



**Promoting Coherence between the OECD Guidance  
and the Voluntary Principles on Security and Human Rights**

**Promoting coherence between the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas and the Voluntary Principles on Security and Human Rights**

**Author**

This report was commissioned by the Geneva Centre for Security Sector Governance (DCAF). It was prepared by Synergy Consulting Ltd based on research carried out in 2019. Founded in 1999, Synergy is a specialist social performance consultancy registered in England and in South Africa with offices in Oxford (UK), Paris (France) and Johannesburg (South Africa). With over two decades of experience, Synergy has worked in over 70 countries and has a network of expert associates worldwide. Synergy focuses on natural resource industries, particularly large-scale mining and infrastructure projects, supporting them throughout their project cycles from feasibility to closure. Likewise, Synergy has worked with leading companies (not exclusively within the extractive industry) in developing responsible business conduct and addressing human rights and security issues in complex environments, especially in Africa, Latin America and the Middle East.

This research has been interview-driven, although various texts have also been examined. The stakeholders have included actors from the extractive industry, civil society organisations, governments, consultancy firms, research organisations and international organisations.

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DCAF – Geneva Centre for Security Sector Governance (DCAF) is an international foundation whose mission is to assist the international community in pursuing good governance and reform of the security sector. DCAF develops and promotes norms and standards, conducts tailored policy research, identifies good practices and recommendations to promote democratic security sector governance, and provides in-country advisory support and practical assistance programmes.

The Organisation for Economic Co-operation and Development (OECD) is a unique forum where governments work together to address the economic, social and environmental challenges of globalisation. The OECD is also at the forefront of efforts to understand and to help governments respond to new developments and concerns, such as corporate governance, the information economy and the challenges of an ageing population. The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies.

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# ACRONYMS

<b>ARM</b>	Alliance for Responsible Mining
<b>ASM</b>	Artisanal and small-scale mining
<b>CAHRAs</b>	Conflict-affected and high-risk areas
<b>CAPAZ</b>	<i>Cadenas de Paz</i>
<b>CIRAF</b>	Cobalt Industry Responsible Assessment Framework
<b>CLS</b>	<i>Comités Locaux de Suivi</i>
<b>CPS</b>	<i>Comité Provincial de Suivi</i>
<b>CRAFT</b>	Code of Risk-mitigation for artisanal and small-scale mining engaging in Formal Trade
<b>DCAF</b>	Geneva Centre for Security Sector Governance
<b>DMCC</b>	Dubai Multi Commodities Centre
<b>EPRM</b>	European Partnership for Responsible Minerals
<b>EU</b>	European Union
<b>FFP</b>	Fund for Peace
<b>ICA</b>	International Copper Association
<b>ICMM</b>	International Council on Mining and Metals
<b>ICOC</b>	International Code of Conduct for Private Security Service Providers
<b>ICRC</b>	International Committee of the Red Cross
<b>ICWGS</b>	VPs In-Country Working Groups
<b>IFC</b>	International Finance Corporation
<b>IGTs</b>	VPs Implementation and Guidance Tools
<b>IPIECA</b>	International Petroleum Industry Environmental Conservation Association

<b>IRMA</b>	Initiative for Responsible Mining Assurance
<b>ITSCI</b>	The International Tin Association Supply Chain Initiative
<b>LBMA</b>	London Bullion Market Association
<b>LME</b>	London Metal Exchange
<b>LSM</b>	Large-scale mining
<b>MLNR</b>	Ghana Ministry of Lands and Natural Resources
<b>NGO</b>	Non-governmental organisation
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>OGP</b>	<i>Observatoire pour la Gouvernance et la Paix</i>
<b>PMH</b>	<i>Police des Mines et des Hydrocarbures</i>
<b>PNC</b>	Congolese National Police
<b>RJC</b>	The Responsible Jewellery Council
<b>RMI</b>	Responsible Minerals Initiative
<b>SHRIM</b>	DCAF Security and Human Rights Implementation Mechanism
<b>SSG</b>	Security sector governance
<b>SSR</b>	Security sector reform
<b>UNGPs</b>	UN Guiding Principles on Business and Human Rights
<b>US</b>	United States
<b>VPI</b>	Voluntary Principles Initiative
<b>VPs</b>	Voluntary Principles
<b>WANEP-GHANA</b>	West Africa Network for Peacebuilding – Ghana

# 1. EXECUTIVE SUMMARY

## 1.1. INTRODUCTION

Companies operating in complex environments have the potential to contribute to economic growth, peace and stability. However, in contexts characterized by insecurity and weak governance, the extraction, transport, trade and export of resources have often failed to contribute to positive development outcomes for States or communities. When companies fail to demonstrate responsible business conduct, their conduct can lead to adverse impacts on communities where they operate, undermine national governance dynamics and create risks for themselves and their personnel.

Recognizing the impact that businesses have on peace and development, the Organisation for Economic Co-operation and Development (OECD<sup>1</sup>) has been one of the leading international organizations in the area of responsible business conduct, developing relevant guidelines and convening OECD and non-OECD member States around this issue. The OECD Responsible Business Conduct (RBC) Unit is tasked with promoting the OECD Guidelines for Multinational Enterprises and supporting implementation of related sectoral guidance, including the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (henceforth referred to as the OECD Guidance).

Sectoral initiatives in the extractive sector have been adopted to promote responsible business conduct. In 2000, a multi-stakeholder group of companies, governments and civil society organizations established the Voluntary Principles on Security and Human Rights Initiative (VPI). The initiative promotes and implements the Voluntary Principles on Security and Human Rights (VPs), a set of high-level recommendations that seek to manage risks associated with security and human rights in the extractive sector.

The Geneva Centre for Security Sector Governance (DCAF<sup>2</sup>) and the International Committee of the Red Cross (ICRC<sup>3</sup>) work in partnership to address security and human rights challenges

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1. Established in 1961 and based in Paris, the OECD is an international organisation of 36 member nations. The OECD promotes democracy, socio-economic development, free markets and world trade. It functions as a global forum and knowledge hub.

2. DCAF – the Geneva Centre for Security Sector Governance seeks to improve the security of States and people within a framework of democratic governance, rule of law and respect for human rights. DCAF works with national partners and international actors to improve the governance of the security and justice sectors through inclusive and participatory reforms based on international norms and good practices.

3. The ICRC is an independent, neutral organization ensuring humanitarian protection and assistance for victims of armed conflict and other situations of violence. It responds to emergencies and promotes respect for international humanitarian law and its implementation in national law. The ICRC's work is based on the Geneva Conventions of 1949, their Additional Protocols, its Statutes (and those of the International Red Cross and Red Crescent Movement) and the resolutions of the International Conferences of the Red Cross and Red Crescent.

faced by companies operating in complex environments. The DCAF-ICRC partnership supports the translation of key principles into practical guidance for companies and other stakeholders.<sup>4</sup> Both DCAF and the ICRC are observers in the VPI.

## 1.2 OBJECTIVES OF THIS STUDY

Initiatives that promote voluntary principles, standards and good practices can complement and reinforce national efforts toward responsible business conduct. However, the uncoordinated development of initiatives and guidelines can lead to incoherence, duplication of efforts and confusion for stakeholders. It is therefore important that such initiatives reinforce each other and capitalize on complementarities and synergies in order to improve their overall reach and impact.

DCAF, the ICRC and the OECD RBC Unit share the common objectives to promote responsible business conduct in order to protect human rights (as well as international humanitarian law when relevant), to support sustainable development and to improve policy coherence between initiatives. They have thus commissioned the present study with the view to **exploring the relationship between the VPs and the OECD Guidance, in terms of both policy and practice** and to **show how the linkages and associated impacts can be improved**. The endeavour is all the more relevant given that the OECD Guidance specifically refers to the VPs.

Methodologically, this study has combined desktop analysis and a semi-structured interview process. In total, seventeen interviews were carried out with nineteen stakeholders. These stakeholders included actors in the extractive industry, consultancy, research organisations, civil society, government, the OECD and the Secretariat of the VPI.

The study offers **a set of practical recommendations**.

## 1.3 KEY FINDINGS AND RECOMMENDATIONS

This report proposes extensive analysis on policy linkages between the VPs and the OECD Guidance. It also looks at the achievements of the respective initiatives established to implement the VPs and the OECD Guidance, the challenges they encountered and the

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4. Two main products have been developed by DCAF and the ICRC: the Security and Human Rights Knowledge Hub and the toolkit Addressing Security and Human Rights Challenges in Complex Environments, DCAF and ICRC, June 2016. See: <http://www.securityhumanrightshub.org/content/toolkit>

connections between the various practices that have emerged. In this regard, the report offers **a central thread of findings demonstrating why greater coherence between the two initiatives should be sought in practice and how this can be achieved.**

A key finding is that **the VPI can increase its impact and reach through linkage to the OECD Guidance initiative.** When they first emerged in 2000, the VPs addressed the security practices of large-scale extractive operations. The VPs underline the importance of identifying security risks and human rights risks related to mining operations, as well as ensuring private and public security forces that provide security for the company act in a lawful manner and exhibit appropriate conduct. The OECD Guidance, introduced a decade later, reflects a shift in the global regulatory landscape and applies to every level of the supply chain. The OECD Guidance introduces the implementation of the VPs as one of its policy requirements. The VPs, as a result, **reach beyond large-scale mining (LSM) operations to artisanal and small-scale mining (ASM) operations.** The OECD Guidance also **gives the VPs applicability to all points along extractive supply chains that require security,** such as transport routes, trading hubs and export houses. **This presents opportunities for collaboration between stakeholders who have previously worked in silos on the VPs and the OECD.**

Another finding is that since the VPs were developed in 2000, **numerous tools and guidance documents have been developed to explain expectations and provide clarity on responsible security linked to extractive operations.** This set of tools can be useful for actors along the mineral supply chain in relation to their responsible management of security linked to the implementation of the OECD Guidance.

**A further finding is that collaborative opportunities are presented through the greater involvement of LSM in the implementation of the OECD Guidance.** The OECD Guidance is indeed of relevance not only to ASM, but also to LSM, even if its implementation by LSM has remained so far limited. A closer engagement between the VPI, which includes major LSM actors, and the OECD would be an opportunity to reinforce the implementation of the OECD Guidance by LSM. This is timely, since the OECD Secretariat has over the past years been progressively extending the implementation programme of the OECD Guidance to cover additional mineral supply chains, forming the basis for a growing number of international regulations that are changing the wider global regulatory landscape. This includes the new responsible sourcing principles introduced for London Metal Exchange (LME) listed brands and the forthcoming European Union (EU) Conflict Minerals Regulation.

Three sets of recommendations, which build on the key findings of this study, identify opportunities and entry points for enhanced OECD-VPI collaboration:

### **1. Improve due diligence on security and human rights to reflect a changing global regulatory landscape**

Taking into account the new regulatory landscape, including the 2021 entry into force of the new EU Conflict Minerals Regulation and the 2019 responsible sourcing principles for all London Metal Exchange (LME) listed brands, VPI stakeholders and the OECD could jointly consider the development of a common roadmap paving the way for progressive implementation of security and human rights due diligence requirements along supply chains (notably through risk assessment, due diligence processes, auditing and improved public reporting).

### **2. Address security and human rights challenges in ASM contexts**

While the VPs were developed with large-scale operations in mind, VPI stakeholders have developed important policies and processes in the management of security and human rights that would be useful for other sectors, including ASM. The VPs were developed primarily for LSM contexts however, the good practices and guidance they provide do not exclude ASM. Indeed, the ASM sector faces many barriers to implementing the VPs, including a lack of information and resources as well as the need to contextualize the VPs to micro-enterprises or collectives. The OECD and VPI stakeholders could work together to ensure that the experience of VPI stakeholders feeds into the elaboration of refined expectations in relation to the management of security and human rights risks in the ASM sector. The OECD has worked already on FAQs<sup>5</sup> that provide explanation in relation to critical aspects of the OECD Guidance A similar document could be drafted with inputs from VPI stakeholders with a specific focus on security arrangements.

### **3. Take advantage of potential synergies and strategic opportunities between OECD in-country work and VPs In-Country Working Groups (ICWGs) to address security and human rights challenges**

One of the commonalities between the OECD and the VPI is the recognition that a multi-stakeholder process is essential to handle risks related to security and human rights. As a result, both initiatives have been supporting the establishment of multi-stakeholder platforms in various fragile contexts. The VPI and the OECD should work together to share lessons learned from their experiences. The VPI and the OECD should also make sure that these platforms are not duplicating information, but rather building on each other's efforts. The experience of the VPs technical working group in the province of South Kivu in the Democratic Republic of Congo (DRC) can be enlightening in this sense.

All the recommendations are set out in more detail at the end of this report.

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5. OECD, Artisanal and small-scale gold mining, <http://www.oecd.org/daf/inv/mne/artisanal-small-scale-miner-hub.htm>.

## 2. INTRODUCTION

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Companies operating in complex environments have the potential to contribute to economic growth, peace and stability. However, in contexts characterized by insecurity and weak governance, the extraction, transport, trade and export of resources have often failed to contribute to positive development outcomes for States or communities. When companies fail to demonstrate responsible business conduct, their

conduct can lead to adverse impacts on communities where they operate, undermine national governance dynamics and create risks for themselves and their personnel.

Recognizing the impact that businesses have on peace and development, the Organisation for Economic Co-operation and Development (OECD<sup>6</sup>) has been one of the leading international organizations in the area of responsible business conduct, developing relevant guidelines and convening OECD and non-OECD member States around this issue. The OECD Responsible Business Conduct (RBC) Unit is tasked with promoting the OECD Guidelines for Multinational Enterprises and supporting implementation of related sectoral guidance, including the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (henceforth referred to as the OECD Guidance).

Sectoral initiatives in the extractive sector have been adopted to promote responsible business conduct. In 2000, a multi-stakeholder group of companies, governments and civil society organizations established the Voluntary Principles on Security and Human Rights Initiative (VPI). The initiative promotes and implements the Voluntary Principles on Security and Human Rights (VPs), a set of high-level recommendations that seek to manage risks associated with security and human rights in the extractive sector. The

principles guide companies in conducting a comprehensive human rights risk assessment in their engagement with public and private security providers, to ensure human rights are respected. Through the implementation of the Voluntary Principles and participation in the Initiative, governments, NGOs and companies develop relationships through which they can participate in dialogue, engage in mutual learning and joint problem solving, create common approaches to address challenges, and jointly promote human rights for a lasting positive impact.

Recognizing the diversity of challenges facing stakeholders in business, security and human rights, Geneva Centre for Security Sector Governance (DCAF<sup>7</sup>) and the International Committee of the Red Cross (ICRC<sup>8</sup>) came together as likeminded, impartial and neutral organisations to develop solutions to address the complexity of situations where businesses are often underprepared for security and human rights challenges in high-risk and fragile settings; struggle with engaging host governments or public and private security, and would benefit from good practice guidance tools. Through the financial support of the Swiss Federal Department of Foreign Affairs, DCAF and ICRC developed a holistic guidance for companies: The DCAF-ICRC Toolkit, which is also useful for governments, communities and civil society, and security actors. In this way, the DCAF-ICRC partnership supports the translation of key principles into practical guidance for companies and other stakeholders.<sup>9</sup> Both DCAF and the ICRC are Observers in the VPI.

## 2.1 OBJECTIVES AND METHODOLOGY

Initiatives that promote voluntary principles, standards and good practices can complement and reinforce national efforts toward responsible business conduct. However, the uncoordinated development of initiatives and guidelines can lead to incoherence, duplication of efforts and confusion for stakeholders. It is therefore important that such

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7. DCAF – the Geneva Centre for Security Sector Governance seeks to improve the security of States and people within a framework of democratic governance, rule of law and respect for human rights. DCAF works with national partners and international actors to improve the governance of the security and justice sectors through inclusive and participatory reforms based on international norms and good practices.

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9. Two main products have been developed by DCAF and the ICRC: the Security and Human Rights Knowledge Hub and the toolkit Addressing Security and Human Rights Challenges in Complex Environments, DCAF and ICRC, June 2016. See: <http://www.securityhumanrightshub.org/content/toolkit>.

initiatives reinforce each other and capitalize on complementarities and synergies in order to improve their overall reach and impact.

DCAF, the ICRC and the OECD RBC Unit share the common objectives to promote responsible business conduct in order to protect human rights (as well as international humanitarian law when relevant), to support sustainable development and to improve policy coherence between initiatives. They have thus commissioned the present study with the view to **exploring the relationship between the VPs and the OECD Guidance, in terms of both policy and practice** and to **show how the linkages and associated impacts can be improved**. The endeavour is all the more relevant given that the OECD Guidance specifically refers to the VPs.

Methodologically, this study has combined desktop analysis and a semi-structured interview process. In total, seventeen interviews were carried out with nineteen stakeholders. These stakeholders included actors in the extractive industry, consultancy, research organisations, civil society, government, the OECD and the Secretariat of the VPI.

The study first highlights policy linkages between the OECD Due Diligence Guidance and the VPs by exploring the origins and scope of the initiatives as well as the intersections and differences. The study then dives into the achievements and challenges with the respective initiatives, before identifying key synergies and operational linkages, drawing on specific case study examples. Finally, the study offers **a set of practical recommendations**.



## 3. POLICY LINKAGES

This chapter explores how the OECD Due Diligence Guidance and the Voluntary Principles intersect with each other. Some background to the origin and scope of the guidelines and key stakeholders is provided. This draws largely upon the texts themselves and various supporting documents, such as guidance and toolkits.

Key findings are summarised at the end of the chapter as bullet points in a key points box.

### 3.1 ORIGINS AND SCOPE

#### 3.1.1 The Voluntary Principles

Established in 2000, the Voluntary Principles on Security and Human Rights (VPs) are designed to help extractive industry companies maintain the safety and security of their operations while respecting the human rights of those who come into contact with the security setups of those operations.<sup>10</sup> They provide a set of principles that cover three dimensions: risk assessment, interaction with public security and interaction with private security.

To support the implementation of the VPs, the Voluntary Principles Initiative is a tripartite, multi-stakeholder initiative set up by governments, companies and civil society organisations. The VPI is chaired by a member government, rotating annually. The corporate pillar includes large-scale companies from the extractive sector (primarily mining and oil and gas). The membership underlines an important aspect of the Voluntary Principles: they are designed to ensure that upstream large-scale operations implement good practices in securing their people, property and assets. The Voluntary Principles Secretariat is responsible for general administration of the VPI, facilitation of the work of all pillars and members, communications, management of new applications, outreach activities and support for the implementation process.<sup>11</sup>

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10. Voluntary Principles Initiative, 'What are the Voluntary Principles', accessed on 3 October 2019 at: <https://www.voluntaryprinciples.org/what-are-the-voluntary-principles>.

11. Voluntary Principles Initiative, 'The Secretariat', accessed on 3 October 2019 at: <https://www.voluntaryprinciples.org/about/>.

The VPI also has nine observers, including DCAF, the ICRC and the OECD. Other observers include industry associations, international organizations, inter-governmental bodies and national institutions. DCAF has been an important actor for on-the-ground implementation of the principles, mainly through a multi-donor trust fund called the Security and Human Rights Implementation Mechanism (SHRIM). This role has been formalised by the initiative, as DCAF and the VPI have signed an MoU that recognises DCAF's SHRIM as the VPI's preferred organisation to support in-country implementation projects.

In terms of recommended actions, the Voluntary Principles' three core elements can be detailed as follows:

- 1. Risk assessment:** Companies should assess security risks and the potential for human rights violations.
- 2. Public security providers:** Where the services of public security providers (such as the police or military) are required, companies should interact with them in a way that promotes protection of human rights; this includes assessing gaps in public security providers' ability to act in line with the requirements of the VPs, including in their deployment and conduct, and responding if they abuse human rights.
- 3. Private security providers:** Similarly, companies should ensure that contracted private security providers respect human rights; this includes conducting due diligence when selecting and contracting private security, monitoring those selected and responding to any misconduct.<sup>12</sup>

### 3.1.2 The OECD Due Diligence Guidance

In line with the UN Guiding Principles on Business and Human Rights (the UNGPs), the OECD Due Diligence Guidance for Responsible Supply Chains from Conflict-Affected and High-Risk Areas, introduced in 2011, provides guidance to help companies respect human rights and avoid contributing to conflict through their mineral sourcing practices. The OECD Guidance cultivates transparent mineral supply chains and sustainable corporate engagement in the mineral sector, enabling countries to benefit from their mineral resources whilst preventing the extraction and trade of minerals from becoming a source of conflict, human rights abuses and insecurity.<sup>13</sup>

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12. ICMM, ICRC, IFC and IPIECA, 'Voluntary Principles on Security and Human Rights: Implementation Guidance Tools', 2011, p. 8.

13. OECD Council, 'Recommendation of the Council on Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas', May 2011.

The OECD Guidance provides:

1. **An overarching five-step due diligence framework for responsible supply chains of minerals from conflict-affected and high-risk areas**<sup>14</sup> – similar to the VPs, this framework also incorporates risk assessment (as step two), but the focus is on assessing mines, transportation routes, points where minerals are traded and suppliers;<sup>15</sup>
2. **A model mineral supply chain policy** providing a common set of principles that companies can commit to;
3. **Suggested measures for risk mitigation and indicators for measuring improvement**, which upstream companies may consider with the possible support of downstream companies; and
4. **Two supplements on tin/tantalum/tungsten (3T) and gold** tailored to the challenges associated with the structures of these minerals’ supply chains.<sup>16</sup>

The model mineral supply chain policy recommends that companies that foresee the need to contract public and/or private security forces should commit to the Voluntary Principles. The VPs also feature in the suggested measures for risk mitigation and in the gold supplement (but not explicitly in the 3T supplement).<sup>17</sup>

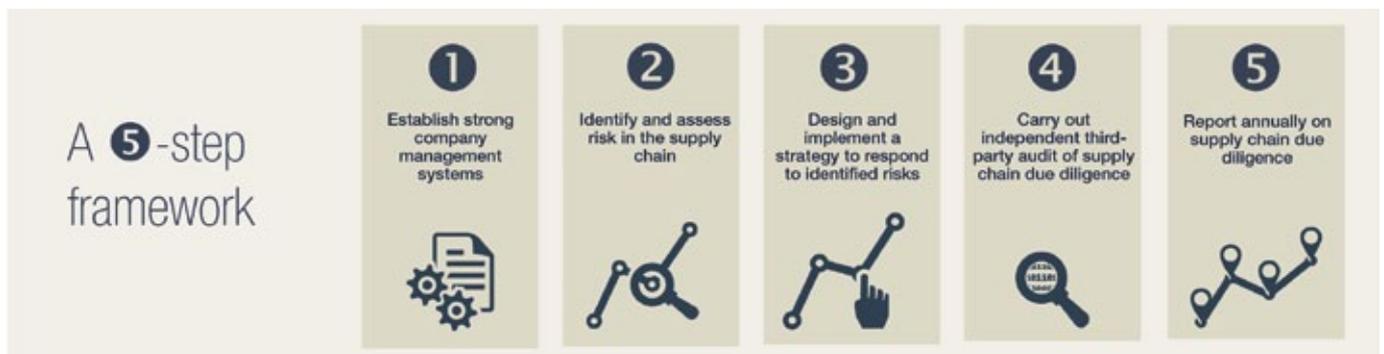


Figure 1: OECD five-step framework<sup>18</sup>

14. Refer to Figure1 (above).

15. OECD, ‘Due Diligence Guidance: towards conflict-free mineral chains’, p. 2.

16. OECD, ‘OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas’, 2016, p. 16.

17. OECD, ‘OECD Due Diligence Guidance for Responsible Supply Chains’, p. 22, pp. 25-26, p. 83, p. 92 and pp. 115-116.

18. OECD, ‘A Global Standard: Towards responsible mineral supply chains’, [http://mneguidelines.oecd.org/Brochure\\_OECD-Responsible-Mineral-Supply-Chains.pdf](http://mneguidelines.oecd.org/Brochure_OECD-Responsible-Mineral-Supply-Chains.pdf).

## 3.2 INTERSECTIONS IN SCOPE

To best understand the intersections between recommendations in the OECD Guidance and the Voluntary Principles, it is useful to compare their scope. As this section and Figure 2 below illustrate, the OECD Guidance is broader in terms of value chain and content, but both have a global geographical scope.

### 3.2.1 Comparing the VPs and the OECD Guidance

Compared to the VPs, the OECD Guidance addresses a wider range of supply chain stakeholders, reaching both upstream and downstream and including both industrial large-scale mining (LSM) and artisanal and small-scale mining (ASM). The Voluntary Principles have been developed with the participation of industrial companies (primarily LSM and other industrial companies which may face similar challenges) and through the optic of these companies' operations.

The OECD Guidance recommends that companies identify risks of human rights violations, conflict financing and serious economic crimes, thus going beyond the scope of the VPs. The OECD Guidance is concerned with human rights more broadly, with serious abuses committed by a range of supply chain actors. It is also concerned with direct or indirect support to non-State armed groups through bribery; fraud; money laundering; and payment of taxes, fees and royalties to governments.<sup>19</sup>

The Guidance and the VPs have a similar scope in terms of commodities. Both apply to the extraction of mineral resources, meaning that both include oil and gas, even though the OECD Guidance has so far mostly been applied to the extraction of minerals (historically with a strong initial focus on tin, tungsten, tantalum and gold).

Both texts are global in scope. The implementation requirements of the OECD Guidance primarily concern companies that 'supply or use minerals sourced from conflict-affected or high-risk areas' or from red-flagged supply chains. However, any company sourcing mineral resources should at least implement steps 1, 2 and 5 of the guidance (see Figure 1 above).<sup>20</sup>

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19. OECD, 'OECD Due Diligence Guidance for Responsible Supply Chains', pp. 20-24.

20. Ibid., p. 15, p. 33 and p. 78.

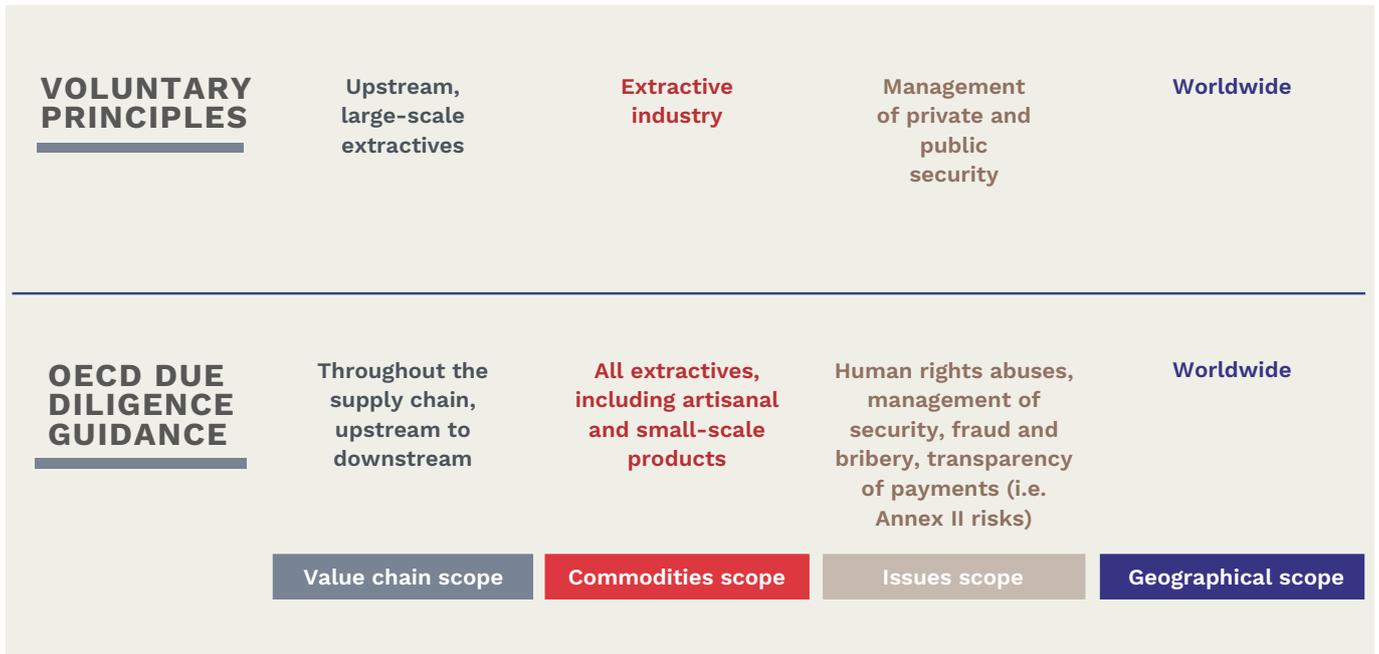


Figure 2: Comparison of the scope between the VPs and the OECD Guidance

### 3.2.2 The VPs’ application within the OECD Guidance

The model supply chain policy in the OECD Guidance refers to the VPs in the following statement:

*Where we or any company in our supply chain contract public or private security forces, we commit to or we will require that such security forces will be engaged in accordance with the Voluntary Principles on Security and Human Rights. In particular, we will support or take steps, to adopt screening policies to ensure that individuals or units of security forces that are known to have been responsible for gross human rights abuses will not be hired.<sup>21</sup>*

This policy statement greatly expands the potential applicability of the VPs. It is not only addressed to large-scale extractive companies, but requires all companies across the supply chain to exercise their leverage to ensure good management of security around extractive sites and beyond (for example, on transportation routes or around export houses that contract security forces).<sup>22</sup> As such, the principles laid out in the VPs can and should be applied both in the context of large-scale operations and artisanal and small-scale mining.

21. Ibid, p. 22

22. An important qualification here is that these are only companies that ‘supply or use minerals sourced from conflict-affected or high-risk areas’.

Under the OECD Guidance's suggested measures for mitigation of risks identified through its due diligence framework (Annex III), consistency with the principles promoted by the VPs is suggested for the securitization of ASM areas:

*[W]hile sourcing from areas of artisanal and small-scale mining ("ASM"), support the formalisation of security arrangements between ASM communities, local government, and public or private security forces, in cooperation with civil society and international organisations, as appropriate, to ensure that all payments are freely made and proportionate to the service provided, clarify rules of engagement consistent with the Voluntary Principles on Security and Human Rights, the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials ...<sup>23</sup>*

It is recommended that these measures are undertaken through 'upstream companies individually or through associations, joint assessment teams or other suitable means'.<sup>24</sup> This reference demonstrates that the principles put forward in the VPs would not only be applicable to large-scale mining operations, but that all supply chain actors should be involved to ensure that sound security measures are being implemented in the extraction, transport and trade of minerals. Stakeholders are encouraged to work with international organisations and civil society to 'support capacity-building of security forces consistent with the Voluntary Principles'.<sup>25</sup>

These measures provide flexibility around what types of practical arrangements should be sought in the formalisation of security arrangements, depending on the local context and actors involved in the supply chain. While sometimes a large-scale mining company, or even a smaller mining company, will be able to individually formalize security arrangements in the context of small-scale mining, formalization will often require joint action from companies and other relevant stakeholders. Companies sourcing from such ASM contexts must ensure that their providers set up their security arrangements with public and/or private security in line with applicable national laws and good practices. The formalisation of these arrangements should involve all concerned parties, with the support of downstream actors. In this sense, VPs In-Country Working Groups (ICWGs) could be a potential platform to facilitate discussions around these contextual questions (see section 4.1) as illustrated in the case of the South Kivu Technical Working Group on the VPs (see section 5.1.1).

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23. OECD, 'OECD Due Diligence Guidance for Responsible Supply Chains', p. 25

24. Ibid.

25. Ibid, p. 26.

In the OECD Guidance's supplement on gold, the VPs are first promoted in the context of LSM gold. However, the supplement ends with an appendix on 'Suggested measures to create economic and development opportunities for artisanal and small-scale miners', which 'proposes measures to build secure, transparent and verifiable gold supply chains from mine to market and enable due diligence for legitimate ASM gold.'<sup>26</sup> Here, applying the VPs is recommended in the securitization not only of ASM mine sites, but also trading hubs and transportation routes.<sup>27</sup>

In sum, the OECD Guidance's incorporation of both LSM and ASM and its supply chain approach – which expands the scope of monitoring well beyond mining sites to a range of other points across these commodity chains – offer valuable potential entry points for the VPI.

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26. OECD, 'OECD Due Diligence Guidance for Responsible Supply Chains', p. 114.

27. Ibid, p. 115 and p. 117.

# KEY POINTS

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**The scope of each guideline is different, but both have global application.**

**Through reference to the VPs, the OECD Guidance's supply chain approach extends the application of the VPs' recommendations by requiring:**

1. Application of the VPs not only in large-scale extractive operations, but also artisanal and small-scale mining; and
2. Application of the VPs along entire supply chains, thus including all extractive operations and sites, as well as trading hubs, export houses and transportation routes.

**There is an opportunity to clarify and promote best practices on security and human rights for upstream ASM, including what types of practical arrangements should be developed. The experience of ICWGs is valuable here, and there is a need for these platforms to explore the adjustment of VPs' recommendations to ASM contexts.**

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# 4. ACHIEVEMENTS AND CHALLENGES

This chapter assesses what the VPI and the OECD have achieved in practice, with respect to the promotion and implementation of the two sets of recommendations, as well as what challenges they have encountered.

## 4.1 THE VOLUNTARY PRINCIPLES

### 4.1.1 Achievements

The VPs were regarded as ground-breaking when they were established in 2000. The VPs gave new emphasis and visibility to the management of the relationship between security and human rights in the extractive sector. As a multi-stakeholder initiative, the VPI created an unprecedented forum, bringing together governments, NGOs and multinational oil, gas and mining companies. Another key achievement was a standardisation of good practices around security and human rights, which was not limited to VPI members.

While the text of the VPs is brief, VPI members and other organisations have gradually developed tools to provide companies with further guidance on implementation. The International Council on Mining and Metals (ICMM), the ICRC, the International Finance Corporation (IFC) and the International Petroleum Industry Environmental Conservation Association (IPIECA) developed the VPs Implementation Guidance Tools (IGTs) in 2011, which include modules on stakeholder engagement, risk assessment, public security providers and private security providers. More recently, building on the IGTs, DCAF and the ICRC introduced an 'Addressing Security and Human Rights Challenges in Complex Environments Toolkit', which focuses on supporting company engagement with public and private security, host governments and communities, filling gaps in guidance not covered by other documents.

DCAF and ICRC also developed a Knowledge Hub, an online platform that brings together a wide selection of resources related to security and human rights (as well as international humanitarian law when relevant). Both the Toolkit and Knowledge Hub are intended as

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28. DCAF and ICRC, 'Addressing Security and Human Rights Challenges in Complex Environments Toolkit', Third Edition, 2016, p. 1.

‘living products’ to be ‘regularly updated with good practices, tools and resources, and amended based on user feedback.’<sup>28</sup> Together with the VPs, they are freely accessible public goods and are useful in extractive and in other sectors.

While the VPs themselves are static, a growing set of resources has been developed, including frameworks for the admission and participation of VPI members, training materials and resources for developing agreements between companies and government security. Together with the IGTs, the DCAF-ICRC Toolkit and a number of other guidelines, these resources – which are available on the VPs website – provide crucial support for the implementation of the provisions of the VPs.

As the resources for implementation of the VPs have proliferated, so too have the number of stakeholders linked to the VPI. In addition to core VPI membership, In-Country Working Groups (ICWGs) are presently operating in Ghana, Nigeria, Myanmar, Peru, Colombia and the DRC. The ICWGs facilitate implementation of the VPs’ provisions at a local level, bringing the VPs closer to the realities of extractive operations.

The VPs, their ecosystem of guidance documents and resources, and the growing circle of actors seeking to implement them have led to significant progress in standardising and enhancing extractive industry good practices towards security arrangements that respect human rights. The Business and Human Rights Resource Centre highlights the following achievements in standardisation of good practice:

- Promoting regular consultations between companies, host governments and local communities;
- Making company provisions for use of force and firearms that is proportional to the threat;
- Improving company engagement with their security contractors with a view to respecting human rights;
- Monitoring progress of investigations into alleged abuses;
- Including human rights provisions in security contracts; and
- Encouraging reviews of the background of private security providers that companies intend to employ.<sup>29</sup>

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29. Business and Human Rights Resource Centre, ‘Voluntary Principles on Security and Human Rights’, retrieved 18 October 2019 at: [www.business-humanrights.org/en/conflict-peace/special-initiatives/voluntary-principles-on-security-and-human-rights](http://www.business-humanrights.org/en/conflict-peace/special-initiatives/voluntary-principles-on-security-and-human-rights)

### 4.1.2 Challenges

The VPs have had, to date, a specific focus on companies extracting, harvesting and/or developing natural resources or petroleum at an industrial scale. The VPs have been available for use and guidance to other sectors as they are a public good, but the overall focus of the Initiative has been on extractive companies. Challenges remain, however, around the VPs' uptake into other sectors, as well as their application to ASM. Some VPI stakeholders have shown an openness toward broadening the industry scope of the Voluntary Principles. However, in practice, several factors hinder prospects to broaden the scope of the initiative.

Firstly, the VPI faces challenges around the limited involvement of States. There are ten member States in the VPI, with only one State from Africa and two from South America. This is a small following, particularly with respect to representation from host States where extractive operations are taking place. This being said, not all States that seek to endorse and implement the provisions of the VPs need necessarily be VPI members.

As an additional challenge, many interviewees noted that industry actors tend to be overly cautious when dealing with host governments, especially in complex environments. This caution often leads companies to avoid emphasizing the duty of States to protect human rights or the need ensure proportional use of force. This can contribute to the risk of States not holding public security actors accountable for human rights violations. One interviewee hoped 'that the VPs could have enabled stakeholders, and particularly companies, to speak up in front of governments', but realised ultimately that 'more emphasis is needed on the role of governments'.

The collaborative space of the VPI has been restricted in certain ways to VPI members, even if non-members are occasionally invited to certain meetings for awareness-raising and outreach purposes. Certain member companies have been criticised for a reluctance to be transparent about successes and failures in their implementation of the VPs, though many have taken significant steps towards transparency (for example, by making their VPs annual reporting publicly accessible). Furthermore, the ICWGs have promoted greater openness, inviting non VPI-member companies, governments and civil society organisations to participate in group proceedings. In general, more needs to be done to demonstrate and communicate about the impact of the VPI and the VPs on the ground.

Challenges surrounding the VPs are well-illustrated through case studies. In 2018, the Myanmar ICWG produced a scoping study to ascertain the value of implementing the VPs in Myanmar. The study expressed an openness towards including non-VPI members in

the Working Group and extended the application of the VPs to other sectors where the use of security presents human rights concerns. Sectors identified included energy, ports and special economic zones, private security, tourism, construction, banking and finance, garment production and telecommunications.<sup>30</sup> The study omitted ASM as a potential sector for expansion, despite ASM having a large presence in Myanmar. It also highlighted risks with including the potential sectors that it did identify. The study noted that there would be risk of ‘watering down the VPs’ by expanding the application, but also the possibility that the specific focus and purpose of the VPs would be diluted.

### BOX 1: ASM AND THE GHANA VPI WORKING GROUP

The Ghana VPI Working Group was established in mid-2017. It meets quarterly in Accra to support government efforts to implement Voluntary Principles-related programmes and policy, discuss key security and human rights issues in Ghana’s natural resource sector and share experiences on implementation.<sup>31</sup> The Working Group’s four priority areas are public security training, security and human rights application in small-scale mining, private security licencing reform and coordination between oil and gas sector actors and coastal communities. The group is co-chaired by the Ghana Ministry of Lands and Natural Resources (MLNR), the Fund for Peace (FFP) and the West Africa Network for Peacebuilding – Ghana (WANEP-Ghana). The forum is currently supported by the Government of the Netherlands, Tullow Oil, Anglo-Gold Ashanti and Newmont Mining.



The Fund for Peace’s 2018 Final Project Report on the VPs in Ghana often refers to ASM or ‘Galamsey’, which is the term used in Ghana for illicit small-scale mining practices. While concerns exist over the legality of ASM, in certain circumstances it can also be a legitimate and formalised mode of mining and a source of livelihoods for communities. The OECD Guidance has helped shift industry

thinking around ASM and its potential for formalisation and provision of livelihoods. Yet this formalisation requires further definition for a range of different ASM contexts, including how the VPs’ provisions should be applied from case to case. ICWGs such as the ICWG in Ghana are ideal platforms to explore such questions.

30. Asia Conflict and Security Consulting, ‘Voluntary Principles on Security and Human Rights (VPSHR) Mapping: Myanmar’, 28 March 2018, p. 8.

31. Fund for Peace and WANEP-Ghana, ‘Ghana VPI Working Group’, retrieved 18 October 2019 at <http://ghanavps.org/blog/ghana-vpi-working-group/>



# KEY POINTS

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## **VPI achievements include:**

1. A new high-level standardisation of good practices regarding the relationship between security and human rights in the extractive sector;
2. Toolkits that VPI members and observers have produced, as well as additional resources which add practical depth to the application of the VPs, available as a public good; and
3. The creation of new collaborative spaces between extractive companies, governments and civil society actors, through the VPI itself but also through the In-Country Working Groups (ICWGs).

## **VPI challenges include:**

1. Modest expansion of the application of the VPs in other sectors (including ASM); and
  2. Limited involvement and buy-in from State actors, particularly host States (although the ICWGs are increasing such involvement).
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## 4.2 THE OECD GUIDANCE

### 4.2.1 Achievements

The OECD Guidance emerged at a similar time as Section 1502 of the United States' Dodd-Frank Wall Street Reform and Consumer Protection Act<sup>32</sup> and the United Nations Guiding Principles on Business and Human Rights (UNGPs).<sup>33</sup> The Dodd-Frank Act built on the ongoing negotiations that underpinned the OECD Guidance, which began in 2009, more than a year before the Act was signed into law. The Guidance was also highly influential in the drafting of the UN Security Council's 2010 Resolution 1952 on due diligence guidelines for Congolese minerals. Together, these documents marked considerable changes in the global context and notions of how the extractive sector should be regulated.

This new international context of heightened focus on due diligence throughout the supply chain is reflected in the OECD Guidance's supply chain approach. The human rights responsibilities of companies have been broadened well beyond their own sites of operation to the entire supply chain, including transportation, manufacturing, refining and sale of the end product.<sup>34</sup> To achieve this end, the OECD Guidance draws in a vast assemblage of supply chain stakeholders. The OECD Guidance also encompasses human rights risks far broader than those linked to security provision.

The OECD Guidance 'space' has evolved quickly in practice. Starting with less than 300 participants in 2011, the annual Forum on Responsible Mineral Supply Chains has grown to host more than 1,200 in 2019. The OECD Guidance applies to all mineral supply chains; this development is well-reflected in the discussions of the forum, where commodities covered have expanded from tin, tantalum, tungsten and gold to also include cobalt, mica, gemstones and many other mineral resources. Like the VPI, the OECD has collaborative spaces for various stakeholders, but OECD spaces are more numerous and often more diverse, open and fluid. The monitoring ecosystem that has proliferated under the OECD Guidance is perhaps most evident in the attendance at the OECD's 13<sup>th</sup> Forum on Responsible Mineral Supply Chains held in Paris in April 2019. Parts of the forum were open to the media, and a wide range of stakeholders led its many discussions (see Annex I).

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32. Signed into law in 2010, Dodd-Frank Section 1502 requires publicly listed US companies to check their supply chains for tin, tungsten, tantalum and gold. If these minerals originate in the Democratic Republic of Congo (DRC) or its neighbours, companies must take steps to address any risks of funding armed groups or human rights abuses and report on their due diligence efforts to the US Securities and Exchange Commission (SEC).

33. Unanimously endorsed by the United Nations Human Rights Council in 2011, the UNGPs clearly establish that businesses have a responsibility to respect human rights, including through preventing, mitigating and/or remediating negative human rights impacts. The degree of responsibility is dependent on the potential of the company to cause, contribute to, or be linked to a negative human rights impact. Due diligence is a key aspect of the UNGPs.

34. OECD, 'OECD Due Diligence Guidance for Responsible Supply Chains', p. 14

Practically, the geographical scope of implementation has also broadened from a focus on the African Great Lakes Region to a more global focus on high-risk areas, including South America, Asia and West Africa, with growing participation from OECD member States. The fact that the guidance was integrated into requirements of the CCCMC (China Chamber of Commerce for Metals, Minerals and Chemicals Importers) for Chinese foreign investments in mining is another indication of the OECD Guidance's growing scope and outreach.

The Guidance has enjoyed numerous successes in raising the profile of ASM. ASM has long been associated with 'conflict minerals', and far-reaching efforts have been made to reduce ASM activities in the interest of reducing the circulation of conflict minerals. However, the OECD Guidance has helped to nuance this thinking towards realisation of a formal ASM sector that is both possible and highly beneficial for livelihoods (for instance, through the work carried out with the World Bank – including DELVE – or on the CRAFT code, as explained further in Box 3).

Overall, the OECD Guidance has made a significant contribution to the last decade's regulatory and market developments on supply chain approaches to human rights.

#### **4.2.2 Challenges**

A current challenge the OECD faces is facilitating greater involvement of industrial extractive companies. The Guidance initially had less traction with industrial mining operators than with ASM supply chain stakeholders, due to the history of the Guidance and its development, which was rooted in the 'conflict minerals' narrative and the Great Lakes Region context. In addition, there is sometimes limited awareness among large-scale miners of the full scope of risks as per the Guidance.

The OECD has not been involved in the VPI until recently, when it joined as an Observer to promote synergies between both initiatives, but also to encourage engagement with large-scale mine operators to promote implementation of the Guidance. The lack of engagement-to-date has presented challenges in ensuring coordination and avoiding duplication. Furthermore, the OECD included in the OECD 13<sup>th</sup> Forum a session on 'Due Diligence on the Use of Security Forces', which featured VPI members. However, the VPI secretariat has not yet participated in OECD forums. The OECD's presence in the VPI space, together with DCAF and the ICRC, presents significant opportunity for closer cooperation between the initiatives and for practice-based intersections between the two guidelines.

# KEY POINTS

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Together with Dodd-Frank Act and the UNGPs, the OECD Guidance reflects a new international context of heightened emphasis on oversight and accountability for security and human rights throughout the supply chain. Its main achievement has been to promote a practical supply chain approach, which has reshaped market regulation over the last decade.

The OECD has generated significant traction through the creation of numerous open, collaborative spaces, which have cultivated a diverse monitoring ecosystem.

The OECD Guidance has been influential in re-shaping global thinking around ASM, shifting away from its criminalization towards deeper understandings of its potential for formalisation and the provision of livelihoods.

A current challenge for implementing the OECD Guidance is facilitating the greater involvement of industrial extractive companies. The OECD is working towards creating an interface between itself and the VPI (e.g., by joining the VPI as an observer) and promoting implementation of the Guidance by industrial extractive companies.

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## 5. SYNERGIES

As far as direct activities are concerned, numerous intersections have emerged from changes around the implementation of responsible sourcing programmes. In addition, tangible intersections between the Voluntary Principles and OECD Due Diligence Guidance have emerged from the work of the DCAF Security and Human Rights Implementation Mechanism (SHRIM).

### 5.1 LINKAGES BETWEEN THE OECD GUIDANCE AND THE VPS IN INTERNATIONAL POLICY AND REGULATION

#### 5.1.1 The emergence and broadening of the OECD Guidance and VPs as a global norm

As the interest of consumers in responsible supply chains has increased, the influence of the OECD Guidance has spread beyond the ambit of ‘conflict minerals’. Industry programmes have played a substantial role in driving the Guidance’s increased traction, with both support and pressure coming from international organisations, monitoring groups and the media.

The Initiative for Responsible Mining Assurance (IRMA), the Cobalt Industry Responsible Assessment Framework (CIRAF), and the due diligence tool that the International Copper Association (ICA) is developing have all drawn extensively upon the OECD Guidance. The World Gold Council (WGC) has also done so through the Conflict-Free Gold Standard and the Responsible Gold Mining Principles. The International Council on Mining and Metals (ICMM) 10 Principles and associated performance expectations have evolved to include the OECD Guidance through Principle 4, which requires members to:

*Undertake risk-based due diligence on conflict and human rights that aligns with the OECD Due Diligence Guidance on Conflict-Affected and High-Risk Areas when operating in – or sourcing from – a conflict-affected or high-risk area.<sup>35</sup>*

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35. ICMM, ‘Performance expectations’, retrieved on 24 October 2019 at <https://www.icmm.com/icmm-10-principles>

The London Metal Exchange (LME) has launched a formal market-wide consultation on proposed rules for the application of responsible sourcing principles. The approach is grounded in the OECD Guidance and will require all LME-listed brands to undertake an OECD Red Flag Assessment by end of 2020. Where such assessments reveal potential responsible sourcing red flags, the brand in question will need to be audited as compliant against an OECD-aligned standard by end of 2022.<sup>36</sup> Furthermore, ‘a phased transparency approach’ will ensure all LME-listed brands publish complete ‘Red Flag Assessments’ to the market by the end of 2024.<sup>37</sup> The requirements will either be consistent with or build on the OECD Guidance and related requirements on the use of security forces.

The OECD Guidance and the aforesaid industry programmes will become further entrenched in international practice when the European Union’s new Conflict Minerals Regulation comes into force on 1 January 2021. The regulation will require that EU importers of 3TG (tin, tantalum, tungsten and gold) identify and address actual and potential risks linked to complex environments when carrying out due diligence of their supply chains. The regulation will require them to do so in accordance with the due diligence recommendations of the OECD Guidance, including Annex II security issues. The new EU regulation represents a useful topic for further discussion between the VPI and OECD.

In the context of the upcoming EU Conflict Minerals Regulation, the OECD started a new project, the Alignment Assessment. The Alignment Assessment evaluates how far OECD Guidance recommendations have been incorporated into the policies and standards of five industry programmes,<sup>38</sup> as well as the extent to which each programme has implemented the Guidance recommendations.<sup>39</sup>

While the initial 2016 assessment found significant gaps between industry programmes’ standards and Guidance recommendations, it was reported in the latest 2018 assessment that subsequent changes to industry programmes had brought all programmes’ standards either in alignment with or close to alignment with the Guidance. This project demonstrates the importance of such assessments in driving the standards of the industry programmes. Experience sharing between the OECD and the VPI community could be interesting in that sense as the VPI has been working on developing frameworks to assess the implementation of the VPs by its members for some time.

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36. LME, ‘LME launches consultation on the introduction of responsible sourcing standards across all listed brands’, 23 April 2019.

37. Ibid.

38. Five industry programmes volunteered for the assessment, namely: The Dubai Multi Commodities Centre (DMCC), The International Tin Supply Chain Initiative (ITSCI), The London Bullion Market Association (LBMA), The Responsible Jewellery Council (RJC) and The Responsible Minerals Initiative (RMI).

39. OECD, ‘Alignment Assessment of Industry Programmes with the OECD Minerals Guidance’, 2018, p. 9.

The Alignment Assessment has also brought to light remaining challenges around the implementation of the OECD Guidance. Regarding human rights and security aspects in particular, areas for improvement can be identified around industry programmes' incorporation of VPs-related requirements, including:

- How explicit the various responsible sourcing standards and templates are in referring to the VPs and associated requirements;
- What reporting on the implementation of due diligence on security requirements against the responsible sourcing standards should look like; and
- The limited guidance provided to companies and auditors on how to assess and manage risks.

These challenges led an interviewee to note that 'auditors do not look enough at human rights and security issues' and that 'there could certainly be more non-conformance on human rights issues'. As another interviewee put it, there is 'room for improvement both on educating the refiners/smelters and the auditors, and on implementing the tools'.

The case study below (Box 2) highlights the consequences that may arise when smelters or refiners are not audited adequately against the Guidance, and particularly against the applicable Voluntary Principles provisions.

## BOX 2: SECURITY AND HUMAN RIGHTS AT AN AFRICAN LARGE-SCALE MINE

An investigation by *The Guardian* and its partners in the *Forbidden Stories* journalism group has alleged that State security providers are perpetrating ongoing violence against the surrounding community of an African gold mine and that health threats associated with possible chemical pollution from the mine persist.

While the gold mine has denied wrong-doing, electronics companies including Canon, Apple and Nokia have responded by re-evaluating their value chains. *Forbidden Stories* found that some of the gold mine's ore was exported to a Swiss gold refiner which supplies many tech companies. Canon announced that 'if allegations are confirmed, this smelter will be red-flagged, and we will ask our supply chain to divert business from this smelter'.<sup>40</sup> However, Canon also pointed out that this smelter had passed a conflict minerals audit, conducted by the RMI, and that it was also a certified and audited member of the LBMA.

As *The Guardian* noted, 'there are concerns that scrutiny by such bodies focuses on small-scale miners rather than multinationals' and that 'responsibility gets diluted along the supply chain.' These concerns speak, among other things, to challenges around adequate auditing.

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40. The Guardian, 'Tech firms to check suppliers after mining revelations in Tanzania', 18 June 2019.

This case study also reflects growing expectations for improvement in the implementation of due diligence on human rights and security risks in supply chains and LSM. As one industry programme interviewee noted,

*Supply chain awareness is increasing, along with expectations for transparency. Downstream actors are working with second- and third-tier suppliers, but now pressure is leading all the way up to LSM and making their operations more visible, creating more awareness of what they are and a new pressure on them to reveal their activities. The supply chain approach is starting to incorporate them, bringing more pressure for conformance to the OECD Guidance.*

This incorporation of LSM into the supply chain approach works in both directions. OECD Guidance standards are coming to bear upon LSM, but there is ‘also increased interplay between downstream and upstream on the implementation of the VPs’. These developments make future collaboration between OECD and VPI actors increasingly relevant.

### **5.1.2 Practical challenges currently encountered in ASM**

Implementation of robust due diligence on security risks comes with specific challenges in the context of ASM supply chains.

On the one hand, there is a degree of flexibility around who should be involved in and who should be leading the formalisation of security arrangements within ASM supply chains. In practice, this has contributed to a dilution of responsibilities and a lack of clarity on who should be engaged.

In contexts where minerals exporters have a direct control over an ASM site and organise the security arrangements, they are in a position to implement the VPs and can logically be requested to do so, both at site and further down the chain (for example, during transport and at export premises). Companies in such contexts are either owners of the mining concession or hold an exclusive purchasing contract with the cooperative operating on-site.

However, more often, a clear identification of supply chain responsibilities and of risk mitigation measures is more challenging. As an example, a mineral exporter might not be able to individually exert any leverage on upstream stakeholders. Similarly, at mine sites, even though management of security can be linked to the structure of the cooperatives operating the site, it more often relates to wider power and security dynamics that can be local, regional or national and beyond the control of the mining cooperative itself. The

mining cooperative might thus be unable to exert necessarily influence on the management of security around the mine sites. It is therefore essential to better understand local contexts and dynamics around ASM to support the implementation of sustainable and effective security and human rights good practices. The OECD and the VPI could work together in order to further develop the understanding of what the implementation of the VPs could look like in this context.

On the other hand, limitations exist and must be acknowledged as to the role and impact that upstream ASM supply chain audits can have on the effective management of security risks:

- The audits are not conducted often enough to provide dynamic information on risks to downstream stakeholders for continued risk assessment and mitigation; and
- They do not provide a comprehensive, dynamic picture of security risks at a more regional level – data that is often required in contexts where the ASM supply chain is more dispersed (for example, when exporters are buying from independent *négociants* who are sourcing ASM products in the free market).

Because of these limitations, upstream company audits in ASM supply chains cannot replace multi-stakeholder mechanisms in providing dynamic, comprehensive information on security risks and related mitigation measures that need to be taken, particularly in relation to public security forces in the context of dispersed ASM supply chains.

Provincial and Local Steering Committees in South Kivu provide good examples of such multi-stakeholder mechanisms, which monitor the provincial mining sector in line with the OECD Guidance and which now provide the umbrella for the SK Technical Working Group on the VPs (see 5.1.1). In the Great Lakes Region, the development of such multi-stakeholder monitoring activities as part of wider due diligence efforts has reportedly had a positive effect on security at a regional level.<sup>41</sup>

This case points to a broader opportunity for supply chain stakeholders to utilise multi-stakeholder monitoring committees. These committees offer the potential to work more closely with governments and other (supply chain) stakeholders in increasing the volume, transparency and quality of information produced, thus producing greater supply chain leverage and improved on-the-ground risk mitigation.

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41. IPIS and Ulula, 'Assessing the Impact of Due Diligence Programmes in Eastern DRC: A Baseline Study', 2019.

# KEY POINTS

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The Guidance's influence is increasingly wider than the scope of traditional 'conflict minerals' and will become further rooted as a global norm due to the European Conflict Minerals Law. This could be a useful discussion point for VPI stakeholders and the OECD.

The findings of the OECD Alignment Assessment report show that the OECD Guidance, including the VPs-related provisions, have become increasingly embedded in industry practice.

In both ASM and LSM supply chains, evidence suggests that there is a growing pressure for improvement in how the VPs are incorporated in various industry programmes' requirements as part of the OECD Guidance and how these are being verified, checked and reported.

Regarding ASM supply chains, practical challenges must be acknowledged, particularly around clear identification of supply chain responsibilities and audits' limitations in complex environments.

Multi-stakeholder mechanisms can provide dynamic, comprehensive information on shifting security risks and related mitigation measures.

There is an opportunity for supply chain stakeholders to work more closely with governments and other stakeholders in increasing the volume, transparency and quality of information produced for improved on-the-ground mitigation of security risks.

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## 5.2 OPERATIONAL LINKAGES BETWEEN THE OECD AND THE VPS

This section details two projects implemented through the DCAF Security and Human Rights Implementation Mechanism (SHRIM), which are particularly significant in the contribution they have made toward promoting intersections between the Voluntary Principles and OECD Guidance in practice.

The SHRIM is a multi-donor trust fund ‘committed to improving security and human rights good practice in a coherent, sustainable and cost-effective way’, by supporting ‘targeted, cost-effective security, development and human rights programming in fragile contexts’, laying particular emphasis on local ownership and public-private cooperation.<sup>42</sup> While not formally linked to the VPI, it supports implementation of good security and human rights practices. Moreover, recognising the importance of SHRIM in the support of in-country implementation of security and human rights, in 2019, the VPI has recognised it as the preferred vehicle for in-country implementation of the VPs.

### 5.2.1 DCAF SHRIM project to improve field implementation of the VPs in South Kivu, DRC

DCAF’s project for ‘Improving the field implementation of the Voluntary Principles for Security and Human Rights in South Kivu’, supported by the Dutch Ministry of Foreign Affairs, is a direct response to the need to further the on-the-ground implementation of the VPs, as well as the importance of including all relevant stakeholders (including host government and civil society organisations) in the implementation of the VPs. The project proposal responds to one of the strategic objectives of the VPI: to increase ‘implementation of the VPs and participation of the VPI, specifically by host governments from high-risk, resource-rich countries’.<sup>43</sup>

VPs working groups have been set up in Kinshasa and Lubumbashi prior to the South Kivu project. The project establishes a South Kivu Technical Working Group on the VPs and seeks, among other objectives, to facilitate human rights trainings for a specific unit within the Congolese National Police (PNC) that focuses on extractives, the *Police des*

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42. DCAF and ICRC, ‘About the SHRIM’, accessed on 22 January 2020 at: <http://www.securityhumanrightshub.org/content/about-shrim>

43. DCAF, ‘Improving the field implementation of the Voluntary Principles for Security and Human Rights in South Kivu – DRC’, 2017, p. 5.

*Mines et des Hydrocarbures* (PMH). DCAF and a local partner organisation are now carrying out VPs capacity-building for all members of the Working Group (which includes industry, government and civil society actors), as well as supporting the group's establishment as a platform for dialogue, identification of risks and discussion of mitigation measures.

This project is significant not only because of its pursuit of host government involvement and that of other stakeholders, including mining communities, at the most local level, but also because it aims to adapt good security and human rights practices (including the VPs) to ASM contexts. As the project proposal notes, while DCAF has a deep working knowledge of VPs-related guidance tools and their application, through collaboration with a local partner, the *Observatoire pour la Gouvernance et la Paix* (OGP) will:

*... ensure local appropriateness of the tools [...] and adapt them to the South Kivu context. For instance, in South Kivu, there is more artisanal and small-scale mining, rather than industrial mining – therefore security and human rights challenges will be slightly different.*<sup>44</sup>

As DCAF recognised, South Kivu never had a VPs working group, but its Governor had set up a Provincial Steering Committee, or *Comité Provincial de Suivi* (CPS), which monitors the provincial mining sector in line with the OECD Due Diligence Guidance and based on recommendations from the OECD implementation programme. Under the umbrella of the CPS, Local Steering Committees, or *Comités Locaux de Suivi* (CLS),<sup>45</sup> had also been set up to respond to local mining sector risks. Due to their broad mandate under the Guidance, a focus on security and human rights was sometimes lacking, but this gap was also an opportunity:

*As the CPS and CLS are already operational, and aligned with the OECD Due Diligence Guidance, it provides the perfect umbrella for the creation of a SK Technical Working Group on the VPs with a concrete mandate and focus on the VPs, that will address specifically questions around security and human rights. Matters will be addressed to the SK Technical Working Group on the VPs from the CPS and the CLS. The work of this group will then feed the discussions of the CPS. This set up will align with the current functioning in the province, while ensuring that all the different initiatives reinforce each other.*<sup>46</sup>

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44. Ibid, p. 7.

45. These Committees have representatives from the Ministry of Mines, the FARDC, the Police, miners, local traders, companies, civil society organisations and international organisations.

46. DCAF, 'Improving the field implementation of the Voluntary Principles for Security and Human Rights in South Kivu', p. 6.

The South Kivu project is perhaps the best existing case study as an illustration of how the VPI and OECD can work together to promote their respective implementation, as well as coherence between them. The project also reflects the interplay between the VPs and the OECD Guidance in relation to ASM. The integration of the Working Group into a pre-existing structure that already implements the OECD Guidance, and the use of local actors to adjust VPs-related guidance tools to fit with ASM contexts, provides insight into how the involvement of State actors and the sustainability of these initiatives may be promoted.

### **5.2.2 DCAF SHRIM project to support the Alliance for Responsible Mining's CAPAZ programme, Colombia**

Launched in 2004, the Alliance for Responsible Mining (ARM) is an initiative that works to transform ASM into a socially and environmentally responsible activity, as well as promote the socio-economic wellbeing of ASM actors through the design and implementation of responsible standards for ASM. In 2009, ARM worked with Fairtrade International to develop the Fairtrade and Fairmined Standard for ethical ASM gold. More recently, ARM has developed CRAFT (Code of Risk-mitigation for artisanal and small-scale mining engaging in Formal Trade). For more detail on CRAFT, see Box 2 below.

Together with other partners such as the EPRM (European Partnership for Responsible Minerals), DCAF is providing support to ARM to implement its CAPAZ (*Cadenas de Paz* – Chain of Peace) programme, which will incorporate CRAFT. CAPAZ seeks to demonstrate that Colombian artisanal small-scale miners can produce minerals according to both the OECD Guidance *and* the Voluntary Principles, through the creation of transparent and legal supply chains that can connect to and generate confidence within national and international markets.<sup>47</sup>

The CAPAZ project also aims to foster inter-regional exchange and improved public-private cooperation to promote due diligence and mitigate risks related to ASM in Colombia. On a local level, the project involves community-based, ethnic and civil society organizations. Furthermore, ARM collaborates with ministries and State institutions related to ASM and/or involved in regulating mining with various actors in the gold supply chain (such as buyers and refineries), as well as with initiatives that support ASM, to share knowledge and foster alliances aimed at the development of more transparent and formal supply chains.<sup>48</sup>

As part of the SHRIM support to CAPAZ, ARM carried out fieldwork-based due diligence through a preliminary risk assessment in five regions of Colombia in 2019.<sup>49</sup> The risk assessment identified key challenges and opportunities for supporting mining communities

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47. DCAF, 'The Security and Human rights Implementation Mechanism – Quarterly Monitoring Report April – June 2019', p. 13.

48. DCAF Security and Human Rights Implementation Mechanism, CAPAZ project proposal, p. 1.

49. Caucasia, Cáceres, Tarazá, Remedios and Segovia.

in accordance with CRAFT. The assessment's scope included concerns around security and human rights, and it went on to flag the security sector as a key risk area. The assessment also produced a risk mitigation strategy, which will pave way for implementation of CRAFT in two of the region's municipalities.<sup>50</sup> Thanks to the SHRIM project, ARM has developed a nuanced understanding of the security context and the entry points of CRAFT in these regions.

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50. DCAF, 'The Security and Human rights Implementation Mechanism – Quarterly Monitoring Report April – June 2019', p. 13.

**BOX 3: THE CRAFT CODE**

CRAFT is designed as a tool that enables due diligence to be applied in the artisanal gold mining sector. It is more flexible than its predecessor, the Fairtrade and Fairmined Standard, and employs an approach of progressive improvement and compliance to make itself more accessible to ASM actors.

CRAFT is designed to offer a gateway into the formal market for ASM through focussing on risks that are specific to the sector. It is intended to be globally applicable and adaptable to other minerals. It seeks alignment with the OECD Due Diligence

Guidance, with direct links to the risks outlined in Annex II of the Guidance. Furthermore, under ‘Module 4: “Annex II Risks” requiring disengagement after unsuccessful mitigation’, the code has a requirement that it is reasonable to expect that an ASM actor ‘does not knowingly hire individuals or units of security forces that are known to have been responsible for gross human rights abuses’. This requirement is consistent with the Voluntary Principles.<sup>51</sup> In 2020, the Alliance for Responsible Mining (ARM) initiated a revision of CRAFT in order to adapt CRAFT to ensure it adequately responds to users’ needs, and effectively ensures a passport to formal markets. The review process has included the Voluntary Principles, taking into account how artisanal miners interact with security. The Voluntary Principles were developed with LSM contexts in mind. This means that their application to ASM may be complicated, primarily because the requirements ask too much of most ASM actors with less capacity than LSM. Nevertheless, these expectations *could* be met by more organised ASM organisations, such as mining collectives who have worked with CRAFT, or in partnership with other stakeholders (e.g., in the context of multi-stakeholder monitoring mechanisms) As one of the 2018 Recipients of the DCAF Security and Human Rights Grant,<sup>52</sup> ARM developed a project in Colombia to assess the risks linked with ASM including around armed conflict and illicit drugs. Based on this first step, ARM developed an engagement strategy to convince key ASM stakeholders along the supply chain to apply and use the CRAFT code and therefore contribute to the improvement of environmental and social practices. The project has identified how the CRAFT Code could be adapted to security and human rights good practices – a practical way to promote the VPs in ASM contexts..

51. ARM and RESOLVE, ‘CRAFT – Code of Risk-mitigation for artisanal and small-scale mining engaging in Formal Trade’, 2018, p. 37.

52. DCAF, Security and Human Rights Implementation Mechanism, <http://www.securityhumanrightshub.org/content/security-and-human-rights-grant>.

# KEY POINTS

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## **DCAF's South Kivu project is significant because:**

- The VPs Working Group operates under Provincial and Local Steering Committees that the Governor has set up to monitor the extractive sector through the lens of the OECD Due Diligence Guidance;
- Collaboration with a local partner enables adjustment of VPs-related guidance tools to fit with ASM contexts; and
- It illustrates how the VPI and OECD can promote alignment on the ground in a complex environment.

## **The Colombia CAPAZ project is significant because:**

- It shows that ASM can adopt both OECD Guidance and the VPs to establish transparent, legal supply chains, and that CRAFT can constitute a relevant tool to do so in certain contexts; and
  - Public-private cooperation has been a useful tool in due diligence and risk mitigation for Colombian ASM.
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## 6. RECOMMENDATIONS

Greater coherence between the work streams carried out to respectively implement the VPs and the OECD Guidance can strengthen the implementation and advancement of both. The following recommendations, which build on the key findings of this study, identify opportunities and entry points for enhanced OECD-VPI collaboration at different levels.

### ADAPT DUE DILIGENCE ON SECURITY AND HUMAN RIGHTS TO A CHANGING GLOBAL REGULATORY LANDSCAPE

- **New regulations:** OECD and VPI stakeholders could work together on developing a joint understanding on the new responsible sourcing principles for all London Metal Exchange (LME) listed brands and the EU Conflict Minerals Regulation that will come into force in 2021.
- **Risk assessment:** OECD and VPI stakeholders could share experience and learning on implementation of risk assessment methodology.
- **Multi-stakeholder dialogue:** OECD and VPI stakeholders could jointly promote multi-stakeholder dialogue on security and human rights-related risks and impacts in both ASM and LSM. Over time, the dialogue could be expanded to cover other supply chain areas, such as transport routes, trading hubs and export houses
- **Dialogue between stakeholders:** OECD and VPI stakeholders could jointly foster dialogue between local, national and international stakeholders with a view to clarifying security and human rights-related due diligence requirements, particularly around risk assessment, verification of security arrangements in ASM, and identification, evaluation and mitigation of security and human rights risks.
- **Robust due diligence:** To support VPI stakeholders responding to the new regulatory framework around the mineral sector – notably with the entry into force of EU Conflict Minerals Regulation and the new responsible sourcing principles for all LME listed brands companies – the OECD and VPI stakeholders could jointly consider the development of a common roadmap paving the way for progressive implementation of security and human rights due diligence requirements along supply chains, with an emphasis on the Voluntary Principles and their explicit incorporation and implementation through responsible sourcing programmes.

- **Audit programmes and auditors:** OECD and VPI stakeholders could jointly provide guidance to audit programmes and auditors on security and human rights, including audit checklists, interpretation notes and practical case studies.
- **Public disclosure:** While OECD and VPI stakeholders are both subject to annual public reporting, the quality of the reports published varies. To improve the quality of reporting, the OECD and VPI stakeholders could jointly work on progressively improving public disclosure on security and human rights risks and their management, ensuring that supply chain due diligence is subject to annual reporting by companies.

#### ADDRESS SECURITY AND HUMAN RIGHTS CHALLENGES IN ASM CONTEXTS

- **Possible addenda:** With the participation of VPI stakeholders, an ASM Voluntary Principles addendum could be included in the OECD Guidance as a set of frequently asked questions or a guiding note. This addendum could help formalized ASM operators implement the provisions of the VPs. It could draw on the CRAFT code, which indicates that organised, formalised ASM can and should be expected to assure that security services are ‘rendered under the Voluntary Principles’.
- **Model clauses:** OECD and VPI stakeholders could use the ‘Model Clauses for Agreements between Government Security Forces and Companies with Respect to Security and Human Rights’,<sup>53</sup> particularly their focus on developing Memoranda of Understanding Between Companies and State Security Forces, to clarify responsibilities for appropriate regulation of the LSM-ASM interface, as well as State responsibilities around informal ASM more broadly.
- **Discussions on responsibilities of stakeholders:** Based on the experience of VPI stakeholders and guidance/documents developed in the framework of the initiative, supply chain stakeholders should be included in the discussions on the potential responsibilities for different actors in term of security and human rights, for instance around expectations for engagement, participation and financial contributions from supply chain stakeholders. The OECD Guidance maintains a degree of flexibility, meaning that security arrangements and the stakeholders involved in their design and implementation depends on the context.

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53. The VPI has adopted model clauses for use in security agreements between public security and companies in the extractive and energy sectors. They are designed to be used together or individually, but all reflect different aspects of the VPs as they relate to public security. The VPI strongly recommends that government and company members include these model clauses or similar variations thereof in security agreements that VPI member governments/public security enter into with VPI member companies, when relevant and applicable. The VPI encourages non-member governments and extractive and energy sector companies who seek to create a security framework that ensures respect for human rights related to public security, to consider these or similar clauses for inclusion in their security agreements.

- **Improved regulation of the security sector:** Closer linkages between programmes supporting the implementation of the OECD Guidance and/or the VPs and SSR programmes could be established. Taking into account power dynamics, especially in the ASM sector, it is essential that national governments review and improve existing regulations for the security sector in order to foster good practices and enhance State accountability for the implementation of the VPs in-country.

### TAKE ADVANTAGE OF POTENTIAL SYNERGIES THROUGH VOLUNTARY PRINCIPLES IN-COUNTRY WORKING GROUPS

- **Bottom-up synergies:** following the model of the South Kivu Working Group, OECD and VPI stakeholders could seek to identify other geographic areas with mining activity where the joint development of local monitoring units could help identify risks related to security services, as well as risks covered by the OECD Guidance (i.e., conflict financing, etc.). Such working groups could promote both initiatives. Not only can this improve risk monitoring and identification, it can also facilitate synergies between VPI and OECD stakeholders from the ground up, thus avoiding duplication and ensuring greater impact and sustainability. Such areas may include for instance other parts of the DRC, mining regions in West Africa (e.g., Mali, Niger, Burkina Faso) and extractives-heavy areas in Latin America (e.g., Colombia).
- **Additional working groups:** VPI stakeholders could contribute to the further development or creation of In-Country Working Groups and ensure that the implementation of the OECD Guidance is among the objectives of these groups. This should include support to increased collaboration between ICWGs and potential multi-stakeholder steering committees involved in OECD Annex II risk monitoring. To guide the creation of new ICWGs, stakeholders could consult the recent study on lessons learned and the experience of VPs In-Country Working Groups developed jointly by DCAF and the Fund for Peace (FFP): *From Commitment to Impact: A Guide for Local Working Groups on Business, Security and Human Rights*. This study and its accompanying guide aims to encourage and support the development of effective In-Country Working Groups (ICWGs) that foster responsible business conduct. Building from lessons learned and recommendations from stakeholders' experiences, this Guide explores approaches that worked (or did not work) in the past.<sup>54</sup> The OECD could encourage supply chain stakeholders to join and contribute to ICWGs, particularly in areas where there are already activities conducted under the OECD Guidance (e.g., in the DRC, Colombia and West Africa). Further participation would facilitate a

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54. DCAF and FFP, *From Commitment to Impact: A Guide for Local Working Groups on Business, Security and Human Rights*, 2020.

wider security-related discussion on both ASM and other supply chain areas, such as transport routes, trading hubs and export houses. Finally, national governments could be more actively engaged within existing ICWGs and support the creation of new groups, thus contributing to the effective implementation of the Voluntary Principles on the ground, together with their link to the OECD Guidance.

- **Reach of ICWGs:** OECD and VPI stakeholders could encourage industry associations and supply chain stakeholders to consolidate and share information on risks identified in ICWGs with VPI members and downstream actors. This could include sharing regular updates on issues discussed and progress regarding risk mitigation. Downstream actors could be encouraged to act on this information by following up with suppliers and using leverage as appropriate.

# ANNEX I: VOLUNTARY PRINCIPLES INITIATIVE MEMBERSHIP<sup>55</sup>

## Government pillar:

- Argentina
- Australia
- Canada
- Colombia
- Ghana
- The Netherlands
- Norway
- Switzerland
- United Kingdom
- United States

## Corporate pillar:

- Agnico Eagle
- Alphamin Bisie Mining SA
- Anglo American
- AngloGold Ashanti
- Barrick Gold Corporation
- BHP Billiton
- BP
- Chevron
- ConocoPhillips
- Dinant (engaged)
- Equinor
- ExxonMobil
- Freeport-McMoRan Inc.
- Frontera Energy
- Galp Energia
- Gemfields (engaged)
- Glencore
- MMG (engaged)
- Newcrest Mining Limited
- Newmont Goldcorp
- Norsk Hydro
- Oil Search
- PanAust
- Repsol
- Rio Tinto
- Seven Energy
- Shell
- Sherritt International
- Total
- Tullow Oil
- Vale
- Woodside Energy

## NGO pillar:

- CDA Collaborative Learning Projects (engaged)
- COMPPART
- The Fund for Peace
- Green Advocates (engaged)
- Human Rights Watch
- IMPACT
- International Alert
- LITE-Africa
- New Nigeria Foundation
- Pact
- PAX
- Search for Common Ground
- UNICEF Canada (engaged)

## Observers:

- Seguridad y Derechos Humanos (CME)
- DCAF
- International Council on Mining and Metals (ICMM)
- International Code of Conduct Association (ICoCA)
- ICRC
- International Finance Corporation (IFC)
- Institute for Human Rights and Business (IHRB)
- International Petroleum Industry Environmental Conservation Association (IPIECA)
- OECD

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55. Refer to <https://www.voluntaryprinciples.org/the-initiative/>, last consulted in April 2020.

# ANNEX II: LIST OF STAKEHOLDER INTERVIEWS

Organisation	Name	Date of interview
DCAF Research Unit	Marlène Wäfler	19/09/2019
UK Government - FCO	Annie McGee	30/09/2019
IMPACT	Joanne Lebert	02/10/2019
Ambatovy	Carine Guidicelli	02/10/2019
International Alert	Trine Pertou	03/10/2019
MMTC-PAMP	Olivier Demierre, Jacqueline Mayor	03/10/2019
Alliance for Responsible Mining	Yves Bertran	04/10/2019
Glencore	Francesca Santinelli, Anna Krutikov, Pam Bell	04/10/2019
Responsible Minerals Initiative (RMI)	Leah Butler	04/10/2019
Freeport Mac Moran	Andrea Vaccari	04/10/2019
Bureau of Environmental and Social Affairs, Colombian Government	Natalia Rodriguez	07/10/2019
Control Risks	John Bray	08/10/2019
London Bullion Market Association (LBMA)	Susannah McLaren	08/10/2019
ICMM	Hannah Clayton	10/10/2019
World Gold Council	Edward Bickham	15/10/2019
VPI Secretariat	Mora Johnson	18/10/2019 and 21/10/2019

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**DCAF** Geneva Centre  
for Security Sector  
Governance  
SECURITY & HUMAN RIGHTS  
IMPLEMENTATION MECHANISM (SHRIM)



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