Position Paper on the OECD Guidelines

The OECD Guidelines as leading standard for Responsible Business Conduct

The MVO Platform refers to the OECD Guidelines for Multinational Enterprises (OECD Guidelines) as the pre-eminent normative framework for responsible business conduct. These Guidelines are authoritative among governments and companies internationally, of high quality and offer practical recommendations for companies. The Dutch government has also made the OECD Guidelines central in its policy for Responsible Business Conduct: all Dutch companies are required to comply with these guidelines.

The OECD Guidelines were last revised in 2011; however, much has changed over the last ten years concerning responsible business conduct (RBC). Sector guides have been developed, a new climate agreement has been signed and technological developments are bringing new risks for people and the environment. In addition, the Dutch government has committed itself in various ways to new standards at the thematic level, for example in RBC agreements. In order to keep up with current developments and to maintain broad support for the OECD Guidelines, the MVO Platform calls for a revision of the Guidelines.

This position paper outlines which themes the MVO Platform would like to see included or improved in the revised OECD Guidelines, so that the expectations placed on companies in those areas become clear. The concept of due diligence (see text box) in the Guidelines stipulates that companies should prioritise risks of adverse impacts on society and subsequently start to address these risks. This position paper examines the following themes (in random order):

*** Climate change * Gender * Animal welfare * Digitalisation * Taxation * Land rights**
*** Caste discrimination * Transparency * Labour rights * Children's rights * Human rights defenders**
*** Scope of the Guidelines * Conflict-affected areas**

The report Get Fit: Closing gaps in the OECD Guidelines to make them fit for purpose from OECD Watch provides more details about the points for improvement, for the issues listed above as well as for the guidelines aimed at the functioning of the National Contact Points (NCPs).[1] OECD Watch is a global network of civil society organisations which share expertise on the OECD Guidelines and is an important stakeholder for the OECD's RBC Working Group.[2]

The aim of revision

In various places, including in the Netherlands, standards for companies have been raised or clarified in recent years, often at the sector or thematic level. This is a good development, but it is not sufficient. The aim of revising the OECD Guidelines is to ensure that they are in line with these improvements and to clarify what is specifically expected of companies. Moreover, complaints can only be submitted to NCPs based on the OECD Guidelines (see text box). Improving the Guidelines will therefore increase rights for victims.

What are the OECD Guidelines?

As member of the OECD, the Netherlands endorsed the OECD Guidelines for Multinational Enterprises in 2011, along with 43 other countries. In the meantime, the number of countries backing the Guidelines has grown to 50. The OECD Guidelines state clearly what is expected from companies in terms of respecting human rights, trade union rights and the right to collective bargaining, paying a living wage, respecting the environment, and contributing to the effective abolition of child labour, discrimination and forced labour.

The OECD Guidelines require businesses to continuously evaluate and respond to risks and violations of human rights, labour rights and environmental standards – both in their own operations and in the activities of companies they do business with – through means of *due diligence* for human rights and the environment. The focus is therefore not on the risks to the company itself, but on the risks for society. A six-step practical guide which companies can use to perform due diligence has been available since 2018: the OECD Due Diligence Guidance. It includes explanations for how companies can prioritise their social and environmental risks.

Countries that have endorsed the Guidelines have committed to implementing them, which is why the OECD Guidelines form the starting point for Dutch RBC policy. Countries are also required to have a National Contact Point (NCP). The core

[1] Due to a lack of extensive instructions in the OECD Guidelines, widely divergent NCPs have emerged and in some countries do not function properly or are not independent. The Dutch NCP works relatively well, yet the MVO Platform also sees room for improvement in the Dutch NCP (in Dutch).
[2] OECD Watch has more than 130 members in over 50 countries: https://www.oecdwatch.org/about-us/

duties of an NCP are to promote the application of the OECD Guidelines as well as to function as a contact point for complaints from civil society organisations which believe that companies are not complying with the OECD Guidelines: the NCP can then play a mediating role. The Dutch NCP functions well, certainly in comparison with others in the world. Clear statements are regularly published that are not only relevant to the case in question, but also contribute to a further clarification of RBC standards.

In 2011, the OECD Guidelines were brought into line with the principles and responsibilities as prescribed in the UN Guiding Principles on Business and Human Rights. The OECD Guidelines give extensive substance to the second basic principle of the UN Guiding Principles, the responsibility of companies to respect.

CLIMATE CHANGE

Climate change is one of the greatest crises of our time, with devastating consequences for biodiversity, agriculture and food production, clean air, and many other necessities. Businesses play a major role in climate change; 71% of global CO_2 emissions since 1988 have come from 100 companies.[3] Sweeping changes are needed to achieve the goal of limiting global warming to no more than 1.5 degrees, as called for in the Paris Climate Agreement (2016). Companies are thus key in implementing the sweeping changes required. The oil and gas sector in particular has a substantial role to play, as there is a large gap between the Paris climate targets and the surplus production of fossil fuels.[4] The financial sector should also do much more, as well as many other highly polluting sectors.

The call for *climate justice* is becoming increasingly urgent. The role of companies in this is to monitor the consequences of climate change for marginalised groups and to proportionately shoulder their responsibility for pollution. In the transition to sustainable energy, it is important that companies transition to the responsible extraction of raw materials, for example, in the production of batteries. Currently, extraction often leads to major environmental damage and human rights violations.[5]

Climate change is not mentioned in the OECD Guidelines, nor are international climate targets included in them. However, in 2019 the Dutch NCP concluded that in order to comply with the OECD Guidelines, ING bank and other commercial banks are indeed obliged to limit the negative climate impacts of their investments in accordance with the Paris climate targets.[6] It is vital to integrate this ruling into the OECD Guidelines so that other countries also view limiting climate change as part of their responsibility.

Revision of the OECD Guidelines:

- ➔ Include the responsibility of companies to combat climate change explicitly in the Guidelines.
- ➔ In doing so, provide clear descriptions of the responsibilities of companies to avert and address climate impacts, to disclose and to reduce their greenhouse gas emissions in accordance with the Paris Agreement (targeting a maximum 1.5 degree temperature rise) and any successive agreements.
- ➔ The Guidelines should make it clear to companies that they should identify where and how much greenhouse gas they emit (also indirectly and in chains: *scope 1, 2 and 3* of the Greenhouse Gas Protocol[7]) and make a CO_2 emission action plan to bring their emissions in line with the targets of the Paris Climate Agreement. In doing so, companies should work with short, intermediate and long-term objectives, as well as report on these.
- ➔ It must be made clear that political lobbying aimed at lowering environmental standards and weakening regulations is not part of responsible business conduct.

[3] Friends of the Earth Netherland https://milieudefensie.nl/klimaatzaakshell/100-bedrijven-verantwoordelijk-voor-71-van-de-uitstoot
[4] UNEP https://www.unep.org/resources/emissions-gap-report-2019
[5] SOMO https://www.somo.nl/let-the-energy-transition-be-a-fair-and-truly-sustainable-transition/?noredirect=en-GB
[6] Dutch NCP Final Statement and the Evaluation of the Final Statement regarding the notification of Oxfam Novib, Greenpeace, BankTrack and Milieudefensie vs ING
[7] The Greenhouse Gas Protocol (the most-used international protocol to calculate emissions of greenhouse gases) lists three scopes: Scope 1: direct CO_2-emissions, caused by the organisation's own sources. Scope 2: the indirect emission of CO_2 through the production of self-purchased and consumed electricity or heating. Scope 3: indirect emission of CO_2, caused by business activities of another organisation, such as the emissions caused by the production or extraction of purchased raw materials or other materials and outsourced activities such as goods transport.

- ➔ When it comes to the use of natural resources by companies, the OECD Guidelines should provide clarity on how to limit and compensate for the impacts on local communities, especially women, whose livelihoods often depend directly on these resources.

GENDER

Discrimination against women deserves special attention. The activities of companies impact on women differently than on men, not only in sectors with high percentages of female workers who are forced to work in poor labour conditions, such as agriculture, the garment sector and electronics, but also in communities involved in mining or infrastructure projects. The OECD Due Diligence Guidance clearly indicates how companies can better respect the rights of women and girls by integrating a gender perspective into their due diligence process, and in which situations this extra attention is needed. However, the Guidelines themselves do not name the specific impacts women face.

In the Netherlands, gender was established as a *cross-sectoral* risk[8] in 2014 and later received attention in two RBC agreements.[9] In 2020, however, large Dutch companies were still finding it difficult to include gender-specific risks in their due diligence processes.[10] Following the adoption of a resolution to strengthen the safeguarding of women's rights and gender equality in RBC policy,[11] the Dutch government financed a platform for Gender-Responsive Due Diligence.

Revision of the OECD Guidelines:

- ➔ The Guidelines should explicitly state that companies should carry out gender-sensitive due diligence. Revision of the Guidelines should explicitly address the disproportionate impacts caused by structural discrimination against women and LGBTQ+ people (and further vulnerabilities based on intersectional characteristics, such as ethnicity, age, caste, etc.).
- ➔ Economic autonomy is vital to breaking through discriminatory gender roles. The OECD Guidelines must emphasise the importance of equal pay for work.
- ➔ The procedural guidelines (which set expectations for the functioning of NCPs) for how NCPs can address the specific barriers that women and LGBTQ+ persons face in accessing justice should be made clearer.

ANIMAL WELFARE

Every year, billions of animals are used in the agriculture, textiles, pharmaceuticals, cosmetics and tourism sectors. This has many negative consequences, not only for animals, but also for people and the environment. The high-density housing of animals and greater interaction between animals and humans increase the risk of developing zoonotic diseases such as Covid-19, SARS, Ebola and avian influenza. In addition, intensive livestock farming is inextricably linked to climate change, deforestation and biodiversity loss through land use and greenhouse gas emissions. Finally, a lack of space for movement, breeding for higher production (e.g. factory-farmed poultry), unnecessary animal testing, trade in wild animals and unsustainable fishing cause considerable animal suffering.

Several European directives set requirements for, for example animal housing, transport of animals in the agriculture industries and animal testing for scientific purposes. The 2016 OECD-FAO Guide to Responsible Agricultural Supply Chains[12] does call on companies to assess animal welfare when conducting due diligence, citing the 'five freedoms' for animals.[13] Countries – including the Netherlands – also often have legislation concerning animal welfare. There is, however, a need for a broad standard that unifies the various

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[8] KPMG, CSR Sector Risk Assessment https://www.imvoconvenanten.nl/-/media/imvo/files/mvo-sector-risk%20assessment.pdf
[9] KIT Royal Tropical Institute https://www.kit.nl/wp-content/uploads/2020/07/KIT-2020-Evaluation-of-RBC-agreements-FINAL.pdf
[10] Equileap, Gender Equality in the Netherlands - Assessing 100 leading companies on workplace equality https://equileap.com/wp-content/uploads/2020/10/Equileap_DutchReport.pdf
[11] Motion from Dutch MP Van Raan c.s. (kenmerk 35570-XVII, nr. 38)
[12] OECD-FAO Guide https://www.oecd.org/daf/inv/investment-policy/rbc-agriculture-supply-chains.htm
[13] Freedom from hunger and thirst; discomfort; pain, injury and disease; freedom to express normal behaviour and freedom from fear and distress: https://www.fawec.org/en/technical-documents-general-concepts/106-what-is-animal-welfare

components of animal welfare; and this would be an excellent time for the OECD to formulate this standard and to include it in the OECD Guidelines.

In the Netherlands, a thematic policy framework on animal welfare was published in the Dutch Insurance Industry Agreement; this could serve as a reference for the OECD. In addition, the Dutch government stimulates the use of the OECD-FAO Guide and has declared itself in favour of including animal welfare in the OECD Guidelines.[14]

Revision of the OECD Guidelines:

- ➔ The Guidelines should provide clarity on how companies can carry out due diligence with attention for animal welfare.
- ➔ The standard for animal welfare should be formulated broadly and comprehensively in the Guidelines.

DIGITALISATION

Over the past decade, the rapidly increasing digitisation of the global economy has increased the potential for enterprises – not just technology companies – to have an adverse impact on human rights and the environment. Artificial intelligence, algorithms, surveillance technologies and online media platforms allow for a large array of human rights violations, concerning freedom of expression, the right to self-determination, the right not to be discriminated against, the right to security and economic, social and cultural rights. The large-scale collection of personal data entails social risks as well. Online platforms facilitate the rapid spread of disinformation, which poses risks to the quality of public debate and even democracy itself. The large-scale collection, storage and sale of data to create personal advertising profiles also entails serious risks for human rights.[15]

Moreover, environmental impacts (from mining to the enormous climate impact of data centres) and labour rights (in the platform economy) are too often overlooked. Responsibilities, duties and limits for technology companies (and others in the broader field) need to be defined, so that society can reap the benefits while limiting the risks to society. The OECD Guidelines can make an important contribution to this end. The OECD, with support from the Netherlands,[16] has carried out an analysis of the links between digitisation and RBC, and has identified a series of new standards.[17] These do not cover all the risks identified, however, and this is where the OECD Guidelines could play a role in filling in the gaps. The ILO also recently carried out research into the platform economy and has formulated recommendations.[18]

Revision of the OECD Guidelines:

- ➔ The OECD Guidelines should provide companies with clarity on how to conduct due diligence in the context of ongoing digitalisation.
- ➔ The Guidelines should set a standard and provide guidance for companies on how to deal with risks such as disinformation, environmental impacts, labour rights and human rights.

TAXATION

Corporate tax avoidance results in hundreds of billions in lost revenues for governments worldwide each year, due to multinationals shifting their profits to tax havens.[19] A broad public consensus now supports halting this tax avoidance, and the European Union is developing new policies to tackle the problem. In 2015, the OECD drafted the OECD-G20 Inclusive Framework on Base Erosion and Profit Shifting, which includes 15 actions that governments can take to combat tax avoidance.

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[14] Notes of a parliamentary written procedure https://zoek.officielebekendmakingen.nl/kst-28286-987.html
[15] Dutch NCP Webinar https://www.oesorichtlijnen.nl/evenementen/201214-ncp-themabijeenkomst-digitaliseren-en-imvo/presentaties
[16] Letter of Dutch government https://www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2021Z04820&did=2021D10665
[17] OECD, The impact of the digital transformation on business https://mneguidelines.oecd.org/rbc-and-digitalisation.htm
[18] ILO, The role of digital labour platforms in transforming the world of work https://www.ilo.org/global/research/global-reports/weso/2021/WCMS_771749/lang--en/index.htm
[19] Tax Justice NL https://www.taxjustice.nl/onderwerp/belastingparadijzen/

The Netherlands is one such tax haven, with no fewer than 15,000 letterbox companies that have been set up to facilitate tax avoidance. Many subsidiaries of large companies and private limited companies (BVs) owned by wealthy individuals are established in the Netherlands on paper only. These companies pay little or no tax in the Netherlands and other countries lose a great deal of income through these constructions as well. These developments show that OECD Guidelines governing these constructions are outdated – they do not mention the term tax avoidance and only discourage undue profit shifting by means of transfer pricing mechanisms.

Revision of the OECD Guidelines:

- ➔ Bring the Guidelines into line with global standards – the GRI Tax Standard could serve as an example – and call on companies to stop tax avoidance (including in their supply chains) and to refrain from inappropriate profit shifting.
- ➔ The Guidelines should specify that companies cease harmful tax practices, stop using tax havens and dismantle artificial corporate structures involving letterbox companies that aim to avoid taxes. Enterprises should not engage in improper shifting of profits and losses through financial transactions, i.e. not only through transfer pricing, but also through internal loans, royalty payments for trademarks and other practices.
- ➔ Clear requirements must be set for transparency: companies should publicly report profits and tax payments for each country and project. Ownership and corporate structures, including all holding companies and other letterbox companies, should be made public, as well as all tax-related financial constructions used.

LAND RIGHTS

For many local communities in various parts of the world, no land rights have been established. This makes these communities vulnerable to investors looking for land, for example, to meet the growing demand for biofuels, palm oil and livestock feed crops (soy). Land grabbing leads to violations of indigenous peoples' rights and to the dispossession of smallholders. The loss of land often also leads to a loss of biodiversity and food security. Moreover, land grabbing leads to increased greenhouse gas emissions through deforestation and large-scale industrial monocultures, thus contributing to climate change.[20] Land expropriation often also means violation of rights to housing, food, health and a clean-living environment, and is often even worse for women in local communities. Furthermore, the activities of companies often violate the rights of local fishermen to access and use traditional fishing grounds.

Companies should respect land rights, including the right to free, prior and informed consent (FPIC) for indigenous peoples and local communities, respect undocumented or informal property rights of women and communities, and address issues such as past land disputes or the failure of states to protect land rights. These issues are not currently reflected in the OECD Guidelines and there is no mention of FPIC (only a reference to UN instruments elaborating the rights of indigenous peoples). Land rights for women and vulnerable groups and FPIC are however addressed in the OECD Due Diligence Guidance and in two OECD sectoral guides.[21] In 2012, the FAO adopted guidelines for responsible management of land tenure, fisheries and forests, the Voluntary Guidelines on the Responsible Governance of Tenure (VGGT). These guidelines have since become an important reference point for sustainable and responsible land management.

The Dutch Banking Sector Agreement in late 2016 established that the Dutch government would work to improve international forums, including the OECD, on land rights and promote wider application of FPIC.[22] This can be achieved by advocating for the inclusion of land rights in the OECD Guidelines.

Revision of OECD Guidelines:

- ➔ The OECD Guidelines should set clear expectations for land rights and land management.
- ➔ The right to free, prior and informed consent (FPIC) of indigenous peoples should also become part of the OECD Guidelines. The four elements of FPIC should be specifically listed and elaborated upon.

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[20] ActioAid Netherlands https://actionaid.nl/2017/04/24/landrechten-cruciale-oplossing-klimaatverandering/
[21] FAO Guidelines for Responsible Agricultural Supply Chains and OECD Guidelines on Due Diligence for Meaningful Stakeholder Engagement in the Extractive Sector
[22] Dutch Banking Agreement https://www.ser.nl/-/media/ser/downloads/overige-publicaties/2016/dutch-banking-sector-agreement.pdf

In order to respect human rights, companies should consult with and seek the consent of all persons who have an interest in the land before starting new business activities on the territory in question.

- ➔ In addition, companies should respect the undocumented land rights and use rights of women and informal land tenure structures of indigenous communities or small-scale farmers, and investigate the issues surrounding existing land disputes.

CASTE DISCRIMINATION

Caste systems divide people into unequal, hierarchical social groups. Those at the bottom of the hierarchy are considered second-class citizens. Caste-based discrimination affects more than 260 million people worldwide, particularly in South Asia, but also in other parts of Asia, Africa, the Middle East and in various diaspora communities, including in the United Kingdom and the United States. Caste-based discrimination comprises violations of civil, political, economic, social and cultural rights, including labour rights, land rights and gender equality rights, as well as the right to access health care, education and justice systems.

Caste discrimination affects workers in all sectors, but particularly in agriculture, leather-working, garments, carpet weaving, natural stone, construction and IT. Research has shown that companies – sometimes through their suppliers or through outsourced recruitment and employment – hire low-caste workers as forced labour or pay them far below the minimum wage.[23] Low-caste workers have no support to organise collectively or to join trade unions. The OECD Guidelines do use the term 'social origin', but explicit mention of caste is needed to counter this form of 'invisible' discrimination.

Revision of OECD Guidelines:

- ➔ The Guidelines should outline how companies should perform due diligence to identify and address their impact on structurally disadvantaged or marginalised people, including people discriminated against on the basis of caste and the categories already mentioned in the current text of the Guidelines.
- ➔ Where the current text mentions 'local communities' or 'stakeholders', the terms 'marginalised' or 'disadvantaged' groups should also be included. The Guidelines should specify that disadvantaged or marginalised groups must be included in company consultations.

TRANSPARANCY

Sustainability reporting, integrated reporting and *ESG reporting*. Increasingly, countries throughout the world are asking companies to disclose non-financial information. Many different obligatory and voluntary instruments are used for this purpose. The European Union is currently strengthening legislation on sustainability reporting.

The disclosure chapter of the OECD Guidelines is outdated: the standards are limited to the minimum legal requirements for financial reporting – companies are also advised to disclose risks, but whether this includes social risks is unclear.[24] The OECD Due Diligence Guidance provides much more clarity on communicating with stakeholders, including communicating with the public: companies must be transparent about each step of the due diligence process, including the societal risks identified.

In the Netherlands, the Transparency Benchmark is conducted every two years. This is a study of RBC reporting among the 500 largest companies. The assessment examines whether the company endeavours to comply with the OECD Guidelines, and awards points for the publication of information on all steps involved in due diligence. Although this reporting is still very limited,[25] the expectations of the Dutch government are more concrete for that group of companies than for other companies.

When applying due diligence, it is inevitable that companies must make choices. It is crucial that companies communicate transparently about why certain choices have been made and what challenges they face in

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[23] Arisa https://arisa.nl/publicaties/
[24] OECD Guidelines, Commentary 32 and 33.
[25] Only 12 companies report on all six steps of due diligence, according to the Ernst & Young monitoring report

exercising due diligence, so that lessons can be learned and meaningful discussions with companies and stakeholders can be held.

Revision of OECD Guidelines:

- ➔ The importance of transparency and reporting on all aspects of RBC and due diligence should be central to the OECD 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.
- ➔ In this context, it must be clear that companies, at the minimum, report on:
    - All six steps of the due diligence process for enterprises, in an ongoing process
    - Profits and tax payments per country and per project
    - Ownership and corporate structure, including all holding companies and other letterbox companies
    - Data on jobs and employees
    - Names and locations of financers and business partners
    - Wages paid to workers in supply chains and how those wages compare to minimum and living wages
    - Pricing policy; how efforts are made to counteract price pressure in the production chain
    - Greenhouse gas emissions from the company's own operations and those of its supply chains and business partners.

LABOUR RIGHTS

The number of working people without collective bargaining agreements has increased enormously since 2011.[26] Labour rights are at risk worldwide, in all sectors and supply chains. Furthermore, 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. Workers who are part of company supply chains are largely invisible because traditional employer relationships are disappearing. In many cases, trade union members and leaders are dismissed or companies establish their own strictly controlled trade unions. Too many people are employed informally and earn insufficient wages. In addition, the increased automation and digitalisation of work, as well as the Covid-19 pandemic, have shown how companies' purchasing practices and disengagement further increase the impact on workers.

The OECD Guidelines should contain clear guidance on various issues related to labour rights, payment of a living wage and living income, protection of workers' rights on platforms and the digital economy. The Guidelines should also include expectations for companies on responsible disengagement from suppliers and/or withdrawal of operations from a particular region where upholding labour rights proves impossible.

Revision of OECD Guidelines:

- ➔ Freedom of association and collective bargaining as enabling rights must be given a central place in the Guidelines.
- ➔ The Guidelines must also make clear that companies must conduct due diligence on the impact on labour rights in their supply chains, and not (only) rely on social audits.
- ➔ Clarity that companies must facilitate, stimulate and respect collectively negotiated wages that are equal to or higher than a living wage/living income.
- ➔ The Guidelines should provide guidance for the purchasing practices of companies, which must be aimed at respecting labour rights and paying a living wage. The Guidelines should also provide clarity on the negative consequences of outsourcing activities to uncontrolled external companies.

[26] TUAC, Reviewing the Guidelines for MNEs: Trade Union Key Messages, OECD Guidelines that Deliver, December 2020

CHILDREN'S RIGHTS

The activities of companies impact on the full spectrum of rights as defined in the UN Convention on the Rights of the Child. Children are among the most marginalised and vulnerable members of our society, due to their physical and intellectual immaturity[27] and their dependence on parents and caregivers.[28] The OECD Guidelines should place more attention on the potential differential risks for and impacts on children.

Child labour is only one aspect of the violation of children's rights. Children can also be adversely affected (as consumers) by products that companies put on the market, such as unhealthy food, dangerous/badly produced toys, child-oriented marketing or the promotion of normative body ideals used in marketing. Children can be disadvantaged not only as consumers but also in their role as employees or as members of a community. The interests of the next generation must be considered now, as children are also valid stakeholders of today.

Dutch companies and banks are also implicated in negative impacts on children's rights and the environment through oil extraction[29] and soy production.[30] The OECD Guidelines focus on child labour and elimination of the worst forms of child labour, but they do not address the risks underlying child labour. Furthermore, the Guidelines do not address the rights of children as part of a community, as consumers and as social actors. The Child's Rights and Business Principles provide the most concrete and holistic elaboration of the obligations of companies regarding children's rights.

Revision of the OECD Guidelines:

- ➔ The OECD Guidelines should clearly support paying a living wage, thereby preventing much potential child labour. Fair purchasing practices would also contribute to paying a living wage and combating child labour.
- ➔ It is important that companies take responsibility for respecting and supporting child rights. The differential impacts (and potential impacts) on children must be part of the due diligence process. As with universal human rights such as access to health, education and a safe and healthy environment and living space, companies should specifically ensure that the creation and use of products and services are safe for children. The use of marketing and advertising must also respect and support children's rights. It must also be made clear that companies must ensure that children are recognised as stakeholders, with all the rights that this implies. All these elements must be clarified in the Guidelines.
- ➔ A section in the consumer interest section of the Guidelines should state that companies must also respect children's rights in their marketing and advertising.

HUMAN RIGHTS DEFENDERS

Human rights defenders – individuals or groups working peacefully to promote and protect human rights, including journalists and whistle-blowers – are under pressure worldwide. Human rights defenders face threats, reprisals, legal charges (SLAPPs[31]), stigmatisation, suspension of fundamental freedoms and legal restrictions. Violence against human rights defenders is also on the rise worldwide.[32] Many of these attacks are directed against those who work to protect human rights from the adverse impacts of business activities.

Companies are directly involved in committing or instigating violations against defenders in various ways,[33] such as by firing workers for protesting, filing SLAPP lawsuits against activists, hiring security companies to intimidate communities, detaining or assaulting journalists, abusing digital surveillance, or requesting

[27] Childhood is a unique period of physical, mental, emotional and spiritual development and violations of children's rights can have lifelong, irreversible and even generational consequences. Practices that are not problematic for adults can violate children's rights.
[28] Children, especially younger children, are dependent on parents, family and caregivers, so practices that directly affect adults can have indirect but immediate adverse effects on children.
[29] PNAS, Effect of oil spills on infant mortality in Nigeria. https://www.pnas.org/content/116/12/5467
[30] Amazon Watch, Complicity in Destruction II. https://amazonwatch.org/assets/files/2019-complicity-in-destruction-2.pdf
[31] A SLAPP, Strategic Lawsuit Against Public Participation, is litigation which is initiated with the aim of intimidating and silencing a critical party.
[32] Business & Human Rights Resource Center https://media.business-humanrights.org/media/documents/HRDs_2020_infographic_.pdf
[33] Companies use different strategies to actively undermine and attack human rights defenders. A further description of the different strategies is found here: https://www.mindthegap.ngo/harmful-strategies/undermining-defenders-communities/

unnecessary armed protection from state forces.[34] In other instances, companies look the other way when third parties – such as the military or police – engage in attacks against human rights defenders that are intended to benefit business.

OECD Watch research shows that 25 per cent of complaints submitted by communities and NGOs to NCPs involve violations against human rights defenders and/or retaliation as a result of the complaint.

Revision of the OECD Guidelines:

- ➔ The OECD Guidelines should detail how the actions and omissions of companies are linked to their impact on human rights defenders and how companies must respect and facilitate the advocacy of human rights defenders.

SCOPE OF THE GUIDELINES

In recent years, many kinds of abuses have come to light that were caused, or linked, to new forms of enterprises and institutions, in addition to the more traditional multinationals. Examples include sports federations linked to accusations of money laundering and human trafficking, social audit companies hired to perform due diligence for companies but which are unable to identify human rights violations, and government and government-affiliated institutions that grant licences, execute tenders, award government contracts, establish special economic zones or provide export credits without consistently maintaining proper due diligence practices. State-owned companies and other enterprises for which the government bears ultimate responsibility are just as responsible for conducting due diligence properly as private companies.

In the Netherlands as well, the proper application of due diligence is not yet a condition for financial support to companies. Atradius Dutch State Business (ADSB), for example, still uses other due diligence standards which in some ways are weaker than the OECD Guidelines. As a result, export credit insurance is still regularly granted for activities by Dutch companies which in fact do not comply with OECD Guidelines. Although the NCP has stated[35] that ADSB must also comply with the OECD Guidelines, ADSB places the responsibility for this entirely on its clients. Another example is the Port of Rotterdam Authority, which is involved in the development of port and industrial areas abroad where fossil fuels play a major role.[36]

The OECD Guidelines deliberately do not specifically define 'multinational corporation', so that they have a broad scope. They also make it clear that governments should encourage the broadest possible compliance with the Guidelines. However, it would be beneficial to clarify the definition to include all non-traditional companies as well as small and medium-sized enterprises (SMEs). At present, NCPs sometimes reject complaints for this reason. However, even a relatively small company can be involved in a very serious violation. The measures that a company should take to address RBC risks do not depend on the size or nature of the company, but should be proportionate to the severity and likelihood of negative impacts on human rights and the environment. The Dutch government's RBC policy also emphasises that the government expects all companies to comply with the OECD Guidelines.[37] The OECD Due Diligence Guidance provides recommendations on how SMEs can increase their influence on supply chain partners, for example by forming alliances.

Revision of OECD Guidelines:

- ➔ The Guidelines should elucidate its definition of 'multinational enterprise', so that it is clear that small and medium-sized enterprises, export credit agencies, sports federations, government and government-affiliated institutions with economic activities, (such as purchasing organisations) state-

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[34] By cooperating with an oppressive regime or by bringing in the army or police, companies try to silence human rights defenders and deny responsibility for the associated human rights violations. See also: https://www.mindthegap.ngo/harmful-strategies/utilising-state-power/

[35] NCP Evaluation of the Final Statement of Both Ends et al vs ADSB. The Final Statement of Both Ends vs ADSB.

[36] SOMO, The extended reach of the Port of Rotterdam https://www.somo.nl/the-far-reaching-tentacles-of-the-port-of-rotterdam/?noredirect=en-GB

[37] Dutch government, From giving information to imposing obligations: a new impulse for responsible business conduct https://www.government.nl/topics/responsible-business-conduct-rbc/documents/policy-notes/2020/10/16/from-giving-information-to-imposing-obligations

owned companies, and other non-traditional enterprises also have the responsibility to respect human rights and the environment.

CONFLICT-AFFECTED AREAS

The number of civil wars has almost tripled since the OECD Guidelines were last revised in 2011.[38] Many of these conflicts have arisen from stalled peace processes, organised crime and attacks by violent extremists or terrorists. The most serious human rights abuses take place in these situations and the risk of businesses contributing to these is high. Companies may even fuel conflicts if they are not aware of the underlying causes of the conflicts. Their activities can increase inequality and conflicts of interest between different groups and motivate violence. There are examples of enterprises deliberately operating in conflict zones to take advantage of the absence of an effective state, but in general, fragility tends to discourage entrepreneurs. But if investments are nevertheless made, a well-founded vision of how this can contribute to prevent conflict is lacking.

In Mozambique, huge gas discoveries have recently sparked a conflict with many victims and at least 700,000 displaced people. Dutch companies and export credit insurer ADSB are involved in this gas development.[39] Armed groups in countries such as the Democratic Republic of Congo, Colombia and Afghanistan use the proceeds from illegal mineral exploitation to finance their struggle. Therefore, the OECD has taken steps with specific Due Diligence Guidance[40] and the EU has put regulations into place. However, both initiatives only cover the trade in tin, tantalum, tungsten and gold. Moreover, it remains unclear how companies can carry out due diligence concerning human rights risks in conflict areas, and how they can prevent negatively impacting on conflict, as well as how they can contribute to conflict prevention. These elements are also lacking in the Guidelines.

A strongly felt need to answer these questions now exists. The UN Working Group on Business and Human Rights emphasises the importance of 'enhanced' due diligence in conflict zones and the need to include conflict prevention measures. Large enterprises are working within the Voluntary Principles on a comprehensive conflict analysis and prevention instrument. And in the Netherlands, , a thematic framework has been developed within the Dutch pension agreement to increase due diligence for investments in companies active in conflict areas. The UNGPs[41] indicate that companies should not aggravate the situation and to assess this should involve external expertise, such as from independent experts, governments and civil society. These frameworks can be used as a reference by the OECD to provide clarity in the Guidelines on enterprises and conflict zones.

Revision of OECD Guidelines:

- ➔ The increased risk of involvement in the most serious human rights violations in conflict areas calls for an increased due diligence effort on the part of enterprises associated with conflict situations. The link between business activities and " conflict-affected and high-risk areas" should receive explicit attention in the OECD Guidelines.
- ➔ The Guidelines should outline how to identify, prevent and mitigate conflict-related risks in due diligence processes, what efforts should be made to reduce the underlying causes of conflict and when responsible disengagement is an appropriate step.

[38] UN report https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/203/33/PDF/N1920333.pdf?OpenElement
[39] Both ENDS https://www.bothends.org/nl/Ons-werk/Dossiers/Gas-in-Mozambique/
[40] OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas http://mneguidelines.oecd.org/mining.htm
[41] Guiding Principle 23 https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf