-E.docx](http://lib.ohchr.org/HRBodies/UPR/Documents/Session23/AU/A.HRC.31.14.Add.1_AV-Australia-E.docx)

59 See: <http://www.unglobalcompact.org.au/events/3rd-australian-dialogue-on-business-and-human-rights/>

60 C. O’Brien, A. Mehra, S. Blackwell, C. Bloch Poulsen Hansen, “National Action Plans: Current Status and Future Prospects for a New Business and Human Rights Governance Tool,” (2015) Available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2627568](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2627568) (C. O’Brien)

61 Penelope Simons, ‘The governance gap: multi-stakeholder and intergovernmental initiatives’ in Penelope Simons and Audrey Macklin, ‘The Governance Gap: Extractive industries, human rights, and the home state advantage’ (Routledge 2014) 94.

62 *Ibid.*, C. O’Brien, p. 9.

# The OECD Guidelines for Multinational Enterprises

# 3

## 3.1 OECD Guidance on the Extractive Sector

The OECD Guidelines apply to all multinational enterprises in adhering states and set out the expectation that enterprises carry out risk due diligence.<sup>1</sup> As part of its proactive agenda, the OECD supports companies in doing so by offering sector-specific due diligence guidance. While the OECD Guidelines did not focus on the extractive sector specifically, the subsequent development of two areas of guidance reflects the significance of RBC to the sector. Two guidance documents specifically deal with the extractive sector.<sup>2</sup> The first, the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas<sup>3</sup> was adopted in 2011, and amended in 2012 and again in 2016 and is accompanied by an increasing range of additional guidance on implementation across a wide range of conflict minerals.<sup>4</sup> The Guidance aims to “help companies respect human rights and avoid contributing to conflict through their mineral sourcing practice.”<sup>5</sup> The OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector,<sup>6</sup> offers a toolkit for enterprises to set in place, carry out and evaluate their performance on stakeholder engagement. Both of these guidance documents address enterprises’ due diligence processes rather than (home) states policies and legislation.

As is demonstrated by the conflict minerals guidance, such guidance documents can evolve into internationally accepted practice on due diligence in the extractive sector and further, as a basis for home state legislation, introducing or specifying due diligence obligations in the extractive sector. The US Securities and Exchange Commission recognised the OECD Guidance as an international framework for due diligence measures undertaken by companies that are required to file a conflict minerals report under the SEC’s final rule implementing Section 1502 of the US legislation – the Dodd-Frank Act.<sup>7</sup> The forthcoming EU legislation on conflict minerals is also expected to recognise the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.

1 OECD Guidelines, General Policies Chapter, Paragraph A10. Available at: <http://www.oecd.org/daf/inv/mne/48004323.pdf>

2 Other guidance concern agricultural and garment supply chains <<http://mneguidelines.oecd.org/responsible-supply-chains-textile-garment-sector.htm>.

3 OECD, ‘OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas: Second Edition’ (2013) <http://www.oecd.org/daf/inv/mne/GuidanceEdition2.pdf>.

4 <http://mneguidelines.oecd.org/mining.htm>

5 OECD, ‘OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas: Second Edition’ (2013), Foreword.

6 <http://mneguidelines.oecd.org/OECD-Guidance-Extractives-Sector-Stakeholder-Engagement.pdf>

7 See: SEC Adopts Rule for Disclosing Use of Conflict Minerals (2012). Available at: <http://www.sec.gov/News/PressRelease/Detail/PressRelease/1365171484002>

### 3.2 Extending the Influence of OECD Guidance to Non-Members

At this point, 46 governments adhere to the OECD Guidelines. Adhering governments commit to “jointly recommend to multinational enterprises operating in or from their territories the observance of the Guidelines”<sup>8</sup> and make a binding commitment to implement them.<sup>9</sup> A country does not need to be a member of the OECD in order to adhere to the OECD Guidelines. Thus, all 34 OECD member states plus an additional 12 non-OECD countries adhere to the OECD Guidelines, including BRICS-country Brazil.<sup>10</sup> Given that implementation and promotion of the OECD Guidelines is obligatory for adhering countries,<sup>11</sup> this number is significant. Approximately 85% of global foreign direct investment is covered by the OECD Guidelines.<sup>12</sup>

However, of the countries reviewed in Table B, all of the BRICS countries have significant extractive sector operations but do not adhere to the OECD Guidelines. Yet, even without China adhering to the OECD Guidelines, close cooperation between the OECD and Chinese bodies resulted in the ‘Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains.’<sup>13</sup> They apply on a voluntary basis to all Chinese corporations and their supply chains in order to align their due diligence standards on conflict minerals with international standards.<sup>14</sup> This example shows that the OECD Guidelines and its guidance documents have the potential to affect home state policies in the long term with regard to extractive enterprises even without formal adherence to the OECD.

### 3.3 National Contact Points: Implementation and Complaint Mechanisms

The OECD Guidelines obligate adhering countries to create a National Contact Point (NCP) as part of national-level implementation to serve as a non-judicial grievance mechanism for business-related impacts. The main role of the NCPs is to undertake promotional activities, and contribute to the resolution of issues that may arise from the alleged non-observance of the Guidelines.<sup>15</sup> Quite uniquely in the world, they provide a mediation and conciliation platform for resolving grievances by stakeholders relating to implementation of the Guidelines by businesses in their operations (referred to as “specific instances” by the OECD). NCPs can hear cases concerning extraterritorial application of the OECD Guidelines and issue non-binding

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8 OECD Guidelines for Multinational Enterprises (2011), Declaration On International Investment And Multinational Enterprises, Para. I. Available at: <http://mneguidelines.oecd.org/>

9 OECD Guidelines for Multinational Enterprises (2011), Preface, para. 1. Available at: <http://mneguidelines.oecd.org/>

10 See: <http://mneguidelines.oecd.org/about/>

11 OECD Guidelines, Concepts and Principles, Paragraph 11.

12 See: <http://www.oecd.org/corporate/mne/oecdguidelinesformultinationalenterprises.htm>.

13 CCCMC, ‘Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains’ (2015). Available at: <https://mneguidelines.oecd.org/chinese-due-diligence-guidelines-for-responsible-mineral-supply-chains.htm>

14 Ibid.

15 OECD Guidelines, p. 68.

decisions. Non-governmental organisations (NGOs), trade unions and individuals can make a complaint to an NCP. For example, 181 trade union complaints were filed at the time of this report.<sup>16</sup> The OECD Watch is an international network of civil society organisations that reports on all cases filed to a respective NCP by NGOs.<sup>17</sup> The findings of this section are based on an analysis of the data provided in Table B, in the Annex.

The NCPs established in accordance with the OECD Guidelines vary significantly in their institutional structure. In some countries, the NCP confers primary responsibility to a single person (Australia<sup>18</sup>) or a leading division within the competent ministry (Germany<sup>19</sup>), sometimes supported by a multi-stakeholder advisory board (Germany<sup>20</sup>) or steering committee (Australia, UK<sup>21</sup>). Canada's NCP is an inter-departmental committee chaired by the Department for Foreign Affairs, Trade and Development.<sup>22</sup> While many NCPs involve different departments and ministries of the government (Brazil), either as part of the NCP itself or as part of an advisory body, others include third parties such as labour organisations, trade unions (France<sup>23</sup>) and NGOs (Germany<sup>24</sup>). The US NCP has perhaps the widest range of stakeholders on its advisory group, with representatives from business, organised labour, academia, environmental, and human rights groups.<sup>25</sup> The US NCP is established within the US State Department.<sup>26</sup> In other countries such as Norway and the Netherlands, the NCP is composed of independent experts rather than of government authorities. The Trade Union Advisory Committee (TUAC) and OECD Watch are in the process of publishing a NCP Performance Index in 2016, which will include a ranking of NCP performance.<sup>27</sup>

### 3.4 Extractives-Related Specific Instances

Of the NGO cases filed by 2015, the sector attracting the most complaints was the extractive sector: mining (57) was the highest number of complaints, followed by oil and gas (33).<sup>28</sup> Together, this represents 58% of the NGO cases filed. The specific instances were filed against a range of multinationals from financial institutions to large, global extractive sector corporations. According to the OECD Secretariat database, the second highest number of

16 OECD Guidelines, "Closing Global Governance Gaps." Available at: <http://www.tuaoecdmguidelines.org/Home.asp>

17 OECD Watch. Available at: <http://www.oecdwatch.org/>. There have been 276 NGO cases filed to a respective NCP according to the OECD Watch, and 346 cases in total according to the OECD database; the discrepancy is due to old rather than current cases.

18 <http://mneguidelines.oecd.org/ncps/australia.htm>

19 <https://mneguidelines.oecd.org/ncps/germany.htm>

20 Ibid.

21 <http://mneguidelines.oecd.org/ncps/unitedkingdom.htm>

22 Global Affairs Canada, Government of Canada, 'Canada's National Contact Point (NCP) for the Organization for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises (MNEs)'. Available at: [http://www.international.gc.ca/trade-agreements-accords-commerciaux/ncp-pcn/index.aspx?lang=eng&menu\\_id=1&menu=R](http://www.international.gc.ca/trade-agreements-accords-commerciaux/ncp-pcn/index.aspx?lang=eng&menu_id=1&menu=R)

23 See more at: <https://mneguidelines.oecd.org/ncps/france.htm>

24 <http://mneguidelines.oecd.org/ncps/germany.htm>

25 <http://www.state.gov/e/eb/oecd/usncp/sab/index.htm>

26 United States Mission to the Organization for Economic Cooperation and Development, 'OECD Directorate and Main Committees'. Available at: <http://usoecd.usmission.gov/mission/work.html>

27 OECD Watch, "Consultation on DRAFT TUAC-OECD Watch NCP performance index." Available at: <http://www.oecdwatch.org/ncp-ranking>

28 OECD Watch, <http://www.oecdwatch.org/cases/statistics>

OECD cases were brought in the mining and quarrying sector (18%); the manufacturing industry was the highest (34%).<sup>29</sup> Overall, since the adoption of the revised Guidelines in 2011, specific instances of human rights issues went from less than 5% of cases heard by NCPs to over 50%.<sup>30</sup>

Given that NCPs vary in composition and experience, so do the cases that are brought to them. The number of extractive sector cases tends to reflect the significance of the sector in the home country. For example, France hears very few extractive-related cases in relation to the total number of cases heard, and while the U.K. NCP has heard 83 NGO and TUAC cases—the most of any NCP—only 26 of these are related in some way to the extractive industry.<sup>31</sup> For Canada, where the extractive sector is a very significant sector operating in the country and abroad, extractive-related cases are the largest majority - every NGO case involving the Canadian NCP has been related to the extractive sector except one.<sup>32</sup> Another important element about why Canada's NCP hears such a prevalence of extractive-related cases may be the NCP's established relationship with the Office of the Extractive Sector CSR Counsellor, an important element of Canada's national CSR strategy.<sup>33</sup> If the CSR Counsellor determines formal mediation is necessary for potential business-related human rights claims, it will refer parties to the NCP.<sup>34</sup> The NCP then reflects a well-established means of addressing extraterritorial abuses and providing remedy should a complaint be brought to the Canadian NCP.

### 3.5 Improving the Handling of Extractives-Related Specific Instances

Even though the OECD Guidelines together with the NCP complaint mechanism offer an avenue to hold extractive companies accountable, outcomes of NCP settlements have been limited to date.<sup>35</sup> According to OECD Watch, only 14% of cases filed by NGOs, communities and individuals led to some measure of remedy, and only 1% led to an outcome that "directly improved conditions for the victims of corporate misconduct."<sup>36</sup> The OECD's review of the 15 year anniversary of the NCPs pointed to an improved rate of agreement resulting from specific instance procedures between 2011 – 2015.<sup>37</sup>

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29 OECD NCP Database. Available at: <http://mneguidelines.oecd.org/database/>

30 OECD, "15 Years of the National Contact Points Highlights", (2016), p.1. Available at: <https://mneguidelines.oecd.org/15-Years-of-the-National-Contact-Points-Highlights.pdf>.

31 OECD Watch and TUAC, <http://www.tuacoecdmneguidelines.org/contact-points.asp>.

32 <http://www.oecdwatch.org/cases/advanced-search/cases/advanced-search/ncps/casesearchview?type=NCP&search=National%20Contact%20Point%20Canada>. This includes cases that the Canadian NCP served as lead and participated as non-lead.

33 Canadian government, "Doing Business the Canadian Way: A Strategy to Advance Corporate Social Responsibility in Canada's Extractive Sector", (2014), p.11. Available at: [http://www.international.gc.ca/trade-agreements-accords-commerciaux/assets/pdfs/Enhanced\\_CS\\_Strategy\\_ENG.pdf](http://www.international.gc.ca/trade-agreements-accords-commerciaux/assets/pdfs/Enhanced_CS_Strategy_ENG.pdf).

34 Ibid. "Doing Business the Canadian Way", p. 12.

35 Penelope Simons, 'The governance gap: multistakeholder and intergovernmental initiatives' in Penelope Simons and Audrey Macklin, 'The Governance Gap: Extractive industries, human rights, and the home state advantage' (Routledge 2014) 102; see also OECD Watch, '10 Years On - Assessing the contribution of the OECD Guidelines for Multinational Enterprises to responsible business conduct' (June 2010). Available at: [http://www.oecdwatch.org/publications-en/Publication\\_3550](http://www.oecdwatch.org/publications-en/Publication_3550)

36 OECD Watch, "Remedy Remains Rare", (2015), p.19. Available at: [http://www.oecdwatch.org/publications-en/Publication\\_4201](http://www.oecdwatch.org/publications-en/Publication_4201).

37 OECD, "Implementing the OECD Guidelines for Multinational Enterprises: The National Contact Points from

The different NCP compositions in conjunction with national implementation of the OECD Guidelines inevitably evoke the question of how the institutional structure of national NCPs ensures expertise for extractives issues (both in implementation and in dealing with complaints) that is necessary, as the NCP case databases highlight. In order to strengthen NCPs and their impact, countries must make a concerted effort to provide adequate resources and underscore the value of the NCP structure through policy coherence, such as within their NAPs on business and human rights. Additionally, sector-focused guidance and training is recommended, as it would allow countries to differentiate redress and remedy based on a particular industry. The OECD Guidelines are still an emerging system that offers a normative framework similar to law,<sup>38</sup> and therefore have the potential to close the governance gap concerning companies operating over national boundaries, including companies in the extractive sector.

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2000 to 2015,” (2016) p. 3. Available at: <http://mneguidelines.oecd.org/15-years-of-ncps.htm>

<sup>38</sup> See with citations Penelope Simons, ‘The governance gap: multistakeholder and intergovernmental initiatives’ in Penelope Simons and Audrey Macklin, ‘The Governance Gap: Extractive industries, human rights, and the home state advantage’ (Routledge 2014) 101-102.

# Annex: Country Mapping Against the UN Guiding Principles and OECD Guidelines



Table A. Using the UN Guiding Principles to Incentivise Responsible Business Conduct of Extractive Companies Operating Abroad

Country	NAP Adopted	NAP In Progress	Gov. measure to implement UNGPs	Other Gov. Endorsement of UNGPs	Extraterritorial Elements	Reference to the Extractive Sector	Measures on Remedy
Australia	No	Yes	Yes	National consultation	No	No	No
Brazil	No	No	No	No	No	No	No
Canada	No	No	Yes	Publicly promoted in CSR strategy	Yes	Yes	No
China	No	No	No	Publicly endorsed	No	No	No
EU	No	No	Yes	State of Play reports a EU level	No	Yes	Yes
France	No	Yes	Yes	Publicly endorsed	No	Yes	No
Germany	No	Yes	Yes	Discussed at its CSR Forum	No	No	No
India	No	No	No	No	No	No	No

Country	NAP Adopted	NAP In Progress	Gov. measure to implement UNGPs	Other Gov. Endorsement of UNGPs	Extraterritorial Elements	Reference to the Extractive Sector	Measures on Remedy
Netherlands	Yes (2013)	N/A	No	Publicly emphasised	No	Yes	Yes
Norway	Yes (2015)	N/A	No	Publicly promoted in Gov. white papers	Yes	Yes	Yes
Russia	No	No	No	No	No	No	No
South Africa	No	No	No	Yes	No	No	No
United Kingdom	Yes (2012, updated 2016)	N/A	No	Yes	No	No	Yes
United States	No	Yes	Yes	Publicly endorsed	No	No	No

## 1. Overview of the Key International Standards

How Home Governments can Incentivise Responsible Business Conduct of Extractives Companies Operating Abroad

**Table B. Using the OECD Guidelines for Multinational Enterprises to Incentivise Responsible Business Conduct of Extractive Companies Operating Abroad**

Country	OECD Member Country	Adherence to OECD Guidelines	NCP Established	Cases per NCP	Extractives Cases
Australia	Yes	Yes	Yes	15	4
Brazil	No	Yes	Yes	35	5
Canada	Yes	Yes	Yes	25	15
China	No	No	No	0	0
EU	'Quasi-member'	EU policy commitment	No	0	0
France	Yes	Yes	Yes	34	2
Germany	Yes	Yes	Yes	42	3
India	No	No	No		
Netherlands	Yes	Yes	Yes	41	8
Norway	Yes	Yes	Yes	24	3
Russia	No	No	No	0	0
South Africa	No	No	No	0	0
United Kingdom	Yes	Yes	Yes	83	26
United States	Yes	Yes	Yes	73	6