



The OECD Guidelines for Multinational Enterprises

Recommendations for Responsible
Business Conduct in a Global Context

TRADE UNION GUIDE



TUAC

The Trade Union Advisory Committee to the OECD (TUAC) is the official voice of labour at the OECD. TUAC leads the trade union movement's work on the OECD Guidelines for Multinational Enterprises. TUAC's members consist of fifty-nine national trade union centres together representing sixty million workers in OECD member countries.

<http://www.tuac.org>

<http://www.tuac.oecd.mneguidelines.org>

OECD

The Organisation for Economic Cooperation and Development (OECD) is an inter-governmental organisation that provides a forum for governments to work together in an array of public policy areas ranging from economic policy, job markets and skills to investment and responsible business conduct. Founded in 1961, its membership today stands at thirty-five.

<http://www.oecd.org/>

OECD Guidelines

The OECD Guidelines for Multinational Enterprises set out the expectations of governments on responsible business conduct. The *Guidelines* are unique in having a government-backed complaints mechanism for addressing the actions of multinational enterprises. *Trade unions have used this mechanism successfully.* The *Guidelines* form part of the OECD Investment Declaration, under which adhering governments commit to improving their investment climate and encouraging the positive contribution that multinational enterprises can make to economic and social progress.

<http://mneguidelines.oecd.org>

2011 Update

The OECD Guidelines, first adopted in 1976, were significantly improved in the most recent update in 2011: reference to internationally-recognised standards; inclusion of a new human rights chapter; adoption of a general recommendation to conduct due diligence to avoid and address adverse impacts; clarification that the *Guidelines* apply to supply chains and other business relationships; broadening of the scope of the employment chapter to include workers in indirect employment relationships, as well as employees; and strengthening the government-backed complaints mechanism.

http://www.tuac.org/en/public/e-docs/00/00/08/E7/document_doc.phtml



This Trade Union Guide to the OECD Guidelines for Multinational Enterprises has been published with the financial support of the Friedrich-Ebert-Stiftung.

TUAC 2016



Introduction

Trade unions have long worked to ensure that the fruits of foreign direct investment are more equally shared – between and within countries and between labour and capital – and that multinational enterprises (MNEs) comply with international labour standards throughout their global production chains. Foreign direct investment and MNEs can make an important contribution to sustainable development. All too often, however, MNEs are involved in breaches of international standards that leave millions of women and men around the world working in conditions of hardship, insecurity and poverty, denied access to their human rights.

The OECD Guidelines for Multinational Enterprises (the *Guidelines*) are one of the few international instruments available to trade unions to help secure respect by MNEs of international labour standards and decent work. The *Guidelines*, which are signed by governments, make recommendations to MNEs in areas ranging from employment, industrial relations and human rights, to transparency, the environment and anti-corruption.

Governments that sign the *Guidelines* are required to set up National Contact Points (NCPs), which have a responsibility to help resolve complaints of alleged breaches of the *Guidelines*. To date, trade unions have submitted 184 complaints to NCPs. These have mainly concerned violations of the rights to freedom of association and collective bargaining, but also a range of other issues including precarious work, disclosure of information, forced labour, discrimination, health and safety, the environment, and corruption.

The trade union experience of using the *Guidelines* has been mixed. At their best, NCPs have provided a forum for problem-solving that has helped to strengthen trade union organising and collective bargaining. One landmark case involving UNI Global Union and the private security MNE G4S led to the signing of a Global Framework Agreement. But all too often, NCPs have failed to meet their obligations under the *Guidelines*, thereby failing in their responsibility to help ensure that MNEs contribute to decent work and sustainable development.

The *Guidelines* were considerably strengthened in the 2011 *Update*, including by incorporating key elements of the UN's work on business and human rights and further aligning the chapter on employment and industrial relations with the ILO MNE Declaration. As a result, the *Guidelines* clearly apply to workers in indirect employment relationships and in the supply chain. The government-backed complaints mechanism, however, was not sufficiently improved.

Overall, TUAC considers the OECD Guidelines today to be more fit-for-purpose and more relevant for workers around the world. TUAC's aim in publishing this *Guide* is to help trade unions to use the 2011 *Guidelines* in their workplaces and in their campaigns to defend workers' rights and improve living and working conditions.

TUAC is grateful to the Friedrich-Ebert-Stiftung for its support, which has enabled the publication of this Guide.

John Evans, *General Secretary, Trade Union Advisory Committee to the OECD*

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Terms and Concepts

TERM/CONCEPT	DEFINITION
Actual adverse human rights impact (see “adverse human rights impact”)	An adverse human rights impact that has already occurred or is occurring. ¹
Adverse human rights impact	Occurs when an action removes or reduces the ability of an individual to enjoy his or her human rights. ²
Business relationships (see “supply chain”)	Includes relationships with business partners, entities in the supply chain, and any other non-State or State entities directly linked to its business operations, products or services. ³
Conciliation	A non-binding dispute resolution procedure in which a conciliator plays a relatively direct role in the actual resolution of a dispute and even advises the parties on certain solutions by making proposals for settlement. ⁴
Due diligence (see “human rights due diligence”)	The process through which enterprises can identify, prevent, mitigate and account for how they address their actual and potential adverse impacts as an integral part of business decision-making and risk management systems. ⁵
Good faith	In the context of participating in the complaints procedure means responding in a timely fashion, maintaining confidentiality where appropriate, refraining from misrepresenting the process and from threatening or taking reprisals against parties involved in the procedure, and genuinely engaging in the procedures with a view to finding a solution to the issues raised. ⁶
Human rights due diligence (see “due diligence”)	Assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses as well as communicating how impacts are addressed. ⁷
Human rights risks (see “potential adverse human rights impact”)	Risks that a company’s operations may lead to one or more adverse human rights impacts. They relate to potential human rights impacts and are distinct from the risks to the company that may arise from its involvement in adverse human rights impacts. ⁸
Leverage	The ability of an enterprise to effect change in the wrongful practices of the entity that causes the harm (i.e., adverse impacts). ⁹
Mediation	A voluntary and guided process in which a skilled mediator helps the parties to negotiate the settlement of a dispute. The process is not binding unless or until the parties reach agreement. ¹⁰

TERM/CONCEPT	DEFINITION
Mitigation of adverse (<i>human rights</i>) impact	Actions taken to reduce the extent of an adverse (human rights) impact, with any residual impact then requiring remediation. The mitigation of (human rights) risks refers to actions taken to reduce the likelihood of a certain adverse impact occurring. ¹¹
National Contact Points (NCPs)	Structures established by signatory governments to the Guidelines to further the effectiveness of the Guidelines, including by handling complaints.
Potential adverse impact	An adverse impact that may occur on matters covered by the Guidelines but has not yet done so.
Potential adverse human rights impact	An adverse human rights impact that may occur, but has not yet done so. ¹²
Problem-solving approach	A quality improvement approach that involves identifying the causes of a problem and proposing potential, often creative, solutions agreeable to multiple parties or individuals. ¹³
Procedural Guidance	The rules in the Guidelines that govern the functioning of the NCPs.
Remediation	Refers to both the processes of providing remedy for an adverse impact and the substantive outcomes that can counteract, or make good, the adverse impact, including apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. ¹⁴
Soft Law	Rules that are neither strictly law nor completely lacking legal significance (e.g., governmental Guidelines, Declarations or Recommendations).
Specific Instance	The term used in the Guidelines to mean a case or complaint relating to an alleged breach of the Guidelines. This Guide uses the term case or complaint.
Specific Instance Procedure (<i>see “specific instance”</i>)	The term used in the Guidelines to describe the rules governing the handling of a case or complaint by the National Contact Points (NCPs) under the Guidelines.
Supply Chain (<i>see “business relationships”</i>)	Includes relationships that take a variety of forms including, for example, franchising, licensing or subcontracting. ¹⁵

PART 1. Quick Guide

Part 1 summarises the Guidelines and highlights of the 2011 Update and provides answers to key questions



FIGURE 1.1 The OECD Guidelines – Chapter By Chapter

CHAPTER	WHAT DOES IT SAY?	USED BY TRADE UNIONS?
I. Concepts and Principles	The <i>Guidelines</i> comprise principles and standards consistent with applicable laws and internationally-recognised standards. They apply to multinational enterprises (MNEs) in all sectors wherever they operate. Enterprises should obey domestic laws. In countries where domestic laws conflict with the <i>Guidelines</i> , enterprises should seek ways to honour the <i>Guidelines</i> to the fullest extent, which does not place them in violation of domestic law.	✓
II. General Policies	Enterprises should contribute to sustainable development, respect human rights, abstain from improper involvement in local political activities and refrain from retaliating against workers who report practices that contravene the law, the <i>Guidelines</i> or the enterprise's policies. Enterprises should conduct due diligence to <i>avoid</i> being involved in adverse impacts on matters covered by the <i>Guidelines</i> , including through their supply chain and business relationships, and to <i>address</i> such impacts when they occur, including using their <i>leverage</i> so that business partners address their adverse impacts. Enterprises should engage with stakeholders to provide meaningful opportunities for their views to be taken into account in relation to planning and decision making on activities that may significantly impact local communities.	✓
III. Disclosure	Enterprises should disclose information on material matters regarding their activities, structure, financial situation, performance, ownership and governance and workers, and should apply high quality standards to financial and non-financial reporting.	✓
IV. Human Rights	Enterprises should respect human rights, which means they should avoid infringing on the rights of others, through their own activities and relationships, and address such impacts when they occur, including using their <i>leverage</i> so that business partners address their adverse human rights impacts. Enterprises should have a human rights policy, conduct human rights due diligence and have legitimate processes in place for remedying actual adverse impacts where they have <i>caused</i> or <i>contributed</i> to those impacts.	✓
V. Employment and Industrial Relations	Enterprises should respect the right to form or join a trade union and to bargain collectively, contribute to the effective abolition of child labour and the elimination of all forms of forced or compulsory labour, and respect the right to non-discrimination in employment and occupation. Enterprises should provide information to workers' representatives, which is needed for meaningful negotiations on conditions of employment and provide information to workers and their representatives which enables them to obtain a true and fair view of the performance of the entity, or the enterprise as a whole. Enterprises should provide the best possible wages (which at a minimum should meet the basic needs of workers and their families), ensure occupational health and safety, provide reasonable notice to workers of restructuring or closures and not threaten to transfer operations in response to negotiations on employment conditions, or workers forming or joining a union.	✓

The general recommendation in Chapter II that enterprises should conduct due diligence applies to all chapters except Science and Technology (IX), Competition (X) and Taxation (XI).

CHAPTER	WHAT DOES IT SAY?	USED BY TRADE UNIONS?
VI. Environment	Enterprises should maintain environmental management systems to collect and evaluate information on their environmental, health and safety impacts, provide timely information to the public and workers on potential impacts, communicate and consult with affected communities, and provide adequate education and training to workers in environmental health and safety.	✓
VII. Combating Bribery, Bribe Solicitation and Extortion	Enterprises should not offer, give or demand a bribe to or from a public or private official, to obtain or retain an improper advantage, nor use intermediaries, such as agents, for this purpose. Enterprises should prohibit or discourage the payment of facilitation payments and should ensure that political contributions comply fully with public disclosure requirements and are reported to senior management.	✓
VIII. Consumer Interests	Enterprises should meet all legally required health and safety standards, provide consumers with sufficient information to make informed decisions, provide access to non-judicial dispute resolution and redress mechanisms, not make misrepresentations or omissions nor otherwise engage in misleading, fraudulent or unfair practices, and should cooperate with public authorities to address serious threats to public health and safety or to the environment with which they are involved.	✓
IX. Science and Technology	Enterprises should adopt practices to support technology transfer in a way that contributes to sustainable development and, where relevant, develop ties with local public research institutions.	
X. Competition	Enterprises should carry out their activities in a way that is consistent with applicable competition laws and regulations and refrain from price fixing, bid rigging, or dividing up markets.	
XI. Taxation	Enterprises should contribute to the public finances of host countries by making timely payment of their tax liabilities, complying with both the letter and the spirit of the tax laws and regulations of host countries, providing timely information to public authorities, including in the context of requests from other countries, and applying the arm's length principle in transfer pricing practices to avoid shifting of profits or losses to reduce the tax burden.	✓

FIGURE 1.2: National Contact Points – Promoting and Implementing the OECD Guidelines¹⁶

NCP	WEB SITE
Argentina	English: http://www.cancilleria.gov.ar/en/ancp Spanish: http://www.cancilleria.gov.ar/pnca
Australia	http://www.ausncp.gov.au/content/content.aspx?doc=home.htm
Austria	http://www.en.bmwfw.gv.at/ExternalTrade/Investment_Policy/Seiten/OECD-Guidelines-for-Multinational-Enterprises.aspx
Belgium	http://economie.fgov.be/oeso.jsp
Brazil	English: http://www.pcn.fazenda.gov.br/assuntos/english/ Portuguese: http://www.pcn.fazenda.gov.br/
Canada	English: http://www.international.gc.ca/trade-agreements-accords-commerciaux/ncp-pcn/index.aspx?lang=eng&menu_id=1&menu=R French: http://www.international.gc.ca/trade-agreements-accords-commerciaux/ncp-pcn/index.aspx?lang=fra
Chile	https://www.direcon.gob.cl/ocde/punto-nacional-de-contacto/
Colombia	http://www.mincit.gov.co/mincomercioexterior/publicaciones.php?id=2241
Costa Rica	http://www.comex.go.cr/OCDE/PuntoNacionaldeContactodelasLineasDirectricesparaEmpresasMultinacionales.aspx
Czech Republic	http://www.mpo.cz/dokument75865.html
Denmark	http://businessconduct.dk/
Egypt	Egypt does not currently have a web site for its NCP.
Estonia	https://www.mkm.ee/en/objectives-activities/economic-development
Finland	http://tem.fi/en/handling-individual-cases-in-the-oecd-guidelines-for-multinational-enterprises
France	http://www.tresor.economie.gouv.fr/pcn
Germany	English: http://www.bmwi.de/EN/Topics/Foreign-trade/International-bodies/oecd-guidelines-for-multinational-enterprises,did=430522.html German: http://www.bmwi.de/DE/Themen/Aussenwirtschaft/Internationale-Gremien/oecd-leitsaetze,did=429916.html
Greece	http://www.mindev.gov.gr/index.php/2-uncategorised/3377-international-trade-policy
Hungary	http://oecd.kormany.hu/oecd-nkp
Iceland	https://www.atvinnuvegaraduneyti.is/verkefni/serverkefni/leidbeinandi-reglur-oecd-fyrir-althjodlega-fyrirtaeki/
Ireland	https://www.djei.ie/en/What-We-Do/Trade-Investment/Bilateral-Trade/OECD-Guidelines-for-Multinational-Enterprises/
Israel	Israel does not currently have a web site for its NCP.
Italy	English: http://pcnitalia.sviluppoeconomico.gov.it/en Italian: http://pcnitalia.sviluppoeconomico.gov.it/it/
Japan	http://www.mofa.go.jp/mofaj/gaiko/csr/housin.html
Jordan	Jordan does not currently have a web site for its NCP.

NCP	WEB SITE
Kazakstan	Kazakstan does not currently have a web site for its NCP.
Korea	http://www.ncp.or.kr/jsp/kcab_ncp/intro_ncp.jsp
Latvia	http://www.mfa.gov.lv/en/policy/economic-affairs/oecd/latvian-national-contact-point-for-the-oecd-guidelines-for-multinational-enterprises
Lithuania	http://ukmin.lrv.lt/lt/veiklos-sritys/investiciju-veiklos-sritis/nacionalinis-koordinacinis-centras-nkc
Luxembourg	https://www.gouvernement.lu/5125749/pcn
Mexico	http://www.gob.mx/se/acciones-y-programas/responsabilidad-social-empresarial
Morocco	Arabic: http://www.invest.gov.ma/?Id=34527&lang=ar English: http://www.invest.gov.ma/?Id=34527&lang=en French: http://www.invest.gov.ma/?lang=fr&Id=34527
Netherlands	http://www.oecdguidelines.nl/
New Zealand	http://www.mbie.govt.nz/info-services/business/trade-tariffs/trade-environment/oecd-guidelines-for-multi-national-enterprises
Norway	English: http://nettsteder.regjeringen.no/ansvarlignaringsliv-en/
Peru	http://www.investinperu.pe/modulos/JER/PlantillaStandard.aspx?are=0&prf=0&jer=8006&sec=1
Poland	http://www.mr.gov.pl/strony/zadania/wsparcie-przedsiębiorczosci/spoleczna-odpowiedzialnosc-przedsiębiorstw-csr/krajowy-punkt-kontaktowy-oecd/
Portugal	http://www.portugalglobal.pt/PT/Internacionalizar/GuiadoExportador/OutrosAspectosRelevantes/Paginas/outros-aspetos-relevantes.aspx
Romania	English: http://dpiis.gov.ro/new_dpiis/foreign-investments/pnc-national-contact-point/ Romanian: http://dpiis.gov.ro/new_dpiis/investitii-straine/pnc-punctul-national-de-contact/
Slovak Republic	The Slovak Republic does not currently have a web site for its NCP.
Slovenia	http://www.mgrt.gov.si/si/delovna_podrocja/trgovinska_politika/sodelovanje_z_oecd/nacionalna_kontaktna_tocka_nkt_za_izvajanje_smernic_za_vecnacionalne_druzbe/
Spain	http://www.comercio.mineco.gob.es/es-ES/inversiones-exteriores/punto-nacional-contacto-lineas-directrices/Paginas/El_PNC.aspx
Sweden	http://www.regeringen.se/artiklar/2015/12/nationella-kontaktpunkten-nkp
Switzerland	https://www.seco.admin.ch/ncp
Tunisia	Tunisia does not currently have a web site for its NCP.
Turkey	http://www.ekonomi.gov.tr/portal/faces/home/yatirim/yurtdisinaYatirim/OECD?_adf.ctrl-state=d4jlomeip_4&_afLoop=776182328983685&_afWindowMode=0&_afWindowId=null#!%40%40%3F_afWindowId%3Dnull%26_afLoop%3D776182328983685%26_afWindowMode%3D0%26_adf.ctrl-state%3Dwdt6ywa4e_239
United Kingdom	https://www.gov.uk/guidance/uk-national-contact-point-for-the-organisation-for-economic-co-operation-and-development-oecd-guidelines-for-multinational-enterprises#contact-the-uk-national-contact-point
United States	http://www.state.gov/e/eb/oecd/usncp/index.htm

THE 2011 UPDATE

An Upgrade In Corporate Responsibility

Since their adoption in 1976, the OECD Guidelines have been subject to periodic update and review, most recently in 2011. Highlights of the 2011 *Update* include:

- **Internationally-recognised standards:** incorporation of reference to internationally recognised standards¹⁷, alongside domestic law, and the recommendation that in countries where there is conflict between the standards of the *Guidelines* and domestic law, enterprises should seek to honour the *Guidelines* unless doing so would result in violating domestic law;¹⁸
- **Responsibility determined by impact:** adoption of the principle that the responsibility of an enterprise is determined by its adverse impacts, in line with the UN Guiding Principles on Business and Human Rights (UNGPs);
- **Supply chains and business relationships:** clarification that MNEs are responsible for *avoiding* adverse impacts and *addressing* those with which they are involved through their supply chains and business relationships;¹⁹
- **Due diligence:** inclusion of a general recommendation that enterprises should conduct due diligence to *avoid* and *address* adverse impacts on matters covered by the *Guidelines*;²⁰
- **Human rights:** introduction of a new chapter setting out the corporate responsibility to respect human rights, based on the *UNGPs*;²¹
- **Employees and workers:** broadening the scope of the *Guidelines* to cover workers in indirect employment relationships and in the supply chain;²²
- **Wages to meet basic needs:** inclusion of a new recommendation that MNEs should provide the “*best possible wages, benefits and conditions of work*” that should be “*at least adequate to satisfy the basic needs of the workers and their families*”;²³
- **Parallel proceedings:** guidance that NCPs should not reject or suspend cases for the sole reason that there are other (legal) proceedings, unless handling the case would create serious prejudice for the parties involved;²⁴
- **Strengthened complaints mechanism:** incorporation of new principles requiring NCPs to be *impartial, predictable* and *equitable* when handling complaints²⁵, improved procedures (including timeframes)²⁶ and provision for NCP capacity-building and monitoring (voluntary peer review);
- **Proactive agenda:** introduction of a new proactive agenda as a complement to the complaints mechanism, under which governments should work on a multi-stakeholder basis to address risks of adverse impacts associated with particular products, regions, sectors or industries, to promote the effective observance of the *Guidelines*.²⁷

The 2011 Update increased significantly the responsibility of MNEs under the *Guidelines*. However, the steps taken to strengthen the complaints mechanism fell far short of trade union and NGO demands. This was the major failing of the 2011 Update.

1.1 What are the OECD Guidelines for Multinational Enterprises?

The OECD Guidelines for Multinational Enterprises (the *Guidelines*) are recommendations of governments on the standard of business behaviour that is expected of multinational enterprises (MNEs) throughout their global operations. The *Guidelines* set out principles and standards in areas ranging from human rights, employment and industrial relations, to information disclosure, environment and taxation (see *FIGURE 1.1*).

1.2 Do MNEs sign up to the Guidelines?

No. Governments sign the *Guidelines*, not MNEs. This makes the *Guidelines* qualitatively different from company codes of conduct. So far 47 governments have signed: 35 OECD member countries and 12 non-members. Governments that sign the *Guidelines* make a binding commitment to implement them.

The government-backed complaints mechanism is a unique characteristic of the Guidelines.

1.3 How do the Guidelines apply to Multinational Enterprises?

The *Guidelines* apply to all MNEs which are headquartered in the 47 countries that have signed the *Guidelines* wherever these MNEs operate, including abroad. They also apply to MNEs operating in the territories of countries that have signed the *Guidelines*. The *Guidelines* apply irrespective of ownership (state-owned, public or private) or sector, including to the financial sector.

1.4 What about suppliers and other business partners?

The *Guidelines* apply to the full range of business relationships of MNEs: subsidiaries, suppliers, sub-contractors, franchises, licensees and other business partners.

 This is discussed further in Part 2.2

1.5 Are the Guidelines optional for MNEs?

No. The *Guidelines* are not optional. The *Guidelines* are an example of a “soft law” instrument. This means that they are neither strictly legally binding in nature, nor completely lacking legal significance. As they are not “hard law”, the *Guidelines* cannot be enforced through the courts. But because 47 governments have made a legal commitment to implement the *Guidelines*, MNEs are *expected* to comply with the *Guidelines*.

BOX 1.1: Signatories to the OECD Guidelines

OECD MEMBERS

Australia, Austria, Belgium, Canada, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Latvia, Luxembourg, Mexico, New Zealand, Norway, The Netherlands, Poland, Portugal, Republic of Korea, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, UK, US.

NON-OECD MEMBERS

Argentina, Brazil, Colombia, Costa Rica, Egypt, Kazakhstan, Lithuania, Morocco, Peru, Romania, Tunisia.

All NCPs are required to be visible, accessible, transparent and accountable in their every-day operations and, when handling complaints, impartial, predictable and equitable.

1.6 So how are the *Guidelines* enforced?

Governments that sign the *Guidelines* are required to set up National Contact Points (NCPs) to promote and implement the *Guidelines*, including handling cases concerning alleged breaches of the *Guidelines*. The government-backed complaints mechanism is a unique characteristic of the *Guidelines* (see *FIGURE 1.2*).

1.7 Where are these complaints mechanisms – the National Contact Points (NCPs)?

The NCPs are located in the countries that have signed the *Guidelines*. All of them are government-backed. Most are located within government, either as a single departmental body, an inter-departmental body, or a body involving government representatives and external stakeholders. A small but growing number of NCPs operates independently of government.

1.8 Do the NCPs involve trade unions?

Yes. A small number of NCPs are tripartite where trade unions participate as equal partners with governments and business. In other NCPs, trade unions are formally represented on steering or advisory boards, while the majority of NCPs have processes for consulting with trade unions, along with business and NGOs. All NCPs are supposed to cooperate with trade unions and others in their efforts to promote the *Guidelines*.

1.9 Do the different National Contact Points follow the same rules?

Yes, in principle. All NCPs are required to be *visible, accessible, transparent* and *accountable* in their every-day operations and, when handling complaints, *impartial, predictable* and *equitable*. In practice, however, there is considerable variation between NCPs with a small number of “high” performers leading the field, while all too many NCPs fail to meet an adequate standard.

1.10 When is a case eligible under the *Guidelines*?

The issues raised in the case must be covered by the *Guidelines*. The case must also involve an enterprise that is either owned by or linked to a MNE either headquartered in one of the 47 countries that has signed the *Guidelines*, or is operating in a country that has signed the *Guidelines* (see *BOX 1.1*, *BOX 1.2* and *FIGURE 4.5*).



A check-list for submitting a complaint is provided in Part 4.2

BOX 1.2: What's an Example? Eligibility of Cases

If a subsidiary or supplier of a German MNE operating in Zambia breached provisions of the *Guidelines*, then a case can be filed under the *Guidelines* because Germany has signed the *Guidelines*. If a subsidiary or supplier of a Chinese MNE operating in Zambia breached provisions of the *Guidelines*, then a case cannot be filed under the *Guidelines* because neither China nor Zambia has signed the *Guidelines*.

1.11 Where should a case be filed?

Cases should be filed directly with NCPs. Cases cannot be filed with the OECD. The OECD has no complaints mechanism. Where the alleged breach of the *Guidelines* occurs in a country that has signed the *Guidelines* then the case should be submitted to the NCP of that country – the *host country* NCP – but copying the *home country* NCP. Where the alleged breach of the *Guidelines* occurs in a country that has not signed the *Guidelines*, then the case should be submitted to the NCP of the country where the MNE has its headquarters – the *home country* NCP. Where a case involves alleged breaches of the *Guidelines* by a MNE in more than one country that has signed the *Guidelines*, then the NCPs will decide among themselves which NCP shall take the lead. Finally, where the alleged breaches of the *Guidelines* occur in a country that has not signed the *Guidelines* and involve a consortium comprising several MNEs, then the complaint should be submitted to *all* the *home country* NCPs.

➔ Filing a complaint is discussed further in Part 4.2

1.12 Who can submit cases under the *Guidelines*?

Any organisation, including any trade union – whether company, local, sectoral, national, regional or international – is able to submit a case under the *Guidelines* providing it has a legitimate interest. All cases must be submitted in “good faith”. Trade unions can submit cases on their own, jointly with other trade unions, or with NGOs. Those contemplating using the *Guidelines* for the first time are encouraged to seek support from trade unions with experience of using the *Guidelines*, whether at national or international level. National unions and Global Union Federations (GUFs) are able to provide support to their affiliates. TUAC is also able to provide advice.

The first step in preparing a complaint is to check the website of the NCP with which the complaint is being filed.

1.13 What does a NCP do with a case?

The NCP carries out an initial assessment to check that the case is eligible under the rules of the *Guidelines*. If it accepts the case, it offers mediation to the parties. If the parties come to an agreement through mediation, the NCP publishes its report and closes the case. If mediation fails, best practice NCPs carry out an examination of the case to assess whether the MNE has breached the *Guidelines*. Other NCPs refuse to conduct such an examination, but draw up recommendations on the future conduct of the MNE. Both practices are consistent with the rules of the *Guidelines*.

➔ The NCP complaints process is described in Part 4.1

1.14 Does the NCP cover the participation costs of trade unions?

Not normally. The NCP should cover the costs of the mediation sessions, including paying for the conciliator/mediator. But very few NCPs cover the participation costs of the parties. Trade unions should check with the NCP to see what its position is.

1.15 Are there rules for submitting complaints?

Yes. The *Guidelines* set out the rules governing the complaints process, on the basis of which NCPs publish their own procedures. Some NCPs require complaints to be submitted *via* an on-line form. The first step in preparing a complaint is to check the website of the NCP with which the complaint is being filed. If the NCP does not publish its own procedures, then trade unions should use the checklists provided in Part 4.2 of this Guide as a guide for writing their complaints.

➔ Pre-complaint and complaint checklists are provided in Part 4.2

1.16 Are there rules on confidentiality?

Yes. Transparency is one of the core criteria of NCPs. In general, NCPs are supposed to be transparent in their operations. The exception to this rule is during conciliation/mediation proceedings, where parties are required to respect confidentiality. A small number of NCPs, however, considers that the complaint itself should be kept confidential. Generally, trade unions and NGOs *do* publish – and publicise – their complaints and consider it important that they are able to do so.

1.17 Is it possible to submit a complaint confidentially?

Yes, partly. It is possible to keep elements of the complaint confidential, such as the identity of the workers involved. But it is not possible for the whole complaint to be kept confidential. Neither is it possible to keep the name of the organisation submitting the complaint confidential. NCPs do not accept anonymous complaints.

1.18 Are there other international instruments for holding MNEs to account?

Yes. There are two other authoritative international instruments: the *ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy* (ILO MNE Declaration) (1977, revised 2006); and the *UN Guiding Principles on Business and Human Rights* (UNGPs) (2011). To date, only the *OECD Guidelines* has a functioning complaints mechanism. The Bureau for Workers' Activities at the ILO (ACTRAV) has published a Guide to the *ILO MNE Declaration* and the ITUC has published a Guide to the UNGPs.

➔ Links to resources on these instruments are provided in Parts 5.2 and 5.3

1.19 Are the *Guidelines* relevant to International/Global Framework Agreements?

Yes. Around 20% of agreements negotiated between Global Union Federations and MNEs make reference to the *OECD Guidelines* and trade unions have reported using the *Guidelines* in their negotiations (see *BOX 1.3*). International/Global agreements are also relevant to the implementation of the *Guidelines*. They can strengthen due diligence processes by providing a source of information on risks of adverse impacts and a means of providing workers with access to remedy (see *BOX 1.4*).

➔ A link to the list of global agreements is provided in Part 5.4

BOX 1.3: What's an Example? Global Agreements: Referencing the Guidelines

Aker, Ballast Nedam, EADS, Electrolux, Ford, G4S, GDF SUEZ, GEA, H&M, Impregilo, ISS, Lafarge, Norsk Hydro ASA, Petrobras, Royal BAM, Staedtler, Veidekke, VolkerWessels.

BOX 1.4: What's an Example? Global Agreements: Resolving Conflict – GDF Suez and BWI, IndustriALL, PSI²⁸

5.1 In the event of a complaint or an alleged violation of the agreement the following procedure will apply:

- a) Firstly, the complaint will be raised with the local site management. Workers may seek trade union representation.
- b) If the complaint is not resolved with local management, it should be referred to the appropriate national union who will raise the issue with the company.
- c) Any infractions which could not be resolved through discussion at the workplace or national level will be addressed by the signatories to the agreement in close cooperation with the GUF affiliates in the country concerned and will be reported to the responsible manager, who will ensure that corrective measures are implemented in a timely manner.

1.20 How have trade unions used the *Guidelines*?

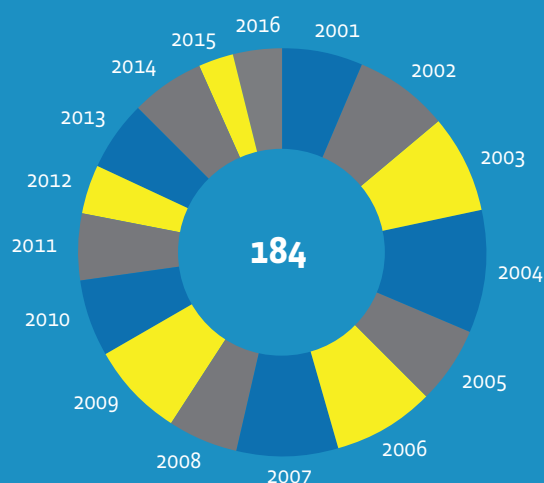
Between 2000 and 2016, trade unions submitted 184 cases under the *Guidelines*. This represents an average of 11.5 trade union cases per year – just under 1 a month. The majority of cases (90.8%) have concerned Chapter V (Employment and Industrial Relations). Trade unions have also made significant use of Chapter II (General Policies). Since the 2011 *Update*, trade unions have made strong use of Chapter IV (Human Rights) as well as the new recommendations on conducting due diligence to *avoid* and *address* adverse impacts (Chapters II General Policies and IV Human Rights).

KEY STATISTICS

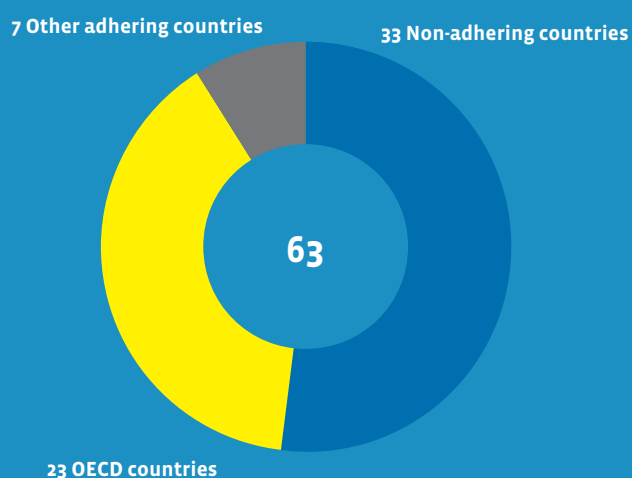
How many trade union cases are there? **184**

What is the average number of cases per year? **11.5**

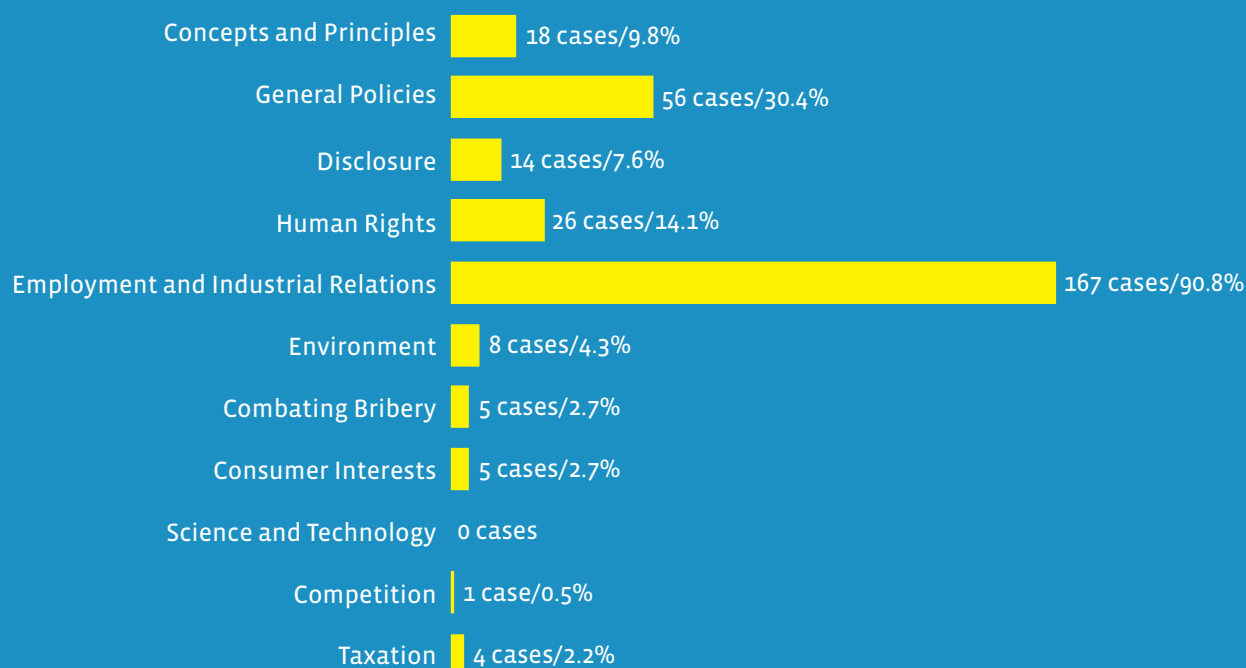
In which years were they submitted?



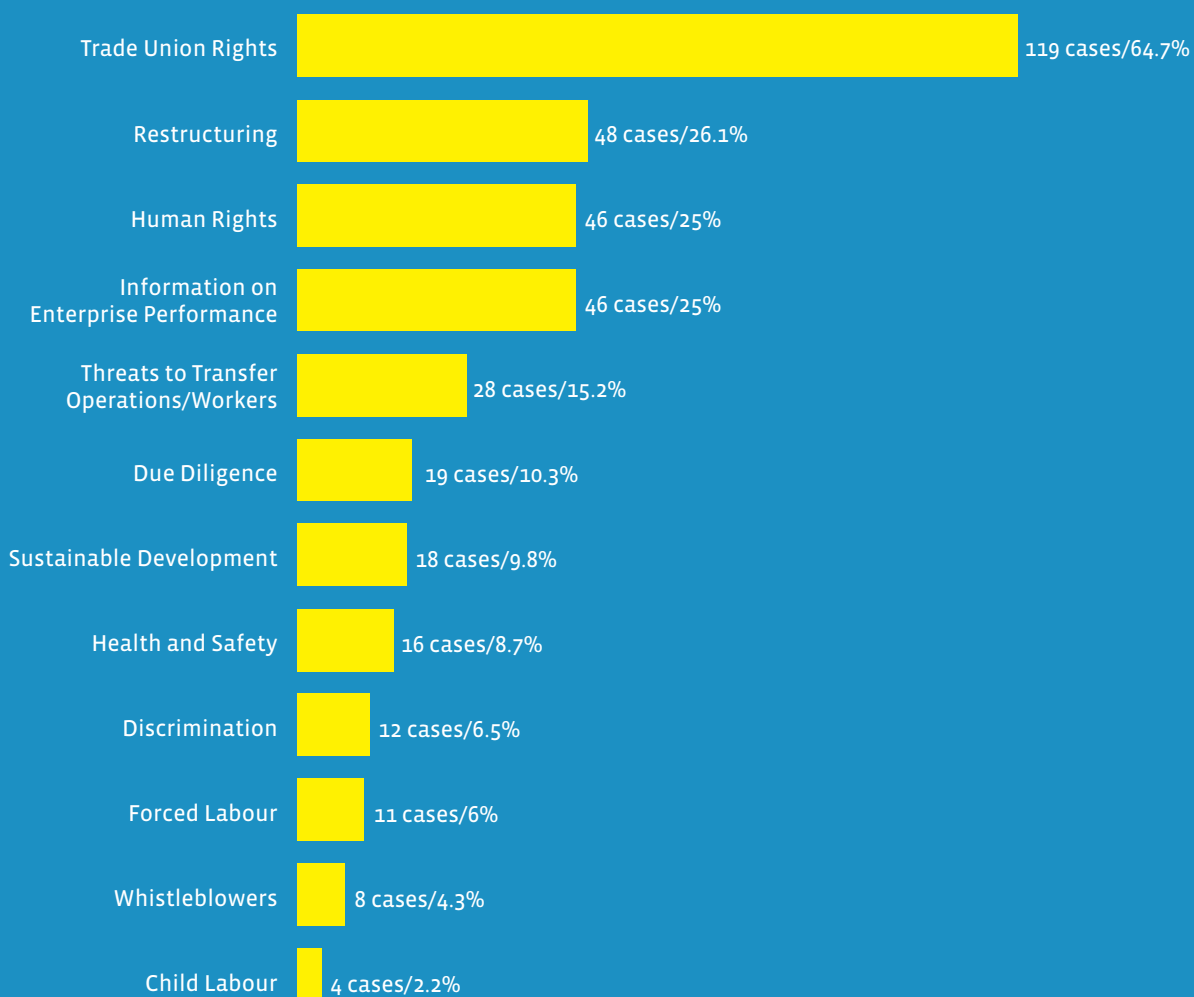
In which countries did the violations take place?



Which chapters have trade unions used?



What issues have been addressed?



Notes

[illegible]

PART 2. Understanding the Responsibility of Multinational Enterprises

Part 2 sets out the responsibilities of multinational enterprises under the OECD Guidelines



2.1 Responsibility for Complying with the Guidelines

First and foremost, multinational enterprises (MNEs) should comply with the principles and standards set out in the recommendations of the *Guidelines*. The principles and standards of the *Guidelines* apply to all entities within a MNE, and in all sectors,²⁹ wherever they operate.³⁰ In addition, MNEs should encourage their business partners, including their suppliers and sub-contractors, to apply standards of responsible business conduct in line with the *Guidelines*.³¹ A MNE's failure to comply with any of the recommendations of the *Guidelines* represents a breach of the *Guidelines*.

2.2 Responsibility for Adverse Impacts

2.2.1 Avoiding and Addressing Adverse Impacts

In addition to the responsibility to comply with the principles and standards of the *Guidelines*, MNEs have a general responsibility to *avoid* and *address* what are termed “adverse impacts” on matters covered by the *Guidelines*. MNEs should “*know and show*” that they are not involved in adverse impacts by having in place appropriate processes (“due diligence”) that shine a light on the risks of adverse impacts, enabling them to be addressed. Here, it is a MNE's failure to act to *avoid* adverse impacts and to *address* adverse impacts with which it is involved, through “due diligence”, which constitutes a breach of the *Guidelines*.

BOX 2.1: What's the Meaning of “Avoiding and Addressing Adverse Impacts”?

An adverse impact means a negative effect or consequence resulting from the activities (actions or omissions³²) of an enterprise. Meeting the responsibility to *avoid* and *address* adverse impacts under the *Guidelines* requires MNEs to take measures (“due diligence”) against harmful effects or other negative consequences of their activities. This is a baseline responsibility that applies only to those recommendations of the *Guidelines*, which, if not followed by an enterprise, would result in or risk harmful or other negative consequences.³³ It does not apply to recommendations that do not potentially involve MNEs in adverse impacts (such as the recommendation that MNEs establish links with public research institutes in host countries³⁴).

The shift from “sphere of influence” to impact as the basis for determining responsibility is good news for workers. The activities of companies can have “adverse impacts” on all categories of workers, whether employees, or agency, or seasonal workers, or workers in supply chains and franchises. Impacts do not depend on the type of employment relationship; nor do they stop at the “factory gate”.

BOX 2.2: More on Responsibility for Adverse Impacts

The principle that a company's responsibility is determined by its “adverse impacts” was established by the UN in its work on Business and Human Rights.³⁵ The new understanding was that it should not be the level of control or the “sphere of influence” that determines the limits of an enterprise's responsibility for human rights, but rather its *impacts*. In a significant step, the 2011 *Update* of the OECD Guidelines not only incorporated this principle, but extended it to other policy areas covered by the *Guidelines*, beyond human rights.

2.2.2 How Wide is the Responsibility to Avoid and Address Adverse Impacts?

MNEs should *avoid* adverse impacts and *address* those with which they are involved, *wherever they occur* – including in their supply chains and business relationships. This widens considerably the scope of the responsibility of MNEs under the *Guidelines* (see *BOX 2.3*), going beyond the expectation that MNEs encourage business partners to adopt practices that are in line with *Guidelines* (see *Part 2.1*).

BOX 2.3: What's an Example? Widening the Scope of Responsibility³⁶

In September 2012, the French National Contact Point (NCP) held that the involvement of enterprises in the trade in Uzbek cotton, which is harvested using child labour, represented a breach of the *Guidelines*. The NCP found that the MNE named in the case had not itself breached the *Guidelines*, because it had not purchased Uzbek cotton in recent years. Nonetheless, the NCP, referencing the provisions in the *Guidelines* on *avoiding* and *addressing* adverse impacts, reminded the MNE of its responsibility for its supply chain. It recommended that it conduct “due diligence” and report back to the NCP on the measures taken to ensure that its suppliers/potential business partners do not use child labour in the harvesting of cotton.

2.2.3 What Types of Adverse Impacts Should MNEs Avoid and Address?

Under the *Guidelines*, MNEs should *avoid* and *address*:

- Adverse impacts on *matters covered by the Guidelines*;
- Adverse *human rights* impacts.

2.2.3.1 Adverse Impacts on Matters Covered by the Guidelines

The *Guidelines* (Chapter II) set out a general responsibility of MNEs to *avoid* being involved in adverse impacts on any matter covered by the *Guidelines* and to *address* such impacts when they occur.³⁷ This general responsibility applies to all chapters (including *Employment and Industrial Relations*) except those concerning *Science and Technology* (IX), *Competition* (X), and *Taxation* (XI).³⁸

2.2.3.2 Adverse Human Rights Impacts

The *Guidelines* (Chapter IV) also set out the specific responsibility of MNEs to respect human rights. This means that MNEs should *avoid* infringing on the human rights of others, including workers, and should take measures to *address* adverse human rights impacts with which they are involved (see *BOX 2.4*). This responsibility of enterprises to respect human rights exists irrespective of whether a host state has signed up to human rights treaties or is able or willing to meet its human rights obligations and extends to all internationally-recognised human rights (see overleaf).³⁹

BOX 2.4: “What’s the Meaning of “Adverse Human Rights Impacts”?”⁴⁰

The UN defines an “adverse human rights impact” as occurring “when an action removes or reduces the ability of an individual to enjoy his or her human rights”.

THE CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS

A New Global Standard

Human rights are rights that belong to everyone because they are human beings. They apply to everyone regardless of race, religion, nationality, ethnicity, gender, sexuality, disability, or any other status. Traditionally, the international legal architecture for addressing human rights imposed human rights duties on states and not on non-state entities such as enterprises. This began to change in the 1970s with the adoption of the OECD *Guidelines for Multinational Enterprises* (1976) and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (1977). But there was no general international human rights standard setting out the responsibilities of enterprises until June 2011, when the UN Human Rights Council endorsed the *Guiding Principles on Business and Human Rights* (see Part 5.3). The *Guiding Principles* implement the United Nations “Protect, Respect, Remedy” Framework, which comprises three pillars: I. *The State Duty to Protect Human Rights*; II. *The Corporate Responsibility to Respect Human Rights*; and III. *Access to Remedy*.⁴¹ The corporate responsibility to respect human rights is the new global standard of expected conduct for enterprises, wherever they operate. Its concepts and recommendations were incorporated into a new chapter on human rights (IV) in the 2011 *Update*.

Enterprises cannot pick and choose which rights they respect. The *Guidelines* make it clear that enterprises have the potential to impact adversely on all internationally-recognised rights, even if, in practice, they may have to focus on those human rights that are most at risk (in the context of particular countries, sectors or products), or where the impacts are most severe. The corporate responsibility to respect therefore extends to all human rights. The *Guidelines* recommend that, at a minimum, MNEs respect the internationally-recognised rights set out in the following general instruments:

- *The Universal Declaration of Human Rights* (1948);
- *The International Covenant on Civil and Political Rights* (1966);
- *The International Covenant on Economic, Social and Cultural Rights* (1966);

Respect for human rights is the global standard of expected conduct for enterprises independently of States’ abilities and/or willingness to fulfill their human rights obligations, and does not diminish those obligations

– **Commentary on Chapter IV. Human Rights, OECD Guidelines for Multinational Enterprises**

and the principles concerning fundamental rights set out in the:

- *International Labour Organisation Declaration on Fundamental Principles and Rights at Work* (1998).

The *Guidelines* also underline that where enterprises are involved in adverse impacts on individuals belonging to particular groups or peoples – women; children; migrant workers and their families; persons belonging to national or ethnic, religious and linguistic minorities; persons with disabilities; and indigenous peoples – they should consider other specialised standards that set out their specific internationally-recognised rights. These are:⁴²

- *The Convention on the Elimination of All Forms of Discrimination Against Women* (1979);
- *The UN Convention on the Rights of the Child* (1989);
- *The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (1990);
- *The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* (1992);
- *The Convention on the Rights of Persons with Disabilities* (2006);
- *The UN Declaration on the Rights of Indigenous Peoples* (2007).

2.2.4 How Are MNEs Involved in Adverse Impacts?

The *Guidelines* identify three ways in which MNEs can be involved in adverse impacts:

- a. **Cause:** enterprises can *cause* an adverse impact *through their own activities*, including in their supply chain (e.g., franchising, licensing and subcontracting);⁴³
- b. **Contribute:** enterprises can *contribute* to an adverse impact, *through their own activities*, including in their supply chain (e.g., franchising, licensing and subcontracting);
- c. **Linked to an adverse impact:** finally an adverse impact can be *linked to* a MNE's operations, products or services by a *business relationship* (business partners, entities in the supply chain and any other non-State or State actors).⁴⁴

2.2.5 What Should MNEs Do to Avoid and Address Adverse Impacts?

What MNEs should do to *avoid* and *address* adverse impacts depends on the extent of their involvement:

- a. **Stop, Prevent, Remedy:** where the MNE has *caused*, or is at risk of *causing*, an adverse impact it should take action to stop the adverse impact if it has already occurred, or prevent the adverse impact before it occurs. Importantly, it should “remedy” (“make good”) *actual* adverse impacts (see *Part 2.2.6*);
- b. **Stop, Prevent, Remedy and Use Leverage:** where the MNE has *contributed*, or is at risk of contributing, to an adverse impact it should take action to stop its contribution to the adverse impact if it has already occurred, or prevent its contribution to the adverse impact before it occurs. It should also use whatever power it has (“leverage”) so that the other entities change their harmful practices to “mitigate” (“reduce”) or prevent their adverse impacts. The MNE should “remedy” its contribution to actual adverse impacts.
- c. **Use Leverage:** where an actual or potential adverse impact is *linked to* the MNE's operations, products or services by a business relationship, the MNE should use its “leverage” so that the other entity changes its wrongful practices to “mitigate” or prevent the adverse impact.

The level of leverage the MNE has over a business partner does not affect the responsibility of the MNE to address adverse impacts. Its responsibility is determined by its impact.

FIGURE 2.1: Responsibility for Adverse Impacts

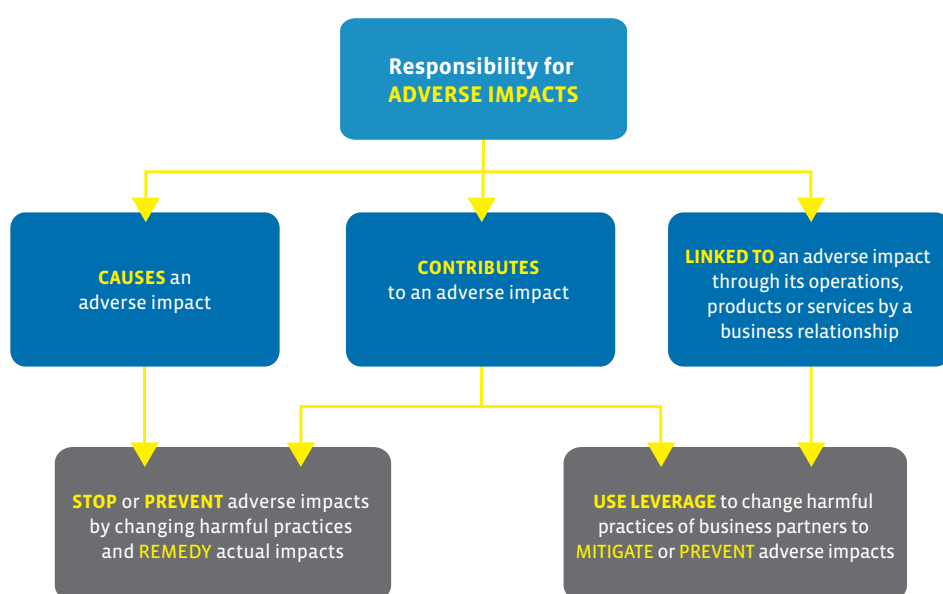


FIGURE 2.2: Understanding Responsibility for Adverse Impacts

WHAT'S THE INVOLVEMENT?	WHAT'S AN EXAMPLE?	WHAT'S THE TEST?	WHAT'S THE RESPONSE?
1. OWN OPERATIONS: DIRECT IMPACTS			
1A. CAUSE an adverse impact	Conducting an anti-union campaign in the MNE.	The MNE is able to stop or prevent all of the adverse impact by changing its anti-union practices.	Actual impacts Stop: Cease all harmful practices that interfere with the rights of workers to form or join a trade union. Remedy:⁴⁵ - Ensure that workers unions are free to form and join trade unions in an atmosphere that is free of harassment, reprisals and intimidation; - Trade union access agreements. Potential impacts Prevent: - Draw up and publish a public policy commitment on freedom of association and collective bargaining signed at the most senior level; - Conduct on-going human rights due diligence involving workers and trade unions; - Provide right to unionise guarantees; - Educate management on freedom of association and collective bargaining.
2. SUPPLY CHAIN AND BUSINESS RELATIONSHIPS : INDIRECT IMPACTS			
2A. CONTRIBUTE to an adverse impact ⁴⁶	Forced and excessive over-time in a factory which supplies electronics for more than one MNE (brand), without paying legal over-time rates.	The MNE is able to stop or prevent some, but not all of the adverse impact by changing its own practices.	Actual impacts Stop: Cease own harmful purchasing practices. Remedy: - Back-pay for illegally under-compensated overtime; - Reduction in working hours; - Introduction of regular breaks. Use and seek to increase leverage: - Use leverage to ensure that the supplier changes its practices that contribute to the forced overtime; - Also work collectively with other brands so as to increase leverage and help ensure that they amend their purchasing practices. Potential impacts Prevent: - Publish a human rights policy statement; - Embed human rights commitments across policies and procedures including purchasing practices; - Conduct human rights due diligence working with workers and trade unions; - Address low pay rates/support a living wage.
2B. LINKED TO: an adverse impact is <i>linked</i> to a MNE's operations, products or services by a <i>business relationship</i>	A Pension Fund with a minority shareholding in a MNE, which is involved in anti-union activity.	The Pension Fund neither causes nor contributes to the anti-union activity, but is linked to the anti-union activity through its investment.	Use and seek to increase leverage: - Use leverage so that the MNE changes its harmful practices and stops interfering with the rights of workers to form or join a trade union; - Consider divesting if the MNE does not change its behaviour.

The *Guidelines* explain that *contributing* to an adverse impact means causing, facilitating or incentivising another entity to cause an adverse impact. It does not include minor contributions.

BOX 2.5: What's the Meaning of "Remediation"?⁴⁷

Remediation refers to "both the processes of providing remedy for an adverse impact and the substantive outcomes that can counteract, or make good, the adverse impact".

2.2.6 What's the Responsibility of MNEs to Provide Remediation?

Remediation refers to the *processes* for providing remedy as well as the remedies themselves (see BOX 2.5). Under the *Guidelines*, MNEs should provide for or co-operate in legitimate remediation processes⁴⁸ and remedy actual impacts that they have *caused* or *contributed to*.⁴⁹

Possible remediation processes include operational level grievance mechanisms established by enterprises for facilitating dialogue/engagement with potentially affected individuals/groups on adverse human rights impacts.

Grievance mechanisms should be legitimate, transparent, accessible, predictable and equitable.⁵⁰ The *Guidelines* emphasise that these grievance mechanisms should not undermine the role of trade unions in addressing labour-related disputes.⁵¹

Possible remedies, while not described in the *Guidelines*, include measures such as apologies, financial or non-financial compensation, or injunctions to prevent adverse impacts from recurring (see *BOX 2.6*).

BOX 2.6: What's an Example? "Remedy" ⁵²

Forms of possible remedy include:

- Apologies;
- Restitution;
- Rehabilitation;
- Financial or non-financial compensation;
- Punitive sanctions (whether criminal or administrative, such as fines);
- The prevention of harm through, for example, injunctions or guarantees of non-repetition.

2.2.7 What's the Responsibility of MNEs to Use Leverage?

Where the MNE *contributes* to an adverse impact, or its operations, products or services are *linked to* an adverse impact by a business relationship, the MNE has a responsibility to use its power – “leverage” – to ensure that the other entity changes its wrongful practices so as to reduce the extent or risk of an adverse impact – “mitigation” (see *BOXES 2.7 and 2.8*).

The *Guidelines* recognise that the level of leverage of the MNE will vary according to such factors as:⁵³

- Product characteristics;
- Number of suppliers;
- Structure of the supply chain;
- Contractual arrangements;
- How *crucial* the supplier/business partner is (i.e., whether it provides a product or service for which there is no reasonable alternative).

2.2.8 How Should MNEs Respond to Adverse Impacts of Business Partners?

The *Guidelines* also recognise that the actual response of the MNE to the adverse impacts of business partners, including whether it terminates the relationship, will vary according to:

- How much “leverage” it has;
- The *severity* and *probability* of the adverse impacts;
- How *crucial* the business partner is to the MNE;⁵⁴

- The potential social (including human rights) and economic adverse impacts of a decision to disengage.⁵⁵

The appropriate responses of MNEs to the adverse impacts of business partners identified in the *Guidelines* are set out in *FIGURE 2.3* and elaborated further in *FIGURE 2.4*.⁵⁶

FIGURE 2.3: Understanding Leverage and Mitigation

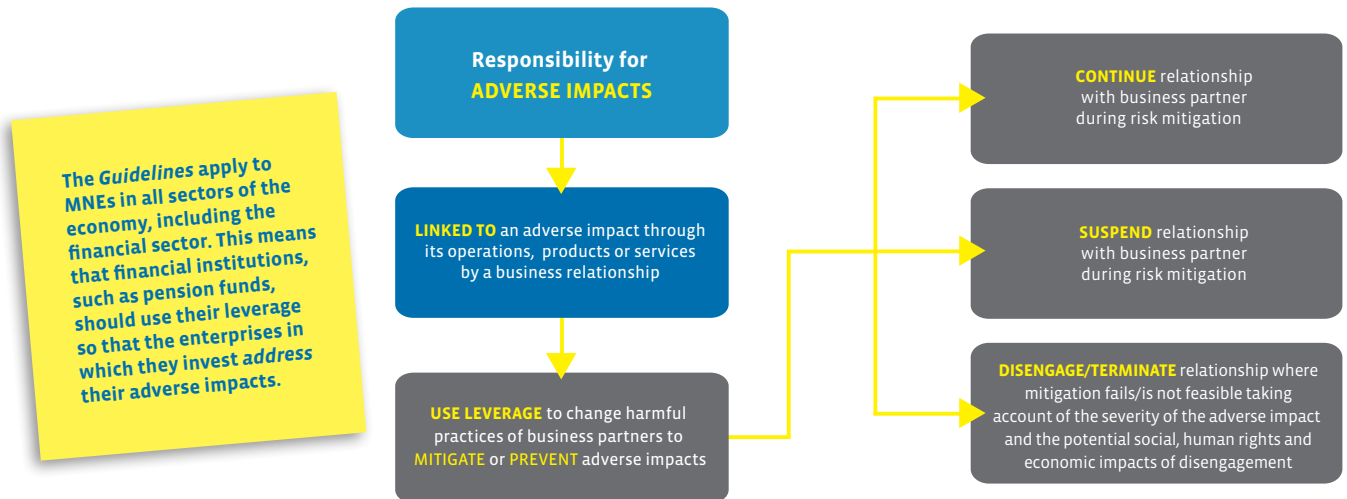


FIGURE 2.4: Addressing the Adverse Impacts of Business Partners⁵⁷

	HAVE LEVERAGE	LACK LEVERAGE
Crucial Business Relationship	A • MITIGATE the risk that the adverse impact continues/recurs • If UNSUCCESSFUL	B • Seek to INCREASE LEVERAGE • If SUCCESSFUL seek to mitigate risk that the adverse impact continues/recurs • If UNSUCCESSFUL consider DISENGAGING/TERMINATING taking account of: • i) potential, social and economic adverse impacts of disengaging; • ii) the severity of the impact
Non-crucial Business Relationship	C • Try to MITIGATE the risk that the adverse impact continues/recurs • If UNSUCCESSFUL take steps to END THE RELATIONSHIP taking account of potential, social and economic adverse impacts of disengaging	D • Assess reasonable options for increasing leverage to MITIGATE the risk that the adverse impact continues/recurs; • If NOT POSSIBLE/UNSUCCESSFUL, consider DISENGAGING/TERMINATING

BOX 2.7: What's the Meaning of "Leverage"?⁵⁸

Leverage means an enterprise's ability to effect change in the wrongful practices of the entity that causes adverse (human rights) impacts.

BOX 2.8: What's the Meaning of "Mitigation"?⁵⁹

Actual adverse impacts: "*Mitigation*" refers to the actions taken to reduce the extent of an actual adverse (human rights) impact, with any residual impact then requiring remediation.

Potential adverse impacts: "*Mitigation of risk*" refers to actions taken to reduce the likelihood of a certain adverse (human rights) impact occurring.

BOX 2.9: What's the Meaning of "Due Diligence"?⁶⁰

The *Guidelines* define due diligence as "*the process through which enterprises can identify, prevent, mitigate and account for how they address their actual and potential adverse impacts as an integral part of business decision-making and risk management systems*".

2.2.9 What's the Responsibility of MNEs to Conduct Due Diligence?

Under the *Guidelines*, MNEs should conduct due diligence in order to meet their responsibility to *avoid* and *address*:

- Adverse impacts on matters covered by the *Guidelines*;
- Adverse *human rights* impacts.

2.2.9.1 Due Diligence on Adverse Impacts on Matters Covered by the Guidelines

Chapter II (*General Policies*) sets out the general responsibility of MNEs to "know and show" that they are meeting their responsibility to *avoid* adverse impacts on matters covered by the *Guidelines* and to *address* those adverse impacts with which they are involved. This means having in place a risk management process that collects the information needed for assessing the risk of adverse impacts occurring, identifying actual adverse impacts that have occurred and accounting for how these risks are addressed. This process is called "due diligence" (see BOX 2.9).⁶¹

2.2.9.2. Human Rights Due Diligence

Chapter IV (*Human Rights*) sets out the specific responsibility of MNEs to carry out "human rights due diligence"⁶² as part of their responsibility to *avoid* and *address* adverse human rights impacts. The *Guidelines* identify the main steps involved in human rights due diligence (see BOX 2.10). These are described in more detail in FIGURE 2.5.

Due diligence under the *Guidelines* should focus on the risks of the enterprise's activities to society – the environment, communities, rights-holders, workers, consumers – not to the enterprise itself.

International Framework Agreements – global agreements negotiated between Global Union Federations and MNEs – have a role to play in all stages of due diligence by providing a source of information on adverse impacts, a means of tracking responses, and a mechanism for providing remedy.

BOX 2.10: What's the Meaning of "Human Rights Due Diligence"?⁶³

The *Guidelines* define human rights due diligence as a process that “entails assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, as well as communicating how impacts are addressed”.

FIGURE 2.5: Understanding Human Rights Due Diligence⁶⁴

HUMAN RIGHTS DUE DILIGENCE		TUAC NOTE
Scope: What determines the scope of human rights due diligence?	Identification of adverse human rights impacts that are: • <i>Caused by</i> the MNE; • <i>Contributed to</i> by the MNE; • <i>Linked to</i> the operations, products or services of the MNE by a business relationship.	See <i>Parts 2.2.4-2.2.5</i> of this Guide.
Level: What determines the level of human rights due diligence?	• Severity of the actual and potential adverse impacts; • Nature and context of operations (country, region, sector or product); • Size of the enterprise.	The level of due diligence should be driven by the severity of the adverse impacts.
Characteristics: What are the characteristics of human rights due diligence?	• Focuses on the risks of the enterprise's activities to rights-holders, not to the enterprise; • On-going;⁶⁵ • Involves stakeholders.	Rights-holders include workers. Risks of adverse impacts change over time so due diligence must be ongoing. Human rights due diligence should directly involve potentially affected individuals and their legitimate representatives.⁶⁶ <i>This includes workers and their trade unions.</i>
Steps: What are the steps involved in human rights due diligence?	1. Make a public policy commitment to respect human rights.⁶⁷ 2. Embed the policy commitment throughout the enterprise.⁶⁹ 3. Identify actual and potential adverse impacts.⁷⁰ 4. Integrate findings and act to <i>avoid</i> and <i>address</i> adverse impacts. 5. Remedy actual impacts, where the MNE has <i>caused</i> or <i>contributed</i> to these impacts. 6. Track responses. 7. Communicate how adverse impacts are addressed.	Policy commitments on human rights should be approved at the most senior level, informed by relevant internal/ external expertise and communicated internally and externally.⁶⁸ Policy commitments on human rights should be reflected in operational policies and procedures. This embedding process should be driven from the top of the enterprise. Responsibility should be assigned and decision-making processes put in place.⁷¹ Possible responses to the adverse impacts of business partners are set out in <i>FIGURES 2.3 and 2.4</i>. The MNE should actively engage in the remediation of actual adverse impacts, either by itself or in cooperation with other actors (see <i>Part 2.2.6</i>). Tracking responses requires the development of indicators and feedback from affected stakeholders.⁷² Information should be adequate, sufficiently regular and accessible.⁷³

2.3 Responsibility for Workers

The recommendations of the *Guidelines* refer to different categories of worker (“employee”, “workers”, “workers employed by”) which means that whether a particular group of workers is covered by the *Guidelines* will depend on the particular recommendation. In general, the recommendations apply either to “all workers” or to those workers deemed to be “*in an employment relationship with the MNE*”, including agency and contract workers (see *BOX 2.11*).

However, the baseline responsibility of MNEs to *avoid* being involved in adverse impacts (on matters covered by the *Guidelines*) and to *address* such impacts *wherever they occur* extends the responsibility of the MNE to workers in the supply chain and other business relationships (for those recommendations that potentially involve the MNE in an adverse impact). This includes workers in franchises, licensees, subcontractors,⁷⁴ as well as other non-State or State business partners.⁷⁵ This new and extended responsibility of MNEs for workers under the *Guidelines* is summarised in *FIGURE 2.6*.

BOX 2.11: More on Responsibility for Workers: Indirect Employment

Chapter V. (*Employment and Industrial Relations*) refers to “*workers employed by the multinational enterprise*” and “*workers in their employment*”.⁷⁶ The Commentary explains that these terms refer to workers who are “*in an employment relationship with the multinational enterprise*”⁷⁷ and that enterprises “*wishing to understand the scope of their responsibility under Chapter V*” should refer to the criteria for determining the existence of an employment relationship, which are set out in ILO R198 Employment Relationship Recommendation (2006).⁷⁸ These are:

- 13 (a) *the fact that the work*: is carried out according to the instructions and under the control of another party; involves the integration of the worker in the organization of the enterprise; is performed solely or mainly for the benefit of another person; must be carried out personally by the worker; is carried out within specific working hours or at a workplace specified or agreed by the party requesting the work; is of a particular duration and has a certain continuity; requires the worker’s availability; or involves the provision of tools, materials and machinery by the party requesting the work;
- (b) periodic payment of remuneration to the worker; the fact that such remuneration constitutes the worker’s sole or principal source of income; provision of payment in kind, such as food, lodging or transport; recognition of entitlements such as weekly rest and annual holidays; payment by the party requesting the work for travel undertaken by the worker in order to carry out the work; or absence of financial risk for the worker.

The Commentary on Chapter V. also states that MNE are expected to “*avoid supporting, encouraging or participating in disguised employment practices*”.⁷⁹

FIGURE 2.6: Which Workers?

KEY RECOMMENDATIONS COVERING WORKERS	EXTENT OF MNES' RESPONSIBILITY FOR WORKERS	
	RECOMMENDATION	ADVERSE IMPACTS ⁸⁰
CHAPTER II. GENERAL POLICIES		
A. 4. Encourage human capital formation, in particular by creating employment opportunities and facilitating training opportunities for employees . <i>(The Commentary explains that this recommendation covers training and employee development as well as the "notion of discrimination" in hiring and promotion practices. Only the latter part potentially involves the MNE in adverse impacts.)⁸¹</i>	Employees	All workers potentially adversely affected by discrimination in hiring and promotion practices , which the MNE <i>causes, contributes to</i> or is <i>linked to</i> , including in the supply chain and other business relationships. ⁸²
A. 8. Promote awareness of and compliance by workers employed by multinational enterprises with respect to company policies through appropriate dissemination of these policies, including through training programmes.	Workers in an employment relationship with the MNE including contract and agency workers as defined under ILO R198 (see BOX 2.11).	All workers potentially adversely affected by the failure to disseminate and provide training on policies (e.g., human rights, health and safety), which the MNE <i>causes, contributes to</i> or is <i>linked to</i> , including in the supply chain and other business relationships.
A. 9. Refrain from discriminatory or disciplinary action against workers who make <i>bona fide</i> reports to management or, as appropriate, to the competent public authorities, on practices that contravene the law, the <i>Guidelines</i> or the enterprise's policies.	Workers	All workers potentially adversely affected by the failure to safeguard whistle-blowing activities , which the MNE <i>causes, contributes to</i> or is <i>linked to</i> , including in the supply chain and other business relationships.
CHAPTER V. EMPLOYMENT AND INDUSTRIAL RELATIONS		
1. a) Respect the right of workers employed by the multinational enterprise to establish or join trade unions and representative organisations of their own choosing.	Workers in an employment relationship with the MNE including contract and agency workers as defined under ILO R198 (see BOX 2.11).	All workers potentially affected by an infringement of their right to form or join a trade union and the right to collective bargaining , which a MNE <i>causes, contributes to</i> or is <i>linked to</i> , including in the supply chain and other business relationships.
1. b) Respect the right of workers employed by the multinational enterprise to have trade unions and representative organisations of their own choosing recognised for the purpose of collective bargaining, and engage in constructive negotiations.		
1. c) Contribute to the effective abolition of child labour , and take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. <i>(The Commentary explains that this recommendation covers the positive role that MNEs can play in addressing the root causes of poverty and raising standards of education of children. This extends beyond avoiding and addressing adverse impacts.)</i>	Any child potentially affected by efforts to abolish effectively child labour.	All child labour which the MNE <i>causes, contributes to</i> or is <i>linked to</i> .
1. d) Contribute to the elimination of all forms of forced or compulsory labour and take adequate steps to ensure that forced or compulsory labour does not exist in their operations.	Any worker potentially affected by efforts to eliminate all forms of forced or compulsory labour, including in their operations.	All workers potentially affected by forced or compulsory labour , which the MNE <i>causes, contributes to</i> or is <i>linked to</i> .
1. e) Be guided throughout their operations by the principle of equality of opportunity and treatment in employment and not discriminate against their workers with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin, or other status...	Workers	All workers potentially affected by an infringement of their right to non-discrimination , which the MNE <i>causes, contributes to</i> or is <i>linked to</i> , including in the supply chain and other business relationships.
2. a) Provide such facilities to workers' representatives as may be necessary to assist in the development of effective collective agreements.	Workers	All workers potentially affected by an infringement of their right to collective bargaining resulting from the lack of provision of facilities , which the MNE <i>causes, contributes to</i> or is <i>linked to</i> , including in the supply chain and other business relationships.
2. b) Provide information to workers' representatives which is needed for meaningful negotiations on conditions of employment.	Workers	All workers potentially affected by the infringement of their right to collective bargaining resulting from the lack of information , which the MNE <i>causes, contributes to</i> or is <i>linked to</i> , including in the supply chain and other business relationships.

KEY RECOMMENDATIONS COVERING WORKERS	EXTENT OF MNES' RESPONSIBILITY FOR WORKERS	
	RECOMMENDATION	ADVERSE IMPACTS ⁸⁰
2. c) Provide information to workers and their representatives which enables them to obtain a true and fair view of the performance of the entity or, where appropriate, the enterprise as a whole.	Workers	All workers potentially adversely affected by the failure to provide adequate information on the performance of the company , which the MNE <i>causes, contributes to</i> or is <i>linked to</i> , including in the supply chain and other business relationships.
3. Promote consultation and co-operation between employers and workers and their representatives on matters of mutual concern.	Workers	All workers potentially adversely affected by the failure to consult on matters of mutual concern , which the MNE <i>causes, contributes to</i> or is <i>linked to</i> , including in the supply chain and other business relationships.
4. a) Observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country.	Workers	All workers potentially adversely affected by the failure to observe standards of employment and industrial relations not less favourable than those observed by the host country , which the MNE <i>causes, contributes to</i> or is <i>linked to</i> , including in the supply chain and other business relationships.
4. b) When multinational enterprises operate in developing countries, where comparable employers may not exist, provide the best possible wages, benefits and conditions of work, within the framework of government policies. These should be related to the economic position of the enterprise, but should be at least adequate to satisfy the basic needs of the workers and their families .	Workers	All workers potentially adversely affected by the failure to pay wages adequate to meet basic needs of workers and their families , which the MNE <i>causes, contributes to</i> or is <i>linked to</i> , including in the supply chain and other business relationships.
4. c) Take adequate steps to ensure occupational health and safety in their operations.	Workers	All workers potentially adversely affected by the failure to ensure occupational health and safety , which the MNE <i>causes, contributes to</i> or is <i>linked to</i> , including in the supply chain and other business relationships.
5. In their operations, to the greatest extent practicable, employ local workers and provide training with a view to improving skill levels, in co-operation with worker representatives and where appropriate relevant government authorities.	Workers	All workers potentially adversely affected by the failure to ensure equal opportunity with regard to training , which the MNE <i>causes, contributes to</i> or is <i>linked to</i> , including in the supply chain and other business relationships. ⁸³
6. In considering changes in their operations which would have major employment effects, in particular in the case of the closure of an entity involving collective lay-offs or dismissals, provide reasonable notice of such changes to representatives of the workers in their employment and their organisations, and, where appropriate, to the relevant governmental authorities, and co-operate with the worker representatives and appropriate governmental authorities so as to mitigate to the maximum extent practicable adverse effects...	Workers in an employment relationship with the MNE including contract and agency workers as defined under ILO R198 (see BOX 2.11).	All workers potentially affected by adverse employment effects resulting from the failure to provide the opportunity for meaningful co-operation to mitigate the effects of restructuring or closing an entity, which the MNE <i>causes, contributes to</i> or is <i>linked to</i> , including in the supply chain and other business relationships.
7. In the context of bona fide negotiations with workers' representatives on conditions of employment, or while workers are exercising a right to organise, not threaten to transfer the whole or part of an operating unit from the country concerned nor transfer workers from the enterprises' component entities in other countries in order to influence unfairly those negotiations or to hinder the exercise of a right to organize.	Workers	All workers potentially affected by adverse impacts as a result of threats to transfer operations or workers in the context of bona fide negotiations , which the MNE <i>causes, contributes to</i> or is <i>linked to</i> , including in the supply chain and other business relationships.
8. Enable authorised representatives of the workers in their employment to negotiate on collective bargaining or labour-management relations issues and allow the parties to consult on matters of mutual concern with representatives of management who are authorised to take decisions on these matters.	Workers in an employment relationship with the MNE including contract and agency workers as defined under ILO R198 (see BOX 2.11).	All workers potentially affected by an infringement of their right to collective bargaining which the MNE <i>causes, contributes to</i> or is <i>linked to</i> , including in the supply chain and other business relationships.
CHAPTER VI. ENVIRONMENT		
7. Provide adequate education and training to workers in environmental health and safety matters, including the handling of hazardous materials and the prevention of environmental accidents, as well as more general environmental management areas, such as environmental impact assessment procedures, public relations, and environmental technologies.	Workers	All workers potentially adversely affected by a failure to provide adequate education and training on environmental health and safety matters , which the MNE <i>causes, contributes to</i> or is <i>linked to</i> , including in the supply chain and other business relationships.

Notes

[illegible]

PART 3. Using the OECD Guidelines

Part 3 provides examples of trade union issues that can be addressed using the Guidelines



3.1 Trade Union Rights

3.1.1 What's the potential to use the Guidelines?

The majority of trade union cases (c65%) submitted under the *Guidelines* have concerned the rights of workers to form or join trade unions and to bargain collectively. The *Guidelines* can be used to defend the trade union rights of employees, contract workers and workers in other parts of the supply chain.

3.1.2 What's the responsibility of MNEs under the Guidelines?

Under the *Guidelines*, MNEs have a responsibility to:

- Respect the right of workers to form or join trade unions;
- Respect the right of workers to bargain collectively;
- Provide facilities to assist in the development of effective collective agreements;
- Provide information which is needed for meaningful negotiations on conditions of employment;
- Publish a human rights policy including a commitment to respect the right to form or join a trade union and to bargain collectively;
- Conduct human rights due diligence in order to *avoid* being involved in infringements of the rights of workers to form or join trade unions and to bargain collectively and to *address* such impacts when they occur, including in the supply chain and other business relationships;
- Involve workers and trade unions in conducting human rights due diligence;⁸⁴
- *Stop* the harmful practices that are *causing* or *contributing* to infringements of trade union rights;
- *Remedy* actual infringements of trade union rights, where the MNE has *caused* or *contributed* to those infringements;
- Use *leverage* so that business partners *mitigate* or *prevent* the infringements of trade union rights where the MNE has *contributed* to or is *linked* to those adverse impacts;

BOX 3.1: Which Human Rights? Trade Union Rights

Right to Freedom of Association
ICCPR (Article 22)⁸⁵
1998 ILO Declaration (Article 2)⁸⁶

Right to Form Trade Unions and Join the Trade Union
ICESCR (Article 8)⁸⁷

Right to Collective Bargaining
1998 ILO Declaration (Article 2)



- *Communicate* on how infringements of trade union rights have been addressed.

3.1.3 What issues can be addressed?

The issues that can be addressed under the *Guidelines* include the following:

- Anti-union campaigns;
- Interference with the right of workers to form or join a trade union;
- Reprisals against trade unionists (loss of hours, discipline, discrimination in hiring, job assignment, discharge, pay, benefits, promotion, transfer or relocation, termination, training and retirement) (see BOX 3.2);
- Refusal of enterprises to recognise the union;

BOX 3.2: What's An Example? Trade Union Rights – Benin and Canada

In November 2010, the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUFA) submitted a complaint to the French NCP stating that the hotel chain ACCOR had violated the right to freedom of association and collective bargaining in Benin and Canada. In Benin, management refused to enter into collective bargaining negotiations and unilaterally implemented a new wages policy. In Canada, management engaged in a range of anti-union activity including reprisals against union members at three non-union hotels where workers were seeking recognition and bargaining rights. The French NCP accepted and sought to resolve the case without providing mediation. The latest information is published on TUAC's web site: <http://www.tuacoecdmguidelines.org/CaseDescription.asp?id=142>.

- Refusal of enterprises to engage in collective bargaining (see BOX 3.2);
- Failure of enterprises to provide information to workers' representatives which is needed for meaningful negotiations on conditions of employment;
- Failure to provide facilities to workers' representatives for the development of effective collective agreements;
- Failure to conduct human rights due diligence.

3.1.4 What are the relevant provisions?

The relevant provisions of the *Guidelines* are set out in BOX 3.3:

- Chapter IV (Human Rights): all provisions;
- Chapter V (Employment and Industrial Relations): paras. 1.a), 1.b), 1.e), 2.a), 2.b) and 8.

The references and provisions of other relevant instruments are set out in BOX 3.4.

BOX 3.4: Which Provisions? Other Instruments – Trade Union Rights

International Covenant on Civil and Political Rights (1966)

Article 22: 1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

International Covenant on Economic, Social and Cultural Rights (1966)

Article 8 ... 1. a) The right of everyone to form trade unions and join the trade union of his choice....

ILO Declaration on the Fundamental Principles and Rights at Work (1998)

Article 2: ... to respect, to promote and to realize in good faith ... the principles concerning the fundamental rights ... namely:

a) freedom of association and the effective recognition of the right to collective bargaining....

ILO Freedom of Association and Protection of the Right to Organise Convention (1948) (NO. 87)⁹⁰

ILO Right to Organise and Collective Bargaining Convention (1949) (NO. 98)⁹¹

ILO Discrimination (Employment and Occupation) Convention (1958) (NO. 111)⁹²

ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (1977, Revised 2006)⁹³

Industrial Relations: Articles 41-56.

BOX 3.3: Which Provisions? OECD Guidelines – Trade Union Rights

CHAPTER IV. Human Rights

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

CHAPTER V. Employment and Industrial Relations

1. a) Respect the right of workers employed by the multinational enterprise to establish or join trade unions and representative organisations of their own choosing.
1. b) Respect the right of workers employed by the multinational enterprise to have trade unions and representative organisations of their own choosing recognised for the purpose of collective bargaining, and engage in constructive negotiations, either individually or through employers' associations, with such representatives with a view to reaching agreements on terms and conditions of employment.
1. e) Be guided throughout their operations by the principle of equality of opportunity and treatment in employment and not discriminate against their workers with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin, or other status....⁸⁸

Commentary on Recommendation V.1.e)

54. The reference to the principle of non-discrimination with respect to employment and occupation in paragraph 1e is considered to apply to such terms and conditions as hiring, job assignment, discharge, pay and benefits, promotion, transfer or relocation, termination, training and retirement. The list of non-permissible grounds for discrimination which is taken from ILO Convention 111 of 1958, the Maternity Protection Convention 183 of 2000, Employment (Disabled Persons) Convention 159 of 1983, the Older Workers Recommendation 162 of 1980 and the HIV and AIDS at Work Recommendation 200 of 2010, considers that any distinction, exclusion or preference on these grounds is in violation of the Conventions, Recommendations and Codes. The term "other status" for the purposes of the Guidelines refers to trade union activity and personal characteristics such as age, disability, pregnancy, marital status, sexual orientation, or HIV status.⁸⁹

2. a) Provide such facilities to workers' representatives as may be necessary to assist in the development of effective agreements.
2. b) Provide information to workers' representatives which is needed for meaningful negotiations on conditions of employment.
8. Enable authorised representatives of the workers in their employment to negotiate on collective bargaining or labour-management relations issues and allow the parties to consult on matters of mutual concern with representatives of management who are authorised to take decisions on these matters.

3.2 Restructuring/Closures

3.2.1 What's the potential to use the Guidelines?

Nearly one third of trade union cases (c30%) submitted under the *Guidelines* have concerned the restructuring or closure of entities/operations and the failure of enterprises to consult with workers/trade unions, or to provide information or reasonable notice.

3.2.2 What's the responsibility of MNEs under the Guidelines?

Under the *Guidelines* MNEs have a responsibility to:

- Provide information to workers and their representatives that enables them to obtain a true and fair view of the performance of the entity and the enterprise as a whole;
- Disclose timely and accurate information including on activities, structure, financial situation and performance for the enterprise as a whole and business lines/geographic areas;
- Promote consultation and cooperation between employers and workers on matters of mutual concern;
- Give reasonable notice to workers and trade unions of changes in operation that would involve major employment effects;
- Provide the opportunity for meaningful cooperation with worker and government representatives in order to reduce adverse employment effects of restructuring/closure, including by giving prior notice;
- Conduct due diligence to *avoid* and *address* adverse employment effects resulting from restructuring/closure, including in the supply chain and other business relationships;

BOX 3.5: What's an Example? Restructuring/Closures – Peru⁹⁴

In March 2009, the Central Nacional de la Mujer Minera del Peru and the national trade union confederation CUT PERU submitted a complaint to the Peruvian NCP concerning the dismissal of forty-seven contracted miners at Perubar S.A.'s Rosaura Mining Unit, a subsidiary of the Swiss MNE, Glencore AG. The complaint focused on Perubar's failure to inform or consult with workers on its decision, or to provide reasons for terminating operations at Rosaura. The Peruvian NCP rejected the case on the grounds that there were ongoing court proceedings (see *Part 4.1.1*), but tried to secure mediation through the court process.

The ILO MNE Declaration can be of use in understanding the Guidelines to the extent that it is of a greater degree of elaboration.

– **Commentary on Chapter V. Employment and Industrial Relations, OECD Guidelines for Multinational Enterprises**

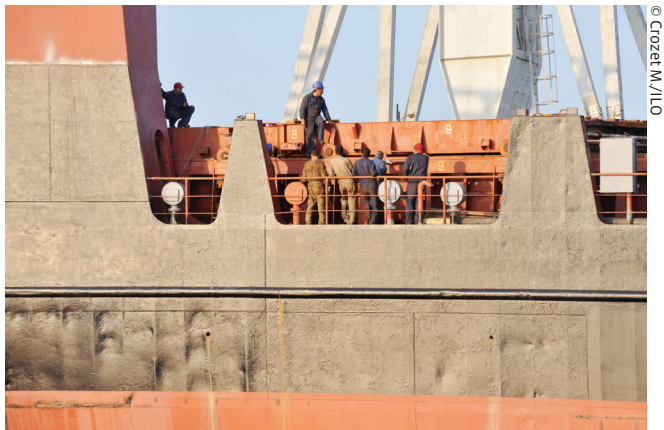
- *Remedy* adverse employment effects resulting from restructuring/closure, where the MNE has *caused* or *contributed* to those effects, including in the supply chain;
- Use *leverage* so that business partners *mitigate* adverse employment effects resulting from restructuring/closure where the MNE has *contributed* to or is *linked* to those adverse effects.

3.2.3 What issues can be addressed?

The issues that can be addressed under the *Guidelines* include the following:

- Failure to provide information on the performance of the entity/enterprise;





- Failure to give reasonable notice of restructuring/closure;
- Failure to conduct *due diligence* to *identify* and *address* adverse employment effects on workers of restructuring/closures;
- Failure to work with trade unions to *mitigate* the adverse employment effects of restructuring/closures;
- Failure to provide *remedy* where the MNE has *caused* or *contributed* to the adverse employment effects;
- Failure to use *leverage* so that business partners *mitigate* the adverse employment effects, where the MNE has *contributed to* or is *linked to* those adverse effects.

3.2.4 What are the relevant provisions?

The relevant provisions of the *Guidelines* are set out in BOX 3.7:

- Chapter II (General Policies): paras. A.10, A.11 and A.12;
- Chapter III (Disclosure): para. 1;
- Chapter V (Employment and Industrial Relations): paras. 2.c), 3. and 6.

BOX 3.6: What's an Example? Restructuring/Closures – Belgium⁹⁵

In January 2011, the Belgian NCP found that the security firm Brink's had failed to provide adequate information to workers' representatives on its restructuring or to provide reasonable notice of the sale of part of Brink's Belgium. The Belgian NCP recommended that the Brink's Group should promote respect of the *Guidelines* to all enterprises within the Group, in particular the provisions on disclosing economic and financial information in a timely and transparent manner.

BOX 3.7: Which Provisions? OECD Guidelines – Restructuring/ Closures

CHAPTER II. General Policies

A. 10. Carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts as described in paragraphs 11 and 12, and account for how these impacts are addressed....

A. 11. Avoid causing or contributing to adverse impacts on matters covered by the *Guidelines*, through their own activities, and address such impacts when they occur.

Commentary on Recommendation II. A. 11

17. To avoid causing or contributing to adverse impacts on matters covered by the *Guidelines* through their own activities includes their activities in the supply chain. Relationships in the supply chain take a variety of forms including, for example, franchising, licensing or subcontracting....

A. 12. Seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship.

Commentary on Recommendation II. A. 12

14. ...The term "business relationship" includes relationships with business partners, entities in the supply chain and any other non-State or State entities directly linked to its business operations, products or services.

CHAPTER III. Disclosure

1. Enterprises should ensure that timely and accurate information is disclosed on all material matters regarding their activities, structure, financial situation, performance, ownership and governance. This information should be disclosed for the enterprise as a whole, and, where appropriate, along business lines or geographic areas....

CHAPTER V. Employment and Industrial Relations

2. c) Provide information to workers and their representatives which enables them to obtain a true and fair view of the performance of the entity or, where appropriate, the enterprise as a whole.

3. Promote consultation and co-operation between employers and workers and their representatives on matters of mutual concern.

Commentary on Recommendation V.3

56. The reference to consultative forms of worker participation in paragraph 3 of the Chapter is taken from ILO Recommendation 94 of 1952 concerning Consultation and Co-operation between Employers and Workers at the Level of the Undertaking. It also conforms to a provision contained in the ILO MNE Declaration.

6. In considering changes in their operations which would have major employment effects, in particular in the case of the closure of an entity involving collective lay-offs or dismissals, provide reasonable notice of such changes to representatives of the workers in their employment and their organisations, and, where appropriate, to the relevant governmental authorities, and co-operate with the worker representatives and appropriate governmental authorities so as to mitigate to the maximum extent practicable adverse effects. In light of the specific circumstances of each case, it would be appropriate if management were able to give such notice prior to the final decision being taken. Other means may also be employed to provide meaningful co-operation to mitigate the effects of such decisions.

3.3 Health and Safety

3.3.1 What's the potential to use the Guidelines?

The health and safety recommendations of the *Guidelines* can be used by workers in a MNE's own operations, as well as by workers in the supply chain and other business relationships who are potentially affected by adverse health and safety impacts with which the MNE is involved.

3.3.2 What's the responsibility of MNEs under the Guidelines?

Under the *Guidelines* MNEs have a responsibility to:

- Take adequate steps to ensure that there is adequate occupational health and safety in their operations;
- Apply prevailing regulatory standards and industry norms, even if not required by national regulations;
- Respect workers' rights to remove themselves from an unsafe work situation;
- Refrain from retaliating against workers who report breaches of health and safety law or the *Guidelines*;
- Adopt a human rights policy that includes health and safety;
- Ensure that policy commitments on health and safety are *embedded* in operational procedures and policies;
- Promote workers' awareness of and compliance with health and safety policies through dissemination and training programmes;
- Conduct *due diligence* to *avoid* being involved in adverse impacts on health and safety, and to *address* such impacts with which they are involved, including in their supply chains and business relationships;
- Involve workers and trade unions in the *due diligence* process;
- *Stop* the harmful practices that are *causing* or *contributing* to adverse health and safety impacts;
- *Remedy* actual adverse health and safety impacts, where the MNE has *caused* or *contributed* to those impacts;

BOX 3.8: Which Human Rights? Health and Safety

Right to Safe and Healthy Conditions at Work
ICESCR (Article 7)

Right to Health
ICESCR (Article 12)

Enterprises can have an impact on virtually the entire spectrum of internationally recognised human rights

– Chapter IV. Human Rights, *OECD Guidelines for Multinational Enterprises*

- Use *leverage* so that business partners *mitigate* their adverse health and safety impacts, where the MNE has *contributed to* or is *linked to* those impacts;
- *Communicate* on how adverse impacts on health and safety have been addressed.

3.3.3 What issues can be addressed?

The issues that can be addressed under the *Guidelines* cover the full range of health and safety issues, including:

- Fire safety;
- Locking-in workers on security grounds;
- Exposure to hazardous substances, noise, dust;
- Failure to provide adequate safety equipment;
- Failure to conduct health and safety due diligence;
- Failure to provide training on environmental health and safety matters, including on handling hazardous substances;
- Retaliation against workers who in good faith report breaches of health and safety law, or the *Guidelines*.

3.3.4 What are the relevant provisions?

The relevant provisions of the *Guidelines* are set out in BOX 3.10:

- Chapter II (General Policies): paras. A.8, A.9, A.10, A.11 and A.12;

BOX 3.9: What's an Example? Health and Safety – Brazil⁹⁶

In May 2006, the trade union Sipetrol-SP (Petroleum By-Product and Ore Workers' Labour Union of the State of Sao Paulo) and the NGO Green Alternative Collective (CAVE) submitted a case against Shell and Esso to the Brazilian and Dutch NCPs over the failure of Shell and Esso to respond to complaints from the State Secretary for Health regarding violations of federal, state and municipal health and safety legislation concerning illnesses arising from exposure to products containing dangerous chemicals. The Brazilian NPC accepted the case but reported that it was unable to bring the parties together for mediation due to ongoing court proceedings (see Part 4.1.1).

BOX 3.10: Which Provisions? OECD Guidelines – Health and Safety

CHAPTER II. General Policies

A.8. Promote awareness of and compliance by workers employed by multinational enterprises with respect to company policies through appropriate dissemination of these policies, including through training programmes.

A.9. Refrain from discriminatory or disciplinary action against workers who make *bona fide* reports to management or, as appropriate, to the competent public authorities, on practices that contravene the law, the Guidelines or the enterprise's policies.

Paras. A.10, A.11 and A.12 (see BOX 3.7).

CHAPTER IV. Human Rights

Paras. 1, 2, 3, 4, 5, 6 (see BOX 3.3).

CHAPTER V. Employment and Industrial Relations

4.c) Take adequate steps to ensure occupational health and safety in their operations.

Commentary on Recommendation V. 4.c)

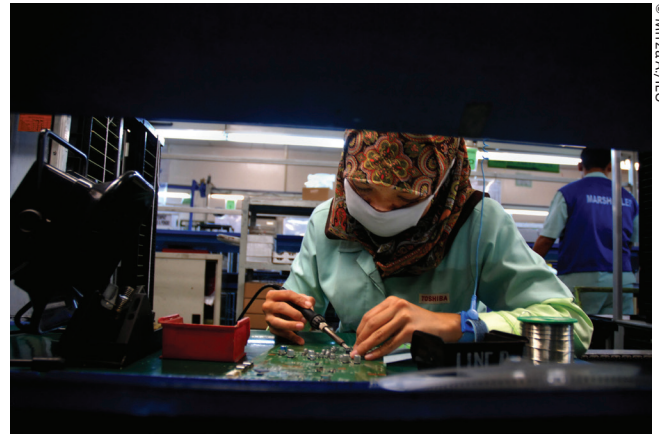
57. The reference to occupational health and safety implies that multinational enterprises are expected to follow prevailing regulatory standards and industry norms to minimise the risk of accidents and injury to health arising out of, linked with, or occurring in, the course of employment. This encourages enterprises to work to raise the level of performance with respect to occupational health and safety in all parts of their operation even where this may not be formally required by existing regulations in countries in which they operate. It also encourages enterprises to respect workers' ability to remove themselves from a work situation when there is reasonable justification to believe that it presents an imminent and serious risk to health or safety...The ILO Recommendation No. 194 of 2002 provides an indicative list of occupational diseases as well as codes of practice and guides which can be taken into account by enterprises for implementing this recommendation of the Guidelines.⁹⁷

CHAPTER VI. Environment

7. Provide adequate education and training to workers in environmental health and safety matters, including the handling of hazardous materials and the prevention of environmental accidents, as well as more general environmental management areas, such as environmental impact assessment procedures, public relations, and environmental technologies.

Commentary on Recommendation VI.7

73. Enterprises have an important role to play in the training and education of their employees with regard to environmental matters. They are encouraged to discharge this responsibility in as broad a manner as possible, especially in areas directly related to human health and safety.



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- Chapter IV (Human Rights): all provisions;
- Chapter V (Employment and Industrial Relations): para. 4.c);
- Chapter VI (Environment): para. 7.

The references and provisions of other relevant instruments are set out in BOX 3.11.

BOX 3.11: Which Provisions? Other Instruments – Health and Safety

International Covenant on Economic, Social and Cultural Rights (1966)

Article 7 ... recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:...

- ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;...
- (b) Safe and healthy working conditions;...

Article 12

1. ... recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. ...

2. The steps to be taken...to achieve the full realization of this right shall include those necessary for: ...

- (b) The improvement of all aspects of environmental and industrial hygiene;

ILO List Of Occupational Diseases Recommendation, 2002 (No. 194)

ILO Tripartite Declaration Of Principles Concerning Multinational Enterprises And Social Policy (1977, Revised 2006)

Safety And Health: Articles 38-40

3.4 Precarious Work

3.4.1 What's the potential to use the Guidelines?

The *Guidelines* can be used to defend rights and improve the working conditions of any worker potentially affected by adverse impacts on matters covered by the *Guidelines* with which the MNE is involved, regardless of the employment relationship. They can also be used in trade union campaigns against precarious work to tackle the abusive use of contract labour (see *BOX 3.14*).

3.4.2 What's the responsibility of MNEs under the Guidelines?

Under the *Guidelines* MNEs have a responsibility to:

- Comply with the recommendations of the *Guidelines*;
- *Avoid* being involved in adverse impacts on workers in precarious work on matters covered by the *Guidelines* and to *address* such impacts when they occur.

3.4.3 What issues can be addressed?

The full range of issues covered by the *Guidelines* that affect workers in precarious work can be addressed including:

- Human rights/trade union rights;
- Discrimination;
- Working conditions;
- Health and safety;
- Living conditions.

BOX 3.12: Which Human Rights? Precarious Work⁹⁸

Right to Freedom of Association
ICCPR (Article 22)
1998 ILO Declaration (Article 2)

Right to Form Trade Unions and Join the Trade Union
ICESCR (Article 8)

Right to Collective Bargaining
1998 ILO Declaration (Article 2)

Right to Non-discrimination in Employment and Occupation
1998 ILO Declaration (Article 2)

Right to Enjoy Just and Favourable Conditions of Work
ICESCR (Article 7)

Right to an Adequate Standard of Living (adequate food, clothing and housing)
ICESCR (Article 11)

3.4.4 What are the relevant provisions?

All recommendations that potentially involve the MNE in adverse impacts on workers are relevant, including (see *BOX 3.15*):

- Chapter II (General Policies): paras. A.1, A.10, A.11, A.12 and A.13;
- Chapter IV (Human Rights): all provisions;
- Chapter V (Employment and Industrial Relations): all provisions.

The references and provisions of other relevant instruments are set out *BOX 3.16*.

BOX 3.13: What's the Meaning of "Precarious Work"?

Precarious work refers to work that is either temporary (casual, seasonal or fixed-term) or carried out in a "triangular" relationship whereby the worker is employed by an agency or other intermediary but works on behalf of another enterprise. Precarious work is typically characterised by low pay, few benefits and high insecurity.

BOX 3.14: What's an Example? Precarious Work – Pakistan⁹⁹

In October 2008 and March 2009 respectively, the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) submitted two cases against Unilever to the UK NCP concerning employment practices at two factories in Pakistan, both of which relied heavily on precarious employment contracts. The IUF contended that the abusive use of precarious employment contracts effectively denied workers their right to be represented by a trade union having a collective bargaining relationship with Unilever, the real employer. Following mediation provided by the UK NCP, Unilever agreed to transform precarious contracts into direct, permanent employment, thus significantly enlarging union membership at both plants. In return, the local unions agreed to withdraw all court petitions. Successful resolution of these conflicts led to recognition of the IUF by Unilever and a formal engagement process with the company.

BOX 3.15: Which Provisions? OECD Guidelines – Precarious Work

Chapter II. General Policies

A.1. Contribute to economic, environmental and social progress with a view to achieving sustainable development.

Paras. A.10, A.11 and A.12 (see BOX 3.7).

A.13. In addition to addressing adverse impacts in relation to matters covered by the *Guidelines*, encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of responsible business conduct compatible with the *Guidelines*.

Chapter IV. Human Rights

Paras. 1, 2, 3, 4, 5, 6 (see BOX 3.3).

Chapter V. Employment and Industrial Relations

Trade Union Rights: paras. 1.a), 1.b), 1.e), 2.a), 2.b) and 8 (see BOX 3.3); *Restructuring/Closure*: paras. 2.c), 6 (see BOX 3.7); *Health and Safety*: para. 4.c) (see BOX 3.10).

4.b) When multinational enterprises operate in developing countries, where comparable employers may not exist, provide the **best possible wages**, benefits and conditions of work, within the framework of government policies. These should be related to the economic position of the enterprise, but should be at least adequate to satisfy the basic needs of the workers and their families.



BOX 3.16: Which Provisions? Other Instruments – Precarious Work

International Covenant on Civil and Political Rights (1966)

Article 22: 1. (see BOX 3.4)

International Covenant on Economic, Social And Cultural Rights (1966)

Article 7: ...the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

Article 8: ... 1 a) The right of everyone to form trade unions and join the trade union of his choice...

Article 11: 1. ... the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

ILO Equal Remuneration Convention, 1951 (NO. 100)¹⁰⁰

ILO Declaration on the Fundamental Principles and Rights at Work (1998)

Article 2: ... (see BOX 3.4)

ILO Employment Relationship Recommendation, 2006 (NO. 198)

ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (1977, Revised 2006)

3.5 Migrant Workers

3.5.1 What's the potential to use the Guidelines?

The *Guidelines* apply to all workers who are potentially affected by adverse impacts on matters covered by the *Guidelines* with which the MNE is involved, including in the supply chain, so they can be used to defend rights and tackle the exploitation of migrant workers.

3.5.2 What's the responsibility of MNEs under the Guidelines?

The *Guidelines* recognise that the human rights of migrant workers may be specifically at risk, requiring particular attention (see *BOX 3.20*).¹⁰¹ Under the *Guidelines*, MNEs have a responsibility to:

- Comply with the recommendations of the *Guidelines*;
- *Avoid* being involved in adverse impacts on migrant workers on matters covered by the *Guidelines* and to *address* such impacts when they occur;
- Respect the human rights of migrant workers, including those set out in the Migrant Workers Convention (1990) (see *BOX 3.17* and 3.21).

3.5.3 What issues can be addressed?

Any adverse impact on migrant workers on matters covered by the *Guidelines* with which the MNE is involved can be addressed, including:

- Discrimination;
- Working conditions;
- Living conditions;
- Withholding of wages;
- Confiscation of passports/identity papers;
- Illegally imposing fees associated with their employment;

BOX 3.17: Which Human Rights? Migrant Workers¹⁰²

ALL MIGRANT WORKERS

Right to Freedom from Slavery, Servitude or Forced or Compulsory Labour

Article 11 (Migrant Workers Convention)

Right to Privacy

Article 14 (Migrant Workers Convention)

Right to Property

Article 15 (Migrant Workers Convention)

Right of Equal Treatment with Nationals in Respect of Remuneration and other Conditions of Work and Terms of Employment

Article 25 (Migrant Workers Convention)

Right to Join Freely any Trade Union

Article 26 (Migrant Workers Convention)

DOCUMENTED MIGRANT WORKERS

Right to Form Associations and Trade Unions in the State of Employment

Article 40 (Migrant Workers Convention)



- Bonded labour;
- Forced labour;
- Physical violence;
- Sexual violence;
- Child labour.

3.5.4 What are the relevant provisions?

All provisions that potentially involve MNEs in adverse impacts on migrant workers are relevant, including (see *BOX 3.20*):

- Chapter II (General Policies): paras. A.1, A.10, A.11, A.12 and A.13;
- Chapter IV (Human Rights): all provisions;
- Chapter V (Employment and Industrial Relations): 1.a), 1.b), 1.c), 1.d), 1.e), 4.b), 4c).

Selected provisions from the Convention on Migrant Workers are set out in *BOX 3.21*.

BOX 3.18: What's an Example? Migrant Workers – The Netherlands¹⁰³

In July 2012, the Netherlands Trade Union Confederation (FNV) submitted a case to the Netherlands NCP concerning the unequal pay of migrant workers from, mainly, Eastern European countries, working in the Netherlands. The workers were hired by agencies that were subcontracted by Nuon and Mitsubishi to build a new electricity plant. FNV argued that the migrant workers should be paid on the same basis as Dutch construction workers, in line with the collective agreement in force at the construction site. The complaint argued that under the *Guidelines*, Nuon and Mitsubishi should encourage their subcontractors to apply the *Guidelines* and to conduct due diligence in order to *avoid* adverse impacts and *address* those impacts with which they are involved. The Dutch NCP accepted the case and offered mediation to the parties. In late 2013, Nuon agreed to take steps to use its leverage in its supply chain.

BOX 3.19: What's An Example? Migrant Workers – Argentina¹⁰⁴

In June 2011, the NGOs Centro de Derechos Humanos y Ambiente (CEDHA), INCASUR, SOMO and Oxfam Novib submitted a complaint to the Dutch NCP concerning the living and working conditions of temporary workers at the corn seed processing operations of Dutch MNE Nidera in Argentina. The complaint documented breaches of Chapters IV (Human Rights) and V (Employment and Industrial Relations) with regard to inadequate living conditions, lack of health and safety, withholding of wages, intimidation of workers who wanted to stop working at the operation, and insufficient information on the terms, conditions and place of work. Following mediation provided by the Dutch NCP, Nidera made a commitment to strengthen its human rights policies and to conduct human rights due diligence.

BOX 3.20: Which Provisions? OECD Guidelines – Migrant Workers

CHAPTER II. General Policies

Paras. A.1, A.10, A.11, A.12 and A.13 (see BOXES 3.7 and 3.15).

CHAPTER IV. Human Rights

Paras. 1, 2, 3, 4, 5, 6 (see BOX 3.3).

Commentary on Chapter IV

40. Depending on circumstances, enterprises may need to consider additional standards. For instance, enterprises should respect the human rights of individuals belonging to specific groups or populations that require particular attention, where they may have adverse human rights impacts on them. In this connection, United Nations instruments have elaborated further on the rights of indigenous peoples; persons belonging to national or ethnic, religious and linguistic minorities; women; children; persons with disabilities; and **migrant workers and their families**...

CHAPTER V. Employment and Industrial Relations

1.a), 1.b), 1.e), 4.b), 4.c) (see BOXES 3.3, 3.10 and 3.15).

1.c) Contribute to the effective abolition of child labour, and take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.

Commentary on Recommendation V.1.c)

Paragraph 1c) recommends that multinational enterprises contribute to the effective abolition of child labour in the sense of the **ILO 1998 Declaration** and **ILO Convention 182** concerning the worst forms of child labour. Long-standing ILO instruments on child labour are **Convention 138**¹⁰⁵ and **Recommendation 146**¹⁰⁶ (both adopted in 1973) concerning minimum ages for employment.

1.d) Contribute to the elimination of all forms of forced or compulsory labour and take adequate steps to ensure that forced or compulsory labour does not exist in their operations.

Commentary on Recommendation V.1.d)

53. Paragraph 1d) recommends that enterprises contribute to the elimination of all forms of forced and compulsory labour, another principle derived from the 1998 ILO Declaration. The reference to this core labour right is based on the **ILO Conventions 29 of 1930**¹⁰⁷ and **105 of 1957**¹⁰⁸.

4.a) Observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country.

BOX 3.21: Which Provisions? Migrant Workers Convention

ALL MIGRANT WORKERS

Article 11:

1. No migrant worker or member of his or her family shall be held in slavery or servitude.
2. No migrant worker or member of his or her family shall be required to perform forced or compulsory labour.

Article 14:

No migrant worker or member of his or her family shall be subjected to arbitrary or unlawful interference with his or her privacy, family, correspondence or other communications...

Article 15:

No migrant worker or member of his or her family shall be arbitrarily deprived of property...

Article 25:

1. Migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the State of employment in respect of remuneration and:

- (a) Other conditions of work, that is to say, overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship and any other conditions of work which, according to national law and practice, are covered by these terms;
- (b) Other terms of employment, that is to say, minimum age of employment, restriction on work and any other matters which, according to national law and practice, are considered a term of employment...

Article 26: ...

- (a) To take part in meetings and activities of trade unions and of any other associations established in accordance with law....
- (b) To join freely any trade union and any such association as aforesaid...;
- (c) To seek the aid and assistance of any trade union and of any such association as aforesaid.

DOCUMENTED MIGRANT WORKERS

Article 40:

1. Migrant workers and members of their families shall have the right to form associations and trade unions in the State of employment...

Notes

[illegible]

PART 4. Using the Complaints Mechanism

Part 4 describes the complaints process of the government-backed National Contact Points (NCPs) and provides a check-list for submitting complaints



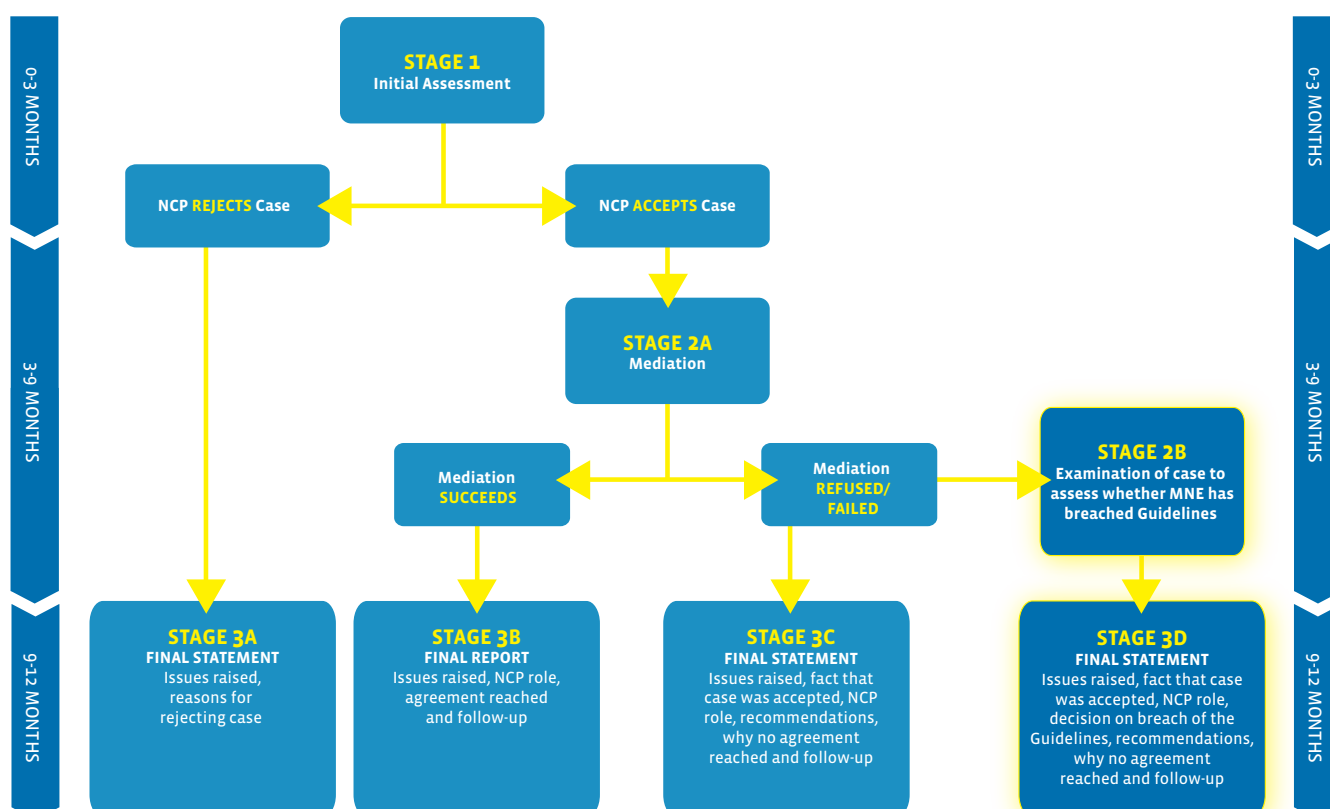
4.1 The NCP Complaints Process

One of the main roles of the government-backed National Contact Points (NCPs) is to handle complaints of alleged breaches of the *Guidelines* submitted by trade unions and NGOs. The *Guidelines* describe a three-stage complaints process to be completed within a twelve month period:¹⁰⁹

- Stage 1: Initial Assessment;
- Stage 2: Conciliation/Mediation;
- Stage 3: Final Report/Final Statement.¹¹⁰

In addition to these three stages, the majority of NCPs¹¹¹ conducts an *examination* in cases where mediation is refused or fails before issuing the Final Statement. This stage is not described in the *Guidelines*. The whole process, including the examination stage, is set out in *FIGURE 4.1* and described in the sections below.

FIGURE 4.1: NCP Complaints Process



4.1.1 Stage 1: Initial Assessment: *Eligibility*

0-3 MONTHS

3-9 MONTHS

9-12 MONTHS

The NCP first conducts an initial assessment to check that the case is eligible under the *Guidelines*. The initial assessment stage should be completed within three months.

4.1.1.1 What does the NCP do?

All NCPs should undertake the following steps:

- Acknowledge receipt of the complaint;
- Inform the MNE about the complaint and ask it for an initial response;
- Request further information from the complainants, as necessary;
- Inform the parties about the outcome of the initial assessment, including the reasons if the NCP has decided to reject the case.

4.1.1.2 What does the NCP require?

For the case to be eligible under the *Guidelines*, the NCP will check that:¹¹²

- There is a clear link between the MNE and the issues raised in the case;
- The MNE is headquartered or operating in a country that has signed the *Guidelines*;
- The issues raised in the case are covered under the *Guidelines*;
- The case falls under the jurisdiction of the NCP;
- The trade unions making the complaint have a legitimate interest in the issues;
- The complaint is made in “good faith” – not frivolous or vexatious;
- The case does not cause any serious prejudice to on-going legal proceedings;
- The NCP can contribute to the effectiveness of the *Guidelines* by accepting the case.

NCPs should not reject a case for the sole reason that other (legal) proceedings have been conducted, are underway, or are available to the parties concerned...

BOX 4.1: More on Initial Assessment: *Parallel Proceedings*

Parallel legal proceedings (court or other legal proceedings) have been the main reason trade union cases have been rejected in the past. Under the 2011 *Guidelines*, NCPs should not reject a case for the sole reason that other (legal) proceedings *have been conducted, are underway, or are available to the parties concerned*, unless handling the case would create serious prejudice for the parties involved in these proceedings.¹¹³

4.1.2 Stage 2A: Conciliation/Mediation: *Problem-solving*

0-3 MONTHS

3-9 MONTHS

9-12 MONTHS

Once the NCP accepts a case it will offer its “good offices” to help parties resolve the issues raised in the case, including providing the parties with access to conciliation and mediation.¹¹⁴ This process should be completed within six months.

BOX 4.2: What's the Meaning of "Conciliation"?¹¹⁵

"A non-binding dispute resolution procedure in which a conciliator plays a relatively direct role in the actual resolution of a dispute and even advises the parties on certain solutions by making proposals for settlement."

BOX 4.3: What's the Meaning of "Mediation"?¹¹⁶

"A voluntary and guided process in which a skilled mediator helps the parties to negotiate the settlement of a dispute. The process is not binding unless or until the parties reach agreement."

Where the breach of the Guidelines takes place in a country that has signed the Guidelines the *host country* NCP will handle the case but should co-operate with the *home country* NCP.

4.1.2.1 What does the NCP do?

The *Guidelines* do not set out the steps involved in the conciliation/mediation process. However, on the basis of existing practice the NCP can be expected to carry out the following:

- Seek advice of relevant authorities, including embassies, representatives of business, workers, NGOs or other experts;
- Consult other concerned NCP/s (*home country* or other *host country* NCPs);
- Organise pre-conciliation/mediation meetings with the parties – jointly or separately;
- Clarify the issues to be addressed in the conciliation/mediation;
- Identify any issues to be kept confidential, such as the identity of the workers;
- Identify the parties to be included in the conciliation/mediation;
- Appoint a neutral conciliator/mediator who is acceptable to both parties;
- Draw up terms of reference for the conciliation/mediation, including the goals, ground- rules, limits of confidentiality and a timetable.

Importantly, while the NCP can be expected to pay for the costs of conciliation/mediation, **most NCPs do not cover the costs of parties participating in the mediation.**

4.1.2.2 What does the NCP require?

Based on experience, trade unions can expect to be asked to provide or meet the following requirements:

- A single trade union contact point;
- Written agreement that they consent to conciliation/mediation;
- The participation of parties with the authority to make binding decisions;
- A willingness to participate in conciliation/mediation in "good faith" – in other words to engage in dialogue with a view to reaching agreement;
- A commitment to respect confidentiality while conciliation/mediation is underway;
- Have the resources to fund the costs of participating in the process if not covered by the NCP.

Mediation of the OECD Guidelines case provided the opportunity for G4S and UNI to resolve a longstanding dispute to the benefit of the company, its workers and the unions which represent them. While G4S and UNI ultimately crafted their own agreement, the involvement of the mediator and the process itself provided an incentive to find solutions to the difficult problems presented in our case and to agree upon a system to resolve problems in the future. It was a turning point in our relationship.

– Christy Hoffman, Deputy General Secretary, UNI Global Union

BOX 4.4: More on Conciliation and Mediation: NCP Practice

NCPs fall into two broad groups when it comes to conciliation/mediation. The first group, including the UK and the US, appoints an external, professional conciliator/mediator to conduct the conciliation/mediation. The second group, including Germany, Norway and The Netherlands, conducts the conciliation/mediation themselves. Moreover, some NCPs have relatively little experience of providing conciliation/mediation. Due to differences in practice and experience, it is likely that standards of conciliation/mediation will continue to vary from NCP to NCP.

BOX 4.5: More on Conciliation and Mediation: Confidentiality

Trade unions agree that parties should respect confidentiality during conciliation/mediation. However, a small number of NCPs consider that the substance of the complaint itself should be confidential and publishing it represents “bad faith”. The trade union position, based on the rules of the *Guidelines*,¹¹⁷ is that confidentiality only applies while conciliation/mediation proceedings are underway, other than in exceptional circumstances, such as complainants being at risk or where parties themselves agree that confidentiality would best serve the implementation of the *Guidelines*.

BOX 4.6: What’s an Example? Conciliation and Mediation¹¹⁸

In 2006, UNI Global Union filed a complaint at the UK NCP concerning alleged breaches of the *Guidelines* by G4S in the Democratic Republic of Congo (DRC), Malawi, Mozambique and Nepal. The issues raised included the right of workers to join a trade union, the payment of the legal minimum wage, and over-time rates. In advance of conciliation proceedings, the parties were asked to confirm that they would implement the conciliator’s recommendations in the event that no agreement was reached. This provided the incentive for both sides to come to an agreement. As a result of the dialogue established at the UK NCP, UNI Global Union and G4S signed a Global Framework Agreement in 2008.

4.1.3 Stage 2B: Examination: *When Conciliation/Mediation Fails*

0-3 MONTHS

3-9 MONTHS

9-12 MONTHS

Success in conciliation/mediation is not guaranteed. Either party may refuse to participate in mediation (several MNEs have done so in the past) or else parties may participate in mediation but fail to come to agreement. Where conciliation/mediation is refused or fails, it is best practice for NCPs to conduct an *examination* of the case to assess whether there has been a breach of the *Guidelines*. A small number of NCPs, however, will not undertake such an examination (see BOX 4.7).

4.1.3.1 What does the NCP do?

The *Guidelines* do not contain any description of the examination stage. On the basis of existing NCP practice, trade unions can expect the NCP to:

- Conduct fact-finding, including from embassies, government officials in the host country and representatives of business, workers, NGOs and inter-governmental organisations, such as the ILO;
- Consult other concerned NCP/s (*home country* or other *host country* NCPs);
- Request further information from the complainants and the MNE, as necessary.

4.1.3.2 What does the NCP require?

Trade unions can expect to be asked for the following:

- Timely responses to requests for information;
- Information that is accurate and substantiated.

BOX 4.7: More on Examination

All NCPs agree that problem-solving through conciliation/mediation lies at the heart of the NCP process. The problem-solving approach allows NCPs to identify opportunities “to implement the spirit of the *Guidelines*” often going beyond the issues raised in the initial complaint.¹¹⁹ However, NCPs do not agree about what to do when conciliation/mediation fails. Practice is divided between the majority of NCPs who is willing to conduct an examination to assess whether there has been a breach of the *Guidelines*, and those who are not. TUAC considers it essential that all NCPs conduct an examination in the event that conciliation/mediation fails. The background threat of an examination acts as a “stick” to help bring MNEs to the mediation table. Without it the NCP system is inherently weak. Moreover, there may be cases for which the only appropriate response is for the NCP to examine the case and assess whether there has been a breach of the *Guidelines*.

BOX 4.8: What’s an Example? Examination¹²⁰

In August 2008, in response to a complaint submitted by the NGO Global Witness against the operations of Afrimex in the Democratic Republic of Congo (DRC), the UK NCP conducted an examination of the case and concluded that Afrimex had “failed to contribute to the sustainable development in the region; to respect human rights; or to influence business partners and suppliers to adhere to the *Guidelines*” and that “Afrimex did not apply sufficient due diligence to the supply chain and failed to take adequate steps to contribute to the abolition of child and forced labour in the mines or to take steps to influence the conditions of the mines”.

4.1.4 Stage 3: Final Reports/Statements: Communication and Dissemination

0-3 MONTHS

3-9 MONTHS

9-12 MONTHS

The final stage of the complaints process involves the NCP issuing its Final Report/Final Statement.¹²¹ The content of the Final Report/Statement varies according to whether the parties have reached agreement and whether the NCP has undertaken an examination of the case if mediation has failed. In all cases, irrespective of the outcome, the NCP must make its Final Report/Statement public (see *FIGURE 4.2*). It is also best practice for the NCP to disseminate its Final Report/Statement to relevant government departments (see *BOX 4.9*).

BOX 4.9: More on Dissemination: Consequences

There are no formal sanctions for MNEs that refuse to participate in the NCP process or breach the *Guidelines*. Nonetheless, there may still be consequences. NCPs are encouraged to send their Final Reports/Statements to relevant government departments (e.g., export credit agencies, public procurement departments, development agencies), which can be expected to take into account the conduct of the MNE in their decision-making. Additionally, publicly available NCP Final Reports/Statements can be used by institutional investors, which have a responsibility under the *Guidelines* to use leverage to help ensure that the enterprises in which they invest address adverse impacts. Trade unions can inform institutional investors about cases submitted under the *Guidelines*, either directly or through the Global Unions Committee on Workers' Capital (see *Part 5.5*).

*In order to foster policy coherence, NCPs are encouraged to inform these government agencies of their statements and reports when they are known by the NCP to be relevant to a specific agency's policies and programmes.*¹²²

– **Commentary on the Procedural Guidance for NCPs, OECD Guidelines for Multinational Enterprises**

FIGURE 4.2: Complaints Process: Final Report/Statement

OUTCOME	CONTENT OF FINAL REPORT/STATEMENT	NEXT STEPS
3A. Case Rejected	Final Statement¹²³ - Names of the parties (unless the NCP considers it unfair to identify a party publicly); - Date on which issues were raised; - Description of issues raised; - Reasons for rejecting the case.	Publication of <i>Final Statement</i>.
3B. Case Accepted and Parties Reach Agreement	Final Report¹²⁴ - Names of the parties; - Date on which issues were raised; - Description of issues raised; - Fact that the case was accepted and the NCP offered its good offices; - Role played by the NCP; - Date when agreement reached; - Details of the agreement reached (to the extent that the parties agree to disclose the information); - Follow-up steps for implementing the agreement, if the parties have agreed to such follow-up.	- Publication of <i>Final Report</i>; - Dissemination of <i>Final Report</i> to relevant government departments; - NCP follow-up on implementation of the agreement in line with the terms of the agreement.
3C. Case Accepted, Parties Fail to Reach Agreement	Final Statement¹²⁵ - Names of the parties; - Date on which issues were raised; - Description of issues raised; - Fact that the case was accepted and the NCP offered its good offices; - Role played by the NCP; - Observations on why the proceedings did not produce agreement; - Recommendations to the MNE on future conduct in line with the implementation of the <i>Guidelines</i>; - Follow-up on recommendations with timeframe if NCP deems appropriate.	- Publication of <i>Final Statement</i>; - Dissemination of <i>Final Statement</i> to relevant government departments; - NCP follow-up on implementation of recommendations in line with the content of the <i>Final Statement</i>.
3D. Case Accepted, Parties Fail to Reach Agreement, NCP Conducts Examination of the Case	Final Statement¹²⁶ - Names of the parties; - Date on which issues were raised; - Description of issues raised; - Fact that the case was accepted and the NCP offered its good offices; - Role played by the NCP; - Observations on why the proceedings did not produce agreement; Finding on whether the <i>Guidelines</i> have been breached; - Recommendations to the MNE on future conduct that would be in line with the implementation of the <i>Guidelines</i>; - Follow-up on recommendations with timeframe.	- Publication of <i>Final Statement</i>; - Dissemination of <i>Final Statement</i> to relevant government departments; - NCP follow-up on implementation of recommendations in line with the content of the <i>Final Statement</i>.

4.2. Submitting a Complaint – A Trade Union Checklist

FIGURE 4.3: Pre-complaint Checklist

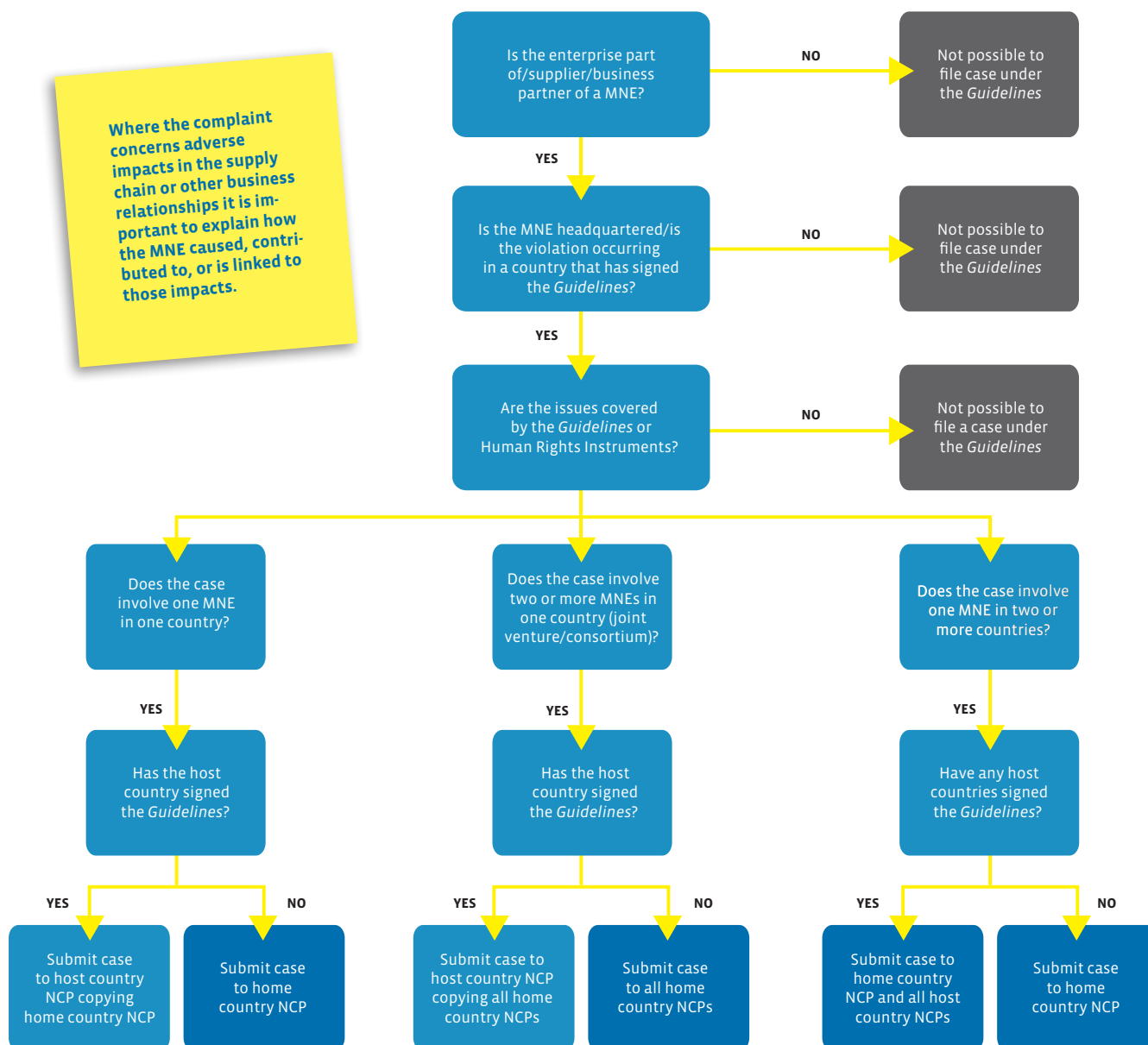
1. Trade Union Support: Have you sought support from trade unions with experience of submitting complaints under the <i>Guidelines</i> ?	✓ National unions; ✓ Global Union Federations (GUFs); ✓ Trade Union Advisory Committee to the OECD (TUAC).
2. Eligibility: Have you checked that the complaint is eligible under the <i>Guidelines</i> ?	✓ The issues are covered by the paragraphs of the <i>Guidelines</i>; ✓ There is a link between the issues raised in the complaint and the activities or relationships of a MNE; ✓ The MNE in question is headquartered or operating in a country that has signed the <i>Guidelines</i> (see BOX 1.1).
3. No Quick Fix: Are you prepared to engage in a process that may take up to twelve months?	✓ You are aware that the timescale of the NCP complaints process is twelve months; ✓ You have the resources/time to engage in the process throughout.
4. Protection of Workers: Are you concerned that there may be retaliation against workers or others? ¹²⁷	✓ You are aware that the NCP normally sends the complaint to the MNE; ✓ You are aware that you can request that part of the complaint be kept confidential; e.g., that the identity of the workers be withheld from the enterprise/s; ✓ You are aware that a complaint cannot be made anonymously.
5. Good Faith: Are you willing and able to participate in conciliation/mediation in “good faith”? ¹²⁸	✓ You understand that the NCP will first offer conciliation/mediation to try to resolve the issues raised in the complaint; ✓ You are aware that “good faith” means:¹²⁸ • responding in a timely fashion; • maintaining confidentiality during conciliation and mediation proceedings; • not misrepresenting the process; • not threatening or taking reprisals against involved parties; • engaging with a view to finding agreement.
6. Publicity: Have you considered how you will publicise your complaint?	✓ You have checked the website of the NCP and are aware of the NCP’s position on publishing the complaint.
7. Participation in the Process: Have you considered who will participate in the conciliation/mediation process and how this will be financed?	✓ You understand that representatives in conciliation/mediation should have the authority to make binding commitments on behalf of the complainants; ✓ You understand that there may be as many as two or three conciliation/mediation sessions; ✓ You have checked the position and understand that the NCP may not pay the participation costs of parties; ✓ Where resources are a constraint you have considered the option of trade union partners supporting your participation/ representing you in the NCP process.

FIGURE 4.4: Complaint Checklist

1. National Contact Point: Have you identified the correct NCP (see <i>FIGURE 4.5</i>)?¹²⁹	✓ You are submitting the case to the <i>host</i> country NCP because the alleged breach of the <i>Guidelines</i> occurred in a country that has signed the <i>Guidelines</i>; OR ✓ You are submitting the case to the <i>home</i> country NCP because the alleged breach of the <i>Guidelines</i> occurred in a country that has not signed the <i>Guidelines</i>; OR ✓ You are submitting the case to the <i>home</i> country NCP and asking it to take the lead, while copying the complaint to the other relevant NCPs, because the alleged breach of the <i>Guidelines</i> involved the same MNE in different countries some of which have signed the <i>Guidelines</i>; OR ✓ You are submitting copies of the same case to <i>several</i> NCPs because the alleged breach of the <i>Guidelines</i> occurred in a country that has not signed the <i>Guidelines</i> and involved a consortium involving MNEs from different countries that have signed the <i>Guidelines</i>.
2. Complainants: Have you explained who you are and what your interest is?	✓ You have given the name/s of the trade union/s and others involved in the complaint, together with a brief description and contact details; ✓ You have explained your interest in the case (e.g., your members are affected by the breach of the <i>Guidelines</i>); ✓ You have provided the NCP with a single contact point.
3. Enterprises: Have you provided details of all the enterprises involved and the relationship between them?	✓ You have provided the name and the contact details of the local <i>entity/ies</i> involved in the alleged adverse impacts/breach of the <i>Guidelines</i>; ✓ You have provided the name, the country of headquarters and the contact details of the MNE; ✓ You have explained the link between the local <i>entity/ies</i> involved in the breach of the <i>Guidelines</i> and the MNE; ✓ You have explained the link between the issues that breach the <i>Guidelines</i> and the activities or relationships of the MNE.
4. Provisions of the <i>Guidelines</i>: Have you cited the relevant provisions of the <i>Guidelines</i> and the Commentary?	✓ You have matched the issues raised in the complaint with the relevant paragraphs of the <i>Guidelines</i>; ✓ You have cited relevant paragraphs of the Commentary of the <i>Guidelines</i>; ✓ You have cited articles of relevant Human Rights instruments and ILO labour standards.
5. Description of Facts and Circumstances: Have you provided the NCP with an adequate description of facts and circumstances?	✓ You have provided the NCP with a description of the relevant facts and circumstances; ✓ You have included relevant dates and places; ✓ You have provided supporting evidence (e.g., relevant correspondence, minutes of meetings, excerpts from collective bargaining agreements, affidavits, excerpts from national law).

6. Awareness of the MNE: Have you informed the NCP whether the MNE is aware of the issues raised in the case?	✓ You have informed the NCP whether the MNE is aware of the issues raised in the complaint; ✓ You have informed the NCP of relevant meetings/correspondence held with the MNE and the status and outcome.
7. Parallel Proceedings: Have you informed the NCP of other domestic or international proceedings? ¹³⁰	✓ You have provided information about the existence and status of completed or ongoing court or other relevant proceedings; ✓ You have explained why the NCP handling the case would contribute to the resolution of the issues without causing serious prejudice to the parties.
8. Protection of workers: Are you concerned that there may be retaliation against workers or others? ¹³¹	✓ You are aware that the NCP normally sends the complaint to the MNE; ✓ You are aware that you can request that parts of the complaint be kept confidential: e.g., the identity of the workers involved to be withheld from the enterprises; ✓ You are aware that a complaint cannot be made anonymously; ✓ You have provided the reasons for requesting confidentiality.
9. Remedy required: Have you set out what it is you want the NCP to do?	✓ You have stated that you are willing to participate in conciliation/mediation; ✓ You have indicated that you consider that NCP-led mediation could contribute to resolving the issues raised in the case; ✓ You have informed the NCP about the issues that you would like to address in mediation including possible remedies (e.g., recognition of the trade union for collective bargaining, reinstatement of dismissed workers, establishment of a health and safety committee).
10. Inform TUAC: Have you kept TUAC informed?	✓ You have sent TUAC a copy of the complaint; ✓ You have alerted TUAC about any delays or problems in the NCP process; ✓ You have updated TUAC on key developments; ✓ You have informed TUAC about the outcome.

FIGURE 4.5: Is the Case Eligible Under the Guidelines?



PART 5. Resources

Part 5 lists key resources for the OECD Guidelines and other relevant instruments, together with trade union contacts



5.1 OECD Guidelines for Multinational Enterprises

Trade Union Advisory Committee to the OECD (TUAC)

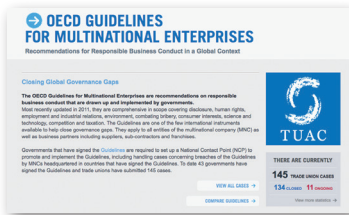
TUAC is the official voice of labour at the OECD. TUAC's members consist of 59 national trade union centres, which together represent 60 million workers in OECD member countries. TUAC leads the trade union movement's work on the OECD Guidelines. It liaises with the OECD on policy developments. It also provides support to trade unions around the world by providing advice on filing complaints and running training events together with partner organisations. TUAC maintains a dedicated website on the *Guidelines*, where it publishes trade union cases submitted under the *Guidelines*. It also maintains profiles and contact details for the government-backed complaints mechanism, the National Contact Points (NCPs).

Tel: +33 1 55 3737337

Email: tuac@tuac.org

TUAC: <http://www.tuac.org>

TUAC Guidelines: <http://www.tuaoecdmguidelines.org>



OECD Watch

OECD Watch is an umbrella organisation comprising more than 80 non-governmental organisations (NGOs) from around the world, which is dedicated to undertaking campaigns and policy advocacy on the OECD Guidelines. OECD Watch's secretariat provides advice and support to NGOs on filing complaints under the OECD Guidelines. OECD Watch maintains an online database of all NGO cases submitted under the *Guidelines*, produces *Quarterly Case Updates* and has published a *Civil Society Guide* to the *Guidelines*.

Tel: +31 20 6391291

Email: info@oecdwatch.org

OECD Watch: <http://www.oecdwatch.org>

OECD Watch Cases: <http://www.oecdwatch.org/cases>

OECD Watch Guide:

• English: http://oecdwatch.org/publications-en/Publication_3962

• French: http://oecdwatch.org/publications-fr/Publication_3962-fr?set_language=fr

• Spanish: http://oecdwatch.org/publications-es/Publication_3962-es?set_language=es



Organisation for Economic Cooperation and Development (OECD)

The OECD's dedicated web site publishes different language versions of the Guidelines together with a database of cases and a range of other materials.

<http://mneguidelines.oecd.org>

National Contact Points (NCPs)

A list of National Contact Points (NCPs) – the government-backed complaints mechanism – together with links to their websites and contact details are published on both the TUAC and OECD websites:

TUAC: <http://www.tuaoecdmguidelines.org/contact-points.asp>

OECD: <http://mneguidelines.oecd.org/ncps>

5.2 ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy

The International Labour Organisation's *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, 1977 (last revised 2006)* (ILO MNEs Declaration) is an authoritative international instrument that sets out standards for business behaviour in the areas of employment, training, conditions of work and life, and industrial relations. There is considerable overlap between Chapter V (*Employment and Industrial Relations*) of the OECD Guidelines and the ILO MNEs Declaration. The ILO MNEs Declaration applies to all MNEs.

International Labour Organisation (ILO)

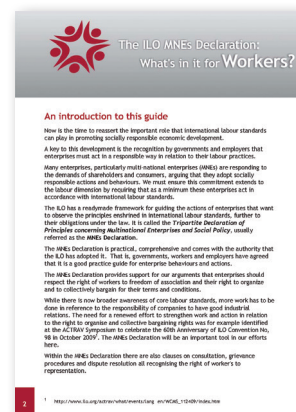
The *ILO MNE Declaration* is published on the ILO web site in the following languages: Arabic, Bahasa Indonesia, Chinese (Mandarin), English, German, Italian, French, Russian and Spanish:

http://www.ilo.org/empent/Publications/WCMS_094386/lang-en/index.htm

The Bureau for Workers' Activities (ACTRAV)

ACTRAV has published a Guide to the *ILO MNE Declaration*, which is available in: Arabic, Chinese (Mandarin), English, French, Russian and Spanish:

The ILO MNEs Declaration: What's in it for Workers?: http://www.ilo.org/actrav/info/pubs/WCMS_152797/lang-en/index.htm



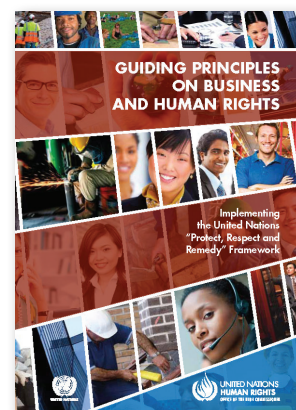
5.3 UN Guiding Principles on Business and Human Rights

The *UN Guiding Principles on Business and Human Rights* (2011) are a new international instrument that sets out standards for business behaviour in the area of human rights. Pillar II, the *Corporate Responsibility to Respect Human Rights*, provides the basis of Chapter IV (Human Rights) of the OECD Guidelines. The *UN Guiding Principles* apply to all enterprises.

Office of the United Nations High Commissioner for Human Rights

The Office of the United Nations High Commissioner for Human Rights publishes links to available resources on the *UN Guiding Principles on Business and Human Rights* (2011), including the *Principles* themselves in English, French and Spanish, and an Interpretive Guide on the Corporate Responsibility to Respect Human Rights:

<http://www.ohchr.org/EN/Issues/Business/Pages/Tools.aspx>



International Trade Union Confederation (ITUC): Briefing Note and Guide

The ITUC has published a Briefing Note and a Guide to the *UN Guiding Principles on Business and Human Rights* (2011). Both documents are available in English, French and Spanish:

The United Nations "Protect, Respect, Remedy": Briefing Note for Trade Unionists:

<http://www.ituc-csi.org/the-united-nations-protect-respect.html>

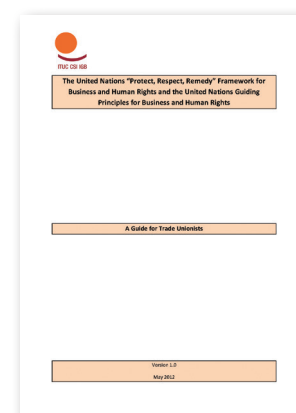
The United Nations "Protect, Respect, Remedy" Framework for Business and Human Rights and the United Nations Guiding Principles for Business and Human Rights, A Guide for Trade Unionists: http://www.ituc-csi.org/IMG/pdf/12-04-23_ruggie_background_fd.pdf

Business and Human Rights Resource Centre

The Business and Human Rights Resource Centre maintains a number of useful portals, including on the *UN Guiding Principles on Business and Human Rights* and the Working Group on Business and Human Rights:

Guiding Principles on Business and Human Rights: <https://business-humanrights.org/en/un-guiding-principles>

Working Group on Business and Human Rights: <https://business-humanrights.org/en/working-group/latest-news-on-unwg>



5.4 International/Global Framework Agreements (IFAs)

International/Global Framework Agreements are agreements that are negotiated between Global Union Federations and Multinational Enterprises. The full list of IFAs is published by the Council of Global Unions:

<http://www.global-unions.org/framework-agreements.html>

5.5 Global Union Partners

Building and Woodworkers' International (BWI)

The Building and Woodworkers' International (BWI) is the global federation representing workers in building, building materials, wood, forestry and related areas of work. The BWI has 328 national affiliates representing around 12 million members in 130 countries.

Tel.: +41 22 827 37 77
Email: info@bwint.org
Web: <http://www.bwint.org>

Education International (EI)

Education International (EI) represents teachers and other education workers, with 30 million members in 394 member organisations in 171 countries and territories. EI members come from all levels of education – from pre-school to university.

Tel: +32 2 224 06 11
Email: headoffice@ei-ie.org
Web: <http://www.ei-ie.org/>

IndustriALL

IndustriALL Global Union represents 50 million workers in 140 countries in the mining, energy and manufacturing sectors.

Tel: +41 22 308 5050
Email: info@industriall-union.org
Web: <http://www.industriall-union.org/>

International Transport Workers' Federation (ITF)

The International Transport Workers' Federation (ITF) is a federation of 681 transport worker unions in 148 countries, representing 4,500,000 transport workers.

Tel: +44 20 7403 2733
Email: mail@itf.org.uk
Web: <http://www.itfglobal.org/>

International Federation of Journalists (IFJ)

The International Federation of Journalists is the global voice of journalists representing more than 550,000 journalists in 150 national unions covering 119 countries.

Tel: +32 223 5 22 00
Email: ifj@ifj.org
Web: <http://www.ifj.org>

International Trade Union Confederation (ITUC)

The International Trade Union Confederation (ITUC) is the main international trade union organisation representing the interests of working people worldwide.

Tel: +32 2 224 0211
Email: info@ituc-csi.org
Web: <http://www.ituc-csi.org/>

International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF)

The International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) is an international federation of 336 trade unions in 120 countries representing over 12 million workers employed in: agriculture and plantations; the preparation and manufacture of food and beverages; hotels, restaurants and catering services; all stages of tobacco processing.

Tel: + 41 22 793 22 33
Email: iuf@iuf.org
Web: <http://www.iuf.org/w/>

Public Services International (PSI)

Public Services International is a global trade union federation representing 20 million working women and men who deliver vital public services in 150 countries.

Tel: +33 45 040 64 64
Email: psi@world-psi.org
Web: <http://www.world-psi.org>

UNI Global Union

UNI Global Union provides a voice and a platform at the international level for 20 million workers in 900 unions at the international level in jobs ranging from the night janitor in your office block to the big-time Hollywood director of your favourite movie.

Tel: +41 22 365 21 00
Email: contact@uniglobalunion.org
Web: <http://www.uniglobalunion.org>

5.6 Global Union Networks

Committee on Workers' Capital

The Committee on Workers' Capital (CWC) is an international labour union network for dialogue and action on the responsible investment of workers' capital. Workers' capital is invested in companies operating in a globalised economy, with increasingly complex supply chains. By leveraging their retirement savings, workers can influence how companies respect human and labour rights, remain financially sustainable, and minimise adverse impacts on the environment.

Web: <http://www.workerscapital.org/>

- ¹ The Corporate Responsibility to Respect Human Rights, An Interpretive Guide, 2012, p.5.
- ² *Ibid.*
- ³ OECD Guidelines for Multinational Enterprises, Commentary on Chapter II, General Policies, para. 14, p.23.
- ⁴ NCP Mediation Manual, (The Consensus Building Institute), 2012, p.21.
- ⁵ OECD Guidelines for Multinational Enterprises, Commentary on Chapter II, General Policies, para. 14, p.23.
- ⁶ Part II. Implementation Procedures of the OECD Guidelines, Commentary on the Procedural Guidance, *Implementation in Specific Instances*, para. 21, p. 81.
- ⁷ OECD Guidelines for Multinational Enterprises, Commentary on Chapter IV, Human Rights, para. 45, p.34.
- ⁸ The Corporate Responsibility to Respect Human Rights, An Interpretive Guide, 2012, p.6-7.
- ⁹ OECD Guidelines for Multinational Enterprises, Commentary on Chapter II, General Policies, para. 19, p.24 and Commentary on Chapter IV, Human Rights, para. 42.
- ¹⁰ NCP Mediation Manual, (The Consensus Building Institute), 2012, p.21.
- ¹¹ The Corporate Responsibility to Respect Human Rights, An Interpretive Guide, 2012, p.7.
- ¹² *Ibid.*
- ¹³ NCP Mediation Manual (The Consensus Building Institute), 2012, p.20.
- ¹⁴ The Corporate Responsibility to Respect Human Rights, An Interpretive Guide, 2012, p.7.
- ¹⁵ OECD Guidelines for Multinational Enterprises, Commentary on Chapter II, General Policies, para. 17.
- ¹⁶ There are a total of 47 NCPs. NCP profiles including contact details are published on TUAC's web site: <<http://www.tuaoecdmguidelines.org/contact-points.asp>>. The OECD also publishes a list of NCPs: <<http://mneguidelines.oecd.org/ncps/>>.
- ¹⁷ Chapter I, *Concepts and Principles*, para.1.
- ¹⁸ Chapter I, *Concepts and Principles*, para.2.
- ¹⁹ Commentary on Chapter II, *General Policies*, para. 17.
- ²⁰ Chapter II, *General Policies*, paras. A10, A11, A12.
- ²¹ Chapter IV, *Human Rights*.
- ²² This is explained further in Part 2.3 of this Guide.
- ²³ Chapter V, *Employment and Industrial Relations*, para. 4.b).
- ²⁴ Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises, I. *Commentary on the Procedural Guidance for NCPs*, para. 26.
- ²⁵ *Ibid.* para. 22. These principles are based on the principles for an effective grievance mechanism set out in the *UNGPs*, 2011.
- ²⁶ Commentary on the *Procedural Guidance*, para. 40.
- ²⁷ Part II. Implementation Procedures of the OECD Guidelines, Amendment of the Decision of the Council on the OECD Guidelines for Multinational Enterprises, II. Investment Committee, para. 8.
- ²⁸ GDF Suez and Global Unions: Global Agreement on Fundamental Rights, Social Dialogue and Sustainable Development; 16 November 2010; <<http://www.bwint.org/pdfs/GDFgobagreeEN.pdf>>.
- ²⁹ Chapter I. *Concepts and Principles*, para. 4.
- ³⁰ *Ibid.* para. 3.
- ³¹ Chapter II. *General Policies*, para. A.13.
- ³² Commentary on Chapter IV. *Human Rights*, para. 42.
- ³³ The *Guidelines* explain that the recommendation to undertake due diligence to avoid and address adverse impacts "*applies to those matters that are covered by the Guidelines that are related to adverse impacts*" (Commentary on Chapter II. *General Policies*, para. 14).
- ³⁴ Chapter IX. *Science and Technology*, para. 5.
- ³⁵ Protect, Respect and Remedy: a Framework for Business and Human Rights, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, April 2008; <www2.ohchr.org/english/bodies/hrcouncil/docs/8session/A-HRC-8-5.doc>.
- ³⁶ The case was brought against the French MNE Devcot S.A. by the French NGO Sherpa and the European Center for Constitutional and Human Rights (ECCHR). The French NCP found that Devcot S.A. itself had not been involved in the trade of Uzbek cotton in recent years but that the trade in Uzbek cotton is a breach of the *Guidelines*.
- ³⁷ Enterprises should "*Avoid causing or contributing to adverse impacts on matters related to the Guidelines, through their own activities, and address such impacts when they occur*" and should "[S]eek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship...". Chapter II. *General Policies*, paras. A.11 and A.12.
- ³⁸ Commentary on Chapter II. *General Policies*, para. 14.
- ³⁹ Commentary on Chapter IV. *Human Rights*, paras. 38 and 39.
- ⁴⁰ The Corporate Responsibility to Respect Human Rights, An Interpretive Guide, 2012, p.5.
- ⁴¹ The ITUC has published a Guide to this work: The United Nations "Protect, Respect, Remedy" Framework for Business and Human Rights and the United Nations Guiding Principles for Business and Human Rights, A Guide for Trade Unionists: <http://www.ituc-csi.org/IMG/pdf/12-04-23_ruggie_background_fd.pdf>.
- ⁴² The *Guidelines* do not refer to these instruments individually, but as follows: "*enterprises may need to consider additional standards. For instance, enterprises should respect the human rights of individuals belonging to specific groups or populations that require particular attention, where they may have adverse human rights impacts on them. In this connection United Nations instruments have elaborated further on the rights of indigenous peoples; persons;...*" (Commentary on Chapter IV, para. 40). The UN's Interpretive Guide to the Corporate Responsibility to Respect Human Rights (2012), which underpins Chapter IV, identifies these instruments by name (The Corporate Responsibility to Respect Human Rights, An Interpretive Guide, 2012, p.12).
- ⁴³ The Commentary on Chapter II explains that the responsibility to "*avoid causing or contributing to adverse impacts on matters covered by the Guidelines through their own activities includes their activities in the supply chain. Relationships in the supply chain take a variety of forms including, for example, franchising, licensing or subcontracting*", Commentary on Chapter II. *General Policies*, para. 17.
- ⁴⁴ Commentary on Chapter II. *General Policies*, para. 14.
- ⁴⁵ While these are steps that can be taken to correct the situation, it may not be possible to fully remedy the damage done by an anti-union campaign.
- ⁴⁶ The *Guidelines* emphasise that the responsibility to use leverage to mitigate the adverse impacts of business partners is not intended to shift responsibility from the entity causing the adverse impact to the MNE (Chapter II. *General Policies*, para. A12).
- ⁴⁷ The *Guidelines* do not define "remediation". This definition is taken from the Corporate Responsibility to Respect Human Rights, An Interpretive Guide, 2012, p.7.
- ⁴⁸ Chapter IV. *Human Rights*, para. 6.
- ⁴⁹ "*...actual impacts are to be addressed through remediation*", Commentary on Chapter II. *General Policies*, para. 14.
- ⁵⁰ Commentary on Chapter IV. *Human Rights*, para. 46.
- ⁵¹ *Ibid.*
- ⁵² The *Guidelines* do not describe what remediation would entail. This list is taken from the Commentary on Guiding Principle 25 of the *United Nations Guiding Principle for Business and Human Rights*, 2011. The UNGPs provide the basis of Chapter IV. *Human Rights*.
- ⁵³ Commentary on Chapter II. *General Policies*, para. 21; Commentary on Chapter IV. *Human Rights*, para. 43.
- ⁵⁴ Commentary on Chapter II. *General Policies*, para. 21.
- ⁵⁵ Commentary on Chapter II. *General Policies*, para. 22.
- ⁵⁶ *Ibid.*
- ⁵⁷ *FIGURE 2.4* reproduces a diagram presented in the Interpretive Guide to The Corporate Responsibility to Respect Human Rights (The Corporate Responsibility to Respect Human Rights, An Interpretive Guide, 2012, p.50). It has been adapted to reflect the language of the *OECD Guidelines*.
- ⁵⁸ Commentary on Chapter II. *General Policies*, para. 19; Commentary on Chapter IV. *Human Rights*, para. 42.
- ⁵⁹ The Corporate Responsibility to Respect Human Rights, An Interpretive Guide, 2012, p.7.
- ⁶⁰ Commentary on Chapter II. *General Policies*, para. 14.
- ⁶¹ See Chapter II. *General Policies*, para. A.10.
- ⁶² Chapter IV. *Human Rights*, para. 5.
- ⁶³ Commentary on Chapter IV. *Human Rights*, para. 45.
- ⁶⁴ The *Guidelines* do not provide a detailed description of a due diligence process. The guidance in *FIGURE 2.5* draws on the elements set out in the *OECD Guidelines* as well as the description of human rights due diligence provided in the UNGPs (on which Chapter IV is based). See Part 5.3.
- ⁶⁵ Commentary on Chapter IV (Human Rights) para. 45.
- ⁶⁶ United Nations Guiding Principles on Business and Human Rights, 2011, Guiding Principle 18.
- ⁶⁷ Chapter IV (Human Rights) para. 4.
- ⁶⁸ Commentary on Chapter IV (Human Rights), para. 44.
- ⁶⁹ *Ibid.*
- ⁷⁰ *Ibid.* para. 45.
- ⁷¹ United Nations Guiding Principles on Business and Human Rights, 2011, Guiding Principle 19.
- ⁷² *Ibid.*, Guiding Principle 20.
- ⁷³ *Ibid.*, Guiding Principle 21.
- ⁷⁴ Commentary on Chapter II. *General Policies*, para. 17.

- ⁷⁵ *Ibid.*, para. 14.
- ⁷⁶ Chapter V. *Employment and Industrial Relations*, paras. 1.a), 1.b), 6. and 8.
- ⁷⁷ Commentary on Chapter V. *Employment and Industrial Relations*, paras. 49 and 50.
- ⁷⁸ ILO Employment Relationship Recommendation, 2006 (No. 198): <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0:NO:12100:P12100_INSTRUMENT_ID:312535:NO>.
- ⁷⁹ Commentary on Chapter V. *Employment and Industrial Relations*, para. 49.
- ⁸⁰ The *Guidelines* make clear that the responsibility of enterprises to prevent or mitigate an adverse impact when they have not caused or contributed to that impact but the impact is linked to their operations, products or services by a business relationship is not intended to shift the responsibility away from the entity causing the adverse impact.
- ⁸¹ Commentary on Chapter II. *General Policies*, para. 5.
- ⁸² All workers potentially affected by adverse impacts with which the MNE is involved include workers in supply chains, franchising, licensing and subcontracting and other business relationships.
- ⁸³ See ILO Human Resources Development Recommendation, 2004 (No. 195).
- ⁸⁴ Chapter IV (Human Rights) of the *Guidelines* states that it is in line with the UNGPs. While there is no reference in the *Guidelines* to involving potentially affected groups and other stakeholders, this expectation is set out in Guiding Principle 18 of the UNGPs (United Nations Guiding Principles on Business and Human Rights, 2011, *Guiding Principle 18*).
- ⁸⁵ International Covenant on Civil and Political Rights (1966): <<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>>.
- ⁸⁶ International Labour Organisation Declaration on Fundamental Principles and Rights at Work (1998): <<http://www.ilo.org/public/english/standards/relm/ilc/ilc86/com-dtxt.htm>>.
- ⁸⁷ International Covenant on Economic, Social and Cultural Rights (1966): <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>>.
- ⁸⁸ Emphasis added.
- ⁸⁹ *Ibid.*
- ⁹⁰ <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0:NO:12100:P12100_INSTRUMENT_ID:312232:NO>.
- ⁹¹ <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0:NO:12100:P12100_INSTRUMENT_ID:312243:NO>.
- ⁹² <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0:NO:12100:P12100_INSTRUMENT_ID:312256:NO>.
- ⁹³ <http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_094386.pdf>.
- ⁹⁴ TUAC Case Profile: <<http://www.tuacoecdmguidelines.org/CaseDescription.asp?id=61>>.
- ⁹⁵ Press Release of the Belgian National Contact Point, 20 January 2011: <http://economie.fgov.be/fr/binaries/brincks_en_tcm326-119457.pdf>.
- ⁹⁶ TUAC Case Profile: <<http://www.tuacoecdmguidelines.org/CaseDescription.asp?id=46>>.
- ⁹⁷ Emphasis added.
- ⁹⁸ The rights listed in this example are for illustrative purposes only. The *Guidelines* recognise that enterprises can potentially affect all rights and should therefore respect all internationally-recognised human rights set out in the description of the Corporate Responsibility to Respect Human Rights (page 16) in Part 2 of this Guide.
- ⁹⁹ UK National Contact Point, Final Statement: Complaint from the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations against Unilever plc on Pakistan's Khanewal factory: <<http://web.archive.nationalarchives.gov.uk/20121212135622/http://www.bis.gov.uk/files/file53915.pdf>>; UK National Contact Point, Final Statement: Complaint from the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations against Unilever plc on Pakistan's Rahim Yar Khan factory: <<http://www.oecd.org/corporate/mne/44478663.pdf>>.
- ¹⁰⁰ <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0:NO:12100:P12100_INSTRUMENT_ID:312245:NO>.
- ¹⁰¹ Commentary on Chapter IV. (Human Rights) para. 40.
- ¹⁰² These are some of the rights set out in the International Convention on the Protection of the Rights of All Migrants Workers and Members of Their Families (1990) relating to migrant workers; <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx>>. Under the *Guidelines* enterprises should respect all the rights in this Convention.
- ¹⁰³ TUAC Case Profile: <<http://www.tuacoecdmguidelines.org/CaseDescription.asp?id=165>>.
- ¹⁰⁴ The Netherlands National Contact Point Final Statement: <<http://www.oecdguidelines.nl/notifications/documents/publication/2015/1/6/ncp-final-statement-nidera---argentinean-ngos-somo-oxfam-novib>>; OECD Watch Case Database: <http://www.oecdwatch.org/cases/Case_220?set_language=en>.
- ¹⁰⁵ <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0:NO:12100:P12100_INSTRUMENT_ID:312283:NO>.
- ¹⁰⁶ <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0:NO:12100:P12100_INSTRUMENT_ID:312484:NO>.
- ¹⁰⁷ Forced Labour Convention, 1930 (No. 29): <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0:NO:12100:P12100_INSTRUMENT_ID:312174:NO>.
- ¹⁰⁸ Abolition of Forced Labour Convention, 1957 (No. 105): <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0:NO:12100:P12100_INSTRUMENT_ID:312250:NO>.
- ¹⁰⁹ Part II. Implementation Procedures of the OECD Guidelines for Multinational Enterprises, Procedural Guidance, C. *Implementation in Specific Instances*, paras. 1-5, pp.72-74.
- ¹¹⁰ Where parties reach agreement in the NCP-led process, the NCP produces a Final Report; where the case is rejected or mediation is refused or fails, the NCP publishes a Final Statement.
- ¹¹¹ This refers to the majority of NCPs that have handled cases – to date c60% of NCPs.
- ¹¹² Part II. Implementation Procedures of the OECD Guidelines for Multinational Enterprises, Commentary on the Procedural Guidance, *Initial Assessment*, para. 25, p.82.
- ¹¹³ Part II. Implementation Procedures of the OECD Guidelines for Multinational Enterprises, Commentary on the Procedural Guidance, *Initial Assessment*, para. 26, p.83.
- ¹¹⁴ Part II. Implementation Procedures of the OECD Guidelines for Multinational Enterprises, Procedural Guidance, C. *Implementation in Specific Instances*, para. 2d), p.73 and Commentary on the Procedural Guidance, *Providing Assistance to the Parties*, paras. 28-29, pp.83-84.
- ¹¹⁵ The *Guidelines* do not provide a definition of “conciliation”. This definition is taken from the NCP Mediation Manual, (The Consensus Building Institute), 2012, p.21.
- ¹¹⁶ The *Guidelines* do not provide a definition of “mediation”. This definition is taken from the NCP Mediation Manual, (The Consensus Building Institute), 2012, p.21.
- ¹¹⁷ Part II. Implementation Procedures of the OECD Guidelines for Multinational Enterprises, Commentary on the Procedural Guidance, *Core Criteria for Functional Equivalence in the Activities of NCP, Transparency*, para. 9, p.79.
- ¹¹⁸ TUAC Case Profile: <<http://www.tuacoecdmguidelines.org/CaseDescription.asp?id=18>>.
- ¹¹⁹ NCP Mediation Manual (The Consensus Building Institute), 2012.
- ¹²⁰ UK NCP: Final Statement by the UK National Contact Point for the OECD Guidelines for Multinational Enterprises: Afrimex (UK) Ltd. Final Statement: <<http://www.bis.gov.uk/files/file47555.doc>>.
- ¹²¹ The NCP issues a Final Report when the parties reach agreement, but otherwise issues a Final Statement.
- ¹²² Part II. Implementation Procedures of the OECD Guidelines, Commentary on the Procedural Guidance, Conclusion of the Procedures, para. 37;
- ¹²³ Part II. Implementation Procedures of the OECD Guidelines, Procedural Guidance, C. *Implementation in Specific Instances*, para. 3. a) and Commentary on the Procedural Guidance, *Conclusion of the Procedures*, para. 32, p.84.
- ¹²⁴ Part II. Implementation Procedures of the OECD Guidelines, Procedural Guidance, C. *Implementation in Specific Instances* para. 3.b); and Commentary on the Procedural Guidance, *Conclusion of the Procedures*, para. 34, p.84.
- ¹²⁵ Part II. Implementation Procedures of the OECD Guidelines, Procedural Guidance, C. *Implementation in Specific Instances*, para. 3.c); and Commentary on the Procedural Guidance, *Conclusion of the Procedures*, para. 35, p.85.
- ¹²⁶ Scenario 3D is not referenced at all in the 2011 *Guidelines*. This description is based on the actual practice of some NCPs.
- ¹²⁷ Part II. Implementation Procedures of the OECD Guidelines, Commentary on the Procedural Guidance, *Providing Assistance to the Parties*, para. 30, p.84.
- ¹²⁸ Part II. Implementation Procedures of the OECD Guidelines, Commentary on the Procedural Guidance, *Implementation in Specific Instances*, para. 21, p.81.
- ¹²⁹ Part II. Implementation Procedures of the OECD Guidelines, Commentary on the Procedural Guidance, *Coordination Between NCPs in Specific Instances*, paras. 23-24, p. 82.
- ¹³⁰ Part II. Implementation Procedures of the OECD Guidelines, Commentary on the Procedural Guidance, *Initial Assessment*, para. 26, p. 83.
- ¹³¹ Part II. Implementation Procedures of the OECD Guidelines, Commentary on the Procedural Guidance, *Providing Assistance to the Parties*, para. 30, p.84.



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