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# Stocktaking exercise on the OECD Guidelines for Multinational Enterprises

OECD Public Consultation | March 2021 - April 2022

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## Summary of Public Submissions

May 2022

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



## Background

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In 2021, 10 years since the most recent revision of the OECD Guidelines for Multilateral Enterprises, the OECD Working Party on Responsible Business Conduct (WPRBC) initiated a stocktaking exercise to assess 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.

To ensure that the stocktaking exercise benefitted from the views and experiences of all stakeholders, the OECD made the resulting draft stocktaking report publicly available for consultation and comment from 1 June-14 September 2021. This document presents a summary of responses received to the online survey conducted during the stocktaking exercise.

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

## Third party content disclaimer

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This document presents a summary of responses received to the online survey conducted during the [public consultation held from June-September 2021](#) for the stocktaking exercise on the OECD Guidelines for Multinational Enterprises. Except for minor formatting changes and subject to compliance with OECD web content rules, the submissions are reproduced herein as received. The OECD is providing an opportunity through its website and this consultation document for viewing information or submissions provided by third parties who are not associated with the OECD. All such third-party submissions included in the website and consultation document are the sole responsibility of the persons from whom the content originated.

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# Written submissions

## 1. Accountability Counsel

Dear OECD Working Party on Responsible Business Conduct members:

We write to provide feedback on the [stocktaking](#) of gaps in the OECD Guidelines for Multinational Enterprises (Guidelines). As a non-governmental organization that operates to amplify the voices of communities harmed by internationally financed projects and business activities, we value the Guidelines for their potential to encourage the responsible business conduct (RBC) of entities involved with development and impact-driven projects, particularly with respect to remedying adverse impacts via National Contact Points (NCPs). Nonetheless, serious gaps<sup>1</sup> in the Guidelines, including the Procedural Guidance for the NCPs, hinder achieving the full potential of the Guidelines and accountability for RBC commitments. We therefore recommend the following:

### 1. Reforms to NCPs

Over the years, we have worked to strengthen the NCP system in our [support of communities](#) filing specific instances, [policy advocacy](#), service on the Stakeholder Advisory Board of the United States NCP, and contributions to the U.S. NCP [peer review](#). In our view, the failure of the Guidelines and Procedural Guidance to outline good practice and baseline expectations for NCP structure and functions has resulted in wide discrepancies in the effectiveness of NCP offices, and many NCPs fall short of the criteria for effective non-judicial grievance mechanisms articulated by [Principle 31](#) of the UN Guiding Principles on Business and Human Rights (UNGPs). To promote effective NCP offices equipped to facilitate access to remedy, we recommend the following guidance grounded in the UNGPs:

- **Legitimacy.** NCPs should have access to (a) expertise on human rights and technical topics covered by specific instances, (b) input from stakeholder advisors, and (c) adequate resources to investigate specific instances. NCP offices should be placed within institutions that do not have countervailing mandates or agendas or can be perceived as compromising the NCP's mandate or ability to facilitate remedy for environmental or social harm. NCPs should be resourced and equipped to offer a variety of grievance resolution approaches such as mediation, conciliation, and investigation.
- **Accessibility.** NCP mandates and procedures should be readily discoverable on institutional websites, and all procedures should provide easy-to-understand options for filing specific instances. NCP procedures should address accessibility for persons with disabilities and eliminate potential language or cultural barriers. NCPs should undertake promotional activities at least annually to heighten their profile amongst stakeholder groups.
- **Predictability.** NCPs should develop their respective procedures in consultation with stakeholder groups. Operational procedures should set forth clear timelines, describe the approaches and

<sup>1</sup> This letter draws on analysis from the OECD Watch network. For insight on other gaps in the Guidelines of concern to civil society, please see OECD Watch's [submission to the first draft of the stocktaking report](#) and paper [Get Fit: closing gaps in the Guidelines to make them fit for purpose](#).

potential outcomes available, and detail how the NCP will monitor the implementation of agreements and promised actions.

- **Equitability.** NCP procedures should not favor Multinational Enterprises (MNEs) above complainants, and NCPs should issue and disclose reports and findings with an even hand. NCP procedures should describe tools for encouraging the good faith participation of MNEs and addressing power imbalances during dispute resolution. NCPs should have the capacity for independent fact-finding and compliance review to facilitate remedy, and NCP procedures should not restrict a complainants' access to remedy through judicial and administrative mechanisms.
- **Transparency.** NCPs should publish their procedures, and maintain an easily searchable database containing information on the registration, status, and outcomes of all specific instances received.
- **Rights-compatibility.** NCPs procedures should align with internationally recognized human rights, detail precautions for protecting confidentiality requested by complainants, and outline anti-reprisal commitments.
- **A source for continuous learning.** NCPs should publish targeted and sectoral advice to MNEs and regulating agencies based on specific instances received and managed by their offices.

## 2. Updates to the Guidelines

In addition to strengthening the NCP system, we recommend updates in the following areas to the Guidelines to ensure that they are fit for purpose:

- **Disclosure:** Expand discussion on [Disclosure](#) beyond financial reporting to comport with the [OECD Due Diligence Guidance for Responsible Business Conduct](#), i.e., MNEs should "[c]ommunicate externally relevant information on due diligence policies, processes, activities conducted to identify and address actual or potential adverse impacts, including the findings and outcomes of those activities." With particular respect to impact disclosure, we recommend incorporating non-financial disclosure expectations outlined by the [OECD-UNDP Impact Standards for Financing Sustainable Development](#), i.e.:

Transparency and Accountability: MNEs should disclose to stakeholders how they manage and measure impact, including the sources of data used for both ex-ante and ex-post assessment of impact results and for monitoring (such as grievance mechanisms).

Disclosures related to an MNE's ability to manage and respond to grievances about environmental and social impacts are also envisioned for the European Commission's mandatory due diligence framework,<sup>2</sup> the Global Reporting Initiative's universal responsible business conduct standards,<sup>3</sup> and the Stakeholder Capitalism Metrics of World Economic Forum/International Business Council.<sup>4</sup> We propose the following language:

<sup>2</sup> European Parliament Resolution on Corporate Due Diligence and Corporate Accountability, Annex, Article 9, para. 4 (March 2021) ("Undertakings shall report on reasonable concerns raised via their grievance mechanisms and regularly report on progress made in those instances. All information shall be published in a manner that does not endanger the stakeholders' safety, including by not disclosing their identity."), available at [https://www.europarl.europa.eu/doceo/document/TA-9-2021-0073\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2021-0073_EN.html).

<sup>3</sup> Global Sustainability Standards Board, GRI UNIVERSAL STANDARDS: GRI 10, GRI 102, and GRI 103 -- Exposure Draft, Disclosure RBC-4, p. 64 (11 June 2020) ("The organization shall . . . describe its approach to identify and address grievances, including . . . the grievance mechanisms that the organization has established or participates in; . . . describe how the stakeholders who are the intended users of the grievance mechanism and other remediation processes are involved in the design, review, operation, and improvement of the mechanisms and processes; . . . describe how the organization tracks the effectiveness of the grievance mechanisms and other remediation processes and provide examples of their effectiveness, including stakeholder feedback."), available at <https://www.globalreporting.org/standards/media/2605/universal-exposure-draft.pdf#page=64>.

<sup>4</sup> World Economic Forum, *Measuring Stakeholder Capitalism: Towards Common Metrics and Consistent Reporting of Sustainable Value Creation*, Human rights review, grievance impact, & modern slavery (September 2020) (requiring disclosure of the "Number and type of grievances reported with associated impacts related to a salient human rights issue in the reporting period and an explanation on type of impacts."), available at <https://www.weforum.org/reports/measuring-stakeholder-capitalism-towards-common-metrics-and-consistent-reporting-of-sustainable-value-creation>.

*Enterprises should ensure that timely and accurate information is disclosed on all material matters regarding their management of risks and response to harm. Enterprises should disclose:*

*(1) A description of all approaches to identifying and addressing grievances, including how grievance redress mechanisms are operated and governed, and who administers them;*

*(2) The effectiveness of grievance redress mechanisms, as defined by the eight effectiveness criteria outlined by Principle 31 of the UNGPs, i.e., legitimacy, accessibility, predictability, equitability, transparency, rights compatibility, a source for continuous learning, and created and evaluated through dialogue and engagement;*

*(3) Quantitative information such as (a) the number and types of grievances filed during the reporting period, (b) the number of repeated or recurring grievances, (c) the percentage of grievances addressed and resolved through remediation, and (d) the percentage of grievances addressed and resolved through a compliance review; and*

*(4) Qualitative information such as (a) the issues raised by grievances, (b) the projects of concern, and (c) the resources dedicated to resolving issues.*

- **Scope of Application of the Guidelines:** Clarify that the standards and NCP framework extend from traditional to non-traditional MNEs such as impact investors, multi-stakeholder initiatives, and States operating as economic actors.
- **Human Rights and Land Rights:** Provide discussion on the multi-faceted ways that people can be adversely impacted by business conduct, as well as the need for specialised due diligence to identify and consult with groups and remediate harm. Discussion should encompass (a) the Free, Prior and Informed Consent of Indigenous Peoples, (b) women's human rights and gender equality, (c) the rights of the children and marginalized groups, (d) and the topic of land rights, including respect for non-documented tenure rights including of women and communal owners, and legacies of dispute over contested lands.
- **Environmental Impact:** To meet the goal of promoting positive contributions to global environmental progress, provide instruction on structuring grievance and remediation mechanisms to mitigate and remedy the localized impacts of common adverse instances of environmental harm (e.g., deforestation, pollution, biodiversity loss, and contribution to climate change).
- **Anti-Retaliation:** Address [risks of reprisals](#) against environmental and human rights defenders by instructing MNEs to avoid actions and omissions that adversely impact defenders, and setting expectations for NCPs to adopt procedures to minimize and combat instances of reprisals, including retaliation for filing specific instances.

### 3. Conclusion

We hope that the final stocktaking report reflects and responds to each of the gaps identified by civil society, especially with respect to inconsistency in the NCP system that peer reviews thus far have not been able to address, and we urge an inclusive process to revise the Guidelines at the conclusion of the stocktaking to ensure they remain fit for purpose.

Thank you for your consideration, we stand ready to support future revision discussions.

Sincerely,

Margaux Day

Policy Director

[accountabilitycounsel.org](https://accountabilitycounsel.org)

Gregory Berry

Policy Associate

## 2. ActionAid Netherlands

Amsterdam,

Dear members of the OECD Working Party on Responsible Business Conduct (RBC),

ActionAid Netherlands welcomes the public consultation on gaps in the OECD Guidelines for Multinational Enterprises (Guidelines). As part of an international federation, our ActionAid colleagues across the world work directly with women and local communities adversely impacted by business activities. Together we advocate at the national, regional and global level for improved RBC policies and the introduction of binding regulations.

Although valuable due to their international recognition, the Guidelines have (largely) failed to address the need for access to justice and remedy for affected communities. Additionally, ten years after the last revision, the Guidelines do not correspond with new challenges and developments anymore. With more and more governments embracing the Guidelines as a base for binding RBC legislation, their revision is even more essential.

There is a strong need to improve the OECD Guidelines, both in terms of incomplete standards on a range of issues as well as concerns related to the Procedural Guidance for National Contact Points. For further analysis of the gaps in the Guidelines we refer you to the papers of OECD Watch<sup>5</sup> and the Dutch coalition MVO Platform<sup>6</sup>.

Without prejudice to other relevant issues to be addressed, in this statement we would like to address four themes that deserve explicit attention relevant to ActionAid Netherlands' work.

In the Guidelines, there is not one reference to **gender**. The Guidelines should explicitly address the disproportionate negative effects of business activities on women, including those caused by structural discrimination and vulnerabilities based on intersecting identities (e.g. age, race, disability). In line with the OECD Due Diligence Guidance, the Guidelines should clarify that businesses are expected to do gender-sensitive due diligence.

While land grabs and other abuses related to land security are frequent violations occurring within supply chains, the Guidelines do not address **land rights**. The Guidelines should mention the responsibility of businesses to respect the right to Free, Prior, and Informed Consent (FPIC) for all communities, respect non-documented tenure rights of women and communal owners, and respect land rights even where states fail their own duty to protect these rights.

Broad public consensus now holds that corporate **tax** avoidance should stop. The Guidelines, however, do not refer to tax avoidance or discourage it, making them out of alignment with the OECD's own initiatives, and therefore obsolete. The Guidelines should be made to align with internationally recognized norms.<sup>7</sup> The Guidelines should call on businesses to cease any harmful tax practices including, use of tax havens and artificial corporate structures and transactions to irresponsibly limit their tax burden. Additionally, there is a need for companies to adopt the Public Country by Country Reporting standards.

Countering the effects of **climate change** is the most critical challenge our world faces, however the Guidelines do not mention climate challenges and related vulnerabilities, particularly those of local communities and women. The Guidelines should explicitly include the responsibility of businesses to

<sup>5</sup> OECD Watch, Get Fit: closing gaps in the Guidelines to make them fit for purpose, 2021: <https://www.oecdwatch.org/get-fit-closing-gaps-in-the-oecd-guidelines-to-make-them-fit-for-purpose/>

<sup>6</sup> MVO Platform, Vision document OECD Guidelines, 2021: <https://www.mvoplatform.nl/en/position-paper-oecd-guidelines/>

<sup>7</sup> Such as the Tax Standard of GRI and frameworks developed by Civil Society, see: [https://www.actionaid.org.uk/sites/default/files/publications/getting\\_to\\_good\\_towards\\_responsible\\_corporate\\_tax\\_behaviour.pdf](https://www.actionaid.org.uk/sites/default/files/publications/getting_to_good_towards_responsible_corporate_tax_behaviour.pdf)



address climate change and require enterprises to both disclose and reduce their greenhouse emissions in line with the Paris Agreement.

Finally, we kindly request that you ensure the final stocktaking report reflects and responds to each of the gaps identified by civil society. We also request that, following conclusion of the stocktaking, the Working Party initiate an inclusive process to revise the Guidelines to make them fit for purpose.

We thank you for your consideration.

Anna Hengeveld, on behalf of ActionAid Netherlands

### 3. Advocating Rights In South Asia (ARISA)

Utrecht

Dear members of the OECD Working Party on Responsible Business Conduct,

Arisa welcomes this public consultation on gaps in the OECD Guidelines for Multinational Enterprises (Guidelines). We work with Dalit communities (those outside the South Asian caste system) and others *discriminated against based on work and descent* (DBWD) who are adversely impacted by business activity. This letter urges the Working Party to revise the Guidelines to close the current gap in guidance on how companies should identify and address caste-related impacts in their value chains. We consider a revision to strengthen standards on caste critical, not only to improve norms for business, but also to help pave the way for better policies by governments of caste-affected countries and governments whose corporations do business in caste-affected countries.

While the Guidelines have been a valuable tool to advance responsible business conduct (RBC), in the ten years since their last revision, the standards have not kept pace with new challenges and expectations for corporate conduct. Similarly, the National Contact Point (NCP) complaint mechanisms have largely failed to facilitate access to remedy. We work closely with OECD Watch, and we support their position that serious gaps<sup>8</sup> in both the RBC standards for multinational enterprises (MNEs) and implementation expectations for NCPs are preventing the Guidelines from fulfilling their purposes.

One of the gaps that needs to be addressed most urgently is:

#### **Gap in standards guiding companies on addressing caste-based discrimination in their value chains**

- **Caste-based discrimination** affects more than 260 million people worldwide in South Asia, Africa, Asia, the Middle East, the Pacific, and diaspora communities like the UK and US.<sup>9</sup> Caste-based discrimination affects workers in all sectors and is often “invisible” to businesses throughout the supply chain. This invisibility is a key reason why businesses need improved guidance on addressing their caste-based impacts. However, the Guidelines do not include “caste” as a ground for discrimination, leaving MNEs without either a reminder to focus on this stigmatized group, nor guidance on how meaningfully to address caste-related impacts. The Guidelines do not identify the rights of this stigmatized group, the different ways Dalits can be adversely impacted by business conduct – for example, not only as employees but as community members – nor the specialised due diligence needed to ensure Dalits are consulted in corporate due diligence processes and afforded access to remedy. The Guidelines also do not advise businesses in understanding intersectional discrimination; i.e. how individuals within marginalised groups may suffer impacts

<sup>8</sup> For insight on other gaps in the Guidelines of concern to civil society, please see OECD Watch’s submission to the first draft of the stocktaking report and paper *Get Fit: closing gaps in the Guidelines to make them fit for purpose*.

<sup>9</sup> See, e.g., Nitasha Tikku, THE WASHINGTON POST, “India’s engineers have thrived in Silicon Valley. So has its caste system,” 28 October 2020, available at: <https://www.washingtonpost.com/technology/2020/10/27/indian-caste-bias-silicon-valley/>.

differently as a result of another identity trait, such as their gender, age, disability or race. For example, the Guidelines must more clearly call on businesses to address gender impacts in their value chains, and understand how Dalit women may suffer differently from Dalit men, whether as workers, community members or human rights defenders, as a result of their gender. We are also concerned that the Guidelines only address “discrimination” in the Employment chapter, misleading MNEs to believe that discrimination in their value chains only impacts workers and not community members.

We welcome the stocktaking as a signal of OECD states’ commitment to evaluating whether the Guidelines remain current and responsive to the needs of MNEs and civil society alike. To ensure the Guidelines achieve their purpose, we ask that OECD states:

1. Ensure the final stocktaking report discusses the gap in the standards on caste discrimination; and
2. Undertake a revision of the Guidelines, following the close of the stocktaking process, to ensure the standards
  - a. Identify “caste” as a ground for discrimination (both of workers and non-workers) and identify people of low-caste as marginalized or disadvantaged, and
  - b. Call on businesses to undertake specialized due diligence and remedial action to ensure the voices and needs of marginalized or disadvantaged groups are heard and met.

We thank you for your consideration and stand ready to support future revision discussions.

Sincerely,  
 Sandra Claassen  
 Director  
[www.arisa.nl](http://www.arisa.nl)

#### 4. Alliance Sud

Berne

Dear members of the OECD Working Party on Responsible Business Conduct,

Alliance Sud welcomes this public consultation on gaps in the OECD Guidelines for Multinational Enterprises (Guidelines). We are the umbrella organization of Swiss aid organizations which work with communities adversely impacted by business activity and are experienced in attempting to use the Guidelines to encourage responsible business conduct (RBC) by corporations, advocate for improved RBC policies by governments, and secure remedy for harm via the National Contact Point (NCP) complaint mechanisms.

While the Guideline should be a valuable tool to advance RBC, in the ten years since their last revision, the standards have not kept pace with new challenges and expectations for corporate conduct and the NCP complaint mechanisms have largely failed to facilitate access to remedy for impacted communities.

In our view, serious gaps in both the RBC standards for multinational enterprises (MNEs) and implementation expectations for NCPs are preventing the Guidelines from fulfilling their purposes:

**Reforms to NCPs:** NCPs play a vital role in ensuring the success of the Guidelines, by promoting the Guidelines to businesses and other key stakeholders including civil society, and by facilitating access to remedy via their dispute resolution services. Unfortunately, the Guidelines’ Procedural Guidance sets so low a threshold for the required basic institutional arrangements, promotional activities, and complaint-handling procedures of NCPs that they vary widely in their effectiveness. Minimum expectations for NCPs in the Procedural Guidance should be raised to, for example, ensure NCPs have access to expertise on human rights and technical topics covered in complaints, input from stakeholder advisors, adequate resourcing to investigate complaints, a practice of undertaking promotional activities annually towards all

stakeholder groups, and complaint handling procedures that ensure participation by NCPs and accountability for irresponsible business conduct, such as transparency over complaint processing, commitment to issue determinations of non-compliance and seek consequences for MNEs refusing to participate in good faith, and a practice of engaging in follow-up monitoring.

**Marginalised groups:** Business impacts are often felt most strongly – and differently – by the most marginalised and disadvantaged members of society, including women, Indigenous Peoples, people of low caste, children, and others. The Guidelines do not identify key rights of these groups – such as Indigenous Peoples’ right to free, prior, and informed consent (FPIC) over use of their territories – the different ways these people can be adversely impacted by business conduct – for example, not only as employees but as community members – nor the specialised due diligence needed to consult these groups, and identify, address, and remedy impacts to them.

- Indigenous Peoples are among the world’s most vulnerable, and they are disproportionately impacted by business activities on or near their territories. While Indigenous Peoples only form 5% of the world’s population, they safeguard 80% of the earth’s biodiversity and a great wealth of natural resources. Unfortunately, Indigenous Peoples territories are routinely exploited, sold, appropriated or polluted by companies that have not respected their internationally-recognised rights. The Guidelines do not identify key specific rights of Indigenous Peoples such as the right to free prior and informed consent and self-determination, their particularly vulnerability as human rights defenders, nor the specialised due diligence needed to consult them, and identify, address, and remedy impacts to they experience.
- Women and LGBTQ+ people typically suffer gender-specific impacts from business activity whether they are impacted as workers, community members, or human rights defenders. Unfortunately, the Guidelines do not comprehensively highlight how impacts may affect women and LGBTQ+ people differently, nor advise businesses in understanding how women (and others) with intersecting identity traits subject to discrimination (e.g. race, caste, age, disability, etc.) may suffer impacts differently. The Guidelines also do not set out the specialised due diligence needed to consult them, and identify, address, and remedy impacts to they experience, nor clarify (in the Procedural Guidance for NCPs) the expectation that NCPs implement procedures to minimize gender-specific barriers to remedy.
- Caste-based discrimination affects more than 260 million people worldwide, not only people in South Asia, but also in Africa, Asia, the Middle East, the Pacific, and in diaspora communities in countries such as the UK and US. Caste-discrimination affects workers in all sectors and is too often “invisible” to businesses down the supply chain. Unfortunately, the Guidelines do not include “caste” as a ground for discrimination discouraged, leaving MNEs without guidance on addressing impacts to this stigmatized group.
- Children are among the most vulnerable members of society, and can be disproportionately impacted by the activities of MNEs. While the Guidelines call on MNEs to contribute to abolishing child labour, they do not give meaningful guidance on how child labour may occur in MNE value chains and how MNEs should address this by changing practices that inadvertently cause children to be forced to work. The Guidelines also do not emphasize how children may be impacted as community members and consumers, as opposed to workers, nor identify children among vulnerable groups particularly critical to consult through stakeholder engagement.

**Human rights defenders:** In a context of shrinking civil society space, the WPRBC and many OECD states are taking action to advance protections for human rights defenders. Yet the Guidelines include no provisions identifying the corporate nexus with harm to defenders or explaining how MNEs should avoid both actions or omissions that adversely impact defenders. Meanwhile, the Procedural Guidance does not call upon and guide NCPs in adopting procedures to discourage and address threats to complainants, including retaliation for complaint-filing.

**Climate change and environmental degradation:** Countering the effects of climate change is broadly acknowledged as the most vital need of our time. Environmental destruction and climate change have caused devastating effects including severe biodiversity loss, with a recent report finding that the global wildlife population has been reduced by two-thirds over the last 50 years. MNEs are recognized as responsible for almost a fifth of climate-changing carbon emissions, but the Guidelines do not mention the term “climate change,” call upon MNEs to set and achieve climate-related emission targets, nor demand that MNEs avoid and remedy common pressing environmental impacts including deforestation, pollution, and biodiversity loss.

**Land rights:** Land security underpins numerous human rights and helps forestall climate change. While global standards and corporate policies increasingly call for corporate respect for land rights, the OECD Guidelines do not address the topic, failing to guide MNEs on issues such as assuring the right to free prior and informed consent, respecting non-documented tenure rights including of women and communal owners, addressing legacies of dispute over contested lands, and respecting land rights even where states fail their own duty to protect land rights.

**Labour rights:** Unionisation and workers’ rights are under threat, yet the Guidelines fail adequately to set important labour rights standards for MNEs, such as on ensuring responsible disengagement, avoiding business models that preclude payment of a living wage and intentionally escape responsibility for worker well-being, addressing deep-rooted discrimination and sexual harassment within supply chains, and respecting rights of workers in the digital economy.

**Taxation:** According to 2020 data, corporate tax avoidance causes an estimated global loss of \$245 billion annually as MNEs shift about \$1.38 trillion from profit-yielding countries to tax havens allowing them to avoid tax payments. While broad public consensus – and innovative policy initiatives of the OECD – hold that corporate tax avoidance should stop, the outdated Guidelines do not name or discourage tax avoidance, call out the range of financial methods corporations commonly manipulate to avoid taxation, nor seek the disclosures necessary to help governments and civil society identify and prevent tax avoidance moving forward.

**Digitalisation:** Over the past ten years, the rapidly increasing digitalisation of the global economy is altering and exacerbating the potential for all MNEs – not just technology companies – to adversely impact human rights, jeopardize democracies and democratic values, and harm the environment. The OECD Investment Committee has itself identified a need for a comprehensive standard to address RBC challenges linked to digitalisation, but the Guidelines say nothing on this modern issue. The gap leaves MNEs without guidance on the importance of, and means to, understanding their impacts in the digital sphere.

**Disclosure:** ESG reporting, sustainability reporting, or integrated reporting are on the rise globally as countries increasingly require MNEs to disclose not merely their financial but their non-financial data to support efficient market functioning, corporate contribution to the UN Sustainable Development Goals, and public monitoring of outcomes. Against this growing tide, the OECD Guidelines’ Disclosure chapter is seriously outdated, setting standards not much stronger than the minimum legal requirements on financial reporting, and inadequately synchronizing with the Guidelines’ own due diligence communication expectations added in 2011.

**Corruption:** Despite the close relation between corruption and violation of human rights, the Guidelines currently address only bribery and extortion and do not set expectations regarding all forms of corporate corruption. They do not call for key disclosures – such as of beneficial ownership and country-by-country reporting – that would facilitate identification of corruption, nor highlight the nexus between avoiding corruption and meeting standards across the other chapters in the Guidelines.

**Animal welfare:** More and more OECD states recognise animal sentience and the link between irresponsible MNE conduct on animals and adverse impacts to animals, people, and the planet. Yet the

Guidelines do not provide standards on animal welfare at all, failing to reflect growing legal protections, international standards, and MNE policies on animals, whose well-being is widely understood as tied to public health (seen with COVID-19) and environmental protection. The complete gap in standards on animal welfare has prevented any complaints from being filed – and any remedy achieved – via the NCP complaint system regarding irresponsible business conduct towards animals.

**Scope of application of the Guidelines:** Although the WPRBC is focused on policy coherence, the Guidelines do not adequately clarify the applicability of the standards and complaint mechanism to non-traditional MNEs such as holding and letterbox companies, multistakeholder initiatives, and states operating as economic actors. Lack of clarity on the scope of covered enterprises has led to conflicting interpretation by NCPs in complaints, and frequent rejection of complaints against non-traditional MNEs. The gap not only stymies access to remedy for impacted communities but fails to ensure a good example by states and a level playing field amongst types of enterprises.

**General policies:** The General policies chapter of the Guidelines does not set a proper tone for the overall document by highlighting the full range of standards and expectations addressed in the subsequent chapters. For example, several key topics – such as respect for the rights of human rights defenders, the special care needed to identify and address risks to marginalized groups, the role of disclosure in helping facilitate and measure RBC, the nexus between paying full and fair taxes and avoiding corruption and fulfilling other human rights and environmental expectations, and the way in which digitalization can exacerbate corporate impacts – should all be highlighted. The chapter should call for MNEs to prioritize avoidance of adverse human and environmental impacts over profit-making and avoid business models and methods that hinder MNEs from fulfilling their responsibility to respect human rights. The chapter should also more clearly outline the six steps of the RBC due diligence process.

Considering these concerns, we respectfully request that you ensure the final stocktaking report reflects and responds to each of the gaps identified by civil society. We also request that, following conclusion of the stocktaking, the Working Party initiates an inclusive process to revise the Guidelines to ensure they remain fit for purpose.

We thank you for your consideration and stand ready to support future revision discussions.

Sincerely,

Alliance Sud  
Laurent Matile  
Senior Advisor, Business and Development  
[www.alliancesud.ch](http://www.alliancesud.ch)

## 5. American Postal Workers Union

The American Postal Workers Union represents 200,000 workers in the postal industry in the United States of America. Our union is proudly affiliated to UNI Global Union and supports UNI's campaigns to secure trade union rights and other human rights for workers in multinational enterprises.

While most of our members are employed by the United States Postal Service, our sector is much broader than the national postal operator and includes many multinational enterprises, many of whom are major employers in countries around the world.

As such, we have a keen interest in there being an effective mechanism to hold multinational employers to account for their human rights practices and to find remedy for those affected by human rights abuses and violations of trade union rights. We are dismayed to learn from our global counterparts that the OECD Guidelines risk falling into irrelevance absent substantial and significant improvement in their application and to the accessibility of the claims process through the National Contact Points.

We therefore echo the calls from UNI, the Trade Union Advisory Committee and others to improve the Guidelines and the NCP procedures. We are particularly interested in improvements dealing with the misclassification of workers, an issue rampant in our industry both in the United States and around the world.

We urge the adoption of procedural requirements that NCPs issues findings on whether an employer has breached the Guidelines. We also urge the adoption of consequences for businesses who are found to violate the Guidelines or who refuse to participate in the NCP complaint process.

We urge the adoption of a binding arbitration mechanism to allow complainants access to remedy should mediation fail or should an employer refuse to participate in the NCP process. Binding arbitration is proven as an effective tool in labor relations in the United States and around the world.

Finally, we also encourage the adoption of fair and consistent rules on campaigning, transparency and confidentiality, as these principles have been misused by employers participating in the claims process.

We urge the OECD to take advantage of this consultation process as an opportunity to improve outcomes for working people and ensure adherence to the Guidelines.

Mark Dimondstein,  
President  
[apwu.org](http://apwu.org)

## 6. Amfori

### *Executive summary*

amfori, the business association for open and sustainable trade, welcomes the stocktaking exercise on the OECD Guidelines for Multinational Enterprises (MNE Guidelines) as recently launched by the OECD Working Party on Responsible Business Conduct.

Below we outline what we believe are the greatest achievements over the past decade – notably a growing awareness and uptake of RBC due diligence. Looking ahead, we also suggest a few focus areas that we believe are necessary to ensure the MNE Guidelines remain fit for purpose. Those include:

- Continuing to build capacity, including in producing countries
- Continuing to ensure alignment across international due diligence standards
- Tailoring the Guidelines to the needs of SMEs
- Providing further guidance on what environmental due diligence entails
- Integrating a gender lens and elaborating on the role of vulnerable / marginalised groups
- Strengthening the complementarity between judicial and non-judicial grievance mechanisms via the setting-up of an Access to Remedy Hub.

### *What has worked and what could be improved going forward?*

Ten years after the MNE Guidelines were last updated and a human rights chapter was included, the **awareness** around the business, human rights, environment, and governance nexus has grown considerably and, with it, the **uptake** of responsible business conduct due diligence too.

The standard has also become the **blueprint** for responsible business conduct due diligence legislation adopted in various EU and non-EU countries while in the pipeline in others. In the face of this legislative wave, it is important that the standard be **adequately reflected** without substantial diversions from its spirit. This is necessary for legal certainty, policy coherence and to avoid unnecessary costs of

implementation. Other policy instruments, such as public procurement, could be further aligned with the OECD standard too.

We encourage the OECD to continue to **build capacity and raise awareness**, including in producing countries, so that local efforts can be strengthened and the necessary support provided.

Valuable efforts have been put in place to ensure **alignment** between responsible business conduct due diligence standards, notably the MNE Guidelines, the UNGPs and ILO Declaration. We support those and suggest this work be continued also at this particular juncture where both the OECD MNE Guidelines and the UNGPs are undergoing separate yet parallel stocktaking exercises.

The potential of the Guidelines is untapped in terms of their uptake among **SMEs**. Better appreciating the challenges SMEs face, but also their strengths and unique characteristics, might help in making the OECD MNE Guidelines more accessible and meaningful to them and, by extension, facilitate their greater uptake.

Chapter VI of the MNE Guidelines falls short of providing the sufficient level of guidance for an integrated model for **environmental due diligence**. The exact scope of environment and environmental impacts would benefit from additional clarifications. Also, further elaborating on the interlinkages between this chapter and the human rights chapter and the differences between the two could help with further operationalising those aspects of due diligence.

The MNE Guidelines indicate that businesses might have to consider the specific rights of certain groups in case of adverse impacts. We suggest integrating a **gender lens** and further elaborating on how **vulnerable / marginalised people** could be disproportionately affected by business activities.

The MNE Guidelines emphasise the need for complementarity between judicial and non-judicial grievance mechanisms. This should be done in such a manner that existing grievance mechanisms strengthen each other by exchanging experiences and integrating their efforts. Therefore, we welcome the ongoing conversations with the OECD to support the set-up of an '**Access to Remedy Hub**' resulting in the better facilitation of access to remedy for impacted stakeholders and the continuous improvement of and collaboration between our respective grievance mechanisms.

### Conclusions

amfori looks forward to continuing the dialogue with the OECD and other stakeholders on the next steps of the stocktaking exercise.

Valentina Bolognesi  
Senior Social Policy Advisor  
[www.amfori.org](http://www.amfori.org)

## 7. Amnesty International

Amnesty International<sup>10</sup> welcomes the opportunity to contribute to this public consultation of the OECD Guidelines Stocktaking Exercise. We also welcome the OECD member and adherent states' commitment to review the OECD Guidelines for Multinational Enterprises so that they remain fit for purpose.

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<sup>10</sup> Amnesty International is a global movement of more than 10 million people fighting injustice and campaigning to ensure human rights are enjoyed by all. We investigate and expose human rights harm wherever it happens and advocate for governments and other powerful actors, including business enterprises, to respect international laws and standards.



Amnesty International would like to raise the following concerns and recommendations:

### 1. *On the general principles of due diligence*

- Alignment of due diligence standards with OECD Due Diligence Guidance for Responsible Business Conduct

The OECD Guidelines for Multinational Enterprises (MNE Guidelines) have fallen behind the currently expected conduct of businesses. This is particularly demonstrated by the standards set by the OECD Due Diligence Guidance for Responsible Business Conduct (RBC Guidance), published in 2018. This guidance is an important practical tool to understand and implement due diligence requirements. The broad scope of the OECD's framing of due diligence – covering all corporate sectors, geographical regions, corporate sizes, and impacts across the corporate value chain – and its methodology – outlining an iterative and consultative process by which companies should identify, prevent, and address their actual and potential human rights impacts – has been crucial to clarify the expected responsible conduct of business and have informed legislative initiatives on due diligence legislation.<sup>11</sup>

The MNE Guidelines, as the binding instrument, should equally set clear standards for the core concepts of due diligence. For example, the framing in the MNE Guidelines should outline requirements for the six steps of due diligence outlined in the RBC Guidance. They should clarify that “activities” through which a business enterprise may be linked to harm can include actions *and omissions*, a critical distinction in light of, for example, widespread corporate failure to speak out against harm to human rights defenders by state entities for corporate benefit. They should equally clarify that due diligence is required throughout the entire value chain, up to and including the end use of services and products. Critically, they should require due diligence to be undertaken in a continuous and iterative manner through the duration of business activities until all harms have been addressed. Further, they should require stakeholder engagement, including especially with marginalized or disadvantaged rights holders, to be undertaken at numerous stages of the due diligence cycle.

In particular, the MNE Guidelines should establish requirements to ensure access to remedy, both as a part of the due diligence process and in its own right, including in cases where the business enterprise did not cause or contribute to the harm, but is directly linked to it through a business relationship.

In addition we also believe the concept of due diligence should take a more central role in the MNE Guidelines as a key means by which enterprises achieve the expectations and prevent the adverse impacts outlined in the subsequent chapters of the MNE Guidelines.

- Application of MNE Guidelines to all businesses of all sizes

The OECD Guidelines are clear that small and medium enterprises (SMEs) are expected, like other businesses, to act responsibly and carry out due diligence to identify and respond to adverse environmental and social impacts they may be involved. However, national due diligence laws such as the *Loi sur le devoir de vigilance* in France or the *Lieferkettengesetz* in Germany, exempted SMEs from their scope. Equally, the European Parliament's report on corporate due diligence, formulating the Parliament's expectation towards an EU wide delegation, focuses on “large undertakings”.<sup>12</sup> As the OECD's first draft of the stocktaking report acknowledges, “the extent to which SMEs should be subject to due diligence expectations and how to ensure proportionality and reasonableness is one of the most debated issues surrounding [recent mandatory due diligence] legislation design.”<sup>13</sup>

Amnesty International therefore suggests that the MNE Guidelines be strengthened to require all enterprises, irrespective of size, to observe the Guidelines' standards in full. They should address what is

<sup>11</sup> See for instance legislative proposal on EU Battery Regulation, <https://ec.europa.eu/environment/waste/batteries/>

<sup>12</sup> European Parliament, “Corporate due diligence and corporate accountability”, [responsiblebusinessconduct.eu/wp/wp-content/uploads/2021/03/Corporate-due-diligence-and-corporate-accountability-report-1.pdf](https://responsiblebusinessconduct.eu/wp/wp-content/uploads/2021/03/Corporate-due-diligence-and-corporate-accountability-report-1.pdf)

<sup>13</sup> OECD, *Draft Report for the Stocktaking of the OECD Guidelines for Multinational Enterprises*, pg. 23.



expected from SMEs when discharging their responsibilities and provide governments with instruments to consider when enabling SMEs to fulfill that basic expectation.

## 2. On substantial risks

- Addressing the risk of discrimination

Discrimination is an egregious and cross-cutting human rights violation. Unfortunately, marginalised and disadvantaged members of society, including women and girls, often experience adverse business impacts more often or more severely, including as a result of direct, indirect, and/or intersectional discrimination.

The MNE Guidelines are outspoken on the risk of discrimination against workers, yet fail to acknowledge the risk of discrimination in relation to other groups and right holders. The MNE Guidelines should be revised to establish requirements for companies to identify and address their potential and actual impacts on marginalised and disadvantaged groups, through engagement with stakeholders. The MNE Guidelines should also set out expectations on how businesses engage with rights-holders in the remediation of discriminatory harms, and victims' access to remedy.

- Preventing and addressing harm to human rights defenders

Community leaders, lawyers, journalists, and other human rights defenders across the world are facing unprecedented levels of persecution, intimidation, and violence. These attacks represent a full-frontal assault by powerful entities, including corporations, against the very right to defend human rights. Against this widely-recognised backdrop of increasing threats to defenders and shrinking civic space, the MNE Guidelines do not acknowledge the particular role businesses can play, through actions and omissions, with regard to adverse human rights impacts on human rights defenders. The MNE Guidelines should be clear about the responsibilities of businesses to avoid and prevent harms to human rights defenders. We are also concerned the MNE Guidelines' Procedural Guidance does not require and guide National Contact Points (NCPs) to adopt procedures to discourage and address threats to defenders involved in MNE Guidelines complaints, including retaliation for complaint-filing.

- Preventing adverse climate impacts

The climate emergency is a human rights crisis of unprecedented proportions. Climate change threatens the enjoyment of human rights of present and future generations and, ultimately, the future of humanity. When climate change-related impacts hit a country or a community, the knock-on effects can seriously undermine the enjoyment of the right to life lived in dignity, endanger a range of freedoms, and in many cases even put at risk the cultural survival of entire peoples. Certain businesses –particularly the fossil fuel industry and large-scale agri-businesses and their financiers –bear an important responsibility for the climate crisis. Research shows that just 100 fossil fuel-producing companies have been responsible for 71% of global greenhouse gas (GHG) emissions since 1988.<sup>14</sup>

Currently, the MNE Guidelines do not even use the term “climate change” in outlining expectations for business enterprises with respect to the environment. The MNE Guidelines should make it clear that corporations must adopt and implement measurable short and long-term targets for minimizing greenhouse emissions compatible with the imperative of limiting global warming to 1.5°C above pre-industrial levels –and make relevant information about their emissions and mitigation efforts public. Such efforts must extend to all the major subsidiaries, affiliates, and entities in corporate supply chains.<sup>15</sup> The

<sup>14</sup> Climate Accountability Institute, Carbon Majors, [climateaccountability.org/carbonmajors.html](https://climateaccountability.org/carbonmajors.html). See also CDP, Carbon Majors Database, Carbon Major Report 2017, [b8f65cb373b1b7b15feb-c70d8ead6ced550b4d987d7c03fcdd1d.ssl.cf3.rackcdn.com/cms/reports/documents/000/002/327/original/Carbon-Majors-Report-2017.pdf?1499691240](https://www.cdp.com/en/10000/carbonmajors/2017)

<sup>15</sup> For more detailed recommendations to companies in relation to the climate crisis, see section 13 of Amnesty International, Stop Burning Our Rights! What States and Corporations Must Do to Protect Humanity from the Climate Crisis, 7 June 2021 (Index: POL 30/3476/2021), [amnesty.org/en/documents/pol30/3476/2021/en/](https://www.amnesty.org/en/documents/pol30/3476/2021/en/)

MNE Guidelines should also call on business enterprises to avoid and remedy pressing environmental impacts that are currently missing or seriously under-addressed in the standards in Chapter VI on Environment, including deforestation, pollution, and biodiversity loss.

### 3. *Procedural concerns*

1. The Specific Instance procedure does not allow for interventions to address ongoing human rights abuses. The procedure would be more effective if there was greater emphasis on prevention and if NCPs could request at the initial assessment stage that a company activity that is the subject of a complaint be halted, pending further examination, when there is prima facie evidence that it is causing or contributing to human rights violations; e.g. the diversion of a river that would affect the rights of Indigenous Peoples. In such instances, permanent harm may be done during the time in which the complaint is being considered.
2. There is undue emphasis on mediation in the Specific Instance procedure even in situations where there is no reasonable prospect that the 'good offices' of the NCP might help the parties 'come to mutually agreed resolution without undue delay'. This may be because of the power imbalance between the parties or because there is too much at stake for the company to halt activities that are causing or contributing to human rights violations. NCPs should not prioritise mediation over determination in situations where the complainants do not feel that mediation would address their concerns.
3. The Specific Instance procedure doesn't require consequences for companies found to be in breach of the MNE Guidelines which undermines the procedure's effectiveness in improving the conduct of companies.
4. The MNE Guidelines should require NCPs to use the most advanced interpretations by the UN Working Group of the UN Guiding Principles (and therefore of the Human Rights Chapter of the Guidelines). Otherwise NCP's apply their own logic which is often far removed from what is set out in the UN Guiding Principles and in the various clarifications from the UN Working Group.
5. The threshold of evidence required from complainants is often unrealistically high for a complaint to be accepted and a breach to be determined. Clarification is needed as to what is meant by 'substantiated'.
6. There should be much more emphasis on transparency in the Specific Instance procedure. It is one of the core criteria in principle, but frequently ignored in practice. While much of the evidence submitted by complainants is put in the public domain, companies often insist on all their submissions being kept confidential. This means that they cannot be subjected to external scrutiny. There should be a presumption of transparency, with the expectation that all evidence submitted to the NCP should be put on their website, unless there are overwhelming reasons for this not to happen.

### **Conclusion**

The MNE Guidelines have an important role to play in establishing standards for responsible business conduct and ensuring access to justice for victims of adverse business impacts. Unfortunately, the gaps mentioned above, as well as others already raised by civil society, are preventing the MNE Guidelines from fulfilling their purpose.

We respectfully urge you to ensure the final stocktaking report reflects and responds to the concerns raised in this submission and in other contributions submitted by civil society. We also urge that, following conclusion of the stocktaking, the Investment Committee initiates an inclusive process to revise the MNE Guidelines to close the gaps identified.

Patrick Wilcken

Deputy Programme Director – Head of Business, Security and Human Rights  
International Secretariat

## 8. Animal Equality

### Animal Equality Statement for OECD MNE Guidelines Review

The OECD guidelines are incomplete since they ignore animal welfare, even though it is one of the top concerns globally for consumers. The significant advancements in scientific evidence and knowledge made over the past decade on animal welfare are not currently taken into account. It is legal in many OECD countries to keep a hen in a battery cage, cut piglets tails and teeth off without anesthetics and kill fish and other animals without effective stunning. The OECD guidelines exist to clarify what responsible businesses should be doing, these guidelines can support companies to go above the legal minimums.

The public's growing concern for animals has led companies around the world to voluntarily start to address animal welfare within their corporate social responsibility efforts. In the Business Benchmark on Farm Animal Welfare results it becomes clear that new standards are being set by progressive companies, while others are completely ignoring the issue, doing the legal minimum. Many MNEs are still carrying out practices that have been scientifically proven to cause pain and long-lasting frustration to the animals. Since one of the aims of the OECD guidelines is to promote better business models, animal welfare must be incorporated to set clear standards for animal welfare.

Recent studies show a strong link between animal welfare and human health. Negative animal welfare doesn't only affect the individual animals, but impacts human health too. According to the European Food Safety Authority, up to 50% of human infectious diseases are of zoonotic origin, and about 75% of the new diseases that have appeared in humans in the past 10 years have been caused by animals or animal products, a pattern predicted to continue. Experts all over the world highlight that live-animal markets and intensive factory farming have contributed to the increased formation or spread of zoonoses in recent history.

Factory farms, by definition, raise animals at very high stocking densities. As stocking densities increase, infection pressure and thus the possibility of pathogen transmission also increases. Meanwhile, low animal welfare leads to the overuse of antibiotics and to the rise in antibiotic-resistant bacteria that threatens both animal and human health. Antibiotic resistance is largely due to the overuse and misuse of antibiotics at factory farms to accelerate growth and enable animals to survive in unsanitary conditions. Antimicrobial resistance is projected to kill 10 million people annually by 2050 without action to address it.

On top of this, the massive usage of chemicals and fertilizers, combined with the cultivation of feed for farmed animals, are causing deforestation and environmental pollution. Livestock production is associated with 14.5% of global greenhouse gas emissions. While the evidence is clear on the link between factory farming and climate change, MNEs have been slow to address the negative impacts of animal agriculture.

By not addressing animal welfare, the OECD guidelines are falling behind the growing attention to animal welfare, the legal advances that OECD member states have already taken and the rising number of many MNEs' policies

Katie Arth  
International Director of Corporate Outreach  
[Animal Equality](#)

## 9. Asociación Bancaria de Argentina

Buenos Aires

Señores

OCDE

Presentes

De nuestra mayor consideración:

Por la presente tenemos el agrado de dirigirnos a ustedes en el marco de la consulta pública abierta por ustedes para Revisión de las Líneas Directrices de la OCDE para Multinacionales, para referir de los incumplimientos y violaciones a las normativas sociales y laborales, además de políticas antisindicales y antilaborales llevadas adelante por el Banco Santander SA en la República Argentina. La referida entidad financiera viene desarrollando procesos de ajuste que implican reducción de personal mediante desvinculaciones que dejan a trabajadores y trabajadoras desocupados sin su fuente de labor, tercerizaciones que disminuyen derechos y salarios, y medidas comerciales que afectan la atención del público y quitan puestos de trabajo.

Sin más, saludamos a ustedes.

Dr. Guillermo Maffeo

## 10. Asociación por los Derechos Civiles (ADC)\_Argentina

Consulta pública - Balance de las Líneas Directrices de la OCDE para Empresas Multinacionales

Asociación por los Derechos Civiles (ADC).Argentina

La Asociación por los Derechos Civiles (ADC) es una organización de la sociedad civil con sede en Argentina que desde 1995 trabaja en la defensa y promoción de los derechos civiles y humanos, en el país y la región. En la última década el incesante desarrollo tecnológico y la acelerada digitalización, presentan un escenario insoslayable para el ejercicio de los más variados derechos e intereses democráticos. Por ello, el marco internacional de empresas y derechos humanos es un pilar central en nuestra labor.

Desde su última actualización (2011) las Líneas Directrices para Empresas Multinacionales de la OCDE han contribuido a consagrar el respeto a los derechos humanos como la conducta empresarial responsable esperada a nivel mundial. Además de promover un abordaje diferencial al incorporar y establecer la debida diligencia basada en el riesgo como el proceso que las empresas deben llevar adelante para evitar causar impactos negativos -reales y potenciales- a los derechos humanos mediante sus actividades.

En la actualidad, el contexto mundial en el que se implementan las Líneas Directrices ha cambiado significativamente. La revolución digital y la innovación tecnológica están generando transformaciones que por su escala, velocidad y complejidad, no tienen precedentes. La adecuación de las Líneas Directrices para garantizar su continua pertinencia y eficacia, abordando las tendencias actuales que determinan el entorno de la Conducta Empresarial Responsable (CER), representa un gran desafío.

La digitalización, la innovación tecnológica, el flujo transfronterizo de datos y la economía digital, pueden impulsar el desarrollo en sus múltiples formas pero también pueden perpetuar y agudizar las desigualdades entre los países y al interior de ellos, entre los diversos grupos sociales, tal como lo puso en evidencia la pandemia de COVID 19. La OCDE tiene la oportunidad de fortalecer su trabajo y los estándares para la CER mediante una amplia adecuación transversal de las Líneas Directrices para dar

cuenta de las nuevas tendencias y así propiciar el desarrollo social, productivo y económico en forma inclusiva.

La Agenda 2030 exige el involucramiento del sector privado en las medidas de desarrollo mundiales y la implementación de normas en materia de CER se considera una parte esencial para la contribución de las empresas con respecto a los Objetivos de Desarrollo Sostenible. Sin embargo, la puesta en práctica de la debida diligencia por parte de las empresas vinculadas a la digitalización y la tecnología, es aún escasa.

La OCDE tiene la oportunidad desde el ámbito institucional y a través de los Puntos Nacionales de Contacto (PNC) de impulsar iniciativas relacionadas a la gobernanza digital y empresarial, en consonancia con la Líneas Directrices para poner en el centro de los modelos de negocios a los derechos humanos y la sustentabilidad. Al tiempo que es deseable que procure mayor interacción entre sus diferentes órganos, por ejemplo con el Comité de Política en Economía Digital (CDEP por sus siglas en inglés y, a su vez, con sus observadores de diferentes partes interesadas, como CSISAC (en representación de sociedad civil), TUAC y BIAC.

Marianela Milanes  
Oficial de Proyecto

## 11. Austrian Chamber of Labour

### Stocktaking exercise on the OECD Guidelines for Multinational Enterprises (MNE Guidelines)

The Austrian Chamber of Labour welcomes the public consultation to comment on the First Draft for the 2021 OECD Guidelines Stocktaking Exercise.

The MNE Guidelines presents a set of **non-binding recommendations** to enterprises and includes a **national implementation mechanism**, the National Contact Points (NCP), mandated to act as non-judicial grievance mechanisms. The most recent update of the MNE Guidelines took place in 2011 and led to the introduction of a new **chapter on human rights** as well as the **concept of risk-based due diligence for RBC**.

The last decade showed very clearly that the **voluntary and non-binding nature** of the recommendations as well as the **voluntary grievance procedure** failed to improve the situation of workers and people affected by activities of MNEs worldwide. Human and workers' rights violations and environmental degradation are on an unprecedented high, as figures of recent reports show<sup>16</sup>.

The **Covid-19 pandemic** exacerbated existing negative impacts and showed the fragility of global supply chains. Unfair purchasing and tendering practices as well as last minute cancellation of orders or contracts negatively affect the lives of millions of workers. Furthermore, **climate change** and the continuous loss of biodiversity have become the main challenge of the 21st century, forcing humanity to dramatically change the way of living, producing and consuming goods.

In light of the cited developments, the **introduction of mandatory human rights and environmental due diligence legislation** is essential. The Austrian Chamber of Labour therefore welcomes the announcement of the European Union in 2020 to present a legislative proposal and continues to support the work of the open-ended intergovernmental working group for an internationally binding treaty on business and human rights.

We therefore also call for a **fundamental reform of the OECD Guidelines** by creating a **binding mechanism** for human rights and environmental due diligence as well as an **effective grievance and enforcement mechanism**. Given the fact that the MNE Guidelines and especially the sectoral as well as the general Guidance's represent an important reference on an international level, their enhancement to make them fit for purpose are of utmost importance.

Current expectations vis-à-vis MNEs to reduce GHG emissions under the **Paris Agreement** as well as clear environmental due diligence requirements have to be included in Chapter VI (Environment). **Environmental degradation** and **occupational health and safety** are interlinked. It is therefore necessary to incorporate the concept of **Just transition** in the Guidelines.

**Minimum standards** and overall **respect for the NCP** remain one of the biggest challenges for implementation of the Guidelines. Minimum standards for the NCP need to be established in order to allow the NCPs to work impartially and effectively. In Austria for instance, potential conflict of interests can result in the fact, that the Austrian NCP is part of the Ministry of Economy and thus bound by instructions. Furthermore, the goal of facilitating access to remedy for victims of adverse business impacts has not been achieved yet and makes the Guidelines not fit for purpose.

The 2021 Stocktaking exercise can only be considered a success, if enterprises and NCPs show that the Guidelines are able to **improve workers' rights** and **better protect the environment**.

We respectfully request to consider our proposals.

MMag. Julia Wegerer

AK Wien

[wien.arbeiterkammer.at](https://wien.arbeiterkammer.at)

## 12. Avocats sans frontières + I WATCH

### CONTRIBUTION

#### Consultation publique - Exercice de bilan sur les Principes Directeurs de l'OCDE à l'intention des Entreprises Multinationales

Avocats Sans Frontières (ASF) et I Watch ont déposé en août 2018 une demande d'examen d'une « circonstance spécifique » auprès du PCN français, visant à faire la lumière sur la nature des opérations d'exploration et d'exploitation d'hydrocarbures de l'entreprise Perenco en Tunisie, dans la région de Kebili, et sur leur conformité aux Principes Directeurs de l'OCDE à l'intention des entreprises multinationales. Plus de trois ans après la saisine du PCN, ce dossier n'est toujours pas formellement clôturé<sup>17</sup>. Le 25 février 2021, ASF et I-Watch ont communiqué au Point de Contact National (PCN) français de l'OCDE leur retrait de la procédure qu'elles avaient elles-mêmes [initiée](#) en août 2018<sup>18</sup>.

Sur la base de cette expérience, ASF et I Watch se joignent aux nombreuses [ONG françaises](#) qui s'inquiètent du manque d'effectivité du mécanisme pour formuler quelques constats visant au renforcement des Principes directeurs de l'OCDE et de leur mise en œuvre.

- Structure et composition du PCN français

L'indépendance du PCN français est mise à mal par son **rattachement au Ministère de l'économie et des finances**, caractéristique d'un conflit d'intérêts s'agissant de procédures de plainte contre des entreprises multinationales françaises.

<sup>17</sup> <https://www.asf.be/fr/blog/publications/joint-statement-establishing-transparency-on-the-perenco-groups-activities-in-kebili/>

<sup>18</sup> <https://www.asf.be/fr/blog/publications/french-press-release-withdrawal-of-the-procedure-before-the-french-ncp/>

La **composition tripartite** – représentant de ministères, du Patronat et des Syndicats – ne suffit pas à doter le PCN d'une expertise couvrant l'ensemble des principes directeurs, notamment sur les questions de diligence raisonnable fondées sur les risques en matière environnementale, sociale et de droits humains. Il en résulte un déséquilibre entre les parties, qui reproduit les asymétries de pouvoir observées dans le cadre de relations entre entreprises multinationales et les sociétés affectées par leurs activités, y compris civiles.

Tout PCN devrait a minima intégrer des représentants de la société civile, et idéalement être constitué d'experts indépendants et spécialistes des questions traitées.<sup>19</sup>

La structure du PCN français est d'autant plus inquiétante qu'elle est promue comme une bonne pratique, exportable dans les pays en voie d'établissement de tels mécanismes, comme la Tunisie.<sup>20</sup>

- Effectivité et transparence de la procédure

La procédure à laquelle nos organisations ont participé a été marquée par de nombreux incidents propres à porter atteinte au principe d'effectivité de la procédure, que ce soit dans ses composantes d'impartialité, de prévisibilité ou d'équité telles que posées au paragraphe 22 du Commentaire sur les procédures de mise en œuvre des Principes directeurs de l'OCDE. Ces incidents ont notamment porté sur :

- Le séquençage de la procédure et sa **prévisibilité**, alors que n'a pas été respecté le propre [règlement intérieur](#) du PCN ;
- Les **délais excessivement longs de traitement** de notre saisine ;
- **L'approche de la médiation** par le PCN, qui n'hésite pas à entrer dans des procédures parallèles de discussion avec l'entreprise ou proposer des solutions en dehors de tout cadre légal s'agissant, par exemple, d'accès à l'information ;
- La **procédure d'adoption et le contenu des divers communiqués publiés par le PCN** : les versions finales publiées diffèrent substantiellement des premiers projets proposés par le PCN, remaniés selon le bon-vouloir des parties, en particulier de l'entreprise. Il en ressort un compte-rendu biaisé des faits, des échanges et de l'application des principes directeurs.

Face à ces dysfonctionnements, il n'existe **pas de mécanisme d'appel**, la saisine de mécanismes extra-judiciaires intervenant souvent pour palier à l'absence de voies de recours judiciaires. Le PCN français procède par ailleurs à une **interprétation extrêmement stricte de la notion de confidentialité** applicable aux échanges, qui vise à décourager toute communication de la part des organisations plaignantes, et enferme le différend dans un voile d'opacité que ce type de saisine vise pourtant à lever.

Ms Zeineb Mrouki  
Responsable Prorgamme Transnational-Thematics  
Avocats Sans Frontières - Tunisie  
[www.asf.be](http://www.asf.be)

## 13. Brazilian Business Ethics Institute

### OECD Guidelines – Public Consultation

The Board of Directors is the highest authority in the company and composed by the representatives of the Shareholders. Thus, the members of the Board dictate to the executives the guidelines of conducting business. Besides, they are the personification of “Corporate Governance” and, as if that wasn't enough, they must fulfill the role of “Guardian of Ethics”, holding in their right hand the “Code of Ethics”!

<sup>19</sup> Voir OECD Watch, [Indicateurs de performance des PCN](#), Indicateurs 34 (Stakeholder involvement in NCP) et 36 (NCP Structure).

<sup>20</sup> ASF, OECD Watch et BHRRC, [Entreprises et droits humains : La Tunisie doit se saisir pleinement des instruments internationaux](#) (2019).



The Code of Ethics is the company's "Constitution", the "Magna Carta". Because it is the "Corporate Higher Law", the Code of Ethics is the company's main instrument of "government". However, by publishing the Code of Ethics in the corporate website, the company makes its ethical, social and environmental commitments "publicly known", claiming to the market exactly "how" the company will conduct its business. Besides, the Code of Ethics "motivates" the Stakeholders, especially the employees, to "report" to the "Complaint Channel" any "nonconformities" regarding the code or professional "conduct deviations", that is, the words and the spirit of the Code of Ethics has a "value" from the fabric floor to the Board and, especially, the CEO, who is the main example to be followed within the corporate walls. As if this wasn't enough, the Code of Ethics guarantees to the whistleblowers "protection" against any kind of "retaliation". However, the Code of Ethics results in reciprocal "rights" and "duties"!

Global research demonstrates that most of the complaints reported to the Complaint Channels" are from "employees". So the whistleblowers are the companies' main "allies" because, by making a complaint, the whistleblower is trying to conserve the name, the image, the reputation and the corporate patrimony. This way, the whistleblowers, by doing what is right, are contributing to the success and the continuity of business!

Unfortunately, what we observe in the global market is that many whistleblowers are being silenced and having their careers and reputations buried around the world by companies that don't respect their Codes of Ethics, by employees and executives who steal corporate coffers and the Board that pretends nothing happens.

For all the reasons mentioned above, it would be of great importance if OECD includes in the "OECD Guidelines for Multinational Enterprises" a special highlight for themes involving "Ethics & Compliance Programs", especially about its main tools: the "Code of Ethics" and "Complaint Channels", having as a main goal the improvement of corporate actions and attention regarding "protection of whistleblowers".

As a result, multinational companies would actually be globally acting based on the most important pillars of RBC (Responsible Business Conduct): "Ethics, Integrity and Compliance"!

We are at the disposal of OECD.

**Douglas Linares Flinto**

*Chairman & CEO*

*Brazilian Business Ethics Institute*

[www.eticanosnegocios.org.br](http://www.eticanosnegocios.org.br)

## 14. Business & Human Rights Resource Centre

Dear members of the OECD Working Party on Responsible Business Conduct,

The [Business & Human Rights Resource Centre](#) welcomes this public consultation on gaps in the OECD Guidelines for Multinational Enterprises (Guidelines). The Resource Centre supports communities and civil society organizations adversely impacted by business activity and engages companies to address human rights concerns. We seek to build, analyse and deploy evidence to influence decision-makers in governments and businesses towards effective laws, regulation, and norms that transform exploitative business behaviour into a rights-respecting economic model. Since 2005, we have made over 6,600 [approaches](#) to companies asking them to respond to specific human rights allegations across the globe.

Throughout the years, we have engaged with the OECD system in various ways, including through participating in the OECD Forum, co-writing a briefing with OECD Watch and co-wrote the briefing and presenting it to NCPs, engaging in consultations with National Contact Points (NCP), and in some



instances supporting civil society and communities seeking remedy for harm via the National Contact Point (NCP) complaint mechanisms.

While the Guidelines remain a valuable tool to advance responsible business conduct, in the ten years since their last revision the standards have not kept pace with new challenges and expectations for corporate conduct. One of the most serious gaps in both the RBC standards for multinational enterprises (MNEs) and implementation expectations for NCPs is the lack of provisions that address how corporate actions can cause harm to human rights defenders and guidance as to how MNEs should avoid causing, contributing, or being directly linked to such harm.

In the context of shrinking civil society space, the OECD Working Party on Responsible Business Conduct (WPRBC) and many OECD states are taking action to advance protections for human rights defenders. There is a growing recognition how defenders can be harmed by business action and omission and of the need to address retaliation. We particularly welcome the encouraging statement by WPRBC in March 2020, in which it stated it was *“deeply concerned by a number of alleged incidents of undue pressure intended to silence those who submit cases (referred to as “specific instances”) to National Contact Points for Responsible Business Conduct (NCPs). In addition to their impact on submitters, incidents of this kind undermine the NCP process and risk weakening the NCP system as a whole as well as the effectiveness of the OECD Guidelines. Any undue pressure applied to submitters of specific instances is entirely unacceptable. No individual or organisation filing a specific instance with an NCP should face undue repercussions for doing so.”*

Yet the Guidelines themselves include no provisions identifying the corporate nexus with harm to defenders or explaining how MNEs should avoid both actions or omissions that adversely impact defenders. Also, the Procedural Guidance does not call upon and guide NCPs in adopting procedures to discourage and address threats to complainants, including retaliation for complaint-filing. In sum, the OECD Guidelines do not set standards for business on avoidance of harm to human rights defenders, nor guidance for NCPs on how to respond to reprisal risks connected to the specific instance process. **Therefore, we believe revision of the OECD Guidelines for Multinational Enterprises is needed to specify expectations for multinational enterprises (MNEs) and National Contact Points (NCPs) on preventing and mitigating harm to human rights defenders, including during the specific instance process.**

Human rights defenders (defenders) – any person or group peacefully working to promote and protect human rights, including journalists and whistle-blowers inside MNEs – contribute greatly to safeguarding human rights, natural resources, and shared planet, as well as playing a vital role in drawing attention to the harms created by abusive business practices. Protecting HRDs’ safety, freedom of expression, and freedom of association is crucial for strong democracies, healthy environments, and more equitable, transparent economic systems. As Resource Centre’s database of attacks on defenders’ shows, since

2015 there have been [more than 3400](#) killings, beatings, threats, strategic lawsuits against public participation (SLAPPs), stigmatization, suspension of fundamental freedoms, legal restrictions and other attacks against defenders focused on business activities. The number of attacks [has increased in recent years](#), demonstrating heightened risk to defenders in a context of shrinking civil society space.

Many of these attacks are made against defenders working to protect human rights from MNE misconduct. Sometimes businesses do not solicit attacks but are connected to them by remaining silent when economic or government partners harm or denigrate defenders in the name of development. Businesses also cause or contribute to harm to defenders directly, such as by firing workers for protesting, bringing SLAPP suits against activists, hiring abusive security firms to intimidate communities, detaining or attacking journalists reporting on MNE conduct, engaging in digital surveillance of defenders, cancelling the financial accounts

of defenders or their affiliates, or requesting unnecessary armed protection from state forces.<sup>21</sup> Defenders fighting the harmful impacts of business activity often rely on non-judicial grievance mechanisms such as NCPs as an avenue to seek justice. Unfortunately, BHRRC and OECD Watch's [research](#) shows great risk of reprisal for defenders who engage with the specific instance process. A full 25% of complaints filed to NCPs by communities and NGOs involve harms against defenders, either harms highlighted in the complaint text itself, happening alongside the complaint, or even occurring as a result of the complaint. The risk is greatest for marginalized or isolated defenders such as indigenous people, women, LGBTQ+ members, and those who are rural and remotely located.

Despite the importance of the work of defenders and their vulnerability to threats from businesses, including during NCP complaints, the OECD Guidelines – the preeminent standard for businesses in all sectors on responsible business conduct – do not mention the issue. Neither Chapter IV on human rights nor any other chapter addresses the rise in harm to defenders and the nexus with activism against harmful business activity. Critically, the Guidelines set no expectations for MNEs on how to prevent, mitigate, and remedy impacts to defenders, including impacts directly linked to their supply chains, and those MNEs cause or contribute to. The OECD Guidelines also do not provide guidance to NCPs on the steps they should take to discourage and respond to allegations or occurrence of reprisals in connection with specific instances. Without guidance in the Guidelines, almost no NCPs have a policy to address reprisal risks for complainants and their affiliates. BHRRC and OECD Watch's [briefing](#) in 2019 showed that while threats to defenders have been raised implicitly or explicitly in a quarter of all community-led complaints, NCPs generally do not know how to respond effectively, and are indeed hesitant to respond at all for fear of worsening the situation.

These omissions are in contrast with the developments in the rest of the business and human rights space, where this issue is gaining increasing recognition and traction. For example, the UN Working Group on Business & Human Rights recently released an [authoritative interpretation of the Guiding Principles on Business & Human Rights on Human Rights Defenders](#), which makes it clear that States should make the protection of human rights defenders working on business-related human rights abuses a policy priority, in line with the Guiding Principles and that “pursuant to the Guiding Principles, business enterprises have a responsibility to avoid infringing the human rights of those who defend them. This entails business enterprises adapting their procedures to anticipate risks to rights holders including human rights defenders. Concretely, it means that business enterprises need to ensure, as a minimum, that their activities, actions and omissions, do not lead to retaliation, violence, death, legal harassment or any other form of silencing or stigmatization of human rights defenders, and they need to address adverse impacts on human rights defenders with which they are involved, either through their own activities or as a result of their business relationships”.

The Independent Consultation and Investigation Mechanism of the Inter-American Development Bank, the Project Complaints Mechanism of the European Bank for Reconstruction and Development, IDB Invest and the International Finance Corporation have also adopted guidelines meant to prevent retaliation against stakeholders. Moreover, this issue is present in the discussion about the proposed mandatory due diligence law on the EU level: for instance, the draft Directive, which was presented by Member of European Parliament Lara Wolters and the European Parliament's Committee on Legal Affairs in September 2020, reflected risks of retaliation in a number of ways.

Given this direction of travel and that the OECD Guidelines are often an inspiration for mandatory due diligence laws, which are increasingly being considered in OECD countries, it is crucial that the OECD Guidelines for Multinational Enterprises are revised to specify expectations for multinational enterprises (MNEs) and National Contact Points (NCPs) on prevention and mitigation of harm to human rights

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<sup>21</sup> For further on company strategies to undermine and silence human rights defenders, see Mind the Gap, “Undermining defenders and communities,” available at: <https://www.mindthegap.ngo/harmful-strategies/undermining-defenders-communities/>.

defenders, including during the specific instance process. We appreciate that our and OECD Watch's [research](#) was mentioned in the draft version of the stocktaking report, and we hope this indicates that the final stocktaking report will reflect and respond to this crucial gap. We also request that, following conclusion of the stocktaking, the Working Party initiates an inclusive process to revise the Guidelines to include guidance regarding human rights defenders and ensure they remain fit for purpose.

We thank you for your consideration and would be happy to support revision discussions.

Sincerely,

Ana Zbona, on behalf of the Business & Human Rights Resource Centre  
[Business & Human Rights Resource Centre](#)

## 15. Clean Clothes Campaign network

Dear members of the OECD Working Party on Responsible Business Conduct,

Dedicated to improving working conditions and empowering workers in the global garment and sportswear industries, the [Clean Clothes Campaign](#) network has significant experience in using the Guidelines<sup>22</sup> to advocate for improved responsible conduct by corporations and governments, as well as to holding companies accountable and securing remedies for victims via the National Contact Point (NCP) complaint mechanisms.

We support the position of OECD Watch that serious gaps in both the Guidelines and the NCP mechanisms are preventing them from fulfilling their purposes. The gaps that need to be addressed most urgently are the following:

### 1. Labour rights

The Guidelines (in particular Chapter V) focus on internal employment rather than on labour across the whole value chain, and as such fail to set important labour rights standards for MNEs, such as ensuring responsible disengagement from suppliers who do not provide safety and rights to their workers, avoiding business models that preclude payment of a living wage across the value chain and intentionally escape responsibility for worker well-being, or addressing deep-rooted discrimination and sexual harassment within supply chains. The COVID-19 pandemic further exposed gaps that allow companies to escape their responsibility towards workers<sup>23</sup>.

#### a) Purchasing practices

Companies' purchasing practices and business models are at the root of many human rights/labour rights impacts but the Guidelines are silent on this issue. Our experience shows that improved purchasing practices such as long-term relationships with suppliers, sufficient lead times, offering realistic prices, payment terms will address common violations (insufficient wage levels, unwarranted overtime, mass dismissals) and have a positive impact on workers rights.

#### b) Responsible disengagement

The concept of "responsible disengagement" should be expanded to cover cases where disengagement is the result of a business decision or specific purchasing practices carried out by the company. Companies should be expected for instance to notify trade unions/workers of their intentions to stop a work relationship; undertake due diligence before leaving and mitigate/remedy any negative impact, including ensuring workers receive what they're legally owed (e.g. severance pay) and concrete commitments to ensure workers reallocation.

<sup>22</sup> As well as the Guidance for Responsible Supply Chains in the Garment and Footwear Sector

<sup>23</sup> <https://cleanclothes.org/news/2020/covid-19-short-term-demands-in-defense-of-garment-workers-in-global-supply-chains>

## 2. Reform to the NCP

In our experience<sup>24</sup> effectiveness of NCPs vary widely. Minimum expectations for NCPs in the Procedural Guidance should be raised to ensure NCPs have expertise on human/labour rights and adequate resourcing to investigate complaints and include victim's active participation in the whole procedure. They should have complaint-handling procedures ensuring accountability for irresponsible business conduct: transparency over complaint processing, commitment to issue determinations of non-compliance and consequences for MNEs refusing to participate in good faith or not complying with the NCP recommendations. Furthermore, NCP's threshold for accepting a case should be at reasonable plausibility, they should proactively address power imbalances in their proceedings and should be able to monitor compliance with the outcomes of their mediation and follow through if they are not adhered to.

## 3. Disclosure

The OECD Guidelines' Disclosure chapter is outdated, setting standards not much stronger than the minimum legal requirements on financial reporting, and inadequately synchronizing with the Guidelines' own due diligence communication expectations added in 2011. Traceability, supply chain mapping and transparency are necessary for responsible business conduct and facilitates access to remedies and justice. As binding and non-binding standards on transparency and disclosure<sup>25</sup> are developed, the OECD Guidelines should improve its disclosure requirements. At a minimum, companies should be expected to disclose the names, locations, workforce number, type of products made and parent company of their suppliers in a searchable format.

In light of these concerns, we ask that you ensure the final stocktaking report reflects and responds to each of these gaps. We also request that, following the conclusion of the stocktaking, the Working Party initiates an inclusive process to revise the Guidelines.

Sincerely,

Clean Clothes Campaign.

### Contact details

Muriel Treibich

Lobby & Advocacy Coordinator

## 16. CNV Internationaal

Dear members of the OECD Working Party on Responsible Business Conduct,

CNV Internationaal welcomes the public consultation on gaps in the OECD Guidelines for Multinational Enterprises (Guidelines). CNV Internationaal is part of the second largest trade union in the Netherlands. The Guidelines take a central role in our work. We use the Guidelines in direct advocacy with corporations to encourage responsible business conduct (RBC) and in conversation with the Dutch government to advocate for improved RBC policies. The Guidelines have been an important tool to advance RBC, but since their last revision the standards have not kept pace with new challenges or expectations for corporate conduct. It is critical that the Working Party and Investment Committee take the opportunity to close serious gaps<sup>26</sup> in the RBC standards for corporations.

<sup>24</sup> Most recently, this includes the NCP in Italy (RINA case) and the NCP in Austria (adidas case) <https://cleanclothes.org/news/2020/faulty-pakistan-factory-audit-italian-social-auditor-rina-yet-again-disregards-families-harmed-by-textile-factory-fire> and <https://cleanclothes.org/news/2020/ngos-disappointment-as-german-ncp-close-adidas-labour-violations-case>

<sup>25</sup> EU Directive on Corporate Sustainability Reporting (upcoming), UNECE Standard on Traceability and Transparency in the textile and leather sector

<sup>26</sup> For insight on gaps in the Guidelines of concern to civil society, please see OECD Watch's paper [Get Fit: closing gaps in the Guidelines to make them fit for purpose](#)

The number of working people without collective bargaining agreements has increased enormously since the last revision<sup>27</sup>, despite our efforts to have collective labour agreements in all sectors worldwide. Labour rights are at risk worldwide, in all sectors and supply chains. The Covid-19 pandemic has aggravated the situation. Trade unionists are threatened and the number of trade unions is decreasing because workers in many places do not have the right to representation nor to collective bargaining. In many cases, trade union members and leaders are dismissed or companies establish their own strictly controlled trade unions. Audits performed by companies often lack independent standards. The revision should list rules for these audits, such as good stakeholder consultation of the end users, workers and communities.

Workers who are part of company supply chains are largely invisible because traditional employer relationships are disappearing, and outsourcing and flexible work is growing as cheap and unregulated labour. The Guidelines should provide clarity on the negative consequences of outsourcing activities to uncontrolled external companies.

Too many people are employed informally and earn insufficient wages. The Guidelines should contain clear guidance on payment of a living wage. Companies must facilitate, stimulate and respect collectively negotiated wages that are equal to or higher than a living wage.

The importance of transparency and reporting on all aspects of RBC and due diligence should be central to the Guidelines. It must be made immediately clear that this does not concern the risks to and the rights of the company itself, but the risks to society, local residents, local communities and workers.

Clear RBC standards that consider the impact on women are needed, for example on mitigating the additional barriers that women experience in seeking access to effective remedies. 28 These standards should include gender responsive auditing and making use of gender responsive monitoring methods in due diligence.

The Dutch government and European Commission are currently working on the development of RBC legislation in which the Guidelines are expected to play a pivotal role. It is therefore of the utmost importance that the Guidelines reflect the latest and highest standards on various RBC themes, making clear to all stakeholders what exactly is expected of companies, and improving the grounds on which states can help facilitate access to justice for victims.

Thank you for your consideration.

Sincerely,

Anne Wehkamp  
Lobbyist CNV Internationaal  
[www.cnvinternationaal.nl](http://www.cnvinternationaal.nl)

## 17. Committee on Corporate Social Responsibility

What:

Submission to OECD guidelines for multinational enterprises

By whom:

Written submission written by Dr, Adjunct Professor Kari Latvus, a member of Committee on Corporate Social Responsibility (Finland). The Committee is a consultative body that supports administrative decision making. Members of the Committee on Corporate Social Responsibility represent various authorities, trade

<sup>27</sup> TUAC, Reviewing the Guidelines for MNEs: Trade Union Key Messages, OECD Guidelines that Deliver, December 2020

<sup>28</sup> <https://www.ohchr.org/EN/Issues/Business/Pages/GenderLens.aspx>

and industry, and labour market and civic organisations. The Committee's term of office extends from 1 January 2021 to 31 December 2023.

The major concern for existing gap of OECD guidelines focuses on lack of understanding serious and enormous existing discrimination based on caste. Major focus is on Asia (India, Nepal etc) but it reflects the reality around the world including Europe. Caste-based discrimination affects more than 260 million people worldwide in South Asia, Africa, Asia, the Middle East, the Pacific, and diaspora communities like the UK and US.

Lack of understanding the meaning of caste discrimination is an urgent issue to be corrected.

The Guidelines also do not advise businesses in understanding intersectional discrimination, i.e., how individuals within marginalised groups may suffer impacts differently because of another identity trait, such as their gender, age, disability, or race. For example, the Guidelines must more clearly call on businesses to address gender impacts in their value chains and understand how Dalit women may suffer differently from Dalit men, whether as workers, community members or human rights defenders, because of their gender.

Thus OECD guidelines will be hopefully in future include following points:  
Ensure the final stocktaking report discusses the gap in the standards on caste discrimination; and

Undertake a revision of the Guidelines, following the close of the stocktaking process, to ensure the standards

- a. Identify "caste" as a ground for discrimination (both of workers and non-workers) and identify people of low-caste as marginalized or disadvantaged, and
- b. Call on businesses to undertake specialized due diligence and remedial action to ensure the voices and needs of marginalized or disadvantaged groups are heard and met.

Warm thanks for having this opportunity to join in development of OECD guidelines for multinational enterprises.

Kari Latvus  
Director  
Dr., Adjunct professor, Rev.  
Worship and Society, National Church Council

## 18. Community Empowerment and Social Justice Network (CEMSOJ)

Dear members of the OECD Working Party on Responsible Business Conduct (WPRBC):

Community Empowerment and Social Justice Network (CEMSOJ), Nepal welcomes this public consultation on gaps in the OECD Guidelines for Multinational Enterprises (Guidelines). We work with communities, particularly Indigenous Peoples and other marginalized groups, adversely impacted by business activity<sup>29</sup> and are thus aware of the potential use of the Guidelines to encourage responsible business conduct (RBC) by corporations, advocate for improved RBC policies by governments, and secure remedy for harm via the National Contact Point (NCP) complaint mechanisms.

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<sup>29</sup> See, for example, our works to support indigenous Newar communities affected by construction of a mega business complex in Kathmandu that houses a local franchisee of the Marriott International at <https://cemsoj.wordpress.com/tag/chhaya-center/>, and to assist indigenous Magar and local communities in western Nepal impacted by Tanahu Hydropower Project co-financed by the Asian Development Bank, European Investment Bank and Japan International Cooperation Agency at <https://cemsoj.wordpress.com/tag/tanahu-hydropower-project/>



While the Guidelines should be a valuable tool to advance RBC, in the ten years since their last revision, we are of the view that the standards have not kept pace with new challenges and expectations for corporate conduct and the NCP complaint mechanisms have largely failed to facilitate access to remedy for impacted communities. In our work with communities facing negative impacts from operations of multinational enterprises (MNEs), the communities seek to use the Guidelines but are discouraged to engage with the NCPs when they learn about the gaps in the Guidelines and that the NCPs weak mandate and poor performance records. Importantly, they expect that the NCPs, when they receive credible allegations against violations of the Guidelines, should be able to take immediate actions against the concerned MNEs headquartered in their States, such as causing suspension of their operations or involvement in the wrongdoings, deferral of any State or public (through stock trading) financing to the MNEs as well as red-noticing them for public information until the MNEs take concrete measures to ensure RBC. In lack of such enforcement of the Guidelines and mandate of the NCPs, the communities feel that the MNEs cannot be pushed through voluntary measures or dispute resolutions.

So, in our view, serious gaps<sup>30</sup> in both the RBC standards for MNEs and implementation expectations for NCPs are preventing the Guidelines from fulfilling their purposes as follows:

**Marginalized groups:** Business impacts are often felt most strongly – and differently – by the most marginalized and disadvantaged members of society, including women, Indigenous Peoples, so-called “low caste” people, children, and others. The Guidelines do not identify key rights of these groups – such as Indigenous Peoples’ right to free, prior, and informed consent (FPIC) over use of their lands, resources and territories – the different ways these people can be adversely impacted by business conduct – for example, not only as employees but as community members – nor the specialized due diligence needed to consult these groups, and identify, address, and remedy impacts to them. In our work with marginalized groups, the following groups have specific concerns with business impacts that the OECD Guidelines should take into account.

- **Indigenous Peoples** are among the most vulnerable populations in the world, and they are disproportionately impacted by business activities on or near their territories.<sup>31</sup> While Indigenous Peoples only form at least 6% of the world’s population, they safeguard 80% of the earth’s biodiversity and a great wealth of natural resources.<sup>32</sup> Unfortunately, Indigenous Peoples territories are routinely exploited, sold, appropriated or polluted by companies that have not respected their internationally-recognized rights.<sup>33</sup> The Guidelines do not identify key specific rights of Indigenous Peoples such as the right to free prior and informed consent (FPIC) and self-determination, their particularly vulnerability as human rights defenders, nor the specialized due diligence needed to consult them, and identify, address, and remedy impacts to their experience.

**Human rights defenders:** In a context of shrinking civil society space, the WPRBC and many OECD states are taking action to advance protections for human rights defenders. Yet the Guidelines include no provisions identifying the corporate nexus with harm to defenders or explaining how MNEs should avoid both actions and omissions that adversely impact defenders. Meanwhile, the Procedural Guidance does

<sup>30</sup> This letter draws on analysis from the OECD Watch network. For insight on other gaps in the Guidelines of concern to civil society, please see OECD Watch’s [submission to the first draft of the stocktaking report](#) and paper [Get Fit: closing gaps in the Guidelines to make them fit for purpose](#).

<sup>31</sup> Indigenous Peoples Indigenous Voices fact sheet. Available at: [https://www.un.org/esa/socdev/unpfii/documents/PFII8\\_FS3.pdf](https://www.un.org/esa/socdev/unpfii/documents/PFII8_FS3.pdf); International Labour Organization, Implementing the ILO Indigenous and Tribal Peoples Convention No. 160 = Towards an inclusive, sustainable and just future, 2019. Available at: [https://www.ilo.org/global/publications/books/WCMS\\_735607/lang-en/index.htm](https://www.ilo.org/global/publications/books/WCMS_735607/lang-en/index.htm)

<sup>32</sup> Gleb Raygorodetsky, “Indigenous peoples defend Earth’s biodiversity - but they’re in danger,” The National Geographic, 16 November 2018, available at: <https://www.nationalgeographic.com/environment/article/can-indigenous-land-stewardship-protect-biodiversity-#:~:text=Recent%20research%20demonstrates%20that%20while,percent%20of%20the%20global%20biodiversity>.

<sup>33</sup> Amnesty International, Indigenous Peoples. Available at: <https://www.amnesty.org/en/what-we-do/indigenous-peoples/#:~:text=There%20are%20370%20million%20Indigenous,5%25%20of%20the%20world's%20population>.

not call upon and guide NCPs in adopting procedures to discourage and address threats to complainants, including retaliation for complaint-filing.

**Climate change and environmental degradation:** Countering the effects of climate change is broadly acknowledged as the most vital need of our time. Environmental destruction and climate change have caused devastating effects including severe biodiversity loss, with a recent report finding that the global wildlife population has been reduced by two-thirds over the last 50 years.<sup>34</sup> MNEs are recognised as responsible for almost a fifth of climate-changing carbon emissions,<sup>35</sup> but the Guidelines do not mention the term “climate change,” call upon MNEs to set and achieve climate-related emission targets, nor demand that MNEs avoid and remedy common pressing environmental impacts including deforestation, pollution, and biodiversity loss.

**Land rights:** Land security underpins numerous human rights and helps forestall climate change. While global standards and corporate policies increasingly call for corporate respect for land rights, the OECD Guidelines do not address the topic, failing to guide MNEs on issues such in assuring the right to free prior and informed consent, respecting non-documented tenure rights including of women and communal owners, addressing legacies of dispute over contested lands, and respecting land rights even where states fail their own duty to protect land rights.

**Reforms to NCPs:** NCPs play a vital role in ensuring the success of the Guidelines, by promoting the Guidelines to businesses and other key stakeholders including civil society, and by facilitating access to remedy via their dispute resolution services. Unfortunately, the Guidelines’ Procedural Guidance sets so low a threshold for the required basic institutional arrangements, promotional activities, and complaint-handling procedures of NCPs that they vary widely in their effectiveness. Minimum expectations for NCPs in the Procedural Guidance should be raised to, for example, ensure NCPs have access to expertise on human rights and technical topics covered in complaints, input from stakeholder advisors, adequate resourcing to investigate complaints, a practice of undertaking promotional activities annually towards all stakeholder groups, and complaint handling procedures that ensure participation by NCPs and accountability for irresponsible business conduct, such as transparency over complaint processing, commitment to issue determinations of non-compliance and seek consequences for MNEs refusing to participate in good faith, and a practice of engaging in follow-up monitoring. At the same time, as mentioned above, the NCPs should have a stronger mandate, including quasi-judicial powers, to ensure the MNEs take concrete measures to ensure RBC through sanctions and other actions when there is credible allegations of violations of the Guidelines by the MNEs.

**Disclosure:** ESG reporting, sustainability reporting, or integrated reporting are on the rise globally as countries increasingly require MNEs to disclose not merely their financial but their non-financial data to support efficient market functioning, corporate contribution to the UN Sustainable Development Goals, and public monitoring of outcomes. Against this growing tide, the OECD Guidelines’ Disclosure chapter is seriously outdated, setting standards not much stronger than the minimum legal requirements on financial reporting, and inadequately synchronizing with the Guidelines’ own due diligence communication expectations added in 2011.

**Corruption:** Despite the close relation between corruption and violation of human rights, the Guidelines currently address only bribery and extortion and do not set expectations regarding all forms of corporate corruption. They do not call for key disclosures – such as of beneficial ownership and country-by-country reporting – that would facilitate identification of corruption, nor highlight the nexus between avoiding corruption and meeting standards across the other chapters in the Guidelines.

<sup>34</sup> WWF, (2020), Living Planet Report 2020 - Bending the curve of biodiversity loss. Almond, R.E.A., Grooten M. and Petersen, T. (Eds). WWF, Gland, Switzerland.

<sup>35</sup> Zhang, Z., Guan, D., Wang, R. *et al.* (2020), Embodied carbon emissions in the supply chains of multinational enterprises. *Nature Climate Change*, **10**, 1096–1101.



**General policies:** The General policies chapter of the Guidelines does not set a proper tone for the overall document by highlighting the full range of standards and expectations addressed in the subsequent chapters. For example, several key topics – such as respect for the rights of human rights defenders, the special care needed to identify and address risks to marginalized groups, the role of disclosure in helping facilitate and measure RBC, the nexus between paying full and fair taxes and avoiding corruption and fulfilling other human rights and environmental expectations, and the way in which digitalization can exacerbate corporate impacts – should all be highlighted. The chapter should all for MNEs to prioritise avoidance of adverse human and environmental impacts over profit-making and avoid business models and methods that hinder MNEs from fulfilling their responsibility to respect human rights. The chapter should also more clearly outline the six steps of the RBC due diligence process.

In light of these concerns, we respectfully request that you ensure the final stocktaking report reflects and responds to each of the gaps identified by civil society. We also request that, following conclusion of the stocktaking, the Working Party initiate an inclusive process to revise the Guidelines to ensure they remain fit for purpose.

We thank you for your consideration and stand ready to support future revision discussions.

Regards,

Prabindra Shakya

Founder/Director

Community Empowerment and Social Justice Network (CEMSOJ)

Nepal

[www.cemsoj.wordpress.com](http://www.cemsoj.wordpress.com)

## 19. Confederation of Finnish Industries

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

#### General remarks

Confederation of Finnish Industries EK would like to thank for the opportunity to express our opinion relating to OECD's public consultation on OECD Guidelines for Multinational Enterprises (the Guidelines).

Confederation of Finnish Industries recognizes the same strengths and challenges highlighted in the draft stocktaking report. The Guidelines form an essential basis for businesses' responsible business conduct (RBC) and act as an important guidance for multinational enterprises around the world.

The draft stocktaking report conducted a survey to the National Contact Points (NCPs), gathering their views on the relevance and suitability of the Guidelines. Even though these responses are naturally of significant value, it is important to notice the survey sample is quite small (38 NCPs). Therefore, it is essential that the OECD takes into account the results of the public consultation in addition to the draft stocktaking report's survey.

A great deal of developments has happened since 2011 and it is reasonable to review whether the Guidelines are still up to date. Regarding the Guidelines' thematic chapters, Confederation of Finnish Industries would like to comment the following.

#### Comments of Disclosure

The OECD Guidelines for Multinational Enterprises have offered an important guidance relating the RBC since its publication. However, as the scope concerns multinational enterprises, it should not be broadened to cover SMEs, as well. Multinational enterprises are typically large corporations, who

don't face similar challenges regarding sustainability disclosures as SMEs. Rather than applying more demands for sustainability disclosures for SMEs, we should encourage them to take advantage of collaborative initiatives and learn from other SMEs who have implemented RBC successfully.

### **Comments on Human Rights**

The NCP survey highlights that there is a need for more focused guidance on different themes under the human rights Chapter. It is important to understand that the issues mentioned in the draft stocktaking report are complex and demand multidimensional cooperation for example at EU level. It is essential that OECD continues its cooperation with EU to bring forward its valuable insights.

### **Comments on Employment and industrial relations**

We agree that the Chapter's relevance is high and its themes are increasingly important. It is good to offer guidance on these themes in the Guidelines, but at the same time remember that labour law is mainly regulated at national level. The recognized challenges are complex and should be solved within the scope of national legislation.

### **Comments on Environment**

Many significant developments have happened since 2011 and the Chapter is in a need of a revision. The Confederation of Finnish Industries is strongly committed to the targets of the Paris Agreement and sees mitigating climate change as the greatest challenge of our time. We support the alignment of the Chapter with the Paris Agreement on climate change in addition to alignment with the UN Sustainable Development Goals.

The Confederation of Finnish Industries recognizes the relationship between environment and human rights and sees that it is important. However, due to the complexity and the scale of the issue, the choices require a multifaceted solution, which contains strong international co-operation between states, companies and different interest groups. This international and well-functioning co-operation is paramount in achieving the goals.

### **Concluding remarks**

There are many parallel and overlapping EU legislative proposals currently in the preparation, which are trying to tackle these similar problems that are covered with these OECD guidelines. Legislation with limited geographical enforceability is not the best instrument to tackle problems of international nature and therefore EU-wide and international cooperation between countries and institutions such as the OECD should be promoted even further since OECD's insights on matters regarding RBC are of high value.

Legal Affairs and Administration  
Hannu Ylänen, Elina Sonninen  
[www.ek.fi](http://www.ek.fi)

## **20. Cordaid**

### **Ref. Online consultation - OECD Guidelines for MNEs**

Dear members of the OECD Working Party on Responsible Business Conduct,

Cordaid welcomes the public consultation on gaps in the OECD Guidelines for Multinational Enterprises (Guidelines). We work with communities, smallholders and other groups adversely impacted by business activity and are experienced in attempting to use the Guidelines to encourage responsible business conduct (RBC) by corporations, and advocate for improved RBC policies by governments.

While the Guideline should be a valuable tool to advance RBC, in the ten years since their last revision, the standards have not kept pace with new challenges and expectations for corporate conduct. In our view, the following gaps in the RBC standards for multinational enterprises (MNEs) are preventing the Guidelines from fulfilling their purposes:

**Climate change and environmental degradation:**

Countering the effects of climate change is broadly acknowledged as the most vital need of our time. MNEs are recognized as responsible for almost a fifth of climate-changing carbon emissions,<sup>i</sup> but the Guidelines do not mention the term “climate change,” call upon MNEs to set and achieve climate-related emission targets, nor demand that MNEs avoid and remedy common pressing environmental impacts including deforestation, pollution, and biodiversity loss.

**Living wage and living income:**

Many smallholder farmers and workers in international agricultural supply chains do not earn an income or remuneration that allows them and their families a decent and dignified life. Referring to Article 11 of the International Covenant on Economic, Social and Cultural Rights (1966) on the right of everyone to an adequate standard of living, it can be argued that living wage and living income are basic human rights, which enable other human rights such as the right to food, health, education and the prohibition of child labor.<sup>ii</sup> However, the Guidelines do not mention living wage and living income.

**Women and other marginalized groups:**

Business impacts are often felt most strongly – and differently – by the most marginalized members of society, including women, refugees, youth and children. The Guidelines do not identify key rights of these groups, the different ways these people can be adversely impacted by business conduct, nor the specialized due diligence needed to consult these groups, and identify, address, and remedy impacts to them.

**Land rights:**

Land security underpins numerous human rights. While global standards and corporate policies increasingly call for corporate respect for land rights, the OECD Guidelines do not address the topic, failing to guide MNEs on issues such as assuring the right to free prior and informed consent, respecting non-documented tenure rights, and respecting land rights even where states fail their own duty to protect land rights.

In light of these concerns, we respectfully request that you ensure the final stocktaking report reflects and responds to each of the gaps identified by civil society. We also request that, following conclusion of the stocktaking, the Working Party initiates an inclusive process to revise the Guidelines to ensure they remain fit for purpose.

We thank you for your consideration and stand ready to support future revision discussions.

Yours sincerely,

Kees de Ruiter

Director of Programs

CARE. ACT. SHARE. LIKE CORDAID.

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

## 21. Corporate Justice Coalition (CJC), Business and Human Rights Resource Centre, RAID, Labour Behind the Label, London Mining Network, Forest Peoples Programme and Tim Cooke Hurle (Doughty Street Chambers)

Dear members of the OECD Working Party on Responsible Business Conduct,

Corporate Justice Coalition and others welcomes this public consultation on gaps in the OECD Guidelines for Multinational Enterprises (Guidelines). While the Guidelines should be a valuable tool to advance RBC, in the ten years since their last revision, the standards have not kept pace with new challenges and expectations for corporate conduct and the NCP complaint mechanisms have largely failed to facilitate access to remedy for impacted communities. In our view, serious gaps<sup>36</sup> in both the RBC standards for multinational enterprises (MNEs) and implementation expectations for NCPs are preventing the Guidelines from fulfilling their purposes.

The OECD Guidelines have also been closely scrutinised by Professor John Ruggie during his mandate as the Special Representative of the Secretary-General to the United Nations on the issue of human rights and transnational corporations and other business enterprises. In Prof Ruggie's 2008 report, 'Protect, Respect and Remedy: A Framework for Business and Human Rights', he suggested the role that the NCPs could play within the context of his framework. But he noted that, "with a few exceptions, experience suggests that in practice [the NCPs] have too often failed to meet this potential".

### **The OECD Guidelines**

The ambiguous and hybrid nature of the Guidelines means that their purpose continues to be contested: they are neither a fully-fledged human rights instrument nor simply a means of promoting investment and open markets. Business impacts are often felt most strongly – and differently – by the most marginalised and disadvantaged members of society, including women, Indigenous Peoples, people of low caste, children, and others. The Guidelines do not identify key rights of these groups nor does it adequately address evolving specific challenges and issues such as climate change. Below is a list of specific groups and areas where the guidelines should include more specific standards and guidance.

**Climate change and environmental degradation:** Countering the effects of climate change is broadly acknowledged as a vital need of our time. Environmental destruction and climate change have caused devastating effects including severe biodiversity loss, with a recent report finding that the global wildlife population has been reduced by two-thirds over the last 50 years.<sup>37</sup> MNEs are recognised as responsible for almost 20% of climate-changing carbon emissions,<sup>38</sup> but the Guidelines do not mention the term "climate change", call upon MNEs to set and achieve climate-related emission targets, nor do they demand that MNEs avoid and remedy common pressing environmental impacts including deforestation, pollution, and biodiversity loss.

**Indigenous Peoples:** The Guidelines do not identify key specific rights of Indigenous Peoples such as the right to self-determination, the right to own, occupy, manage and use ancestral lands and territories, the right to give or withhold free prior and informed consent to activities or measures that affect them, their particularly vulnerability as human rights defenders, nor the specialised due diligence needed to consult them, and identify, address, and remedy impacts they experience.

**Human rights defenders:** In a context of shrinking civil society space, the WPRBC and many OECD states are taking action to advance protections for human rights defenders. Yet the Guidelines include no

<sup>36</sup> For insight on other gaps in the Guidelines of concern to civil society, please see OECD Watch's submission to the first draft of the stocktaking report and paper *Get Fit: closing gaps in the Guidelines to make them fit for purpose*.

<sup>37</sup> WWF, (2020), Living Planet Report 2020 - Bending the curve of biodiversity loss. Almond, R.E.A., Grooten M. and Petersen, T. (Eds). WWF, Gland, Switzerland.

<sup>38</sup> Zhang, Z., Guan, D., Wang, R. *et al.* (2020), Embodied carbon emissions in the supply chains of multinational enterprises. *Nature Climate Change*, **10**, 1096–1101.

provisions identifying the corporate nexus as intrinsic with harm to defenders or explaining how MNEs should avoid both actions or omissions that adversely impact defenders. Meanwhile, the Procedural Guidance does not call upon and guide NCPs in adopting procedures to discourage and address threats to complainants, including retaliation for complaint-filing.

**Children** are among the most vulnerable members of society and can be disproportionately impacted by the activities of MNEs. While the Guidelines call on MNEs to contribute to abolishing child labour, they do not give meaningful guidance on how child labour may occur in MNE value chains and how MNEs should address this by changing practices that inadvertently cause children to be in child labour or forced to work. The Guidelines also do not emphasise how children may be impacted as community members and consumers, as opposed to workers, nor identify children among vulnerable groups particularly critical to consult through stakeholder engagement.

**Migrant workers** are also at particular risk of being exploited and discriminated against in MNE operations and supply chains. Workers reliant on their employer for the “leave to remain” in a country are particularly vulnerable, but also internal migrants (i.e., people migrating within one country). This is particularly linked to recruitment practices, and migrant workers’ often have greater obstacles to know and access their rights. Debt bondage and document retention to maintain control over workers are particularly high risks. The Guidelines do not offer any specificity as to how businesses should identify or address the vulnerabilities faced by migrant workers.

**Disengagement in contexts of severe unmitigable human rights abuses, such as state-imposed forced labour:** The Guidelines briefly note disengagement with suppliers as a last resort option. This guidance should be elaborated upon to provide clear guidance as to when businesses should disengage from relationships or contexts due to a lack of leverage and an inability to prevent, mitigate or remedy abuses. This would also be in line with the UNGPs. Current ongoing state-imposed forced labour in various contexts are relevant examples for numerous industries.

**Land rights:** Land tenure rights are directly protected by numerous human rights provisions, and land tenure security also underpins a wider range of human rights and helps forestall climate change. While global standards and corporate policies increasingly call for corporate respect for land rights, the OECD Guidelines do not address the topic, failing to guide MNEs on issues such in respecting customary and other legitimate tenure rights, including of women and collective owners, addressing legacies of dispute over contested lands, and respecting land rights even where states fail their own duty to protect land rights.

**Taxation:** According to 2020 data, corporate tax avoidance causes an estimated global loss of \$245 billion annually as MNEs shift about \$1.38 trillion from profit-yielding countries to tax havens, enabling them to avoid tax payments.<sup>39</sup> While broad public consensus – and innovative policy initiatives of the OECD – hold that corporate tax avoidance should stop, the outdated Guidelines do not name or discourage tax avoidance, call out the range of financial methods corporations commonly manipulate to avoid taxation, nor do they seek the disclosures necessary to help governments and civil society identify and prevent tax avoidance moving forward.

**Digitalisation:** Over the past ten years, the rapidly increasing digitalisation of the global economy is altering and exacerbating the potential for all MNEs – not just technology companies – to adversely impact human rights, jeopardise democracies and liberal democratic values, and harm the environment. The OECD Investment Committee has itself identified a need for a comprehensive standard to address RBC challenges linked to digitalisation, but the Guidelines say nothing on this modern issue. The gap leaves

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<sup>39</sup> Tax Justice Network, “\$427bn lost to tax havens every year; landmark study reveals countries’ losses and worst offenders,” 20 November 2020, available at: <https://www.taxjustice.net/2020/11/20/427bn-lost-to-tax-havens-every-year-landmark-study-reveals-countries-losses-and-worst-offenders/>

MNEs without guidance on the importance of, and means to, understanding their impacts in the digital sphere.

**Animal welfare:** More and more OECD states recognise animal sentience and the link between irresponsible MNE conduct on animals and adverse impacts to animals, people, and the planet. Yet the Guidelines do not provide standards on animal welfare at all, failing to reflect growing legal protections, international standards, and MNE policies on animals, whose wellbeing is widely understood as tied to public health (seen with COVID-19) and environmental protection. The complete gap in standards on animal welfare has prevented any complaints from being filed – and any remedy achieved – via the NCP complaint system regarding irresponsible business conduct towards animals.

**Caste-based discrimination** affects not only people in South Asia, but also in Africa, Asia, the Middle East, the Pacific, and in diaspora communities in countries such as the UK and USA.<sup>40</sup> Castebased discrimination affects workers in all sectors and is too often “invisible” to businesses down the supply chain. Unfortunately, the Guidelines do not include “caste” as a ground for discrimination to be discouraged, leaving MNEs without guidance on addressing impacts to this stigmatised group.

Finally, but crucially, **Employment & Industrial Relations:** are the central stakeholder relationship with the most potential for impact in the Guidelines. If more businesses and NCPs effectively implemented the standards in Chapter V, the Guidelines would be more effective. Chapter V can do more to encourage enterprises to implement a fair process to recognise trade unions and worker representatives for collective bargaining. As part of this, Chapter V should also mainstream the concept of “good faith bargaining” as it is practiced and understood within the context of industrial relations.

### **The NCP**

National Contact Points (NCPs) are a prominent non-judicial mechanism for addressing the conduct of multinational enterprises. The role of the NCPs is to observe the OECD’s implementation procedures for the Guidelines, known as Procedural Guidance, which sets out the expectation that NCPs operate in accordance with core criteria of visibility, accessibility, transparency and accountability. NCPs play a vital role in ensuring the success and correct implementation of the Guidelines, by promoting the Guidelines to businesses and other key stakeholders including civil society, and by facilitating access to remedy via their dispute resolution and mediation services.

The UK NCP is based in the Department for International Trade (DIT). The NCP steering board was reviewed by the DIT in 2017 and some changes were implemented following this. While this made some improvements civil society groups and trade unions were concerned it did not go far enough and there continues to be a lack of confidence in the UK NCP ability to act fairly and impartially. There are still obvious issues within the UK NCP that need to be urgently rectified if it is to be a credible avenue for redress for victims of human rights abuses. These are outlined below.

1. **Lack of transparency, accessibility and compatibility with the Guidelines:** The UK NCP tends to reject parts of the allegations raised in a complaint while accepting others. There is a distinct lack of transparency in communicating the reasoning within the decision-making process.

It appears from evidence collected by [Amnesty International in 2016](#) that the NCP rejects parts of complaints alleging actual negative human rights impacts while accepting for further examination parts of complaints related to the general policies and processes of companies with regard to respect for human rights. The rationale for rejecting the majority of cases submitted and for refusing to consider key aspects of complaints is unclear and appears to reflect a misinterpretation of the Guidelines. This raises questions about the way the UK NCP’s handling of cases fulfils the criteria

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<sup>40</sup> See, e.g., Nitasha Tiku, THE WASHINGTON POST, “India’s engineers have thrived in Silicon Valley. So has its caste system,” 28 October 2020, available at: <https://www.washingtonpost.com/technology/2020/10/27/indian-caste-bias-silicon-valley/>.

of accessibility, predictability and compatibility with the Guidelines, as set out in the Procedural Guidance.

2. **The Steering Board:** The UK has an NCP structure that is unique among its peers and which has helped to create a degree of independence. While the NCP is based in DIT, it has an inter-departmental Steering Board with four external members. The Steering Board is mandated to provide advice, oversee the effectiveness of the NCP and review decisions taken by the NCP to ensure that the correct procedures are followed. Reviews offer an invaluable opportunity for the Steering Board to clarify certain procedural issues. The Steering Board appears to be facing obstacles in its role of providing an effective oversight mechanism. The main consequence of this is a lack of Ministerial pressure on the NCP to improve its functioning and a lack of confidence in the review procedure on the part of complainants.

However, after a peer review stated the role of the NCP was unclear, the NCP limited its definition and has often refused to heed the Board's warnings. Therefore, the Steering Board faces obstacles in its role of providing an effective oversight mechanism. For example, the NCP ignored warnings that the presence of 'yellow' trade unions did not meet the guidelines acceptability criteria and the trade union expert had to revert through, Trade Union Advisory Committee, to the OECD system to seek a forced correction. The lack of Ministerial pressure on the NCP to genuinely engage with the Board's to improve its functioning and therefore lack of confidence in the review procedure on the part of complainants.

The 2016 Amnesty study provides evidence of the UK NCP's failure to implement some of the recommendations of the Steering Board, and of the Steering Board's failure to direct the NCP to correct deficiencies in its procedures, including misinterpretation of the Guidelines. The integrity of the NCP process depends on the Steering Board's willingness and ability to challenge the NCP's recommendations where appropriate and to consider fully the concerns of complainants.

3. **Lack of expertise:** Minimum expectations for NCPs in the Procedural Guidance should be raised to ensure NCPs have access to expertise on human rights and technical topics covered in complaints, input from stakeholder advisors, adequate resourcing to investigate complaints. The staff of the NCP are civil servants and are not experts in the broad remit of topics that the NCP covers. There is scope within procedural rules to access expert advice. However, it appears that this is not used at all by the NCP. The UK NCP very rarely finds on the fact that companies have 'caused or contributed' to adverse human rights impacts, which suggests a lack of expertise in properly applying the Guidelines and/or institutional reluctance in making weighty assessments. The high rate of rejection of complaints at the initial assessment stage and further down the complaint process may be attributable to lack of relevant expertise, which undermine the NCP's ability to fulfil its role.



## Recommendations

- Complaints should be assessed and examined on merit with regard to the objectives and substance of the OECD Guidelines and evolving concepts in the field of business and human rights to ensure consistency and predictability.
- The NCP should be reconstituted to incorporate a Panel of Experts composed of a roster of suitably qualified independent specialists with human rights and environmental experience, drawn from academics, lawyers, mediators, judges and others, who would undertake initial assessment, investigation and determination of complaints submitted to the NCP.
- The appointments process for this proposed Panel of Experts should be overseen by the independent Steering Board rather than by DIT.
- The Steering Board should be reconstituted to enable it to exercise effective oversight of the NCP and its decision-making, and to ensure its independence, objectivity and impartiality from vested interests.
- The staffing and financial resources made available to the NCP should reflect the capacity that is necessary to handle the volume of complaints received through all stages of the procedure, including assessment, mediation, determination and follow-up.
- The NCP should create a press department which sends out press releases that explain its decision in a clear and accessible way that will enhance the transparency of its decision-making. The NCP does currently publish its decisions but the website is hard to navigate and a press release would make decisions available to complainants and to the public.
- There should be an introduction of consequences for businesses that do not act in accordance with the guidelines. The NCP should be granted powers of enforcement and be able to impose penalties on companies or award compensation to victims.
- The Review procedure requires fundamental reform. Requests for reviewing NCP decisions should be handled directly by the Independent Steering Board and removed from the influence of the NCP. Grounds for review should encompass substantive errors in the application of the Guidelines to the case in question.

We thank you for your consideration and stand ready to support future revision discussions.

Sincerely,

Corporate Justice Coalition  
 Business and Human Rights Resource Centre  
 RAID  
 London Mining Network  
 Forest Peoples Programme  
 Labour Behind the Label  
 Tim Cooke-Hurle, Doughty Street Chambers  
[Corporate Justice Coalition](#)

## 22. Dalit Solidarity Network (DSN), Finland

Dear Contact person, OECD

The International Dalit Solidarity Network as well the Dalit Solidarity Network in Finland welcome this public consultation on gaps in the OECD Guidelines for Multinational Enterprises (Guidelines). We work with Dalit communities (those outside the South Asian caste system) and others *discriminated against based on work and descent* (DBWD) who are adversely impacted by business activity. This letter urges the Working Party to revise the Guidelines to close the current gap in guidance on how companies should identify and



address caste-related impacts in their value chains. We consider a revision to strengthen standards on caste critical, not only to improve norms for business, but also to help pave the way for better policies by governments of caste-affected countries and governments whose corporations do business in caste-affected countries.

While the Guidelines have been a valuable tool to advance responsible business conduct (RBC), in the ten years since their last revision, the standards have not kept pace with new challenges and expectations for corporate conduct. Similarly, the National Contact Point (NCP) complaint mechanisms have largely failed to facilitate access to remedy. We work closely with OECD Watch, and we support their position that serious gaps<sup>41</sup> in both the RBC standards for multinational enterprises (MNEs) and implementation expectations for NCPs are preventing the Guidelines from fulfilling their purposes.

One of the gaps that needs to be addressed most urgently is:

**Gap in standards guiding companies on addressing caste-based discrimination in their value chains**

- **Caste-based discrimination** affects more than 260 million people worldwide in South Asia, Africa, Asia, the Middle East, the Pacific, and diaspora communities like the UK and US.<sup>42</sup> Caste-based discrimination affects workers in all sectors and is often “invisible” to businesses throughout the supply chain. This invisibility is a key reason why businesses need improved guidance on addressing their caste-based impacts. However, the Guidelines do not include “caste” as a ground for discrimination, leaving MNEs without either a reminder to focus on this stigmatized group, nor guidance on how meaningfully to address caste-related impacts. The Guidelines do not identify the rights of this stigmatized group, the different ways Dalits can be adversely impacted by business conduct – for example, not only as employees but as community members – nor the specialised due diligence needed to ensure Dalits are consulted in corporate due diligence processes and afforded access to remedy. The Guidelines also do not advise businesses in understanding intersectional discrimination, i.e., how individuals within marginalised groups may suffer impacts differently because of another identity trait, such as their gender, age, disability or race. For example, the Guidelines must more clearly call on businesses to address gender impacts in their value chains and understand how Dalit women may suffer differently from Dalit men, whether as workers, community members or human rights defenders, because of their gender. We are also concerned that the Guidelines only address “discrimination” in the Employment chapter, misleading MNEs to believe that discrimination in their value chains only impacts workers and not community members.

We welcome the stocktaking as a signal of OECD states’ commitment to evaluating whether the Guidelines remain current and responsive to the needs of MNEs and civil society alike. To ensure the Guidelines achieve their purpose, we ask that OECD states:

1. Ensure the final stocktaking report discusses the gap in the standards on caste discrimination; and
2. Undertake a revision of the Guidelines, following the close of the stocktaking process, to ensure the standards
  - a. Identify “caste” as a ground for discrimination (both of workers and non-workers) and identify people of low-caste as marginalized or disadvantaged, and
  - b. Call on businesses to undertake specialized due diligence and remedial action to ensure the voices and needs of marginalized or disadvantaged groups are heard and met.

<sup>41</sup> For insight on other gaps in the Guidelines of concern to civil society, please see OECD Watch’s submission to the first draft of the stocktaking report and paper *Get Fit: closing gaps in the Guidelines to make them fit for purpose*.

<sup>42</sup> See, e.g., Nitasha Tiku, THE WASHINGTON POST, “India’s engineers have thrived in Silicon Valley. So has its caste system,” 28 October 2020, available at: <https://www.washingtonpost.com/technology/2020/10/27/indian-caste-bias-silicon-valley/>.

We thank you for your consideration and stand ready to support future revision discussions.

Sincerely,  
 Meena Varma  
 The International Dalit Solidarity Network  
 Timo Lappalainen  
 The Dalit Solidarity Network in Finland

## 23. International Dalit Solidarity Network (IDSN)

Dear members of the OECD Working Party on Responsible Business Conduct,

The International Dalit Solidarity Network welcomes this public consultation on gaps in the OECD Guidelines for Multinational Enterprises (Guidelines). We work with Dalit communities (those outside the South Asian caste system) and others *discriminated against based on work and descent* (DBWD) who are adversely impacted by business activity. This letter urges the Working Party to revise the Guidelines to close the current gap in guidance on how companies should identify and address caste-related impacts in their value chains. We consider a revision to strengthen standards on caste critical, not only to improve norms for business, but also to help pave the way for better policies by governments of caste-affected countries and governments whose corporations do business in caste-affected countries.

While the Guidelines have been a valuable tool to advance responsible business conduct (RBC), in the ten years since their last revision, the standards have not kept pace with new challenges and expectations for corporate conduct. Similarly, the National Contact Point (NCP) complaint mechanisms have largely failed to facilitate access to remedy. We work closely with OECD Watch, and we support their position that serious gaps<sup>43</sup> in both the RBC standards for multinational enterprises (MNEs) and implementation expectations for NCPs are preventing the Guidelines from fulfilling their purposes.

One of the gaps that needs to be addressed most urgently is:

### **Gap in standards guiding companies on addressing caste-based discrimination in their value chains**

- **Caste-based discrimination** affects more than 260 million people worldwide in South Asia, Africa, Asia, the Middle East, the Pacific, and diaspora communities like the UK and US.<sup>44</sup> Caste-based discrimination affects workers in all sectors and is often “invisible” to businesses throughout the supply chain. This invisibility is a key reason why businesses need improved guidance on addressing their caste-based impacts. However, the Guidelines do not include “caste” as a ground for discrimination, leaving MNEs without either a reminder to focus on this stigmatized group, nor guidance on how meaningfully to address caste-related impacts. The Guidelines do not identify the rights of this stigmatized group, the different ways Dalits can be adversely impacted by business conduct – for example, not only as employees but as community members – nor the specialised due diligence needed to ensure Dalits are consulted in corporate due diligence processes and afforded access to remedy. The Guidelines also do not advise businesses in understanding intersectional discrimination; i.e. how individuals within marginalised groups may suffer impacts differently as a result of another identity trait, such as their gender, age, disability or race. For example, the Guidelines must more clearly call on businesses to address gender impacts in their

<sup>43</sup> For insight on other gaps in the Guidelines of concern to civil society, please see OECD Watch’s submission to the first draft of the stocktaking report and paper *Get Fit: closing gaps in the Guidelines to make them fit for purpose*.

<sup>44</sup> See, e.g., Nitasha Tiku, THE WASHINGTON POST, “India’s engineers have thrived in Silicon Valley. So has its caste system,” 28 October 2020, available at: <https://www.washingtonpost.com/technology/2020/10/27/indian-caste-bias-silicon-valley/>.

value chains, and understand how Dalit women may suffer differently from Dalit men, whether as workers, community members or human rights defenders, as a result of their gender. We are also concerned that the Guidelines only address “discrimination” in the Employment chapter, misleading MNEs to believe that discrimination in their value chains only impacts workers and not community members.

We welcome the stocktaking as a signal of OECD states’ commitment to evaluating whether the Guidelines remain current and responsive to the needs of MNEs and civil society alike. To ensure the Guidelines achieve their purpose, we ask that OECD states:

1. Ensure the final stocktaking report discusses the gap in the standards on caste discrimination; and
2. Undertake a revision of the Guidelines, following the close of the stocktaking process, to ensure the standards
  - a. Identify “caste” as a ground for discrimination (both of workers and non-workers) and identify people of low-caste as marginalized or disadvantaged, and
  - b. Call on businesses to undertake specialized due diligence and remedial action to ensure the voices and needs of marginalized or disadvantaged groups are heard and met.

We thank you for your consideration and stand ready to support future revision discussions.

Sincerely,

Maria Brink Schleimann  
International Dalit Solidarity Network  
[www.idsn.org](http://www.idsn.org)

## 24. Dalit Solidarity Network (DSN) Norway

Dear members of the OECD Working Party on Responsible Business Conduct,

The Dalit Solidarity Network of Norway (DSN-Norway) welcomes this public consultation on gaps in the OECD Guidelines for Multinational Enterprises (Guidelines). We work with Dalit communities (those outside the South Asian caste system) and others *discriminated against based on work and descent* (DBWD) who are adversely impacted by business activity. This letter urges the Working Party to revise the Guidelines to close the current gap in guidance on how companies should identify and address caste-related impacts in their value chains. We consider a revision to strengthen standards on caste critical, not only to improve norms for business, but also to help pave the way for better policies by governments of caste-affected countries and governments whose corporations do business in caste-affected countries.

While the Guidelines have been a valuable tool to advance responsible business conduct (RBC), in the ten years since their last revision, the standards have not kept pace with new challenges and expectations for corporate conduct. Similarly, the National Contact Point (NCP) complaint mechanisms have largely failed to facilitate access to remedy. Through the International Dalit Solidarity Network (IDSN), of which DSN-Norway is a country chapter, work closely with OECD Watch, and we support their position that serious gaps<sup>45</sup> in both the RBC standards for multinational enterprises (MNEs) and implementation expectations for NCPs are preventing the Guidelines from fulfilling their purposes.

One of the gaps that needs to be addressed most urgently is:

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<sup>45</sup> For insight on other gaps in the Guidelines of concern to civil society, please see OECD Watch’s submission to the first draft of the stocktaking report and paper *Get Fit: closing gaps in the Guidelines to make them fit for purpose*.

## Gap in standards guiding companies on addressing caste-based discrimination in their value chains

- **Caste-based discrimination** affects more than 260 million people worldwide in South Asia, Africa, Asia, the Middle East, the Pacific, and diaspora communities like the UK and US.<sup>46</sup> Caste-based discrimination affects workers in all sectors and is often “invisible” to businesses throughout the supply chain. This invisibility is a key reason why businesses need improved guidance on addressing their caste-based impacts. However, the Guidelines do not include “caste” as a ground for discrimination, leaving MNEs without either a reminder to focus on this stigmatized group, nor guidance on how meaningfully to address caste-related impacts. The Guidelines do not identify the rights of this stigmatized group, the different ways Dalits can be adversely impacted by business conduct – for example, not only as employees but as community members – nor the specialised due diligence needed to ensure Dalits are consulted in corporate due diligence processes and afforded access to remedy. The Guidelines also do not advise businesses in understanding intersectional discrimination; i.e. how individuals within marginalised groups may suffer impacts differently as a result of another identity trait, such as their gender, age, disability or race. For example, the Guidelines must more clearly call on businesses to address gender impacts in their value chains, and understand how Dalit women may suffer differently from Dalit men, whether as workers, community members or human rights defenders, as a result of their gender. We are also concerned that the Guidelines only address “discrimination” in the Employment chapter, misleading MNEs to believe that discrimination in their value chains only impacts workers and not community members.

We welcome the stocktaking as a signal of OECD states’ commitment to evaluating whether the Guidelines remain current and responsive to the needs of MNEs and civil society alike. To ensure the Guidelines achieve their purpose, we ask that OECD states:

1. Ensure the final stocktaking report discusses the gap in the standards on caste discrimination; and
2. Undertake a revision of the Guidelines, following the close of the stocktaking process, to ensure the standards
  - a. Identify “caste” as a ground for discrimination (both of workers and non-workers) and identify people of low-caste as marginalized or disadvantaged, and
  - b. Call on businesses to undertake specialized due diligence and remedial action to ensure the voices and needs of marginalized or disadvantaged groups are heard and met.

We thank you for your consideration and stand ready to support future revision discussions.

Sincerely,

Dalit Solidarity Network  
Guro Almås, Coordinator

The Dalit Solidarity Network Norway (DSN Norway) consist of the following organisations: The Norwegian Human Rights Fund (NHRF), FIAN Norway, Forut, Church of Norway Council on Ecumenical and International Relations, Normission, Plan International Norway, Rafto Foundation for Human Rights, Stefanus Alliance, Strømme Foundation and the Development Fund

DSN Norway is a Chapter of International Dalit Solidarity Network, IDSN.

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<sup>46</sup> See, e.g., Nitasha Tiku, THE WASHINGTON POST, “India’s engineers have thrived in Silicon Valley. So has its caste system,” 28 October 2020, available at: <https://www.washingtonpost.com/technology/2020/10/27/indian-caste-bias-silicon-valley/>.

## 25. Danish Business Authority

### **Consultation response regarding the stocktaking exercise on the OECD Guidelines for Multinational Enterprises**

The Danish Business Authority strongly supports the framework of the OECD Guidelines for Multinational Enterprises (OECD Guidelines). The Danish Business Authority is responsible for the interpretation and application of the OECD Guidelines in Denmark.

The OECD Guidelines has, along with the UN Guiding Principle for Business and Human Rights, paved the way for a more responsible global business community. In this regard, EU is currently looking to the OECD Guidelines when drafting legislation initiatives on responsible business conduct. It is therefore vital that this framework remains relevant and effective to respond to the global sustainability challenges.

As put forth in the Draft Report for Stocktaking of the OECD Guidelines for Multinational Enterprises, the Danish Business Authority agrees that the current version of the OECD Guidelines would benefit from a revision.

#### The title

The title of the OECD Guidelines should be reviewed in order to emphasize the applicability of the OECD Guidelines to all companies, including SMEs. Broadening the scope to encompass public and governmental institutions and civil society organizations should also be considered.

#### Description of the due diligence process

The risk-based due diligence process has proven to be an efficient tool to operationalize the companies' sustainability effort. However, the risk-based due diligence process is not sufficiently described in the OECD Guidelines themselves. Companies should be able to understand the specific steps of the due diligence process by reading the OECD Guidelines. The importance of stakeholder engagement should likewise be emphasized as well as the fact that a sufficient due diligence process cannot be conducted without being informed by meaningful stakeholder engagement.

#### National Contact Points

Functional equivalence is vital in securing the credibility of the NCP-system. However, as stated in the Draft Report, it is currently not achieved and is made challenging by the vague and open-ended language of the Implementation Procedures in the OECD Guidelines. The OECD Guidelines should ensure that functional equivalence is a priority in order to strengthen the reach of the OECD Guidelines. This includes the alignment of the interpretation of the NCP role regarding handling of specific instances. The role of the NCP's would for instance be strengthened if all NCP's could issue final statements with determinations regarding the observance of the OECD Guidelines and recommendations. Furthermore, the deterrent effect of the OECD Guidelines would be underlined if all NCP's were able to instigate specific instances at their own accord, as is the case with NCP Denmark.

#### Additional comments

The current version of the OECD Guidelines is becoming outdated. In order to remain relevant and effective, the OECD Guidelines should be revised to include subject matters such as climate change, digitalization, data ethics, biodiversity, and animal welfare. Furthermore, the expectation of non-discrimination based on gender, race, religion, sexual orientation and identity, caste, or other relevant statuses both in regard to employment and stakeholder engagement should be clarified. As should the evident relationship between environmental/climate related impacts and human rights impacts.

Anna Riis Kaagaard  
Specialkonsulent  
[erhvervsstyrelsen.dk](mailto:erhvervsstyrelsen.dk)

## 26. Dansk Erhverv - Danish Chamber of Commerce

### **The Danish Chamber of Commerce contribution to the Draft report for the Stocktaking of the OECD Guidelines for Multinational Enterprises**

The Danish Chamber of Commerce appreciates the opportunity to provide input to the consultation on draft report for the Stocktaking of the OECD Guidelines for Multinational Enterprises (hereafter the MNE guidelines).

#### **General comments**

##### *Better policy coherence going forward*

The Danish Chamber of Commerce concurs that the regulatory eco-system of responsible business conduct is rapidly changing. Multiple new and revised pieces of European legislation target some of the same provisions as the MNE guidelines, among others the European Taxonomy Regulation, the Non-Financial Reporting Directive, NFRD, reviewed as CSRD, and the upcoming proposal on Sustainable Corporate Governance foresees mandatory due diligence. At the same time, we see many legislative due diligence initiatives at the national level, for instance France's Duty of Vigilance, the UK Modern Slavery Act and child labour regulation in the Netherlands. The result is a highly complex landscape of international guidelines and legislative requirements. The situation is detrimental to international trade and may lead to confusion and unnecessary cost for businesses. Even worse, it may inhibit responsible business conduct because of lack of transparency and clarity of expectations. The Danish Chamber of Commerce therefore recommends that the WPRBC seeks to enable a harmonised understanding of what risk-based due diligence on human rights and environment in international operations should look like across the international, European and national level.

#### **Specific comments**

##### *The role of the national contact points*

The Danish Chamber of Commerce recognises the role of the NCPs in promoting the Guidelines and its grievance mechanism. Going forward the Danish Chamber of Commerce urges the OECD to coordinate and align the role of the NCP grievance mechanisms with the proposal of DG FISMA and DG GROW named Sustainable Corporate Governance, which is expected to be put forward in 2021. The NCPs may very well place a role in overseeing the implementation of potential due diligence requirements.

##### *OECD Sector-specific guidelines are helpful*

The Danish Chamber of Commerce supports a sector-specific guidance approach and encourages the WPRBC to continue to pursue this, when making additional guidance material. Guidance on specific topics is in our view generally more helpful to companies than generic support and tools.

##### *Attention to competitive conditions for SMEs*

The Danish Chamber of Commerce finds that responsible business conduct policies place relatively greater administrative burdens on SMEs than on large companies. SMEs often operate further up the value chain, for instance as suppliers, and, given their size, they tend to hold less bargaining power vis á vis their own suppliers, and generally have fewer administrative resources at their disposal. It must also be expected that some large companies will pass derived costs from RBC policies on to their value chain partners. Going forward, we need to focus attention on the competitive conditions for SMEs and for instance allow for proportional targets, depending on size, as well as offering tailored SME-specific guidance.



*The risk-based principle of the MNE guidelines is a strength*

In continuation of the point made above about proportionality, the MNE guideline should guard and hold on to the flexibility that lies in the risk-based approach. It allows companies to devise solutions that suit their size, sector, market and business model and allows them to identify where the significant risk of adverse effects is. This prevents unnecessary compliance costs for businesses.

*Inclusion of public purchasers*

Including public purchasers in the scope of the MNE guidelines will be a helping hand to companies, enhancing the market mechanisms for responsible business conduct that we already see taking shape with corporate purchasers. We see no reason why the guidelines should not extend also to public purchasers.

Best regards

Malene Thiele

Head of CSR

[www.danskerhverv.dk](http://www.danskerhverv.dk)

## 27. Djurskyddet Sverige

Stockholm 26th August 2021

### **Public consultation, OECD MNE Guidelines**

Despite clear links between animal welfare and sustainability of value chains, the OECD guidelines, do not address animal welfare.

Each year, billions of animals are used in industries including farming, textiles, pharmacy and cosmetics, tourism, and finance. Animal welfare is increasingly acknowledged as an issue relevant to responsible business conduct and a consumer concern. Low animal welfare not only generates significant impacts for animals as sentient beings that experience stress and pain, but also presents serious risks on the human-animal-environment interface.

First, animal welfare is strongly linked to several challenges the planet is facing at the moment, such as the spread of zoonoses, antimicrobial resistance and the climate and biodiversity crises. Animal welfare can thus contribute to achieving most of the UN Sustainable Development Goals (SDGs). A clear exemplification is the case of industrial livestock farming. Intensive farming, through highly industrialized animal production systems, has had devastating effects not only on the welfare of the animals exploited, but also on the environment, as it leads to high levels of water, air and ground pollution and to deforestation due to the growing need for animal feed. The livestock supply chain alone accounts for 14.5% of global greenhouse gas emissions.

Another example relates to the change in land use - notably linked to the spread of animal agriculture and to the production of animal feed. The subsequent loss of habitat has made encounters between animals (wild and farmed), humans and ecosystems closer and much more frequent. This pressure on wildlife and habitats has been a major cause of the spread of zoonoses. Moreover, the overuse of antimicrobials in livestock production is the primary cause of the surge in antimicrobial resistance (AMR), which the World Health Organization (WHO) has described as "one of the biggest threats to global health, food security, and development today".

The second reason to include animal welfare in the OECD guidelines is that this would reflect the current practices of many companies. Indeed, facing growing awareness and consumer demand, companies around the world have started to cover animal welfare in their voluntary due diligence efforts, as visible in the Business Benchmark on Farm Animal Welfare (BBFAW) results. In 2019, it was the case for 80% of



the top leading 150 food businesses. This trend can also be explained by a growing awareness and interests of investors, who see it as an emerging issue.

The OECD/FAO Guidance for Responsible Agricultural Supply Chains already provides that business should strive “to ensure that the ‘five freedoms’ for animal welfare are Djurskyddet Sverige Hammarby Fabriksväg 25 SE-120 30 Stockholm Sweden +46-8-673 35 11 info@djurskyddet.se www.djurskyddet.se Org.nr. 802000-6832 Plusgiro 90 01 06-6 Bankgiro 900-1066 implemented” as well as to ensure “high standards of management and stockmanship for animal production, that are appropriate to the scale of operations, in accordance with or exceeding OIE’s principles”. The omission of animal welfare in the OECD guidelines for MNEs has caused significant fragmentation in the understanding of animal welfare across regions and sectors, making it more complicated for MNEs to fulfil their responsibilities towards animal welfare.

Åsa Hagelstedt  
Secretary General  
[www.djurskyddet.se](http://www.djurskyddet.se)

## 28. EarthRights International

### Submission by EarthRights International to the OECD

**September 2021**

Members of the OECD Working Party on Responsible Business Conduct:

EarthRights International is a nonprofit organization with operations in the United States, the Amazon region in Latin America, and the Mekong region in Southeast Asia. We welcome the OECD’s review of its Guidelines for Multinational Enterprises and offer these reflections based on our experiences in Colombia and Peru. Colombia became an OECD member in April 2020, and Peru is in the process of applying for OECD membership.

In both countries, we have witnessed widespread, business-related human rights abuses against human rights defenders, local communities, and Indigenous peoples. Colombia is consistently ranked as the most dangerous country in the world for human rights defenders. According to data by Indepaz, more than 1,230 human rights defenders have been killed in Colombia since the signing of the Havana Agreement in November 2016. Many of these attacks target individuals and communities who are critical of business activities that negatively affect their communities.

Extrajudicial killings are not the only form of abuse that is happening. Attacks against human rights defenders can also involve enforced disappearances, arbitrary detention, torture, sexual and gender-based violence, judicial harassment, illegal surveillance, hate crimes, doxing, smear campaigns, intimidation, and death threats.

In Peru, human rights defenders, especially those advocating for Indigenous rights and the right to a clean environment, have also faced widespread attacks. Many of these attacks involve “criminalization,” in which the perpetrator misuses the legal system as a tool for silencing and harassing those who speak up.

In both Peru and Colombia, attacks on human rights defenders often occur at the hands of public security forces that are protecting specific business interests by attacking local communities. For example, EarthRights has documented the existence of dozens of memoranda of understanding between Peru’s public security forces and mining companies.

It is too early to tell whether Colombia’s OEC membership OECD or Peru’s application for membership will help to improve the human rights situation in these countries. However, we note that many human rights abuses in Colombia and Peru are linked to the operations and supply chains of multinational enterprises

coming from countries that are longtime members of the OECD. We are deeply concerned that the OECD Guidelines have not had a discernible impact on the transnational activities of businesses based in member states.

While the OECD plays a valuable role in encouraging businesses to voluntarily adopt stronger standards, evidence from the past decade demonstrates that voluntary standards are not sufficient. Accountability is also needed to ensure that businesses face consequences when they fail to apply these standards. To our knowledge, the National Contact Points model has proven inadequate in providing accountability and access to remedies, including in the seven cases involving Colombia and the four cases involving Peru.

We see a revision of the Guidelines as an opportunity for the OECD to closely examine why business-related human rights abuses are occurring so frequently in Colombia and Peru. We would be pleased to provide you with more information about the gaps in responsible business conduct in these two countries.

Sincerely,

Kirk Herbertson  
Senior Policy Advisor  
EarthRights International  
[www.earthrights.org](http://www.earthrights.org)

## 29. Etisk handel Norge - Ethical Trade Norway

### Revision of OECDs guidelines

Ethical Trade Norway (ETN) welcomes the decision of the WPRBC to assess whether OECD Guidelines still remain fit for purpose. The general picture is that the guidelines serve their purpose and more needed than ever before. However, they lack inclusion of animal welfare, and the work to establish the guidelines as the golden standard for corporate sustainability and responsible business conduct must be stepped up. Good practice on how enterprises, both small and big, carry out and report on OECDs due diligence model, should be collected in order to inspire others.

#### 1. Include animal welfare in the guidelines

ETN has included animal welfare in our base code of conduct. Our experience so far is that our business-members were more than ready to include this base code element in their work, as many enterprises already has taken it into their policies and work. We strongly encourage the Working Group to include animal welfare in their recommendations to the revision of the guidelines.

#### 2. Establish the OECD guidelines and due diligence methodology as the number one golden standard for corporate sustainability and responsible business conduct, and make them part of legal binding Acts.

All work of ETN is based on UNGPs, the OECDs guidelines and the due diligence methodology and we strongly recommend all actors, governments included, to include the recommendations into legal regulations. Norway has just passed the Transparency Act relating to enterprises' transparency and work on fundamental human rights and decent working conditions. Approx. 9 000 Norwegian enterprises must conduct and report on their work on due diligence, based on the 6 steps in the OECDs model.

#### 3. Mandatory reporting on human rights and environmental due diligence

Our members report annually on human rights and environmental due diligence according to the 6 steps in the OECD model. We have developed many KPIs and also 12 objective documentation criteria in order to meet a basic level of due diligence conduct/responsible business conduct. We have three more levels, whereas the fourth level is Leading in responsible business conduct. We believe that this practical reporting can encourage other, as well as serve as an example for the working Group on how, both small and big,

businesses can become more responsible in a post-covid world where the respect for fundamental human rights and the environment is needed more than ever before.

*About Ethical trade Norway: is a member based multistakeholder-organisation and resource center for sustainable trade. Our aim has for the last 20 years, to promote responsible business conduct in supply chains so that trade helps to secure human rights, workers' rights, society and environment. We offer our members individual guidance, capacity building through different courses and workshops, and access to resources and tools for sustainability work. We reach 170 members, 100.000 suppliers and 8 million workers through our work. All our members must annually report on mandatory due diligence according to OECDs due diligence model and as part of their membership obligations. If they fail to meet the membership obligations, the board might exclude members. In addition to the individual due diligence work, cooperation, both at a national and international level, is key to gain improvements. Ethical Trade Norway is a part of The Joint Ethical Trading Initiatives (JETI), among with our British, Danish and Swedish sister organisations. We also work with different international networks and organisations, and together with members we also conduct due diligence projects in selected supply chains in Bangladesh, Vietnam, Ivory Coast and South-Africa.*

For more information, visit: [www.etiskhandel.no](http://www.etiskhandel.no)

Best regards

Heidi Furustøl  
Executive Director

## 30. Eurogroup for Animals

### Eurogroup for Animals statement – 30 August 2021

#### Contribution to the Public Consultations on the OECD Guidelines for MNEs

Despite clear links between improved animal welfare and sustainability of value chains, the OECD guidelines, in their current form, do not address animal welfare.

Each year, billions of animals are used in industries including farming, textiles, pharmacy and cosmetics, tourism, and finance. Animal welfare is increasingly acknowledged as an issue relevant to responsible business conduct and a consumer concern. Low animal welfare not only generates significant impacts for animals as sentient beings that experience stress and pain, but also presents serious risks on the human-animal-environment interface.

First, animal welfare is strongly linked to several challenges the planet is facing at the moment, such as the spread of zoonoses, antimicrobial resistance and the climate and biodiversity crises. Animal welfare can thus contribute to achieving most of the UN Sustainable Development Goals (SDGs). A clear exemplification is the case of industrial livestock farming. Intensive farming, through highly industrialized animal production systems, has had devastating effects not only on the welfare of the animals exploited, but also on the environment, as it leads to high levels of water, air and ground pollution and to deforestation due to the growing need for animal feed. The livestock supply chain alone accounts for 14.5% of global greenhouse gas emissions.

Another example relates to the change in land use - notably linked to the spread of animal agriculture and to the production of animal feed. The subsequent loss of habitat has made encounters between animals (wild and farmed), humans and ecosystems closer and much more frequent. This pressure on wildlife and habitats has been a major cause of the spread of zoonoses. Moreover, the overuse of antimicrobials in livestock production is the primary cause of the surge in antimicrobial resistance (AMR), which the World Health Organization (WHO) has described as "one of the biggest threats to global health, food security, and development today".

The second reason to include animal welfare in the OECD guidelines is that this would reflect the current practices of many companies. Indeed, facing growing awareness and consumer demand, companies around the world have started to cover animal welfare in their voluntary due diligence efforts, as visible in the Business Benchmark on Farm Animal Welfare (BBFAW) results. In 2019, it was the case for 80% of the top leading 150 food businesses. This trend can also be explained by a growing awareness and interests of investors, who see it as an emerging issue.

Finally, animal welfare has been included in other international guidelines, such as the OECD/FAO Guidance for Responsible Agricultural Supply Chains, and the IFC Good Practice Note on Improving Animal Welfare in Livestock Operations. Yet, the omission of animal welfare in the OECD guidelines for MNEs has caused significant fragmentation in the understanding of animal welfare across regions and sectors, making it more complicated for MNEs to fulfil their responsibilities towards animal welfare.

For all these reasons, it would be highly recommended to include animal welfare in the revised OECD guidelines.

Morgane Dejean  
Junior Programme Officer  
Trade & Animal Welfare

### 31. European Coalition of Corporate Justice (ECCJ)

Dear members of the OECD Working Party on Responsible Business Conduct,

The European Coalition for Corporate Justice (ECCJ) welcomes this public consultation as an opportunity to reflect on pressing gaps in the OECD Guidelines for Multinational Enterprises (Guidelines). As the only European coalition bringing together civil society, trade unions, consumer organizations and academics working on business and human rights, ECCJ prioritizes ensuring better access to justice and remedies for victims of corporate abuse.

The standards in the Guidelines, while an important instrument at the time of their development, have not kept pace with emerging challenges and expectations for corporate conduct and the enforcement mechanism, through National Contact Points (NCPs), has failed to facilitate access to remedy for impacted communities.<sup>47</sup> In our view, serious gaps in implementation and enforcement are preventing the Guidelines from fulfilling their purposes.

NCPs are a unique and promising dispute resolution mechanism, but they face multiple challenges that inhibit victims' access to remedy. While NCPs allow for flexibility of design, the Procedural Guidance provides almost no minimum standards on practical matters on structure and institutional arrangements resulting in varying degrees of effectiveness of implementation.<sup>48</sup> This lack of uniformity affects the enforcement of the Guidelines as a whole and prevents their proper functioning as an avenue for access to remedy for impacted groups. Practical guidance is a necessary requirement for NCPs to enforce the Guidelines and to promote accountability of corporations. ESG disclosure requirements must also be updated and harmonized as this contributes to effective monitoring and enforcement.

Furthermore, a serious structural gap of the guidelines is their limited normative scope. We want to emphasize the relevance of implementing due diligence in a wide range of issues covering all human rights and environmental impacts. This is a consistent demand from several stakeholders including civil society

<sup>47</sup> See <https://www.oecdwatch.org/oecd-ncps/national-contact-points-ncps/ncp-evaluations-outcomes-and-analysis/> and <https://www.oecdwatch.org/wp-content/uploads/sites/8/2021/06/OECD-W-State-of-Remedy-2020.pdf>

<sup>48</sup> <https://www.oecdwatch.org/wp-content/uploads/sites/8/2021/06/OECD-Watch-Get-Fit-Closing-gaps-in-the-OECD-Guidelines-to-make-them-fit-for-purpose-1.pdf>

and the European Parliament for the upcoming Sustainable Corporate Governance Directive.<sup>49</sup> A comprehensive normative framework will prepare the revised Guidelines to better address current gaps such as the exclusion of disadvantaged groups of society including children, women or those marginalized based on caste, ethnicity, color, sexual orientation, or gender identity. Concretely, the Guidelines must:

- a) identify specific rights of indigenous peoples, including their rights to free, prior and informed consent and self-determination;
- b) secure the respect of land rights, including non-documented tenure rights including of women and communal owners, addressing legacies of dispute over contested lands, and respecting land rights even where states fail their own duty to protect land rights;
- c) ensure that labor rights standards are defined and respected;
- d) emphasize that MNEs must avoid actions and omissions that adversely impact human rights, land and environmental defenders and must prevent similar impacts from their value chains as part of their due diligence obligations.

The Procedural Guidance should call upon and guide NCPs in adopting safeguards addressing growing threats<sup>50</sup> and retaliation<sup>51</sup> faced by human rights defenders. As for climate change and the environment, the Guidelines must call on MNEs to achieve emission targets, prevent and remedy their environmental impacts.

We respectfully request that the final stocktaking report reflects and responds to the gaps identified by civil society and that the Working Party initiates an inclusive process to revise the Guidelines to ensure they remain fit for purpose.

We thank you for considering our input,

Sincerely,

The European Coalition for Corporate Justice (ECCJ) is a coalition of over 480 organisations from 17 countries, and the only European coalition bringing together civil society, trade unions, consumer organisations and academics working on business and human rights, corporate accountability and transparency. ECCJ advocates for an effective and comprehensive regulatory framework that includes robust corporate due diligence obligations and ensures access to justice and remedy for victims of corporate malpractice. For more info visit our website: [corporatejustice.org](https://corporatejustice.org)

## 32. FIDH (International Federation for Human Rights)

Dear members of the OECD Working Party on Responsible Business Conduct:

The FIDH welcomes this public consultation on gaps in the OECD Guidelines for Multinational Enterprises (Guidelines). Our organization is an international human rights NGO federating 192 organisations, working with local partners and human rights defenders from 117 countries to ensure corporate accountability and improve victims' access to justice through documentation, advocacy, and litigation. Our work supporting communities using the NCP complaint mechanisms,<sup>52</sup> and continuously advocating for corporate accountability using the OECD Guidelines for Multinational Enterprises (Guidelines), has shed light on the serious gaps that need to be addressed in the Guidelines to achieve their objectives, including for the

<sup>49</sup> [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12548-Sustainable-corporate-governance\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12548-Sustainable-corporate-governance_en)

<sup>50</sup> <https://undocs.org/en/A/HRC/46/35>

<sup>51</sup> <https://undocs.org/A/HRC/47/39/Add.2>

<sup>52</sup> FIDH et al vs. CRCC-Tongguan Investment (Canada) Co., Ltd, <https://www.oecdwatch.org/complaint/fidh-et-al-vs-crcc-tongguan-investmentcanada-co-ltd/>; Egbema Voice of Freedom et al vs ENI, <https://www.oecdwatch.org/complaint/egbema-voice-of-freedom-et-al-vs-eni/>; FIDH, JFI and Redress vs Italtel, <https://www.oecdwatch.org/complaint/fidh-jfi-and-redress-vs-italtel/>.

NCPs to facilitate access to effective remedy for impacted communities. While there are different areas that merit revision, we would like to highlight the following:

### **Environment and climate change**

The climate crisis requires immediate action, and its negative effects are visible in all parts of the world. MNEs are known to be the main entities responsible for contributing to greenhouse gas emissions which represent today the main cause of climate change and environmental degradation. Despite this evidence, the OECD Guidelines do not adequately clarify the obligation of MNEs to mitigate, prevent and remediate common environmental impacts such as pollution and deforestation, nor mention “climate change” among their provisions. We believe the Guidelines must strengthen standards for MNEs to respect the environment, avoid contributing to climate change and other environmental impacts, and redress harm including by contributing to adaptation.

### **Human Rights Defenders (HRDs)**

HRDs, including journalists and whistleblowers, contribute positively to the promotion and protection of human rights around the world. However, as FIDH has documented<sup>53</sup> the work of HRDs is among the riskiest: they are often the victims of threats and other types of attacks linked to business activities that are used to dissuade them from continuing their work. Despite the significant role of business in impacts on HRDs, the OECD Guidelines make no mention of HRDs and therefore do not set standards for companies on how to prevent, mitigate and remediate the impacts they can be connected to – both by their actions and inactions. Similarly, they do not require NCPs to establish procedures to respond to the risk of retaliation HRDs may face from engaging in the specific instance process<sup>54</sup>. These risks are real and, in some cases, fatal. For example, FIDH support a complaint brought to the Canadian NCP in 2013 by communities and defenders in Ecuador against a parent mining company operating in their lands. The complaint itself mentioned the reprisal risks that the members of the indigenous community were suffering.<sup>55</sup> But the complaint was rejected. After its rejection, an indigenous activist became the fourth to be assassinated for protesting the mining project.<sup>56</sup> This case helps illustrate why the Guidelines must include *both* clear provisions for MNEs on respecting the rights of HRDs, and expectations and guidance for NCPs to address actual or potential harm to HRDs associated with business activities subject to NCP complaints.

### **Land Rights**

Attacks against human rights defenders are, in many cases, related to land rights issues. In 2020, the Business and Human Rights Resource Centre tracked 572 attacks against defenders working on business-related human rights issues, from which more than a third originated from a lack of consultation or a failure to secure the free, prior, and informed consent (FPIC) of affected communities.<sup>57</sup> When land security and land rights are not guaranteed, other fundamental rights such as the right to food, housing, health, healthy environment, and others are also under threat. Despite this reality, the OECD Guidelines do not mention land rights at all, nor specific expectations for MNE with regards to FPIC. The Guidelines make a general

<sup>53</sup> See, for example, our last report “New Oil, Same Business? At a Crossroads to Avert Catastrophe in Uganda”, September 2020, available at [https://www.fidh.org/IMG/pdf/new\\_oil\\_same\\_business.pdf](https://www.fidh.org/IMG/pdf/new_oil_same_business.pdf).

<sup>54</sup> See, for example, OECD Watch, “Use with Caution: The role of the OECD National Contact Points in protecting human rights defenders,” (June 2019), available at: <https://www.oecdwatch.org/wp-content/uploads/sites/8/2019/06/Reprisals-NCP-system.pdf>.

<sup>55</sup> FIDH et al vs. CRCC-Tongguan Investment (Canada) Co., Ltd, <https://www.oecdwatch.org/complaint/fidh-et-al-vs-crcc-tongguan-investment-canada-co-ltd/>

<sup>56</sup> OECD Watch, “Get Fit. Closing gaps in the OECD Guidelines to make them fit for purpose”, June 2021, page 42, <https://www.oecdwatch.org/wp-content/uploads/sites/8/2021/06/OECD-Watch-Get-Fit-Closing-gaps-in-the-OECD-Guidelines-to-make-them-fit-for-purpose-1.pdf>

<sup>57</sup> BHRRC, “In the line of fire: Increased legal protection needed as attacks against business & human rights defenders mount in 2020” (March 2021),

<https://www.business-humanrights.org/en/from-us/briefings/line-fire-increased-legal-protection-needed-attacks-against-business-human-rightsdefenders-mount-2020>.



reference in commentary to Chapter IV (Human Rights) to UN instruments elaborating on rights of Indigenous peoples, but this is not clear enough (as was demonstrated in the Canadian NCP's final statement in the Ecuadorian complaint mentioned above).<sup>58</sup> The OECD Guidelines should establish standards for MNEs to respect land security and land rights and provide or engage in remedy for victims of corporate-linked land rights violations.

### **Gender**

MNEs' human rights abuses have a disproportionate impact on victims depending on their gender. For example, women suffer from discrimination on access to land ownership and thus may be overlooked when corporations are involved in resettlement activities serving titled (i.e. male) owners. Women also may have more difficulties than men enforcing their right, such as to information, participation, and access to justice on environmental claims.<sup>59</sup> We believe that the Guidelines hardly address gender-specific issues and do not comprehensively highlight how business activity might impact women and LGBTQ+ people differently. The Guidelines need to integrate a gender-sensitive approach into the standards for MNEs. They should also set out guidance to ensure NCPs can and do minimize gender-specific barriers to remedy during specific instances.

### **Digitalisation**

The Guidelines do not establish minimum standards on digitization, including to ensure that all companies' due diligence processes address their digitalization-related impacts, and that surveillance technologies are not exported to countries where they may contribute to human rights violations. FIDH helped support a complaint filed on September 13<sup>th</sup> 2017 to the Italian NCP<sup>60</sup> that concerned anticipated adverse impacts on civil and political rights of an Italian telecommunications company's sale of its products in Iran. In the framework of that case, FIDH recommended the OECD consider revising the Guidelines to be more up-to-date on technology/ICT issues, particularly concerning due diligence and companies providing technology to authoritarian regimes<sup>61</sup>. We reiterate that recommendation here.

### **NCP Performance**

Based on FIDH's experience supporting communities bringing complaints to different NCPs, we consider that the Guidelines' Procedural Guidance does not set adequate and practical minimum requirements to help NCPs fulfill the core criteria and complaint handling principles. FIDH has pointed out that the accessibility to NCPs should be improved, first and foremost with simpler and more effective admissibility criteria.<sup>62</sup> New admissibility criteria should be framed to ensure NCPs do not apply overly burdensome evidentiary requirements or engage in extensive analysis of evidence at the Initial Assessment phase. As pointed out before, the Guidance should also require NCPs to establish procedures and practices to address actual or potential harm to HRDs involved in protesting business activities subject to NCP complaints. We also believe the Guidance should set requirements for NCPs focused on promoting accountability of corporations, such as: requirements that NCPs clearly determine when a company has breached the Guidelines; ensure dispute resolution looks at past impacts and seeks remedy, not just future policy changes, wherever asked by complaints; undertake follow-up to monitor whether the company has complied with recommendations given or the agreements reached; and seek consequences for MNEs that do not engage in good faith in the specific instance procedure or do not implement recommendations and

<sup>58</sup> FIDH et al vs. CRCC-Tongguan Investment (Canada) Co., Ltd, <https://www.oecdwatch.org/complaint/fidh-et-al-vs-crcc-tongguan-investmentcanada-co-ltd/>

<sup>59</sup> See, for example, our last report "New Oil, Same Business? At a Crossroads to Avert Catastrophe in Uganda", September 2020, available at [https://www.fidh.org/IMG/pdf/new\\_oil\\_same\\_business.pdf](https://www.fidh.org/IMG/pdf/new_oil_same_business.pdf)

<sup>60</sup> FIDH, JFI and Redress vs Italtel, <https://www.oecdwatch.org/complaint/fidh-jfi-and-redress-vs-italtel/>

<sup>61</sup> Ibidem

<sup>62</sup> SOMO, Justice for Iran, FIDH: "Under a watchful eye Due diligence expectations of telecoms companies doing business with repressive regimes – the case of Italtel & Iran", April 2021, [https://www.fidh.org/IMG/pdf/under\\_a\\_watchful\\_eye.pdf](https://www.fidh.org/IMG/pdf/under_a_watchful_eye.pdf)



agreements. We urge you to revise the Procedural Guidance to address these and other procedural gaps identified by civil society.

In addition to revising the Procedural Guidance to address these gaps, we urge the OECD to better train and support NCPs on handling complaints, and strengthen the role of the Investment Committee in monitoring the functioning of NCPs on their handling of individual complaints.

Above, we have identified some of the serious gaps existing in the Guidelines. These gaps exemplify why the Guidelines merit a revision. Indeed, the Guidelines have become a critical guide for businesses and other stakeholders to evaluate what are the responsibilities of corporations with regards to environment, human rights, and other social issues. Moreover, the Guidelines have also become one of the underpinnings of national and regional legislations regulating mandatory human rights due diligence. As such it is important that the Guidelines remain up to date. Finally, the National Contact Points (NCP), are still an important channel for victims of business-related human rights abuses to seek remedy. Closing the gaps with respect to the NCP Performance would ensure impacted individuals have a chance to effectively realize their right to remedy.

FIDH respectfully requests the members of the OECD Working Party on Responsible Business Conduct to incorporate these concerns in the final stocktaking report and to start a revision process of the Guidelines, which includes the participation of civil society organizations working with communities and human rights defenders on the ground.

We thank you in advance for your consideration. We rest of course available to provide any further clarification on the work done within this project that might be needed.

Sincerely,

FIDH Globalisation & Human Rights Desk

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

### 33. Force Ouvriere

#### **Consultation publique - Exercice de bilan sur les Principes Directeurs de l'OCDE à l'intention des Entreprises Multinationales**

FO a participé à l'élaboration de la contribution du TUAC, et partage ses constats. Nous souhaitons insister sur un certain nombre de points.

La liberté syndicale et la négociation collective sont les éléments principaux à développer pour assurer une meilleure application des entreprises multinationales. Cela passe d'abord par un encouragement à développer des négociations et une représentation syndicale à l'échelle de la multinationale, pour compléter la représentation syndicale à l'échelle des différentes entités juridiques constituant l'entreprise multinationale. Le chapitre sur les droits de l'Homme et la diligence raisonnable devrait également être renforcé en précisant le rôle central des OS dans les processus de diligence : elles doivent être impliquées aux niveaux pertinents et ne pas être noyées dans le magma des parties prenantes. L'expérience de la loi française sur le devoir de vigilance montre bien que sans précision, les entreprises ont le choix de leurs interlocuteurs et ne se tournent que très rarement vers les OS pour négocier. D'autres thèmes pourraient être renforcés, aux vues des développements actuels : la lutte contre le faux travail indépendant et l'encadrement du télétravail (fortement développé pendant la pandémie). Par ailleurs, il est nécessaire que le principe d'une transition socialement juste soit au centre des recommandations sur l'environnement et le changement climatique afin que la protection de l'environnement ne se fasse pas au détriment des travailleurs. Les principes directeurs pourraient également être renforcés en intégrant une référence à l'Accord de Paris, assurant une meilleure cohérence entre les différents instruments existants à l'échelle internationale. Des études prospectives devraient être encouragées afin d'anticiper les changements dus

au changement climatique et assurer ainsi un emploi décent pour les travailleurs des secteurs potentiellement affectés, notamment par le biais de la formation. Enfin, les enjeux du numérique pourraient être mieux encadrés, en assurant une protection adéquate des travailleurs concernant l'utilisation croissante de l'intelligence artificielle (dans les processus de recrutement par exemple), et la surveillance biométrique de masse dans certaines entreprises.

Les principes directeurs pourraient intégrer une recommandation sur la nécessité de fournir des moyens adéquats au PCN, notamment en termes de formation (à la médiation notamment) et concernant le nombre de personnes travaillant au sein PCN. Des moyens devraient être mis en place pour la traduction également, qui permettrait une meilleure communication entre les membres du PCN, les entreprises et les plaignants. Une recommandation quant à la structure des PCN devrait être introduite, insistant sur la nécessité de mettre en place des PCN tripartites, mais aussi à la représentation des ministères en fonction du thème de la saisine (en France, selon le thème de la saisine, les ministères en charge de ces questions sont présents). Il faudrait réfléchir à introduire des mécanismes renforcés afin d'assurer une présence de bonne foi des entreprises (notamment en incluant les organisations patronales et syndicales au sein des PCN), passant notamment par une transmission rapide des documents demandés par le PCN. Une meilleure coordination des PCN est également nécessaire, avec des échanges d'information dans un délai raisonnable entre PCN.

Contact : Marjorie ALEXANDRE  
Secrétaire confédérale  
Secteur International, Europe et Migrations  
[www.force-ouvriere.fr](http://www.force-ouvriere.fr)

### 34. Friends of the Earth

#### **Public stocktaking exercise of the OECD Guidelines for Multinational Enterprises – submission by Milieudefensie**

Dear members of the OECD Working Party on Responsible Business Conduct,

Friends of the Earth Netherlands (Milieudefensie)<sup>63</sup> welcomes this public consultation on gaps in the OECD Guidelines for Multinational Enterprises (Guidelines). While the Guidelines should be a valuable tool to advance RBC, the standards have not kept pace with new challenges and expectations for corporate conduct. The NCP complaint mechanisms have, with few exceptions, failed to secure remedy for impacted communities.

In our view, serious gaps in both the standards for multinational enterprises (MNEs) and implementation expectations for NCPs are preventing the Guidelines from fulfilling their purposes. For a full list of gaps and recommendations on how to solve them, we refer you to two position papers by The Dutch RBC

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<sup>63</sup> Milieudefensie collaborates with communities severely impacted by business activities, is experienced in attempting to use the Guidelines to encourage responsible business conduct (RBC) by corporations, campaigns for improved RBC policies by governments, and secures remedy for harm via the National Contact Point (NCP) complaint mechanisms. Milieudefensie filed complaints with the Dutch NCP, and participated in the full mediation process following these complaints, in 2011, 2014, and 2019

Platform (MVO Platform)<sup>64</sup> <sup>65</sup> and OECD Watch<sup>66</sup>. As Milieudefensie considers climate change to be the most urgent gap of the current Guidelines, we elaborate on this topic in the next paragraph.

Countering the effects of climate change is the most vital need of our time, and MNEs are recognised as responsible for almost a fifth of climate-changing carbon emissions<sup>67</sup>. It is crucial that the Guidelines reflect this, by at least including:

- the term “climate change” and the responsibility of companies to combat climate change;
- clear descriptions of these responsibilities to avert and address climate impacts, including that MNEs must disclose and reduce their greenhouse gas emissions in accordance with the Paris Agreement (targeting a maximum 1.5 degree temperature rise) and any successive agreements; and
- clear expectations that companies should identify where and how much GHG they emit (scope 1, 2 and 3) and make and report on a public GHG action plan to bring their emissions in line with the Paris Agreement.

In 2019, the Dutch NCP concluded that banks should ensure their financing, lending and investing is in line with the Paris Agreement. This statement should be incorporated into the Guidelines and applied to other MNEs such as but not limited to fossil fuel corporations.

Based on Milieudefensie’s experiences in recent and ongoing NCP cases<sup>68</sup>, we have noticed that there is a serious need for more clarification and guidance on several topics in the Guidelines. At certain levels the Guidelines are too vague, resulting in contradictory interpretations of text by different stakeholders, complicating the mediation conversations and, even worse, preventing access to remedy for victims. Moreover, we have seen companies directly refuting texts that are found in the OECD sectoral and general guidance documents. We therefore believe that there is a need for some of these clarifications to be taken up and elaborated on in the Guidelines (e.g. in the commentary).

As a start, we would like to raise the following issues for clarification to the Working Party, and would appreciate if these could be taken into account during the stocktaking exercise:

- On the issue of shifting from ‘directly linked’ to ‘contribution’: it is unclear how the three identified factors (foreseeability, adequacy and effectiveness of due diligence, and facilitating/incentivising) should be analysed, when they can be considered to be ‘present’ and if they should be measured in relation to each other.
- In evaluating the adequacy and effectiveness of due diligence, the OECD Guidance for Responsible Business Conduct (p.70-71) and the OECD Guidance for Responsible Corporate Lending and Securities Underwriting (p.43-45) both state that it is important to consider whether the adverse impacts are actually resolved/mitigated. Therefore, Milieudefensie understands that where the adverse impacts have not actually been resolved or mitigated, this suggests the quality and adequacy of the due diligence has been too low.
- On third-party certification, Milieudefensie understands that, in line with the OECD Guidance for Responsible Business Conduct (Q19 and Q22), this can be one of the sources in a due diligence

<sup>64</sup> The MVO Platform is a Dutch coalition of NGOs. Milieudefensie is part of this coalition, please see here for a full list of members: <https://www.mvplatform.nl/over-ons/deelnemers/>.

<sup>65</sup> MVO Platform, Position paper on the OECD Guidelines: <https://www.mvplatform.nl/en/wp-content/uploads/sites/6/2021/09/Position-Paper-OECD-Guidelines-EN.pdf>

<sup>66</sup> This letter draws on analysis from the OECD Watch network. For insight on other gaps in the Guidelines of concern to civil society, please see OECD Watch’s submission to the first draft of the stocktaking report and paper Get Fit: closing gaps in the Guidelines to make them fit for purpose. Milieudefensie fully supports OECD Watch’ submission and analysis.

<sup>67</sup> Zhang, Z., Guan, D., Wang, R. et al. (2020), Embodied carbon emissions in the supply chains of multinational enterprises. *Nature Climate Change*, 10, 1096–1101.

<sup>68</sup> Please see footnote 54 for an overview of NCP cases of Milieudefensie

process to allow for triangulation of information with other sources and consultation of third parties on points in case of doubt. Our understanding is that third-party certification cannot be a proxy or replacement for due diligence by the MNE itself.

- On financial institutions specially, the issue of the use of proceeds is unclear. The OECD Guidance on Responsible Corporate Lending and Securities Underwriting underlines that the use of proceeds should be known (or likely) to be for high-risk activities, and that in case of corporate lending at least a portion of the finance is likely to go to high-risk activities. Can the Working Party clarify how this can be measured, and when this is 'substantial'?
- When a MNE's business partner, including a client of a financial institution, has been involved in judicial or non-judicial proceeding relevant to social, environmental, consumer interest, tax, corruption, or other issues covered by the Guidelines, what would be the appropriate step(s) to take for the MNE?

In light of these concerns, we request that the Working Party ensure the stocktaking report reflects each of the gaps identified by civil society and initiate both a revision of the Guidelines to address the gaps and, as appropriate, issuance of further due diligence guidance to clarify the issues identified. We kindly ask the Working Party to ensure these processes are inclusive, involving civil society representatives and experts, to ensure the Guidelines remain fit for purpose for their primary users. Milieudefensie hereby kindly offers to take part in this process.

We thank you for your consideration and stand ready to support future revision discussions.

Sincerely,

Donald Pols, Director  
Milieudefensie (Friends of the Earth Netherlands)  
Contact person: Janneke Bazelmans  
[www.milieudefensie.nl](http://www.milieudefensie.nl)

### 35. Grantham Research Institute on Climate Change and the Environment

This document outlines our response to the Public Consultation on the Stocktaking exercise on the OECD Guidelines for Multinational Enterprises (the Guidelines). In line with GRI's expertise, this submission is focused on the application of the Guidelines in the context of climate change.

We recognise that in their current form, the Guidelines have made a significant contribution to the global debate on responsible business conduct. The Guidelines have been used as an authoritative source in resolving disputes touching on climate issues by the corporate community, the NCPs, and even by domestic courts. However, as acknowledged in the draft stocking report, much has changed in our understanding of climate change and the climate response required from the business community since the last update to the Guidelines in 2011. Most critically, this includes the signing of the Paris Agreement in 2015, which has been followed by a wave of legal action to clarify the roles and responsibilities of different actors in achieving the aims of the Agreement. A small but significant number of these cases are filed against corporate actors, and such cases often act as a critical avenue for the contestation of climate action and inaction, as well as the clarification of policies and legislation.

As explained in more detail in a [commentary](#) published today on GRI's website, which we invite those reviewing this document to consider alongside these submissions, we believe that the Guidelines in their current form can and should be interpreted in such a way that they support the business community to understand and fulfil their role in ensuring a rapid transition to a low carbon society. However, we also believe that the Guidelines could benefit from revisions and clarifications to ensure that this interpretation is consistent across all key stakeholders, including the NCPs.

In particular, we have identified concerns regarding the text of the Guidelines and the treatment of the following issues by NCPs in specific instances submitted to date:

- Application of due diligence procedures in the climate context
- Emissions reduction obligations of businesses
- Disclosure of climate-related risks and opportunities
- Greenwashing in advertising campaigns and misinformation to shareholders
- Business responsibilities regarding climate change adaptation and resilience

We therefore make the following recommendations:

4. The draft stocktaking report should be updated to include more specific references to the issues set above and detailed in the commentary;
5. The Working Group should initiate a process to review and revise the text of the Guidelines to better incorporate the issues discussed. Consideration should be given to the Chapters on Environment, Human Rights, Disclosure, and Consumer Protection.
6. Supplementary Guidance on the application of the Guidelines in the climate context should be developed, with further sectoral guidance to follow.
7. Key stakeholders, starting with the NCPs, should be offered dedicated training to better equip them to address the issues, including training on climate science and climate change economics, as well as the latest trends in climate change law and litigation

Contact: Catherine Higham, Coordinator

Climate Change Laws of the World | [www.climate-laws.org](http://www.climate-laws.org)

## 36. Greenpeace International

Dear members of the OECD Working Party on Responsible Business Conduct:

Greenpeace International (GPI) welcomes<sup>69</sup> this public consultation on gaps in the OECD Guidelines for MNEs (Guidelines).

Greenpeace International takes the [position](#) that voluntary measures and self-regulation do not guarantee corporate liability or effective access to remedy. Holding companies accountable for their actions requires hard law. However, we saw recently how soft law, specifically the UNGPs, informed the [Shell verdict in the Netherlands in May 2021](#). This shows that if Guidelines are done well, they can also bring about meaningful change.

We support [OECD Watch](#)'s position that serious gaps in RBC standards and implementation expectations for NCPs prevent the Guidelines from fulfilling their purposes. In our view, the most urgent gaps are:

- **Climate Change:** The current wording is too general and doesn't explicitly address climate change's imminent threat. Moreover, "*taking due account of the need to protect the environment*" falls short of requiring MNEs to take concrete and measurable actions. The Guidelines should clearly define business responsibilities regarding climate change<sup>70</sup> and require MNEs to mitigate their contribution to the climate crisis. In addition:
  - MNE responsibilities should be cross-border, extending beyond parent companies to cover entire value chains. Without this, efforts to tackle MNEs' climate harm would fall victim to transnational loopholes where enterprises avoid accountability.

<sup>69</sup> Greenpeace organisations around the world work with communities adversely impacted by business activity and some have engaged the National Contact Point (NCP) complaint mechanisms to seek remedy.

<sup>70</sup> Given that [MNEs are responsible for nearly a fifth of global CO2 emissions](#).

- Establish clear standards for MNEs to commit and take action towards implementing the Paris Agreement. At the least, MNEs should align their business and value chain operations with the aim of limiting global temperature rise to [1.5°](#).
- New oil and gas exploration and production severely threatens the right to a healthy environment.<sup>71</sup> In line with the goal of lowering their climate impact, the Guidelines should prohibit MNEs from exploring and drilling new oil and gas.
- **Biodiversity:** MNE business activities are among those most responsible for the potentially irreversible biodiversity decline.<sup>72</sup> The Guidelines should require MNEs to act on biodiversity.<sup>73</sup>
- **Forest and ecosystems protection:** Forest and ecosystem conversion and degradation threaten climate<sup>74</sup> and biodiversity. They must end. The Guidelines should require MNEs to commit to zero forest and ecosystem conversion and degradation.
- **Combatting SLAPPs/other threats to HR defenders:** MNEs abuse the legal system to intimidate and silence environmental activists and advocacy groups, including GPI and its allies, through filing strategic lawsuits against public participation. These lawsuits show how companies exercise control over free speech, peaceful assembly, and association rights comparable to government censorship. The Guidelines should prevent MNEs from filing such lawsuits as part of MNEs' responsibility to respect the environment and human rights.

We respectfully request that you ensure the final stocktaking report reflects and responds to each of these gaps. We also request that, following stocktaking, you initiate an inclusive process to revise the Guidelines to ensure they remain fit for purpose.

We thank you for your consideration and stand ready to support future revision discussions.

Yours Sincerely,

Shira Stanton (Senior Political Strategist) and Charlie Holt (Legal Counsel Campaigns)  
 Greenpeace International  
[www.greenpeace.org](http://www.greenpeace.org)

## 37. Human Rights Law Centre

Dear members of the OECD Working Party on Responsible Business Conduct

### Re: Consultation on OECD Guidelines for Multinational Enterprises

The Human Rights Law Centre welcomes this public consultation on gaps in the OECD Guidelines for Multinational Enterprises (**Guidelines**).

The Human Rights Law Centre is an Australian legal organization which works to protect human rights within Australia and within Australian operations overseas.

In this context, we have assisted a number of communities to bring complaints under the OECD Guidelines to the Australian OECD National Contact Point (AusNCP). We also often advise communities and civil

<sup>71</sup> Especially during the climate crisis.

<sup>72</sup> A recent report finds that the global wildlife population has been [reduced by two-thirds over the last 50 years](#).

<sup>73</sup> Specifically to: 1. *Protect biodiversity in all its forms*; 2. *Prevent/mitigate their impact on current rapid biodiversity loss in all its forms*; 3. *Avoid causing/contributing to ocean, land, air and fresh water pollution and abuse*.

<sup>74</sup> [No matter how the trees are used](#). Globally, [forests store a volume of carbon in their living parts and through deforestation, this carbon is released into the atmosphere, contributing to climate change](#). Natural forests and ecosystems are vital for climate mitigation and biodiversity.



society organisations on the Guidelines and the process for bringing complaints via the National Contact Point (**NCP**) system.

While the Guidelines should be a valuable tool to advance responsible business conduct (**RBC**), in the ten years since their last revision, the standards have not kept pace with new challenges and expectations for corporate conduct. The NCP complaint mechanisms have also largely failed to facilitate access to remedy for impacted communities. In our view, serious gaps<sup>75</sup> in both the RBC standards for multinational enterprises (**MNEs**) and implementation expectations for NCPs are preventing the Guidelines from fulfilling their purposes:

**Reforms to NCPs:** NCPs play a vital role in ensuring the success of the Guidelines. Unfortunately, the Guidelines' current Procedural Guidance sets such a low threshold for the required basic institutional arrangements, promotional activities, and complainthandling procedures of NCPs that they vary widely in their effectiveness. Minimum expectations for NCPs in the Procedural Guidance should be raised to, for example:

- ensure NCPs have access to expertise on human rights and technical topics covered in complaints, input from stakeholder advisors, adequate resourcing to investigate complaints;
- a practice of undertaking promotional activities annually towards all stakeholder groups;
- complaint handling procedures that ensure participation by NCPs;
- accountability for irresponsible business conduct, such as transparency over complaint processing, a commitment to issuing determinations of non-compliance and seeking consequences for MNEs refusing to participate in good faith; and
- a practice of engaging in follow-up monitoring.

**Climate change and environmental degradation:** Countering the effects of climate change is broadly acknowledged as the biggest human rights and environmental challenge of our time, yet the Guidelines do not mention the term “climate change,” call upon MNEs to set and achieve climate-related emission targets, nor demand that MNEs avoid and remedy common pressing environmental impacts including deforestation, pollution, and biodiversity loss.

**Indigenous Peoples** are among the world's most vulnerable, and they are disproportionately impacted by business activities on or near their territories. The Guidelines currently do not identify:

- key specific rights of Indigenous Peoples, such as the right to free prior and informed consent and self-determination;
- their particularly vulnerability as human rights defenders; nor
- the specialised due diligence needed to consult them, and identify, address, and remedy impacts to they experience.

**Labour rights:** Unionisation and workers rights are under threat, yet the Guidelines fail to adequately set important labour rights standards for MNEs, such as:

- ensuring responsible disengagement;
- avoiding business models that preclude payment of a living wage and intentionally escape responsibility for worker well-being;
- addressing deep-rooted discrimination and sexual harassment within supply chains; and
- respecting rights of workers in the digital economy

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<sup>75</sup> This letter draws on analysis from the OECD Watch network. For insight on other gaps in the Guidelines of concern to civil society, please see OECD [Watch's submission to the first draft of the stocktaking report](#) and paper [Get Fit: closing gaps in the Guidelines to make them fit for purpose](#)



**Taxation:** The Guidelines do not currently name or discourage tax avoidance, call out the range of financial methods corporations commonly manipulate to avoid taxation, nor seek the disclosures necessary to help governments and civil society identify and prevent tax avoidance moving forward.

**Digitalisation:** Over the past ten years, the rapidly increasing digitalisation of the global economy is altering and exacerbating the potential for all MNEs – not just technology companies – to adversely impact human rights, harm the environment and jeopardize democracies and democratic values. The OECD Investment Committee has identified a need for a comprehensive standard to address RBC challenges linked to digitalisation, but the Guidelines say nothing on this issue. The gap leaves MNEs without guidance on the importance of, and means to, understanding their impacts in the digital sphere.

In light of these concerns, we respectfully request that you ensure the final stocktaking report reflects and responds to each of these gaps. We also request that, following conclusion of the stocktaking, the Working Party initiates an inclusive process to revise the Guidelines to ensure they remain fit for purpose.

We thank you for your consideration and stand ready to support future revision discussions.

Yours sincerely,

Keren Adams  
Legal Director  
Human Rights Law Centre  
[www.hrlc.org.au](http://www.hrlc.org.au)

### 38. Human Rights Watch

Dear members of the Organisation for Economic Co-operation and Development (OECD) Working Party on Responsible Business Conduct:

Human Rights Watch welcomes the opportunity to provide feedback as part of the public consultation to review the 2011 OECD Guidelines for Multinational Enterprises (MNE Guidelines).<sup>76</sup> We believe such a review is timely and long overdue.

Human Rights Watch is an international nongovernmental organization that works across 90 countries. We have documented human rights and environmental impacts of businesses and have advocated strongly for businesses to abide by the United Nations Guiding Principles on Business and Human Rights as well as the Guidelines, and relevant OECD due diligence guidance.

The OECD recognizes that its MNE Guidelines are not a substitute for national legislation. We agree and support the view that these Guidelines are not a substitute for mandatory human rights and environmental due diligence legislation or new international binding standards. But voluntary guidelines can continue to help drive more awareness and shape the efforts of private entities to respect human rights.

#### Definitions and Scope of Application

The OECD should continue to press for the widest possible application of the MNE Guidelines and explicitly clarify that they apply to a variety of private entities. Human Rights Watch has researched and written about the need for private organizations to abide by human rights standards and principles. These include

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<sup>76</sup> Organisation for Economic Co-operation and Development (OECD), OECD Guidelines for Multinational Enterprises 2011 Edition (OECD Publishing, 2011)

supranational private entities conducting global procurement for health products,<sup>77</sup> multistakeholder initiatives,<sup>78</sup> and international sport governing bodies.<sup>79</sup>

The MNE Guidelines do not provide a non-exhaustive list of private organizations whose business activities the Guidelines cover and further does not explicitly clarify that state entities that conduct commercial activities also have comparable due diligence responsibilities. This has impacted the ability of local groups to pursue complaints using the OECD National Contact Points (NCP) system and resulted in inconsistent application and interpretation of the Guidelines by different NCPs.<sup>80</sup>

## Disclosures

Chapter III on Disclosures is outdated. Over the years significant strides have been made on voluntary corporate disclosure on non-financial aspects that impact environment, social, and governance issues.

Human Rights Watch has especially been advocating for value chain traceability and transparency in numerous sectors, including garments, textiles, leather, footwear, jewelery, automobiles, and forest-risk commodities like palm-oil and beef.<sup>81</sup> Considerable progress has been made with regards to value chain traceability and transparency through voluntary corporate efforts. The Guidelines should explicitly promote and require such traceability and transparency as part of corporate disclosures. The work of the Transparency Pledge coalition,<sup>82</sup> the Open Apparel Registry,<sup>83</sup> the UN's Sustainability Map,<sup>84</sup> and the UN

<sup>77</sup> COVAX: Enhance Transparency, Share Intellectual Property," Human Rights Watch news release, May 6, 2021, <https://www.hrw.org/news/2021/05/06/covax-enhance-transparency-share-intellectual-property>; Sharing Knowledge, Technology Critical to Curb Covid-19," Human Rights Watch news release, September 14, 2021, <https://www.hrw.org/news/2021/09/14/sharing-knowledge-technology-critical-curb-covid-19>

<sup>78</sup> Human Rights Watch, Fashion's Next Trend: Accelerating Supply Chain Transparency in the Apparel and Footwear Industry (New York: Human Rights Watch, December 18, 2019), <https://www.hrw.org/report/2019/12/18/fashions-nexttrend/accelerating-supply-chain-transparency-apparel-and-footwear>; Sparkling Jewels, Opaque Supply Chains: Jewelry Companies, Changing Sourcing Practices, and Covid-19 (New York: Human Rights Watch, November 24, 2020), <https://www.hrw.org/report/2020/11/24/sparkling-jewels-opaque-supply-chains/jewelry-companies-changing-sourcing>.

<sup>79</sup> Human Rights Watch, They're Chasing Us Away from Sport: Human Rights Violations in Sex Testing of Elite Women Athletes (New York: Human Rights Watch, December 4, 2020), <https://www.hrw.org/report/2020/12/04/theyre-chasing-us-awaysport/human-rights-violations-sex-testing-elite-women#7713>.

<sup>80</sup> OECD Watch, Get Fit: Closing gaps in the OECD Guidelines to make them fit for purpose (OECD Watch: 2021).

<sup>81</sup> Human Rights Watch, Why Our Land?: Oil Palm Expansion in Indonesia Risks Peatlands and Livelihoods (New York: Human Rights Watch, June 3, 2021), <https://www.hrw.org/report/2021/06/03/why-our-land/oil-palm-expansion-indonesia-riskspeatlands-and-livelihoods>; "When We Lost the Forest, We Lost Everything": Oil Palm Plantations and Rights Violations in Indonesia (New York: Human Rights Watch, September 22, 2019), <https://www.hrw.org/report/2019/09/23/when-we-lostforest-we-lost-everything/oil-palm-plantations-and-rights-violations>; A Dirty Investment: European Development Banks' Link to Abuses in the Democratic Republic of Congo's Palm Oil Industry (New York: Human Rights Watch, November 25, 2019), <https://www.hrw.org/report/2019/11/25/dirty-investment/european-development-banks-link-abuses-democraticrepublic>; Rainforest Mafias: How Violence and Impunity Fuel Deforestation in Brazil's Amazon (New York: Human Rights Watch, September 17, 2019), <https://www.hrw.org/report/2019/09/17/rainforest-mafias/how-violence-and-impunity-fueldeforestation-brazils-amazon>; The Air is Unbearable": Health Impacts of Deforestation-Related Fires in the Brazilian Amazon (New York: Human Rights Watch, August 26, 2020), <https://www.hrw.org/report/2020/08/26/air-unbearable/healthimpacts-deforestation-related-fires-brazilian-amazon>; Sparkling Jewels, Opaque Supply Chains: Jewelry Companies, Changing Sourcing Practices, and Covid-19; The Hidden Cost of Jewelry: Human Rights in Supply Chains and the Responsibility of Jewelry Companies (New York: Human Rights Watch, February 8, 2018), <https://www.hrw.org/report/2018/02/08/hidden-cost-jewelry/human-rights-supply-chains-and-responsibility-jewelry>

<sup>82</sup> Transparency Pledge, "Setting the Minimum Standard for Supply Chain Disclosure in the Garment and Footwear Industry," <https://transparencypledge.org/> (accessed September 22, 2021).

<sup>83</sup> Open Apparel Registry, <https://info.openapparel.org/> (accessed September 22, 2021).

<sup>84</sup> International Trade Centre, "Sustainability Map," <https://www.sustainabilitymap.org/home> (accessed September 22, 2021)

Economic Commission for Europe's Sustainability Pledge<sup>85</sup> are examples of efforts that have been made possible through increased voluntary corporate efforts at greater transparency and reporting.

Other initiatives like the Equal Pay International Coalition (EPIC) have allowed private entities to examine and report more on gender pay gaps. Enforceable binding agreements between global unions and companies have set a new standard for transparency and accountability for private initiatives, which have developed pathways for transparent reporting that balance the need to report on the outcomes from private grievance mechanisms with concerns around privacy.<sup>86</sup>

Any review of existing Guidelines should also use the opportunity to caution private entities against the overbroad use of confidentiality clauses, especially those that hamper governments' ability to publicly and transparently report on how they have spent public funds, including loans from international financial institutions.<sup>87</sup>

Transparency is key to providing the public a way to monitor government spending and is a bulwark against conflicts of interest and corruption. The unsubscribed use of confidentiality fuels corruption risks and can undermine governments' ability to report on how they are spending public money. Such unbridled use of commercial confidentiality has also undermined efforts to coordinate, procure, and distribute life-saving vaccines and other health products across the world, particularly during the Covid-19 response. The OECD Guidelines should, at a minimum, state that companies' use of commercial confidentiality should be in accordance with other international binding and non-binding standards and guidelines, including those issued by the World Health Organization (WHO) as well as UN treaty-monitoring bodies and special procedures.

### **Human Rights, Employment and Industrial Relations, and Environment**

The chapters on Human Rights, Employment and Industrial Relations, and Environment should be reviewed, updated, and synthesized to underscore their inter-dependence. These chapters should reiterate the responsibility of businesses to respect the full range of international human rights, labor, and environmental standards, as set out in international human rights and environmental instruments, including the Paris Agreement on climate change, and interpreted by relevant authoritative treaty bodies, International Labour Organization (ILO) supervisory mechanisms, and UN special procedures.

All descriptions of labor rights should move away from the use of terms like "employment" and "employees" and speak of "workers' rights, regardless of employment status." Human Rights Watch has especially found that restricting human rights due diligence to employees can limit the kind of due diligence businesses undertake in their own operations and in global value chains. Further, this risks restricting such due diligence to those who are employees. This excludes rideshare drivers and food and grocery delivery workers misclassified as "independent contractors" in the app-based gig economy, many content moderators for technology platforms, and those engaged in other forms of precarious working arrangements, including daily wage workers and informal or unregistered workers. A framing focusing on labor rights, and the "world of work" is in line with the 2019 ILO Violence and Harassment Convention (C190), which recognizes the responsibilities of employers to prevent violence and harassment in the world of work, including employees, job seekers, job applicants, volunteers, apprentices, and third parties.

In an increasingly digitized world, these chapters should adapt and recognise the need for businesses to centralize human rights and environmental due diligence in their development, procurement and use of algorithmic decision-making systems and other technology platforms.

<sup>85</sup> UN Economic Commission for Europe, "Traceability for Sustainable Garment and Footwear," <https://unece.org/trade/traceability-sustainable-garment-and-footwear> (accessed September 22, 2021).

<sup>86</sup> Accord on Fire and Building Safety in Bangladesh, <https://bangladeshaccord.org/> (accessed September 22, 2021)

<sup>87</sup> "COVAX: Enhance Transparency, Share Intellectual Property," Human Rights Watch news release, May 6, 2021, <https://www.hrw.org/news/2021/05/06/covax-enhance-transparency-share-intellectual-property>.

In particular, these chapters should reiterate the need for corporate human rights and environmental due diligence processes to take into consideration intersecting and multiple forms of discrimination and exclusion, including based on age, gender and sexual orientation, class, disability, religion, race, ethnicity, caste, indigeneity, nationality, and migrant and refugee statuses.

### **Business Models and Practices**

The Guidelines should carry a separate subsection focused exclusively on the need for private entities to examine their own business models and practices that cause or contribute to actual or potential adverse human rights impacts. The buying and purchasing practices of businesses can be huge drivers of human rights abuses in global supply chains, including creating the conditions that allow forced labor, child labor, and other abuses to persist unchecked. The ILO researched and showed the power imbalances between brands, retailers, and suppliers in numerous sectors.<sup>88</sup> What brands and retailers, and their intermediaries, pay for orders and other buying terms undermine suppliers' ability to respect human rights. Even where these brands and retailers breach contractual agreements, the power imbalance means suppliers are unwilling to challenge or report such breaches for fear of business retaliation and losing future business.<sup>89</sup> Studies by Human Rights Watch and the Center for Global Workers Rights have shown how unfair purchasing practices are especially a problem in the garment and textile sector.<sup>90</sup>

**Human Rights Defenders and Media Freedoms** The OECD Guidelines have an important role in identifying the role of businesses, in supporting human rights defenders, including those who defend the right to land, and a healthy environment, while simultaneously highlighting the negative role businesses can play in harassing or silencing its critics. New rules to protect journalists and defenders from strategic lawsuits to silence or harass them are slowly developing. These anti-SLAPP rules (Strategic Lawsuits Against Public Participation) have an important role in protecting media freedoms and human rights defenders. The OECD Guidelines can highlight the role of businesses in scrutinizing and developing policies that support media freedoms and human rights defenders, including developing policies against the use of criminal defamation laws, where they still exist, and voluntarily curbing the use of strategic lawsuits to silence critics of the business.

### **Science and Technology**

The chapter on Science and Technology especially needs to be revised and updated to provide better guidelines to businesses and supranational private organizations developing, procuring, and distributing lifesaving medicines about balancing intellectual property concerns with the rights to health and life. The Covid-19 pandemic has exposed the serious risks of allowing businesses to control where, when, and how life-saving vaccines and treatments are available and at what cost, due to their unchecked ability to protect their intellectual property. Though this system is not new, it has come into stark focus during the pandemic.

Such unbridled use of intellectual property-based arguments to justify limiting access to lifesaving health care in a pandemic ignores the repeated guidance issued by the UN Committee on Economic, Social and

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<sup>88</sup> ILO, Purchasing practices and working conditions in global supply chains: Global Survey results (Germany: ILO, 2017); "Case Against Tobacco Giant Could Protect Children," Human Rights Watch news release, December 4, 2019, <https://www.hrw.org/news/2019/12/04/case-against-tobacco-giant-could-protect-children>.

<sup>89</sup> European Center for Constitutional and Human Rights Worker Rights Consortium, Farce majeure: How global apparel brands are using the COVID-19 pandemic to stiff suppliers and abandon workers, (Germany: WRC, September 2020).

<sup>90</sup> Human Rights Watch, "Paying for a Bus Ticket and Expecting to Fly:"How Apparel Brand Purchasing Practices Drive Labor Abuses, (New York: Human Rights Watch, April 23, 2019), <https://www.hrw.org/report/2019/04/23/paying-bus-ticket-andexpecting-fly/how-apparel-brand-purchasing-practices-drive>; PennState Center for Global Workers' Rights, Abandoned?: The Impact of Covid-19 on Workers and Businesses at the Bottom of Global Garment Supply Chains, (PennState: CGWR, March 27, 2020).

Cultural Rights and other UN special procedures, including the UN Working Group on Business and Human Rights.<sup>91</sup>

The OECD Guidelines on science and technology, as currently written, urgently need to be aligned with the Sustainable Development Goals, the Doha Declaration on the TRIPS Agreement and Public Health,<sup>92</sup> and UN treaty body guidance on the role of businesses in sharing life-saving health technologies, including the need for companies to participate in open and non-exclusive platforms (like a few companies have done through the Open Covid-19 Pledge), participate in voluntary technology transfer platforms created by the WHO,<sup>93</sup> and support the use of intellectual property waivers as part of pandemic response.<sup>94</sup>

### **National Contact Points (NCPs)**

Over the last few years, tremendous improvements have been made using the OECD NCPs not just for developing more clarity on the application of the Guidelines but also resolving disputes. But as has been documented by OECD Watch, there remain considerable challenges and inconsistencies in the ways in which the NCPs operate.<sup>95</sup>

To truly create the space for OECD National Contact Point system to serve as independent bodies that can play an important alternative dispute resolution role, the OECD National Contact Points system should be revised in consultation with various stakeholders, including community-based organizations, indigenous people's organizations, human rights groups, and unions. National Contact Points should be independent of businesses and departments overseeing businesses, have clearly defined conflict of interest declarations for individuals who serve as NCPs, be adequately staffed with people with relevant expertise and credibility, and be sufficiently resourced.

#### **Aruna Kashyap**

Associate Director  
Business and Human Rights Division  
Human Rights Watch  
[www.hrw.org](http://www.hrw.org)

## **39. Humane Society International**

Dear members of the OECD Working Party on Responsible Business Conduct,

Humane Society International welcomes this public consultation on gaps in the OECD Guidelines for Multinational Enterprises (Guidelines). Humane Society International works around the globe to promote the human-animal bond, rescue and protect dogs and cats, improve farm animal welfare, protect wildlife, promote animal-free testing and research, respond to natural disasters, and confront cruelty to animals. To advance this work, we promote adoption of standards and legislation by international organizations and

<sup>91</sup> Statement on Universal and Equitable Access to Vaccines for the Coronavirus Disease (COVID-19), E/C.12/2020/2 (15 December 2020); OHCHR, "Human Rights and Access to COVID-19 Vaccines," December 17, 2020, [https://www.ohchr.org/Documents/Events/COVID-19\\_AccessVaccines\\_Guidance.pdf](https://www.ohchr.org/Documents/Events/COVID-19_AccessVaccines_Guidance.pdf) (accessed 15 July 2021); OHCHR, "COVID-19: Equitable Vaccine Access for All, Including Migrants, is Crucial, Say UN Special Rapporteurs," January 22, 2021, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26684&LangID=E> (accessed 15 July 2021).

<sup>92</sup> World Trade Organization, "TRIPS and public health," [https://www.wto.org/english/tratop\\_e/trips\\_e/pharmpatent\\_e.htm](https://www.wto.org/english/tratop_e/trips_e/pharmpatent_e.htm) (accessed September 22, 2021).

<sup>93</sup> Human Rights Watch, "Whoever Finds the Vaccine Must Share It": Strengthening Human Rights and Transparency Around Covid-19 Vaccines (New York: Human Rights Watch, October 29, 2020) <https://www.hrw.org/report/2020/10/29/whoeverfinds-vaccine-must-share-it/strengthening-human-rights-and-transparency#9410>

<sup>94</sup> "Open COVID Pledge," <https://opencovidpledge.org/> (accessed September 22, 2021).

<sup>95</sup> OECD Watch, <https://www.oecdwatch.org/news-and-publications/> (accessed September 22, 2021)

governments to promote higher welfare business practices. We also work directly with major multinational enterprises (MNEs) to promote policies that respect animal welfare.

Irresponsible business conduct toward animals is having significant adverse impacts in many sectors including agriculture and food, textiles and clothing, biomedicine, personal care products, industrial chemicals and tourism. In addition to adversely impacting billions of animals that experience stress and pain, such poor conduct is linked to numerous global challenges affecting people and the environment.

Although the Guidelines are the foundation for responsible business conduct (RBC) by corporations, at present, they are silent on the issue of animal welfare despite the prevalence of animals across the sectors, regions and enterprises covered by the Guidelines. In this regard, the Guidelines are falling behind high consumer concern for animal welfare, the legal frameworks of many Guidelines-adherent states, and development of standards, models, and policies by governments, civil society and MNEs themselves. The Guidelines are also out of sync with the OECD-FAO Guidance on Responsible Agricultural Supply Chains, which identifies animal welfare as a supply chain key risk, references international and regional standards, and lists some risk mitigation measures.

The various and convergent laws, international initiatives, and MNE policies addressing animal welfare underscore both that animal welfare is widely accepted as an RBC issue, and that there is need for a single, consolidated guidance on the issue. We believe the Guidelines should provide that guidance, and do so directly, not derivatively because the current language on e.g., environment or consumer interests is not a sufficient basis to address the range of animal welfare issues of concern. As is, the current omission of animal welfare from the standards is undermining the effectiveness of existing sector-specific guidance, contributing to confusion, and hampering coordination of government, investor and business efforts. The current language on environment, or consumer interests, does NOT provide enough basis to address the range of animal welfare issues of concern.

A memorandum of understanding with the World Organization on Animal Health obliges the OECD to cooperate in “economics of animal health... and development and effective implementation of high quality international standards.”<sup>96</sup> This obligation could be met by revising the Guidelines to ensure they set a comprehensive, forward looking standard for RBC on animal welfare.

Following this stocktaking, we urge a revision to incorporate language on animal welfare into the Guidelines that:

- Cross references and builds on existing OECD member country legislation, multistakeholder initiatives, and NGO standards (such as the FARMS Initiative Responsible Minimum Standards);
- Seeks corporate due diligence in identifying, preventing, mitigating and remedying impacts associated with poor animal welfare practices in all global supply chains; and
- Calls upon companies to establish measurable objectives for improved animal welfare practices, and, as appropriate, reduce or eliminate their use of animals and animal products in global supply chains.

We thank you for your consideration and stand ready to support further discussions.

Sincerely,

Meg Roggensack

Senior Director, Global Market Engagement

Humane Society International Farm Animal Welfare and Protection Program

<https://www.hsi.org/>

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<sup>96</sup> Renewal Memorandum of Understanding Between the Organization for Economic Cooperation and Development (OECD) and the World Organization for Animal Health (OIE), Article 2 ( August 31, 2018): <https://www.oie.int/app/uploads/2021/03/oecd-mou-august-2018.pdf>.

## 40. Inclusive Development International

Dear members of the OECD Working Party on Responsible Business Conduct:

Inclusive Development International welcomes this public consultation on gaps in the OECD Guidelines for Multinational Enterprises (Guidelines). We work with communities adversely impacted by business activity and are experienced in using the Guidelines to encourage responsible business conduct (RBC) and secure remedy for harm via the National Contact Point (NCP) complaint mechanisms.

While the Guidelines should be a valuable tool to advance RBC, in the ten years since their last revision the standards have not kept pace with new challenges and expectations for corporate conduct and the NCP complaint mechanisms have largely failed to facilitate access to remedy for impacted communities. In our view, serious gaps<sup>97</sup> in both the Guidelines and the implementation expectations for NCPs are preventing the Guidelines from fulfilling their purpose.

Firstly, **reforms to NCPs are badly needed**: NCPs play a vital role in ensuring the effectiveness of the Guidelines. Unfortunately, the Guidelines' Procedural Guidance sets so low a threshold for the required basic institutional arrangements, promotional activities, and complaint-handling procedures that NCPs vary widely in their effectiveness. Minimum expectations for NCPs should be raised to ensure NCPs have human rights expertise, access to technical expertise on topics raised in complaints, adequate resourcing to facilitate effective dispute resolution and investigate complaints. The Guidance for complaint handling procedures should emphasize accountability for irresponsible business conduct by requiring NCPs to act transparently in complaint processing, including by removing overly restrictive confidentiality requirements that suppress community voices; issue determinations of non-compliance where appropriate; institute consequences for MNEs that refuse to participate in NCP processes or act on findings of non-compliance; and engage in follow-up monitoring.

Further, the following are some of the most crucial shortcomings of the Guidelines:

- **Land rights**: While global standards increasingly call for corporate respect for land and natural resource rights, the Guidelines do not address the topic, failing to guide MNEs on issues such as respecting the right to free prior and informed consent, respecting informal and customary tenure rights including of women and communal owners, and addressing legacies of dispute over contested lands and other natural resources.
- **Marginalised groups, including Indigenous Peoples**: Business impacts are often felt most strongly by marginalised and disadvantaged members of society, but the Guidelines fail to safeguard key rights of these groups. Indigenous Peoples, for instance, are disproportionately impacted by harmful business activities,<sup>98</sup> but the Guidelines do not reference the right to free prior and informed consent and self-determination. The Guidelines do not recognize the particular vulnerability of Indigenous human rights defenders, nor the specialised due diligence needed to consult them and identify, address, and remedy impacts they experience.
- **Climate change and environmental degradation**: MNEs are recognised as responsible for almost a fifth of climate-changing carbon emissions, but the Guidelines do not mention the term "climate change," call upon MNEs to set climate-related emission targets, or avoid and remedy climate-related environmental damage.
- **Scope of application of the Guidelines**: The Guidelines do not clarify the applicability of the standards to non-traditional MNEs such as multistakeholder initiatives (MSIs). This lack of clarity

<sup>97</sup> For insight on other gaps in the Guidelines of concern to civil society, please see OECD Watch's submission to the first draft of the stocktaking report and paper *Get Fit: closing gaps in the Guidelines to make them fit for purpose*.

<sup>98</sup> Indigenous Peoples Indigenous Voices fact sheet. Available at: [https://www.un.org/esa/socdev/unpfii/documents/PFII8\\_FS3.pdf](https://www.un.org/esa/socdev/unpfii/documents/PFII8_FS3.pdf); Amnesty International, Indigenous Peoples. Available at: <https://www.amnesty.org/en/what-we-do/indigenous-peoples/#:~:text=There%20are%20370%20million%20Indigenous,5%25%20of%20the%20world's%20population>



has led to conflicting interpretation by NCPs and a failure to subject important enterprises that engage in business activities to the Guidelines. The gap not only stymies access to remedy for impacted communities, but fails to ensure accountability for impacts caused by industry bodies such as MSIs.

In light of these concerns, we request that you ensure the final stocktaking report reflects and responds to each of the gaps identified by civil society. We also request that the Working Party initiates an inclusive process to revise the Guidelines to ensure they remain fit for purpose.

We thank you for your consideration and stand ready to support future discussions.

Warm regards,

**Natalie Bugalski**

Legal and Policy Director

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

## 41. Lady Lawyer Foundation (LLF)

Bologna

Dear members of the OECD Working Party on Responsible Business Conduct:

Lady Lawyer Foundation welcomes this public consultation on gaps in the OECD Guidelines for Multinational Enterprises (Guidelines). We work with communities adversely impacted by business activity and are experienced in attempting to use the Guidelines to encourage responsible business conduct (RBC) by corporations.

We are a member of OECD Watch.

While the Guidelines should and could be a valuable tool to advance RBC, in the ten years since their last revision, the standards have not kept pace with new challenges and expectations for corporate conduct and the NCP complaint mechanisms have largely failed to facilitate access to remedy for impacted communities. We very much support the position of OECD Watch that serious gaps<sup>99</sup> in both the RBC standards for multinational enterprises and implementation expectations for NCPs are preventing the Guidelines from fulfilling their purposes. In our view, the gaps that need to be addressed most urgently are the following:

- **Reforms to NCPs:** NCPs play a vital role in ensuring the success of the Guidelines, by promoting the Guidelines to businesses and other key stakeholders including civil society, and by facilitating access to remedy via their dispute resolution services. Unfortunately, the Guidelines' Procedural Guidance sets so low a threshold for the required basic institutional arrangements, promotional activities, and complaint-handling procedures of NCPs that they vary widely in their effectiveness. Minimum expectations for NCPs in the Procedural Guidance should be raised to, for example, ensure NCPs have access to expertise on human rights and technical topics covered in complaints, input from stakeholder advisors, adequate resourcing to investigate complaints, a practice of undertaking promotional activities annually towards all stakeholder groups, and complaint handling procedures that ensure participation by NCPs and accountability for irresponsible business conduct, transparency over complaint processing, commitment to issue determinations of non-compliance and seek consequences for MNEs refusing to participate in good faith, and a practice of engaging in follow-up monitoring.

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<sup>99</sup> For insight on other gaps in the Guidelines of concern to civil society, please see OECD Watch's submission to the first draft of the stocktaking report and paper Get Fit: closing gaps in the Guidelines to make them fit for purpose.

- **Marginalised groups:** Business impacts are often felt most strongly – and differently – by the most marginalised and disadvantaged members of society, including women, Indigenous Peoples, people of low caste, children, and others. The Guidelines do not identify key rights of these groups – such as Indigenous Peoples’ right to free, prior, and informed consent (FPIC) over use of their territories – the different ways these people can be adversely impacted by business conduct – for example, not only as employees but as community members – nor the specialised due diligence needed to consult these groups, and identify, address, and remedy impacts to them.
- **Human rights defenders:** In a context of shrinking civil society space, the WPRBC and many OECD states are taking action to advance protections for human rights defenders. Yet the Guidelines include no provisions identifying the corporate nexus with harm to defenders or explaining how MNEs should avoid both actions or omissions that adversely impact defenders. Meanwhile, the Procedural Guidance does not call upon and guide NCPs in adopting procedures to discourage and address threats to complainants, including retaliation for complaint-filing.
- **Corruption:** Despite the close relation between corruption and violation of human rights, the Guidelines currently address only bribery and extortion and do not set expectations regarding all forms of corporate corruption. They do not call for key disclosures – such as of beneficial ownership and country-by-country reporting – that would facilitate identification of corruption, nor highlight the nexus between avoiding corruption and meeting standards across the other chapters in the Guidelines.
- **Animal welfare:** More and more OECD states recognise animal sentience and the link between irresponsible MNE conduct on animals and adverse impacts to animals, people, and the planet. Yet the Guidelines do not provide standards on animal welfare at all, failing to reflect growing legal protections, international standards, and MNE policies on animals, whose well-being is widely understood as tied to public health (seen with COVID-19) and environmental protection. The complete gap in standards on animal welfare has prevented any complaints from being filed – and any remedy achieved – via the NCP complaint system regarding irresponsible business conduct towards animals.

In light of these concerns, we respectfully request that you ensure the final stocktaking report reflects and responds to each of the gaps identified by civil society. We also request that, following conclusion of the stocktaking, the Working Party initiate an inclusive process to revise the Guidelines to ensure they remain fit for purpose.

We thank you for your consideration and stand ready to support future revision discussions.

Sincerely,

Lady Lawyer Foundation

<https://ladylawyervillagepostcards.wordpress.com/>

<https://ladylawyervillagepostcards.wordpress.com/>

## 42. Law Council of Australia

OECD Guidelines for Multinational Enterprises

Thank you for the opportunity to provide a submission to the Organisation for Economic Co-operation and Development (OECD)’s public consultation on the OECD Guidelines for Multinational Enterprises (OECD Guidelines).

The Law Council of Australia (Law Council) notes that this consultation is an opportunity to reflect on the position of the OECD Guidelines as a set of non-binding recommendations from government to business with respect to responsible business conduct. They represent a global framework for such conduct

covering all areas of business responsibility including disclosure, human rights, employment and industrial relations, environment, anti-corruption, competition and taxation. As a member of the OECD, Australia is committed to promoting the use of the OECD Guidelines and their effective implementation.

The Law Council has long supported implementation of the OECD Guidelines, in particular the role of Australia's National Contact Point. At the same time, the Law Council recognises that a number of developments have occurred since the OECD Guidelines were last revised in 2011 which may have a bearing on how they are implemented today.

The Law Council's attached submission responds to select survey questions relating to the challenges of the OECD Guidelines, and opportunities to strengthen the standards so that they remain fit for purpose. The Law Council is grateful for the assistance of its specialist Business and Human Rights Committee, as well as the Victorian Bar Association in the preparation of this submission.

If you would like to discuss this matter further, please do not hesitate to contact me (Jacoba Brasch). Alternatively, please contact Ms Sarah Swan, Policy Lawyer, in the first instance if you require further information or clarification.

Yours sincerely,

Dr Jacoba Brasch QC  
President  
[www.lawcouncil.asn.au](http://www.lawcouncil.asn.au)

Attachment

*Question 2 – Main challenges of the OECD Guidelines and their implementation in advancing Responsible Business Conduct now and in the future*

In circumstances where many jurisdictions have moved towards greater national regulation of responsible business conduct,<sup>100</sup> the lack of encouragement within the OECD Guidelines to the development of such measures raises the risk of them becoming outdated and/or being superseded. The Law Council recommends that Part II on the implementation of the Guidelines be updated to encourage adhering countries to move towards greater national regulation on responsible business conduct as set out in the Guidelines.

*Question 5 – Opportunities for strengthening the OECD's standards*

The Law Council recognises that the OECD Guidelines include guidelines directed to the need for business entities to avoid adverse human rights impacts within their own operations, to seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their operations and to carry out human rights due diligence,<sup>101</sup> as well as to contribute to the effective abolition of child labour and the elimination of all forms of forced or compulsory labour, and to take adequate steps to ensure that forced or compulsory labour does not exist in their operations.<sup>102</sup>

The specific issue of modern slavery<sup>103</sup> cuts across these existing Chapters of the OECD Guidelines, but also raises issues not currently addressed. For example, human trafficking and forced marriage, and the roles that enterprise operations play in contributing to conditions that may encourage this conduct, are not presently addressed in the OECD Guidelines.

<sup>100</sup> See eg OECD, [Draft report for the stocktaking of the OECD Guidelines for Multinational Enterprises](#) (2021) [45]. This is consistent with the UN Guiding Principles (Principle 3).

<sup>101</sup> OECD Guidelines (2011) Ch IV – Human Rights, 31.

<sup>102</sup> Ibid, Ch V – Employment and Industrial Relations, 35.

<sup>103</sup> The definition of 'modern slavery' under Australia's Modern Slavery Act 2018 (Cth) includes a range of conduct. In general terms, it encompasses eight types of serious exploitation: trafficking in persons, slavery, servitude, forced marriage, forced labour, debt bondage, deceptive recruiting for labour or services, and the worst forms of child labour.

The Law Council submits that specific reference should be made in a standalone chapter or in Chapters IV and V to modern slavery and the fact that, given their cross-jurisdictional reach and market power, enterprises have a responsibility to tackle modern slavery in the context of business operations. The Guidelines should state that adhering governments expect:

- a) enterprises to take measures to identify and eliminate modern slavery in their operation and supply chains;
- b) regulatory compliance, due diligence and quality management processes undertaken by enterprises to include express consideration of modern slavery; and
- c) cooperation from enterprises in enforcing these measures with reporting standards and appropriate penalties

### 43. Mercy for Animals

Dear Members of the OECD Working Party on Responsible Business Conduct:

Mercy For Animals welcomes this public consultation on gaps in the *OECD Guidelines for Multinational Enterprises (Guidelines)*. Mercy For Animals is a leading farmed animal protection nonprofit organization operating in Brazil, Canada, Hong Kong, India, Mexico, and the United States. We aim to construct a compassionate food system by reducing suffering and ending the exploitation of animals for food. As part of our work, we engage with domestic and multinational enterprises (MNEs) on their food procurement standards to improve farmed animal welfare in their supply chains.

While the *Guidelines* have promoted responsible business conduct by MNEs, the *Guidelines* do not address the animal welfare crisis in food supply chains. The current *Guidelines*' animal welfare gap neglects the significant growth over the past decade of global consumer, corporate, and policy interests in eliminating the cruelest common practices in animal agriculture. We appreciate that, in the *Draft Report for the Stocktaking of the OECD Guidelines for Multinational Enterprises*, the National Contact Points (NCPs) noted the absence of animal welfare in the *Guidelines* and recognized the increased attention on animal welfare in business conduct, and we wish to echo and expand on this point.

Increasingly, OECD states recognize animal welfare and the link between irresponsible business conduct and adverse impacts on animals, people, and the planet. For example, to promote animal welfare, food safety, and the health and welfare of consumers, many governments have banned the practice of confining hens in small, crowded, barren wire cages. The "End the Cage Age" citizens' initiative in the European Union [prompted the European Commission](#) to propose legislation by the end of 2023 to ban cages for several species of animals, expanding on its [existing battery cage ban](#). Further, many U.S. states ([Massachusetts](#), [California](#), [Michigan](#), [Oregon](#), [Washington](#), [Colorado](#), and [Nevada](#)) have banned the production and sale of eggs from hens raised in cages with upcoming effective dates. While [over 100 MNEs](#) have pledged to ban cages from their egg supply chains globally, some MNEs have yet to meaningfully address the confinement of laying hens internationally despite growing concern about irresponsible business conduct toward animals. The exclusion of animal welfare from the current *Guidelines* prevents animal welfare complaints from being filed—and any remedy achieved—via the NCP complaint system.

In light of these concerns, we respectfully request that you ensure the final stocktaking report responds to the animal welfare gap in the current *Guidelines*, with emphasis on the need for MNEs to establish measurable input-based animal welfare standards for animal products in their supply chains (e.g., banning cages for laying hens). We also request that, after the stocktaking, the Working Party initiate a process inclusive of NGO stakeholders to revise the *Guidelines* to ensure they remain fit for purpose.

We thank you for your consideration and stand ready to support future revision discussions.

Sincerely,

**Zoë Sigle**

Global Corporate Engagement Manager

## 44. MVO Platform

Dear members of the OECD Working Party on Responsible Business Conduct,

The MVO Platform welcomes the public consultation on gaps in the OECD Guidelines for Multinational Enterprises (Guidelines). The MVO Platform is the Dutch civil society coalition on corporate accountability. Our 23 members work with communities adversely impacted by business activity across various sectors, geographies, and victim groups. Many of us have been involved in supporting communities filing complaints to the Dutch and other National Contact Points (NCPs). We also use the Guidelines in direct advocacy with corporations to encourage responsible business conduct (RBC) and in conversation with the Dutch government to advocate for improved RBC policies.

The Guidelines have been an important tool to advance RBC, but in the ten years since their last revision, the standards have not kept pace with new challenges or expectations for corporate conduct. In our view, it is critical that the Working Party and Investment Committee take the opportunity to close gaps<sup>104</sup> in both the RBC standards for corporations and implementation expectations for NCPs in the Guidelines.

One reason for a revision is that the Guidelines standards' fall short of current expectations for RBC on the following themes: **Gender, Caste-based discrimination, Children's rights, Human rights defenders, Climate change and environmental degradation, Land rights, Labour rights, Taxation, Digitalisation, Disclosure, Animal welfare and the Scope of application of the Guidelines, Conflict-affected Areas**. We kindly refer you to our [position paper](#) on the revision of the Guidelines, which provides our analysis of concerning gaps on these topics and refers to the Dutch context. Although we believe all of these themes deserve equal attention in the Guidelines, we would like to refer to the specific commitments the Dutch government has already made on improving the position of animal welfare and land rights in the OECD Guidelines.<sup>105</sup>

A second reason is that the Dutch government and European Commission, among other governmental bodies, are currently working on the development of RBC legislation in which the OECD Guidelines are expected to play a pivotal role. We have recently supported development of a Dutch Bill on mandatory human rights due diligence<sup>106</sup> which has the Guidelines at its heart. It is therefore of the utmost importance that the Guidelines reflect the latest and highest standards on various RBC themes, making clear to all stakeholders what exactly is expected of companies, and improving the grounds on which states can help facilitate access to justice for victims.

The Netherlands, among other countries, has taken steps in recent years to raise specific RBC standards for companies, often at a sectoral or thematic level. We expect the Dutch government to play a lead role

<sup>104</sup> See OECD Watch's paper for gaps of concern to civil society: [Get Fit: closing gaps in the Guidelines to make them fit for purpose](#)

<sup>105</sup> [Dutch Banking Sector Agreement](#), p. 16 and [Letter of the Dutch government](#) from 2018

<sup>106</sup> English translation of the Dutch [Bill for Responsible and Sustainable International Business Conduct](#)

in ensuring that OECD member states establish an updated set of criteria for RBC, by promoting a progressive revision of the Guidelines. In light of these concerns, we respectfully request that you:

1. Ensure the final stocktaking report reflects and responds to the gap topics we have identified in our position paper and each of the gaps identified by other members of civil society, and
2. Initiate an inclusive process, following conclusion of the stocktaking, to revise the Guidelines to ensure they remain fit for purpose.

We thank you for your consideration and stand ready to support future revision discussions.

Sincerely,

G. ten Kate, coordinator MVO Platform

[www.mvoplatform.nl](http://www.mvoplatform.nl)

*ActionAid \* Amnesty International \* Arisa \* Both ENDS \* CNV Internationaal \* Cordaid \* Fairfood \* Fairtrade Netherlands \* Fair Wear Foundation \* FNV \* GoedeWaar.nl \* Hivos \* Milieudefensie \* Oxfam Novib \* PAX \* Save the Children Netherlands \* Schone Kleren Campagne \* Stichting Onderzoek Multinationale Ondernemingen (SOMO) \* Tax Justice NL \* Terre des Hommes \* UNICEF Nederland \* Vereniging van Beleggers voor Duurzame Ontwikkeling (VBDO) \* World Animal Protection*

## 45. NomoGaia

Dear members of the OECD Working Party on Responsible Business Conduct:

NomoGaia is a nonprofit research organization focused on human rights due diligence and respect for the dignity and welfare of rightsholders. Like many of our partner institutions, we work with communities adversely impacted by business activity. We welcome the chance to participate in this consultation on gaps in the OECD Guidelines for Multinational Enterprises (Guidelines).

In the ten years since their last revision, the Guidelines have not kept pace with evolving challenges and expectations for corporations. The General Policies chapter does not currently offer a clear articulation of the six steps of the RBC due diligence process or at any point call for MNEs to prioritise avoidance of adverse human and environmental impacts over profit-making.<sup>107</sup> Additionally, the need for MNCs to **disclose their due diligence**, identify the diversity of **marginalized rightsholders** and evaluate impacts that **aren't specific to physical project footprints** represent the most substantial gaps, in our view.

**Disclosure:** The most effective component of the environmental legislation that mandated ESIA's worldwide in the 1980s and 1990s was the expectation that impact assessments be open to public comment. The complete opacity around the human rights impacts of MNEs threatens to undermine the RBC movement writ large. Against a rising tide of transparency expectations, the OECD Guidelines' Disclosure chapter is outdated. RBC due diligence (both process and outcomes) need to be reported to rightsholders. Absent this change, no accountability is possible, even with a modified NCP system.

**Marginalised groups:** Business impacts are often felt most strongly – and unpredictably – by the most marginalised members of society, including women, Indigenous Peoples, people of low caste, children, gender/sexual minorities and others. The Guidelines do not identify key rights of these groups (such as Indigenous Peoples' rights); the different ways these people can be adversely impacted by business conduct (not only as employees, contractors or subcontractors, but as community members or traditional

<sup>107</sup> This letter draws on analysis from the OECD Watch network and its [submission to the first draft of the stocktaking report](#) and paper [Get Fit: closing gaps in the Guidelines to make them fit for purpose](#).



land user); nor the specialised due diligence needed to consult these groups, and identify, address, and remedy impacts to them.

**IT impacts on rights (Digitalisation):** The digitalisation of the global economy is altering and exacerbating the potential for all MNEs – not just technology companies – to adversely impact human rights, jeopardize democratic values, and threaten the environment. The gap leaves MNEs without guidance on the importance of, and means to, understanding their impacts in the digital sphere.

It is NomoGaia's hope that the OECD's final stocktaking responds to these gaps and that the Working Party initiates an inclusive process to revise the Guidelines to ensure they remain fit for purpose.

We thank you for your consideration and stand ready to support future revision discussions.

Sincerely,

Kendyl Salcito, PhD  
Executive Director, NomoGaia

## 46. Norges Bank Investment Management

### Stocktaking exercise on the OECD Guidelines for Multinational Enterprises

Norges Bank Investment Management ("NBIM") welcomes the Stocktaking of the OECD Guidelines for Multinational Enterprises ("the Guidelines").

NBIM is responsible for investing the Norwegian Government Pension Fund Global As a longterm investor, we consider our returns over time to be dependent on sustainable development in economic, environmental and social terms.

We support the OECD Guidelines and the National Contact Point ("NCP") mechanism. The Guidelines are referenced in our management mandate, they form part of our responsible investment policy, and our expectations of companies on sustainability topics are based on the Guidelines. In our view, the Guidelines and associated Guidance have contributed to levelling the playing field by providing a global standard for responsible business conduct.

The report highlights new trends since the last update of the Guidelines which are not necessarily reflected in the current standards. For instance, we agree that there could be further clarity on responsibilities across complex corporate structures and value chains and see the benefits of further guidance from the OECD. We also note the significant developments in sustainability reporting and lack of uniform metrics to assess company performance on responsible business conduct.

With regards the NCP mechanism - as raised by several stakeholders - it is important that the NCPs apply the requirements in the Guidelines in a uniform manner when considering further examination of a specific instance. The requirements have been set by OECD Member States and should prevail over - and not be diluted by - subsequent interpretations. They are supposed to constitute a real threshold, with an examination of whether there are indications of a norm violation, to prevent abuse of process. A decision to open a case can have significant consequences for the dependent party. An important requirement is that there must be an actual ("bona fide") issue, and the issue must be both material and substantiated. We believe additional attention from the OECD on consistent application of these requirements in situations where an entity may be directly linked to a potential norm violation through a business relationship, but not itself causing or contributing to a potential violation, would be beneficial.

Another core criterion in the Guidelines is that the NCPs shall promote functional equivalence to prevent the problem of "forum/NCP-shopping". The Guidelines and adherent procedural system were not set up with the purpose of targeting multinational enterprises regarded as "best in class" with specific instances and by correlation getting the NCPs considered as the most active to accept a case. Rather, specific



instances should be reserved for issues that constitute risks of breaches of the Guidelines. The promotion of good practices — in itself an important objective — should be pursued through other means. We would welcome further efforts by the OECD to strengthen the functional equivalence of NCPs and preserve the legitimacy of the NCP mechanism.

Yours faithfully,

Carine Smith Ihenacho

Séverine Neervoort

Chief Corporate Governance Officer

Senior Analyst, Corporate Governance

Norges Bank Investment Management is a part of Norges Bank — The Central Bank of Norway

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

## 47. Norwegian forum for development and environment

Dear members of the OECD Working Party on Responsible Business Conduct:

The Norwegian Forum for Development and Environment ([ForUM](#)) appreciates the opportunity to provide comments on the first draft of the OECD's stocktaking report on challenges and successes of the OECD Guidelines for Multinational Enterprises (Guidelines).

ForUM is a network of [53 Norwegian organizations](#) working on issues related to development, environment, peace, and human rights. Our vision is a democratic and peaceful world based on fair distribution, solidarity, human rights, and sustainability. Many of our member organizations assist communities and workers whose lives and rights have been adversely impacted by business activities in different sectors and places around the world. Together with our members, we expose human rights and environmental harm communities have suffered, support them in their efforts to seek remedy, and work to strengthen global and national tools and mechanisms available to ensure accountability for irresponsible business conduct.

While one of our core goals is the enactment of binding regulation for corporate accountability, in the short term, we also seek adoption by states of the highest normative standards on responsible business conduct (RBC). We see these soft law standards as critical both to supporting access to remedy for victims relying on them, and paving the way to stronger legislation on accountability moving forward. Additionally, they constitute a key benchmark for business' efforts to establish and maintain a business practice that supports and promotes RBC.

With this in mind, we are deeply concerned by serious gaps in the Guidelines' RBC standards and implementation expectations for National Contact Points (NCPs). We support [OECD Watch](#)'s position that these gaps are preventing the Guidelines from fulfilling their purposes.

We consider the following gaps the most pressing:

Climate change: Climate change is the greatest challenge of our time, and multinational enterprises (MNEs) have a leading role in causing it. Thus, they have a responsibility as well as the potential to be the key to actors in solving the climate crisis. By conservative analyses, MNEs are considered responsible for almost a fifth of climate-changing carbon emissions,<sup>108</sup> while by others, just 100 companies have been responsible for 71% of emissions since 1988.<sup>109</sup> The world has already agreed that it must address this

<sup>108</sup> Zhang, Z., Guan, D., Wang, R. *et al.* (2020), Embodied carbon emissions in the supply chains of multinational enterprises. *Nature Climate Change*, **10**, 1096–1101.

<sup>109</sup> Tess Riley, The Guardian, "Just 100 companies responsible for 71% of global emissions, study says," 10 July 2017, available at: <https://www.theguardian.com/sustainable-business/2017/jul/10/100-fossil-fuel-companies-investors-responsible-71-global-emissions-cdp-study-climate-change>.

challenge, and to do so, states must call upon MNEs to fundamentally change how their business models impact the planet. Yet the Guidelines do not even mention the term “climate change” at all, let alone call upon MNEs to set and achieve climate-related emission targets, and avoid and remedy activities that will lead to climate change as well as other environmental problems including deforestation, pollution, and biodiversity loss. OECD states must show leadership in closing this gap, clarifying for MNEs their responsibility to help tackle a problem they have significantly helped cause.

**Gender:** Despite long awareness of disparities between men and women’s achievement of human rights, women around the world continue to suffer lower conditions of health, education, financial independence, and well-being. MNEs play a large part in this disparity both by actively causing, or failing to prevent, harms to women from their business activities. Women, girls, and LGBTQ+ people experience gender-specific impacts from business activity whether they are impacted as workers, community members, or human rights defenders. Unfortunately, the Guidelines do not mention the term “gender,” comprehensively highlight how business activity may affect women and LGBTQ+ people differently, nor advise businesses in understanding how individuals with intersecting identity traits subject to discrimination (e.g., gender, race, caste, age, disability, etc.) may suffer impacts differently because of those overlapping vulnerabilities. We believe this gap must be closed through inclusion of language in the Guidelines discussing business impacts to women and other marginalized and disadvantaged groups and calling for tailored due diligence to identify, address, and remedy impacts women and other marginalized groups experience. We also believe the Procedural Guidance should be updated to set new expectations for NCPs both to educate companies about addressing their gendered impacts and minimize gender-specific barriers to remedy in their own outreach and procedures. The 2021 FAO OECD guidance on Gender in agricultural supply chains can be used as inspiration<sup>110</sup>

**Taxation:** In 2020, the Corporate Tax Justice Network estimated that corporate tax avoidance causes a global loss of \$245 billion annually as MNEs siphon off approximately \$1.38 trillion from profit-yielding countries to tax havens to avoid tax payments.<sup>111</sup> The OECD itself has taken a leading role in addressing this challenge, developing the progressive [BEPS project](#) to encourage states to adopt policies and practices to end corporate tax avoidance. Against that context, it is unacceptable that the OECD Guidelines do not even use the term “tax avoidance,” nor discourage MNEs’ use of a wide range of financial methods to avoid taxation. The Guideline should be strengthened to close this gap, clearly calling upon MNEs to stop avoiding taxes and additionally disclose the information – including on profits earned and taxes paid, corporate structure, and beneficial ownership – necessary to help governments and civil society identify and prevent tax avoidance moving forward.

**Disclosure:** ESG reporting, sustainability reporting, or integrated reporting are on the rise globally as countries increasingly require MNEs to disclose not merely their financial but their non-financial data to support corporate contribution to the UN Sustainable Development Goals and public monitoring of outcomes. Against this growing tide, the OECD Guidelines’ Disclosure chapter is seriously outdated, setting standards not much stronger than the minimum legal requirements on financial reporting. The Guidelines chapter on disclosure states that companies merely “are encouraged to,” rather than “should,” disclose on matters such as “social, environmental and risk reporting.”<sup>112</sup> This language is insufficient and seriously out of synch with the OECD’s own newer (2011) expectations around disclosure of corporate due diligence activities. Disclosure is essential to ensure accountability to the public and enable government and civil society to monitor MNEs’ RBC performance. The Guidelines should be revised to close this gap.

<sup>110</sup> <https://mneguidelines.oecd.org/integrating-a-gender-perspective-into-supply-chain-due-diligence.htm>

<sup>111</sup> Tax Justice Network, “\$427bn lost to tax havens every year; landmark study reveals countries’ losses and worst offenders,” 20 November 2020, available at: <https://www.taxjustice.net/2020/11/20/427bn-lost-to-tax-havens-every-year-landmark-study-reveals-countries-losses-and-worst-offenders/>.

<sup>112</sup> OECD Guidelines, Chapter II (Disclosure), commentary 33.

Labour rights: As has been thoroughly recorded in the [ITUC Human Rights Index 2021](#), unionization and workers' rights are under great pressure all over the world. This is a worrying development, and it is an area where the Guidelines fail to adequately set important labour rights standards for MNEs. Such standards include ensuring responsible exit strategies, avoiding business models that effectively hamper the payment of a living wage for workers in brands' supply chains and intentionally escape responsibility for worker well-being, and addressing widespread discrimination and sexual harassment within supply chains. We believe this area of the Guidelines must be revised in order to improve important business standards on this issue.

Human rights defenders: In a context of shrinking space for civil society, the OECD Working Party on Responsible Business Conduct and many OECD states are taking action to advance protections for human rights defenders. The Guidelines inadequately address the identification of human rights defenders in relation to MNEs, or how they should prevent actions or omissions that negatively impact defenders. The Procedural Guidance should call upon and guide NCPs in adopting procedures to discourage and address threats to complainants, including retaliation for complaint-filing.

Finally, we would like to address an issue concerning the structure and function of the NCPs themselves. There is a worrying lack of coherency in the practice and functions of the different NCPs, ranging from how they are funded to how well they are structured to ensure independence and impartiality. These gaps weaken the credibility of the NCPs, and a revision must therefore also include issues related to the structure and organization of the NCPs.

In light of these concerns, we respectfully urge the Working Party to:

1. Identify and discuss these gaps in the stocktaking report, and
2. Open an inclusive revision of the Guidelines, to close these and other gaps identified by civil society, following conclusion of the stocktaking process.

We thank you for your consideration and look forward to engaging further on next steps.

Sincerely,

The Norwegian forum for development and environment

Contact: Diego Alexander Foss

Fagrådgiver Ansvarlig næringsliv og investeringer

Advisor Responsible business and Investments

Forum for utvikling og miljø

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

## 48. Oxfam International

Dear Sir or Madam,

**Re: Oxfam submission on the OECD Guidelines for MNEs – SECOND DRAFT**

Dear members of the OECD Working Party on Responsible Business Conduct,

Oxfam welcomes this public consultation on gaps in the OECD Guidelines for Multinational Enterprises (Guidelines) and appreciates the opportunity to share our input.

Oxfam is a global movement fighting to ensure a just and sustainable world in which people and the planet are at the center of our economy and in which governance systems allow for those in power to be held to account. We tackle not just the symptoms of poverty, inequality and injustice, but the underlying systems that perpetuate these conditions. We seek genuine, durable change.

For decades, Oxfam has worked to support, encourage and hold the private sector accountable for its impacts on our societies. Our private sector work varies from collaboration initiatives with business leaders to public campaigns that expose the true sustainability performance of companies including financial institutions. In parallel, we challenge the economic and governance systems that allow or enable businesses to escape responsibility for adverse impacts on human rights and the environment. We strongly advocate for national, regional and international binding regulation on corporate human rights and environmental due diligence.

Systemic change begins with changed norms, and in that light, we consider the OECD Guidelines a critical tool in advancing responsible business conduct (RBC) and tackling inequality. The Guidelines remain the most comprehensive and best-known standard on good business conduct, and we use the Guidelines in our engagement with businesses and governments alike to urge them to adopt stronger policies and practices on corporate respect for human rights and the environment.

Unfortunately, however, the Guidelines' standards have not kept pace with new challenges and expectations for corporate conduct that have developed in the ten years since the last revision. Serious gaps<sup>113</sup> in the RBC standards for multinational enterprises (MNEs) are preventing the Guidelines from fulfilling their purpose of consolidating and advancing the most up-to-date standards on RBC.

We do not want to lose this vital tool in advancing corporate understanding of, and government commitment to, RBC. For this reason we urge you to identify – and undertake a revision to close – several concerning gaps in the Guidelines. We have outlined these gaps in annex to this letter.

Time is up for corporations that fail to respect human rights and the environment and promote equality around the world. The OECD should not miss this opportunity to make that clearer in the text of the Guidelines. We urge that the OECD:

1. Ensure the final stocktaking report reflects and responds to the gaps identified by Oxfam and other civil society organisation through this public consultation.
2. Undertake, following conclusion of the stocktaking, an inclusive process to revise the Guidelines to ensure they remain fit for purpose.

We thank you for your consideration and stand ready to support future revision discussions.

Sincerely,

**Steve Price-Thomas Director of Advocacy, Campaigns and Engagement Oxfam International**  
on behalf of the Oxfam Confederation

#### **Oxfam submission on the OECD Guidelines for MNEs – SECOND DRAFT**

Oxfam has identified the following shortcomings and gaps in the draft OECD Guidelines for MNEs :

**Marginalised groups:** Business impacts are often felt differently and more seriously by the most marginalised and disadvantaged members of society. Failure by business to understand and address this reality helps lead to inequality that is worst for vulnerable populations. **Women and LGBTQ+** individuals typically suffer gender-specific impacts from business activity whether they are impacted as workers, community members, or human rights defenders. Unfortunately, the Guidelines do not comprehensively highlight how impacts may affect people differently on account of their gender, nor advise businesses in understanding how women (and others) with intersecting identity traits subject to discrimination (e.g. race, caste, age, disability, etc.) may suffer impacts differently. The Guidelines also do not call on National Contact Points (NCP) to address the barriers women face to accessing remedy via the NCP complaint

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<sup>113</sup> This submission draws from analysis on gaps in the Guidelines of concern to civil society and consolidated by OECD Watch. For more information on the gaps below and other gaps, please see OECD Watch's [submission to the first draft of the stocktaking report](#) and report [Get Fit: closing gaps in the Guidelines to make them fit for purpose](#).

mechanism. **Children** are also among the most vulnerable members of society and can be disproportionately impacted by MNE activities. While the Guidelines call on MNEs to contribute to abolishing child labour, they do not give meaningful guidance on how child labour may occur in MNE value chains and how MNEs should address this by changing practices that inadvertently cause children to be forced to work. The Guidelines also do not emphasize how children may be uniquely impacted as community members and consumers, not merely as workers. The Guidelines should clarify the particular risks marginalised groups face and call for MNEs to undertake specialised due diligence to consult these stakeholders and identify, address, and remedy impacts to them.

**Meaningful engagement with stakeholders:** The Guidelines fall short in defining what is expected from companies in terms of stakeholder engagement. While they mention that engagement should be interactive and is useful during a project's planning and decision-making stages, they do not emphasize the importance of a continuous, iterative engagement process throughout all steps of the due diligence cycle, through the completion of the project and provision (wherever needed) of remedy. The Guidelines do not explain that companies must engage a variety of stakeholders, including all affected rights holders, with special attention to vulnerable groups such as women, children, and the disabled. The Guidelines also do not clarify that engagement can only be considered meaningful if participants have access to adequate information enabling their informed participation. Some guidance on these matters has been developed in the OECD's sector and multisector due diligence guidance. The Guidelines must now be updated to ensure they (the legal instrument itself) reflect the cornerstone concepts of stakeholder engagement.

**Land rights:** Land security underpins fulfilment of numerous human rights, counteracts poverty and inequality, and helps forestall climate change. While global standards and corporate policies increasingly call for corporate respect for land rights, the OECD Guidelines do not address the topic.

This omission results in a grave lack of guidance for MNEs on issues such as assuring the right of Indigenous people and other marginalized groups to free prior and informed consent (FPIC), respecting non-documented or informal tenure rights including of women and communal owners, addressing legacies of dispute over contested lands, and respecting land rights even where states fail their own duty to protect land rights. The omission on land rights has also impeded the consistency and clarity with which NCPs have handled complaints over land rights so far, as exemplified by the analysis of two cases on FPIC in the introduction to OECD Watch's 2021 *Get Fit* report. The Guidelines should highlight companies' respect of land rights as a key means enabling their respect of other human rights, and identify consultation and consent as vital practices to ensure respect of human rights for all individuals.

**Human rights defenders/civic space:** Between 2015 and 2019, the UN Office of the High

Commissioner for Human Rights documented 1,323 killings of human rights defenders,<sup>114</sup> while NGOs have reported well-over 3,000 attacks – including killings as well as threats, lawsuits, arrests, and detentions – since 2015.<sup>115</sup> Meanwhile, Frontline Defenders reported that in 2020, 331 defenders in 25 countries were killed for their work, 69% defending land, environmental or indigenous peoples' rights often in the context of extractive industries and state-aligned mega-projects.<sup>116</sup> Against this backdrop, the WPRBC and OECD is taking action to advance protection for human rights defenders. In recognition of the link to irresponsible business activity and the threat the issue poses to good governance and inclusive growth, the OECD launched its Observatory of Civic Space in 2019. The OECD Development Assistance Committee (DAC) also adopted in July 2021 a recommendation on creating an enabling environment for

<sup>114</sup> United Nations Human Rights Council, *Final warning: death threats and killings of human rights defenders: Report of the Special Rapporteur on the situation of human rights defenders*, Mary Lawlor, A/HRC/46/35, para. 41, available at: <https://undocs.org/en/A/HRC/46/35>.

<sup>115</sup> Business & Human Rights Resource Centre, *Human Rights Defenders and Civic Freedoms Programme*, Portal of attacks against human rights defenders counting 3386 attacks as of 24 August 2021, available at: <https://www.businesshumanrights.org/en/from-us/human-rights-defenders-database/>.

<sup>116</sup> Frontline Defenders, *Global Analysis 2020*, available at [https://www.frontlinedefenders.org/sites/default/files/fld\\_global\\_analysis\\_2020.pdf](https://www.frontlinedefenders.org/sites/default/files/fld_global_analysis_2020.pdf).



civil society,<sup>117</sup> which recommends that DAC members encourage the private sector to respect, protect and promote open civic space and social dialogue as a prerequisite for ensuring a conducive business environment. To help fight this growing challenge and maintain policy coherence across OECD initiatives and instruments, the Guidelines should be revised to identify the nexus between business activity and harm to defenders. The standards should explain how MNEs should avoid both actions and inactions that adversely impact human rights defenders or the civic space that enables their work. Meanwhile, the Procedural Guidance should call upon and guide NCPs in adopting procedures to discourage and address threats to complainants, including retaliation for complaint-filing. Revision to the Guidelines on this issue would go a long way in confirming the OECD's commitment to rejecting harm to defenders, setting an example for other multilateral institutions, states, and companies to follow.

**Climate change:** Countering runaway climate change is broadly acknowledged as the most vital need of our time. By very conservative estimates, MNEs are recognised as responsible for approximately a fifth of climate-changing carbon emissions,<sup>118</sup> while other estimates suggest that just 100 companies have been responsible for 71% of global emissions.<sup>119</sup> Despite the vital importance of the issue, the Guidelines do not mention the term “climate change,” do not call upon MNEs to set and achieve climate-related emission targets, nor demand that MNEs avoid and remedy environmental impacts and provide support to people living in developing countries to adapt. This total omission risks making the OECD guidelines irrelevant. Revising the Guidelines to include rapid emission reductions as well as adaptation action by business, in ways which protect workers and impacted communities would give stakeholders and impacted people concrete ways in which they can hold companies to task for their impact on climate change.

**Labour and small-scale producers rights:** As inequality rises globally, unionisation and workers rights are under threat. Yet the Guidelines fail to set adequate labour rights standards for MNEs, such as on addressing deep-rooted exploitation, discrimination and sexual harassment within supply chains. The Guidelines also come short of discouraging business models that fail to deliver living wages for workers and living incomes for small-scale producers. The Guidelines must be updated to ensure MNEs take responsibility for worker well-being, respect the rights of workers and small-scale producers, and ensure responsible disengagement when conflict or global disasters such as pandemics make continued business activity untenable. Revisions to the Guidelines are needed to publicly reject the business models that enable companies to profit at the expense of workers' and small-scale producer's rights, preventing inclusive growth and perpetuating inequality globally.

**Taxation:** According to 2020 data, corporate tax avoidance causes an estimated global loss of \$245 billion annually as MNEs shift about \$1.38 trillion from profit-yielding countries to tax havens allowing them to avoid tax payments.<sup>120</sup> Fair tax payments are essential to support public budgets providing essential services such as education, health, and infrastructure to societies. In recent years, there has been an increasing recognition that MNEs have a responsibility to pay a fair share of tax and to be transparent and accountable on their tax practices, not only to tax administrations, but to investors and the wider public. This responsibility has been acknowledged by an increasing number of progressive companies<sup>121</sup>, the

<sup>117</sup> OECD, DAC Recommendation on Enabling Civil Society in Development Co-operation and Humanitarian Assistance, adopted 6 July 2021, available at: <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-5021>.

<sup>118</sup> Zhang, Z., Guan, D., Wang, R. et al. (2020), Embodied carbon emissions in the supply chains of multinational enterprises. *Nature Climate Change*, 10, 1096–1101.

<sup>119</sup> Tess Riley, The Guardian, “Just 100 companies responsible for 71% of global emissions, study says,” 10 July 2017, available at: <https://www.theguardian.com/sustainable-business/2017/jul/10/100-fossil-fuel-companies-investors-responsible-71-globalemissions-cdp-study-climate-change>.

<sup>120</sup> Tax Justice Network, “\$427bn lost to tax havens every year; landmark study reveals countries' losses and worst offenders,” 20 November 2020, available at: <https://www.taxjustice.net/2020/11/20/427bn-lost-to-tax-havens-every-year-landmarkstudy-reveals-countries-losses-and-worst-offenders/>.

<sup>121</sup> See for example B Team, “A new bar for responsible tax – The B Team responsible tax principles”, available at: <https://bteam.org/assets/reports/A-New-Bar-for-Responsible-Tax.pdf>

World Economic Forum<sup>122</sup> and investors.<sup>123</sup> This understanding of responsible tax conduct goes well beyond the current Guidelines, which focus on legal tax compliance (to both letter and the spirit of the law) and cooperation with tax administrations, while being silent on the need for MNEs to be transparent and accountable to the public and investors on their tax affairs in order to address the trust deficit brought on by numerous corporate tax scandals. We believe that the new understanding on responsible tax conduct requires MNEs to, at a minimum, publish a comprehensive country by country report for all countries in which they have operations<sup>124</sup> and firmly commit not to engage in aggressive tax planning. It is time for the Guidelines to call on

MNEs to commit to public transparency around their tax affairs and to avoid in engaging in aggressive tax planning behavior.

**Disclosure:** As part of their human rights due diligence responsibility, companies must communicate at every step of the due diligence process, including by disclosing all impacts their activities have had or might have on people and the environment, and the company's steps to address them. Yet the Guidelines chapter on disclosure states that companies merely "are encouraged to," rather than "should," disclose on matters such as "social, environmental and risk reporting."<sup>125</sup> This outdated language is insufficient and seriously out of synch with the OECD's own newer expectations around disclosure of corporate due diligence activities. The Guidelines should be revised to clarify what, when, and how companies are expected to disclose, including how they are engaging with rightsholders and on which matters, and gender specific data including gender pay gaps, measures taken to ensure gender equality within operations, etc.

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Head of Private Sector Engagement  
Oxfam International  
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## 49. Oyu Tolgoi Watch

Dear members of the OECD Working Party on Responsible Business Conduct:

Oyu Tolgoi Watch NGO (Mongolia) welcomes this public consultation on gaps in the OECD Guidelines for Multinational Enterprises (Guidelines). We work with communities – particularly nomadic pastoral communities – adversely impacted by mining and infrastructure business activity and are experienced in attempting to use the Guidelines to demand responsible business conduct (RBC) by corporations, advocate for improved RBC policies by governments, and secure remedy for harm through the National Contact Point (NCP) complaint mechanisms.

We fully support the gaps identified by the OECD Watch report which concludes that while the Guideline should be a valuable tool to advance RBC, in the ten years since their last revision, the standards have not kept pace with new challenges and expectations for corporate conduct and the NCP complaint mechanisms have largely failed to facilitate access to remedy for impacted communities. In our view,

<sup>122</sup> World Economic Forum, "Davos Manifesto 2020: The Universal Purpose of a Company in the Fourth Industrial Revolution", 2 December 2019, available at: <https://www.weforum.org/agenda/2019/12/davos-manifesto-2020-the-universal-purpose-of-a-company-in-the-fourth-industrial-revolution/>

<sup>123</sup> Principles for Responsible Investment, "Tax avoidance", available at: <https://www.unpri.org/sustainabilityissues/environmental-social-and-governance-issues/governance-issues/tax-avoidance>

<sup>124</sup> As detailed in the Global Reporting Initiative, "Topic Standard Project for Tax – A new global standard for public reporting on tax", available at: <https://www.globalreporting.org/standards/standards-development/topic-standard-project-for-tax/>

<sup>125</sup> OECD Guidelines, Chapter II (Disclosure), commentary 33.



serious gaps<sup>126</sup> in both the RBC standards for multinational enterprises (MNEs) and implementation expectations for NCPs are preventing the Guidelines from fulfilling their purposes. Our analysis below draws heavily from that of OECD Watch. In part b, we note where gaps in the standards for MNEs adversely impact nomadic pastoral communities in particular.

**a. First concern: insufficient guidance in the Procedural Guidance to help states establish effective NCPs that are functionally equivalent to each other**

Our experience with the use of the NCPs mechanism fed into the conclusion that first and foremost concerned that the Procedural Guidance does not give states the foundation they need to establish NCPs equipped to implement the Guidelines effectively and in a manner equivalent to each other.

NCPs are the lynchpin of the OECD Guidelines system. The NCPs are expected to function according to core criteria of visibility, accessibility, transparency, and accountability as well as with complaint handling principles of impartiality, predictability, equitability, and compatibility with the Guidelines. At present, the Procedural Guidance allows states to set up their NCP in any way they choose, so long as it operates in a manner “functionally equivalent” to the other NCPs.

OECD Watch believes the shortcomings in NCP performance originate in the lack of adequate minimum expectations provided in the Procedural Guidance for states’ establishment of NCPs: *Institutional Arrangements*: The Procedural Guidance does not set minimum expectations for the resourcing of NCPs, nor adequate guidance on locating the NCP within government and choosing an organisational structure that helps promote NCPs’ independence and expertise in handling the broad range of issues common in complaints. The Procedural Guidance also does not set minimum requirements for ensuring stakeholder (including civil society) involvement in NCP activities including dispute resolution, ideally in the NCP structure itself or through an oversight or advisory body.

The Procedural Guidance does not clarify how states should *avoid conflicts of interest arising in relation to their NCPs*’ dispute resolution activities. This gap allows NCPs unlimited discrepancy in applying already unwieldy admissibility criteria.

*Implementation in Specific Instances*: The Procedural Guidance does not set adequate threshold expectations for the complaint-handling procedures of NCPs to help promote agreements in disputes and minimize variation in complaint proceedings across NCPs. The admissibility criteria in the Guidance are unwieldy and difficult for NCPs to apply in a manner that facilitates access to dispute resolution; as a result, accessibility of NCPs’ good offices remains far too low. The Guidance does not clarify how NCPs can maintain transparency in a practical way that helps protect persons using the system while righting the power imbalance between MNEs and civil society notifiers. *The Procedural Guidance does not encourage determinations on MNE adherence and non-adherence to the Guidelines* as a means to teach MNEs what adherence entails, nor suggest consequences for MNEs that refuse to participate in good faith in the specific instance process as a means to encourage MNE engagement.

As a result, these gaps in the Procedural Guidance help generate an overall low rate of acceptance of complaints, an even lower rate of agreement in disputes, and serious disparities in the actual and perceived effectiveness of various NCPs that encourage notifiers to prioritize complaints based on NCP performance.

**b. Second concern incomplete or absent standards for MNEs across a range of issues**

The Guidelines do not reflect the changes in standards that have occurred in the past 10 years since last revision which threaten to make the Guidelines obsolete altogether. Several of the gaps fall in areas where significant developments have been made in international norms, public opinion, and global policy-making over the past ten years. The Guidelines are deeply out of synch with developments on the following issues:

<sup>126</sup> This letter draws on analysis from the OECD Watch network. For insight on other gaps in the Guidelines of concern to civil society, please see OECD Watch’s [submission to the first draft of the stocktaking report](#) and paper [Get Fit: closing gaps in the Guidelines to make them fit for purpose](#).

**Marginalised groups:** The Guidelines do not identify all key rights of groups – such as Indigenous Peoples’ right to free, prior, and informed consent (FPIC) over use of their territories – nor the different ways these people can be adversely impacted by business conduct – for example, *nomadic pastoralists* – nor the specialized due diligence needed to consult these groups and identify and address impacts to them.

**Human rights defenders:** In a context of shrinking civil society space, the WPRBC and many OECD states are taking action to advance protections for civil rights and human rights defenders. Yet the Guidelines include no provisions explaining how MNEs should avoid impacts to defenders – including by causing impacts directly or condoning impacts by a business partner or state – and respect and facilitate defenders’ right to advocate and right to remedy.

**Climate change and environmental degradation:** Environmental destruction and climate change have caused devastating effects including biodiversity loss, with a recent report finding that the global wildlife population has been reduced by two-thirds over the last 50 years. MNEs are recognised as responsible for almost a fifth of climate-changing carbon emissions, particularly those operating in the pollution-intensive agriculture, transport, extractive, manufacturing and apparel sectors. The Guidelines fail even mention the term “climate change,” nor clearly call upon MNEs to set and achieve emission targets and avoid environmental impacts including deforestation, pollution, and biodiversity loss.

**Land rights:** Land, *especially pasture security for nomadic communities* underpins numerous human rights and helps forestall climate change. The OECD Guidelines have little on land, failing to guide MNEs in assuring the right to FPIC, *respecting non-documented tenure rights of nomadic pastoralists, women and communal owners*, and respecting land rights even where states fail their own duty to protect land rights.

**Taxation:** The Guidelines are not aligned with the OECD: they do not list tax avoidance let alone discourage it, nor call for the disclosures needed to identify and prevent it, regardless of the fact that OECD is actively engaged in tax reform<sup>127</sup>. According to 2020 data, corporate tax avoidance is estimated to cause a global loss of \$245 billion each year, while MNEs annually shift a full \$1.38 trillion from the countries in which they make their profits to tax havens to avoid tax payments. Broad public consensus now holds that corporate tax avoidance should stop, and international and regional organizations including the OECD are developing innovative new tax policies to tackle the problem. ***Please see Mongolia Oyu Tolgoi/Rio Tinto copper-gold-silver mine specific taxation issues from our joint report with SOMO.***<sup>128</sup>

**Disclosure:** The OECD Guidelines’ Disclosure chapter is seriously outdated, setting standards not much stronger than the minimum legal requirements on financial reporting, and inadequately synchronizing with the Guidelines’ own due diligence communication expectations added in 2011. That should at least require MNEs to disclose not merely their financial but their nonfinancial data to support efficient market functioning, corporate contribution to the UN Sustainable Development Goals, and public monitoring of outcomes.

**Corruption:** The Guidelines currently address only bribery and extortion and do not set expectations regarding all forms of corporate corruption, nor highlight the relationship between avoiding corruption and meeting standards across the other chapters in the Guidelines.

**Scope of application of the Guidelines:** Although the WPRBC is focused on policy coherence, the Guidelines do not adequately clarify the applicability of the standards and complaint mechanism to nontraditional MNEs such as holding and letterbox companies, multistakeholder initiatives, and states operating as economic actors. Lack of clarity on the scope of covered enterprises has led to conflicting interpretation by NCPs in complaints, and frequent rejection of complaints against non-traditional MNEs.

<sup>127</sup> <https://www.oecd.org/ctp/treaties/model-tax-convention-on-income-and-on-capital-condensed-version-20745419.htm>

<sup>128</sup> <https://www.somo.nl/riotinto-taxschemes-mongolia/>

The gap not only stymies access to remedy for impacted communities but fails to ensure a good example by states and a level playing field amongst types of enterprises.

**General policies:** The General policies chapter of the Guidelines does not set a proper tone for the overall document by highlighting the full range of standards and expectations addressed in the subsequent chapters. For example, several key topics – such as respect for the rights of human rights defenders, the special care needed to identify and address risks to marginalized groups, the role of disclosure in helping facilitate and measure RBC, the nexus between paying full and fair taxes and avoiding corruption and fulfilling other human rights and environmental expectations, and the way in which digitalization can exacerbate corporate impacts – should all be highlighted. The chapter should call for MNEs to prioritise avoidance of adverse human and environmental impacts over profit-making and avoid business models and *technologies* that hinder MNEs from fulfilling their responsibility to respect human rights. The chapter should also more clearly outline the six steps of the RBC due diligence process.

In light of these concerns, we respectfully request that you ensure the final stocktaking report reflects and responds to each of the gaps identified by civil society. We also request that, following conclusion of the stocktaking, the Working Party initiates an inclusive process to revise the Guidelines to ensure they remain fit for purpose.

We thank you for your consideration and stand ready to support future revision discussions.

Sincerely,

SUKHGEREL Dugersuren  
Chair  
OT Watch

## 50. Public Eye

Zürich

### **Re: Online public consultation - Stocktaking exercise on the OECD Guidelines for Multinational Enterprises**

Dear OECD Secretary-General Mathias Cormann,

Dear members of the OECD Working Party on Responsible Business Conduct,

Public Eye welcomes this public consultation on gaps in the OECD Guidelines for Multinational Enterprises (hereinafter 'Guidelines'). We take the opportunity of your stocktaking exercise on the

Guidelines to direct your attention to a key challenge as regards proceedings in front of the National Contact Points' (NCPs) unique grievance mechanism. This key challenge may arise in situations of purported parallel proceedings in front of state-based judicial remedy mechanisms and the NCPs' grievance mechanisms. With this submission, we request the following:

1. Please ensure that the stocktaking report identifies the current inadequate text on parallel proceedings as a "gap" needing to be addressed in the Guidelines, and
2. Following conclusion of the stocktaking process, undertake a revision of the Guidelines to clarify and improve the language on parallel proceedings.

Whereas the Guidelines specify the coordination between NCPs of several countries, the relationship between NCPs' grievance mechanism and state-based judicial proceedings is much less clear. The Guidelines merely indicate that 'NCPs should not decide that issues do not merit further consideration solely because parallel proceedings have been conducted, are under way or are available to the parties

concerned'.<sup>129</sup> According to the Guidelines, the concerned NCP should instead 'evaluate whether an offer of good offices could make a positive contribution to the resolution of the issues raised and would not create serious prejudice for either of the parties involved in these other proceedings or cause a contempt of court situation'.<sup>130</sup> In accordance with this guidance, we suggest that the Guidelines make clear that, as a general rule, NCPs are expected to continue their own proceedings and at the same time support a court's handling of the case.

In view of the current lack of effective remedies and states' only insufficient implementation of the UNGPs' third pillar, victims of multinational enterprises' human rights violations must not be made to choose between courts and NCPs. Instead, they should be able to access both forums. Thus, as a result of the distinct nature of the remedy processes in front of NCPs and state courts, the revised Guidelines should clarify that proceedings related to the same adverse human rights impacts must not be deemed parallel proceedings, in particular if the victims and claimants respectively are not identical (not the same group of people).

If an NCP was still to reject a specific instance because of asserted parallel proceedings, the NCP must clearly explain and justify its own decision as to prevent a confusion with the position of the respondent, i.e. the involved businesses. Moreover, the decision to reject the claim must not in any form be considered as a prejudice for court proceedings, and vice versa.

We thank you for the opportunity to take part in this online consultation on the Guidelines. We look forward to your clarifications on the issues mentioned here and stand ready to support future revision discussions.

Your sincerely,

Christa Luginbühl, Joint Managing Director Public Eye

[www.publiceye.ch](http://www.publiceye.ch)

## 51. Ranking Digital Rights

### Ranking Digital Rights' submission on the OECD Guidelines for Multinational Enterprises (MNEs)

Ranking Digital Rights (RDR) welcomes this public consultation on gaps in the OECD Guidelines for Multinational Enterprises ("the Guidelines"). We work with communities adversely impacted by business activity and evaluate information and telecommunications companies' successes and shortcomings in addressing the human rights harms they cause, contribute to, or are linked to (see [www.rankindigitalrights.org](http://www.rankindigitalrights.org) for more details).

We note that the Commentary to Paragraph B.1 identifies "Internet Freedom" as an "emerging issue" while eschewing the creation of new standards. In 2021, the protection of human rights online and in the broader domain of digital communication is no longer an emerging issue. We welcome the OECD's work to update the Guidelines in line with other existing global norms. Notably, the UN Guiding Principles establish the corporate responsibility to respect human rights, whether online or offline.<sup>131</sup> The Global Network Initiative (GNI) Principles establish a framework to provide direction and guidance to the ICT industry and its stakeholders in protecting and advancing the enjoyment of human rights globally.<sup>132</sup> And RDR's own standards, encoded in the Corporate Accountability Index methodology, provide a roadmap for how ICT companies should demonstrate respect for human rights, notably free expression and privacy, as well as good corporate governance of human rights risks.<sup>133</sup>

<sup>129</sup> Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprise (2011), para 26.

<sup>130</sup> Ibid.

<sup>131</sup> [https://www.ohchr.org/Documents/Issues/Business/Intro\\_Guiding\\_PrinciplesBusinessHR.pdf](https://www.ohchr.org/Documents/Issues/Business/Intro_Guiding_PrinciplesBusinessHR.pdf)

<sup>132</sup> <https://globalnetworkinitiative.org/gni-principles/>

<sup>133</sup> <https://rankindigitalrights.org/2020-indicators/>

To better reflect this reality, we believe that the following *six* key gaps in the Guidelines should be addressed in the next revision to ensure they remain fit for purpose:

- **Explicitly recognize the importance of protecting online privacy.** Paragraph B.1 in Chapter II (General Policies) encourages enterprises to “[s]upport, as appropriate to their circumstances, cooperative efforts in the appropriate fora to promote Internet Freedom through respect of freedom of expression, assembly and association online.” We note that the right to privacy is not included, even though privacy is a key enabler of other human rights, especially as more social and economic activity has moved online due to the ongoing COVID-19 pandemic. Robust standards governing companies’ collection, use, and sharing of personal information are more needed than ever, and must be included in the next iteration of the Guidelines.
- **Clarify human rights due diligence processes:** Paragraph 5 in Chapter IV (Human Rights) recommends that enterprises carry out human rights due diligence. We propose to reinforce this guideline with three expectations: (1) that enterprises disclose what risks, impacts, and activities their due diligence processes encompass; (2) that Boards exercise oversight over risks and impacts; and (3) that enterprises strive to engage independent entities with strong human rights credentials to support or conduct such evaluations.
- **Strengthen Guidelines on non-financial reporting:** Chapter III (Disclosure) calls on enterprises to apply “high quality standards for accounting, and financial as well as non-financial disclosure, including environmental and social reporting where they exist.” We propose that this be amended to explicitly acknowledge transparency reporting on how enterprises enforce their own policies and how they process third-party requests, both of which can be vectors of risk and harm to users. Such reporting has become a widely accepted norm among multinationals since the last revision of the Guidelines and must be further normalized in cross-cutting guidance.
- **Address the development and use of algorithmic systems:** We note that the Guidelines do not currently include guidance on the development and use of algorithmic systems. The ubiquitous nature of these systems in modern enterprises, the hidden harms that stem from them, and the patchwork of frameworks that govern them have all become established facts since the development of the original Guidelines. We propose that the Guidelines incorporate, at a minimum, (1) a recommendation for enterprises to be transparent about the uses, development processes, and key variables of algorithmic systems, and (2) a recommendation to adopt strong transparency standards and share data on decisions made about or through algorithmic systems.
- **Incorporate transparency about and control over personal data:** Paragraph 6 in Chapter VIII (Consumer Interests) calls on enterprises to “respect consumer privacy and take reasonable measures to ensure the security of personal data that they collect, store, process or disseminate.” We propose to supplement this with a clear expectation that MNEs disclose information about each of these stages and provide users with meaningful control. The security of users’ data is a critical component of privacy, but it is an insufficient one if not coupled with transparency. Consumers can only make informed choices about the products they use, as stipulated in this chapter, if they are given a complete picture of what data is collected, inferred, and processed and for what purpose; how each of these actions is carried out; and what they can do to stop it. The volume of data MNEs collect and infer has grown exponentially since 2011—a trend further accelerated by the COVID-19 pandemic. It is therefore critical that the Guidelines incorporate a higher standard for enterprises to follow in this area.
- **Effective remedy against the violation of human rights online through the National Contact Points (NCPs):** While we recognize the important role of NCPs in promoting the Guidelines. However, historically, NCPs have arrived at divergent conclusions even when handling similar cases, and grievances generated in online settings are likely to exacerbate these discrepancies if not addressed in the revision process. The revision process should describe how NCPs will

address the challenges involved in delivering effective remedy for the human rights harms that technology companies cause, contribute to, or are linked to.

We believe that these changes can pave a path toward greater accountability and Responsible Business Conduct (RBC) among MNEs while bolstering the continued relevance of the Guidelines. Ranking Digital Rights greatly appreciates the opportunity to contribute to this consultation, and looks forward to engaging further with the OECD in this process to expand on the issues addressed above.

We look forward to further engagement with the OECD secretariat as part of this process, and can be reached via email.

Jessica Dheere, Director

Nathalie Maréchal, Senior Policy & Partnerships Manager

Jan Rydzak, Company & Investor Engagement Manager

Leandro Ucciferri, Global Partnerships Manager

<https://rankingdigitalrights.org/>

## 52. Responsible Business Alliance (RBA)

### **Responsible Business Alliance (RBA) submission to OECD Public Consultation on Stocktaking exercise on the OECD Guidelines for Multinational Enterprises**

- RBA welcomes the opportunity to provide views to the [stocktaking exercise on the OECD Guidelines for Multinational Enterprises \(Guidelines\)](#). This exercise is an opportunity to not only take stock of what has been accomplished to date but work collectively to build and scale tools and programs to further drive responsible business practices in global supply chains and make a meaningful impact for people and planet.
- As an industry body the RBA has been advancing human rights due diligence by helping companies operationalize and implement due diligence into their operations and supply chains over the past 15 years.
- RBA has enjoyed a productive and fruitful partnership with the OECD across many areas and disciplines. Leading standards such as the OECD Guidelines for Multinational Enterprises, and the OECD Due Diligence Guidance for Responsible Business Conduct as well as the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (along with others such as the United Nations Guiding Principles on Human Rights and Business), have become the “source code” helping RBA structure tools and programs
- This stocktaking exercise comes at a critical juncture as the global health pandemic (COVID-19) has demonstrated the need to build resiliency into global supply chains and ensure that the protection of workers and the environment are foremost priorities. At the same time several governments have enacted, or are in the process of enacting, regulatory efforts to further promote and drive business uptake of responsible business conduct.
- While the Guidelines have done much to catalyze action, gaps and challenges remain. A key challenge is how to drive responsible business conduct deeper into supply chains and engage more companies. From our perspective the Guidelines already contain many of the key principles and standards needed to drive responsible business conduct.
- Strengthened public-private collaboration and dialogue are key in this regard. Better governmental policies have the potential to solve issues at the source more effectively. Leveraging and expanding on existing dialogues in key markets and industries would be important and the OECD could play a critical role, including via the OECD National Contact Point System (NCP).
- Specifically, we believe the exercise should aim to:



- **Work with governments to ensure that future regulatory and/or legislative standards on responsible business conduct are based on existing international frameworks – i.e., the UNGPs and OECD Guidance** – harmonized policies would reinforce effective due diligence and current industry best practice.
  - **Address inconsistencies between domestic laws and international standards** - there is need for additional guidance on how to address the complex relationship between domestic laws and enterprise standards in case domestic regulations contradict company policy and international laws, for example in the space of worker rights and recruitment fees.
  - **Encourage harmonizing disclosure and (growing due diligence) requirements** - there is growing need to support reporting coherence and avoid proliferation of conflicting domestic policies to help multinational enterprises implement due diligence globally. Actions would include aligning existing policy frameworks; developing a uniform set of metrics to assess responsible business conduct and develop comparable data; advancing dialogue among stakeholders to promote systemic change.
- RBA stands ready to continue to work closely with the OECD to drive responsible business conduct in global supply chains.

Contact : Carlos Busquets  
 Senior Director of Public Policy  
 Responsible Business Alliance  
[www.ResponsibleBusiness.org](http://www.ResponsibleBusiness.org)

### 53. Russia-OECD Center RANEPA

Russia-OECD Center RANEPA is an academic research institution that provides an expert study and analysis of the OECD recommendations, standards, tools, and best practices in various areas, to give proposals for the improvement of the legislation of the Russian Federation.

One of the main priorities for the Center - promote responsible business conduct standards in Russia by doing researchers, consult the government on legislative initiatives, and helping businesses to establish RBC standards in their due diligence process. In 2020 together with VEB.RF the Russia-OECD Center drafted the Memorandum of BRICS DFIs Principles for Responsible Financing that BRICS DFIs signed in November 2020. The Memorandum established the framework for further work of DFIs on RBC. As a result, in 2021, VEB.RF, together with Russia-OECD Center, is working on the implementation of RBC standards in VEB.RF's business processes. Russia-OECD Center is also a member of the advisory group on OECD RBC in the Financial Sector. As Russia-OECD Center RANEPA has extensive experience of working OECD standards, we believe that OECD might develop further steps to strengthen that international standard.

Firstly, establish the precise positioning of RBC standards in the world of privately established ESG standards and metrics. OECD has already made some efforts, but a clear statement on how RBC standards might help companies and why these established by governments standards are better is crucial, in our opinion, for further promotion of RBC in the world. Especially in the countries with no or few references to MNE guidelines in the national legislation.

Secondly, strengthen the internal cooperation in OECD on responsible business conduct, including finance, ESG, and climate. Currently, OECD is doing several projects on ESG, climate metrics, transition finance that might also touch the MNE Guidelines as a working tool for businesses and governments.

Thirdly, continue and expand the work with non-OECD countries on RBC standards by increasing the transparency about the future developments in the RBC area. As standards, recommendations, and other work are developing by OECD members, the inclusion of other countries in these processes might help



promote RBC standards worldwide. Also, working together with an expert community of different countries help to exchange the practices and shape the RBC standards. A great example of such cooperation was a workshop for BRICS DFIs organized by OECD and Russia-OECD Center in 2020. The event helped DFIs better understand the importance of RBC standards and share their practices with OECD and other FIs.

Russia-OECD Center is ready for further work with OECD on RBC standards and their promotion. To that extent, Russia-OECD Center proposes establishing a network of non-governmental organizations that promote the RBC standards. Such a network might help OECD to reach non-member countries and exchange the practices.

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Deputy Head of Russia-OECD Center RANEPa  
<https://oecd-russia.org/>

## 54. Save the Children

**Written input by Save the Children (contact person: Josje Beukema)**

Dear members of the OECD Working Party on Responsible Business Conduct:

Save the Children welcomes this public consultation on gaps in the OECD Guidelines for Multinational Enterprises. While the Guideline should be a valuable tool to advance RBC, in the ten years since their last revision, the standards have not kept pace with new challenges and expectations for corporate conduct. Herein our focus is on children's rights.

**Unfortunately, the OECD Guidelines do not adequately establish expectations for MNEs and States to particularly identify and address their impacts on children, beyond the elimination of child labour.** Companies' activities may cause disproportionate impact on children compared to adults. Children are affected by businesses that impact their development in different spaces in their lives. The lack of a holistic approach that is needed has already been identified and led to the development of the [Child's Rights and Business Principles](#) in 2011, set up by the UN Global Compact, Save the Children and UNICEF. In order to keep up with both progressing international standards for business responsibility and international law on state responsibility to ensure due diligence for children's rights, a revision of the OECD Guidelines is necessary to maintain the highest possible standard for businesses to do no harm to people and planet.

Children as stakeholders are not only subjects and receivers of company activity, they are also actors in society today and in the future. Children's right are directly and indirectly impacted in their development through e.g. environmental pollution, climate change, labour rights, gender issues, land rights, indigenous' people's rights, and digitalization. We stress the importance of this human rights based approach, while iterating the need for special consideration to the differentiated impact on children.

### **Proposed revisions:**

1. Chapters IV (Human Rights), V (Employment and Industrial relations) and VI (Environment) to better reflect the full range of adverse impacts MNEs may have on children not only from child labour perspective, but also as young workers, community members impacted by MNE operations or investments by adding a reference to the Children's Rights and Business Principles (CRBPs).
2. Chapter II (General Policies) should include the identification of children as relevant stakeholders. Children have their specific interests, needs and rights. Stakeholders as defined in the [General Comment no. 16](#): as consumers, legally engaged employees, future employees and business leaders and members of communities and environments in which business operates. This is based

on one of the four core principles of the [Convention on the Rights of the Child](#): child participation. (II General Policies, point 25)

3. Cooperation in remediation processes and ensure remedy for impacted children and their families in particular, i.e. by safeguarding that any remedy provided will actually reach and benefit impacted children;
4. In Chapter VIII (consumer interests) children should be identified as a vulnerable group directly. Marketing and safety standards can adversely impact children. MNEs should be compliant with the standards of business conduct in World Health Assembly instruments related to marketing and health in all countries. Where national law prescribes a higher standard, business must follow that standard.

We thank you for your consideration and stand ready to support future revision discussions.

Josje Beukema

Lobby & Advocacy officer on Children's Rights & Business

[www.savethechildren.nl](http://www.savethechildren.nl)

## 55. Sherpa

L'association Sherpa, membre active d'OECD Watch, combat les nouvelles formes d'impunité liées à la mondialisation des échanges économiques et financiers et défend les communautés victimes de crimes économiques. A ce titre, elle a déposé plusieurs circonstances spécifiques auprès du Point de Contact National (PCN) français et constaté des dysfonctionnements justifiant les besoins et propositions de réforme qu'elle souhaite réitérer aujourd'hui auprès de l'OCDE. Selon Sherpa, les dysfonctionnements empêchant l'octroi de réparations effectives aux victimes sont de deux natures et tiennent tant à la gouvernance institutionnelle du PCN qu'à la procédure de circonstance spécifique.

S'agissant de la gouvernance institutionnelle, Sherpa souligne :

- le **risque de partialité** résultant inévitablement du rattachement du PCN au ministère de l'Économie, tandis que les circonstances spécifiques concernent par définition des entreprises et notamment des entreprises publiques intéressant l'État. L'absence de garde-fou visant à prévenir et empêcher les conflits d'intérêts n'est pas acceptable. Il est essentiel que le PCN fasse la transparence sur la composition et la désignation de ses membres et que l'institution soit tenue à distance des membres du ministère ;
- l'importance de **la participation de la société civile** aux activités du PCN, pour que celui-ci puisse être efficace, légitime et crédible. Or, comme en témoigne le boycott du PCN français par plusieurs ONG, celui-ci a perdu la confiance des acteurs de la société civile depuis plusieurs années. Il est donc urgent de mettre en place une meilleure intégration des ONG dans le processus de gouvernance du PCN, au-delà des réunions annuelles d'information, qui sont de pure forme ;
- la nécessité d'augmenter significativement **les ressources humaines et financières** du PCN, afin de pallier ses défaillances structurelles. Alors qu'il devrait pouvoir traiter simultanément plusieurs circonstances spécifiques, mener des enquêtes approfondies, faire venir des victimes, résoudre chaque circonstance spécifique dans le délai recommandé d'un an et assurer le suivi des recommandations, son cruel manque de moyens l'empêche d'être un mécanisme fiable et efficace.

S'agissant de la procédure de circonstance spécifique, Sherpa relève également :

- la nécessité de prévenir **les conflits d'intérêts** des membres statuant et recommande d'établir que les procédures soient systématiquement menées par des experts et médiateurs professionnels indépendants. Il est indispensable que les membres du PCN ne puissent plus être à la fois juges et parties

- que d'un point de vue organisationnel, une procédure et un calendrier plus exhaustifs et transparents devraient être établis pour les circonstances spécifiques, afin d'améliorer, notamment, la **prévisibilité** des saisines. Les avancées procédurales des circonstances spécifiques en cours devraient être régulièrement publiées et diffusées sur le site internet du PCN, afin que les ONG puissent bénéficier d'une **procédure juste et équitable** ;
- que la procédure devrait aussi avoir pour principe la **participation** systématique, dans le respect du contradictoire et en conformité avec le principe du traitement équitable, de toutes les parties concernées par la saisine, y compris celles basées à l'étranger ou parlant une autre langue que le français ;
- que le PCN fait une interprétation injustement extensive du principe de **confidentialité**, au détriment des ONG. Sherpa rappelle que la transparence est le principe et la confidentialité l'exception, circonscrite aux « informations sensibles » [Règlement intérieur du PCN français, p.8, §39, accessible [ici](#)]. Une confidentialité trop étendue, par exemple à l'existence de la saisine elle-même ou encore à l'accord résultant de la médiation, empêcherait toute incitation effective de l'entreprise à prendre des mesures de remédiation et toute contrainte judiciaire de les exécuter, et priverait donc le mécanisme de toute utilité. Les entreprises acceptent de collaborer avec le PCN parce qu'elles savent que ses décisions pourraient nuire à leur réputation. L'efficacité même du PCN repose sur le levier médiatique. Sherpa appelle donc le PCN à faire preuve de plus d'ambition dans le traitement des saisines, notamment en ce qui concerne les conséquences médiatiques pour les entreprises contrevenantes. Le PCN devrait laisser les ONG communiquer sur leur saisine et recevabilité, dans les limites de la confidentialité évoquée ci-dessus. Le PCN pourrait également, par exemple, organiser des conférences de presse pour augmenter la visibilité de ses communiqués et rapports. Enfin, il est important que le PCN exige le respect des principes directeurs de l'OCDE de façon ferme dans ses communiqués et qu'il appelle au respect strict de ses recommandations ;
- les interférences entre la médiation et la prise de décision dans le rapport final : l'indépendance des deux procédures doit être garantie. A cette fin, le PCN devrait systématiquement publier son rapport final avant le début de la médiation.

Contact : Laura Bourgeois

Chargée de Contentieux et de Plaidoyer

<https://www.asso-sherpa.org/>

## 56. Sinergia Animal

Dear Members of the OECD Working Party on Responsible Business Conduct:

Sinergia Animal, an international animal protection organization, working in countries of the Global South to reduce the suffering of farmed animals and promote more compassionate food choices, welcomes this public consultation and **urges you to include animal welfare guidelines** in the OECD Guidelines for Multinational Enterprises ("Guidelines").

The lack of guidelines about animal welfare is a serious gap in both the RBC standards for multinational enterprises (MNEs) and implementation expectations for NCPs are preventing the Guidelines from fulfilling their purposes.

To this end, we offer some facts to contribute to our request:

- More and more OECD states recognize animal sentience and the link between irresponsible MNE conduct on animals and adverse impacts to animals, people, and the planet;

- Scientific research shows that improving animal welfare could be an excellent way to achieve some of the sustainable development goals ;<sup>134</sup>
- Animal welfare is associated not only with ethical and legal issues but also with severe risks for public health (zoonoses and antimicrobial resistance);
- The European Commission committed to phasing out cages in animal farming across the EU by 2027;
- Hundreds of companies worldwide have committed to banning the worst practices from their supply chain, including battery cages, gestation cages, mutilations without pain management etc.;
- The Norwegian Oil Fund recently recognized violations of animal welfare as a possible severe violation of fundamental ethical norms, which means that it can justify the exclusion of companies from the fund ;<sup>135</sup>

Even with growing awareness about the importance of better animal welfare, the Guidelines do not provide standards on animal welfare at all, failing to reflect growing legal protections, international standards, and MNE policies on animals, whose well-being is widely understood as tied to public health and environmental protection.

The complete gap in standards on animal welfare has prevented any complaints from being filed – and any remedy achieved – via the NCP complaint system regarding irresponsible business conduct towards animals.

We thank you for your consideration and are available to discuss this topic and support future revision discussions.

Best Regards,

Sinergia Animal

Contact: Ms Taís Toledo  
Global Corporate Engagement Manager  
[www.sinergiaanimalinternational.org](http://www.sinergiaanimalinternational.org)

## 57. Slovak National Centre for Human Rights (SNCHR)

Bratislava

### **INPUT OF THE SLOVAK NATIONAL CENTRE FOR HUMAN RIGHTS TO THE ONLINE PUBLIC CONSULTATION – STOCKTAKING EXERCISE ON THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES**

#### **About the Slovak National Centre for Human Rights:**

The Slovak National Centre for Human Rights (the “Centre”) is a national human rights institution established in the Slovak Republic, accredited with status B by the Global Alliance of National Human Rights Institutions (GANHRI). As an NHRI, the Centre is a member of the European Network of NHRIs (ENNHRI). The Centre was established by the Act of Slovak National Council No. 308/1993 Coll. on the Establishment of Slovak National Centre for Human Rights. Pursuant to the Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection from Discrimination, as amended (the Anti-Discrimination Act), the Centre also acts as the only Slovak equality body. As an NHRI and equality body,

<sup>134</sup> <https://www.frontiersin.org/articles/10.3389/fvets.2019.00336/full>

<sup>135</sup> [The Norwegian Oil Fund's investments will be screened for animal welfare violations - Dyreveralliansen](#)

the Centre performs a wide range of tasks in the field of protection and promotion of human rights and fundamental freedoms including the observance of the principle of equal treatment.

The Centre among other powers:

- 1) monitors and evaluates the observance of human rights and the observance of equal treatment principle;
- 2) gathers and, upon request, provides information on racism, xenophobia and antisemitism in the Slovak Republic;
- 3) conducts research and surveys to provide data in the field of human rights; gathers and distributes information in this area;
- 4) prepares educational activities and participates in information campaigns aimed at increasing tolerance of the society;
- 5) provides legal assistance to victims of discrimination and manifestations of intolerance;
- 6) issues expert opinions on matters concerning the observance of the equal treatment principle;
- 7) performs independent inquiries related to discrimination;
- 8) prepares and publishes reports and recommendations on issues related to discrimination; and provides library services and other services in the field of human rights.

**The Centre hereby submits following answers to the OECD public consultation on the OECD Guidelines for Multinational Enterprises:**

**1. Main achievements of the OECD Guidelines for Multinational Enterprises and their implementation in advancing Responsible Business Conduct since 2011**

The OECD Guidelines for Multinational Enterprises (the “Guidelines”) have been serving as an inspiration or model document when drafting and adopting several pieces of legislation and policy documents adopted on the level of the European level. The examples include the EU Regulation no. 2020/852 of the European Parliament and the Council of 18 June 2020 that sets minimum safeguards as a criterion for environmentally sustainable economic activities based on the requirements of the OECD Guidelines or the Council of Europe's Recommendation CM/Rec (2016)3 of the Committee of Ministers to Member States on Human Rights and Business of 2 March 2016 that member states of the Council of Europe should require business enterprises domiciled within their jurisdiction apply human rights due diligence throughout their operations and business enterprises conducting substantial activities within their jurisdiction carry out human rights due diligence in respect of such activities to respect the Guidelines.

The Guidelines have been also taken into consideration when drafting national policies implementing the obligation of States in the field of protection and promotion of human rights in business setting. As a result, multiple national policies reference the Guidelines and reflect its provisions in their wording. The examples include national action plans on business and human rights adopted on national level in Sweden, France, United Kingdom or Czech Republic.

**2. Main challenges of the OECD Guidelines for Multinational Enterprises and their implementation in advancing Responsible Business Conduct since 2011**

Despite the fact that the Guidelines are a break-through policy on responsible business conduct, there are still some worrisome challenges that remain unsolved.

Especially, the efficiency of the national contact points (the “NCP”) system is concerning. Many NCPs are operating as a part of public institution, understaffed, with weak mandate and own operational budget. Only very limited number of NCPs have enough technical, operational and financial capacities to promote the Guidelines, provide trainings and workshops to relevant stakeholders or to conduct inquiries and investigations in the field. Moreover, it can be said that the overall awareness of public about the role,

mandate and functions of NCP on national level is often very low, especially in countries with moderate – to – no public debate on responsible business conduct.

The Guidelines are very ambitious document covering a wide spectrum of stakeholders and topics concerning responsible business conduct. Therefore, the Guidelines are vague, open to various interpretations and have not advanced debate since 2011, especially in respect to some topics such as human rights.

### 3. Relevance of following topics for implementing responsible businesses conduct globally

The most relevant (scoring 10) topics for implementing responsible business conduct globally are:

Human rights	<i>The protection and promotion of human rights is one of the most important part of the Guidelines. This part is not only highly relevant, but should be advanced to include more specific obligation of stakeholders and reflect the current efforts to adopt a binding treaty on business and human rights.</i>
Employment and industrial relations	---
Environment	---
Digitalization	<i>Digitalization, especially deployment of artificial intelligence has a huge impact on conducting business. Unfortunately, digitalization does not bring only positives. There are also many negatives too, from security issues (e. g. leak of clients' personal data) through business issues (e. g. misuse of intellectual property) to ethical and human rights issues (e. g. algorithms with built-in bias).</i>
Coverage of companies of all sizes and business models	<i>In the past, most of the attention was paid to multinational or large domestic companies. Since 2011, we have witnessed a huge boom in new tech. Today, even small (1 to 15 persons) companies have huge impact on society and should be required and bound to observe rules on responsible business conduct. The so-called argument of "high cost of doing business responsibly" does not apply anymore. Especially, when some small start-ups and companies are able to produce turnovers in millions of EUR.</i>
Climate change	---

### 4. Main achievements of NCPs in promoting the Guidelines and facilitating access to remedy

Despite many challenges of NCP, there are also some achievements that can be attributed to NCP. One of the main achievements is that NCPs are, in many countries, considered key stakeholders in the field of promotion and protection of human rights in business settings. NCPs are usually involved in national action

plans on business and human rights either as a stakeholder responsible for designing/drafting the national action plan, implementing national action plan or monitoring the implementation of the national action plan.

#### **5. Main challenges for NCPs in promoting the Guidelines and facilitating access to remedy**

Please, see answer to question No. 2.

#### **6. The top three overall opportunities for strengthening the Guidelines and work on responsible business conduct**

The top three overall opportunities for strengthening the Guidelines and work of the OECD on responsible business conduct are:

- Advance obligations of stakeholders in the field of protection and promotion human rights and fundamental freedoms to reflect and strengthen the current efforts of the international community to adopt a binding treaty on business and human rights.
- Consider new trends (e. g. new forms of doing business, artificial intelligence and digitalization) when upgrading existing chapters of the Guidelines.
- Reflect on the impacts of the COVID-19 pandemic on the society and responsible business conduct and use lessons learned to advance the position of the Guidelines and OECD as a key stakeholder in the field of responsible business conduct.

**CONTACT:** Ms. Zuzana Pavlíčková, Head of Policy and International Relations, [www.snslp.sk](http://www.snslp.sk)

## **58. Social and Labor Convergence**

Dear members of the OECD Working Party on Responsible Business Conduct,

SLCP (Social & Labor Convergence Program) welcomes this public consultation on gaps in the OECD Guidelines for Multinational Enterprises (Guidelines). We work with stakeholders throughout global supply chains (garments & beyond), including workers and suppliers who are adversely impacted by business activity.<sup>136</sup>

Alongside other frameworks, the Guidelines encourage responsible business conduct (RBC) by corporations, advocate for improved RBC policies and norms by governments, and secure remedy for harm via the National Contact Point (NCP) complaint mechanisms.

[SLCP](#) was created in 2015 with the vision of improving working conditions in global supply chains which continue to be under threat. As a Multi-Stakeholder Initiative (MSI) supported by over 200 Signatories, SLCP aims to do this through collaborative action. SLCP has developed the Converged Assessment Framework (CAF) which can be used to collect & verify data on labor and social conditions and reduce audit fatigue on facilities in the supply chain. To achieve SLCP's broader goal of improving working conditions, strong RBC standards will complement the CAF and increase the value of SLCP in delivering comparable, credible & actionable verified data to drive remediation and improvements.

While the inclusion of a human rights chapter in 2011 has been a welcome improvement for vulnerable and marginalized workers in global supply chains, the current Guidelines have not kept pace in advancing RBC, particularly with respect to proper labor standards.

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<sup>136</sup> See, e.g. ILO, *Purchasing practices and working conditions in global supply chains: Global Survey results*, INWORK Issue Brief No. 10; Mark Anner (2020), *Abandoned: The Impact of Covid-19 on Workers and Businesses at the Bottom of Global Garment Supply Chains*, PennState Center for Global Workers' Rights.



Under the current regulatory frameworks, unfair purchasing practices and improper due diligence efforts by corporations have continued to adversely impact working conditions in global supply chains.<sup>137</sup> While it is clear no one stakeholder can change these imbedded practices, the private sector through MSI's such as SLCP have an opportunity to support the adoption of international RBC norms in industry practice. However, this can only be accomplished with revised Guidelines.

Updates to the Guidelines would help clarify implementation of corporations' responsibility to respect labor rights. In particular, SLCP welcomes revision of Chapter V (Employment and industrial Relations) which could better reflect expectations for MNEs to promote labour rights and use their leverage to remediate violations over their whole value chain. In this sense, SLCP Verified Data could be used by MNEs to support their efforts to understand and prevent poor working conditions in their supply chain and subsequently be responsible in their business conduct.

In light of these concerns, we respectfully request that you ensure the final stocktaking report reflects the necessary improvements to ensure decent work conditions in global supply chains.

Thank you for your consideration.

Sincerely,

Janet Mensink

**Social & Labor Convergence Program (SLCP)**

P/A FFG Center, Rokin 102, Amsterdam, Netherlands

## 59. Society for Threatened Peoples

Berne

### Public Consultation on gaps in the OECD Guidelines for Multinational Enterprises

Dear members of the OECD Working Party on Responsible Business Conduct

Society for Threatened Peoples Switzerland welcomes this public consultation on gaps in the OECD Guidelines for Multinational Enterprises (Guidelines). We work with communities adversely impacted by business activity and are experienced in attempting to use the Guidelines to encourage responsible business conduct (RBC) by corporations, advocate for improved RBC policies by governments, and secure remedy for harm via the National Contact Point (NCP) complaint mechanisms.

While the Guideline should be a valuable tool to advance RBC, in the ten years since their last revision, the standards have not kept pace with new challenges and expectations for corporate conduct and the NCP complaint mechanisms have largely failed to facilitate access to remedy for impacted communities. In our view, serious gaps<sup>138</sup> in both the RBC standards for multinational enterprises (MNEs) and implementation expectations for NCPs are preventing the Guidelines from fulfilling their purposes:

**Reforms to NCPs:** NCPs play a vital role in ensuring the success of the Guidelines, by promoting the Guidelines to businesses and other key stakeholders including civil society, and by facilitating access to remedy via their dispute resolution services. Unfortunately, the Guidelines' Procedural Guidance sets so low a threshold for the required basic institutional arrangements, promotional activities, and complaint-handling procedures of NCPs that they vary widely in their effectiveness. Minimum expectations for NCPs in the Procedural Guidance should be raised to, for example, ensure NCPs have access to expertise on human rights and technical topics covered in complaints, input from stakeholder advisors, adequate

<sup>137</sup> OECD Watch (2021), *Get Fit: Closing gaps in the OECD Guideline to make them fit for purposes*, 54. Available at: <https://www.oecdwatch.org/get-fit-closing-gaps-in-the-oecd-guidelines-to-make-them-fit-for-purpose/>

<sup>138</sup> This letter draws on analysis from the OECD Watch network. For insight on other gaps in the Guidelines of concern to civil society, please see OECD Watch's [submission to the first draft of the stocktaking report](#) and paper [Get Fit: closing gaps in the Guidelines to make them fit for purpose](#).

resourcing to investigate complaints, a practice of undertaking promotional activities annually towards all stakeholder groups, and complaint handling procedures that ensure participation by NCPs and accountability for irresponsible business conduct, such as transparency over complaint processing, commitment to issue determinations of non-compliance and seek consequences for MNEs refusing to participate in good faith, and a practice of engaging in follow-up monitoring.

**Marginalised groups:** Business impacts are often felt most strongly – and differently – by the most marginalised and disadvantaged members of society, including women, Indigenous Peoples, people of low caste, children, and others. The Guidelines do not identify key rights of these groups – such as Indigenous Peoples’ right to free, prior, and informed consent (FPIC) over use of their territories – the different ways these people can be adversely impacted by business conduct – for example, not only as employees but as community members – nor the specialised due diligence needed to consult these groups, and identify, address, and remedy impacts to them.

- **Indigenous Peoples** are among the world’s most vulnerable, and they are disproportionately impacted by business activities on or near their territories.<sup>139</sup> While Indigenous Peoples only form 5% of the world’s population, they safeguard 80% of the earth’s biodiversity and a great wealth of natural resources.<sup>140</sup> Unfortunately, Indigenous Peoples territories are routinely exploited, sold, appropriated or polluted by companies that have not respected their internationally-recognised rights.<sup>141</sup> The Guidelines do not identify key specific rights of Indigenous Peoples such as the right to free prior and informed consent and self-determination, their particularly vulnerability as human rights defenders, nor the specialised due diligence needed to consult them, and identify, address, and remedy impacts to they experience.
- **Women and LGBTQ+ people** typically suffer gender-specific impacts from business activity whether they are impacted as workers, community members, or human rights defenders. Unfortunately, the Guidelines do not comprehensively highlight how impacts may affect women and LGBTQ+ people differently, nor advise businesses in understanding how women (and others) with intersecting identity traits subject to discrimination (e.g. race, caste, age, disability, etc.) may suffer impacts differently. The Guidelines also do not set out the specialised due diligence needed to consult them, and identify, address, and remedy impacts to they experience, nor clarify (in the Procedural Guidance for NCPs) the expectation that NCPs implement procedures to minimize gender-specific barriers to remedy.
- **Caste-based discrimination** affects more than 260 million people worldwide, not only people in South Asia, but also in Africa, Asia, the Middle East, the Pacific, and in diaspora communities in countries such as the UK and US.<sup>142</sup> Caste-discrimination affects workers in all sectors and is too often “invisible” to businesses down the supply chain. Unfortunately, the Guidelines do not include “caste” as a ground for discrimination discouraged, leaving MNEs without guidance on addressing impacts to this stigmatized group.
- **Children** are among the most vulnerable members of society, and can be disproportionately impacted by the activities of MNEs. While the Guidelines call on MNEs to contribute to abolishing child labour, they do not give meaningful guidance on how child labour may occur in MNE value

<sup>139</sup> Indigenous Peoples Indigenous Voices fact sheet. Available at: [https://www.un.org/esa/socdev/unpfii/documents/PFII8\\_FS3.pdf](https://www.un.org/esa/socdev/unpfii/documents/PFII8_FS3.pdf)

<sup>140</sup> Gleb Raygorodetsky, “Indigenous peoples defend Earth’s biodiversity - but they’re in danger,” The National Geographic, 16 November 2018, available at: <https://www.nationalgeographic.com/environment/article/can-indigenous-land-stewardship-protect-biodiversity-#:~:text=Recent%20research%20demonstrates%20that%20while,percent%20of%20the%20global%20biodiversity.>

<sup>141</sup> Amnesty International, Indigenous Peoples. Available at: <https://www.amnesty.org/en/what-we-do/indigenoushttps://www.amnesty.org/en/what-we-do/indigenous-peoples/-:~:text=There%20are%20370%20million%20Indigenous,5%25%20of%20the%20world's%20populationpeoples/#:~:text=There%20are%20370%20million%20Indigenous,5%25%20of%20the%20world's%20population>

<sup>142</sup> See, e.g., Nitasha Tiku, THE WASHINGTON POST, “India’s engineers have thrived in Silicon Valley. So has its caste system,” 28 October 2020, available at: <https://www.washingtonpost.com/technology/2020/10/27/indian-caste-bias-silicon-valley/>.

chains and how MNEs should address this by changing practices that inadvertently cause children to be forced to work. The Guidelines also do not emphasize how children may be impacted as community members and consumers, as opposed to workers, nor identify children among vulnerable groups particularly critical to consult through stakeholder engagement.

**Human rights defenders:** In a context of shrinking civil society space, the WPRBC and many OECD states are taking action to advance protections for human rights defenders. Yet the Guidelines include no provisions identifying the corporate nexus with harm to defenders or explaining how MNEs should avoid both actions or omissions that adversely impact defenders. Meanwhile, the Procedural Guidance does not call upon and guide NCPs in adopting procedures to discourage and address threats to complainants, including retaliation for complaint-filing.

**Climate change and environmental degradation:** Countering the effects of climate change is broadly acknowledged as the most vital need of our time. Environmental destruction and climate change have caused devastating effects including severe biodiversity loss, with a recent report finding that the global wildlife population has been reduced by two-thirds over the last 50 years.<sup>143</sup> MNEs are recognised as responsible for almost a fifth of climate-changing carbon emissions,<sup>144</sup> but the Guidelines do not mention the term “climate change,” call upon MNEs to set and achieve climate-related emission targets, nor demand that MNEs avoid and remedy common pressing environmental impacts including deforestation, pollution, and biodiversity loss.

**Land rights:** Land security underpins numerous human rights and helps forestall climate change. While global standards and corporate policies increasingly call for corporate respect for land rights, the OECD Guidelines do not address the topic, failing to guide MNEs on issues such in assuring the right to free prior and informed consent, respecting non-documented tenure rights including of women and communal owners, addressing legacies of dispute over contested lands, and respecting land rights even where states fail their own duty to protect land rights.

**Labour rights:** Unionisation and workers rights are under threat, yet the Guidelines fail adequately to set important labour rights standards for MNEs, such as on ensuring responsible disengagement, avoiding business models that preclude payment of a living wage and intentionally escape responsibility for worker well-being, addressing deep-rooted discrimination and sexual harassment within supply chains, and respecting rights of workers in the digital economy.

**Taxation:** According to 2020 data, corporate tax avoidance causes an estimated global loss of \$245 billion annually as MNEs shift about \$1.38 trillion from profit-yielding countries to tax havens allowing them to avoid tax payments.<sup>145</sup> While broad public consensus – and innovative policy initiatives of the OECD – hold that corporate tax avoidance should stop, the outdated Guidelines do not name or discourage tax avoidance, call out the range of financial methods corporations commonly manipulate to avoid taxation, nor seek the disclosures necessary to help governments and civil society identify and prevent tax avoidance moving forward.

**Digitalisation:** Over the past ten years, the rapidly increasing digitalisation of the global economy is altering and exacerbating the potential for all MNEs – not just technology companies – to adversely impact human rights, jeopardize democracies and democratic values, and harm the environment. The OECD Investment Committee has itself identified a need for a comprehensive standard to address RBC

<sup>143</sup> WWF, (2020), Living Planet Report 2020 - Bending the curve of biodiversity loss. Almond, R.E.A., Grooten M. and Petersen, T. (Eds). WWF, Gland, Switzerland.

<sup>144</sup> Zhang, Z., Guan, D., Wang, R. *et al.* (2020), Embodied carbon emissions in the supply chains of multinational enterprises. *Nature Climate Change*, **10**, 1096–1101.

<sup>145</sup> Tax Justice Network, “\$427bn lost to tax havens every year; landmark study reveals countries’ losses and worst offenders,” 20 November 2020, available at: <https://www.taxjustice.net/2020/11/20/427bn-lost-to-tax-havens-every-year-landmark-studyhttps://www.taxjustice.net/2020/11/20/427bn-lost-to-tax-havens-every-year-landmark-study-reveals-countries-losses-and-worst-offenders/reveals-countries-losses-and-worst-offenders/>.

challenges linked to digitalisation, but the Guidelines say nothing on this modern issue. The gap leaves MNEs without guidance on the importance of, and means to, understanding their impacts in the digital sphere.

**Disclosure:** ESG reporting, sustainability reporting, or integrated reporting are on the rise globally as countries increasingly require MNEs to disclose not merely their financial but their non-financial data to support efficient market functioning, corporate contribution to the UN Sustainable Development Goals, and public monitoring of outcomes. Against this growing tide, the OECD Guidelines' Disclosure chapter is seriously outdated, setting standards not much stronger than the minimum legal requirements on financial reporting, and inadequately synchronizing with the Guidelines' own due diligence communication expectations added in 2011.

**Corruption:** Despite the close relation between corruption and violation of human rights, the Guidelines currently address only bribery and extortion and do not set expectations regarding all forms of corporate corruption. They do not call for key disclosures – such as of beneficial ownership and country-by-country reporting – that would facilitate identification of corruption, nor highlight the nexus between avoiding corruption and meeting standards across the other chapters in the Guidelines.

**Animal welfare:** More and more OECD states recognise animal sentience and the link between irresponsible MNE conduct on animals and adverse impacts to animals, people, and the planet. Yet the Guidelines do not provide standards on animal welfare at all, failing to reflect growing legal protections, international standards, and MNE policies on animals, whose well-being is widely understood as tied to public health (seen with COVID-19) and environmental protection. The complete gap in standards on animal welfare has prevented any complaints from being filed – and any remedy achieved – via the NCP complaint system regarding irresponsible business conduct towards animals.

**Scope of application of the Guidelines:** Although the WPRBC is focused on policy coherence, the Guidelines do not adequately clarify the applicability of the standards and complaint mechanism to non-traditional MNEs such as holding and letterbox companies, multistakeholder initiatives, and states operating as economic actors. Lack of clarity on the scope of covered enterprises has led to conflicting interpretation by NCPs in complaints, and frequent rejection of complaints against non-traditional MNEs. The gap not only stymies access to remedy for impacted communities, but fails to ensure a good example by states and a level playing field amongst types of enterprises.

**General policies:** The General policies chapter of the Guidelines does not set a proper tone for the overall document by highlighting the full range of standards and expectations addressed in the subsequent chapters. For example, several key topics – such as respect for the rights of human rights defenders, the special care needed to identify and address risks to marginalized groups, the role of disclosure in helping facilitate and measure RBC, the nexus between paying full and fair taxes and avoiding corruption and fulfilling other human rights and environmental expectations, and the way in which digitalization can exacerbate corporate impacts – should all be highlighted. The chapter should call for MNEs to prioritise avoidance of adverse human and environmental impacts over profit-making and avoid business models and methods that hinder MNEs from fulfilling their responsibility to respect human rights. The chapter should also more clearly outline the six steps of the RBC due diligence process.

In light of these concerns, we respectfully request that you ensure the final stocktaking report reflects and responds to each of the gaps identified by civil society. We also request that, following conclusion of the stocktaking, the Working Party initiates an inclusive process to revise the Guidelines to ensure they remain fit for purpose.

We thank you for your consideration and stand ready to support future revision discussions.

Sincerely,

Co-director

Society for Threatened Peoples  
Switzerland  
[www.gfbv.ch](http://www.gfbv.ch)

## 60. Swedwatch

Dear members of the OECD Working Party on Responsible Business Conduct:

Swedwatch welcomes this public consultation on gaps in the OECD Guidelines for Multinational Enterprises (Guidelines). We work with communities adversely impacted by business activity and are experienced in attempting to use the Guidelines to encourage responsible business conduct (RBC) by corporations and to advocate for improved RBC policies by governments. We are a member of OECD Watch.

While the Guidelines should and could be a valuable tool to advance RBC, in the ten years since their last revision, the standards have not kept pace with new challenges and expectations for corporate conduct and the NCP complaint mechanisms have largely failed to facilitate access to remedy for impacted communities. We very much support the position of OECD Watch that serious gaps<sup>146</sup> in both the RBC standards for multinational enterprises and implementation expectations for NCPs are preventing the Guidelines from fulfilling their purposes. In our view, the gaps that need to be addressed most urgently are the following:

Gap 1:

**Marginalised groups:** Business impacts are often felt most strongly – and differently – by the most marginalised and disadvantaged members of society, including women, Indigenous Peoples, people of low caste, children, migrant workers and others. The Guidelines do not identify key rights of these groups – such as Indigenous Peoples’ right to free, prior, and informed consent (FPIC) overuse of their territories – the different ways these people can be adversely impacted by business conduct – for example, not only as employees but as community members – nor the specialised due diligence needed to consult these groups, and identify, address, and remedy impacts to them.

Gap 2:

**Human rights defenders:** In a context of shrinking civil society space, the WPRBC and many OECD states are taking action to advance protections for human rights defenders. Yet the Guidelines include no provisions identifying the corporate nexus with harm to defenders or explaining how MNEs should avoid both actions and omissions that adversely impact defenders. Meanwhile, the Procedural Guidance does not call upon and guide NCPs in adopting procedures to discourage and address threats to complainants, including retaliation for complaint-filing.

Gap 3:

**Land rights:** Land security underpins numerous human rights and helps forestall climate change. While global standards and corporate policies increasingly call for corporate respect for land rights, the OECD Guidelines do not address the topic, failing to guide MNEs on issues such in assuring the right to free prior and informed consent, respecting non-documented tenure rights including of women and communal owners, addressing legacies of dispute over contested lands, and respecting land rights even where states fail their own duty to protect land rights.

Gap 4:

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<sup>146</sup> For insight on other gaps in the Guidelines of concern to civil society, please see OECD Watch’s submission to the first draft of the stocktaking report and paper *Get Fit: closing gaps in the Guidelines to make them fit for purpose*.

**Climate change and environmental degradation:** Countering the effects of climate change is broadly acknowledged as the most vital need of our time. Environmental destruction and climate change have caused devastating effects including severe biodiversity loss, with a recent report finding that the global wildlife population has been reduced by two-thirds over the last 50 years.<sup>147</sup> MNEs are recognised as responsible for almost a fifth of climate-changing carbon emissions,<sup>148</sup> but the Guidelines do not mention the term “climate change,” call upon MNEs to set and achieve climate-related emission targets, nor demand that MNEs avoid and remedy common pressing environmental impacts including deforestation, pollution, and biodiversity loss.

Gap 5:

**Disclosure:** ESG reporting, sustainability reporting, or integrated reporting are on the rise globally as countries increasingly require MNEs to disclose not merely their financial but their non-financial data to support efficient market functioning, corporate contribution to the UN Sustainable Development Goals, and public monitoring of outcomes. Against this growing tide, the OECD Guidelines’ Disclosure chapter is seriously outdated, setting standards not much stronger than the minimum legal requirements on financial reporting, and inadequately synchronizing with the Guidelines’ own due diligence communication expectations added in 2011.

Gap 6:

**Labour rights:** Unionisation and workers’ rights are under threat, yet the Guidelines fail to set important and ambitious labour rights standards for MNEs, such as on ensuring responsible purchasing practices and consistent engagement with suppliers to support the integration of RBC principles throughout the supply chain, avoiding business models that preclude payment of a living wage and intentionally escape responsibility for worker well-being, addressing deep-rooted discrimination and sexual harassment within supply chains, and respecting rights of workers in the digital economy.

In light of these concerns, we respectfully request that you ensure the final stocktaking report reflects and responds to each of the gaps identified by civil society. We also request that, following conclusion of the stocktaking, the Working Party initiate an inclusive process to revise the Guidelines to ensure they remain fit for purpose.

We thank you for your consideration and stand ready to support future revision discussions.

Sincerely,

Hannah Peters, Head of Natural Resource Unit  
On behalf of Swedwatch  
[www.swedwatch.org](http://www.swedwatch.org)

## 61. Swiss Trade Union Confederation - Unia

### Submission of the Swiss Trade Union Confederation to OECD Guidelines public consultation

The Swiss Trade Union Confederation represents Swiss trade unions of different sectors. We welcome the public consultation on the OECD Guidelines for Multinational Enterprises (OECD Guidelines). These are an important mechanism to encourage responsible business conduct by corporations and secure remedy for harm via the National Contact Point (NCP) complaint mechanisms.

<sup>147</sup> WWF, (2020), Living Planet Report 2020 - Bending the curve of biodiversity loss. Almond, R.E.A., Grooten M. and Petersen, T. (Eds). WWF, Gland, Switzerland.

<sup>148</sup> Zhang, Z., Guan, D., Wang, R. *et al.* (2020), Embodied carbon emissions in the supply chains of multinational enterprises. *Nature Climate Change*, **10**, 1096–1101.



However, the standards have not kept pace with new challenges and expectations for corporate conduct. Without significant operational improvement, the Guidelines will become a symbolic statement of intent rather than a mechanism through which to achieve remedy and drive change.

As the Trade Union Advisory Committee (TUAC) has pointed out in its input to the first draft report of the OECD Guidelines Stocktaking Exercise, there is widespread trade union fatigue with the process. Without key changes, unions will lose interest. We agree with the TUAC that the Guidelines should be updated to refer to recent problems faced by workers, such as misclassification and violation of their rights in the digital economy. But we also share TUAC's view that the most urgent need is for better implementation of the Guidelines through a strengthened NCP process. Employers increasingly are opting out of the mediation process offered by the NCPs or participating without real intent to find agreement. Some NCPs do not issue determinations on the merits and, even where the NCP does issue findings, there are no clear consequences for ignoring them. The bars on both "campaigning" and discussing the case during the entire process give employers an incentive to prolong discussions to avoid public criticism.

In our view, NCPs should be required to issue findings on whether a company breached the Guidelines. There should be consequences for breaches and for companies that refuse to participate in the process. For the best outcome in the mediation of labor cases, the NCPs should use professional mediators with labor relations expertise. If an MNC refuses to participate, or mediation fails, the complainant should be allowed to request binding arbitration. Overall, the mechanism should provide a streamlined, adjudicatory process where both sides can present their evidence to the NCP at once.

The Guidelines should also provide fair and consistent rules on campaigning, transparency and confidentiality. The rules on evidence should be clarified and applied consistently to both parties. And the rules on transparency and confidentiality should be standardized and should not exceed a legitimate interest. NCPs should also be required to follow up on settlements to ensure the employer is held to any agreements or decisions made.

Finally, it is not uncommon for small trade unions or NGOs to be barely able to formulate a submission to the relevant NCP (often in Europe or America) and to participate in the mediation process with reasonable resources. In such cases, it should be stipulated that the relevant NCP should provide moral and material support to the organisation concerned from the moment it becomes aware of a possible case.

Contact: Marília Mendes  
Fachsekretärin Migration  
[www.unia.ch](http://www.unia.ch)

## 62. Syndicom

### Submission from syndicom on the OECD Guidelines for Multinational Enterprises

syndicom represents 30 000 workers in Switzerland, including in the sectors of logistics, ICT, and media/printing. A lot of multinational enterprises have their headquarters or an office in Switzerland. The OECD Guidelines offer a path towards finding a remedy for violations of human rights by multinational enterprises. As a mechanism for handling extraterritorial cases, it can also be the way for a global union like UNI Global Union, which syndicom is a part of, to bring a case before a multinational company's home government. Therefore, syndicom sees the Guidelines as an essential tool in the work with global companies. However, measures need to be taken to raise awareness of the Guidelines, both among companies and employees.

Our experience at UNI Global Union has led us to conclude that, absent significant operational improvement, the Guidelines will become a symbolic statement of intent rather than a mechanism through which to achieve remedy and drive change. As the Trade Union Advisory Committee (TUAC) has pointed



out in its input to the first draft report of the OECD Guidelines Stocktaking Exercise, there is trade union fatigue with the process. Without key changes, unions will lose interest.

We agree with the TUAC that the Guidelines should be updated to refer to recent problems faced by workers, such as misclassification and violation of their rights in the digital economy. Some of these issues could be handled by modifying the commentary or guidance. But we also share TUAC's view that the most urgent need is for better implementation of the Guidelines through a strengthened NCP process. Employers increasingly are opting out of the mediation process offered by the NCPs, or participating without any real intent to find agreement. Some NCPs do not issue determinations on the merits and, even where the NCP does issue findings, there are no clear consequences for ignoring them. The bars on both "campaigning" and discussing the case during the entire process gives employers an incentive to prolong discussions in order to avoid public criticism.

NCPs should be required to issue findings on whether a company breached the Guidelines. There should be consequences for breaches and for companies that refuse to participate in the process. For the best outcome in the mediation of labour cases, the NCPs should use professional mediators with labor relations expertise. If a multinational company refuses to participate, or mediation fails, the complainant should be allowed to request binding arbitration. Overall, the mechanism should provide a streamlined, adjudicatory process where both sides are allowed to present their evidence to the NCP at once. The Guidelines should also provide fair and consistent rules on campaigning, transparency, and confidentiality. The rules on evidence should be clarified and applied consistently to both parties. And the rules on transparency and confidentiality should be standardized and should not exceed a legitimate interest. Finally, NCPs should be required to follow up on settlements to ensure the employer is held to any agreements or decisions made.

Contact: Mr Daniel Hügli  
Zentralsekretär Sektor ICT  
[www.syndicom.ch](http://www.syndicom.ch)

## 63. The Hague Rules on Business and Human Rights Arbitration Project Working Group

The Hague

### **OECD Guidelines for MNE's potential to improve their remedy approach.**

The Guidelines provide for certain operational compliance requirements for companies, such as due diligence procedures, inspired by the UNGPs.

They however do not address the setting up of adequate remedy procedures in accordance with the UNGPs, such as operational grievance mechanisms or neutral third party assisted remedial options.

As a voluntary non-legal process the Guidelines' NCP complaints mediation process is aimed at reaching forward-looking improvements and not at retroactive restitution, although it may result occasionally in mediator assisted settlement of established harm.

In case a company agrees to NCP-assisted mediation, the procedure may, notwithstanding good faith negotiations, not result, in whole or in part, in the forward-looking improvements in the company's conduct and/or in adequate remediation sought on account of relevant uncertainty of the legal basis therefor. Rather than NCP determination, in these circumstances a consensual binding legal procedure as follow-on procedure to the NCP mediation process could resolve the (remaining) legal issues between the parties.

International arbitration in accordance with the [Hague Rules on Business and Human Rights Arbitration](#) (Hague Rules) could constitute such follow-on mechanism to the NCPs,<sup>149</sup> to ensure that enterprises uphold the international human rights obligations in line with the UNGPs. Arbitration could offer parties alleging human rights violations, as well as companies and states: (i) a neutral forum for dispute resolution, independent of both parties and interested states; (ii) a consensual and flexible dispute resolution process; (iii) the possibility to obtain binding awards enforceable across borders; and (iv) means of dispute resolution potentially cheaper and quicker than litigation.

The Hague Rules have been *designed* to: (i) address potential violations of human rights by business; and (ii) meet the effectiveness criteria for dispute resolution set out in the UNGPs, including legitimacy, accessibility, predictability and rights-compatibility of the outcomes.

They account *inter alia* for:

- The possible need for special measures to address the circumstances of those affected by the human rights impacts of business activities;
- The potential imbalance of power between the parties;
- The public interest in the resolution of such disputes, which may require, among other things, a high degree of transparency of the proceedings and an opportunity for participation by third persons and States;
- The appointment of arbitrators with expertise appropriate for such disputes and bound by high standards of conduct.

By allowing the Guidelines to

- (i) demand or encourage that, as part of their due diligence, multinational enterprises established in their territory include arbitration clauses in supply-chain contracts; and
- (ii) encourage agreements between enterprises and individuals, that allegedly have suffered a breach of their human rights, failing good faith negotiations, to arbitrate their dispute,

Adhering States would be able to prevent (promoting change in the behavior of suppliers) and remedy (by facilitating an enforceable mechanism) breaches of national laws and internationally recognised standards of human rights by business carrying out activities in and (given the potential cross-border reach of arbitration) through their territories and beyond.

The Hague Rules on Business and Human Rights Arbitration Project Working Group  
Prof. Jan Eijssbouts  
Project Manager

## 64. UFCW America's food and Retail Union + UNI Global Union

Washington, D.C.

Dear Sir or Madam:

On behalf of the United Food and Commercial Workers International Union (UFCW), representing 1.3 million working women and men employed in the retail, wholesale, food processing and manufacturing, health care and services sectors of the United States and Canada, I submit our comments for the public consultation process concerning the future of the OECD Guidelines on Multinational Enterprises (MNEs).

The UFCW thoroughly endorses and supports the submission already made by UNI Global Union, included under separate cover. Moreover, the UFCW wishes to emphasize the following points.

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<sup>149</sup> The Hague Rules include provisions on facilitating settlement and mediation, and expressly emphasize the complementarity of arbitration to such procedures as the OECD National Contact Points system (Articles 1(6), 17(3), 42, and 51).

- 1- All National Contact Points (NCPs) should make findings and determine whether a respondent MNE has violated the Guidelines, pursuant to the filing of a specific instance case/complaint.
- 2- NCPs should end any gag order policies in relation to the publicizing of complaint filings. To avoid compromising the confidentiality of the mediation and conciliation process, the NCPs could limit publicity to the time of the complaint's filing as well as its final resolution.
- 3- The NCPs should look to the ILO standards as the guiding principles for Chapter V of the OECD Guidelines, not the national and local labor law regimes since such systems often fail to provide adequate guarantees for labor and trade union rights.
- 4- The NCPs should not use "parallel proceedings" as a pretext for refusing to receive and review a complaint pursuant to the Guidelines. The existence of pending proceedings before national and local labor law authorities should not pre-empt the OECD review process.
- 5- All NCPs should adopt the due diligence doctrine currently employed by some NCPs concerning the admissibility of complaints. In other words, the NCP should be willing to receive any complaint involving a MNE with headquarters in its country and which failed to exercise due diligence in relation to the Guidelines, even if the alleged violations took place in another country.
- 6- All NCPs should use the most robust measures possible in the case of MNE's rejecting the good offices of mediation and conciliation. In the case of MNE's refusing OECD mediation and conciliation, additional "show cause" proceedings must be adopted. And as UNI Global Union has contended, if a MNE "refuses to participate, or mediation fails, the complainant should be allowed to request **binding arbitration**."

The UFCW trusts that our comments will be given all due consideration.

Sincerely,

Anthony M. Perrone, International President  
 Shaun Barclay, International Secretary-Treasurer  
<https://www.ufcw.org/>

## 65. UNI Global Union

### SUBMISSION OF UNI GLOBAL UNION TO OECD GUIDELINES PUBLIC CONSULTATION

UNI Global Union represents workers in 150 countries through affiliated unions. Workers in UNI sectors include many in low wage service industries such as retail, care, cleaning, private security and contact centers, most of them without the benefit of union representation or collective bargaining. In many countries, the OECD Guidelines offer the only path towards finding a remedy for violations of human rights by multinational enterprises. As a mechanism for handling extraterritorial cases, it can also be the only way for a global union to bring a case before an MNC's home government. Therefore, UNI sees the Guidelines as an essential tool in our work with global companies -- we have brought six cases to five NCPs, and been co-signatory to several others.

However, our experience has led us to conclude that, absent significant operational improvement, the Guidelines will become a symbolic statement of intent rather than a mechanism through which to achieve remedy and drive change. As the Trade Union Advisory Committee (TUAC) has pointed out in its input to the first draft report of the OECD Guidelines Stocktaking Exercise, there is widespread trade union fatigue with the process. Without key changes, unions will lose interest.

We agree with the TUAC that the Guidelines should be updated to refer to recent problems faced by workers, such as misclassification and violation of their rights in the digital economy. Some of these issues

could be handled by modifying the commentary or guidance. But, we also share TUAC's view that the most urgent need is for better implementation of the Guidelines through a strengthened NCP process.

In our experience, employers increasingly are opting out of the mediation process offered by the NCPs, or participating without any real intent to find agreement. Some NCPs do not issue determinations on the merits and, even where the NCP does issue findings, there are no clear consequences for ignoring them. The bars on both "campaigning" and discussing the case during the entire process gives employers an incentive to prolong discussions in order to avoid public criticism.

In our view, NCPs should be required to **issue findings** on whether a company breached the Guidelines. There should be **consequences** for breaches and for companies that refuse to participate in the process. For the best outcome in the mediation of labor cases, the NCPs should use **professional mediators** with **labor relations expertise**. If an MNC refuses to participate, or mediation fails, the complainant should be allowed to request **binding arbitration**. Overall, the mechanism should provide a **streamlined, adjudicatory** process where both sides are allowed to present their evidence to the NCP at once.

The Guidelines should also provide fair and consistent rules on campaigning, transparency and confidentiality. The rules on evidence should be clarified and applied consistently to both parties. And the rules on transparency and **confidentiality** should be standardized and should not exceed a legitimate interest.

Finally, NCPs should be required to **follow up** on settlements to ensure the employer is held to any agreements or decisions made.

UNI Global Union | [www.uniglobalunion.org](http://www.uniglobalunion.org) <http://www.uniglobalunion.org/>

## 66. University of Antwerp and [bhattsollicitor.info](http://bhattsollicitor.info)

### Submission to OECD Working Party on Responsible Business Conduct

#### Online public consultation - Stocktaking exercise on the OECD Guidelines for Multinational Enterprises

**Authors:** Dr. Kinnari Bhatt and Dr. Gamze Erdem Türkelli

#### Introduction

We welcome the stocktaking exercise undertaken by the OECD Working Party on Responsible Business Conduct on the OECD Guidelines for Multinational Enterprises (MNEs) and the opportunity to provide input through this public consultation. This submission focuses on the unique implementation mechanism underpinning the Guidelines: the grievance mechanisms of the National Contact Points (NCPs) for responsible business conduct. We focus on NCPs as we believe that the fitness for purpose of the Guidelines is only as strong as the accessibility and responsiveness of the mechanism through which individuals can resolve the inevitable issues that arise in relation to the implementation of the Guidelines.<sup>150</sup>

#### National Contact Points

<sup>150</sup> Our submission draws from the evaluation and analysis undertaken in our recently published peer-reviewed article that features an evidence-based independent stocktaking of the OECD Guidelines and the role of National Contact Points (NCPs) as effective remedy mechanisms as well as forward-looking recommendations

Bhatt, K. and Erdem Türkelli, G. (2021) 'OECD National Contact Points as Sites of Effective Remedy: New Expressions of the Role and Rule of Law within Market Globalization?', *Business and Human Rights Journal*, 1-26. doi:10.1017/bhj.2021.30; available Open Access: <https://www.cambridge.org/core/journals/business-and-human-rights-journal/article/oecd-national-contact-points-as-sites-of-effective-remedy-new-expressions-of-the-role-and-rule-of-law-within-market-globalization/EE9990CD1EC9599027FEA66D9B5C3A77>

While the OECD may take the technical view that NCPs are not designed to offer formal remedy but rather a mediation platform for dialogue and solutions, it would be short sighted of the OECD not to recognise that NCPs frequently operate within complicated political and legal ecosystems in which people cannot access a functioning rule of law. Consequently, they turn to NCPs as the only way to hold MNEs accountable for irresponsible business conduct. An OECD Watch stocktake shows that between 2000 and 2020 NCPs handled a total of 500 complaints.

Our research into the ability of NCPs to offer effective remedy<sup>151</sup> demonstrates that effectiveness of NCPs is highly dependent on the general context of a case and a fortunate conjunction of external factors e.g. an NCP's own networks, funding and priorities and who is at the mediation table. Thus, the effective use of the NCP good offices becomes more about luck and circumstance. This requires urgent attention to ensure a level playing field, equal access for harmed individuals but also to strengthen the legitimacy and relevance of the Guidelines. Adhering states have the flexibility to organise their NCPs as they see fit and, in this context, we recommend **the following improvements**:

- **Increasing resource allocation** to NCPs is important for ensuring that NCPs can deliver on their problem-solving mandate. We suggest that each NCP set up an independently administered trust to provide communities, particularly those abroad, with funds for facilitating a mediation. An International Fund for Victims similar to that envisaged in the proposed draft legally binding instrument on business and human rights is an option.
- NCPs require an **independent oversight mechanism** staffed with independent experts to render proceedings and decisions more legitimate, accountable and consequently, more responsive to individuals. The possibility for establishing multi-stakeholder oversight bodies is contained in the procedural guidelines and requires implementation at pace.
- **Sanctioning mechanism**: Standard operating procedures applicable across all NCPs should compel respondent companies to engage with the claimants in good faith. Lack of a sanctioning mechanism raises questions around the legitimacy of the entire scheme. Business enterprises that do not experience negative effects, such as reputational costs flowing from specific instances, might simply refuse to participate.
- We recommend the introduction of **compulsory follow-up** to concluded instances as a tool for fostering long-term fitness for purpose. Monitoring of mediated outcomes should be automatic and in robust forms such as publicly available **periodic update reports**. This should be implemented across all NCPs, adhering states with findings feeding into and strengthening the peer-review process.
- Finally, **dialogue and coordination between NCPs in different countries** is required to incentivize the harmonisation of NCP practices across home states.

One of the strengths of NCPs is their capability to hear a diverse range of issues with disputes over human rights and labour being amongst those most frequently heard. Scanning the horizon, we predict an increasing number of specific instances being brought before NCPs. Specifically, with regards to the EU Green Deal and Fit for 55 Package, we anticipate that European NCPs will be increasingly confronted with complex demands against MNEs and financial institutions around climate change and the environment which will require a more harmonised and transparent approach. Onboarding these recommendations is critical for the future orientation and fitness of NCPs and the increasing pressures that NCPs will face as they encounter more David and Goliath situations supported by an increasingly mature, strategic and demanding civil society.

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<sup>151</sup> Ibid.

## 67. Ver.di

### SUBMISSION OF VER.DI TO OECD GUIDELINES PUBLIC CONSULTATION

ver.di represents workers in a broad variety of public and private services sectors. Many of the companies whose workers we represent are multinational corporations or have supply chains spreading across the world. In many countries, the OECD Guidelines offer the only path towards finding a remedy for violations of human rights by multinational enterprises. As a mechanism for handling extraterritorial cases, it can also be the only way to bring a case before an MNC's home government. Therefore, ver.di sees the Guidelines as an important tool in unions' work with global companies.

However, our experience has led us to conclude that, absent significant operational improvement, the Guidelines will become a symbolic statement of intent rather than a mechanism through which to achieve remedy and drive change. As the Trade Union Advisory Committee (TUAC) has pointed out in its input to the first draft report of the OECD Guidelines Stocktaking Exercise, there is widespread trade union fatigue with the process. Without key changes, unions will lose interest.

We agree with the TUAC that the Guidelines should be updated to refer to recent problems faced by workers, such as misclassification and violation of their rights in the digital economy. Some of these issues could be handled by modifying the commentary or guidance. But, we also share TUAC's view that the most urgent need is for better implementation of the Guidelines through a strengthened NCP process.

In our experience, employers increasingly are opting out of the mediation process offered by the NCPs, or participating without any real intent to find agreement. Some NCPs do not issue determinations on the merits and, even where the NCP does issue findings, there are no clear consequences for ignoring them. The bars on both "campaigning" and discussing the case during the entire process gives employers an incentive to prolong discussions in order to avoid public criticism.

In our view, NCPs should be required to issue findings on whether a company breached the Guidelines. There should be consequences for breaches and for companies that refuse to participate in the process. For the best outcome in the mediation of labor cases, the NCPs should use professional mediators with labor relations expertise. If an MNC refuses to participate, or mediation fails, the complainant should be allowed to request binding arbitration. Overall, the mechanism should provide a streamlined, adjudicatory process where both sides are allowed to present their evidence to the NCP at once. The Guidelines should also provide fair and consistent rules on campaigning, transparency and confidentiality. The rules on evidence should be clarified and applied consistently to both parties. And the rules on transparency and confidentiality should be standardized and should not exceed a legitimate interest.

Finally, NCPs should be required to follow up on settlements to ensure the employer is held to any agreements or decisions made.

Contact: Dr. Jenny Jungehülsing  
 Persönliche Referentin des Vorsitzenden  
<http://www.verdi.de>

## 68. Welfarm

### Déclaration

#### ***Consultation publique sur les Principes Directeurs de l'OCDE à l'intention des Entreprises Multinationales***

S'il est nécessaire que les entreprises rendent compte de leurs engagements en matière de durabilité, les Principes directeurs de l'OCDE font l'impasse sur l'un de ses enjeux essentiels : la préservation du bien-



être des animaux, en particulier d'élevage. Outre la propagation des zoonoses et la résistance antimicrobienne que certaines pratiques d'élevage peuvent causer, elles peuvent également être préjudiciables à santé humaine et l'environnement (pollution de l'air, de l'eau, des sols,...). La cohérence des dispositifs prévus par ce texte, comme son articulation avec le guide OCDEFAO pour des filières agricoles responsables, implique d'inclure le bien-être animal.

Lorsqu'elles existent, les normes destinées à protéger les animaux d'élevage sont insuffisantes pour couvrir toutes les problématiques liées à la préservation de leur bien-être. En marge de ces textes, il faut que les entreprises soient transparentes sur l'impact de leurs activités sur les animaux d'élevage et qu'elles soient en mesure d'y remédier. L'objectif ne consiste pas seulement à protéger les animaux mais bien de contribuer aussi à l'information du public. Par exemple, l'UE importe de la viande chevaline et de l'hormone eCG en provenance d'États dont les normes de protection animale sont impropres à garantir le bien-être animal. Les enquêtes de plusieurs ONG, relayées en France par Welfarm<sup>152</sup>, ont révélé des pratiques de maltraitance dont le public ne pouvait avoir connaissance, faute, pour les entreprises concernées d'avoir communiqué à ce sujet. Welfarm défend ainsi la nécessité d'inclure le bien-être animal dans les propositions de directives qui sont discutées à ce jour au sein de l'Union européenne<sup>153</sup>. Nos demandes ont déjà été entendues par le passé : depuis 2017, le bien-être animal compte parmi les informations devant figurer dans les déclarations de performances extrafinancières publiées par les entreprises françaises<sup>154</sup>.

Il est toutefois essentiel que l'OCDE se rallie à cette évolution : les Principes directeurs ont vocation à s'appliquer à l'échelle internationale et ils sont à même d'impulser l'adoption de textes en ce sens au niveau régional et local.

Contact : Adrienne BONNET (dr.)  
Responsable du pôle Campagnes, Plaidoyer et Juridique  
WELFARM – Protection mondiale des animaux de ferme  
[www.welfarm.fr](http://www.welfarm.fr)

## 69. WO=MEN

### **WO=MEN Dutch Gender Platform response to the EU Stocktaking exercise on the OECD Guidelines for Multinational Enterprises, September 2021**

#### **WO=MEN and the perspective we respond from to the public consultation**

WO=MEN Dutch Gender Platform strives for equal power relations between women, men and gender non-conforming persons in the Netherlands and worldwide. WO=MEN is a platform with a diverse network of members, around 50 organisations and 125 professionals, such as development and peace organisations and entrepreneurs.

WO=MEN monitors policy, shares knowledge, connects and mobilizes people.

<sup>152</sup> Plus d'informations à retrouver sur nos sites Internet [www.alterteviandechevaline.fr](http://www.alterteviandechevaline.fr) et [www.action.welfarm.fr/fermesasang/](http://www.action.welfarm.fr/fermesasang/) dans nos articles disponibles sur [www.welfarm.fr](http://www.welfarm.fr) (« Enquête sur la viande chevaline importée d'outre-Atlantique », 8 février 2017 ; « Nouvelle enquête vidéo : le vrai visage de la viande chevaline », 12 juin 2019 ; « Stop au business des fermes à sang », 6 octobre 2017 ; « Nouvelle vidéo : dans l'enfer des fermes à sang », 17 juillet 2018 ; « Ceva renonce au sang de juments d'Amérique du Sud ! », 6 août 2018 ; « Cora, Leclerc, Auchan, Henri Boucher... Que cache la viande chevaline vendue en France ? », communiqué de presse, avril 2021 ; « Que cache la viande chevaline vendue en France ? », 14 avril 2021).

<sup>153</sup> V. notre article à ce sujet sur notre site : « Welfarm publie deux rapports afin que les entreprises veillent à l'impact de leurs activités sur le bien-être animal », 16 juillet 2021, disponible à l'adresse suivante :

<https://welfarm.fr/entreprises-bien-etre-animal>.

<sup>154</sup> Code de commerce, article L. 225-102-1

We focus on three objectives:

- Sustainable social, political, and financial support for gender equality and women's rights;
- Women, men, and gender non-conforming persons have equal influence on and access to natural resources (land, water, forests), manufacturing chains, (international) companies and climate agreements;
- Equal participation in peace processes and the prevention of new conflicts of women, men, and gender non-conforming persons in (post) conflict situations.

Our Theory of Change 2018-2022 and our multi-annual plan can be viewed here: <https://women.nl/bestanden/ToC%20WOMEN%202017%202021%20Final.pdf>

### Business impacts women and LGBTQ+ persons differently

Women (including girls) and LGBTQ+ persons experience business-related human rights abuses differently and are often affected disproportionately. Women also face multiple forms of discrimination. They experience additional barriers in seeking access to effective remedies for business-related human rights abuses.<sup>155</sup>

We echo the publication by OECD Watch<sup>156</sup> which clearly states that the main challenge of the current OECD guidelines is that they do not “adequately establish expectations for MNEs to particularly identify and address their impacts on women and LGBTQ+ individuals (including with focus on how impacts differ for people with additional intersecting vulnerable identity traits), nor guidance for NCPs on how to minimize gender-linked barriers to remedy via the specific instance process.”

### Opportunities

WO=MEN identified three opportunities to strengthen the guidelines.

1. The guidelines should require MNEs to **meaningfully engage** women's rights- and gender equality organisations, to understand and respond to the differentiated impact on women and LGBTQ+ people. This requires clear standards for MNEs on responsible business conduct that consider the impact on women and LGBTQ+ persons. At least, these standard should entail an extra effort to include (indigenous) women and LGBTQ+ people in community consultation, and guidance for governments to monitor these processes.
2. Meaningful participation should provide guidance for NCPs on **mitigating the gender related barriers** to remedy by integrating procedures that facilitate access to remedy for women and LGBTQ+ persons. Also, this guidance should, at minimum, require business to identify gender-specific barriers and to endeavor and report on mitigations measures.
3. The guidelines should consider **parallel existing language** in other international agreements on the inclusion of gender principles in RBC regulations, national laws, industry standards, and civil society guidance. In particular the gender dimensions of the Guiding Principles on Business and Human Rights and the OECD Due Diligence Guidance on RBC's gender due diligence recommendations, that guide businesses to apply a gender lens.<sup>157</sup>

Contact person: Dewi Keppy, Program Manager Gender and Sustainable Economy  
[www.wo-men.nl](http://www.wo-men.nl)

<sup>155</sup> <https://www.ohchr.org/EN/Issues/Business/Pages/GenderLens.aspx>

<sup>156</sup> Stocktaking on the OECD Guidelines Draft Submission to OECD RBC Unit, OECD Watch March 2021

<sup>157</sup> <https://www.ohchr.org/EN/Issues/Business/Pages/GenderLens.aspx>

## 70. Workers Assistance Center, Inc.

Dear members of the OECD Working Party on Responsible Business Conduct:

The Workers Assistance Center, Inc. welcomes this public consultation on gaps in the OECD Guidelines for Multinational Enterprises (Guidelines). We work with communities adversely impacted by business activity and are experienced in attempting to use the Guidelines to encourage responsible business conduct (RBC) by corporations, advocate for improved RBC policies by governments, and secure remedy for harm via the National Contact Point (NCP) complaint mechanisms.

While the Guideline should be a valuable tool to advance RBC, in the ten years since their last revision, the standards have not kept pace with new challenges and expectations for corporate conduct and the NCP complaint mechanisms have largely failed to facilitate access to remedy for impacted communities.

In our view, serious gaps in both the RBC standards for multinational enterprises (MNEs) and implementation of expectations for NCPs are preventing the Guidelines from fulfilling their purposes:

Specifically on labour rights: Unionisation and workers rights are under threat, yet the Guidelines fail adequately to set important labour rights standards for MNEs, such as on ensuring responsible disengagement, avoiding business models that preclude payment of a living wage and intentionally escape responsibility for worker well-being, addressing deep-rooted discrimination and sexual harassment within supply chains, and respecting rights of workers in the digital economy.

More information on this is provided by OECD Watch -

[www.oecdwatch.org/wpcontent/uploads/sites/8/2021/06/OW-OECD-Guidelines-Gap-Analysis-Labour-Rights.pdf](http://www.oecdwatch.org/wpcontent/uploads/sites/8/2021/06/OW-OECD-Guidelines-Gap-Analysis-Labour-Rights.pdf)

In light of these concerns, we respectfully request that you ensure the final stocktaking report reflects and responds to each of the gaps identified by civil society. We also request that, following conclusion of the stocktaking, the Working Party initiates an inclusive process to revise the Guidelines to ensure they remain fit for purpose. We thank you for your consideration and stand ready to support future revision discussions.

Sincerely,

CECILIA V. TUICO

Workers Assistance Center, Inc.

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

## 71. Yokohama Action Research

Dear members of the OECD Working Party on Responsible Business Conduct:

Yokohama Action Research welcomes this public consultation on gaps in the OECD Guidelines for Multinational Enterprises (Guidelines). We are a member of the Support Group for Philippine Toyota Union TMPCWA, one of the co-complainants in the Specific Instance involving Toyota Motor Corporation and Toyota Motor Philippines Corporation, which continued from 2004 to 2019, and also one of the cocomplainants in the Specific Instance involving Suzuki Motor Corporation and Suzuki Motor (Thailand). We are also a member of OECD Watch.

While the Guidelines should and could be a valuable tool to advance responsible business conduct (RBC) and access to remedy for victims, in the ten years since their last revision, the standards have not kept pace with new challenges and expectations for corporate conduct and the NCP complaint mechanisms have largely failed to facilitate access to remedy for impacted communities. We very much support the

position of OECD Watch<sup>158</sup> that serious gaps in both the RBC standards for multinational enterprises and the implementation expectations for NCPs are preventing the Guidelines from fulfilling their purposes.

We are focused first and foremost on the performance of NCPs. In our view, the gaps in expectations for NCPs that need to be addressed most urgently are the following:

- Inadequate communication by NCPs about their promotion *and* complaint-handling mandates, the Guidelines, and the due diligence guidance: An informative website, and outreach activities towards all stakeholders, are supposed to be NCPs' main tools for promoting the Guidelines. But the Japanese NCP's website is maintained only as a part of the Ministry of Foreign Affairs' website and doesn't contain enough information for understanding the contents of the Guidelines or the role of the NCP in encouraging RBC and handling disputes. Further, the Japanese NCP also does not engage in adequate promotional activities, including especially through events and outreach to NGOs and unions to inform them on how to use the Guidelines to assess company conduct and file complaints. We urge you to revise the Procedural Guidance to establish clear and ambitious expectations for NCP's communication and promotion activities equitably towards all stakeholder groups.
- High staff turn-over and lack of independence at NCPs: The Japanese NCP is composed of representatives from three ministries. The staff from the Ministry of Foreign Affairs coordinates among persons from these ministries. As the representative from each ministry is supposed to be transferred to different departments after a certain number of years, continuity in the commitment on specific cases is not guaranteed, nor even basic institutional knowledge on the Guidelines and the NCP's role in improving corporate conduct in Japan. We need independent experts on this task fully paid by the budget for these ministries. We urge you to revise the Procedural Guidance to call for all NCPs to adopt fully resourced, independent expert panel structure that ensure adequate expertise and impartiality, as well as continuity of oversight, particularly in handling complaints.
- Refusal to evaluate claims when a company refuses to participate in good offices: The Japanese NCP, among others, refuses to proceed with good offices if a company refuses to participate. This approach allows the company to stone-wall the work of the NCP, destroying the NCP's impartiality, equitability, and accountability. We urge you to revise the Procedural Guidance to set rules for NCPs to proceed with investigation, determinations of non-adherence, and recommendations even in cases where the company does not comply with NCP mediation.
- Inadequate oversight by the WPRBC of non-accountable NCPs: Over the past two decades, it has become clear that many NCPs do not handle complaints effectively. At worst, some do not show good faith towards complainants, but instead seek to protect the company and/or minimize their own workload. Others simply lack the resources or expertise to provide a rights-compatible path to remedy. Unfortunately, when an NCP has handled a complaint ineffectively, complainants have no recourse but to ask OECD Watch to file a substantiated submission, a process that is itself too lengthy for easy use. The WPRBC is not fulfilling its own responsibility to address these problems. It is therefore necessary that the WPRBC establish its own mechanisms both to better monitor and guide complaint-handling by individual NCPs, and to allow complainants to contact the WPRBC directly both for support during the complaint, and for review of an NCP's implementation of the Guidelines after a complaint has been mishandled.

In light of these concerns, we respectfully request that the Working Party ensures the final stocktaking report reflects and responds to these gaps, as well as others identified by civil society. We also request that, following conclusion of the stocktaking, you initiate an inclusive process to revise the Guidelines to

<sup>158</sup> For more on OECD Watch's analysis, please see the network's submission to the First Draft of the stocktaking report and report "Get Fit: Closing gaps in the OECD Guidelines to make them fit for purpose".

close these gaps and ensure the NCPs fulfil their mandates and the standards promote the most current expectations on RBC.

We thank you for your consideration and stand ready to support future revision discussions.

Sincerely,

Yokohama Action Research

Tono Haruhi

[www.y-ar.org/ja/](http://www.y-ar.org/ja/)