
Stocktaking exercise on the OECD Guidelines for Multinational Enterprises

OECD Public Consultation | March 2021 - April 2022

Submissions Received from International Organisations

May 2022

OECD Centre for Responsible Business Conduct,
Organisation for Economic Co-operation and Development
Paris, France



Background

In November 2020, the OECD Working Party on Responsible Business Conduct (RBC) agreed to undertake a stocktaking exercise on the OECD Guidelines for Multinational Enterprises. The purpose of the stocktaking is to take account of the key developments, achievements and challenges related to the OECD Guidelines and their unique grievance mechanism the National Contact Points for RBC, as well as the ecosystem in which the OECD Guidelines are implemented. In support of the stocktaking exercise, the Working Party on Responsible Business Conduct (WPRBC) developed a draft stocktaking report and launched a public consultation to ensure the stocktaking exercise benefits from views and experiences of all stakeholders. The public consultation was open to all stakeholders from all countries, including businesses, industry groups, civil society organisations, trade unions, as well as academia, interested citizens, international organisations and governmental experts (including from non-Adherent countries).

This document presents a compilation of responses received to the public consultation conducted by the WPRBC from June to September 2021. Information about the public consultation can be found online at:

<https://mneguidelines.oecd.org/public-consultation-stocktaking-study-on-the-oecd-guidelines-for-multinational-enterprises.htm>

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Submissions of International organisations

1. GANRHI
2. ILO
3. OHCHR
4. OHCHR 2
5. UNDP B+HR team
6. UNFCCC

Dear Christine Kaufmann, Chair of the OECD Working Party on Responsible Business Conduct

CC Manfred Schekulin, Chair of the OECD Investment Committee

CC: Allan Jorgensen, Head of the OECD's RBC Unit

CC TUAC, BIAC, OECD Watch

14 June 2021

The Global Alliance of National Human Rights Institutions Working Group on Business and Human Rights (GANHRI WG BHR) congratulates the OECD for embarking on a stocktaking exercise on the implementation of the *OECD Guidelines for Multinational Enterprises* (Guidelines).

The Memorandum of Understanding between GANHRI and the OECD, signed in 2012 and renewed in 2017 for a 5-year period, provides for cooperation and exchange of experiences and expertise between national human rights institutions (NHRIs) and the OECD with a view to promote greater respect for human rights in the sphere of business activities. Within this framework, the GANHRI WG BHR would like to present its view to the adhering states for consideration during the stocktaking exercise.

2021 marks the 10th anniversary of the last revision of the Guidelines and the inclusion of chapter IV on human rights as well of the adoption of the *United Nations Guiding Principles on Business and Human Rights* (UNGPs) with which the Guidelines align. The 2011 revision of the Guidelines, as well as the development of supplementary guidance by the OECD, has permitted important progress in clarifying business responsibilities vis à vis human rights and of the concept of responsible business conduct (RBC) due diligence. With less than 10 years left to realise the ambitions of the 2030 Agenda for Sustainable Development, it is critical to firmly reaffirm that the most significant contribution that businesses can make to the Sustainable Development Goals is to respect human rights through the conduct of meaningful human rights due diligence to avoid and mitigate adverse impacts.¹

For NHRIs, the Guidelines provide an important standard for engaging with companies and governments on human rights in the context of business activities. However, we believe the standards and their implementation mechanisms could be further strengthened with a view to addressing critical human rights challenges connected to business activities.

The GANHRI WG BHR would like to bring to your attention the following issues:

¹ UN General Assembly, [The Report of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises](#), (2018) UN Docs A/73/163 2018 at [18] and [59]. See also OECD, 'Responsible Business Conduct and the Sustainable Development Goals', (undated), 1-3 <https://mneguidelines.oecd.org/RBC-and-the-sustainable-development-goals.pdf>; OHCHR and the UN Working Group on Business and Human Rights, [Information Note - The business and human rights dimensions of sustainable development: Embedding 'Protect, Respect and Remedy' in SDGs implementation](#), (30 June 2017), 4 and The Danish Institute for Human Rights, [Responsible business conduct as a Cornerstone of the 2030 Agenda – A Look at the Implications](#) (June 2019) https://www.humanrights.dk/sites/humanrights.dk/files/media/document/~%2019_02922-15%20responsible%20business%20conduct%20as%20a%20cornerstone%20of%20the%202030%20agenda%20dhr%2019%20-%20fd%20461990_1_1.pdf

1. Strengthening National Contact Points for enhanced accountability

In addition to their role in promoting the Guidelines, National Contact Points (NCPs) are a unique state-based non-judicial grievance mechanism with a clear mandate to address specific instances related to human rights as per Chapter IV of the Guidelines, among other issues covered in the Guidelines. As widely acknowledged, access to an effective remedy for those affected by business activities remains a critical gap in the implementation of the UNGPs ten years after their adoption, in particular in the context of cross-border activities. NCPs can play a key role in closing this gap, alongside existing judicial and non-judicial grievance mechanisms, including NHRIs where they hold a complaints-handling mandate.²

We are however concerned that despite the principle of functional equivalence underlined in the Guidelines, NCPs differ considerably in the way in which they are set up and operate and how they deal with specific instances. The interpretation of the scope and content of the Guidelines varies between NCPs to a large extent. Although over 50% of the specific instances brought to the attention of NCPs concern chapter IV, human rights expertise is not represented in all NCPs. An innovative approach to addressing this concern is NCPs including independent human rights experts or having an agreement with the NHRI to seek to include human rights expertise where needed.³ Such practice however remains piecemeal.

We encourage the Working Party to consider strengthening the efficiency of the NCPs through reviewing the Procedural Guidance in the Guidelines and to establish minimum criteria on how they are structured to ensure an appropriate level of independence from business and government interests and ensure the legitimacy of the NCPs in the eyes of all stakeholders.

Furthermore, in order to ensure an equivalent process across the different NCPs handling specific instances, the Procedural Guideline should be reviewed to further outline what is expected of NCPs in practice in order to meet the effectiveness criteria outlined in the UNGPs for non-judicial grievance mechanisms for implementation of the specific instances and ensure a human rights-based approach throughout the process.⁴

2. Clarifying the scope of the Guidelines and the inclusion of the state as an economic actor

NHRIs note the broad definition of 'multinational enterprises' (MNEs) included in the Guidelines. We note however that interpretation of the scope of applicability of the Guidelines varies across NCPs. While the Guidelines focus on the responsibilities of business in line with Pillar II of the UNGPs, their applicability to states when acting as an economic actor should be clarified, beyond state owned enterprises only, in line with Principle 5 and 6 of the UNGPs. Development agencies and development finance institutions, export credit institutions, public procurement authorities as well as intergovernmental organisations can be connected to adverse human rights impacts through their business relationships. In a recent analysis,⁵ the

² For an analysis of NHRIs' role in remedy in the area of business and human rights see

<https://www.humanrights.dk/publications/national-human-rights-institutions-access-remedy-business-human-rights>

³ <http://mneguidelines.oecd.org/factsheet-working-together-national-human-rights-institutions-and-OECD-guidelines-for-MNEs.pdf>

⁴ The effectiveness criteria defined in Principle 31 of the UNGPs state that non-judicial grievance mechanisms should be: a) legitimate; b) accessible; c) predictable; d) equitable; e) transparent; f) right-compatible; g) a source of continuous learning; and h) based on engagement and dialogue

⁵ https://www.oecd-ilibrary.org/governance/integrating-responsible-business-conduct-in-public-procurement_02682b01-en

OECD has recommended governments to align frameworks on RBC in public procurement with international standards such as the Guidelines.

3. Address the risks to human rights connected to digitalisation

The Covid-19 pandemic has further accelerated the digitalisation of our societies. As the use of digital technology increases, the risks of adverse human rights impacts connected to these have also increased. However, what RBC means in the digital sphere require further attention and guidance. In order to ensure the Guidelines remain relevant to these emerging challenges, it would be pertinent to ensure they include a particular focus on digital technologies building on recent guidance from the OHCHR and other actors.⁶

4. Climate change, environment and human rights

The link between environmental degradation, climate change and adverse human rights impacts should be made clearer in the Guidelines. Climate change is considered as the main threat to the enjoyment of human rights and adverse impacts of climate change on human rights are increasingly being recognised.⁷ At the same time, the responsibility of businesses in contributing to climate change is clearly established and businesses are increasingly being held to account for the human rights and environmental consequences of their greenhouse gas emissions.⁸ The UN OHCHR's recently released [Frequently Asked Questions on Human Rights and Climate Change](#) provides analysis on the responsibility of business related to human rights and climate change under the UNGPs.⁹ With a view to remaining relevant to the key sustainability challenges of our time and aligning with the global commitments articulated in the Paris Agreement and the 2030 Agenda for Sustainable Development, the Guidelines should clarify the expectations on MNEs with regard to climate change. Furthermore, many adverse human rights impacts connected to business activities relate to land use and environmental degradation, with indigenous peoples, women and children particularly at risk. Further emphasis on land and environmental rights in the Guidelines would be necessary.

5. Focus on rights holders and groups and individuals at risk

Groups at particular risks of human rights abuses in the context of business are those who already suffer from marginalisation and discrimination.

Women and girls are often differently and disproportionately impacted by business activities.¹⁰ Instruments aiming at shaping RBC need to include a focus on gender in a broad sense. The *OECD Due Diligence Guidance for Responsible Business Conduct* contains recommendations urging businesses to apply a gender

⁶ See B-tech project foundational papers available here: <https://www.ohchr.org/EN/Issues/Business/Pages/B-TechProject.aspx>

⁷ <https://ganhri.org/outcome-statement-nhris-and-climate-change/>

⁸ See *Vereniging Milieudefensie and others v Royal Dutch Shell PLC* (26 May 2021) C/09/571932 / HA ZA 19-379; Commission on Human Rights of the Philippines National inquiry on climate change, https://essc.org.ph/content/wp-content/uploads/2019/03/CHR_concluded_landmark_inquiry_on.pdf <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2021:5339>

⁹ UN, OHCHR, *Frequently Asked Questions on Human Rights and Climate Change* (2021) 36-38, https://www.ohchr.org/Documents/Publications/FSheet38_FAQ_HR_CC_EN.pdf?fbclid=IwAR0gphzUXG160IJ_gzflUk9CwzEXvT1kyabuo0s0W2P6tvk6jwq5YFVvjw

¹⁰ See for <https://www.humanrights.dk/sites/humanrights.dk/files/media/document/women%20in%20business.pdf>

perspective to risk-based due diligence. However, the Guidelines themselves do not adequately address gender issues, which is a gap that should be addressed.¹¹

The Guidelines should also guide MNEs in supporting the rights of indigenous peoples, ethnic minorities, migrant workers, children, persons with disabilities and other disadvantaged groups. Guidance could include seeking specialised or additional due diligence measures to ensure the needs and rights of these groups are respected. It could also acknowledge the importance of intersectionality and interdisciplinary approaches.

Finally, NHRIs note the efforts of the OECD to develop guidance for businesses on engaging with stakeholders as part of their due diligence efforts through the Due Diligence Guidance as well as sectoral guidance such as the *Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector*. However, NHRIs are concerned about the further shrinking of the civic space and the role businesses are playing in the silencing of civil opposition. Civil society organisations and human rights defenders are increasingly facing reprisal, in particular when raising their voices about adverse impacts of business activities. The Guidelines should therefore recognise the key role of human rights defenders and set a clear expectation that MNEs should avoid infringing on the rights of human rights defenders through their actions and omissions and seek support a shared civic space, as noted in the recent joint statement by BIAC, TUAC and OECD Watch.¹²

The GANHRI WG BHR looks forward to engaging further with the OECD in the upcoming consultations on the Guidelines.

Kind Regards,

A handwritten signature in black ink, appearing to read 'Deniz Utlü', enclosed within a thin black rectangular border.

Deniz Utlü,

Chair, GANHRI Working Group on Business and Human Rights

¹¹ See the approach of the UN Working Group on Business and Human Rights to apply a gender lens to the UNGPs, <https://www.ohchr.org/EN/Issues/Business/Pages/GenderLens.aspx>

¹² <https://www.oecdwatch.org/wp-content/uploads/sites/8/2020/04/FIN-2020-03-BIAC-TUAC-OECD-Watch-statement-on-pressure-against-submitters.pdf>



International
Labour
Organization

September 2021

ILO inputs to the OECD stocktaking exercise to assess the MNE Guidelines, their implementation, and OECD's work on RBC

Key points

The ILO thanks the OECD Secretariat for seeking ILO inputs to the OECD stocktaking exercise to assess the OECD Guidelines for multinational enterprises, their implementation and the OECD's work in general on Responsible Business Conduct (RBC) in the current context.

The ILO has reviewed the draft report of the Stocktaking exercise that includes the inputs from the 50 NCPs as well as the inputs from BIAC and TUAC.

The ILO has structured its inputs in relation to three areas:

- the OECD Guidelines for Multinational Enterprises (MNE Guidelines),

- the National Contact Points (NCPs),
- the OECD's pro-active agenda on Responsible Business Conduct.

Finally, the ILO submission also includes a number of suggestions for strengthened coherence on the RBC agenda, especially in light of the "Global call to action for a human-centred recovery from the COVID-19 crisis that is inclusive, sustainable and resilient" that governments, employers and workers have adopted in the 109th International Labour Conference (June 2021).

1. Inputs in relation to the OECD MNE Guidelines

The OECD Guidelines for Multinational Enterprises and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration) were both adopted in the 1970s as "sister instruments" on the expected conduct of - originally -

multinational enterprises. The two instruments have gone through various revision processes and kept pace with each other as they went.

The last such revision of the OECD MNE Guidelines took place in 2010-2011 during which the ILO provided extensive technical inputs, especially in relation to the "Employment and industrial relations" chapter, based on international labour standards and the 2006 version of the MNE Declaration to ensure alignment of the OECD MNE

Guidelines with international labour standards and the MNE Declaration.

In 2017, government, employer and worker members of the ILO's Governing Body unanimously adopted a revised version of the MNE Declaration (5th version) after a comprehensive review process of the instrument (text and annexes). This review process "took account of developments since the previous update in 2006 within the ILO such as the ILO Declaration on Social Justice for a Fair Globalization, adopted by the International Labour Conference (ILC) in 2008, new international labour standards, the ILC Conclusions concerning the promotion of sustainable enterprises (2007) and the ILC Conclusions concerning decent work in global supply chains (2016); as well as the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (2011) and the goals and targets of the 2030 Agenda for Sustainable Development (2015) that are particularly relevant to the Declaration; and noting the Addis Ababa Action Agenda (2015) on financing for development, the Paris Agreement (2015) concerning climate change, and the OECD Guidelines for Multinational Enterprises (as revised in 2011)."

The Working Party on Responsible Business Conduct may wish to consider the changes resulting from the 2017 update of the MNE Declaration in its stocktaking exercise on the OECD MNE Guidelines:

- The updated text recognizes the continued prominent role of multinational enterprises and the need to apply the principles of the MNE Declaration in the context of FDI and trade, and the use of global supply chains. It also recognizes that MNEs operate through relationships with other enterprises as part of their overall production process and, as such can contribute to further the aim of the MNE Declaration (para 6).
- It now clarifies that MNEs include enterprises – whether fully or partially state owned or privately owned – which own or control production, distribution, services or other facilities outside the country in which they are based. They may be large or small; and can have their headquarters in any part of the world (para 6).
- It also clarifies that although the instrument is addressed to MNEs and social policy in its title, the same expectations are expressed to all enterprises as the principles in the MNE Declaration reflect good social practices for all enterprises (para 5).
- The updated text stresses that both home and host country governments of MNEs have responsibilities in promoting good corporate practice in accordance with this Declaration (national law and international standards) and that both host and home country governments should be prepared to have consultations with each other, whenever the need arises, on the initiative of either (para 12). This is in line with the fundamental duty of States to protect human rights, including human rights at work as stipulated in the UN Guiding Principles on Business and Human Rights.
- It reconfirms the aim of the MNE Declaration is "to encourage the positive contribution which multinational enterprises can make to economic and social progress and the realization of decent work for all; and to minimize and resolve the difficulties to which their various operations may give rise." (para 2) "This aim will be furthered by appropriate laws and policies, measures and actions adopted by the governments, including in the fields of labour administration and public labour inspection, and by cooperation among the governments and the employers' and workers' organizations of all countries." (para 3)
- It includes a reference to the 1998 Declaration on Fundamental Principles and Rights at Work, covering (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; and (d) the elimination of discrimination in respect of employment and occupation. It recognizes that multinational enterprises, through their operations, can contribute significantly to the attainment of its objectives (para 9)
- It is addressed to governments, employers and workers organizations of home and host countries, and to MNEs; and it reflects the fact that different actors have a specific role to play (para 10).
- It includes a direct reference to the UN Guiding Principles on business and human rights (UNGPs), which outlines the respective duties and responsibilities of States and enterprises on human rights. The State duty is to protect, the corporate responsibility is to respect, and rights and obligations need to be matched to appropriate and effective remedies. (para 10(a)) It states that the UNGPs apply to all States and all enterprises regardless of their size, sector, operational context, ownership and structure. (para 10(b))
- It notes that enterprises should avoid causing or contributing to adverse impacts through their own

activities and seek to prevent or mitigate adverse impacts directly linked to their operations, products or services by their business relationships. (para 10c))

- It states that enterprises should conduct due diligence "to identify, prevent, mitigate and account for how they address their actual and potential adverse impacts that relate to internationally recognized human rights, understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the ILO Declaration on Fundamental Principles and Rights at Work". (para 10(d))
- It further states that, "in order to gauge human rights risks, enterprises should identify and assess actual and potential adverse impacts with which they may be involved through their own activities or as a result of their business relationships, and that this process should involve meaningful consultation with potentially affected groups and other relevant stakeholders, including workers' organizations, as appropriate to the size of the enterprise and the nature and context of the operation." It continues that "For the purpose of achieving the aim of the MNE Declaration this process should take account of the central role of freedom of association and collective bargaining as well as industrial relations and social dialogue as an ongoing process." (para 10(e))
- The updated industrial relations chapter expresses the expectation that MNEs should uphold the highest standards of industrial relations throughout their operations. (paras 47 - 68)
- The section on grievance mechanisms was renamed as "access to remedy and grievance mechanisms" with two new paragraphs (64 and 65) stating that "As part of their duty to protect against business-related human rights abuses, governments should take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction any affected worker or workers have access to effective remedy." (para 64) and that "Multinational enterprises should use their leverage to encourage their business partners to provide effective means of enabling remediation for abuses of internationally recognized human rights." (para 65). These new paragraphs are in addition to the existing para 66 that states that "Multinational as well as national enterprises should respect the right of the workers whom they employ to have all their grievances processed in a manner consistent with the following

provision: any worker who, acting individually or jointly with other workers, considers that he or she has grounds for a grievance should have the right to submit such grievance without suffering any prejudice whatsoever as a result, and to have such grievance examined pursuant to an appropriate procedure. This is particularly important whenever the multinational enterprises operate in countries which do not abide by the principles of ILO Conventions pertaining to freedom of association, to the right to organize and bargain collectively, to discrimination, to child labour and to forced labour."

- A number of new areas of social policy have been included:
 - Transitioning from the informal to the formal economy (para 21)
 - Social security/social protection (para 22)
 - A new section addressing the elimination of forced labour (paras 23-25) based on the Protocol of 2014 to the Forced Labour Convention, 1930
 - The effective abolition of child labour: minimum age and worst forms (para 26)
 - That governments should promote equal remuneration for men and women workers for work of equal value (para 29)
 - Setting wages, benefits and conditions of work, taking "into consideration:
 - i) the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups; and
 - ii) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment." (para 41)
 - "Building a preventative safety and health culture in enterprises progressively achieving a safe and healthy working environment, including taking steps to combat workplace violence against women and men and attention to building safety" and adding that "Compensation should be provided to workers who have been victims of occupational accidents or diseases." (para 43)

The importance of these areas were specifically highlighted during the recent COVID-19 pandemic and its impact on the

world of work and labour rights, especially for vulnerable workers.

For the full overview of the changes to the text, please see the report of the review process to the 329th session of the ILO Governing Body - [Recommendations of the tripartite ad hoc working group concerning the review of the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy text, annex and addenda and the interpretation procedure.](#)

The review process of the MNE Declaration also led to the adoption of two new annexes, which may be relevant to the OECD stocktaking exercise:

1. **Annex 1** - List of ILO Declarations, international labour Conventions and Recommendations, Codes of Practice, Guidelines and other guidance documents relevant to the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy – this new annex combines the Annex and Addendum I of the 2006 version and has been organized by topic, following the structure of the MNE Declaration. It has been complemented with ILO Declarations, ILO standards identified as relevant for the revised version; and ILO codes of practice, guidelines and other guidance documents.

2. **Annex 2** – Operational tools to stimulate the uptake of the principles of the MNE Declaration and its principles by all parties:

- a. Regional follow up mechanism.
- b. Promotion at the national level / promotion through tripartite –appointed national focal points.
- c. Technical assistance to tripartite constituents in the ILO member States.
- d. ILO Helpdesk for Business on international labour standards.
- e. ILO company-union dialogue facilitation.
- f. Interpretation procedure.

2. Inputs in relation to the National Contact Points

ILO notes calls in the draft stocktaking report for further capacity building of NCPs on specific areas covered in the OECD MNE Guidelines. In 2019 and 2021, the ILO organized, together with the OECD Secretariat and with financial support of the EU through the Trade for Decent Work project, a training for NCPs on international labour standards and the MNE Declaration. Participants in the 2019 training included 11 NCPs in EU member States (Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Hungary, Italy, Lithuania, and Netherlands) as well as the NCP from the UK and from Morocco. The 2021 training – conducted virtually - was open to all NCPs and included 65 participants from 26 NCPs.

This training introduced the NCPs to ILO tools and resources for business that NCPs could use in their promotional activities on RBC. It also facilitated reflections on how to stimulate coherence and collaboration on the labour dimension of RBC, based on the OECD MNE Guidelines and the ILO MNE Declaration, with both instruments also referring to the UN Guiding Principles on business and human rights. The training also introduced NCPs to ILO tools and resources to assist them in addressing labour-related issues, especially in the context of specific instances; there were “ask the expert” sessions on topics NCPs had identified as particularly challenging; and provided a space for exchange of experience. The course received very high appreciation marks from the participating NCPs.

Discussions on coherence and collaboration focussed particularly on collaboration between the NCPs established under the OECD MNE Guidelines and national focal points established under the ILO MNE Declaration. The operational tools adopted as part of the 2017 MNE Declaration update include a provision that encourages national constituents – governments, employers and workers – “to appoint national focal points on a tripartite basis (taking guidance from Convention No. 144) to promote the use of the MNE Declaration and its principles, whenever appropriate and meaningful in the national

context¹.” The provision implicitly complements the obligation for States adhering to the OECD MNE Guidelines to set up a national contact point. So far, eight ILO member States have appointed such national focal points for the promotion of the MNE Declaration and its principles, including two member States that also have an NCP (Norway and Portugal).

The MNE Declaration moreover states, “Where similar tools and processes exist in relation to the principles of this Declaration, governments are encouraged to facilitate involvement of the social partners in them” which is an implicit reference to the OECD NCPs with the call to governments for these NCPs to become tripartite entities. The draft stocktaking report highlights that currently 10 out of the 50 NCPs are “multipartite”².

This raises the question how a better coordination and collaboration can be achieved between the two mechanisms, while recognizing and respecting their different roles. As both mechanisms have a promotional function, further joint promotion of the OECD MNE Guidelines and the ILO MNE Declaration as well as promotion of supporting tools could be explored, thus stimulating further coherence and synergies on the RBC agenda.

3. Inputs in relation to the OECD's pro-active agenda on RBC

ILO appreciated contributing to the development of the sectoral and general OECD due diligence guidance documents. This inclusive process advanced international policy coherence and coherent guidance to enterprises on due diligence based on the provisions in the three international instruments (UNGPs, ILO MNE Declaration and OECD MNE Guidelines).

The various OECD due diligence guidance documents, which ILO actively promotes, are playing an important role in supporting companies in undertaking the due diligence process. This guidance can be usefully combined with ILO

supporting tools for business such as [the ILO Helpdesk for Business](#), the ILO self-assessment tool for companies based on the MNE Declaration (forthcoming), capacity building opportunities for companies on labour rights, ILO business networks on specific labour rights³ and encouraging the participation of companies in ILO-led development cooperation projects focused on labour rights.

Collaboration has increased over the past 10 years between OECD and ILO, as well as with OHCHR and the UN Working Group on Business and Human Rights. This includes the ILO participation in the annual OECD Global Forum on RBC as well as the OECD sectoral forums on RBC based on the sectoral due diligence guidance. Concrete examples of the collaboration include **the joint ILO-OECD-UNOHCHR brochure** on the three international instruments on responsible business conduct; and the joint EU funded projects in Asia (Responsible Supply Chains in Asia – covering on specific supply chains in six countries in Asia) and the Americas (Responsible Business Conduct in Latin America and the Caribbean). These joint projects have provided excellent opportunities for concrete collaboration between the international organizations using the lead instruments on RBC as the framework for intervention and support. The **joint projects** have also received strong support by constituents in ILO member States as important contributions to enhanced coherence on RBC bringing together different ministries in the policy discussions as well as the social partners (employers' and workers' organizations), businesses and civil society. Joint action also fosters coherence on the expectations on business expressed in the three international instruments and the set of concrete tools for companies developed by the three organizations that support companies to live up to these expectations.

The ILO also would like to highlight the **successful collaboration for the publication of the Alliance 8.7 report** on [“Ending child labour, forced labour and human trafficking in global supply chains”](#). This report was produced in response to the Ministerial Declaration of the July 2017 meeting of the Group of Twenty (G20) Labour and Employment Ministers calling for joined data and expertise

¹ See www.ilo.org/mnedeclaration - promotion at the national level/promotion by tripartite appointed national focal points see [Promotion at the national level / Promotion by tripartite appointed national focal points \(ilo.org\)](#)

² See draft stocktaking report page 45.

³ See [Business Networks \(Helpdesk for business\) \(ilo.org\)](#)

to better understand child labour, forced labour and human trafficking in global supply chains. It was developed under the Alliance 8.7 Supply Chain Action Group by the ILO, the OECD, the International Organization for Migration (IOM) and the United Nations Children's Fund (UNICEF). This landmark report provides the first ever estimates of child labour and human trafficking in global supply chains, finding that the majority of forced and child labour is in domestic supply chains, and outlines several key areas in which governments and businesses can take action. It provides a comprehensive overview of public and private action on child labour and forced labour in global supply chains.

Additionally, ILO would like to highlight the collaboration between the OECD and the ILO Child Labour Platform. This includes the launch at the 2021 OECD Forum on Due Diligence in the Garment and Footwear Sector of the [ILO Supplier Guidance on child labour in the garment sector](#) produced by the Child Labour Platform in collaboration with the private sector. A similar collaboration took place a few months later for the launch at the [OECD Forum on Responsible Mineral Supply Chains](#) of the ILO Mapping of Interventions [Addressing Child Labour and Working Conditions in Artisanal Mineral Supply Chains](#) produced with support of the ILO Child Labour Platform.

Collaboration at the sectoral level could be further strengthened. The OECD has developed sectoral due diligence guidance and conducted sector-specific RBC fora in recent years. ILO has invested considerable resources in these OECD initiatives in the spirit of the need for enhanced policy coherence and joint action in these specific sectors. ILO has considerable sectoral expertise that could stimulate further collaboration. Various ILO sector-specific fora in recent years have proven to be valuable mechanisms for fostering sector-specific social dialogue and solutions. ILO Sectoral meetings help build consensus among governments, employers' and workers' organizations on decent work opportunities and challenges faced in specific sectors. They also offer opportunities for constituents to address supply chain issues and opportunities. During a recent sectoral meeting on the future of work in the automotive industry, for example, ILO constituents included key messages from the ILO MNE Declaration and the OECD MNE Guidelines in the conclusions. There is potential to use these conclusions more strategically to advance decent work as well as to strengthen collaboration between ILO and the OECD to advance decent work and RBC in specific sectors and supply

chains. Examples of such enhanced collaboration at the sectoral level include the following:

- **Towards greater policy coherence and a more strategic collaboration in specific sectors:** The ILO has invested considerable resources in the development of OECD sector-specific due diligence guidance and sector-specific RBC fora in recent years. Both have served as an opportunity to promote decent work and ILO would welcome enhanced policy coherence and improved collaboration between the two organizations so that they can benefit from each other's capacities and leverage each other's resources to advance RBC and decent work in specific sectors and their supply chains.
- **Knowledge creation and dissemination on specific sectors and their supply chains:** Both the ILO and OECD create new knowledge and recommendations to address specific challenges and issues in key sectors and supply chains. However, there is limited coordination and only very few examples of joint work to develop new knowledge and recommendations, particularly for sector and supply chain-specific action.
- **Policy advice and technical assistance focusing on specific sectors and their supply chains at the country level:** The EU-ILO-OECD joint project on responsible supply chains in Asia provided a first opportunity for collaboration on policy advice and technical assistance at the country level in specific supply chains, leveraging the specific strengths of both organizations and reaching a broader range of actors in the countries concerned. This is a model of collaboration that could be further explored in the context of other and new sectoral supply chain-focussed projects implemented by ILO or OECD and in which collaboration is explored.

The ILO very much welcomes further engagement and collaboration in the OECD's pro-active agenda on RBC to foster coherence and synergies.

4. Looking ahead – trends that might be useful to consider

It is clear that the responsible business agenda plays an increasingly important role in the current economic and social context. The 2030 Agenda and the SDGs convey clear expectations to companies on their contribution to the people- and planet-centred Future We Want. A number of governments are taking concrete initiatives to stimulate responsible business conduct through legislative initiatives (including human rights due diligence legislation and legislation on non-financial data disclosure to enhance transparency) and other measures, including ratification of ILO standards, the inclusion of commitments to RBC in trade and investment agreements and the adoption of national action plans on business and human rights.

The ILO would like to bring to the attention of the OECD a number of trends that are particularly relevant in the context of its current stocktaking exercise:

Future of work

In the ILO, governments, employers and workers [adopted](#) at the 108th session of the International Labour Conference (June 2019) the [“Centenary Declaration for the Future of Work”](#) – a roadmap for a human-centred future of work in response to the transformative changes in the world of work, driven by technological innovations, demographic shifts, climate change and globalization. This roadmap includes as one of the pillars “Promoting sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all through: ... policies and incentives that promote sustainable and inclusive economic growth, the creation and development of sustainable enterprises, innovation, and the transition from the informal to the formal economy, and that promote the alignment of business practices with the objectives of this Declaration”. It calls on the ILO to “direct its efforts to ensure that diverse forms of work arrangements, production and business models, including in domestic and global supply chains, leverage opportunities for social and economic progress, provide for decent work and are conducive to full, productive and freely chosen employment”. This ambitious agenda can

only be reached by intensifying cooperation with a view to strengthening policy coherence within the multilateral system. This policy coherence includes aligning RBC approaches with other approaches to sustainable development, including more human-centred industrialization policies and promotion of circular economies. OECD is a key partner in this regard.

Occupational Safety and health

The Centenary Declaration also laid the ground for discussions among governments, employers and workers in the ILO on including safe and healthy working conditions in the ILO's framework on fundamental principles and rights at work. OECD may wish to carefully follow this discussion⁴ in the context of the stocktaking exercise in relation to its MNE Guidelines, the various due diligence guidance documents and the RBC agenda more broadly.

Social dialogue

In February 2019 a Tripartite Meeting of Experts on Cross-border Social Dialogue, held at the ILO, analysed contemporary experiences, challenges and trends characterizing cross-border social dialogue initiatives, and the role and value added of the ILO, including in relation to RBC policies and initiatives. The [Conclusions of the Tripartite Meeting of Experts](#) (subsequently approved by the ILO Governing Body) highlighted the contribution of cross-border social dialogue (including among actors in supply chains), “to the effective implementation of many international instruments such as the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration), the UN Guiding Principles on Business and Human Rights (UNGPs) and the OECD Guidelines for Multinational Enterprises. The MNE Declaration, which is consistent with the UNGPs, emphasizes that all enterprises should carry out human rights due diligence with the meaningful consultation of relevant stakeholders including workers' organizations.” (para 5)

These conclusions also focus on the importance of social dialogue and consultations with stakeholders in corporate social responsibility and responsible business conduct initiatives, such as human rights due diligence and RBC policy initiatives, including legislation and national action plans on business and human rights. They call on

⁴ See agenda item of the 343th session of the ILO Governing Body (November 2021) - Proposals for including safe and healthy working conditions in the ILO's framework of fundamental principles and rights at work (GB.343/INS/6)

governments to promote all aspects of the MNE Declaration and to, whenever meaningful or relevant in the national context, appoint national focal points on a tripartite basis, or make use of similar processes, for the effective promotion of the MNE Declaration and for the facilitation of the involvement of the social partners in relation to the principles of the MNE Declaration. The conclusions also call on workers' and employers' organizations to raise awareness about the voluntary company-union dialogue facilities under the MNE Declaration for the discussion of issues of mutual concerns. The ILO is called upon to "supporting ILO member States, upon request, to establish national focal points on a tripartite basis or to use similar tools or processes to promote the MNE Declaration, and provide the focal points with appropriate training". (para 14(B)(iv)) This is a clear link to the already ongoing ILO-OECD engagement on national focal points and NCPs.

Recovery from COVID-19 pandemic - human-centred, inclusive, sustainable and resilient

The impact of the COVID-19 pandemic on societies, people and planet has reinforced the importance of the people- and planet-centred approach of the SDGs and the human-centred approach to the Future of Work.

An [analysis of policy responses in ILO Member States](#) reveals an immense uptake of sectoral and supply chain strategies to mitigate the impact of COVID-19 on businesses, jobs and the most vulnerable members of society for a range of strategic sectors, such as health, civil aviation, culture, tourism, transport and textiles. This is an unprecedented opportunity to advance decent work and responsible business in the targeted sectors.

In 2021, the International Labour Conference adopted a [Global Call to Action for a human-centred recovery from the COVID-19 crisis that is inclusive, sustainable and resilient](#). This Global Call to Action outlines measures to create a human-centred recovery from the pandemic and avoid the long-term scarring of economies and societies. It includes *inter alia* a section on inclusive economic growth and employment that looks to "foster more resilient supply chains that contribute to: (i) decent work; (ii) sustainability of enterprises along the supply chain, including micro, small and medium-sized enterprises; (iii) environmental sustainability; and (iv) protection of and respect for human rights in line with the three pillars of the UN Guiding Principles on Business and Human Rights and the ILO Tripartite Declaration of Principles concerning

Multinational Enterprises and Social Policy; supported by sustainable international trade and investment". (Section A, para (i))

In follow-up to this Global Call to Action an Office-wide Plan of Action is being prepared for discussion and adoption in the 343th session of the ILO Governing Body (November 2021).

Decent work in supply chains

Further to the resolution concerning decent work in global supply chains adopted by the International Labour Conference in 2016 and the ILO programme of action on decent work in global supply chains, discussions within the ILO continue on normative and non-normative options to ensure decent work in global supply chains. In March 2021, the ILO Governing Body adopted in its 341th session the following decision regarding a two-step process:

"(1) The Office will be tasked to conduct an in-depth review to clearly identify if there are any gaps in the current body of normative and non-normative measures, including means of implementation and other measures, to facilitate a discussion on options to ensure decent work in supply chains, including at sectoral level, where appropriate. The review to be delivered and shared with the constituents by November 2021 should provide the basis for a review by a tripartite working group of a manageable size and observing regional balance, to be established by November 2021.

(2) This working group will further develop, with the support of the Office, the building blocks for a comprehensive strategy on achieving decent work in supply chains, taking into account the 2019 ILO Centenary Declaration for the Future of Work, the One-ILO approach, and relevant outcomes of the 109th Session (2021) of the Conference, and will present its report to the Governing Body for discussion at its 344th Session (March 2022) with a view to deciding on appropriate follow-up action.

(3) Decisions of the working group shall be taken by consensus. Representatives shall make every effort to reach an agreement that is generally accepted, so that a decision can be adopted without formal objections. Where it is not possible to reach consensus on a specific issue, the divergent views shall be set out in its report to the Governing Body."

This process is currently ongoing and ILO recommends OECD to consider its outcomes.

The successful collaboration in the Alliance 8.7 Supply Chains Action Group, including for the publication of the Alliance 8.7 report on "[Ending child labour, forced labour and human trafficking in global supply chains](#)" highlights the importance to further strengthening of the inter-agency collaboration on data collection and analysis of child labour and forced labour in global supply chains and policy recommendation for more effective public and private action on SDG 8.7.

Vulnerable groups

The COVID-19 pandemic has made clear the need for further focused attention on the particular risks faced by different groups in vulnerable situations (indigenous peoples, workers with disabilities, racial/ethnic minorities, migrants, LGBTI, etc.) and the need to strengthen gender-responsive human rights due diligence and access to remedy.

The OECD stock taking report notes a new focus on "intersectionality" as a lens for understanding how women and other individuals may be impacted differently as a result of intersecting identity traits commonly subject to discrimination (e.g. gender, race, ethnicity, migrant status, caste, etc.) as a key development since 2011. This is in line with the ILO's approach to gender, equality, diversity and inclusion and responds to the need expressed by NCPs for more focused guidance addressing issues such as indigenous peoples' rights, gender equality and diversity and inclusion.

The [Violence and Harassment Convention](#), 2019 (No. 190) and Recommendation, 2019 (No. 206) recognize the right of everyone to a world of work free from violence and harassment, including gender-based violence and harassment. The new instruments contain important guidance on measures to protect all persons in the world of work, irrespective of contractual status, including measures on prevention and access to remedy. C190 has recently been referred to in the first OECD MNE Guidelines specific instance related to gender-based violence and harassment (May 2021).

The COVID 19 impacts on **women and gender equality** are well documented, including through several [ILO policy briefs](#). Due diligence efforts should take account of the COVID exacerbated risks to the human rights of women and other groups in vulnerable situations, including unemployment, access to social protection and health and safety risks (including pregnancy and maternity protection and risk of violence and harassment).

In relation to **indigenous peoples**, the 2020 ILO report on [Implementing the ILO Indigenous and Tribal Peoples Convention No. 169: Towards an inclusive, sustainable and just future](#) might be a useful tool for more focused guidance on indigenous peoples' rights. The ILO trainings for NCPs mentioned above, included a session on indigenous peoples and C. 169, based on the request of NCPs.

ILO also notes that in the OECD draft stocktaking report there is a call to reflect on "*developments related to the platform and gig economy and its impacts on protection of workers. Other areas where further clarity might be needed include migrant workers; domestic work; job creation; apprenticeships, gender and broader inclusion and diversity promotion policies...and labour relations during crises or states of emergencies such as the COVID-19 pandemic; and a more proactive approach to health and safety at work and informality.*" In relation to **migrant workers**, and in response to their heightened vulnerability due to the impact of the COVID-19 pandemic, the ILO has recently launched the second phase of the [Fair Recruitment Initiative](#), which includes a specific pillar on "promoting fair business practices". In Phase II, the FRI will focus on the specific challenges for small and medium enterprises, which are often without human resource departments or additional resources to dedicate to recruitment procedures. The FRI will develop a toolkit for small and medium enterprises with easy-to-follow procedures and guidance to help them to most effectively mitigate potential risks and track the effectiveness of their recruitment procedures.

At the national and corridor level, the FRI aims to engage with compliant private recruitment agencies and their associations at national and global level. The FRI will support them to address challenges related to the adverse impact of the COVID-19 pandemic. This will include providing opportunities for peer-to-peer exchanges and learning; fostering innovative approaches; and promoting use of digital solutions to increase effectiveness and transparency in the delivery of fair and effective services to employers and workers.

In relation to seafarers, the UN Global Compact, ILO, IOM and OHCHR released in May 2021 the "[Maritime human rights risks and the COVID-19 crew change crisis – A tool to support human rights due diligence](#)" to which several experts – including from OECD – contributed.

► **ILO inputs to the OECD stocktaking exercise to assess the MNE Guidelines, their implementation, and OECD's work on RBC (21 September 2021)**

- The ILO very much welcomes further engagement with the OECD on the global RBC agenda built on enhanced coherence and collaboration between the organizations on the promotion of their respective instruments on responsible business conduct among governments, employers and workers to achieve inclusive economic growth and social justice through a human-centred approach to the Future of Work.



20 September 2021

Dear Alan,

Many thanks for the invitation to OHCHR to provide written feedback on the OECD stocktaking exercise to assess the OECD Guidelines for Multilateral Enterprises (the MNE Guidelines), their implementation and the OECD's work on responsible business conduct (RBC).

I congratulate you and your colleagues on the draft stock taking report, which provides a comprehensive overview of key developments over the past decade and of the pertinent issues to consider for the future.

Significant developments have also taken place over the past decade with regard to the UN Guiding Principles on Business and Human Rights (the UNGPs). I invite you to review the recent stocktaking report prepared by the UN Working Group on Business and Human Rights on the occasion of the 10th anniversary of the endorsement of the UNGPs by the Human Rights Council, as well as the forthcoming Roadmap for the next decade, which will be published later this year.¹

General comments

OHCHR greatly values the collaboration with OECD on promoting the uptake and effective implementation of our complementary, and mutually reinforcing, normative frameworks. The alignment between the Human Rights Chapter of the MNE Guidelines as well as important elements of the General Policies Chapter, and the UN Guiding Principles on Business and Human Rights (UNGPs) has provided excellent opportunities to leverage our respective roles and mandates in support of the shared objective of preventing and addressing business-related human rights risks and impact.

In particular, we have appreciated the opportunities to contribute to the development of the various due diligence guides with the aim of ensuring alignment also in the implementation of our respective instruments. Alignment in the guidance we provide to stakeholders contributes to coherence and clarity of expectations and avoids fragmentation in approaches, and is ultimately to the benefit of rights holders.

We have also greatly appreciated and benefited from the OECD's contribution to OHCHR's work on Business and Human Rights, notably the inputs concerning the National Contact Points system to our Accountability and Remedy Project (ARP). The Guidance developed through ARP related to state-based non-judicial mechanisms benefitted significantly from these inputs which were reflected in the subsequent guidance presented to, and welcomed by, the UN Human Rights Council. We encourage

¹ [OHCHR | UNGPs next 10 years project](#)

any discussion about the functioning of the National Contact Points taking place in the context of the stock taking exercise to be informed by the OHCHR guidance on state-based non-judicial mechanisms, to the extent possible and relevant for their mandates.²

Another area of mutually reinforcing collaboration has been through participation in our respective events, such as the Annual Forum on Business and Human Rights and the OECD Global Forum on Responsible Business Conduct. Most recently, this was exemplified in a joint side event at the 2021 OECD Global Forum focused on the use of the NCP system in cases involving tech companies. The session demonstrated the mutual value and shared learning to come out of our respective activities, including for an emerging area like digital technology. The focus on a concrete NCP case in dealing with a specific incident involving a technology company was very informative for the OHCHR B-Tech Project.³ We also look forward to collaboration on a forthcoming consultation, mandated by the UN Human Rights Council, on accountability and remedy in the tech sector.⁴

We appreciate the move towards closer collaboration on the country level, as exemplified by our joint efforts in a number of countries in the Latin America and Caribbean region.⁵ The Responsible Business Conduct in Latin America and the Caribbean project (RBCLAC), implemented in cooperation with the ILO, the OECD and OHCHR, has been a continuous exercise of collaboration between institutions. The project has furthermore proved the practical benefits of the alignment between the standards promoted by these institutions. A brochure on key messages of international instruments on RBC was designed to show the alignment between the UNGPs, OECD Guidelines and ILO Tripartite Declaration and how these instruments complement each other.⁶ The V Regional Forum on Business and Human Rights in 2020 hosted an internal consultation of NCPs and national human rights institutions in the region.⁷

In addition to the work in the Latin American and Caribbean region, OHCHR welcomes activities focused on business and human rights/RBC by an increasing number of international organisations in different geographic regions. It is important to safeguard alignment and consistency in approaches to implementation of the MNE Guidelines and the UNGPs, in line with the guidance developed by the OECD and OHCHR.

The continued relevance of the MNE Guidelines

As already mentioned, OHCHR considers the alignment between relevant parts of the MNE Guidelines and the UNGPs to be of pivotal importance, and arguably a key factor in the significant uptake of the standards they both embody, at the company level as well as at the policy and regulatory levels.⁸

The draft stock taking report identifies a number of developments over the past decade in areas covered by or relevant to the MNE Guidelines, such as digitalisation. The

² The guidance (found in the annex to report A/HRC/38/20) and other relevant ARP outputs may be found at www.ohchr.org/EN/Issues/Business/Pages/ARP_II.aspx.

³ www.ohchr.org/EN/Issues/Business/Pages/B-TechProject.aspx.

⁴ [draft-CN-agenda-consultation-A2R-tech-sector.pdf \(ohchr.org\)](#)

⁵ www.ohchr.org/EN/Issues/Business/Pages/JointProjectResponsibleBusinessConduct.aspx.

⁶ <https://www.ohchr.org/Documents/Issues/Business/AlignmentBrochureRBC.pdf>

⁷ <https://www.ohchr.org/Documents/Issues/Business/AlignmentBrochureRBC.pdf>

⁸ www.ohchr.org/EN/Issues/Business/Pages/UNGPsBizHRsnext10.aspx.

report raises the question whether an update of the MNE Guidelines is necessary to effectively respond to these developments.

It is outside the scope of OHCHR's mandate to weigh in this question beyond matters relevant to human rights. However, as a general observation, OHCHR notes that the range of NCP specific incident cases illustrate the inbuilt flexibility in applying the principles of the MNE Guidelines to new and emerging areas. OHCHR also notes the significant challenges and risks associated with opening up the text, including the risk of regressing rather than advancing, and the time and resource implications of updating a framework that has demonstrated to be robust and dynamic in the face of evolving contexts and issues.

OHCHR recommends that to the greatest extent possible challenges related to new and emerging RBC issues be addressed through continued dynamic interpretation, focused guidance (as requested by many NCPs) and through utilising existing mechanisms for authoritative clarification by the Investment Committee in relation to specific issues (see also section below).

If additional chapters were to be added, and any or all of the existing chapters of MNE Guidelines were to be reopened, OHCHR urges that the terms of reference for such a process takes account of the need to ensure continued alignment with the UNGPs.

OHCHR also recommends that if specific chapters of the MNE Guidelines were to be revised or amended to reflect key developments over the past decade, for example on environment and climate change, the process should take account of the intersectionality with human rights and reflect relevant human rights standards and approaches.

Specifically in relation to the Human Rights Chapter, OHCHR notes the reference in paragraph 71 of the stock taking report to the limitations of the MNE Guidelines when it comes to downstream value chain relationships. The UNGPs address all value chain relationships and OHCHR has addressed this issue in both general and sector specific guidance, for example in relation to the technology sector. If any review of the MNE Guidelines were to address the issue of downstream value chain relationships, OHCHR **notes** that it will be important to ensure consistency with the UNGPs, as there would otherwise be a risk of undermining the coherence between the two standards.

OHCHR agrees with the observation put forward in paragraph 75 of the stock taking report that regulatory initiatives related to RBC have accelerated. OHCHR also agrees that there is a growing need to position both the due diligence guidance at the core of both the MNE Guidelines and the UNGPs within these developments to support coherence and help foster a level playing field while avoiding conflicting requirements.

Given the risks outlined above of opening up the text of the MNE Guidelines themselves to respond to these developments, OHCHR is of the view that policy makers can and should rely on existing standards and the associated guidance when regulating. To support policy makers in this regard, additional measures can include targeted engagement with relevant stakeholders to resolve specific issues or challenges from converting soft law standards into binding legal text, for example when it comes to regulatory oversight and enforcement.

Interpretive guidance

Related, but distinct from the issue of implementation guidance, is the issue of authoritative interpretation of the standards themselves. When new standards are created, it is inevitable that issues of interpretation of these standards arise. As the UN system's focal point for interpretation of the UNGPs, OHCHR has on occasion been requested to weigh in on matters of interpretation that have also touched upon the MNE Guidelines. We appreciated on one occasion being requested directly by the Working Party on Responsible Business Conduct to provide such interpretive guidance.⁹

The Investment Committee of the OECD also has a formal mandate to clarify issues of interpretation of the MNE Guidelines. Where questions arise relating to the interpretation of the MNE Guidelines, the power of the Investment Committee to issue authoritative clarification can usefully be deployed to settle any pending issues.

When responding to requests to issue interpretive clarification, OHCHR notes the importance of taking account of any bearing it may have for the continued alignment of the two instruments, and informally consulting to mitigate to the greatest extent possible any risks of divergence between the OECD and OHCHR.

Thanks again for the invitation to provide feedback into the stocktaking process. OHCHR wishes you all the best for this important process.

Yours sincerely,



Lene Wendland
Chief, Business and Human Rights Unit

⁹ www.ohchr.org/Documents/Issues/Business/LetterOECD.pdf.

Mandate of the Working Group on the issue of human rights and transnational corporations and other business enterprises

11 October 2021

Re: Public consultation - Stocktaking exercise on the OECD Guidelines for Multinational Enterprises

The UN Working Group on Business and Human Rights (Working Group) is pleased to have the opportunity to contribute to the stocktaking exercise on the OECD Guidelines for Multinational Enterprises.

The Working Group is a group of five independent experts appointed and mandated by the UN Human Rights Council (resolutions 17/4, 26/22, 35/7, and 44/15) to promote dissemination and implementation of the [UN Guiding Principles on Business and Human Rights](#).¹ The UN Guiding Principles provide the globally recognized and authoritative framework for the respective duties and responsibilities of governments and business enterprises to identify, prevent, mitigate, and address business-related human rights impacts.

The UN Guiding Principles and the OECD Guidelines are closely connected and aligned. The human rights chapter of the 2011 version of the OECD Guidelines incorporates the second pillar of the UN Guiding Principles (the corporate responsibility to respect human rights), and the due diligence concept introduced by the UN Guiding Principles is incorporated across the areas covered by the OECD Guidelines. Moreover, the Working Group and the OECD have collaborated closely over the last decade to build on this alignment and drive further coherence and convergence around standards promoting responsible business conduct. Most recently, a joint session organized by the OECD in collaboration with the Working Group at the 2021 Global Forum on Responsible Business Conduct focused on how this alignment and collaboration has contributed to building international coherence and driving impacts.

2021 marks the 10th anniversary of the Human Rights Council's unanimous endorsement of the UN Guiding Principles, which were developed through a robust wide-ranging multi-stakeholder process. The Working Group has used the occasion of the 10th anniversary to take stock of the first decade of implementation through its "UNGPs 10+" project.² The Working Group's June 2021 report to the Human Rights Council³ noted that the UN Guiding Principles have provided a ground-breaking common platform for action. However, it also observed that the pace of implementation by States and businesses needs to urgently increase over the next decade to realize the vision of responsible business conduct that contributes to a sustainable future for all. The report

¹ See https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr_en.pdf.

² See <https://www.ohchr.org/EN/Issues/Business/Pages/UNGPsBizHRsnext10-inputs.aspx>.

³ A/HRC/47/39, <https://undocs.org/A/HRC/47/39>.

makes a set of recommendations to States and business that cuts across the three pillars of the UN Guiding Principles.

One key recommendation is the need to address remaining coherence gaps at all levels, within governments, businesses and multilateral institutions. Going forward, it will be crucial to build on the alignment between the UN Guiding Principles and the OECD Guidelines achieved to date and to strengthen alignment and coherence in other relevant standards and initiatives (including emerging due diligence legislation and sustainability disclosure regulation) as well as in the implementation efforts that need to increase both in breadth and depth. As highlighted by the Working Group in its several reports,⁴ we have consistently recommended improved coherence and integration of the UN Guiding Principles in relation to the OECD's programmatic areas such as export credit, State-owned enterprises, conflict prevention, public procurement, anti-corruption, development policy and finance, and international investment agreements. The Working Group's report "policy coherence in government action to protect against business-related human rights abuses"⁵ is particularly pertinent and underlined the policy coherence required at various levels to promote business respect for human rights and corporate accountability.

The Working Group notes that the OECD Working Party on Responsible Business Conduct has developed a draft stocktaking report to inform the stocktaking exercise. It commends this process and the wide public consultation. It encourages the OECD Working Party on Responsible Business Conduct to consider the Working Group's stocktaking report, and also take note of the "roadmap for the next decade" of implementation of the UN Guiding Principles, which will be launched in November 2021 at the UN Forum on Business and Human Rights.

As one of the key purposes of the OECD Working Party on Responsible Business Conduct's stocktaking "is to take account of the key developments, achievements and challenges related to the Guidelines and their unique grievance mechanism", the OECD Working Party should consider whether the OECD Guidelines should be revised to provide further guidance to deal more effectively with emerging challenges, such as climate change, digitalization and artificial intelligence. This may also be an opportunity to embed a gender perspective in the OECD Guidelines as a cross-cutting issue,⁶ and clarify the relation between responsible business conduct and business enterprises' contribution to the Sustainable Development Goals.⁷

Moreover, it will be critical to consider what additional steps are required to ensure that the National Contact Points not merely provide access to remedy but also actual remedies to individuals and communities affected by business activities.⁸ Exploring closer cooperation between National Contact Points and national human rights institutions should be another area worth paying attention to during the current stocktaking exercise of the OECD Guidelines.⁹

⁴ See <https://www.ohchr.org/EN/Issues/Business/Pages/Reports.aspx>

⁵ A/74/198, <https://undocs.org/A/74/198>.

⁶ See A/HRC/41/43, <https://undocs.org/A/HRC/41/43>.

⁷ See <https://www.ohchr.org/EN/Issues/Business/Pages/SustainableDevelopmentGoals.aspx>.

⁸ See A/72/162, <https://undocs.org/A/72/162>.

⁹ See A/HRC/47/39/Add.3, <https://undocs.org/A/HRC/47/39/Add.3>.

The Working Group looks forward to continued engagement with the OECD (including the OECD Working Party on Responsible Business Conduct) to further strengthen collaboration and alignment efforts.

A handwritten signature in black ink, appearing to read 'Surya Deva', with a stylized flourish at the end.

Surya Deva
Chairperson

Working Group on the issue of human rights and transnational corporations and other
business enterprises



Consultation
Stocktaking exercise of the
OECD Guidelines for Multinational Enterprises

Survey

Profile information

A. Please enter the name of entity/organisation, collective "grouping" or "coalition", or person:

UNDP, Business and Human Rights team

B. Please indicate your profile:

- Company/business
- Industry organisation/ chamber of commerce
- Civil society organisation
- Trade union
- Public authority of a country adhering to the OECD Guidelines for Multinational Enterprises
- Public authority of a country not adhering to the OECD Guidelines for Multinationals Enterprises
- Media organisation
- Academic, or research institution
- International / intergovernmental organisation
- Individual (expert, journalist, other)
- Other (please specify)

C. Please indicate the home country/territory or country/territory in which your company/entity/organisation is headquartered: U.S.A.

Questions

1. In your view, what are the three main **achievements** of the OECD Guidelines for Multinational Enterprises and their implementation in advancing Responsible Business Conduct since 2011?

Achievement 1 With the update of the Guidelines in 2011, OECD took an important step in aligning with the UN Guiding Principles, thereby advancing policy coherence and ensuring greater effectiveness of international standards in the evolving regulatory framework on Business and Human Rights.

Achievement 2 Ensuring effective access to remedy in a number of high profile cases, such as the complaint against Heineken by DRC workers and others.

Achievement 3 OECD has produced very useful sector-specific guidance for due diligence in minerals, garment and footwear, extractive and other industries. These offer a very useful set of tools for MNCs and other businesses wishing to adhere to standards put forth in the Guidelines.

2. In your view, what are the three main **challenges** of the OECD Guidelines for Multinational Enterprises and their implementation in advancing Responsible Business Conduct now and in the future?

Challenge 1 Updating the OECD Guidelines to cover climate change, digitalisation, the protection of human rights defenders, and other important issues in Business and Human Rights that the Guidelines don't currently cover.

Challenge 2 To ensure NCPs function in a more meaningful way. Some of those NCPs that have been set up seem to have not yet reached the capacity of handling complaints in practice. Moreover, the Guidelines themselves fail to ensure consistent practice, do not require NCPs to use all the tools at their disposal (including whether and how to conduct investigations), and otherwise fail to ensure equitable and consistent access to remedy across different jurisdictions.

Challenge 3 The Guidelines do not specifically cover land rights and the issue of free, prior and informed consent, which are particularly important considering the number of complaints submitted by indigenous groups

3. How **relevant** are the following topics for implementing responsible businesses conduct globally?

Please rate on a scale from 1 to 10, where 1 indicates the lowest relevance and 10 the highest relevance:

	Relevance 1-10	Insert additional comments here (100 words limit)
Disclosure	7	
Human Rights	10	
Employment and Industrial Relations	10	
Environment	10	
Combating Bribery, Bribe Solicitation and Extortion	6	
Consumer Interests	8	
Science and Technology	8	
Competition	9	
Taxation	10	
Coverage of companies of all sizes and business models	8	
Corporate governance	10	
Digitalisation	10	
Climate change	10	
Diversity, including gender	10	
Animal welfare	8	
Other (please specify):		

4. The OECD Guidelines include a unique implementation mechanism: the **National Contact Points for Responsible Business Conduct** (or NCPs). NCPs are government agencies tasked with promoting the Guidelines and with facilitating access to remedy as non-judicial grievance mechanisms.

- a. In your view, what are the three main **achievements** of NCPs in promoting the Guidelines and facilitating access to remedy?

Achievement 1 Offering access to remedy in some high profile cases, including DRC workers, Intex Resources, and others. These have enabled victims of business-related abuses to access remedies where other avenues, including state-based judicial mechanisms, and corporate remediation mechanisms, failed.

Achievement 2 Using mediators in NCP processes enables a richer approach to access to remedy than pure judicial proceedings and is a valuable tool for ensuring access to remedy.

Achievement 3 Creating a viable route for access to remedy beyond the often costly domestic legal remedies and corporate remediation attempts which are mostly inadequate, and thereby promoting the idea of the trans-boundary and extraterritorial application of standards on Responsible Business Conduct.

- b. In your view, what are the three main **challenges** for NCPs in promoting the Guidelines and facilitating access to remedy?

Challenge 1 Lack of consistent structures and procedure, which allows NCPs to reach different outcomes in similar cases and circumstances.

Challenge 2 Inability to compel companies to participate, which then scuppers processes; for instance in the *Ali Enterprises Fire Affectees Association* case, when RINA refused to sign the Terms of Settlement drafted by the mediator.

Challenge 3 Strengthening the Guidelines themselves; despite their 2011 update, further revisions are necessary to secure meaningful access to remedy. One such example is the need to tackle land rights generally, and the issue of free, prior and informed consent, in particular, in the Guidelines.

- c. Have you or your entity/organisation been involved in a case before an NCP (known as a 'specific instance')?

- Yes
 No
 Don't know

Any comments

5. Overall, what are the top three **opportunities** for strengthening the OECD's standards and work on Responsible Business Conduct?

Opportunity 1 Further strengthening work in concert with other institutions, including UN agencies (OHCHR, UNDP), the ILO and others with a greater field presence than OECD, to generate a multiplier effect in ensuring businesses comply with human rights and other responsible business conduct standards.

Opportunity 2 Using due diligence provisions in the Guidelines and practice generated in their implementation to ensure the wave of mandatory human rights due diligence legislation in Europe creates real obligations on the part of companies.

Opportunity 3 Connect NCPs with National Human Rights Institutions. Though some attempts have been made, on an ad-hoc basis, to connect these entities, an institutional architecture of some type, perhaps originating from the existing MoU between OECD and GANHRI, could be created. It would make the work of both NCPs and NHRIs easier in terms of accessing data and providing redress to victims of abuses.



Consultation
Stocktaking exercise of the
OECD Guidelines for Multinational Enterprises

Survey

Profile information

A. Please enter the name of entity/organisation, collective "grouping" or "coalition", or person:

UNFCCC secretariat

B. Please indicate your profile:

- Company/business
- Industry organisation/ chamber of commerce
- Civil society organisation
- Trade union
- Public authority of a country adhering to the OECD Guidelines for Multinational Enterprises
- Public authority of a country not adhering to the OECD Guidelines for Multinationals Enterprises
- Media organisation
- Academic, or research institution
- International / intergovernmental organisation
- Individual (expert, journalist, other)
- Other (please specify)

C. Please indicate the home country/territory or country/territory in which your company/entity/organisation is headquartered:

Germany

Questions

1. In your view, what are the three main **achievements** of the OECD Guidelines for Multinational Enterprises and their implementation in advancing Responsible Business Conduct since 2011?

Achievement 1 Providing a concrete framework to conduct due diligence in companies' supply chains to demonstrate that their commitments to action are indeed being implemented, and not just stated "on paper".

Achievement 2 Presenting the first framework approved officially by national governments to implement due diligence in the supply chain.

Achievement 3

2. In your view, what are the three main **challenges** of the OECD Guidelines for Multinational Enterprises and their implementation in advancing Responsible Business Conduct now and in the future?

Challenge 1 Lack of awareness about their existence among many stakeholders, including those in OECD countries.

Challenge 2 Lack of coordination between the RBC work and other related initiatives to promote human rights, environmental protection, fair taxation etc.

Challenge 3

3. How **relevant** are the following topics for implementing responsible businesses conduct globally?

Please rate on a scale from 1 to 10, where 1 indicates the lowest relevance and 10 the highest relevance:

	Relevance 1-10	Insert additional comments here (100 words limit)
Disclosure	10	Disclosure, with third party verification, is key to the credibility of any action and to ensure companies have enough encouragement to implement effective action.
Human Rights	10	
Employment and Industrial Relations	8	
Environment	10	
Combating Bribery, Bribe Solicitation and Extortion	10	
Consumer Interests	6	
Science and Technology	6	
Competition	9	
Taxation	10	This is key to ensure that society has access to the resources required to meet the climate change and other challenges, including a fair transition.
Coverage of companies of all sizes and business models	8	All companies should implement RBC, but mobilizing the biggest ones will help mobilize smaller ones, so the focus may be on big enterprises.

Corporate governance	10	Changing the current governance models around private enterprises is key. Not so much the internal management of the companies, but the international rules for operation of companies, which allow them to nest companies one within another and avoid paying taxes, avoid responsibility for crimes and accidents etc.
Digitalisation	6	
Climate change	10	If climate change is not addressed successfully, all other actions will become ineffective.
Diversity, including gender	10	
Animal welfare	9	
Other (please specify):		

4. The OECD Guidelines include a unique implementation mechanism: the **National Contact Points for Responsible Business Conduct** (or NCPs). NCPs are government agencies tasked with promoting the Guidelines and with facilitating access to remedy as non-judicial grievance mechanisms.

a. In your view, what are the three main **achievements** of NCPs in promoting the Guidelines and facilitating access to remedy?

Achievement 1

Achievement 2

Achievement 3

b. In your view, what are the three main **challenges** for NCPs in promoting the Guidelines and facilitating access to remedy?

Challenge 1 Lack of awareness among companies and the general public about their existence.

Challenge 2 Strengthening of the NCPs, in particular in adherent and member developing countries

Challenge 3

c. Have you or your entity/organisation been involved in a case before an NCP (known as a 'specific instance')?

- Yes
- No
- Don't know

Any comments

5. Overall, what are the top three **opportunities** for strengthening the OECD's standards and work on Responsible Business Conduct?

Opportunity 1 Develop networks of organizations (governmental, intergovernmental, NGOs, business) to raise awareness about their existence and their contribution

Opportunity 2 Develop a "mapping" that clearly shows the value added by the RBC Guidelines within the wider ecosystem of regulations, initiatives, guidelines, and standards for corporate action on climate and environment, human rights, taxation etc.

Opportunity 3 Implement capacity building for corporates and national governments in implementing the guidelines.