Public consultation: Targeted update of the OECD Guidelines for Multinational Enterprises

General comments

MVO Platform welcomes the public consultation on the targeted update of the OECD Guidelines for Multinational Enterprises. MVO Platform is the Dutch civil society coalition on corporate accountability. The 25 members work with communities adversely impacted by business activity across various sectors, geographies, and victim groups. Many of them have been involved in supporting communities filing complaints to the Dutch and other NCP's. The network also uses the Guidelines in advocacy with corporations to encourage responsible business conduct and in conversation with Dutch policy makers to advocate for improved 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. The Guidelines are falling short 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.

The MVO Platform's 2021 position paper on the revision provides an analysis of concerning gaps and refers to the Dutch context. Although all of these themes deserve equal attention in the Guidelines, the MVO Platform refers to the specific commitments of the Dutch government improving the position of **climate, human rights defenders change** and **animal welfare** in the Guidelines.

The Dutch government and the European Union are both working on RBC legislation in which the OECD Guidelines are expected to play a pivotal role. MVO Platform supports the Dutch Bill on mandatory due diligence which has the Guidelines at its heart. It is therefore of the utmost importance that the Guidelines reflect the latest and highest standards on RBC, making clear to all stakeholders what exactly is expected of companies.

Chapter II: General Policies

The due diligence standards have always been intended to take a risk-based approach that includes the full "**value chain**" of business relationships. This includes "downstream" entities and business relationships as well as "upstream" relationships. Commentary 18 should make clear that due diligence covers impacts directly linked to an enterprise through its downstream business relationships.

Guidelines should **clarify its definition of 'multinational enterprise'**, so that it is clear that small and medium-sized enterprises, government and government-affiliated institutions with economic activities, state-owned companies, and other non-traditional enterprises also have the responsibility to respect human rights and the environment.

Paragraph 4, should delete the proposed text applying the Guidelines to "companies or other entities conducting a significant amount of business in more than one country."

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.

Commentary 28 should define a non-exhaustive list of individuals or groups that may experience marginalisation or vulnerability to include women, children, sexual and gender minorities, indigenous peoples, people subject to discrimination based on descent such as **caste discrimination**, migrants, and human rights defenders, among others.

Commentary 28 should strengthen the explanation of what makes **stakeholder engagement meaningful**, including by calling for engagement to be safe and based on mutual respect, undertaken in an ongoing manner from before business decisions impacting rightsholders have been taken, and ensuring that consolations and dialogues involve human rights defenders and opponents of business activities.

Chapter III: Disclosure

Amendments should be made in the disclosure chapter. The standards are now limited to the minimum legal requirements for financial reporting – companies are also advised to disclose risks, but whether this includes social risks is unclear. 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.

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 as well as the environment. 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.

Chapter IV: Human Rights

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), stigmatisation, suspension of fundamental freedoms and legal restrictions. Violence against human rights defenders is also on the rise worldwide. Many of these attacks are directed against those who work to protect human rights from the adverse impacts of business activities. An explicit **reference to human rights defenders in chapter IV is still needed**, a new commentary paragraph should be added emphasizing the importance of respecting the rights of defenders and mentioning them as an important stakeholder in due diligence processes.

Discrimination against **women** deserves special attention. 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.

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**.

This chapter should 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.

Chapter V: Employment and Industrial Relations

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. Economic autonomy is vital to breaking through discriminatory gender roles. The chapter must emphasise the importance of equal pay for work.

Chapter VI: Environment

The OECD has made extensive edits to this chapter; however, serious shortcomings remain that should be addressed. **Alignment with the six steps of due diligence** needs improvement. In several places in paragraphs 2-5, the suggested actions are lower than what is expected under the due diligence provisions. It should also be put in the right order. A clear description of the responsibilities of companies to avert and address climate impacts should be added, to disclose and to reduce their greenhouse gas emissions in accordance with the Paris Agreement and any successive agreements: such as the commitments of the Glasgow Climate Pact.

It must be made clear that **political lobbying** aimed at lowering environmental standards and weakening regulations is not part of responsible business conduct.

The call for action for **climate justice** is 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 the impact of 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. A clearer and broader definition of just transition should be included.

While positive that the OECD is considering adding language on **land rights** (especially the reference to the VGGT's), the current proposed text does not go far enough. The OECD Guidelines should set clear expectations for land rights and land management. FPIC of indigenous peoples should become part of the OECD Guidelines through its inclusion in the revised guidelines. 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.

Chapter VIII: Consumer Interests

In this chapter **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.

Chapter IX: Science, Technology and Innovation

The OECD recognizes that this chapter needs modernization. But it is focusing on just some rights/issues. The OECD, with support from the Netherlands, has carried out an analysis of the links between digitisation and RBC, and has identified a series of new standards. These do not cover **all the risks identifie**d, however, this is where the OECD Guidelines could play a role in filling in the gaps.

This chapter should provide companies with clarity on how to conduct due diligence in the context of ongoing digitalisation. It 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. This chapter should also include a reference to downstream adverse impacts associated with misuse by government entities (commentary 100).

Chapter XI: Taxation

This chapter 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. The GRI Tax Standard could serve as an example – to call on companies to stop tax avoidance (including in their supply chains) and to refrain from inappropriate profit shifting.

Clear requirements must be set for transparency (commentary 105): 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.