



Business and Human Rights Toolkit

How UK overseas missions can promote good conduct by UK companies

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Business and Human Rights Toolkit

How UK overseas missions can promote good conduct by UK companies

1. Introduction

This toolkit aims to give guidance to political, economic, commercial and development officers in overseas missions on how to promote good conduct by UK companies operating overseas.

- It contains specific guidance on the Organisation for Economic Cooperation and Development's Guidelines (OECD) for Multinational Enterprises and how to implement the complaints procedure via the UK National Contact Point (NCP). (p15)
- It outlines existing UK policy on business and human rights issues and suggests actions staff can take overseas to promote human rights (pp3-5).
- It includes reference to a range of further initiatives and resources in the area of business and human rights including amongst others the Voluntary Principles on Security and Human Rights and the Extractive Industries Transparency Initiative, as well as links to guidance that businesses have designed to address human rights and the website of the UN Special Representative on Business and Human Rights. (p17)

2. UK commitments and policy

The UK is committed to protecting and promoting respect for the human rights as set out in the binding UN international and regional instruments to which it is a party¹ and in 8 binding core ILO Conventions.² All ILO member states, through the Declaration on Fundamental Principles and Rights at Work adopted in 1998, have committed to respect and promote the principles and rights, whether or not they have ratified the corresponding conventions.

The UK supports the mandate of the Special Representative of the Secretary General (SRSG) on Business and Human Rights, John Ruggie. The UK welcomes the SRSG's contribution to the debate around business and human rights. He has adopted a tripartite approach to tackling the business and human rights debate: the State's duty to protect human rights, corporate responsibility to respect human rights, and enhancing access to remedies. This approach recognises that all actors – States, businesses, and civil society have a role to play. John Ruggie's reports and all materials relating to his work are here: www.business-humanrights.org/SpecialRepPortal. As the SRSG has said, the corporate responsibility to respect human rights does not stem directly from international human rights law, which places legal obligations **only on States**, but it is rooted in prevailing social expectations. This distinction between States and companies is important for HMG³.

The UK is nevertheless committed to promoting responsible corporate behaviour amongst UK companies operating (or considering potential opportunities for operating) overseas. The operations of companies can be both beneficial to and detrimental to the enjoyment of human rights of individuals affected by their operations. If a UK company knowingly or inadvertently becomes complicit in human rights abuses by the host State, it may run the risk of legal liability. In such cases the host State will be in breach of its human rights obligations to its own citizens.

¹ Including the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention Against Torture and other forms of Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, the Convention on the Rights of Persons with Disabilities (see <http://www2.ohchr.org/english/law/>)

² ILO Conventions 29, 87, 98, 100, 105, 111, 138 and 182 (see <http://www.ilo.org/ilolex/english/convdisp1.htm>). The "core labour standards" are a set of four internationally recognised basic rights and principles at work, covering freedom of association and the right to collective bargaining, the elimination of forced labour and of child labour and the elimination of discrimination in employment.

³ The UK takes a more nuanced view than John Ruggie about the State's duty to ensure that companies act compatibly with the States' human rights obligations. The UK's view is that this is not a blanket obligation but depends on the wording of the treaty obligation in question. To the extent that there is a legal duty to protect, it only applies in respect of a State's own inhabitants. The UK does not owe legal obligations to ensure that UK companies comply with UK human rights standards overseas.

The UK government is committed to promoting the OECD Guidelines for Multinational Enterprises (the Guidelines) and implementing the Guidelines' complaints procedure. The Guidelines set out recommendations on responsible business conduct addressed to multinational enterprises, which include an encouragement to companies to respect the human rights of those affected by their operations and a chapter on employment and industrial relations (see Annex 3 for more detailed information).

The Guidelines also stress the importance of companies not resorting to bribery or encouraging corruption. UK-registered companies and individuals are breaking UK law if they commit acts of bribery overseas, even if no part of the alleged act took place in the UK. The UK has committed to outlawing bribery through the OECD Anti-Bribery Convention, the UN Convention Against Corruption and various European Conventions.

State Parties to international human rights treaties have international human rights obligations. They must not violate human rights themselves, nor to some extent through their inaction or negligence allow others (e.g. multinational companies) in their jurisdiction to have a negative impact on human rights. In order to fulfil their international human rights obligations, States must also take action to ensure that individuals are able to enjoy their human rights. This will include regulating the activities of companies to fulfil these obligations.

Non state actors are not party to international human rights conventions and are not directly bound by them. They are of course obliged to obey the laws that States enact to implement their human rights obligations. However, the (OECD) Guidelines for Multinational Enterprises and the UK National Contact Point, which is responsible for raising awareness of the Guidelines and implementing the related complaints procedure, can play an important role in the promotion of a corporate culture that is consistent with human rights.

The UK has ratified all of the core ILO conventions. All ILO member states, through the Declaration on Fundamental Principles and Rights at Work adopted in 1998, have committed to respect and promote the principles and rights, whether or not they have ratified the corresponding conventions. The UK works with the international community to bring about respect for labour standards by making full use of the ILO supervisory mechanisms which allow us and workers' and employers' representatives to put our concerns directly to the governments concerned.

3. Relevance to overseas missions

An important part of overseas missions' work is to promote human rights, including labour rights, with host government representatives.

Missions should therefore be aware of allegations of concern arising from the operations of UK companies or their subsidiaries overseas. Where possible, facilitate and lobby for discussion and resolution of these issues. If your embassy is in a high risk area (e.g. a weak governance zone) greater care is expected of companies operating in these areas since they are at greater risk of becoming complicit in human rights abuses. If your host country contains indigenous people⁴, be aware of the vulnerabilities of those communities and encourage companies to consider these. While it is often possible to challenge the behaviour of companies in the UK, this may not be the case in relation to the operations of UK corporations overseas; therefore, promotional activities are increasingly important and pre-investment action could avoid longer term damage.

You may be approached with a complaint that activities of British companies (or their subsidiaries in the host country) are incompatible with human rights standards. Or you might be approached with a request for support in the form of representations from indigenous and/or other groups. There is considerable pressure for mandatory rules regulating activities of UK companies abroad or sanctions and import bans. The OECD Guidelines are a response to these concerns aiming to promote good behaviour by companies through constructive dialogue with them.

4. How overseas missions can promote good business conduct

Below are suggestions on how missions can take action on business and human rights. Each country context will be different; therefore, you may wish to develop a plan to incorporate some of the issues below. At the outset, be aware that it is not your role to make judgments about fault. However, you can have an important role in signposting potential victims of human rights abuses onwards to organisations that can help them.

Raising awareness, lobbying and facilitating contacts:

- (a) Try to make your work relating to business and human rights, and in particular the promotion of the OECD Guidelines, a more explicit component of your human rights work, e.g. by adding relevant objectives into your business plan under the Departmental Strategic Objectives.
- (b) Use in-country networks to share information about the activities of UK and other companies to identify good practise or assess any allegations against them.

An online information hub that collects information about alleged unacceptable behaviour, as well as responses by companies to the allegations, is the Business and Human Rights Resource Centre, which has individual sections on over 180 countries and over 4500 companies:

⁴ As defined by Article 1a of ILO Convention 169 <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C169>

www.business-humanrights.org. To better understand possible violations of labour and trade union rights in your country the International Trade Union Confederation (ITUC) publishes an annual survey covering most of the 157 countries of its 170 million members. It is available online at: <http://survey09.ituc-csi.org/>

- (c) Communicate with DFID Country Offices (Heads of Office, or Governance, Conflict or Social Development Advisors) where appropriate. Many DFID offices have private sector development programmes and work closely with business. DFID advisers also have strong links with local and international NGOs and trade unions and have expertise in governance, transparency and anti-corruption, and human rights issues.
- (d) Consult HRDGGs' Human Rights Defenders Action Plan for guidance and best practice on supporting human rights defenders who defend the interests of those people affected by activities of UK companies abroad.
- (e) UKTI, FCO and other HMG staff who become aware of, or receive information relating to, acts of bribery committed by UK nationals, companies or other incorporated bodies should report the details directly to the Serious Fraud Office (OverseasCorruption@sfo.gsi.gov.uk).

With Governments

- (a) Make representations to host Governments where the UK thinks their behaviour is deficient. We want to make sure that those governments who are not regulating the actions of multinational companies are not under the impression that the UK government condones activities of multinational companies or host State inaction that has an adverse human rights impact. In order to create a fair playing field to attract overseas investment it is important that the host Government apply reasonable standards stringently to all operators.
- (b) Make representations to host Government on the importance of ratifying, implementing and providing adequate resources for the promotion and enforcement of the core ILO Conventions and UN human rights conventions.

With (UK-registered) Business

- (a) Alert your key contacts and the expat British and other foreign business community and their associations in your host country to the existence of the OECD Guidelines and other frameworks/ initiatives / tools. Preventive action is key.⁵
- (b) Consider hosting business seminars for companies to learn about the

⁵ In particular, note that the SRSG elaborates on how companies can take due diligence in light of his "Protect, Respect, Remedy" Framework. See www.business-humanrights.org/SpecialRepPortal

OECD Guidelines and to facilitate cross-business dialogue and sharing of best practice on how to meet the challenges. Inform companies about the operating context, and particular human rights risks in your country. This will be important to their ability to operate sustainably and to compete locally and internationally as there are increasing risks to business of being seen to be involved in human rights abuses (and related impacts in terms of revenue, reputation, business continuity or even litigation costs, whether or not there has been a breach of domestic law). Discussions could focus on how to compete with other companies operating in the same field and/or what to do if a company suspects that a competitor is not following best practise.

- (c) If your embassy is located in a conflict zone, be aware of / inform UK companies of applicable UN Security Council sanctions and UN expert panel reports (which often contain references to companies). You might alert them to International Alert's "Conflict-sensitive business practice: Guidance for extractive industries". www.international-alert.org/pdfs/conflict_sensitive_business_practice_all.pdf

With Civil Society

- (a) Develop contacts with respected local human rights defenders, trade unions and NGOs representing interests of those who may have been affected in a negative way by companies' operations. Posts may consider visiting them or inviting them to visit, attending their events or ensuring that they are invited to events of EU embassies where they can meet and speak informally to relevant government officials, MPs, media and businessmen, representatives of international institutions. Consider if you can facilitate a dialogue between the two sides by e.g. offering the Embassy premises and chairing a meeting.
- (b) In your meetings with human rights defenders or trade unions, discuss whether the operations of multinational enterprises, UK enterprises in particular, are having an effect on the enjoyment of human rights. Raise awareness of various tools amongst complainants and civil society through visits or hosting meetings. Where a UK registered company is involved, raise awareness of the OECD NCP procedure. If it is not a UK company but there are UK shareholders, consider opportunities to lobby them. If you do not already have details of the local trade union(s) you wish to contact, the British Trades Union Congress (TUC) European Union and International Relations Department (EUIRD) in London will facilitate contact with the right person.

With multilateral organisations:

- (a) Where allegations are raised against a company operating in your country share information with the World Bank, IMF, UN and other relevant

institutions. If it is an EU registered company (or has EU stakeholders), encourage your EU colleagues to make representations in support of the OECD Guidelines. If there any industry-wide issues arising which may be having a detrimental impact on human rights, consider raising them in EU or bilateral human rights dialogues that might exist.

Reacting to complaints:

Assist the UK National Contact Point (NCP) for the OECD Guidelines in the examination of allegations against UK companies, by providing the NCP (on request) with any information relevant to a complaint, irrespective of whether it supports or undermines the allegations made in the complaint. See Annex 3 for more details on the UK NCP's complaint process. If in doubt, contact the UK NCP: UK NCP, Bay 4134, Department for Business, Innovation and Skills, 1-19 Victoria Street, London SW1H 0ET, United Kingdom (enquiries +44 (0)20 7215 8682/5756/6344; e-mail UK.NCP@bis.gsi.gov.uk).

Annex 1: Which specific human rights are at stake?

According to the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises “there are few, if any, internationally recognised rights business cannot impact – or be perceived to impact – in some manner. Therefore companies should consider all such rights”.⁶ UN human rights instruments can be found at <http://www2.ohchr.org/english/law/index.htm#core>

The table below represents a list of the rights that could be seriously impinged upon by operations of multinational companies. All this will be vary context specific. But **illustrative examples** might include:

| Human rights & freedoms | Situations where companies risk having a negative impact on human rights |
|--|--|
| Abolition of slavery and forced labour | A company is alleged to buy minerals which it suspects have been produced, including through the use of workers in debt bondage |
| Abolition of child labour | A company is alleged not to know where its materials have been sourced from in an area where there have been reports of child labour |
| Freedom of association and collective bargaining | A company is alleged to incite violence or discrimination against trade union employees |
| Non-discrimination in respect of employment and occupation | A company discriminates on the basis of gender or religion |
| Right to life, liberty and security of the person | A company operating in conflict zones, for security purposes, is alleged to hire unscrupulous private contractors, that don't respect local law, particularly around the lawful use of violence, and which are able to act with impunity |

⁶ A/HRC/8/5 para 52

| | |
|--|---|
| Freedom from torture or cruel inhuman or degrading treatment | A company is alleged to provide equipment used for torture |
| Right to privacy | A company is alleged to provide personal information to government authorities without any checks to ensure that it won't be used in such a way as to commit serious human rights abuses |
| Freedom of expression | An internet provider is alleged to be complicit in disproportionate government restrictions on freedom of expression |
| Rights of indigenous people to property | Forced evictions, with no provision for resettlement, are alleged to have been served on indigenous people in order to make way for a company's refinery; the company is alleged not to have consulted local communities in the process |
| Right to participate in cultural life | A company is alleged not to consult with local groups when its construction will interfere with lands / monuments sacred to those groups |
| Right to food | Local streams and rivers, which provide water to cultivable land, are alleged to have been polluted as a result of emissions from a company's factory |
| Right to health | Local streams and rivers, which provide water to neighbouring villages, are alleged to have been polluted as a result of emissions from a company's factory |
| Right to reasonable hours of work | Workers are forced to work excessive hours |

See further "Red Flags: Liability Risks for Companies Operating in High-Risk Zones" www.redflags.info

Annex 2 – Frequently Asked Questions

Why should businesses respect human rights?

Although businesses do not have human rights obligations in international law, they are important players in contributing to the realisation of human rights. They can have a positive impact on human rights through creating jobs, boosting economic growth, reducing poverty and increasing demand for the rule of law.

It is in the interest of UK businesses operating overseas, as well as of the people affected by the businesses' economic activities, to take into account the human rights, including labour rights, impact of their operations as part of the standard risk assessment process. This minimises the risk of highly damaging negative publicity and of disagreements with the unions/ NGOs in the UK. But also contributes to the smooth running of companies' operations in the host countries and may attract positive publicity and civil society's support in the UK. Public demands on companies to behave responsibly (and pressure from affected communities and workers as well as NGOs in this respect) are growing. These demands are increasingly framed in terms of human rights.

There is an emerging international awareness that companies have a baseline responsibility to ensure that they are corporately responsible, and that this can be as important to the success of a business as compliance solely with the law. This responsibility is enshrined in soft law instruments (see Annex 4).

What do we expect of UK companies operating abroad and how can they respect human rights?

Human rights standards are set internationally. Even if a UK corporation is complying with national law / investment / trade agreements of a host country, these may come into conflict with international human rights standards. Companies should be aware that they may be complicit in human rights abuses even where they are not the direct result of their own action.

As the SRSG says, companies should take due diligence to become aware of, prevent and address adverse human rights impacts. Comparable processes are typically already embedded in companies because in many countries they are legally required to have information and control systems in place to assess and manage financial and related risks. Actions companies could take to ensure they are not having a negative impact on human rights could include adopting human rights policies, conducting human rights impact assessments (or integrate this into existing risk assessments), monitoring and auditing processes to track human rights impact. Integrating human rights policies throughout a company could be done through incentive structures for staff, training, remuneration, etc. This process may be more effective by involving local actors in assessing the human rights impact of business through consultations with NGOs, collective bargaining with trade unions, etc.

What actions are companies taking in this area?

Companies are becoming increasingly proactive in their approach to human rights, through developing their own corporate social responsibility codes of conduct and engaging in environmental or social impact assessments.⁷ Over 50 of the FTSE 100 companies have adopted a human rights policy statement.⁸ Corporate social responsibility can play a role in public perception, employees' morale and retention, productivity improvements, risk management, brand differentiation and building customer loyalty based on ethical values.

Many companies are involved in: collaborating on standards and tools both through industry initiatives (International Council on Mining and Metals, Global Network Initiative, Global Social Compliance Program) and multi-stakeholder initiatives (Ethical Trading Initiative, Extractive Industries Transparency Initiative, Voluntary Principles on Security and Human Rights, and the OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones); developing their stakeholder engagement practices and using stakeholder panels at operational, senior management or board levels to get external perspectives on their environmental and social impacts; improving their sustainability reporting standards, including by using the GRI standards, etc.

A good human rights record for companies can mean increasing worker productivity and retention, good community relationships, risk management, brand differentiation, new customers and markets.

Can companies be held legally responsible for interfering with human rights?

This is a subject of ongoing debate. Companies cannot be held liable for violations of international human rights law as international human rights law only applies to States. Nuances exist where companies are performing public functions on the State's behalf. However, where international human rights standards are incorporated into national legal systems (e.g. employment legislation, health & safety legislation, equal opportunities legislation), companies that break these laws can be held responsible.

The operations of companies may give rise to criminal or civil liability claims. Influencing factors can be the configuration of companies and the incorporation of elements of international law into national laws allowing extraterritorial jurisdiction. Note that increasingly lawsuits alleging detrimental impact to human rights are being brought against companies in the courts of host countries, in the courts of the country where the company is headquartered (including the UK), or in the courts of the United States (under the Alien Tort. Certain exceptional circumstances allow for extra-territorial jurisdiction of UK courts. Although most

⁷ Ruggie noted in A/HRC/4/74 that only one company had conducted a dedicated human rights impact assessment.

⁸ The list of companies with human rights policies is available here: <http://www.business-humanrights.org/Documents/Policies>

of these law suits are settled outside court, this can generate significant negative publicity. Summaries of over 40 such lawsuits are available here: www.business-humanrights.org/LegalPortal/Home

Why wouldn't potential complaints against the activities of UK companies in the host State be taken up by that State?

International human rights law places duties upon State parties to international human rights treaties to respect the human rights of all individuals within their jurisdiction. This obligation includes not only a requirement to regulate the operation of non-State entities, including businesses, to ensure that rights are respected, but also to provide the systems that can investigate, punish and redress related breaches of such legislation or regulation (whether through judicial or administrative mechanisms).

British companies are subject to the laws of the countries in which they are operating. However, while your host country has primary responsibility for regulating companies acting within their territory, they may be unable or unwilling to implement their obligations and prevent unacceptable behaviour. Posts should make it clear that the UK government does not condone behaviour by companies that conflicts with international human rights standards. Inadequate institutional capacity to enforce national laws against transnational corporations, resource constraints and concerns that tough regulation may scare off foreign direct investment are common reasons given for this. When there are poor governance and human rights standards in the host countries it is more likely that corporations could have a negative impact on human rights. British companies should ensure that any Host Government Agreements drawn up with the host government do not prevent the host government from protecting the rights of their inhabitants against the actions of the company.

What is the UK government doing for the rights of indigenous people?

The Government is committed to promoting the respect for the human rights of all people, including indigenous people. The UK supported the adoption of the United Nations Declaration of the Rights of Indigenous Peoples in 2007, albeit with an explanation clarifying our position. The UK works closely with indigenous people on government funding. It is committed to implementing European Union Council Resolution of 30 November 1998 on *Indigenous peoples within the framework of the development co-operation of the Community and the Member States*, a policy which indigenous people were involved in developing.

In 2005, we agreed a joint statement on EU development policy that committed the EU to strengthen the mainstreaming of indigenous issues into its work. This involves regularly meeting representatives of indigenous groups to discuss policies and their implementation, as well as making indigenous groups eligible for funding under the EU human rights and democracy programmes. The EU also funds the International Labour Organisation to work on implementing ILO Convention (No.169) concerning Indigenous and Tribal Peoples in Independent Countries.

DFID has also set out its plans and undertakings in the 2005 Policy Paper "Reducing Poverty by tackling social exclusion", which includes the rights of indigenous people. This means in practice that they will:

- Undertake to identify which groups in society are excluded and why, through the Country Governance Analysis process which feeds into the Country Assistance Plans.
- Recognise that indigenous people are often denied rights, especially through language and geographical location;
- Support programmes that seek to strengthen the rights, voice and political representation and participation of those belonging to excluded groups.

Some of the rights outlined are particularly relevant to industries operating in their area. These can touch on questions of ownership, possession and protection of productive capacity of lands and resources which they traditionally occupy and on their ability to enjoy their own means of subsistence and development. It is important that indigenous people be consulted and involved in the decision-making process in matters which would affect the enjoyment of their rights.

UN Declaration on the rights of Indigenous Peoples (A/RES/61/295 is not a legally binding document but 143 countries voted in favour of it including the UK.⁹ ILO Convention 169 is legally binding on states which have ratified it. 20 states have ratified but only 18 of those have indigenous people.¹⁰

Why is the UK not party to ILO Convention 169?

The Government does not plan to become party to ILO Convention 169¹¹. This convention sets out a framework for the way in which governments operate towards indigenous people in their own territories. There are no indigenous or tribal people in the UK or Overseas Territories, as defined by article 1a of the convention¹². Therefore the obligations in the Convention would have no practical effect in the UK. As set out above, the UK is committed to promoting the rights of indigenous people overseas.

⁹ Against: Australia, Canada, New Zealand, United States. Abstained: Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russian Federation, Samoa, Ukraine. Absent: Chad, Côte d'Ivoire, Equatorial Guinea, Eritrea, Ethiopia, Fiji, Gambia, Grenada, Guinea-Bissau, Israel, Kiribati, Kyrgyzstan, Marshall Islands, Mauritania, Montenegro, Morocco, Nauru, Palau, Papua New Guinea, Romania, Rwanda, Saint Kitts and Nevis, Sao Tome and Principe, Seychelles, Solomon Islands, Somalia, Tajikistan, Togo, Tonga, Turkmenistan, Tuvalu, Uganda, Uzbekistan, Vanuatu. <http://daccessdds.un.org/doc/UNDOC/GEN/N06/512/07/PDF/N0651207.pdf?OpenElement>

¹⁰ The UK is not party to ILO Convention (No. 169)

¹¹ <http://www.ilo.org/ilolex/english/convdisp1.htm>

¹² <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C169>

Annex 3 - OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES¹³

Overview

The UK government, and the other signatories to the Guidelines (as well as 11 adhering countries)¹⁴, committed itself to promoting the OECD Guidelines for Multinational Enterprises and implementing the Guidelines' complaints procedure.

The Guidelines set out recommendations on responsible business conduct addressed to multinational enterprises and contain 10 chapters covering the following areas: concepts and principles underpinning the Guidelines, general policies, disclosure, employment and industrial relations, environment, combating bribery, consumer interests, science and technology, competition and taxation. One of the general policies is that enterprises should "respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments". This is the only direct reference to human rights in the Guidelines. The Guidelines are not legally binding on businesses.

Each adhering Government must establish a National Contact Point (NCP), responsible for raising awareness of the Guidelines and for dealing with complaints on alleged breaches of the Guidelines. In the UK the NCP is led by the Department for Business, Innovation and Skills (BIS) in close cooperation with the Department for International Development (DFID) and the Foreign and Commonwealth Office (FCO). Complaints are usually brought by NGOs or trade unions representing the interests of affected local communities, but complaints can be brought by any organisation or individual which has a close interest in the case and is in a position to supply information about it.

The complaints process

Submitting a complaint (if in doubt, please contact the UK NCP):

- Complaints that the Guidelines have been breached should be filed with the NCP of the country in which the breach is alleged to have taken place ("the host country")¹⁵.
- If the host country is not an OECD Member State or an adhering country and therefore does not have an NCP, then the complaint can be filed with the UK NCP providing it is based on the operations of UK registered companies or their subsidiaries (operating either in the UK or overseas).
- Complaints must be sent in writing to the UK NCP at: **UK NCP, Bay 4133,**

¹³ <http://www.oecd.org/dataoecd/56/36/1922428.pdf>

¹⁴ All OECD members: Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, South Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, Slovakia, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States. 11 adhering (but non-member) countries: Argentina, Brazil, Chile, Egypt, Estonia, Israel, Latvia, Lithuania, Peru, Romania and Slovenia.

¹⁵ The full list of NCPs worldwide is available at <http://www.oecd.org/dataoecd/17/44/1900962.pdf>.

Department for Business, Innovation and Skills, 1-19 Victoria Street, London SW1H 0ET, United Kingdom (enquiries +44 (0)20 7215 8682/5756/6344; e-mail UK.NCP@bis.gsi.gov.uk). Individuals or organisation wishing to bring a complaint under the guidelines, are encouraged to use (but it is not compulsory) the UK NCP's standard form downloadable from <http://www.berr.gov.uk/files/file47341.pdf>.

The UK NCP complaint process is based on a 12-month timeframe (for a full description of the process see www.bis.gov.uk/nationalcontactpoint)

Stage 1 (approximately 3 months): the UK NCP decides whether to accept the case. If so, it publishes an Initial Assessment on its website. The assessment will set out the substance and precise nature of the complaint with reference to those parts of the Guidelines alleged to have been breached. It does not suggest in any way that the enterprise is in breach of the OECD Guidelines.

Stage 2 (up to 6 months if mediation is accepted): the UK NCP offers mediation to both parties as an opportunity to resolve the dispute in a way which is acceptable to both sides. Mediation may be conducted by NCP personnel or a professional mediator.

Stage 3 (approximately 3 months): the UK NCP takes account of the outcome of the mediation process.

If mediation is successful, then the UK NCP will publish a Final Statement on its website (and deposit a copy in the libraries of both Houses of Parliament) recognising the successful outcome of the mediation (see, for example, the Final Statement on the G4S case on <http://www.bis.gov.uk/nationalcontactpoint>). If mediation is not successful, then the UK NCP will carry out a full examination of the complaint and will publish a Final Statement on its website (and deposit a copy in the libraries of both Houses of Parliament) setting out among other things a clear statement as to whether the enterprise is in breach of the Guidelines. See, for example, the Final Statement on the Afrimex case on <http://www.bis.gov.uk/nationalcontactpoint>. Where a Final Statement contains recommendations, it will also set a date by which both parties will be asked to submit to the UK NCP an update of progress towards meeting these recommendations.

In a previous case the National Contact Point (NCP) concluded that the UK registered company in question, Afrimex, had breached the OECD Guidelines. Afrimex initiated the demand for minerals sourced from the conflict zone in Eastern Democratic Republic of Congo and sourced these minerals from an associated company, SOCOMI and 2 independent comptoirs who paid taxes and mineral licences to RCD-Goma during the period they occupied the area. These payments contributed to the on-going conflict. The NCP also concluded that Afrimex applied insufficient due diligence to the supply chain and failed to take adequate steps to contribute to the abolition of child and forced labour in the mines.¹⁶

¹⁶ See the full text of the final statement at www.bis.gov.uk/nationalcontactpoint.

Annex 4: Other Initiatives and Resources

It is sometimes difficult for companies to know whether they are complicit in human rights abuses while pursuing their economic activities. As a general rule, companies can minimise the risk of corporate complicity with human rights abuses by taking due diligence in carrying out their operations. Due diligence should be interpreted as “acting with a certain degree of care”. In practical terms, this means that companies should consider the social, environmental and human rights impact of their operations at the planning (or risk assessment) phase as well as throughout the course of their operations. The scope of diligence will depend on the context in which the company operates (e.g. conflict / weak governance zones), the company’s activities (producer / employer / neighbour) and the relationships the company has connected to its activities (business partners / suppliers).

It is important that corporations integrate human rights concerns that they have in their interaction with stakeholders. For example, the OECD Guidelines for Multinational Enterprises recommend¹⁷ that enterprises should “encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of corporate conduct compatible with the Guidelines”.

A number of voluntary initiatives/ guidance / tools are available to assist companies which posts could highlight. Be aware that companies might endorse certain initiatives without taking steps to implement them¹⁸:

The **UN Global Compact** is a corporate citizenship initiative which encourages companies to embrace human rights, among other things. It encourages companies to go beyond the avoidance of causing harm to human rights and aims, through its practical tools and guidance to help in finding practical solutions to human rights dilemmas that companies face. The UN Global Compact has “local networks” in a number of countries around the world: <http://www.unglobalcompact.org/NetworksAroundTheWorld>

The **OECD Risk Awareness Tool for Weak Governance Zones** is a standard set of questions that companies might ask themselves when considering the actual or prospective investments in weak governance zones. The questions cover the following topics: obeying the law and observing international instruments; heightened managerial care; political activities; knowing clients and business partners; speaking out about wrongdoing; business roles in weak governance societies – a broadened view of self interest.

¹⁷ See paragraph II-10.

¹⁸ UN Special Representative John Ruggie is also currently undertaking a project on business and human rights in conflict-affected regions in order to identify possible practical policies for home, host or neighbouring states to address negative impacts on human rights companies can have in conflict zones.

More information on this tool is available on <http://www.berr.gov.uk/files/file46193.pdf>. You can also contact the UK National Contact Point for the OECD Guidelines (**enquiries +44 (0)20 7215 8682/5756/6344; e-mail UK.NCP@bis.gsi.gov.uk**).

The UN Global Compact is working with the International Business Leaders Forum and the International Finance Corporation to develop guidance on **Human Rights Impact and Management**

(<http://www.iblf.org/resources/general.jsp?id=123946>). The latest draft of this guide has been refined through practical road-testing over the past two years and introduces an eight-step process which business managers can oversee the identification, assessment and implementation of measures that will strengthen their company's contribution to human rights protection.

The **ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy** (MNE Declaration), along with the OECD Guidelines, provides detailed recommendations on responsible business conduct, while helping businesses and stakeholders distinguish between the responsibility of enterprises and that of the State. The purpose of the Declaration is to encourage the positive contribution which MNEs can make to economic and social progress, and to minimise and resolve difficulties arising from their operations. The Declaration sets out principles in the field of general policies, employment, training, conditions of work and life and industrial relations. As a Declaration, it is not legally-binding, however, all government, employer and worker organisations are recommended to observe the principles. For more information on how ILO standards can guide company operations, companies can contact the ILO Helpdesk, assistance@ilo.org +41 (0) 22 7996264 www.ilo.org/public/english/employment/multi

The **Voluntary Principles on Security and Human Rights** are a set of guidelines to help **extractive companies** meet the security needs for their staff and operations whilst ensuring that security arrangements do not have a negative impact on the human rights in surrounding communities.¹⁹ Current membership across pillars stands at eighteen multinational oil, gas and mining companies, eight NGOs, five governments (including the UK) and three observers. For participants see <http://www.voluntaryprinciples.org/participants/index.php> For more information, contact Joe Preston, Conflict Group, FCO +44 (0) 2070083745, joe.preston@fco.gov.uk

¹⁹ Governments: UK, USA, The Netherlands, Norway, Canada. Observers: ICRC, IPMM, IPIECA. NGOs: Amnesty International, The Fund for Peace, Human Rights Watch, Human Rights First, International Alert, IKV Pax Christie, Oxfam, Pact, Inc. UK Companies: Anglo American, BG Group, BP, Rio Tinto

The **Kimberley Process** is an initiative by governments, industry and civil society to stem the flow of **conflict diamonds**.²⁰ The Kimberley Process Certification Scheme imposes extensive requirements on its members to enable them to certify shipments of rough diamonds as “conflict-free”. For participants see http://www.kimberleyprocess.com/structure/participants_world_map_en.html For more information, contact the Government Diamond office Dev Shah, dev.shah@fco.gov.uk 0207 008 6930

The **Extractive Industries Transparency Initiative** aims to strengthen governance by improving transparency and accountability in the extractives sector. The EITI sets a global standard for companies to publish what they pay and for governments to disclose what they receive. For more information, contact Jon Hobbs, j-hobbs@dfid.gov.uk 0207 023 0896

The **Global Network Initiative**, launched in 2008, is a framework for the **ICT sector** to help companies respect, protect and advance human rights in countries in which they operate. It aims to help companies worldwide who face increasing government pressure to comply with domestic laws and policies that require censorship and disclosure of personal information in ways that conflict with internationally recognised human rights law and standards. For participants see <http://www.globalnetworkinitiative.org/participants/index.php>

The **Ethical Trading Initiative** is an alliance of companies, trade unions, charities and campaigning organisations that work together to improve working conditions in global supply chains. See www.ethicaltrade.org

The BIS Anti-Corruption Unit coordinates advice to UK business on bribery law and managing the risks of overseas corruption, including international best practice standards and practical tools (<http://www.berr.gov.uk/anticorruption>). A key resource is the UK-sponsored Business Anti-Corruption Portal (<http://www.business-anti-corruption.com>). The portal contains a variety of instruments and information, which can be used alone or in combination. Some tools are new; others are well- known procedures and methods adapted to smaller and medium size businesses.

²⁰ The following states meet the minimum requirements of the Scheme: Angola, Armenia, Australia, Bangladesh, Belarus, Botswana, Brazil, Canada, Central African Republic, People's Republic of China, Democratic Republic of Congo, Croatia, European Community, Ghana, Guinea, Guyana, India, Indonesia, Israel, Japan, Republic of Korea, Democratic Republic of Lao, Lebanon, Lesotho, Liberia, Malaysia, Mauritius, Mexico, Namibia, New Zealand, Norway, Republic of Congo, Russian Federation, Sierra Leone, Singapore, South Africa, Sri Lanka, Switzerland, Tanzania, Thailand, Togo, Turkey, Ukraine, United Arab Emirates, United States of America , Vietnam, Zimbabwe.

Additional general guidance on business & human rights for companies:

- International Alert has developed “Conflict-sensitive business practice: Guidance for extractive industries”. www.international-alert.org/pdfs/conflict_sensitive_business_practice_all.pdf
- Information on human rights impact assessment tools, including those developed by the UK-based International Business Leaders Forum and by the Canadian NGO Rights and Democracy, is available here: www.business-humanrights.org/Documents/Impactassessment
- Company Policy statements on human rights: <http://www.business-humanrights.org/Documents/Policies>

The following reports provide helpful introductions and management guidance on human rights issues for business:

- “Human Rights Translated: A Business Reference Guide”, Castan Centre for Human Rights Law, the International Business Leaders Forum, the Office of the United Nations High Commissioner for Human Rights and UN Global Compact Office, December 2008
www.iblf.org/resources/general.jsp?id=124073
- “A Guide for Integrating Human Rights into Business Management”, Business Leaders Initiative for Human Rights, UN Global Compact, Office of the UN High Commissioner for Human Rights, 2008
<http://blihr.zingstudios.com>

Further information on a range of business & human rights tools and issues:

- Business & Human Rights Resource Centre website <http://www.business-humanrights.org>
- The UN Special Representative John Ruggie is developing an interactive “Wiki” resource on additional business & human rights grievance mechanisms at global, regional, national, local, industry and company level: www.baseswiki.org