

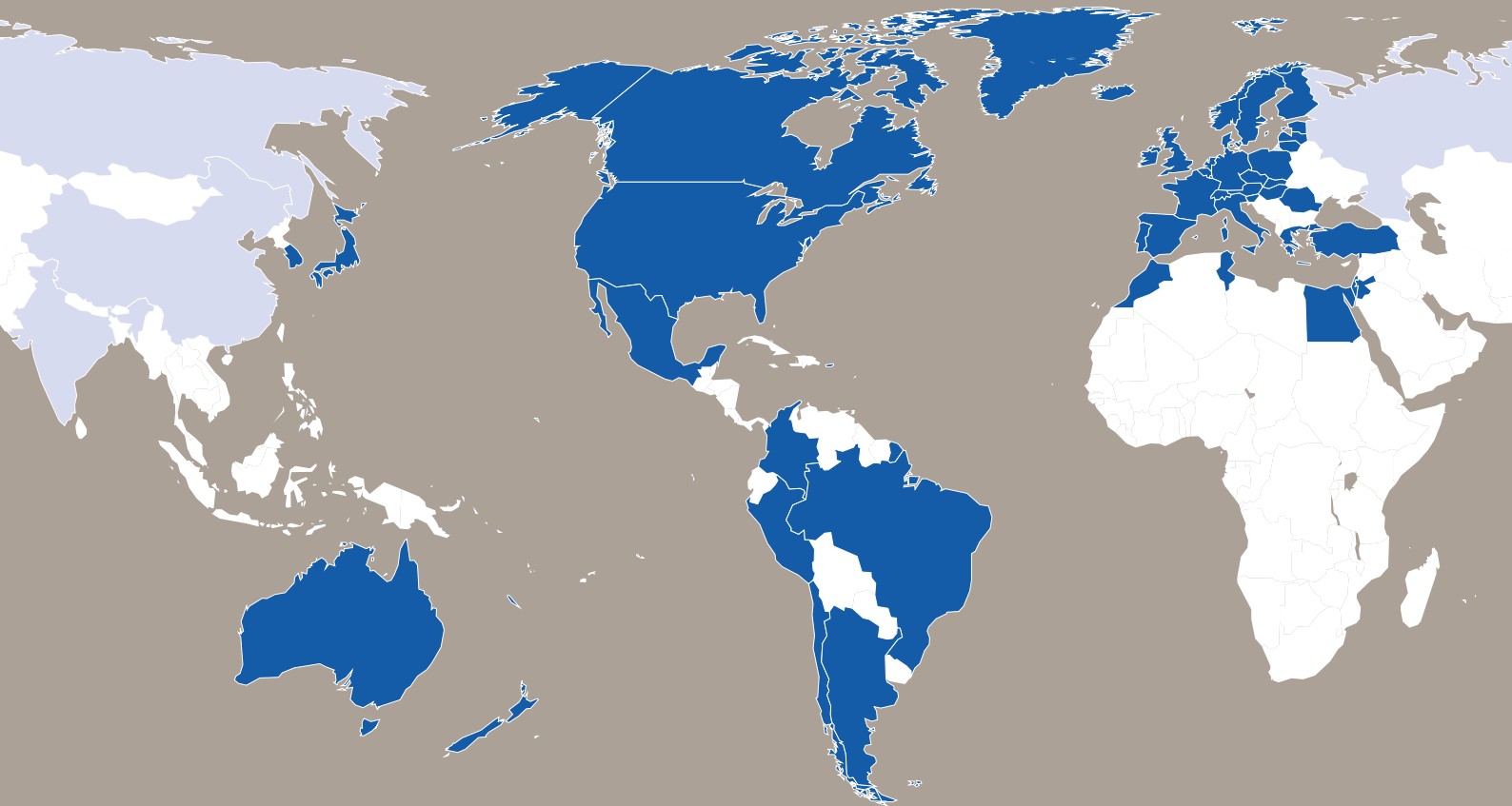


# ANNUAL REPORT **2012/2013**



OECD **GUIDELINES**  
FOR MULTINATIONAL ENTERPRISES

NATIONAL CONTACT POINT  
NORWAY



45 countries adhere to the OECD Guidelines and are hence required to establish a National Contact Point (NCP)

- **Countries with an NCP:** Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, Colombia, the Czech Republic, Denmark, Egypt, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Jordan, Latvia, Lithuania, Luxembourg, Mexico, Morocco, the Netherlands, New Zealand, Norway, Peru, Poland, Portugal, Romania, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, Tunisia, Turkey, the UK, and the US
- **Observing Countries:** China, India, and Russia

This map is for illustrative purposes and is without prejudice to the status of or sovereignty over any territory covered by this map.

## What is the OECD?

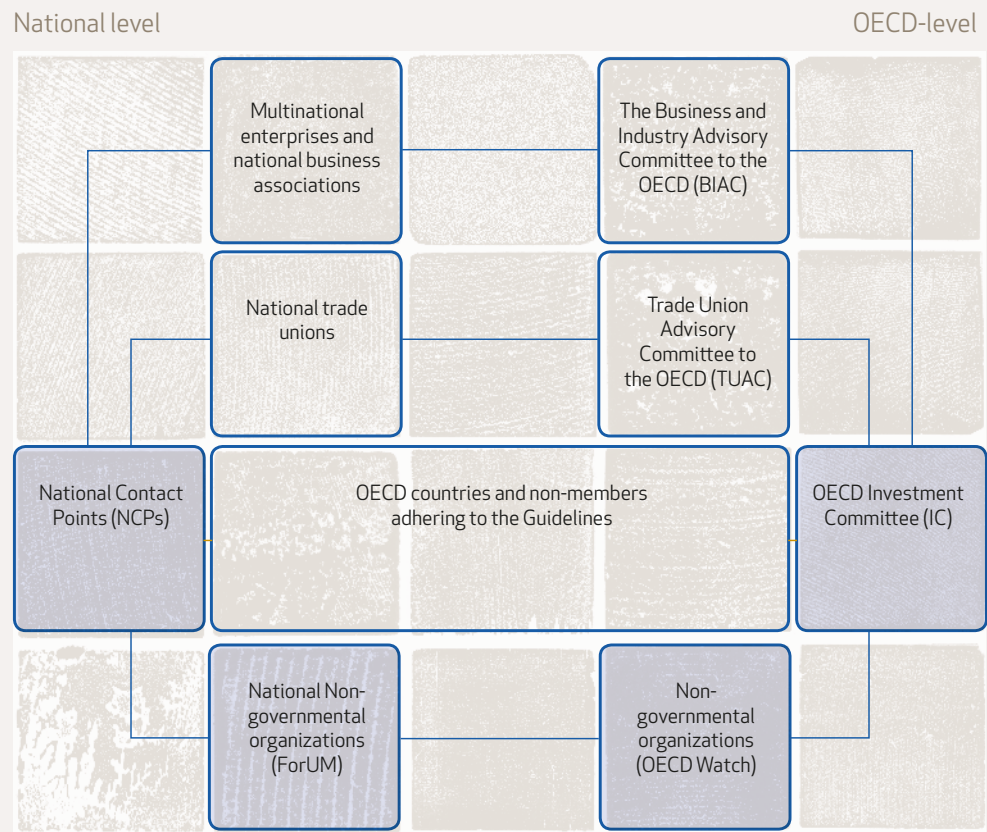
The Organisation for Economic Co-operation and Development (OECD), founded in 1961, comprises 34 countries in five continents. With its member states committed to the principles of democracy and the market economy, the OECD functions as a forum in which countries can work collectively to seek solutions to wider, common problems, share information on effective practices, and coordinate both domestic and international policy. The OECD is one of the world's largest and most reliable sources of comparative statistical, economic and social data. The PISA-studies on education and the economic country surveys are two examples. For the past few years, the OECD has got several new members. Chile, Estonia, Israel and Slovenia joined in 2010. In addition there is extensive collaboration with other countries, such as Brazil, China, India, Indonesia, Russia and South Africa.

## What are the OECD Guidelines?

The OECD Guidelines for Multinational Enterprises (MNEs) are recommendations by governments to multinational and domestic enterprises with international activities. They provide principles and standards of good practice consistent with applicable laws and internationally recognised standards. The Guidelines cover disclosure, human rights, employment and industrial relations, environment, bribery and extortion, consumer interests, science and technology, competition and taxation.

OECD countries and other countries adhering to the Guidelines are required to establish a National Contact Point (NCP) to promote the Guidelines, handle enquiries, and contribute to the resolution of complaints related to enterprises' implementation of the Guidelines. The Guidelines also include procedural guidance to the NCPs.

## Who implements the Guidelines?



## OECD Guidelines in brief

The OECD Guidelines were launched in 1976, and last updated in May 2011. The human rights chapter is drawn from the UN Guiding Principles on Business and Human Rights of 2011. The Guidelines are also compatible with other corporate responsibility standards such as the UN Global Compact and ISO 26000.

**General policies.** Enterprises should operate in accordance with domestic laws and regulations. They should assess, prevent and mitigate adverse impacts on human rights, workers' rights and the environment, and fight corruption. This applies to companies' own activities and to the supply chain.

**Disclosure.** Enterprises are expected to regularly disclose information on operations and results, and demonstrate that they are taking responsibility for the themes in the OECD Guidelines in line with the most advanced standards for transparency and reporting.

**Human rights.** States have the duty to protect and realise human rights. Enterprises should respect human rights and seek ways to prevent or mitigate adverse impacts on human rights through due diligence and remediation processes.

**Workers' rights.** Enterprises should respect the rights of workers, cooperate with employee representatives, fight discrimination and contribute to the abolition of child labour and forced labour.

**Environment.** Enterprises should prevent, mitigate and reduce adverse environmental impacts, for instance through environmental management systems. This is a duty, but also a business opportunity.

**Bribery and extortion.** Enterprises play an important role in combating corruption and bribery through internal controls, ethics and compliance programmes.

**Consumer interests.** Enterprises should act in accordance with fair marketing and advertising practices, and ensure the quality and reliability of the goods and services they provide.

**Science and technology.** Through the transfer of new technologies between countries, enterprises contribute to economic and social progress. Enterprises play an important role in developing national innovative capacities.

**Competition.** Enterprises should operate in a manner consistent with all applicable competition laws and regulations, and refrain from anti-competitive activities. This contributes to functioning markets that promote welfare and economic growth.

**Taxation.** Enterprises should contribute to the public finances of host countries by making timely payment of taxes and avoid inappropriate shifting of profits or losses to reduce the tax burden.

## A. OECD NCP NORWAY

*National Contact Points “Will be composed and organised such that they provide an effective basis for dealing with the broad range of issues covered by the Guidelines and enable the NCP to operate in an impartial manner while maintaining an adequate level of accountability to the adhering government”.* (PROCEDURAL GUIDANCE, I.A.1)

The Norwegian NCP was reformed in 2010. Since March 2011 the NCP is in substance independent of the government. The NCP comprises four individually appointed expert members and a secretariat recruited by the Ministry of Foreign Affairs. The Ministry of Foreign Affairs and the Ministry of Trade and Industry name the expert members based on proposals from business, civil society and trade unions. The expert members assess complaints based on material prepared by the secretariat. The NCP and the secretariat also conduct promotional activities regarding the Guidelines.

All members of the NCP have signed a declaration of transparency, confidentiality, trade restrictions, and impartiality.

The NCP is funded by and reports administratively to the Norwegian Ministry of Foreign Affairs. As a publicly funded and administered institution, the NCP complies with Norwegian laws and regulations, such as the Norwegian Freedom of Information Act and the Norwegian Public Administration Act.

The NCP participates in the Government’s consultative body for corporate responsibility, KOMpakt. The NCP also reports to the Norwegian parliament on a voluntary basis.

The NCP has an annual budget of approximately 4 MN NOK (525 000 Euro). The budget covers salaries to the secretariat, remuneration to the NCP members, travelling, consultant services and fact finding related to specific instances and information work, as well as administrative costs such as rent. The chair receives approximately EUR 16 000 a year, while each of the remaining three members receives approximately EUR 10 000 a year. The NCP spent 99 per cent of the budget in 2012 and 75 per cent of the budget in 2011.

### Establishment of a new NCP

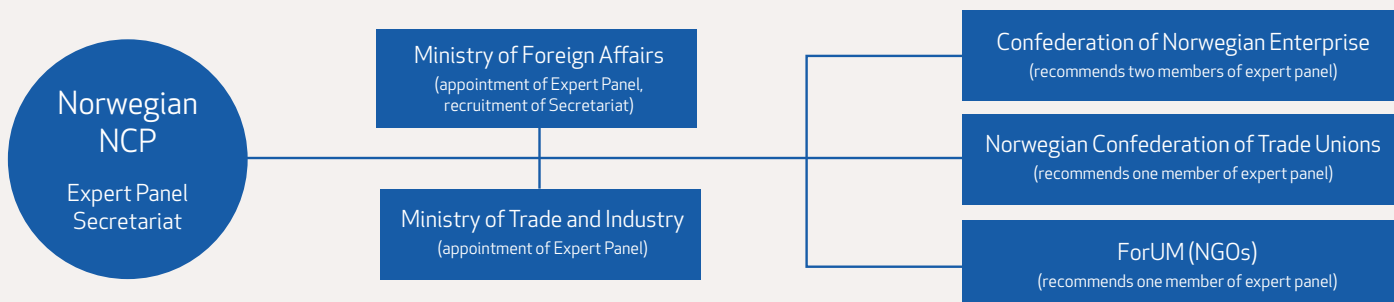
Civil society had called for a more efficient and independent grievance mechanism. In 2010, the Government decided that in order to strengthen the NCP it would have to be restructured. The changes made to the NCP’s composition, administration and budget were based on a Government report to the Parliament entitled “Corporate Social Responsibility in a Global Economy” (Report to the Parliament nr. 10, 2008-09).



From left: Chair Hans Petter Graver, dean and professor of law at the University of Oslo; Gro Granden, special adviser at the Norwegian Confederation of Trade Unions (LO); Elin M. Myrmel-Johansen, Information Director Storebrand; and Jan Erik Korssj en, former CEO Kongsberg Group, and lecturer at Buskerud College and the Norwegian University of Life Sciences. Photo: Anita Arntzen

The rationale for the restructuring was that the former model contained many inherent deficiencies, such as the perceived domination of government interests, appointment on the basis of position, insufficient financial resources, and the absence of civil society representation.

The transition included an extensive consultation process that sought valuable input from the likes of OECD Watch, the British and Dutch NCPs, as well as the UN Special Representative to the Secretary-General on Business and Human Rights, Professor John Ruggie. Key stakeholders, such as labour organisations, civil society, business, academia and government offices also contributed.



Members of NCP Norway are individually appointed by the Ministry of Foreign Affairs and the Ministry of Trade and Industry on the basis of proposals from the Confederation of Norwegian Enterprise (NHO), the Norwegian Confederation of Trade Unions (LO) and the Forum for Environment and Development (ForUM).

## CRITERIA for non-judicial grievance mechanisms

In adhering to the OECD Guidelines for Multinational Enterprises, all NCPs shall seek to:

- Fulfil the criteria for non-judicial grievance mechanisms set forth by OECD and UN
- Make the OECD Guidelines known and available
- Respond to enquiries from companies, labour organisations, civil society and other interested parties
- Assess complaints and contribute to resolving cases that arise regarding breaches of the Guidelines, and where dialogue or mediation is not feasible, publish a final statement on the complaint
- Report annually to the Investment Committee
- Share experience and discuss cases and best practices with NCPs in other countries

### OECD Core Criteria



**Visibility.** Adhering governments should inform the business community, worker organisations, NGOs and other interested parties about the availability of facilities associated with NCPs. Governments are expected to publish information about their NCP and to take an active role in promoting the Guidelines (i.e. by hosting seminars and meetings, which could be done in co-operation with different stakeholders).

**Accessibility.** Easy access to NCPs is important to their effective functioning. NCPs respond to all legitimate requests for information and also deal with specific issues raised by different parties in an efficient and timely manner.

**Transparency.** Transparency contributes to the accountability of the NCP and is important for gaining the confidence of the general public. Activities of NCPs should be transparent, although it is recognised that in specific instances NCPs might take appropriate steps to establish confidentiality of the proceedings. Outcomes of specific instances, however, will be transparent unless preserving confidentiality is in the best interests for the effective implementation of the Guidelines.

**Accountability.** A more active role in enhancing the profile of the Guidelines – and their potential to aid in the management of difficult issues between enterprises and the societies in which they operate – puts the activities of NCPs in the public eye. Nationally, parliaments could have a role to play. Annual reports and regular meetings of NCPs provide an opportunity to share experiences and encourage best practices. The OECD Investment Committee also holds exchanges of views, where experiences are exchanged and the effectiveness of the activities of NCPs could be assessed.

### UN Guiding Principles' Effectiveness Criteria for Non-Judicial Grievance Mechanisms



In accordance with the criteria set forth in the UN Guiding Principles on Business and Human Rights, the Norwegian NCP strives to be:

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

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

**Predictable:** proving a clear and known procedure with an indicative timeframe for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;

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

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

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

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

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

## B. INFORMATION AND PROMOTION

*“The National Contact Point will: 1. Make the Guidelines known and available by appropriate means, including through on-line information, and in national languages. Prospective investors (inward and outward) should be informed about the Guidelines, as appropriate.” (PROCEDURAL GUIDANCE, B.)*

### Communication Plan

The Norwegian NCP Communication Plan outlines the NCP’s vision, mandate, core criteria, stakeholder groups, key operational goals and key messages. All communication goals are linked to one of the NCP’s three key operational goals. For instance:

1. The NCP deals with complaints regarding possible breaches of the OECD Guidelines in a manner that is impartial, predictable, equitable and compatible with the Guidelines. Communication goal: Procedures for specific instances, initial assessments and final statements are published on our website.
2. Key stakeholders, such as large and medium sized enterprises as well as potential notifiers, are aware of the Guidelines. Communication goals: The NCP documents knowledge of the OECD Guidelines through annual surveys. The NCP has an accessible website. The NCP responds to all legitimate requests for information in an efficient and timely manner. The NCP presents the Guidelines and the NCP at seminars held by key stakeholders.
3. Cooperate with other NCPs and the OECD Investment Committee with the aim that NCPs work effectively, and that they develop similar practices and understanding of the OECD Guidelines.<sup>1</sup> Communication goals: The NCP shares all information products developed with the OECD investment committee and with other NCPs. The NCP contributes to regional and thematic workshops with NCPs and other key stakeholders.

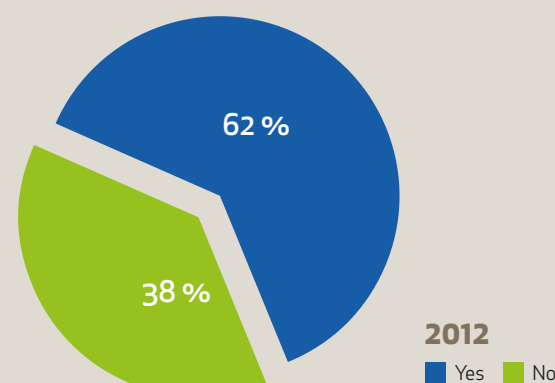
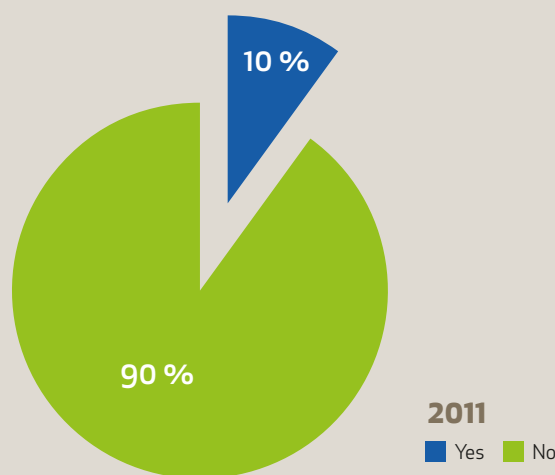
<sup>1</sup> The principle of functional equivalence and the NCP’s contribution to the OECD “proactive agenda” is described in the Implementation Procedures of the OECD Guidelines. See for instance Commentary 9, 17 and 18.



**Media** The Norwegian NCP issues press releases on the conclusion of specific instances.

### Increased knowledge of the OECD Guidelines

NCP Norway conducts an annual survey amongst 600 companies on awareness of the Guidelines and the complaint mechanism. Approximately half of the companies have international activities either through production, trade or investments. In 2012 six out of ten business leaders had heard of the Guidelines, against one out of ten in 2011. Of the six out of ten, 51 per cent had heard about the Guidelines, ten per cent had looked into them and one per cent knew them well.



## MEETINGS and NETWORKS

NCP Norway organises and participates actively in meetings, seminars and conferences in order to increase awareness of the Guidelines. In 2012/2013 the NCP co-organised three stakeholder meetings in Brasilia, Oslo and Santiago de Chile respectively.

In addition the NCP presented the Guidelines and the Norwegian NCP specific instances in over a dozen workshops and conferences organised by others, including at an EU workshop on national human rights institutions, Berlin, an EU expert conference on business and human rights, Copenhagen, the UN Forum for business and human

rights, Geneva, “Resolving Company-Community Conflicts” by the World Legal Forum, Hague, Sami Parliament seminar about mineral extraction, Karasjok, Institute for Human Rights and Business and UK NCP workshop on NCPs and the extractive sector, London, Singapore University Summer Institute on Business and Human Rights Singapore, Norwegian Ministry of Trade and Industry conference “CSR – a driver of innovation and competitiveness in the Nordic region”, Trondheim and by video link to the Danish Chamber of Commerce, Copenhagen and ILO-ITC, Rome.

The NCP also had a series of meetings with key stakeholders.



Head of Secretariat from 1 March 2011 – 1 June 2013, Ms. Hege Rottingen, presented the Norwegian NCP at the first UN Global Forum on Business and Human Rights in Geneva December 2012.

<http://bit.ly/11ZSWAI>



The NCP invited the parties to the Cermaq case to present their joint statement at the Annual meeting for NCPs in Paris in June 2012. The parties also presented the statement at a seminar in Santiago de Chile in November.



Vice Chair of the NCP Elin M. Myrmet-Johansen discussed business and human rights at the Oslo CSR Conference organised by the Norwegian Ministry of Foreign Affairs in November 2012.

## Collaboration with GIEK and other public agencies to promote the Guidelines

In its white paper on Corporate Social Responsibility in a Global Economy (Report no. 10, 2008-09), the Norwegian Government stated that it will “work to increase knowledge and guidance about the Guidelines, among other things through the NCP and relevant public instruments”. In this respect, the NCP maintains close contact with the Norwegian Guarantee Institute for Export Credits (GIEK). The NCP has considered standards and practices GIEK utilizes when conducting environmental and human rights due diligence in the projects it supports, exchanged views on best practices and approaches, and shared common experience and advise in cases where GIEK has considered similar issues or sectors. GIEK has informed its exporters about the Guidelines, the Norwegian NCP, and the complaint mechanism, as well as advocated, within the Export

Credit Group of the OECD, for the inclusion of a reference to the Guidelines in the revision of the OECD Recommendation on the Environment and Officially Supported Export Credit. GIEK has expressed that they take consideration of the findings and opinions of the NCP when reviewing projects they support, and would consult the NCP in the event that a complaint would be raised against a company or project GIEK is reviewing for officially supported export credit. The NCP has also initiated and will continue to increase collaboration with other public institutions to promote the Guidelines such as Norfund, the Council on Ethics for the Norwegian Government Pension Fund Global, the Ministries of Trade, Finance, Environment and Foreign Affairs and Export Credit Norway.

## C. PROACTIVE AGENDA

*“In accordance with the Investment Committee’s proactive agenda, NCPs should maintain regular contact, including meetings, with social partners and other stakeholders in order to: a) consider new developments and emerging practices concerning responsible business conduct; b) support the positive contributions enterprises can make to economic, social and environmental progress; c) participate where appropriate in collaborative initiatives to identify and respond to risks of adverse impacts associated with particular products, regions, sectors or industries.”*

(COMMENTARY ON IMPLEMENTATION PROCEDURES, PARA. 18)



How to engage with stakeholders, including indigenous peoples, is a key issue on the OECD proactive agenda. Photo: Plan Norway

The OECD Investment Committee’s “proactive agenda” includes developing guidance to help enterprises identify and respond to risks of adverse impacts associated with particular products, regions, sectors or industries. In 2012/2013, the Investment Committee established two working groups on 1) stakeholder engagement in the extractive sector, co-funded by Canada and Norway (the Ministry of Foreign Affairs) and 2) financial due diligence, funded by the Netherlands. The working groups are multi-stakeholder and have expert representations.

To contribute to the proactive agenda, the Norwegian NCP prioritises to contribute to workshops and working groups related to specific instances that have been or are being handled by the NCP, or that are of special interest to Norwegian stakeholders, including business, civil society and trade unions. In 2012/2013

the Norwegian NCP:

- Participated in the OECD working group for financial due diligence and the working group for stakeholder engagement in the extractive industry
- Invited the Sami Parliament to suggest candidates for the working group on stakeholder engagement in the extractive sector
- Participated in a panel on NCPs role in the extractive sector in a workshop organised by Institute for Human Rights and Business (IHRB) and UK NCP. This workshop was a follow-up to a similar workshop co-organised by Norway NCP and IHRB in March 2012
- Contributed to a seminar about due diligence in the ICT sector, co-organised with IHRB, at the OECD Global Forum for Responsible Business Conduct in Paris



## Tools and Resources

### OECD TOOLS FOR DUE DILIGENCE

The OECD has several tools supplementing the Guidelines to help companies implement responsible business procedures. The OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas and the OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones are both available on the Norwegian NCP website, and have been distributed to key stakeholder groups in our newsletter.



## Red Flags for Human Rights Abuses



**RED FLAGS**  
LIABILITY RISKS FOR COMPANIES  
OPERATING IN HIGH-RISK ZONES

In addition to OECD risk assessment tools, the Norwegian NCP endorses the Red Flags pamphlet and website, developed by International Alert and Fafo, the Norwegian Institute for Applied International Studies. “The Red Flags are an indispensable tool alerting companies to risks that may contribute to serious human rights abuses--enabling them to change their plans before harm occurs,” says Professor John Ruggie, UN SRSG for Business and Human Rights. [www.redflags.info](http://www.redflags.info).

## D. COLLABORATION WITH OTHER NCPS

*“In addition to contributing to the Committee’s work to enhance the effectiveness of the Guidelines, NCPs will engage in joint peer learning activities. In particular, they are encouraged to engage in horizontal, thematic peer reviews and voluntary NCP peer evaluations. Such peer learning can be carried out through meetings at the OECD or through direct co-operation between NCPs.” (COMMENTARY TO THE IMPLEMENTATION PROCEDURES, PARA. 19)*



NCPs Chile and Norway co-organised a seminar in Santiago de Chile. From left: Chair of NCP Norway, Hans Petter Graver, former Managing Director of Friends of the Earth Norway, Jan Thomas Odegard, Chair of the Board of Cermaq ASA, Baard Mikkelsen, former chair of NCP Chile, Marcelo Garcia and Director of Ecocéanos, Juan Carlos Cardenas.

NCP Norway contributes to the development of similar practice by sharing all information material it produces. For transparency and accountability reasons, the NCP publishes all of its final assessments and mediated outcomes in full, including the factual basis, reasoning and assessment, each substantiated with footnotes to provide access to the specific sources on which the assessment is built.

In 2012/13, the NCP contributed to sharing good practices by:

- Chairing the annual meeting of the OECD NCPs in Paris, June 2012 and sharing experiences in meetings in the Investment Committee in December 2012 and March 2013
- Working to strengthen regional collaboration by organising a Nordic Roundtable in Oslo in November 2012, and working together with Latin American NCPs on workshops in Santiago de Chile and Brasilia in November 2012 and January 2013
- Chairing the Peer Review of Japan and pledging a Peer Review of itself for autumn 2013
- Working together with other NCPs and specific industries on the Guidelines, e.g. extractives, telecommunications

Collaboration with relevant NCPs in specific instances is another opportunity for NCPs to increase their efficiency and achieve functional equivalence. In 2012/13, NCP Norway:

- Co-organised a presentation in Santiago de Chile with NCP Chile

- on the mediated joint statement between Cermaq ASA, Friends of the Earth Norway and Forum for Environment and Development
- Worked actively with NCP Sweden on the specific instance *Jijnjevaerie vs. Statkraft AS*
- Received information from and kept NCP Morocco informed about the Specific Instance Norwegian Support Committee for Western Sahara vs. *Sjøvik AS*
- Coordinated with NCPs Netherlands and South Korea concerning the *Posco/ABP-AGP/NBIM* case



The Norwegian NCP co-organised a workshop on the OECD Guidelines and NCPs with NCP UK and Brazil in Brasilia on 28 January 2013. Hydro, represented by Ms. Anne-Lene Midseim, was invited and shared dilemmas related to establishing grievance mechanisms with local groups in Brazil and other countries where Hydro has activities.

## Peer Review

A “Peer Review” is a voluntary evaluation in the OECD system all NCPs are encouraged to sign up for. The aim is to identify good practice and give improvement recommendations. The Norwegian NCP will be undergoing a peer review 21 to 23 October 2013.

A group of NCPs with assistance from the OECD Investment Committee Secretariat will evaluate the Norwegian NCP. The evaluation is coordinated by the organisation Shift, hired by the Norwegian NCP after a public tender. Shift is chaired by Caroline Rees with UN SRSG on Business and Human Rights as Chair of the Board of Trustees. The outcome of the process will be a report on how the Norwegian NCP handles complaints and promotes the Guidelines. The report will be written by Shift, presented at the OECD and then published. If you want more information, please contact the NCP secretariat.

## Mediation Manual

The British, Dutch, and Norwegian NCPs have all successfully concluded specific instances by mediation. In order to improve operational performance and share experiences with other NCPs, the three NCPs funded and developed a manual on mediation that was launched at the last annual meeting in Paris in June 2012.

The Norwegian NCP finds mediation to be its most effective tool. Participation in mediation is voluntary, but NCPs may be able to bring parties into dialogue by outlining the benefits of such a decision:

- Engaging in the process will allow all parties greater influence over the outcome that would otherwise have been forfeited
- A more proactive stance on behalf of the company towards engaging in dialogue with critical stakeholders can contribute to their branding and “good name”
- Notifiers may be able to procure a more concrete commitment to future implementation of the Guidelines from the company



Norway chaired the delegation of NCPs that participated at the Japanese peer review in 2012.



## E. NCP PROCEDURES IN SPECIFIC INSTANCES

*“The NCP will contribute to the resolution of issues that arise relating to implementation of the Guidelines in specific instances in a manner that is impartial, predictable, equitable and compatible with the (...) Guidelines.”*

(PROCEDURAL GUIDANCE I, C)

*“NCPs should provide information (...) on the information that is necessary to raise a specific instance, the requirements for parties participating in specific instances, including confidentiality, and the processes and indicative timeframes that will be followed.”* (PROCEDURAL GUIDANCE, COMMENTARY, I.15)

Although NCPs are not legal bodies, they may assess whether or not enterprises have breached the OECD Guidelines, and also assist companies and other stakeholders in resolving issues that arise in relation to the Guidelines. No other international guidelines for corporate responsibility have such a complaint mechanism. NCPs deal with cases on request. Mediation by the Norwegian NCP is offered free of charge to the parties involved.

Norwegian NCP procedures are updated according to the Procedural Guidelines adopted at the OECD Ministerial Meeting on 25 May 2011. In addition to the transparency requirements of the Guidelines,

the Norwegian NCP complies with the Norwegian Freedom of Information Act. All information will be made public, except when information may cause harm to individuals, reveal business secrets or expose certain details of the mediation process. Initial assessments, final statements, mediated outcomes, press releases and the Norwegian NCP procedures are fully explained and accessible on our website. Mail to the NCP will be handled in accordance with the Norwegian Freedom of Information Act. This means that you must assume that the content of your e-mail can be made publically available if someone asks for access to it.

### The Norwegian NCP complaint process is divided into the following key stages:

#### Stage 1: Initial Assessment

A desk-based analysis of the complaint, the company's response and any additional information provided by the parties. The NCP uses this information to decide whether further consideration of a complaint is warranted.

*Normally three months*

#### Stage 2: Mediation OR examination

If a case is accepted, the NCP offers conciliation/mediation to both parties with the aim of reaching a settlement agreeable to both. Should conciliation/mediation fail to achieve a resolution or should the parties decline the offer, the NCP will examine whether the complaint is justified.

*Normally six to twelve months*

#### Stage 3: Final statement

If a mediated settlement is reached, the NCP will publish a final statement with details of the agreement. If mediation is refused or fails, the NCP will publish a final statement on whether the Guidelines have been breached and, if appropriate, make recommendations to the company for future conduct.

*Normally within three months after the conclusion of the procedure*

## GUIDING PRINCIPLES FOR SPECIFIC INSTANCES

Consistent with the core criteria for functional equivalence, in their activities NCPs should deal with specific instances in a manner which is:

**Impartial:** NCPs should ensure impartiality in the resolution of specific instances.

**Predictable:** NCPs should ensure predictability by providing clear and publicly available information on their role in the resolution of specific instances, including the provision of good offices, the stages

of the specific instance process including indicative timeframes, and the potential role they can play in monitoring the implementation of agreements reached between the parties.

**Equitable:** NCPs should ensure that the parties can engage in the process on fair and equitable terms, for example by providing reasonable access to sources of information relevant to the procedure.

**Compatible with the Guidelines:** NCPs should operate in accordance with the principles and standards contained in *the Guidelines*.

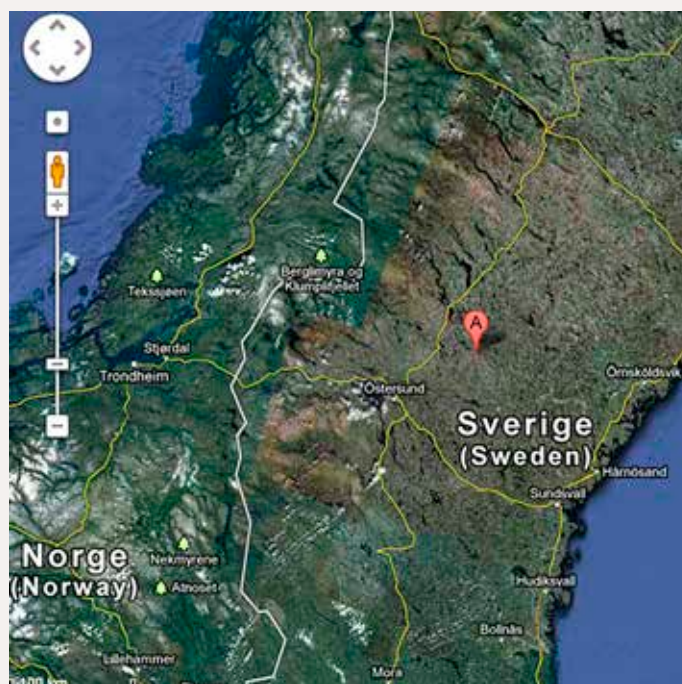
# ON-GOING SPECIFIC INSTANCES

## Jijnjevaerie Saami Village vs. Statkraft AS

WIND POWER PROJECT IN REINDEER HERDING AREA			
Date Filed: October 2012	Status: On hold		
Company/ies	Statkraft AS	Industry concerned	Energy
	Jijnjevaerie Saami Village		
Lead National Contact Point	Sweden	Secondary National Contact Point(s)	Norway
Relevant Chapter(s) of the Guidelines <sup>1</sup>	II (General Policies), IV (Human Rights), VI (Environment)		
Documents available online	NCP Initial Assessment, Preliminary views from company, Complaint		

The Norwegian and the Swedish OECD National Contact Points (NCPs) on 14 February 2013 in principle accepted, but deferred the consideration of, a notification from the Sami reindeer herding collective Jijnjevaerie Sami Village against the Norwegian state-owned company Statkraft AS. The notification concerns alleged breaches of the OECD Guidelines for Responsible Business Conduct (the Guidelines) by Statkraft AS in its wind farm projects in the counties of Jämtland and Västerbotten, Sweden. The joint venture Statkraft SCA Vind AB, of which Statkraft owns 60 per cent, operates the wind power project. Jijnjevaerie Sami Village claims that it has not been adequately consulted about the parts of the project that affect their reindeer herding, and that Statkraft AS risks breaching the Guidelines provisions on the corporate responsibility to respect human rights if they do not engage in meaningful consultations. Their main request to Statkraft AS was to engage in such consultations with the Sami Village. The Sami Village requested the NCPs to facilitate such a dialogue.

How a multinational company engages with relevant stakeholders and respects the internationally recognised human rights of those affected by their activities, including indigenous peoples, fall within the scope of the Guidelines. The NCPs also find that the notifier has a legitimate interest in the matter, that the claims concerning stakeholder engagement are material and substantiated, and that there is a link between the enterprise's activities and the issue raised. That the notification is admitted does not necessarily mean that the enterprise has breached the Guidelines. The NCPs have only considered whether the notification could merit further consideration, and not the substance of the claims. However, since a bilateral dialogue between the parties had been renewed since the notification, the NCPs decided to defer the case to allow the parties to find a mutually acceptable solution to this situation without the NCPs' assistance. The case is put on hold until either of the parties requests the NCPs to open the case.



Google Maps

# CONCLUDED SPECIFIC INSTANCES 2011–2013

## Norwegian Support Committee for Western Sahara vs. Sjøvik AS

FISHERIES OFF THE COAST OF WESTERN SAHARA			
Date Filed: 5 December 2011	Status: Concluded by mediated Joint Statement 2 July 2013		
Company/ies	Sjøvik AS	Industry concerned	Fishing
Complainant(s)	Norwegian Support Committee for Western Sahara (NSCWS) (NGO)		
Lead National Contact Point	Norway	Secondary National Contact Point(s)	Morocco
Relevant Chapter(s) of the Guidelines	Chapter IV (Human Rights)		
Documents available online	Joint Statement, NCP Final Statement, Press Releases, NCP Initial Assessment, Notification, Media Coverage		

The notifier claimed that Sjøvik AS, which through a joint venture operates a fishing vessel and a fish processing plant in the Non-Self-Governing territory of Western Sahara, has failed to respect the Saharawi right to self-determination, and thereby has violated the human rights provisions of the Guidelines. NSCWS stated that the operations should be discontinued. Sjøvik AS denied that the human rights provisions of the Guidelines has been violated, accentuated that the complaint seemed to be politically motivated, and maintained that its investment benefits the Saharawis.

### Joint Statement

After the initial assessment where the NCP found the complaint to be substantiated and sufficiently linked to the Guidelines, both parties initially rejected the NCP's offer to facilitate mediation. However, they both reverted on 27 May 2012 to accept the offer. The parties reached an agreement after mediation conducted by former Supreme Court judge and former director of the Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime, Lars Oftedal Broch, on behalf of OECD NCP Norway. The parties' board chairmen signed the joint statement on 2 July in Molde, Norway. As a consequence the complaint was withdrawn.

The joint statement refers to the parties' disagreement on whether Sjøvik AS should operate in Western Sahara. The parties agree to request Norwegian authorities to give unambiguous advice to businesses operating in conflict areas. They also agree that Sjøvik AS shall carry out environmental and social impact assessment for its activities based on the principles set out in the new OECD Guidelines and UN Guiding Principles on Business and Human Rights, and publish content in the report in accordance with the OECD Guidelines, chapter III (Disclosure). Sjøvik will also publish "codes of conduct" and make sure that its internal grievance mechanism meets the Guidelines' requirements by the end of 2013.



Photo: NCP Norway

### Recommendations

Since the mediation in this Specific Instance was successful, the NCP has not examined the merits of the claims in the complaint. The NCP nevertheless underscores on a general basis that there is a heightened due diligence requirement for business in relation to human rights violations when operating in or from areas in conflict. The NCP also encourages the company to draw on human rights expertise on how to conduct the human rights impact assessment for Sjøvik's activities in Western Sahara. The NCP furthermore recommends that the parties continue their dialogue, and invites both parties to a follow-up meeting tentatively in May 2014.

## Forum for Environment and Development (ForUM) vs. Norges Bank Investment Management

DUE DILIGENCE IN THE FINANCIAL SECTOR			
Date Filed: 17 October 2012	Status: Concluded by Final Statement on breaches of the OECD Guidelines 27 May 2013		
Company/ies	Norges Bank Investment Management	Industry concerned	Financial sector
Complainant(s)	Forum for Environment and Development (NGO)		
Lead National Contact Point	Norway	Secondary National Contact Point(s)	The Netherlands, South Korea
Relevant Chapter(s) of the Guidelines	II (General Policies), III (Disclosure), IV (Human Rights) [VI (Environment)]		
Documents available online	NCP Initial Assessment, Complaint, Attachment to complaint, Questions to the company, NCP Final Statement, Statement by the UN High Commissioner for Human Rights, Press Release, Media Coverage		

The Norwegian, Dutch and South Korean Contact Points (NCPs) received a complaint from the four non-governmental organisations (NGOs): Lok Shakti Abhiyan (India), KTNC Watch (South Korea), Fair Green and Global Alliance (the Netherlands) and Forum for Environment and Development (Norway) on 9 October 2012. The notification concerned alleged breaches of the Guidelines by South Korean Pohang Iron and Steel Enterprises (POSCO) through its subsidiary POSCO India Private Limited. The notification was also directed at two of POSCO's investors; (1) the Dutch pension Fund ABP and its pension administrator APG, and (2) Norges Bank Investment Management (NBIM) of the Government Pension Fund Global.

In accordance with the OECD Guidelines' Procedural Guidance, the Dutch, Norwegian and South Korean NCPs agreed to coordinate, but also handle the notification against the enterprise registered in their respective country. The Norwegian NCP accepted the case against NBIM. The assessment was specifically limited to whether NBIM has acted in accordance with the Guidelines. Thus, the NCP report does not examine the POSCO investment, but exclusively deals with NBIMs general human rights due diligence policies.

This Specific Instance concerned POSCO India's project to set up an integrated steel plant and infrastructure in the Jagatsinghpur District in Odisha, India. The notifiers claimed that NBIM had failed to take the appropriate steps to prevent or mitigate negative human rights and environmental impacts in connection with its investment in POSCO, of which NBIM owns 0,9 per cent. The notifiers further claimed that the project in India will result in physical and economical marginalisation of more than 20.000 local residents. Their main request to NBIM was to use their leverage in order to influence POSCO.

NBIM submitted that the OECD Guidelines do not apply to minority shareholders.

The Norwegian NCP found that the Guidelines are applicable to minority shareholders. The Guidelines apply to the financial sector, and they do not make any exceptions for sub-groups of investors, nor do they exempt minority shareholders. The UN High Commissioner

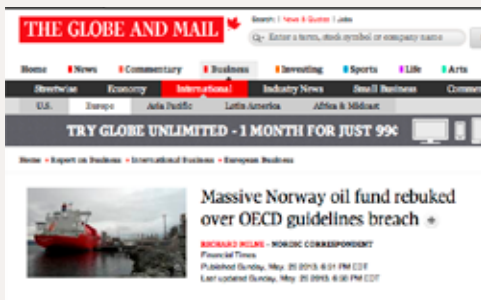
for Human Rights and the Dutch and UK NCPs supported this view. The question of how the guidelines apply for a shareholder with numerous small shareholder positions formed the basis for the Norwegian NCP's examination.

### Non-cooperation

The Norwegian NCP concluded that NBIM violated the OECD Guidelines by refusing to cooperate with the NCP. According to the Guidelines, cooperation with NCP is a key part of "responsible business practise". The NCP had meetings with NBIM on two occasions, and NBIM was given the opportunity to address the complaint via dialogue/mediation or written procedure. NBIM rejected the NCP's offer of dialogue and chose the written procedure. 4 January 2013 NBIM was presented with 32 questions. The NCP did not receive a satisfactory response, either in writing or orally, even after pointing out that the general presentation was not adequate. Since dialogue proved difficult, the NCP decided to examine the complaint and prepare a final statement. The notifiers and NBIM were given the opportunity to correct factual mistakes before the statement was published. The Norwegian NCP found that in light of the Norwegian people's expectation to state owned enterprises, NBIM's conduct is particularly regrettable. The NCP also notes that ABP/APG collaborated with the Dutch NCP and released a joint statement with the notifier.

### Human Rights

Human Rights was the focus of the ForUM submission concerning NBIM. The Norwegian NCP examined two dimensions of the application of Chapter IV (Human Rights). First, the extent to which NBIM had integrated the OECD Guidelines provisions on human rights into its policies and processes, and secondly the steps NBIM had taken, or omitted, in response to the allegations in this Specific Instance. NBIM had a strategy on the risk of child labour available on its website, but violated the Guidelines by not having any strategy on how to react if it becomes aware of other human right risks related to companies in which NBIM has invested. NBIM



The conclusion of the case ForUM vs. NBIM received extensive press coverage in Norway and abroad.

The facsimile of the Reuters website has been manipulated to remove irrelevant content.

could decide not to invest, or seek to impose conditions, for instance by shareholder proposals, engagement with management and the threat of divestment.

### Disclosure

Due to the lack of information NBIM provided, the Norwegian NCP found it difficult to conclude whether NBIM has acted in accordance with the Guidelines Chapter III (Disclosure). NBIM demonstrated lack of disclosure in three areas in this Specific Instance: (1) non-cooperation with the NCP, (2) lack of communication on its human right due diligence and (3) non-observance of the OECD Guidelines Chapter III. NCP did not receive any information to indicate whether NBIM intended to investigate the allegations that POSCO was responsible for large scale human rights impacts. NCP found that there can be legitimate reasons why NBIM cannot always provide detailed information about a dialogue with a specific company, but there is an opportunity for greater openness that NBIM should have used to disclose more to the NCP and to the general public.

### Recommendations

To align policies and processes with the Guidelines, the NCP recommends that NBIM, as a minimum:

- Cooperate with the NCP, by responding to the 32 questions and accepting the offer of dialogue/mediation
- Is more transparent in showing how NBIM is a responsible investor in this Specific Instance
- Disclose more information related to the risk of its portfolio companies impacting all human rights, not only child labour
- Expand human rights due diligence in connection with its investments to address the whole range of human rights
- Identify which human rights risks are prevalent in the various sectors or types of investments, and develop a strategy to address these
- Include in the strategy to work with other investors to encourage selected investees with particular risks to establish a grievance mechanism
- Publicise the strategy on human rights due diligence. Disclosure will make NBIM less vulnerable to criticism that NBIM addresses human rights risks randomly
- In addition to these core recommendations, the NCP recommends that NBIM acts upon the more detailed recommendations outlined at the end of the Final Statement



## Future In Our Hands (FIOH) vs. INTEX

NICKEL PROJECT IN THE PHILIPPINES			
Date Filed: 26 January 2009	Status: Concluded by Final Statement on breaches of the Guidelines on 30 November 2011		
Company/ies	Intex Resources ASA	Industry concerned	Mining and Quarrying
Complainant(s)	Future in Our Hands (NGO)		
Lead National Contact Point	Norway	Secondary National Contact Point(s)	None
Relevant Chapter(s) of the Guidelines <sup>1</sup>	Chapter II (General Policies), Chapter V (Environment), Chapter VI (Combating Bribery)		
Documents available online	NCP Final Statement, Fact finding reports, Questions to the company, Notification, Press Release		

The complaint claimed that Intex conducted flawed consultations with indigenous populations, engaged in bribery and corruption, and that there was potential for serious environmental damage if the project continued.

The Norwegian NCP concluded in a 50 page report including 233 footnotes that the OECD Guidelines are applicable to enterprises that are still at the planning or exploratory stages of their operations. Abiding by national law in itself is not sufficient for compliance with the Guidelines. On 24 September 2012, the NCP and Intex Resources met in a follow-up meeting requested by the company. Intex Resources presented a report commissioned to assess the NCP's conclusions. The NCP took note of the report, and underscored that the NCP report was final. The NCP recommends the company to follow the NCP recommendations in the report.

### Human rights

The NCP concluded that the company was in breach of the human rights provisions of the Guidelines because it had not consulted broadly enough with the indigenous peoples affected by the project and associated infrastructure.

The company was unable to provide a clear, proactive stakeholder strategy, and thus rendered itself vulnerable to criticism from groups that are affected, but do not see themselves as able to benefit from the project.

### Bribery

The NCP did not find evidence that the company had been involved in bribery or corruption, but recommended that the company establish a sound managerial system to manage such risks, particularly since the operations were in a country figuring at the lower part of international corruption indexes. Nor did the NCP find that Intex had violated the Guidelines by supporting a community development project. However, Intex did not have a transparent, publicly disclosed system for allocating development funds. If a company commences a community project prior to gaining social acceptance, this may raise doubts as to whether the company is undertaking such a project in order to secure an endorsement.

### Environment

Local populations were worried that mining could exacerbate flood problems, pollute rice fields, impact biodiversity, water quality, agriculture and tourism potential. The NCP found that Intex had conducted a detailed Environmental Impact Assessment (EIA), but did not sufficiently distinguish between significant and less significant risks. The EIA had not been disseminated as required by Philippine legislation; nor did it provide adequate information about a number of important aspects of the project or sufficient baseline studies.

The extraction of minerals and metals requires careful assessment and disclosure of potential direct and indirect environmental impacts. Sharing information and engaging in consultations about environmental and health and safety consequences with the local community, including indigenous peoples, is of particular importance for projects with large and potentially lasting impacts for the environment and people.

The Norwegian NCP recommended that the company:

- Conduct due diligence in relation to the entire project impact area
- Engage in consultations with all impacted indigenous peoples in an understandable language and form
- Establish a transparent system for deciding community spending and disclose systematic information on criteria for planned and implemented projects
- Develop disclosure and reporting plans and systems in accordance with the IFC Performance Standards and the Global Reporting Initiative (GRI)
- Prepare a revised Environmental and Social Impact Assessment (ESIA or EIA) that provides a comprehensive and detailed analysis of all the environmental and social implications of all components of the project, including details on waste emissions, potential for marine pollution, implications of related infrastructure and transport routes
- Finalise the environmental and social impact assessment in dialogue with all relevant groups directly affected by the company's operations, and ensure a review by an independent third party
- Establish a grievance management system to cover the range of possible concerns, including environmental health and safety, labour rights and community grievances by impacted groups and indigenous peoples

## Friends of the Earth Norway, Forum for Environment and Development (ForUM) vs. Cermaq ASA

SALMON FARMING IN CHILE AND CANADA			
Date Filed: 19 May 2009	Status: Concluded by mediated Joint Statement 10 August 2011		
Company/ies	Cermaq ASA	Industry concerned	Fishing
Complainant(s)	Friends of the Earth Norway and Forum for Environment Development (NGOs)		
Lead National Contact Point	Norway	Secondary National Contact Point(s)	Chile, Canada
Relevant Chapter(s) of the Guidelines	Chapter II (General Policies), Chapter IV (Employment and Industrial Relations), Chapter VI (Environment)		
Documents available online	NCP Final Statement, Press release, NCP minutes from follow up meeting, Joint Statement, Notification		

The complaint maintained that Cermaq had acted in violation of the Guidelines, claiming it did not take adequate account of indigenous peoples' rights, that it engaged in discriminating trade union practices, and that it conducted flawed environmental due diligence. Cermaq rejected these claims. The Norwegian NCP offered to mediate. In August 2011 the parties agreed on a joint statement.

By engaging in mediation, the parties regained influence over the outcome, rather than leaving it solely to the NCP to determine whether or not the Guidelines had been breached. The parties' willingness to engage with one another has demonstrated to the public that they were able to achieve concrete results on the implementation of CSR practices through constructive dialogue.

### Joint Statement

The agreement describes how Cermaq will operate according to the precautionary principle, indigenous peoples' rights, human rights, labour rights and reporting on sustainability. The Joint Statement also acknowledges that Cermaq, after major outbreaks of the virus infectious salmon anaemia (ISA) in Chile, has contributed to knowledge development to make the industry more sustainable.

– We acknowledge that aquaculture in Chile, including Cermaq's farming activities, was not sustainable in the manner it was done prior to the fish health crisis in 2007. We have learned from the Chilean collapse, and followed through on a number of concrete improvements, says Baard Mikkelsen, Chair of the Cermaq Board.

– We are very pleased that this process concluded with constructive dialogue which both parties are set to continue, he underscores. Friends of the Earth Norway and ForUM acknowledge that Cermaq has learned from the crisis in Chile.

– We see that Cermaq has undertaken positive changes in their routines to prevent fish disease both in Chile and in Cermaq's global business, says Lars Haltbrekken, Chair of Friends of the Earth Norway's board.

Chair of ForUM's board, Andrew P. Kroglund, emphasises the significance of the agreement.

– We are also very pleased that Cermaq through the Joint Statement commits to respecting the rights of indigenous peoples in all areas where they operate, he says.

The parties agree there are accusations in the complaint that have been refuted. The parties also agree that contact should be based on mutual trust and clarification of facts. That Cermaq's CEO participated and that Chair of the Board signed the joint statement clearly demonstrated the company's engagement in the process. The joint statement was a result of concessions from both parties, and they all deserve honour for participating. The notifiers have entrusted the company to follow up on the joint statement in practice.

In accordance with the NCP final statement about the process, NCP Norway facilitated a follow-up meeting in May 2012 and then closed the case. By invitation from the NCP, both the NGOs and the company presented the joint statement at the Annual NCP meeting in Paris in June 2012, and in a meeting co-organised by NCP Norway and NCP Chile together with the business association SOFOFA in Santiago de Chile.



Photo: NCP Norway

# REJECTED SPECIFIC INSTANCES

## Norwegian Climate Network and Concerned Scientists Norway vs. Statoil ASA

OIL SANDS EXTRACTION IN CANADA			
Date Filed: 28 November 2011	Status: Rejected because it was directed towards national policies rather than company policies 13 March 2012		
Company/ies	Statoil ASA	Industry concerned	Mining and Quarrying
Complainant(s)	Norwegian Climate Network and Concerned Scientists Norway (NGOs)		
Lead National Contact Point	Norway	Secondary National Contact Point(s)	Canada
Relevant Chapter(s) of the Guidelines	Chapter VI (Environment)		
Documents available online	NCP Initial assessment, Notification, Press Release		

The complainants claimed that Statoil's oil sands operations contributed to Canada's violation of its international obligations to reduce greenhouse gas emissions in the period 2008–2012. NCP Norway decided to reject the case on formal grounds, while underscoring the challenges that oil sands operations may pose to the climate and the environment.

The Norwegian NCP stated that the complaint, while concerning some of today's most pressing issues, is directed towards Canada's policy of allowing oil sands development rather than towards the manner in which Statoil has operated in the context of this policy. The complaint does not concern the issue of whether Statoil, in its activities, has in fact breached the Guidelines. In order for the NCP

to be mandated to process a complaint, it must concern specified violations of the Guidelines that can be attributable to the company in question.

In highlighting the risks associated with oil sands development, the NCP called particular attention to valid concerns about the current monitoring regime and that land reclamation is not keeping pace with land disturbance, as well as the long-term and cumulative regional effects on groundwater and air quality.

All parties cooperated and engaged positively in the NCP process by readily providing information and comments to the NCP.

## 129 Roma Refugees vs. Norwegian Church Aid

HAZARDOUS CONDITIONS AT REFUGEE CAMP IN KOSOVO			
Date Filed: 22 June 2011	Status: Rejected as Norwegian Church Aid was not acting as an MNE in this instance 27 September 2011		
Company/ies	Norwegian Church Aid	Industry concerned	NGO
Complainant(s)	Dianne Post, representing 129 Roma refugees		
Lead National Contact Point	Norway	Secondary National Contact Point(s)	None
Relevant Chapter(s) of the Guidelines	IV (Human Rights), VI (Environment)		
Documents available online	NCP Initial assessment, Notification, Press Release		

The complainants claimed that Norwegian Church Aid had not performed adequate due diligence in seeking to end or mitigate human rights violations at refugee camps in Kosovo. The complainants claimed that Norwegian Church Aid should be viewed as a Multinational Enterprise (MNE) on the grounds that it receives nearly half of its income from public funds and operates internationally. The complaint against Norwegian Church Aid was rejected by the Norwegian NCP, which concluded that the complaint is not against a "company" as understood by the OECD Guidelines for Multinational Enterprises.

The complaint alleged that, following the 1999 NATO bombing of Kosovo, Roma who did not flee Kosovo were placed in camps for internally displaced persons (IDPs). The camps were allegedly located on land contaminated with lead or land that was used as

a toxic waste dump site. As a result, the inhabitants of the camps experienced severe health problems.

Although NCA did not set up the camps itself, it managed one camp in the region on behalf of the United Nations Interim Administration Mission in Kosovo (UNMIK), and later on behalf of the local government. Since NCA managed the camp, the complainants hold the organisation responsible for alleged negative health impacts caused by exposure to lead poisoning, as well as the lack of basic hygiene and sufficient food.

The Norwegian NCP consulted with the OECD Investment Committee, which supported the view that Norwegian Church Aid, in this specific instance, did not qualify as an MNE. The case, therefore, falls beyond the range of the Guidelines and the mandate of the NCP.



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For more detailed information, see our Annual Report to the OECD on [www.responsiblebusiness.no](http://www.responsiblebusiness.no)