



Norwegian Ministry  
of Foreign Affairs

English version

# Business and Human Rights

National Action Plan for the implementation  
of the UN Guiding Principles



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of the UN Guiding Principles

*This is a translation from Norwegian. The original Norwegian text is the  
formally approved version in the event of any divergence between the two.*



# Foreword

Norwegian business enterprises play a part in creating thousands of jobs worldwide, and the internationalisation of the Norwegian business sector is crucial to Norway's competitiveness. In our foreign policy we are therefore strengthening economic diplomacy. The Government wishes to support Norwegian business internationally as much as possible, on the basis of Norwegian values and recognised international standards, and is stepping up the efforts to promote business participation in new and demanding markets.

In the last 10 years, the world economy has been marked by rapid economic integration. Globalisation has raised the standard of living in both developed and developing countries, and has helped to lift several hundred million people out of poverty. However, globalisation has also resulted in reciprocal vulnerability. Crises and events often have worldwide repercussions, and the global threats we are facing, such as poverty, climate change, population growth and the increasing pressure on resources, must be resolved through a common effort and by cooperation at both government and private-sector levels.

A sustainable, well-functioning business sector is a key element in the efforts to create the 600 million new jobs that according to the World Bank's 2013 estimates are needed over the next 15 years.

A number of leading global business enterprises, including Norwegian companies, have long since become involved in long-term development. There is a growing trend for international organisations, individual countries and civil society to establish partnerships and coopera-

tion with business enterprises. UN Global Compact and the OECD Guidelines for Multinational Enterprises are good examples of such initiatives. Since 2011, the UN Guiding Principles on Business and Human Rights have been the prevailing international standard, and served as a frame of reference for both the Global Compact and the OECD Guidelines. A common feature of these initiatives is that they strive to ensure a more level playing field for a sustainable business sector with global operations.

The present national action plan is intended to enable the business sector to follow the UN Guiding Principles, and the plan outlines specific measures to achieve this aim. The measures have been developed through broad-based cross-sectoral cooperation in the public administration.

Special thanks go to the business sector and civil society for their input to the work on the plan.



**Børge Brende**  
*Minister of Foreign Affairs*





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# Summary

The action plan is based on the white paper *Opportunities for All: Human Rights in Norway's Foreign Policy and Development Cooperation* (Meld. St. 10 (2014–2015)).<sup>1</sup>

The plan begins by describing developments in the field of corporate social responsibility (CSR) and why the Government considers this important. The plan has the same three-part structure as the UN Guiding Principles on Business and Human Rights:

- states' duty to protect against human rights abuse (chapter 2, principles 1–10);
- the responsibility of business enterprises to respect human rights (chapter 3, principles 11–24);
- the responsibility of states and business enterprises to ensure effective remedy (chapter 4, principles 25–31).

The measures the Norwegian Government intends to implement are presented in chapters 2 and 4. The Government's expectations of business enterprises with regard to CSR are set out in chapter 3.

Norway already has sound legislation for safeguarding human rights. In many fields processes have already been started and changes made that are relevant to UN and OECD instruments, for example the Government's state ownership policy, corporate governance of the Government Pension Fund Global and a number of measures implemented by diplomatic and consular missions. The action plan describes what has been done in relevant areas as well as new measures.

The UN Guiding Principles emphasise that states have an obligation under international law to protect against human rights abuses by third parties, including business enterprises. The Government attaches importance to the state's role as legislator, adviser and facilitator. This action plan is intended to ensure coherent practice throughout the public administration.

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<sup>1</sup> <https://www.regjeringen.no/en/dokumenter/meld.-st.-10-2014-2015/id2345623/>

# The Government's expectations of business enterprises

Business enterprises have an independent responsibility under the UN Guiding Principles to respect human rights by developing a public strategy or policy, exercising due diligence and helping to ensure a consultation and remediation process for individuals and communities affected by their activities.

The responsibility to respect human rights applies independently of where the enterprise operates, but is particularly important if it operates in states that do not themselves ensure respect for human rights. The Guiding Principles are norms and do not have the force of law. It is the duty of the enterprises themselves to decide how and to what extent the Guiding Principles apply to their operations. Such decisions must be based on risk assessments in which respect for human rights is evaluated in the context of the individual enterprise's activities and resources and the challenges in the place where the enterprise operates. Two principles are relevant here: the "comply or explain" principle and the materiality principle.<sup>2</sup> The Government's expectations of business enterprises are discussed in more detail in chapter 3.

In brief, the Government expects business enterprises to:

- comply with the legislation in the country where it operates;
- familiarise themselves with the UN Guiding Principles and the OECD Guidelines for Multinational Enterprises;
- follow the Guiding Principles or the OECD guidelines, where applicable, when developing strategies for responsible business conduct;
- exercise due diligence and assess the human rights-related risks in the context of their operations. This applies particularly to enterprises that operate in demanding markets;
- follow the "comply or explain" principle and the materiality principle.

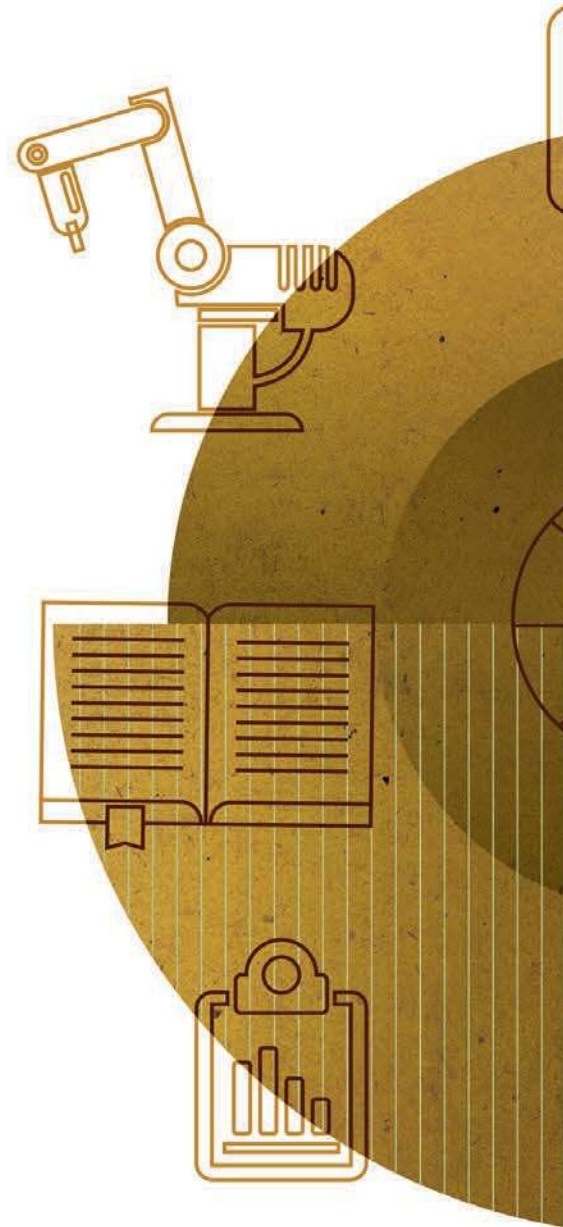
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<sup>2</sup> The principles are discussed in the white paper *Diverse and value-creating ownership* (Meld. St. 27 (2013–2014)). <https://www.regjeringen.no/en/dokumenter/meld.-st.-27-2013-2014/id763968/>



# 1

## Global developments and CSR





In the last few decades the global economy has been marked by rapidly increasing economic integration. Globalisation has resulted in a higher standard of living in both developed and developing countries, and helped to lift several hundred million people out of poverty. A number of developing countries, especially in Asia, have experienced unprecedented economic development, whereas others, especially in Africa, have lagged behind. In spite of this, several of the world's fastest growing economies are found in Africa.

Globalisation is therefore a basically positive process, and over the last 20 years Norway has benefited from global trade. Norwegian companies' success abroad and growing foreign ownership in Norway indicate that we have a globally competitive business sector. We must also expect a major restructuring of the Norwegian economy in the time ahead. Although Europe and the Nordic countries are our most important trading partners, trade with and investment in Asia, South America and Africa are growing. The Government is therefore stepping up economic diplomacy. Priority is given to supporting the private sector in weak states and in new and demanding markets. This includes stronger support for guidance, dialogue and cooperation on challenges relating to CSR, including human rights.

## 1.1 Developing an international framework for CSR

Economic integration has consequences for the international division of labour and for national and business development strategies. Economic considerations are bringing about a shift in political focus, from West and North to East and South. The fastest growth is not confined to stable, well-regulated states.

Globalisation has resulted in reciprocal vulnerability. Crises and events often have worldwide repercussions, and the global threats we all face, such as poverty, climate change, population growth and the increasing pressure on resources, must be resolved through a common effort and by cooperation at both government and private-sector levels. What is needed is economic development that can ensure enough food, water and energy for over nine billion people in

2050, without exceeding the planetary boundaries. A sustainable, well-functioning business sector is crucial if we are to achieve this goal.

This is the reason why a number of leading multinational enterprises, including Norwegian enterprises, have long since become involved in long-term developments, and there is an increasing trend for international organisations, individual countries and civil society to establish partnerships and cooperation with companies.

The UN Global Compact is one such initiative. This is a network-based organisation that works with business enterprises. The enterprises are committed to aligning their strategies and operations with 10 principles in the areas of human rights, labour, environment and anti-corruption. The idea behind this is that business is a driving force for globalisation that can help ensure that trade, markets and technology are developed in ways that benefit economies and societies throughout the world. Support for this initiative, which now has over 12 000 members,<sup>3</sup> is a good example of the fact that global challenges can be met by common efforts.

The UN Human Rights Council expressed its unanimous support for the UN Guiding Principles on Business and Human Rights in resolution 17/4 of 16 June 2011. The OECD updated its Guidelines for Multinational Enterprises in May of the same year, and incorporated the UN Guiding Principles in a separate chapter on human rights,<sup>4</sup> although the Guidelines cover far more topics. All OECD countries must establish National Contact Points to ensure implementation.

The Guiding Principles have rapidly developed into the prevailing international standard, and are being integrated into many other guidelines and frameworks. In addition to the OECD Guidelines, these include UN Global Compact, ISO 26000, the Equator Principles and the International Finance Corporation Performance Standards. The Guiding Principles are also incorporated in national action plans and

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<sup>3</sup> More than 8000 of these are companies.

<sup>4</sup> <http://www.oecd.org/daf/inv/mne/oecdguidelinesformultinationalenterprises.htm>

guidelines for particular industries. Many enterprises are now aligning their CSR strategies with these principles.

The UN Guiding Principles are intended to promote more sustainable, socially beneficial economic development. Promoting human rights is directly and indirectly linked with environmental protection, climate and anti-corruption efforts. For example, the right to health can be affected by hazardous substances and air, soil and water pollution. Measures to prevent deforestation and forest degradation can safeguard the climate and at the same time promote the rights of indigenous peoples and local communities.

Many multinational enterprises are actively engaged in solutions to global issues: from poverty to climate change, to population growth and increased pressure on resources. This is where respect for human rights becomes important. Studies have shown that a growing number of business enterprises have recognised the implications of respect for human rights for sustainable development, and have integrated this into their operations.<sup>5</sup>

## 1.2 Human rights and states' obligations

Human rights are the fundamental rights of the individual that apply irrespective of race, colour, sex, language, religion, political or other belief, property, birth and other factors. It is the state's duty to protect human rights, both by avoiding human rights abuses themselves and ensuring that human rights are respected by private parties under their jurisdiction. Protection of human rights is laid down in international agreements and customary international law, which is binding on states. Any violation of these rights by a state is considered to be a violation of international law.

Normally, international agreements regulate states' obligations and not those of individuals, organisations or companies. Some conventions have established complaints mechanisms for violations of the convention provisions. However, these mechanisms only apply to states. The UN Guiding Principles are not a new convention but are based on existing

obligations under international law that commit states to protecting individuals from abuse by third parties, in this case by business enterprises. Any lack of respect for human rights shown by a company cannot in itself be considered a human rights violation of, since a business enterprise does not have obligations towards human rights under the provisions of a convention. Thus when the present action plan refers to human rights violation by business enterprises, this does not refer to a violation of international law but to a lack of respect for human rights that should not be understood in the legal sense of the term.

The UN Guiding Principles refer to the Universal Declaration of Human Rights and the 1966 International Covenants on Economic, Social and Cultural Rights, and on Civil and Political Rights, together with the ILO core conventions on fundamental rights and principles at work.<sup>6</sup> The Guiding Principles state that other standards dealing with specific individual or collective rights may also apply to business enterprises, depending on the context.

## 1.3 CSR in the Norwegian business sector

In recent years, Norwegian business organisations such as the Confederation of Norwegian Enterprise (NHO), the Enterprise Federation of Norway (Virke), Finance Norway, the Norwegian Shipowners' Association and the Norwegian Institute of Public Accountants have given high priority to CSR. Most major Norwegian companies have incorporated CSR into their business strategies. The Norwegian Corporate Governance Board (NUES) has published recommendations<sup>7</sup> that have to be followed by all companies listed on the Oslo Stock Exchange. Another initiative is the Business

5 [https://agenda.weforum.org/2015/05/what-is-the-business-view-on-human-rights/?utm\\_content=buffer9ec2&utm\\_medium=social&utm\\_source=twitter.com&utm\\_campaign=buffer](https://agenda.weforum.org/2015/05/what-is-the-business-view-on-human-rights/?utm_content=buffer9ec2&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer)

<https://www.unglobalcompact.org/library/1151>

6 <http://www.ilo.org/declaration/principles/freedomofassociation/lang-en/index.htm>

7 [http://www.oslobors.no/ob\\_eng/Oslo-Boers/Listing/Shares-equity-certificates-and-rights-to-shares/Oslo-Boers-and-Oslo-Axess/Corporate-governance-CG](http://www.oslobors.no/ob_eng/Oslo-Boers/Listing/Shares-equity-certificates-and-rights-to-shares/Oslo-Boers-and-Oslo-Axess/Corporate-governance-CG)



for Peace Foundation, which promotes business practices that contribute to sustainable development. The social partners have played an active role in the development of decent working conditions, and NGOs have mobilised both business and the public sector to give priority to CSR. There are an increasing number of partnerships between civil society and business, such as the Ethical Trading Initiative Norway (ETI-Norway), which was set up in 2000 by the Norwegian Confederation of Trade Unions (LO), Virke, COOP and Norwegian Church Aid.

## 1.4 Purpose of the action plan

Norwegian foreign and development policy is based on promoting democracy, human rights, growth economies that create jobs, a proactive trade policy, sustainable development and an international legal order. We are also intensifying our economic diplomacy efforts by focusing more strongly on trade, energy and climate, and, in our development policy, on private sector development. The internationalisation of Norwegian business makes a crucial contribution to Norway's competitiveness, and Norwegian companies are creating thousands of jobs worldwide.

The Government wishes to provide strong support, based on Norwegian values, to Norwegian companies abroad, and is stepping up the efforts to assist companies in new and demanding markets. As part of our support, we are strengthening guidance, dialogue and practical cooperation on CSR.

In this context, 'corporate social responsibility' refers to the responsibility companies are expected to assume for people, society and the environment that are affected by their activities. The Government's expectations are confined to companies' business operations. The measures will make it easier for companies to avoid the risk of contributing to human rights violations and to follow the UN Guiding Principles.

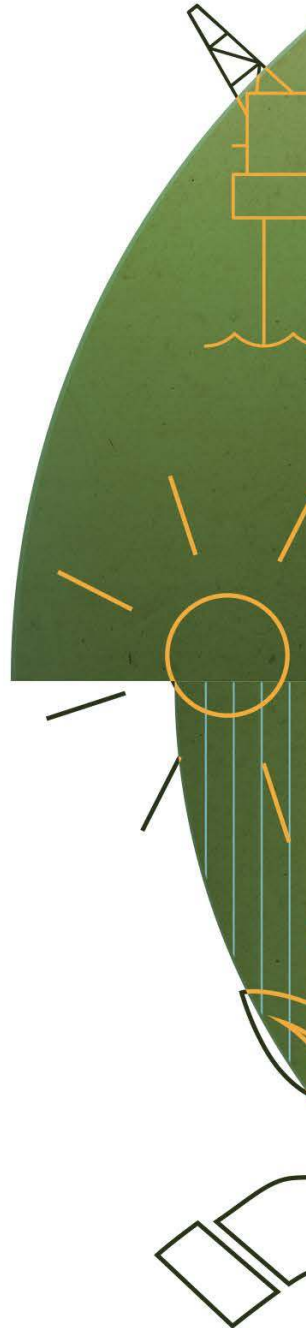
The extensive international engagement in CSR at many different levels and in a wide range of forums makes it difficult for the individual company to keep track of what is relevant and useful for its operations. This action plan aims to provide a clearer picture of the situation and help Norwegian business enterprises find their way around in this landscape.



# 2

## The State duty to protect human rights

**This chapter reviews principles 1–11 of the UN Guiding Principles, which deal with the duties of states in the field of human rights. The chapter contains most of the measures the government will take to enable business enterprises to fulfil their social responsibility.**







The first two principles define the state's overall obligation:<sup>8</sup>

1. *States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.*
2. *States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.*

The next eight principles describe what the state should do to fulfil these obligations. The third principle concerns the state's role as legislator and adviser.

3. *In meeting their duty to protect, States should:*
  - (a) *Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps;*
  - (b) *Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights;*
  - (c) *Provide effective guidance to business enterprises on how to respect human rights throughout their operations;*
  - (d) *Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.*

## 2.1 The state as legislator

The Norwegian Human Rights Act<sup>9</sup> states that certain key human rights conventions have the force of Norwegian law<sup>10</sup> and take precedence over any

other legislative provisions that are in conflict with them. In 2014, a number of human rights were also enshrined in the Norwegian Constitution. The duty of business enterprises to respect human rights is set out in Norwegian legislation, for example in the Working Environment Act, the Gender Equality Act and the Environmental Information Act. In addition there are acts regulating other areas that may have consequences for human rights, such as the Nature Diversity Act, the Pollution Control Act and the Greenhouse Gas Emission Trading Act. These are intended to contribute to a stable climate and a healthy environment, and to help safeguard the right to health. Generally speaking, Norwegian legislation safeguards human rights in Norway, so that companies that operate only in Norway are in little danger of violating these rights as long as they comply with the legislation.

However, although Norway already has in place sound legislation that applies to business, it may be necessary to consider amending certain acts in the light of the Guiding Principles and other international developments. It is often relevant to follow EU action in this field. The action plan therefore provides for review at regular intervals to ensure that legislation keeps pace with international decisions affecting human rights and CSR. Coherent follow-up of principle 8 (see section 2.7 below) should also be ensured. The Government will therefore appoint an interministerial working group headed by the Ministry of Foreign Affairs to ensure that such reviews are conducted. The aim of the working group is described in section 2.7.

The following are examples of relevant legislation.

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8 The official translations of the UN Guiding Principles are available in Arabic, Chinese, English, French, Russian and Spanish: <http://www.ohchr.org/EN/PublicationsResources/Pages/ReferenceMaterial.aspx>

9 <http://app.uio.no/ub/ujur/oversatte-lover/cgi-bin/sok.cgi?dato=&nummer=&tittel=human+rights&type=LOV&S%F8k=S%F8k.tr>

10 The 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, the two 1966 International Covenants on Economic, Social and Cultural Rights, and on Civil and Political Rights, the 1989 Convention on the Rights of the Child, and the 1979 Convention on the Elimination of All Forms of Discrimination against Women.

## The Accounting Act

Under the Accounting Act, large enterprises have been required to submit reports on CSR since 2013. The provision stipulating that enterprises must take account of human rights is considered to be in line with the Guiding Principles concerning the independent responsibility of enterprises to ensure that they respect human rights.

## Amendments to EEA legislation

Small amendments to Norwegian legislation may be necessary in order to implement the expected new EEA rules corresponding to the new EU Directive (2014/95/EU) on disclosure of non-financial and diversity information by certain large companies and groups, which includes CSR. In this context it will be appropriate to look to other international developments, such as the new UN Guiding Principles Reporting Framework.<sup>11</sup>

## Regulations on country-by-country reporting

Under the country-by-country reporting regulations, large enterprises that are required to submit accounts, and issuers of financial instruments listed on the stock exchange, in the extractive industry and/or forestry and logging, are required to prepare and publish an annual report on their activities by country and by project. The regulations entered into force on 1 January 2014, and will be reviewed after three years.<sup>12</sup>

## The Minerals Act

In Norway as in other countries, conflicts may arise between commercial activity and indigenous peoples' rights. Protection of Sami rights is laid down in the Constitution and other legislation, and obligations towards the Sami people follow from international conventions, particularly Article 27 of the International Covenant on Civil and Political Rights and ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries. In Norway, Sami rights are also enshrined in special legislation and through consultation procedures between the public authorities and Sámediggi (the Sami Parliament). As part of its follow-up of ILO Convention 169, Norway is conducting a dialogue with ILO on how the convention is being implemented in Norwegian law, including in

the area of mineral resources. In the Official Norwegian Report 2007:13 on legislation pertaining to the Sami, the Sami Rights Commission reviewed measures relating to mineral resources and in legislation that regulates mineral extraction. Some of the commission's proposals were evaluated in connection with the preparatory work on the Minerals Act. The Act, which replaced five existing acts, entered into force on 1 January 2010. As part of the Government's follow-up of the report from the Sami Rights Commission,<sup>13</sup> the Ministry of Trade, Industry and Fisheries will evaluate proposals for amendments to the Minerals Act.

## Legislation governing the export of arms, ammunition and other military equipment

Norwegian legislation governing the export of arms, ammunition and other military equipment, associated technology and services for military purposes is strict and comprehensive. It is based on the principle that Norway does not permit such exports to areas where there is war, a threat of war, or countries where there is civil war. The Foreign Ministry's guidelines recommend that such applications should be rejected in cases where, for example, there is considered to be an unacceptable risk that the equipment to be exported is intended to be used for internal oppression or serious human rights violations. The Arms Trade Treaty (ATT), signed in April 2013, provides guidelines for the regulation of export control by states. The guidelines provide for the possibility that states may have more restrictive practices than those that follow from the ATT, and Norway will continue with its restrictive legislation. At the same time, the Government wishes to continue to provide Norwegian business enterprises with clear, predictable framework conditions for their export operations, for example by providing unambiguous, long-term guidelines for the Foreign Ministry's processing of applications to export defence materiel. An annual report is submitted to the Storting on the Ministry's implementation of legislation and guidelines, and on the scale of Norwegian exports of goods and related technology controlled by the EU Munition List.

11 <http://www.ungpreporting.org/consult-the-reporting-framework/download-the-reporting-framework/>

12 <https://www.regjeringen.no/no/aktuelt/for-skrift-om-land-for-land-rapportering/id748537/> (In Norwegian).

13 <https://www.Regjeringen.no/nb/dokumenter/nou-2007-13/id491883/> (In Norwegian).

## Measures:

- appoint an interministerial working group to assess the need for follow-up of international decisions and to ensure coordinated implementation of this action plan (see section 2.7 for a more detailed description of the group's objective and tasks). Each relevant ministry will continue to be responsible for assessing the need for legislative amendments and other measures in its area of expertise;
- review the country-by-country reporting regulations for the extractive industry and forestry in 2016–17;
- evaluate the amendments to the Minerals Act proposed by the Sami Rights Commission in their report;
- continue to practise a strict and predictable control regime for arms exports.

### NORWAY'S OECD NATIONAL CONTACT POINT

As a member of the OECD, Norway is committed to promoting the OECD Guidelines for Multinational Enterprises. The Guidelines were updated and adopted at the OECD Ministerial Council Meeting in May 2011. All OECD countries must appoint a National Contact Point that in addition to promoting the Guidelines provides on request assistance in specific instances of alleged non-observance of the Guidelines. The Contact Point is not a supervisory or control body, but provides advice and facilitates access to conciliation and mediation procedures. National Contact Points are also mandated to cooperate with each other on promoting the Guidelines. Norway's Contact Point is appointed by the Ministry of Foreign Affairs in consultation with the Ministry of Trade, Industry and Fisheries and the Ministry of Finance, from candidates proposed by the social partners (the Confederation of Norwegian Enterprise (NHO) and the Norwegian Confederation of Trade Unions (LO) and civil society (the Norwegian Forum for Environment and Development).

## 2.2 The state as adviser

A large number of public or officially supported institutions that work with business internationalisation provide guidance on CSR and human rights. Among them are the Foreign Service, Norad, the Ministry of Trade, Industry and Fisheries, and Innovation Norway. Norway's OECD National Contact Point also provides information and guidance.

Although the advice given by these bodies often needs to be adapted to the context and situation of the individual company, the question of whether the various bodies' advice is consistent should be examined. The Government's goal is that Norwegian enterprises should encounter the same expectations regardless of which public authority they come in contact with, and the business sector expressed a desire for coherence in this respect in its input to the action plan. Such a review would also satisfy the terms of the white paper Human Rights in *Opportunities for All: Human Rights in Norway's Foreign Policy and Development Cooperation* (Meld. St. 10 (2014–2015)).

The Government will therefore consider establishing a centre where the resources of several advisory bodies would be co-located. Such a centre would help to ensure coherence and best practice, and serve as a direct resource for companies. The secretariat of Norway's OECD Contact Point, which is an important source of information, would be co-located in this centre.

There is also a need to raise the level of competence on international decisions in the public administration, and especially in public bodies that offer courses and training in business internationalisation.

Many Norwegian enterprises operate in new markets in weak states with poorly developed legislation or a poor capacity to enforce human rights legislation. Such companies are requesting advice and cooperation on CSR and related subjects such as security, risks and corruption. The diplomatic and consular missions and Innovation Norway in particular will be strengthening their capacity for advice and dialogue on such subjects.

In order to ensure that advice and guidance on CSR and human rights are relevant and up to date, the

Government will continue the dialogue with the social partners and civil society, especially in KOMPakt, the Government's Consultative body on matters relating to CSR.

Under the UN Guiding Principles, the state has a particular responsibility for advising business enterprises in conflict-affected areas. This is described in more detail in section 2.6.

### Measures:

- consider establishing a centre for co-locating the resources of a number of public bodies that provide advice on CSR;<sup>14</sup>
- improve the level of competence on the UN Guiding Principles and the OECD Guidelines among the public bodies that offer guidance on CSR;
- strengthen guidance and dialogue with companies on human rights, business ethics, security and corruption in especially demanding markets;
- continue the work on CSR by KOMPakt, the Government's Consultative body on matters relating to CSR.

## 2.3 State ownership and practice for supporting the business sector

Principle 4 concerns the business activities of state-owned enterprises and enterprises that receive economic support or other services from state agencies:

4. *States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.*

Direct state ownership in multinational enterprises is relatively extensive in Norway. We also have the world's largest sovereign wealth fund, the Government Pension Fund Global, which is invested in around 9000 enterprises worldwide.

### State ownership

In 2014, the Government presented a white paper on the importance of ownership for diversity and value creation (Meld. St. 27 (2013–2014)), which discusses the state's expectations of enterprises in which it has a direct ownership interest, including expectations based on the UN Guiding Principles. The expectation that state-owned enterprises will exercise CSR is based on the belief that this is desirable in itself and that it helps to maintain the state's shareholder value. Enterprises are exposed to different levels of risk and face different challenges. This means that they can adapt the "comply or explain" principle and the materiality principle to their own operations. The "comply or explain" principle applies to cases where a company's practice deviates from the state's expectations. There may be good reasons for this, and the board of directors must provide a public explanation of the reasons for the lack of compliance. The materiality principle implies that companies work with and report on factors that are of major importance to the way its operations affect people, communities, climate and the environment.

The Government has noted that there is a need to focus more strongly on the responsibility of the boards also of enterprises in which the state has an ownership interest and their approach to CSR, including human rights. We believe that greater involvement by company boards will improve risk management and thereby help to maintain shareholder value. The follow-up of CSR and human rights performance is conducted through the owner dialogue in quarterly and/or annual meetings on CSR. In special cases it may be necessary to follow the company's activities more closely. The work of companies and boards on CSR, including human rights, is taken into account in the election of board members.

<sup>14</sup> This will be financed within the Ministry's existing budgetary framework, and will not require additional allocations.



## Responsible management

Through the Government Pension Fund Global (GPGF) and the Government Pension Fund Norway (GPFN), Norway has financial investments both in Norway and the world at large. The role of the Fund is that of a financial investor, and the overriding objective is to achieve the highest possible return at moderate risk.

Under the GPGF investment strategy, 60 % of the capital is invested in equities, 35 % in bonds and up to 5 % in real estate. The GPGF may not own more than 10 % of any single company in its portfolio. The investment strategy for the GPGF has been expressed, inter alia, through benchmark indices. Its benchmark indices for equities and bonds are based on broad and easily available indices from leading index providers. Norges Bank may only deviate to a small extent from the benchmarks (1% expected tracking error). The management of the GPGF thus follows closely the broad market indices as set by the Ministry. This also means that the fund is invested widely and with small holdings in the global markets. At the end of 2014, the fund's average holding in the global equity market was 1.3 %. This means that the fund is a minority shareholder in a large number of companies.

The Government attaches importance to transparency and ethics in the management of the Government Pension Fund. In the management of the fund, emphasis is also given to respecting values shared by the beneficial owners of the Fund. Guidelines have been drawn up for observation and exclusion from the GPGF portfolio of companies that contribute to or are responsible for certain gross violations of norms, including human rights violations. Expectations from different perspectives are being expressed on the best way to fulfil the funds' ownership role. However, it is important that the fund keeps to its role as financial investor: there is broad political consensus that the fund is not a foreign or environmental policy tool. The state has other and more effective instruments in these fields.

The Ministry of Finance is responsible for the management of the Government Pension Fund, including the framework of responsible management. The operational responsibility for management of the GPGF and the GPFN lies with Norges Bank and Folketrygdfondet respectively, which operate in accordance with mandates decided by the Ministry

of Finance. The Ministry reports to the Storting on the management and on planned changes in the framework in an annual white paper (see e.g. *The Management of the Government Pension Fund in 2014* (Meld. St. 21 (2014–2015))).

In the management mandate set by the Ministry it is stated that a good long-term return is considered dependent on sustainable development in economic, environmental and social terms, as well as well-functioning, legitimate and efficient markets. The mandates laid down by the Ministry of Finance to Norges Bank and Folketrygdfondet require that these considerations are integrated into the operational management strategies. Within the framework decided by the Ministry, Norges Bank and Folketrygdfondet make investment decisions and exercise their ownership rights independently of the Ministry.

The work on responsible management is an integrated part of the investment process and Norges Bank uses a variety of tools in its responsible management. They can be divided into three main groups: standard setting, ownership and risk management. Norges Bank's responsible investment management is, as a starting point, based on international principles and standards, such as those set by the UN in the Guiding Principles on Business and Human Rights and the OECD in the Guidelines for Multinational Enterprises. When the UN Guiding Principles were adopted, Norges Bank endorsed a campaign by investors in support of the principles.

When Norges Bank assesses markets and country risks, it includes violent conflicts, human rights violations and political terror in its analyses. Human rights may also be a part of the risk monitoring at sector and company level.

In its capacity as owner and minority shareholder in over 9000 companies worldwide (by the end of 2014), Norges Bank has chosen to focus on certain areas in order to achieve the best and most effective risk management and exercise of ownership rights. At present the bank has three focus areas that are directly linked with environmental and social conditions: children's rights, climate change and water management. It has set out expectations in each of these areas for how companies can manage risks and

report on their activities. The expectation documents are publicly available.

In its 2014–2016 strategy document, Norges Bank stated that it may add additional focus areas towards the end of the period. The Ministry of Finance will follow up the Storting's recommendation to verify with Norges Bank whether an expectation document on human rights can be drawn up, including which areas of human rights can be expected to be included. The Ministry of Finance has asked Norges Bank to respond by 1 February 2016, and will report on the subject in its spring white paper to the Storting on the management of the Government Pension Fund.

However, it should be emphasized that Norges Bank's work on responsible management is not confined to these areas. In its annual report on responsible management for 2014 the bank has elaborated on how it deals with a number of other issues and areas as well, including social conditions such as human rights and workers' rights. In recent years the bank has also made risk-based divestments based on an overall financial assessment of companies that includes environmental and social issues. Such divestments are made within the limits set out in the mandate from the Ministry of Finance.

To further strengthen its work on responsible management, in February 2015 Norges Bank presented for the first time a separate report on its activities in this area. The aim of the report is to provide a broad and coherent overview of the bank's work on assuring responsible management and in this way increasing the transparency of the management of the GPFG. The report is published on <http://www.nbim.no/en/>.

A system has also been established for observation and exclusion of companies. The system is intended to ensure that the GPFG is not invested in companies that produce certain products or contribute to or are responsible for grossly unethical conduct. The Ministry of Finance has appointed a Council on Ethics to advise Norges Bank on exclusion or observation of companies in the fund's portfolio on the basis of the criteria in the guidelines for observation and exclusion. The criteria are laid down by the political authorities.

The Council on Ethics can recommend exclusions or

observations in cases where there is an unacceptable risk that a company contributes to or is responsible for serious or systematic violations of human rights. The companies are identified by means of, among other things, systematic reviews of sectors or issues, approaches from interest groups and reports in the media. Another criterion concerns serious violations of individual rights in war or other conflict situations. In 2014, the council reviewed a number of cases of human rights violations in connection with extraction of natural resources, agriculture, food production and textile manufacturing.

It follows from the mandate from the Ministry of Finance to Norges Bank that in certain cases the GPFG is prevented from investing in government bonds. The GPFG is not a foreign policy instrument, and only in special cases of comprehensive international sanctions or measures that Norway has endorsed, has such restrictions been imposed on investing in government bonds.<sup>15</sup>

### Measure:

- The Ministry of Finance has asked Norges Bank to consider whether it can draw up an expectations document for human rights, and which areas of human rights it would consider including, by 1 February 2016. The Ministry will report on this subject in its spring white paper to the Storting on the management of the Government Pension Fund.

### Conditions for government support for business promotion and private sector development

The state is responsible for exercising due diligence when it provides significant economic support or other types of benefits to the business sector. This particularly affects the Norwegian Export Credit

<sup>15</sup> Section 2, first paragraph (c) of the Government Pension Fund Global Guidelines for observation and exclusion state that 'The Fund shall not be invested in companies that... sell weapons or military materiel to states that are subject to investment restrictions on government bonds as described in the management mandate for the Fund section 3-1(2)(c).'

GIEK and Export Credit Norway often provide financing for the same projects, and have established formal cooperation on CSR. The cooperation includes human rights due diligence based on the expectations of export credit institutions set by the UN Guiding Principles, and is an integrated part of GIEK's and Export Credit Norway's loan and guarantee activities. All projects for which financing is being considered are submitted to an internal risk classification, even projects where this is not required<sup>16</sup> by the OECD Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence.<sup>17</sup> On the basis of the risk classification and considerations relating to opportunities for exerting influence, appropriate measures are taken to avoid, reduce and/or remedy potentially negative outcomes. In markets where there is a high risk that human rights will not be safeguarded in connection with business operations, it may be logical for example to require business enterprises to have adequate systems and strategies for risk assessment and follow-up.

Innovation Norway practises environmental and social due diligence when dealing with all financing applications from business enterprises. The information on the company and the project for which support has been requested is assessed on the basis of a red flag checklist and a checklist based on the 10 principles of the UN Global Compact and adapted to Innovation Norway's mandate and target groups. The red flags are: risk of corruption, the nature of the company's activities in low-cost countries, ethical dilemmas and environmental pressure from commercial activities. CSR scores reflect the level of CSR-related risk connected with the project or whether CSR may be a reason for giving the case priority. One of the conditions laid down in the contract with the client is that the enterprise must have high ethical standards and avoid contributing to corruption, human rights violations, poor working conditions or adverse impacts on local communities or the environment.

Guarantee Agency (GIEK), Export Credit Norway, Innovation Norway, Norad and the Foreign Service. The expectation that companies will observe a high standard of CSR reduces the risk that those that receive credit, loans or other financial support fail to respond correctly in difficult situations, which would affect Norway's credibility and reputation as well as that of the company concerned. Responsible business conduct also constitutes a competitive advantage.

The Government wishes to expand its cooperation with the business sector in private sector development policy. The cooperation would include financial support for projects with a development effect in particular developing countries, and strategic cooperation between the Norwegian authorities, Norwegian companies and third parties such as the recipient country, multinational institutions or NGOs. In such cases expectations and in some cases requirements will be set for business conduct compatible with the practices of other public institutions.

### Measures:

- give companies with international operations that apply for public funding or services<sup>18</sup> adequate and coherent information and guidance on the Government's expectations concerning respect for human rights;
- expect companies that are to receive financial support or services to respect human rights;
- continue to classify all export transactions<sup>19</sup> for which public funding is sought according to the risk of human rights violations.

16 Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence. See also section 2.9 on international cooperation on CSR.

17 For example mobile units such as vessels and cases of less than 10 million SDRs (Special Drawing Rights). 10 million SDRs corresponds to about NOK 100 million.

18 Financial support and services may be provided by for example GIEK, Innovation Norway, Norad or the Ministry of Foreign Affairs. Examples of services would be advice or participation in business delegations or state visits.

19 For example for applications for export credits, guarantees, etc.

## 2.4 Competitive tendering for public services

The fifth principle states that:

5. *States should exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights.*

Examples of public services subject to competitive tendering that may have consequences for human rights are the operation of asylum reception centres, hospitals and schools. The state may also be held responsible for human rights violations if these result from inadequate management or control of private service providers within the state's sphere of responsibility. The Government considers that Norwegian law and supervisory authorities are adequate for this purpose, and that there is no need for special measures at present.

## 2.5 Public procurement

The sixth principle deals with public procurement:

6. *States should promote respect for human rights by business enterprises with which they conduct commercial transactions.*

Since the UN Guiding Principles and the OECD Guidelines do not distinguish between public-sector and private-sector business conduct, it is important that the state should have high standards. It is not logical to have high expectations of private companies if the state does not set the same expectations for itself. The state is also Norway's largest purchaser, a fact that was emphasised by companies and organisations in their input to the action plan. For example, in 2013 the public sector purchased goods and services worth NOK 432 billion. The state's procurement practices should therefore reflect the UN Guiding Principles.

The Government has held a public consultation on a proposed amendment to section 6 of the Procure-

ment Act to include a provision stating that contracting authorities should have adequate procedures for ensuring social responsibility in connection with public procurement. The Agency for Public Management and eGovernment (DIFI) provides guidance on such matters.

### Measure:

- continue the efforts to develop measures to promote respect for international human rights in public contracts.

## 2.6 Human rights in conflict areas

The seventh principle emphasises that the state has a special role to play in facilitating companies' respect for human rights in conflict areas:

7. *Because the risk of gross human rights abuses is heightened in conflict-affected areas, States should help ensure that business enterprises operating in those contexts are not involved with such abuses, including by:*

*(a) Engaging at the earliest stage possible with business enterprises to help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships;*

*(b) Providing adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence;*

*(c) Denying access to public support and services for a business enterprise that is involved with gross human rights abuses and refuses to cooperate in addressing the situation;*

*(d) Ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses.*



Companies themselves have a responsibility to identify serious risks connected with areas that have been or are affected by conflict. There is an increasing demand from the business sector for dialogue and cooperation with the public authorities on security, risk assessment and corruption in conflict areas and demanding markets in these areas.

The Ministry of Foreign Affairs is the contact point for companies in matters of security abroad. The dialogue on the risk of gender-based and sexual abuses will be intensified where appropriate. No assistance will be given to companies that are involved in gross human rights violations unless they show a willingness to cooperate on addressing the situation.

Security personnel hired to protect Norwegian interests, whether private or public, pose a potential problem. States that hire private security guards must ensure that these comply with the state's obligation to protect against human rights violations. The Voluntary Principles on Security and Human Rights and the International Code of Conduct for Private Security Service Providers are useful guidelines for private business enterprises on how best to ensure their security.

### Measures:

- strengthen the dialogue with the business sector through the missions abroad on the risks associated with human rights violations, security concerns and corruption in conflict areas;
- strengthen project cooperation with the business sector on ethics, security and corruption.

## 2.7 Policy coherence in the central government administration

The eighth principle deals with the state's responsibility for ensuring coherence in the central government administration:

8. *States should ensure that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State's human rights obligations when fulfilling their respective mandates, including by providing them with relevant information, training and support.*

To strengthen coordination, the Government will establish an interministerial working group headed by the Ministry of Foreign Affairs to ensure that Norway's CSR-related positions in international forums are coherent, and that the relevant ministries are notified of international decisions. See also section 2.1, The state as legislator.

The Government's consultative body on matters relating to CSR, KOMpakt, will continue to serve as a forum for regular dialogue at top level between the authorities, the private sector, trade unions, academics and civil society.

## 2.8 Free-trade agreements and investment contracts

The ninth principle concerns the framework conditions established through trade policy:

9. *States should maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives with other States or business enterprises, for instance through investment treaties or contracts.*

Norway is bound by reciprocal obligations through its membership of international trade organisations such as EFTA and WTO. The Ministry of Trade, Industry and Fisheries has the overall responsibility for bilateral free trade agreements (EFTA) and investment contracts, while the Ministry of Foreign Affairs is responsible for WTO negotiations.

### Measure:

- seek to ensure that provisions on respect for human rights, including fundamental workers' rights, and the environment are included in bilateral free trade and investment agreements.

## 2.9 International cooperation on CSR

The 10th guiding principle concerns how states should act when they cooperate in international organisations and forums:

*10. States, when acting as members of multilateral institutions that deal with business-related issues, should:*

*(a) Seek to ensure that those institutions neither restrain the ability of their member States to meet their duty to protect nor hinder business enterprises from respecting human rights;*

*(b) Encourage those institutions, within their respective mandates and capacities, to promote business respect for human rights and, where requested, to help States meet their duty to protect against human rights abuse by business enterprises, including through technical assistance, capacity-building and awareness-raising;*

*(c) Draw on these Guiding Principles to promote shared understanding and advance international cooperation in the management of business and human rights challenges.*

Implementation of the UN Guiding Principles will help to ensure a more level playing field and greater transparency and predictability for enterprises with international investments. States should harmonise their expectations in international forums that support, enter into partnerships with and provide guidance to enterprises. Norway is therefore working for the integration of the OECD Guidelines for Multinational Enterprises into the OECD framework for export financing.<sup>20</sup> We also play an active role in the UN, the OECD, the multilateral financial institutions and the regional development banks.

### Measures:

- emphasise the importance of business and human rights in the Human Rights Council;
- work for the global implementation of the UN Guiding Principles and the OECD Guidelines;
- recognising the crucial contribution of business to development, economic growth and job creation, and the fact that states have a duty to protect against human rights abuse, seek to ensure that Norway's positions in the relevant forums are coherent;
- give priority to institution-building, ensuring favourable framework conditions and developing appropriate legislation for protection against human rights abuses in developing countries where Norway is involved in private sector development;
- seek to ensure that the reporting framework set out in the UN Guiding Principles is incorporated into the United Nations Global Compact and the Global Reporting Initiative.

<sup>20</sup> Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence. <http://www.oecd.org/tad/xcred/environmentalandsocialduediligence.htm>

# 3

## The Corporate responsibility to respect human rights

**This chapter deals with principles 11–24 of the UN Guiding Principles, which concern the practical implementation of CSR by business enterprises.**







The UN Guiding Principles are recommendations, and are not legally binding. They advise enterprises on what they should do in order to avoid causing or contributing to human rights abuses, a consequence that most companies consider undesirable. The voluntary involvement of business in the development of the Guiding Principles and in other areas is evidence that the business community itself realises the value of a common global approach.

As described in chapter 2, the Norwegian Government has set out clear expectations and in some cases requirements for the business sector in connection with all forms of state support or ownership. The Guiding Principles set out here in chapter 3 deal with how business enterprises should comply in practice with the expectations on respecting human rights.

Due to their advisory nature, the Guiding Principles have not set any standards that would define which companies or countries they apply to, or how companies should apply them. The individual company itself must decide how to integrate CSR into its activities. It is natural that the largest international companies with the most resources and operating in demanding markets should actively follow international guidelines with regard to both the amount of resources they devote to CSR and the formalisation of their strategies. A small technology company that exports to Denmark or Sweden is unlikely to risk becoming implicated in human rights abuses to any great extent. However, under the Guiding Principles all companies are expected to be responsible for considering who they are dealing with, what their commercial partners do to ensure respect for human rights and how, as customer or contracting party, they can use their influence to address or prevent any adverse impacts on human rights.

The most important factor that a company should consider is whether there is a risk of its becoming implicated in situations where human rights are being violated as a result of its operations. Even small companies may find themselves in such a situation, depending on the nature of their operations. Thus all business enterprises should familiarise themselves with the Guiding Principles and assess the extent to which they are applicable. In cases where the principles do not apply, the government guidelines

for enterprises in which the state has an ownership interest recommend that these enterprises should publish, in accordance with the “comply or explain” principle, a report stating why the Guiding Principles are not relevant to its activities. Private companies should do the same.

### **The Government expects all companies to:**

- follow the rules and regulations of the country where the company operates;
- acquaint themselves with the UN Guiding Principles and the OECD Guidelines for Multinational Enterprises;
- make use where appropriate of the UN Guiding Principles or the OECD Guidelines in the development of their strategies for responsible business conduct;
- exercise due diligence and assess the risks of human rights abuses in their area of operation. This applies particularly to companies that operate in demanding markets;
- apply the “comply or explain” principle and the materiality principle.

## **3.1 Responsibility to respect human rights**

Under the UN Guiding Principles and the OECD Guidelines, business enterprises have an independent responsibility to respect human rights. This is not a legal requirement. However, most countries have legislation that directly or indirectly protects individuals and vulnerable groups from human rights abuses in connection with business operations. There is thus a global standard for what can be expected of a business enterprise regardless of whether or not the local legislation affords adequate protection for human rights.

Many Norwegian companies make systematic efforts to include human rights in for example their work on HSE, the working environment and negotiations with trade unions. Much of this work is regulated by law. In a number of countries, however, the situation is quite different. There legislation is inadequate or only weakly enforced. Often there is no dialogue between employer, employees or any other stakeholders. The expectation that business enterprises are responsible for respecting human rights applies regardless of whether the local legislation is adequate or properly enforced.

### Companies' responsibility to respect human rights

The 11th principle sets out what it means to respect human rights:

- 11. Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.*

### The 12th principle clarifies which human rights should be respected:

- 12. The responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work.*

'Internationally recognised human rights' are those set out in the Universal Declaration of Human Rights of 1948, the two 1966 International Covenants, on Economic, Social and Cultural Rights and on Political and Civil Rights, and the ILO core conventions. In some cases other standards may also be applicable, such as the rights of women, indigenous peoples, national, ethnic or linguistic minorities, children, people with disabilities, or foreign workers and their families. In cases of armed conflict companies should respect the standards laid down in international humanitarian law.

### THE ILO CORE CONVENTIONS

The eight ILO core conventions provide a globally recognised framework for what constitutes a decent working life. The conventions are of key importance for the UN Guiding Principles on Business and Human Rights, the UN Global Compact and the OECD Guidelines for Multinational Enterprises. They include the following areas:

**The abolition of child labour** (*Convention No. 138 on the Minimum Age for Admission to Employment and Work, and Convention No. 182 on the Worst Forms of Child Labour*).

**Freedom of association** (*Convention No. 87 on Freedom of Association and Protection of the Right to Organise, and Convention No. 98 on the Application of the Principles of the Right to Organise and to Bargain Collectively*).

**The elimination of discrimination** (*Convention No. 100 on Equal Remuneration for Men and Women Workers for Work of Equal Value, and Convention No. 111 on Discrimination in Respect of Employment and Occupation*).

**The elimination of forced or compulsory labour** (*Convention No. 29 on Forced Labour, and Convention No. 105 on the Abolition of Forced Labour*).

## 3.2 Responsible business conduct

The 13th principle clarifies what companies' responsibility to respect human rights involves:

- 13. The responsibility to respect human rights requires that business enterprises:*

*(a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;*

*(b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.*

An enterprise may cause or contribute to adverse human rights impacts if for example its employees are working under disgraceful conditions or if the

living conditions of the local community that are directly affected by the company's operations decline without prior explanation from or dialogue with the relevant parties, including the local authorities. Impacts on the climate and the environment resulting from the enterprise's activities, for example through land use, exploitation of natural resources, greenhouse gas emissions or releases of hazardous substances, may also have adverse impacts on a broader range of human rights, such as minority and indigenous people's rights or the right to life, health, food, water or adequate housing. If a company is responsible for such impacts, it is also responsible for addressing them.

Norwegian companies should be aware that the UN Guiding Principles also include a responsibility to seek to prevent or reduce activities by their business relationships that have adverse human rights impacts. Examples of business relationships are subcontractors, enterprises the company has invested in, and business partners. However, the principles also emphasise that this does not mean that the company is complicit in the detrimental activities of its business relationships. They encourage companies to use their influence to mitigate the adverse impacts of such activities.

Political unrest and conflict entail a particularly high risk of human rights abuses. Companies that operate in such areas should therefore exercise particular due diligence if they are to avoid becoming involved in such abuses. A typical example is abuses perpetrated by security personnel hired to protect the company. There is also a higher risk of corruption, illegal transactions, sexual abuse and other forms of violence against civilians.

### **Which companies are the Guiding Principles targeting?**

The 14th principle states that the recommendations apply to all companies. However, it is clear that more is expected of companies with substantial resources. Relevance and context must also be taken into account:

*14. The responsibility of business enterprises to respect human rights applies to all enterprises regardless*

*of their size, sector, operational context, ownership and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise's adverse human rights impacts.*

A company's capacity to act often depends on its size and whether or not it is one of a group of companies. The Guiding Principles assume that not all companies can be expected to have equally broad strategies and that each company must assess its own capacity.

### **What should a company do?**

The 15th principle specifies ways in which companies can ensure responsible business conduct:

*15. In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:*

*(a) policy commitment to meet their responsibility to respect human rights;*

*(b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;*

*(c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.*

Thus companies must know and show that they respect human rights. This means having sound strategies and management systems. Principles 16–24 describe in more detail points (a), (b) and (c) of the 15th principle.

### **How should a company fulfil its responsibility?**

The 16th principle specifies the ways in which companies can embed respect for human rights in all their activities and publicly express their commitment:

*16. As the basis for embedding their responsibility to respect human rights, business enterprises should*

*express their commitment to meet this responsibility through a statement of policy that:*

*(a) Is approved at the most senior level of the business enterprise;*

*(b) Is informed by relevant internal and/or external expertise;*

*(c) Stipulates the enterprise's human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services;*

*(d) Is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties;*

*(e) Is reflected in operational policies and procedures necessary to embed it throughout the business enterprise*

Policy statements and operational guidelines provide a practical framework for the company's activities. The Guiding Principles strongly emphasise that a company's strategy should be adopted at the most senior level. The Government stressed the responsibility of management in this respect in its white paper on state ownership.

## **Due diligence**

The 17th principle explains what is meant by due diligence:

*17. In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.*

*Human rights due diligence:*

*(a) Should cover adverse human rights impacts that the business*

*enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships;*

*(b) Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations;*

*(c) Should be ongoing, recognizing that the human rights risks may change over time as the business enterprise's operations and operating context evolve.*

## **Acquiring expertise for risk identification and assessment**

The 18th principle outlines procedures for risk management based on internal or external expertise and dialogue with stakeholders:

*18. In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should:*

*(a) Draw on internal and/or independent external human rights expertise;*

*(b) Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.*

Companies in high-risk industries and companies that operate in vulnerable areas should identify and gauge the risks they run of having adverse human rights impacts. The first step is to identify actual and potential risks. Which specific human rights and individuals do they risk abusing in certain situations? Risk identification and assessment should be conducted and repeated for each new decision and each new direction, such as entry into a new market.

It may be necessary to conduct a dialogue on due diligence with stakeholders. This will give the company a better picture of which rights may be under pressure and what can be done to prevent potential misunderstandings or conflicts. Dialogue can help to clarify expectations and reduce conflict.

### **Integrating and managing the findings from due diligence processes and risk analyses**

The 19th principle concerns how companies should follow up the findings of the impact assessments:

*19. In order to prevent and mitigate adverse human rights impacts, business enterprises should integrate the findings from their impact assessments across relevant internal functions and processes, and take appropriate action.*

*(a) Effective integration requires that:*

*(i) Responsibility for addressing such impacts is assigned to the appropriate level and function within the business enterprise;*

*(ii) Internal decision-making, budget allocations and oversight processes enable effective responses to such impacts.*

*(b) Appropriate action will vary according to:*

*(i) Whether the business enterprise causes or contributes to an adverse impact, or whether it is involved solely because the impact is directly linked to its operations, products or services by a business relationship;*

*(ii) The extent of its leverage in addressing the adverse impact.*

### **Measuring the effectiveness of the company's response**

The 20th principle concerns follow-up of the action taken:

*20. In order to verify whether adverse human rights impacts are being addressed, business enterprises*

### **THE RIGHTS OF INDIGENOUS PEOPLES**

Indigenous peoples have a right to be consulted on projects that will have an impact on land where they live and earn their livelihoods (for example reindeer husbandry). The most important international standards concerning indigenous rights and the right to be consulted are the United Nations Declaration on the Rights of Indigenous Peoples and ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries. In many countries, indigenous peoples are largely excluded from political, economic and cultural life, and indigenous groups have a lower score than other population groups on many standard-of-living indicators, for example health and education. Indigenous peoples are also particularly vulnerable to the impacts of climate change.

*should track the effectiveness of their response. Tracking should:*

*(a) Be based on appropriate qualitative and quantitative indicators;*

*(b) Draw on feedback from both internal and external sources, including affected stakeholders.*

Companies should verify whether the action taken to address human rights impacts has had the intended result. Many companies have reported that they find it difficult to identify appropriate indicators. A number of initiatives in this respect are being taken internationally. Norway has supported the development of a reporting framework for the Guiding Principles to help companies assess the effectiveness of their measures and report on them. This is described in more detail in the following section.

### **3.3 External communication and reporting**

The 21st principle deals with internal and external communication:

*21. In order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally, par-*



*particularly when concerns are raised by or on behalf of affected stakeholders. Business enterprises whose operations or operating contexts pose risks of severe human rights impacts should report formally on how they address them. In all instances, communications should:*

*(a) Be of a form and frequency that reflect an enterprise's human rights impacts and that are accessible to its intended audiences;*

*(b) Provide information that is sufficient to evaluate the adequacy of an enterprise's response to the particular human rights impact involved;*

*(c) In turn not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality.*

The Guiding Principles also provide further details on how companies should address the human rights impacts of their operations. It is the company itself that decides how to communicate and report on this in the light of its situation and target groups. We recommend companies to use international reporting frameworks, and to have their reports verified by an independent auditor or other expert. It is also important to publish the reports in the language of the country where the company operates. The company itself chooses the most appropriate reporting framework, and the Norwegian authorities can advise on this.

### 3.4 Grievance mechanisms for human rights violations

The 22nd principle concerns remediation:

*22. Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.*

Grievance mechanisms are described in chapter 4. It is important to distinguish between judicial and non-judicial mechanisms. Cases involving violations of national legislation are dealt with by the judicial system or the appropriate appeals body.

#### INTERNATIONAL REPORTING STANDARDS

The UN Guiding Principles (UNGP) Reporting Framework was launched in February 2015. It evolved from the Human Rights Reporting and Assurance Frameworks (RAFI) and is co-facilitated by Shift and Mazars. Business was actively involved in the development of the reporting framework, and many companies began using it during the development process. The High Commissioner for Human Rights (OHCHR), and the Working Group on the issue of human rights and transnational corporations and other business enterprises, have expressed their support for the project but are not involved in it. Norway has supported the project.

[www.ungpreporting.org](http://www.ungpreporting.org)

United Nations Global Compact requires its members to report on their efforts to implement its 10 principles in four areas: human rights, labour, environment and anti-corruption. Enterprises' reports are graded as GC Advanced, GC Active or GC Learner (minimum requirement). Norway supports Global Compact.

[www.gcnordic.net/](http://www.gcnordic.net/)

[www.unglobalcompact.org](http://www.unglobalcompact.org)

Global Reporting Initiative (GRI) is the most widely used standard for reporting on CSR, and includes human rights indicators. There are three levels of reporting, from A, the most advanced, to C, the least advanced. Independent auditing/verification of the report earns a plus, making A+ the highest level. Norway supports GRI. CSR Norge maintains an overview of Norwegian companies that follow GRI, and regularly holds GRI Certified Training courses.

[www.globalreporting.org](http://www.globalreporting.org)

[www.csrnorge.no](http://www.csrnorge.no)

### 3.5 Compliance with legislation

The 23rd principle concerns compliance with legislation:

23. *In all contexts, business enterprises should:*

*(a) Comply with all applicable laws and respect internationally recognized human rights, wherever they operate;*

*(b) Seek ways to honour the principles of internationally recognized human rights when faced with conflicting requirements;*

*(c) Treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate.*

In some geographical areas, such as conflict-affected areas, a company may unintentionally enter into a business relationship with an enterprise, such as a security company, that is guilty of gross human rights abuses. In such a situation the Norwegian company should be aware that this may have legal consequences such as liability.<sup>21</sup> The Norwegian Penal Code of 2005, which entered into force on 1 October

2015, also applies to certain punishable offences committed on behalf of an enterprise registered in Norway when the offence is also punishable under the law of the country where it has been committed.<sup>22</sup>

Norwegian companies that are faced with demands from the authorities in the host country that appear to be in conflict with international guidelines are encouraged to contact either the nearest Norwegian mission or the Ministry of Foreign Affairs. Examples of such situations are a demand for a bribe or a request to keep certain information secret.

#### **Giving priority to monitoring of risk and actual adverse human rights impacts**

The 24th principle gives advice on priorities:

24. *Where it is necessary to prioritize actions to address actual and potential adverse human rights impacts, business enterprises should first seek to prevent and mitigate those that are most severe or where delayed response would make them irremediable.*

The most important principle here is that the company should explain the reasons for its priorities.

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<sup>21</sup> The provisions of the Rome Statute of the International Criminal Court that concern rights violations in war and conflict do not apply to enterprises. Under Article 25 (1) of the Rome Statute, the Court only has jurisdiction over natural persons. However, the provisions may become applicable to enterprises if they are incorporated into national law that provides for corporate penalties.

<sup>22</sup> See Section 5, first paragraph, (c) (2) and (3) of the 2005 Penal Code. It follows from section 5 that the criminal legislation applies to acts committed on behalf of an enterprise registered in Norway when the acts are punishable under the law of the country in which they are committed. The criminal legislation also applies to contravention of the punishable offences set out in section 5, first paragraph, even if the acts are not punishable in the country where they are committed. Under section 6, the criminal legislation also applies to acts committed abroad that are outside the scope and extent of section 5 if Norway has a right or an obligation to prosecute such acts under international law.

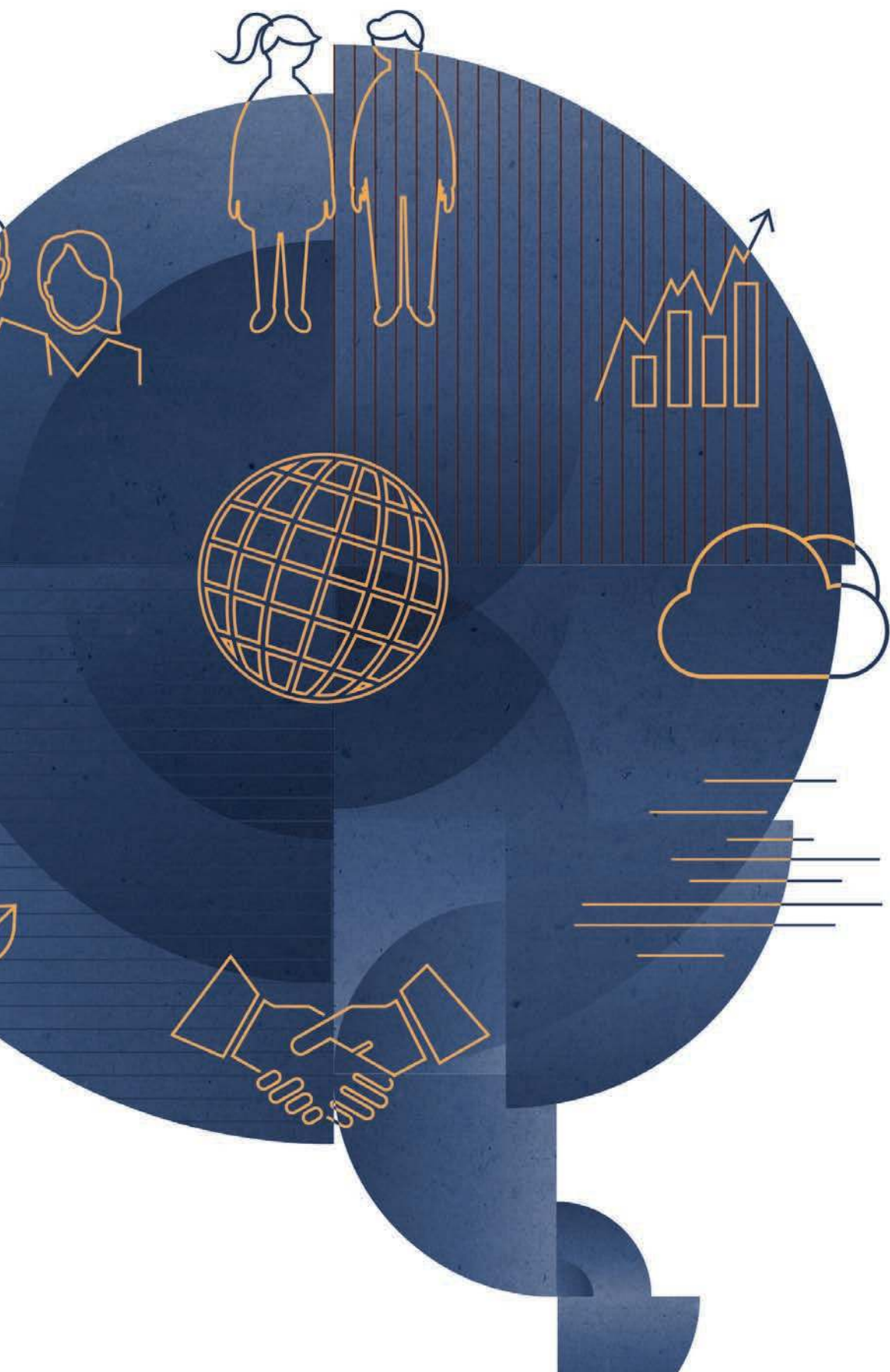


# 4

## Access to remedy

**This chapter deals with principles 25–31, on the responsibility of states and enterprises to ensure access to effective judicial and non-judicial remedy.**







## 4.1 State-based grievance mechanisms

The 25th principle concerns the state's overall responsibility to ensure a well-functioning remediation system:

*25. As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.*

Principles 26–31 deal with what steps states and enterprises can take to ensure remediation.

### Judicial grievance mechanisms

The 26th principle concerns judicial mechanisms for addressing human rights abuses:

*26. States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.*

Norway has comprehensive human rights legislation and legislation in other areas that is also applicable to CSR. We also have an effective judicial system, and the Norwegian law of damages provides for financial compensation or redress under certain conditions.

Norwegian companies may become involved in legal cases dealing with human rights abuses in the host country. If the case is to be brought before a Norwegian court, it must satisfy the requirement in the Dispute Act that the facts of the case 'have a sufficiently strong connection to Norway'.<sup>23</sup> In order to determine whether the connection is sufficiently strong, an overall evaluation must be made of all the circumstances in the case that includes both judicial and other relevant circumstances.<sup>24</sup> There are also other conditions for bringing a case before a Norwegian court.<sup>25</sup>

It is important to ensure that individuals who feel that their rights have been violated have access to effective remedy. The Government will actively follow the international efforts to strengthen access to judicial grievance mechanisms at the national level.

### Measures:

- participate in international cooperation to ensure that victims of grave and systematic human rights violations as a result of business activities have access to effective remedy;
- support the work headed by OHCHR to strengthen national judicial systems to protect the rights of the victims of grave and systematic human rights violations;
- participate in the process in the Council of Europe on following up the recommendations of the UN Guiding Principles on access to effective remedies at national level.

### State-based non-judicial grievance mechanisms

The 27th principle concerns public non-judicial grievance mechanisms:

*27. States should provide effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive State-based system for the remedy of business-related human rights abuse.*

<sup>23</sup> 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).

<sup>24</sup> See for example Rt. 2010–1197, paragraph 41. (In Norwegian).

<sup>25</sup> Section 1-3 of the Dispute Act sets out the requirements relating to the subject matter in dispute, the parties' connection to the dispute and the dispute situation. It also sets out the requirements relating to the parties' capacity to sue and be sued and their procedural capacity.

Norway has a number of well-functioning institutions such as the Labour Inspection Authority, the Ombudsman for Children, the Consumer Ombudsman, the Equality and Anti-discrimination Ombudsman, the Norwegian Environment Agency and the Parliamentary Ombudsman for the Public Administration. There are also complaints mechanisms in connection with the rights of employees, children, women and men. For example, on the basis of the Environmental Information Act, the Appeals Board for Environmental Information handles appeals concerning rejected requests from private and public agencies for access to environmental information. The National Contact Point provides information on the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles. The Contact Point also deals with individual cases independently of the government. In line with the Guidelines, the parties to cases that come before the Contact Point are expected to participate in good faith during the procedure.

## 4.2 Non-state-based grievance mechanisms

Principles 28–30 deal with non-state-based grievance mechanisms, such as those established by the business sector itself. These may be linked with an individual enterprise such as a factory, or take the form of schemes aimed at a particular local community. Other types of grievance mechanisms are available to companies through industry organisations or tripartite cooperation. The 28th principle concerns the state's responsibility to facilitate the establishment of non-state-based grievance mechanisms:

*28. States should consider ways to facilitate access to effective non-State-based grievance mechanisms dealing with business-related human rights harms.*

Norway supports the organisation Access Facility. Access promotes effective problem solving for company–community conflicts by providing a safe space for dialogue between companies, communities and governments. It has a global network of professional facilitators who help communities and

companies find practical solutions. At present the network is supported by institutions in the following countries: Argentina, Bolivia, Brazil, Chile, the Philippines, India, Kenya, Nigeria, Peru, South Africa, Thailand, Uganda and the US. Norway is supporting the training of facilitators in 2015.

### Grievance mechanisms at company level

The 29th principle concerns what companies themselves should do to ensure access to grievance mechanisms:

*29. To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.*

Companies that discover or are made aware that they may cause or help to cause a violation of individuals' rights should establish or participate in effective grievance mechanisms and engage in a dialogue with the interested parties. In this way the company may succeed in addressing potential problems before they can escalate into conflict. Norwegian companies are encouraged to actively share their experience of grievance mechanisms and dialogue with interested parties. The National Contact Point, in cooperation with enterprises that have made considerable progress in this area, can provide practical advice on the establishment of consultation and grievance mechanisms.

### Cooperation on grievance mechanisms

The 30th principle concerns cooperation on ensuring access to grievance mechanisms:

*30. Industry, multi-stakeholder and other collaborative initiatives that are based on respect for human rights-related standards should ensure that effective grievance mechanisms are available.*

Norwegian companies should take steps, either alone or in cooperation with others, to ensure that their cooperation partners and suppliers provide access to effective grievance mechanisms where appropriate.

### 4.3 Criteria for ensuring effective non-judicial grievance mechanisms

The 31st principle sets out criteria for ensuring the effectiveness of non-judicial grievance mechanism:

31. *In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be:*

*(a) Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;*

*(b) Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;*

*(c) Predictable: providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;*

*(d) Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;*

*(e) Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;*

*(f) Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights;*

*(g) A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms;*

*Operational-level mechanisms should also be:*

*(h) Based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.*

The criteria are designed to ensure that those for whom the mechanism is intended are aware of it, have confidence in it and are in a position to use it. Companies that establish grievance mechanisms should familiarise themselves with the criteria and seek to satisfy them. The OECD National Contact Point Norway follows these criteria.

Published by:  
The Ministry of Foreign Affairs  
Additional copies may be ordered from:  
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Tel: +47 22 24 00 00

Publication code: E-951 E  
Design and illustrations: Kord AS  
Printed by: the Government Administration Services  
11/2015 – no. of copies 100

