

# The OECD Guidelines and Socially Responsible Investment

## Introduction

The Organisation for Economic Co-operation and Development's (OECD) Guidelines for Multinational Enterprises outline what OECD member governments agree are the basic components of responsible corporate conduct. They

cover a range of issues, including labour and human rights, bribery and corruption, the environment and information disclosure. These guidelines can be a useful tool for the socially responsible investment (SRI) community because of their

broad coverage of corporate social responsibility (CSR) issues, commitment from governments, and support from business, labour and some civil society groups. OECD Watch, a network of 70 international NGOs working on corporate

accountability, and Eurosif (the European Social Investment Forum) have partnered to develop a series of fact sheets to help investors and SRI agencies better understand the scope of the OECD Guidelines and facilitate their use.

Download the entire fact sheet series at [www.oecdwatch.org](http://www.oecdwatch.org) or [www.eurosif.org](http://www.eurosif.org).

## Fact Sheet

# 1 2 3 4

## Making Use of the OECD Guidelines for Multinational Enterprises

### Summary

This introductory fact sheet, the first in a series of four, explains how the SRI community can use the OECD Guidelines. It outlines how the OECD Guidelines fit into the larger CSR norm-

ative framework, vis-à-vis other internationally-agreed guidelines and instruments. The OECD Guidelines are a unique instrument in the CSR domain. On the one hand, they are voluntary for

companies, yet they reflect endorsing governments' expectations and complaints can be submitted to "National Contact Points" (NCPs) for alleged breaches. Complaints alleging

violations of the Guidelines, as well as corporate responses to these complaints, can serve as a useful indicator of concerns surrounding corporate practices.

## The Origins of the OECD Guidelines

The Organisation for European Economic Cooperation (OEEC) was created after World War II to manage American and Canadian aid for Europe's reconstruction. In 1961, the OEEC became the Organisation for Economic Cooperation and Development (OECD). Its 30 member countries, who state that they share a commitment to democracy and the market economy, produce two thirds of the world's goods and services.

The OECD member countries are: Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States.

For more information on the OECD, see [www.oecd.org](http://www.oecd.org).

# The OECD Guidelines

The OECD Guidelines for Multinational Enterprises (referred to here as the OECD Guidelines), were adopted in 1976, at a time when there was growing concern about the negative impact of corporate practices, particularly on developing countries. The OECD Guidelines are part of a package that consisted of the Declaration on International Investment and Multinational Enterprises, for the facilitation of direct investment among OECD member countries, together with four additional instruments related to the Declaration.

The OECD Guidelines are non-binding recommendations addressed by governments to multinational enterprises operating in or from adhering countries. The Guidelines are signed by the 30 OECD participating countries and nine non-member countries (Argentina, Brazil, Chile, Estonia, Israel, Latvia, Lithuania, Romania and Slovenia). This requires them to set up a National Contact Point (NCP) for the OECD Guidelines in each country.

The OECD Guidelines provide voluntary principles and standards for responsible business conduct in areas such as:

- Information disclosure
- Respect for labour standards
- Contribution to sustainable development
- Respect for human rights
- Supply chain responsibility
- Consumer interests
- Science and technology
- Competition
- Taxation
- Environment
- Bribery and corruption
- Whistleblower protection

This is set out in the ten “chapters” of the OECD Guidelines. The OECD Guidelines have application to all sectors of business and cover companies operating in or from OECD member states worldwide and addresses their supply chain responsibilities.

To read the OECD Guidelines and related documents, see [http://www.oecd.org/document/28/0,2340,en\\_2649\\_201185\\_2397532\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/28/0,2340,en_2649_201185_2397532_1_1_1_1,00.html).

# The legal status of the OECD Guidelines

The OECD Guidelines are voluntary. There is no legal enforcement mechanism in relation to compliance with the standards and principles they outline, however the Guidelines do offer a procedure for raising complaints when standards are violated. Since 2000 both trade unions and non-governmental organisations (NGOs) can submit complaints of alleged breaches of the Guidelines to a National Contact Point (NCP) specified for each member country.

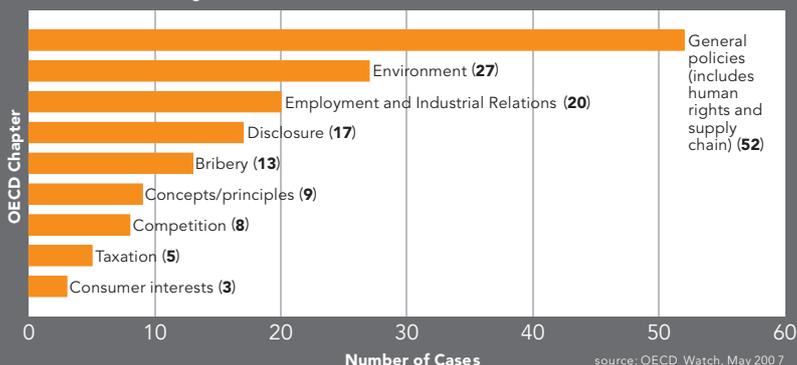
To date some 60 OECD complaints have been filed by NGOs. These cases have involved 60 multinational companies and nearly 50 additional companies that are their suppliers or business relations. Cases have involved companies operating in varied sectors, ranging from agriculture, textile and garments, and aviation to banking, mining, and the automotive industry. Some 80 cases have been filed by trade unions, some of which are overlapping with the NGO cases as they have been filed jointly.

The NCPs report annually to the OECD Investment Committee (IC) on their activities in relation to the implementation of the OECD Guidelines.

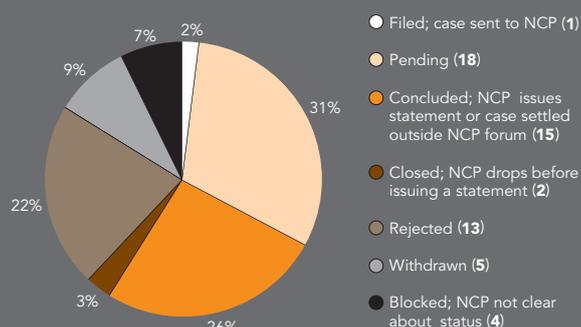
It has been argued that the NCPs’ follow-up activities on complaints (though quite varied from country to country) and the IC’s activities can be viewed to some extent as implementation mechanisms for the Guidelines (see sidebar). Related to this is the suggestion that the OECD Guidelines have entered the sphere of application of international customary law. Customary international laws are those rules that result from a clear consensus among nations, demonstrated both by their conduct and a sense of obligation. Because the OECD Guidelines are signed by all OECD and adhering governments (a legally-binding act) and they have the above-mentioned implementation procedure/complaints process that is in use (as demonstrated by the growing number of cases being filed), it has been argued that this constitutes evidence of state practice, which has trans-

## BREAKDOWN OF OECD GUIDELINES VIOLATION CASES PRESENTED BY NGOS

OECD Cases by Violations



OECD Cases by Status



formed some of the recommendations into customary international law.

It has also been suggested that given the broad acceptance of the OECD Guidelines they can and should be utilized as an alternative mechanism for the arbitration of international disputes.

It is noteworthy that a considerable number of complaints that charge companies with practices that violate the OECD Guidelines are disputes in which charges of violations of national law have also been filed. In a case involving Dutch jeans company G-star and its Indian supplier FFI the Guidelines violations were also presented as violations of India's domestic law (Indian Penal Code) and labour laws (Industrial Disputes Act, Industrial Employment Standing Order Act, Karnataka Factories Rules).

FFI also filed legal obstacles to prevent communications between local organisations (NGOs and labour union) with international rights organisations actively supporting them in the case. In this way the OECD Guidelines complaint flagged numerous legal issues. OECD complaints can also be an indication that more legal action will be taken in relation to the disputed issues.

Sometimes cases are also simultaneously being pursued in other fora, such as in the complaint filed against the Finnish company Botnia, with regard to the controversial construction of two paper mills on the Uruguayan and Argentinian border. While a complaint was pending with the Finnish NCP, the case was pursued at the International Court of Justice and the Inter-American Commission on Human Rights.

## National Contact Points and the Complaints Procedure

National Contact Points (NCPs) are responsible for encouraging observance of the Guidelines in a national context and for ensuring that the Guidelines are well known and understood by the national business community and by other interested parties. The NCPs also deal with "specific instances", which is the term used for complaints. If the parties involved do not reach an agreement with regard to the specific instance, the NCP is required to issue a statement. However, NCPs do not monitor whether or not companies are following the Guidelines.

NCPs should respond to enquires about the Guidelines from other NCPs, the business community, employee organisations, NGOs, the public and governments from non-adhering countries. NCPs have the right to screen cases, that is decide if they are admissible or not through the initial assessment procedure. When a party raises a case, the NCP is required to make an initial assessment of whether the issue raised merits further examination and respond to the party. Generally, issues are dealt with by the NCP in whose

country the issue has arisen. If there is no NCP in that country, cases can instead be brought before the NCP of the country where the company is headquartered. The institutional set up of the NCP differs from country to country: most NCPs consist of a single government department, while some consist of multiple government departments, some tripartite and some quadripartite. Therefore, there is an obvious risk that NCPs make different initial assessments. After completion of the initial assessment, the focus is on problem solving with help from

experts, stakeholders, other NCPs and through mediation with the parties involved.

Any person or organisation may approach a National Contact Point to enquire about a matter related to the Guidelines. Because of the central role it plays, the effectiveness of the NCP is a crucial factor in determining how influential the Guidelines are in each national context.

For a list of NCPs see <http://www.oecd.org/dataoecd/17/44/1900962.pdf>.

## How the SRI community can use the OECD Guidelines

The OECD Guidelines are relevant to the SRI community. The content areas of the Guidelines cover what are now widely recognised as the most important corporate social responsibility (CSR) issues. The endorsement of the OECD Guidelines by governments makes clear the expectations that states have with respect to corporate practices on these important issues. If a company endorses the Guidelines this is a significant policy commitment that the SRI community can take into consideration when assessing the company and use as a point of dialogue with the company.

The diverse SRI community, including financial institutions, fund managers, non-profit organisations, and financial services providers can integrate the OECD Guidelines into their SRI strategies. Some suggestions include:

- **Ethical exclusions/simple or norms-based screenings:** Alleged violations of the OECD Guidelines can flag serious concerns regarding corporate practices. The Norwegian Government Pension Fund, for example, uses information about OECD Guidelines complaints as part of their

in-depth screening of companies in their portfolio. Explaining how they use the cases in their screening process, a representative from the Secretariat of the Fund's Ethics Council said "We look at the type of violation: how serious is it? Does it involve forced labour? Child labour? We look at the scale: how is it spread? Is it systematic or an isolated event? Is it ongoing? Is there a risk for this event to re-occur in the future?" SRI agencies can use services such as OECD Watch's Case Alert System, information contained in OECD Watch's *Quarterly Case Update*, and other resources (see box 1) to learn about pending cases. The manner in which a company responds to allegations of wrong-doing is also important to consider when assessing corporate practice.

- **Positive screening:** In their in-house codes of conduct or other relevant policies, do companies make reference to the OECD Guidelines or outline the same minimum level of responsibility called for by the Guidelines? Is there a credible system in place for assessing compliance with these standards? Fact Sheet #2 provides a basic checklist of points covered by the Guidelines.

- **An engagement tool:** SRI practitioners can use the OECD Guidelines to engage in a dialogue with companies. The Guidelines provide a framework for raising questions about how multi-national companies address important CSR issues. Violations of the Guidelines point to areas where companies could improve their practices (see box 2).

## BOX 1 OBTAINING INFORMATION ON OECD GUIDELINES COMPLAINTS FILED AGAINST COMPANIES

OECD Watch's **Quarterly Case Update** presents highlights of complaints filed by NGOs that allege violations of the OECD Guidelines. The Quarterly Case Update provides an overview of pending and recently concluded or rejected cases filed with NCPs by NGOs that OECD Watch has been informed of. Case information includes companies charged with violations, name of

the complainant, the NCPs involved and the issues at stake. Downloadable at [www.oecdwatch.org](http://www.oecdwatch.org).

The OECD Watch **Case Alert System** sends SRI agencies and other interested groups an electronic alert each time OECD Watch is informed about a new OECD Guidelines complaint filed by NGOs at an NCP. To sign up for this service send a message

to [info@oecdwatch.org](mailto:info@oecdwatch.org).

While OECD Watch tracks down and documents cases filed by NGOs, the **Trade Union Advisory Committee** to the OECD (TUAC), an international trade union organisation that has consultative status with the OECD and its various committees, periodically publishes a list of cases filed by trade unions. For the most recent list of

cases filed by trade unions, please visit the TUAC website: [www.tuac.org](http://www.tuac.org). The **OECD Investment Committee** also periodically publishes a list of cases, based on the information they receive from NCPs. See for example "OECD Guidelines for Multinational Enterprises: 2006 Annual Meeting of the National Contact Points", available at <http://www.oecd.org/dataoecd/23/33/37439881.pdf>.

## BOX 2 CORPORATE RESPONSES TO OECD GUIDELINES COMPLAINTS

A complaint charging that a company has violated the OECD Guidelines can be not only an important indicator of past behaviour and serious ongoing concerns raised by stakeholders (such as workers, local communities, NGOs and trade unions) but also provides an opportunity to see how companies deal with problems. Companies' reactions to OECD complaints have been varied:

- When a complaint was filed with the Canadian NCP against Canadian First Quantum Mining, the Canadian co-owner of Mopani, a Zambian mining company, the company agreed to undertake positive action: to set aside land for farmers, drop levies on land and withdraw the immediate threat of evictions. However, in the long-term the company did not follow up and breached every aspect of the resolution.

- After a complaint was filed simultaneously with the UK and Australian NCPs against Global Solutions Limited (Australia) Pty. Ltd (GSL) – a wholly owned subsidiary of the UK parent company Global Solutions Limited – which runs Australia's immigration detention centres, they agreed to implement significant changes to ensure they operate under international human rights standards.

- In a case filed with the German NCP against Bayer, with regard to their Indian supplier's use of child labour, the company refused to attend a meeting with the NCP because they objected to the participation of one of the complainants.

Additional tools available to facilitate the use of the OECD Guidelines:

**Fact Sheet #2** in this series presents information to better understand the specific issues covered by the different standards and principles referred to in the OECD Guidelines.

**Fact Sheet #3** goes into more depth on how the SRI community can make use of the OECD Guidelines' human rights provision.

**Fact Sheet #4** examines in more detail how the SRI community can use the supply chain provision of the OECD Guidelines.

**This fact sheet series is a co-publication of OECD Watch and Eurosif.**

**OECD Watch** is an international network of civil society organisations promoting corporate accountability. OECD Watch aims to inform the NGO community about policies and activities of the OECD's Investment Committee and to test the effectiveness of the OECD Guidelines for Multinational Enterprises. For more information visit [www.oecdwatch.org](http://www.oecdwatch.org).

**Eurosif** (The European Social Investment Forum) is a pan-European group whose mission is to address sustainability through financial markets. Member affiliates of the association include pension funds, financial service providers, academic institutes, research associations and NGOs. For more information visit [www.eurosif.org](http://www.eurosif.org).

OECD Watch and Eurosif are working together to promote dialogue on better integration of the OECD Guidelines into SRI practices. To share your feedback on this fact sheet or other issues related to the Guidelines and SRI please contact [contact@eurosif.org](mailto:contact@eurosif.org) and [info@oecdwatch.org](mailto:info@oecdwatch.org)

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## Fact Sheet

# 1 2 3 4

## SRI Criteria and the OECD Guidelines

### Summary

The OECD Guidelines for Multinational Enterprises are recommendations addressed by governments to multinational enterprises that cover a broad range of corporate activities. This fact sheet, the second in a

series of four, outlines the relevant content of the OECD Guidelines for the SRI community. Each of the ten chapters that make up the Guidelines can be linked to key CSR indicators. Drawing upon the standards

included in the Guidelines, a series of key questions is presented that SRI agencies can use to guide information gathering to develop a profile of a company's practices. Using the OECD Guidelines as a

basis for developing indicators ensures a broad coverage of commonly accepted standards and principles that companies should comply with in order to operate in a responsible manner.

## The Content of the OECD Guidelines

The OECD Guidelines are divided into ten chapters which cover a broad range of corporate activities and outline standards for good business practices. Monitoring a company's compliance with

the standards included in the Guidelines can provide an overview of a company's practices.

While there is no standard practice or methodology

among SRI agencies for ranking and rating the overall CSR performance of companies, many of the numerous indicators currently used to make such assessments can be grouped into themes, which

overlap with those covered by the OECD Guidelines. Therefore the ten OECD Guidelines chapters could be a useful common framework for those interested in examining CSR performance.

## Chapter Content

<b>Chapter 1 Concepts and Principles</b>	Discusses the scope of the Guidelines (applicable to the global activities of companies based in any of the 39 signatory countries, voluntary nature, includes coverage of small and medium-sized enterprises, foreign and domestic) and states the obligation of multinational enterprises to obey national and international law.
<b>Chapter 2 General Policies</b>	Discusses the obligation of companies to take into account the policies of the countries in which they operate and the views of various stakeholders; includes recommendations on human rights, sustainable development and supply chain responsibility.
<b>Chapter 3 Disclosure</b>	Focuses on a company's obligation to disclose information. The information recommended for compilation and publication includes both financial and non-financial information (for example through environmental and social reporting).
<b>Chapter 4 Employment and Industrial Relations</b>	Presents a company's obligations to respect workers' rights, including the ILO core labour standards, and ensure good working conditions.
<b>Chapter 5 Environment</b>	Focuses on a company's obligation to protect the environment, public health and safety and to contribute to the goal of sustainable development.
<b>Chapter 6 Combating Bribery</b>	Recommends that companies do not, directly or indirectly, offer, promise, give, or demand a bribe or other undue advantage to obtain or retain business or other improper advantage.
<b>Chapter 7 Consumer Interests</b>	Calls upon enterprises to act in accordance with fair business, marketing and advertising practices and recommends that they take all reasonable steps to ensure the safety and quality of the goods or services that they provide.
<b>Chapter 8 Science and Technology</b>	Includes recommendations for a company's obligations in relation to compliance with science and technology policies, intellectual property rights issues, technology transfer, and science and technology capacity building.
<b>Chapter 9 Competition</b>	Calls upon companies to operate in a competitive manner.
<b>Chapter 10 Taxation</b>	Recommends that enterprises contribute to the public finances of host countries by complying with tax laws and recommendations, including on information disclosure and transfer pricing practices.

This is an outline of the OECD Guidelines; it is recommended that the complete text of the Guidelines be read in order to develop a comprehensive understanding of the scope and content of each chapter ([www.oecd.org/daf/investment/guidelines](http://www.oecd.org/daf/investment/guidelines)). For a better understanding of the Guidelines and their implementation procedures it is also advisable to read the Commentary, Clarifications and Procedural Guidance sections.

### NAVIGATING THE GUIDELINES: SIMILAR AND REINFORCING RECOMMENDATIONS

The OECD Guidelines are organised into chapters that mainly relate to one broad subject area, for example the environment or information disclosure. However, some of the chapters of the guidelines are somewhat similar or in some way reinforce the expectations contained in other chapters. For example, although most of the guidelines that relate to labour issues are contained in chapter 4 on employment and industrial relations, there are guidelines in other chapters that also pertain to labour issues. Chapter 5 for example, on the environment, includes several references to obligations relating to safe-guarding the health and safety of employees, reinforcing the expectations raised in

chapter 4. There are also major recommendations, such as companies' obligations to obey the law, which are repeated in several chapters (ex. chapters 1, 2, 4, 5, 6, 9, 10).

For a reference list to assist in identifying similar and reinforcing guidelines, see part five of *Guide to the Guidelines*, published by Friends of the Earth – United States. This reference also includes a list of the international laws, standards and principles referred to in the explanatory commentary section that follows each of the Guidelines' chapters. Downloadable at [www.foe.org/oecdguidelines/oecdguidelinesguide.pdf](http://www.foe.org/oecdguidelines/oecdguidelinesguide.pdf).

# Assessing Corporate Practices Based on the OECD Guidelines

Using the OECD Guidelines chapters as a framework, the following is a list of selected indicators ("key questions" relating to policy or practice) to help SRI agencies consider if companies are in compliance with the Guidelines. Some observations on the provisions of each chapter are presented in the "remarks" section. It is important to recognise that assessing a company's compliance with the Guidelines provides a *broad picture* of its practices; this analysis must be further supplemented by the use of indicators that specifically relate to the sector of industry being examined.

Complaints of alleged violations of the Guidelines, filed with the National Contact Points (NCPs) in the various OECD member countries, can flag serious concerns regarding corporate practices. Examples of ways in which corporate policies or practices have been alleged to violate each chapter of the Guidelines are presented in the margin. These cases are more extensively documented in OECD Watch's Case Database. To sign up for the Case Alert System, which sends SRI agencies and others an electronic alert each time OECD Watch is informed of a new Guidelines complaint filed by NGOs, send a message to [info@oecdwatch.org](mailto:info@oecdwatch.org).

## Chapter 1 Concepts and Principles

### Key question on practices

- Is the company in violation of any domestic laws of the host countries in which it operates?

### Remarks

The Guidelines apply to all parts of a multinational enterprise – from the company's headquarters to its subsidiaries – located in both OECD and non-OECD countries. Determining if a company is in violation of the law in any of the countries where it operates

would need to involve examining past and pending court cases and their rulings in those countries. A comprehensive mapping of the com-

pany's supply chain would be needed as the starting-off point for determining where to investigate possible legal violations.

### Example of Violation Chapter 1, OECD Guidelines

#### Sector

Mining

#### Description

NGOs filed a complaint with the Canadian NCP alleging that Ascendant Copper Corporation violated the Equadorian constitution and national mining law for failing to obtain authorisation to conduct exploratory activities.

source: OECD Watch Case Database

## Chapter 2 General Policies

### Key questions on policy

- Does the company have a credible mechanism in place for stakeholder consultation (including a complaints mechanism) that is accessible to host country workers and community members? How is this stakeholder input used in decision-making?

- Does the company have benchmarks in place for reaching sustainable development goals?

- Does the company have a policy to protect "whistle-blowers"?

- Does the company implement all these policies throughout their supply chain? Does the company have an appropriate supply chain management system?

### Key questions on practice

- Is the company in compliance with the human rights obligations and

commitments of host governments?

- How does the company facilitate local capacity building? Human capital formation? For example, does the company invest in local community services such as education or health care? Does the company have programmes for training local managers? What percentage of management is local or foreign?

- Has the company sought or accepted any exemptions to regulatory requirements?
- Has the company become involved in local political activities?

### Remarks

In the General Policies chapter, paragraph 2 makes clear that multinational enterprises should respect the human rights of those affected by their activities, and that companies' activities should be consistent with the host governments' human rights

obligations and commitments. A government's obligations and commitments apply to its responsibilities under both legally binding and non-legally binding human rights instruments, for example, the Universal Declaration of Human Rights (UDHR). Fact Sheet # 3 provides more detailed information on the human rights provision of the Guidelines and its relevance to the SRI community. The Guidelines apply to the supply chains of companies, meaning all the direct suppliers, contractors, and sub-contractors that take part

in the manufacture, delivery and sale of the multinational enterprise's goods and services. However the business community and some governments have challenged the scope of the obligation pertaining to supply chains, and a narrower interpretation based on an identifiable "investment" relationship between the multinational and its supplier has come into use. This is explained in more depth in Fact Sheet #4 which focuses on how the SRI community can use the supply chain provision of the Guidelines.

### Example of Violation Chapter 2, OECD Guidelines

#### Sector

Oil and gas

#### Description

Several NGOs filed a complaint with the Dutch NCP alleging Royal Dutch Shell with improper involvement in local political activities in conjunction with their operations in the Philippines.

source: OECD Watch Case Database

## Chapter 3 Disclosure

### Key questions on practice

- Does the company regularly disclose to the public basic material company information, including information on its activities, structure, financial situation and performance?
- Does the company regularly disclose information to the public about the social and environmental impact of its activities? Does the company disclose its social and environmental policies and practices?
- Does the company disclose of all information,

accounting and auditing meet high-quality standards?

- Does the company disclose information on its systems for managing risks and complying with laws and codes of conduct?

### Remarks

This chapter makes clear that companies should disclose "material" information to the public: information is considered "material" if it is important enough to potentially influence shareholders or investors' decisions. It is important to note that information that represents "material foreseeable risk factors" or "material issues regarding employees and other stakeholders" can be the subject of intense debate. OECD Watch considers, for example, information on the social and environmental impact of a company's operations to be "material".

Available tools to assist companies in how to report on

their activities include the Global Reporting Initiative's (GRI) *Sustainability Reporting Guidelines*. For more information from the GRI on how their reporting framework relates to the OECD Guidelines see "Synergies between the OECD Guidelines for Multinational Enterprises and the GRI 2002 Sustainability Reporting Guidelines" (available at [http://www.globalreporting.org/NR/rdonlyres/A8087145-1A5F-4420-97D8-5C550F5FD184/0/GRI\\_OECDUsersGuide.pdf](http://www.globalreporting.org/NR/rdonlyres/A8087145-1A5F-4420-97D8-5C550F5FD184/0/GRI_OECDUsersGuide.pdf)).

Information that is disclosed must be independently verified by qualified third parties in order to be considered a credible account of a company's practices. For example, statements made regarding compliance with workers' rights obligations covered in chapter 4 would need to be verified through a comprehensive auditing process that includes off-site interviews with workers and their representatives.

### Example of Violation Chapter 3, OECD Guidelines

#### Sector

Oil

#### Description

Environmental organisations filed complaints with the US, UK, German, Italian and French NCPs charging that British Petroleum's proposed plans for a Baku-Tbilisi-Ceyhan oil pipeline violated disclosure obligations due to a failure to adequately consult with project-affected communities.

source: OECD Watch's Case Database

## Chapter 4 Employment and Industrial Relations

### Key questions on policy

- Does the company have and implement an anti-discrimination policy that covers discrimination on the basis of race, colour, sex, religion, political opinion, national extraction or social origin?

### Key questions on practice

- Does the company comply with its employees' right to organise and negotiate collectively?
- Does the company use child labour in its operations?
- Does the company use forced or compulsory labour in its operations?

- Are the company's standards of employment and industrial relations equal to or better than comparable employers in the country of operation?
- Does the company have sufficient measures in place to ensure the health and safety of employees?
- Does the company employ local personnel and provide training?
- Has the company provided reasonable notice of major changes in its operations, such as facility closure or large-scale dismissals?
- Does the company unfairly influence negotiations on employment conditions or employees' right to organise?

### Remarks

Gathering information to answer these questions will involve consultation with local and international unions and labour-rights NGOs active in the relevant sectors where the

company is active. They can also provide feedback on significant issues that are not covered by the Guidelines (for example provision of a living wage and working hours). Additional resources that can be consulted include the annual survey of violations of trade union rights published by the International Trade Union Confederation (ITUC), which flags well-documented labour rights issues that the company should be addressing in specific countries or locations. Multi-stakeholder initiatives covering specific sectors in relation to labour rights can also be a source of current information on a company's labour practices (ex. the Fair Labor Association publishes an annual report and tracking charts of the labour rights compliance of garment industry member companies). Business and Human Rights ([www.business-humanrights.org](http://www.business-humanrights.org)) compiles information on the rights compliance of some 3,000 companies from various sectors into an online searchable database.

### Example of Violation Chapter 4, OECD Guidelines

#### Sector

Chemical

#### Description

NGOs filed a complaint with the German NCP alleging that Bayer used child labour in their supply chain in India.

source: OECD Watch's Case Database

## Chapter 5 Environment

### Key questions on policy

- Does the company have a credible management system in place to take into account protection of the environment, public health and safety (EH&S) in relation to its activities? Does the company take precautions to prevent serious harm to the EH&S?
- Does the company have benchmarks in place for contributing to the wider goal of sustainable development?

- Does the company have a credible mechanism in place for consulting with communities on EH&S policies and their implementation?

### Key questions on practice

- Does the company monitor and verify its progress towards EH&S objectives or targets?
- Does the evaluation of the company's activities, goods and services for their EH&S impacts cover the full life

cycle? And does the company address these results in decision making?

- Does the company disclose information on EH&S impacts to employees and the public?
- Does the company adopt technologies and procedures in all parts of the enterprise that reflect standards concerning environmental performance in the best-performing part of the enterprise?

- Does the company develop and provide products or services that have undue environmental impacts and that are inefficient in their consumption of energy?
- Does the company promote awareness among customers of the environmental implications of its products and services?
- Is the company actively researching ways to improve environmental performance?
- Does the company provide training to employees on EH&S matters including hand-

ling hazardous materials and preventing accidents?

- Does the company contribute to the development of environmental policies?

#### Remarks

This chapter makes clear that companies should not use scientific uncertainty as a reason for not taking action to prevent serious harm to the environment or human health.

Examining agreements between the company and the host government could reveal

if the enterprise has secured exemptions from laws to minimize or prevent serious harm to the environment and human health, this could point to concerns.

*Environment and the OECD Guidelines for Multinational Enterprises: Corporate Tools and Approaches* is a book published by the OECD (2005) that highlights the environmental aspects of the Guidelines, providing information and case studies on tools and approaches available to companies that seek to upgrade their environmental performance.

#### Example of Violation Chapter 5, OECD Guidelines Sector

Automotive

#### Description

An NGO filed a complaint with the German NCP alleging that some Volkswagen AG products have negative impacts on the climate and also charged the company with failing to promote awareness of the environmental implications of their products.

source: OECD Watch's Case Database

## Chapter 6 Combating Bribery

#### Key questions on practices

- Does the company offer bribes to obtain or retain business or other undue advantage?
- Does the company make illegal contributions to political candidates or parties?
- Does the company give in to demands to pay officials or others a portion of a contract payment?

- Does the company maintain a list of payments it has made to public bodies and state-owned enterprises? Has it made this information available to authorities? Is the company in compliance with domestic disclosure requirements?

- Does the company have a management system that discourages bribery and corrupt practices?

- Has the company implemented accounting and audit practices to prevent corrupt practices?

#### Remarks

The OECD Convention on Combating Bribery of Foreign Public Officials is a legally binding convention – the contents of which are reflected in the Combating Bribery chapter of the Guidelines. The Bribery Convention makes it a crime to offer, promise or give a bribe to foreign public officials in order to obtain or retain business deals. Coun-

tries that have ratified the Bribery Convention (36 to date) agree to implement legislation to monitor and punish companies and individuals that engage in illegal bribery. The scope of a company's obligations under the Guidelines goes beyond those set out in the Convention.

Transparency International, whose Bribe Payers Index shows that the use of bribes to gain or retain business is still common in major exporting economies, including OECD countries, has several tools available to help companies come into compliance with their obligations under this chapter of the Guidelines. For example, their Business Principles for Countering Bribery with guidance document for implementation and their Six-Step Implementation Process to guide companies in developing a systematic anti-bribery policy or process for countering bribery. For more information see [www.transparency.org](http://www.transparency.org).

#### Example of Violation Chapter 6, OECD Guidelines

#### Sector

Mineral trading

#### Description

An NGO filed a complaint with the UK NCP alleging that Afrimex's trade in minerals contributed directly to the brutal conflict and large-scale human rights abuses in the Democratic Republic of Congo by making tax payments to an armed rebel group with a well-documented record of carrying out grave human rights abuses.

source: OECD Watch's Case Database

## Chapter 7 Consumer Interests

### Key questions on practices

- What steps does the company take to ensure safety and quality of its goods and services?
- Do the company's goods and services meet agreed and legally required standards for consumer health and safety?
- Does the company provide clear and accurate information to enable consumers to make informed decisions?
- Does the company engage in misleading, fraudulent or unfair practices?

- Does the company have a transparent and effective mechanism in place to address consumer complaints and resolve disputes?
- Does the company cooperate with officials to prevent or remove threats caused by their products?

### Remarks

Examples of misleading or fraudulent practices include misleading or inaccurate product information, advertising and labelling. National-level consumer organisations could be consulted for information on corporate practices.

Consumer watchdog organisations operate in some sectors and alert the public to instances of corporations making misleading statements about their business practices. For example, the Clean Clothes Campaign ([www.cleanclothes.org](http://www.cleanclothes.org)) uses

websites and other means to inform European consumers about cases of garment sector companies that allegedly violate not only the law in their supply chains, but also their own public promises to maintain specific codes of labour practice.

### Example of Violation Chapter 7, OECD Guidelines

#### Sector

Security

#### Description

Several NGOs filed a complaint with the Australian NCP charging that in addition to committing human rights violations at their immigration detention centres in Australia, Global Solutions Limited misrepresented their policies about promoting human rights at these facilities.

source: OECD Watch's Case Database

## Chapter 8 Science and Technology

### Key questions on practices

- Are the company's activities compatible with the science and technology (S&T) policies of the host country?
- Is the company contributing to the development of local and national S&T capacity?
- Is the company carrying out S&T development work in host countries and hiring

people from host countries to encourage training?

- Does the company grant licenses for the use of intellectual property rights or technology transfer under reasonable terms and conditions?
- Has the company cultivated relationships with local educational and research institutions through collaborative research?

### Remarks

Intellectual property rights and controversial patenting are key issues connected to this chapter. Sectors of specific interest in relation to these obligations include the pharmaceutical industry, agriculture and the computer software industry.

## Chapter 9 Competition

### Key questions on practices

- Is the company in compliance with competition laws and regulations?
- Has the company made any anti-competitive agreements with competitors? To do so violates the Guidelines. This would include engagement in: (a) price fixing, (b) rigged bids,

(c) setting output restrictions or quotas, or (d) sharing or dividing markets.

- Does the company have a process for taking into account the anti-competition laws of other countries?

### Remarks

Profits and margins are not

divided equitably across market and value chain players if dominant market positions are abused and corporations enter into agreements that undermine free trade and competition. Companies engaging in free trade and free markets should comply with rules aimed at providing fair opportunities to all players in the market.

### Example of Violation Chapter 9, OECD Guidelines

#### Sector

Logging

#### Description

An NGO filed a complaint with the Danish NCP charging Nepenthes with violation of the competition provision of the Guidelines in connection with purchase of illegal timber.

source: OECD Watch's Case Database

# Chapter 10 Taxation

## Key question on policy

- Does the company apply the arm's length principle for transfer pricing to intra-group trade?

## Key questions on practices

- Does the company avoid paying taxes by accumulating deferred tax reserves?
- Is the company in compliance with tax laws and regulations in every country where it has operations?
- Does the company provide all necessary information to the relevant authorities where it has operations to determine tax obligations?

## Remarks

The transfer price is the amount paid from one part of a multinational enterprise for goods or services provided by another. There are some legitimate reasons for multinational companies to use trans-

fer pricing. However, when transfer pricing is abused, it deprives states – particularly developing countries – of much needed tax revenues. As a basic principle tax should be paid in the country where business activities have actually taken place. Examining a company's practices in relation to taxation could include checking to see if the company has subsidiaries in OECD-defined "non-cooperative" tax havens.

The Guidelines recommendation that companies apply the arm's length principle to the practice of transfer pricing means that transfer prices "should be the same as if the two companies involved were independent of each other, not part of the same corporate structure".

### Example of Violation Chapter 10, OECD Guidelines

#### Sector

Mining and quarrying

#### Description

Several NGOs filed a complaint against Nami Gems and three other Belgian companies concerning the illegal exploitation of natural resources in the DRC. The complaint against Nami Gems alleges that the company evaded taxes, hid revenues, and failed to provide the relevant authorities with the information necessary for the correct determination of taxes by smuggling diamonds from DRC through Uganda to Belgium.

source: OECD Watch's Case Database

## Concluding remarks

This fact sheet provides a brief overview of the content of the OECD Guidelines for Multinational Enterprises and the practical translation of each chapter into questions to guide the assessment of corporate compliance with

these obligations. In order to develop a more thorough view of a company's performance in relation to responsible business standards, the SRI community is encouraged to make use of the key questions outlined

above in conjunction with more sector-specific indicators of a company's performance.

The Guidelines in their entirety are more detailed and more has been

elaborated elsewhere on the obligations they contain; readers are encouraged to visit the OECD Watch website for more information and reference to other resources on the Guidelines ([www.oecdwatch.org](http://www.oecdwatch.org)).

Additional tools available to facilitate the use of the OECD Guidelines:

**Fact Sheet #1** in this series provides an introduction as to how the SRI community can make use of the OECD Guidelines.

**Fact Sheet #3** goes into more depth on how the SRI community can make use of the OECD Guidelines' human rights provision.

**Fact Sheet #4** examines in more detail how the SRI community can use the supply chain provision of the OECD Guidelines.

This fact sheet series is a co-publication of OECD Watch and Eurosif.

**OECD Watch** is an international network of civil society organisations promoting corporate accountability. OECD Watch aims to inform the NGO community about policies and activities of the OECD's Investment Committee and to test the effectiveness of the OECD Guidelines for Multinational Enterprises. For more information visit [www.oecdwatch.org](http://www.oecdwatch.org).

**Eurosif** (The European Social Investment Forum) is a pan-European group whose mission is to address sustainability through financial markets. Member affiliates of the association include pension funds, financial service providers, academic institutes, research associations and NGOs. For more information visit [www.eurosif.org](http://www.eurosif.org).

OECD Watch and Eurosif are working together to promote dialogue on better integration of the OECD Guidelines into SRI practices. To share your feedback on this fact sheet or other issues related to the Guidelines and SRI please contact [contact@eurosif.org](mailto:contact@eurosif.org) and [info@oecdwatch.org](mailto:info@oecdwatch.org)

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# The OECD Guidelines and Socially Responsible Investment

## Introduction

The Organisation for Economic Co-operation and Development's (OECD) Guidelines for Multinational Enterprises outline what OECD member governments agree are the basic components of responsible corporate conduct. They

cover a range of issues, including labour and human rights, bribery and corruption, the environment and information disclosure. These guidelines can be a useful tool for the socially responsible investment (SRI) community because of their

broad coverage of corporate social responsibility (CSR) issues, commitment from governments, and support from business, labour and some civil society groups. OECD Watch, a network of 70 international NGOs working on corporate

accountability, and Eurosif (the European Social Investment Forum) have partnered to develop a series of fact sheets to help investors and SRI agencies better understand the scope of the OECD Guidelines and facilitate their use.

Download the entire fact sheet series at [www.oecdwatch.org](http://www.oecdwatch.org) or [www.eurosif.org](http://www.eurosif.org).

## Fact Sheet

# 1 2 3 4

## Assessing Adherence to the OECD Guidelines' Human Rights Provisions

### Summary

The OECD Guidelines for Multinational Enterprises are recommendations addressed by governments to multinational enterprises that cover a broad range of corporate activities. This fact sheet, the third in a series of four, examines the human rights provisions of the OECD Guidelines and their relevance to the SRI community.

There are a number of explicit human rights provisions in the OECD Guidelines which are not limited to particular sectors or activities. The Office of the High Commission of Human Rights (OHCHR) has commented on the "lack of specificity in the references" to human rights in the Guidelines. On the basis of the experience of the human

rights cases that have been filed, this fact sheet clarifies i) which human rights are included in the Guidelines; ii) how human rights have been interpreted by NCPs; iii) what can be deduced from the outcomes about the responsibilities of business for human rights; iv) how SRI agencies and analysts might screen companies for human rights compliance.

The treatment of labour rights in the Employment and Industrial Relations chapter is more thorough than that of other human rights provisions in the Guidelines. For further guidance on the Employment and Industrial Relations Chapter of the OECD Guidelines readers are advised to consult the website of the Trade Union Advisory Committee (TUAC): [www.TUAC.org](http://www.TUAC.org).

## What are the human rights responsibilities of companies under the Guidelines?

The human rights recommendations are not grouped into a single chapter of the Guidelines. However, the overarching human rights provision is contained in the General Policies Chapter paragraph 2 which states that companies should “respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments.” Both the preface and the commentary refer to the international legal and policy framework in which business is conducted including the Universal Declaration of Human Rights.

What is clear from the commentary on the Guidelines is that OECD and adhering governments uphold the view that multinational corporations should respect not only host country but also supranational standards.

The commentary on the *Guidelines* makes it clear that this respect for human rights applies not only to the dealings of multinational enterprises with their employees, but also to their relations with others affected by their activities. As an integral part of the International Bill of Human Rights, the Universal Declaration is implemented by means of the two corresponding International Covenants on Civil and Political Rights (ICCPR) and Economic, Social and Cultural Rights (ICESCR). Companies are expected to uphold and promote the rights guaranteed by these two treaties as well as core labour standards. There is an explicit reference in the commentary to the ILO Declaration on the Fundamental Principles and Rights at Work.

The opening chapter, Concept and Principles, states that the *Guidelines* should be observed wherever a company operates. In other words, a company based in an adhering country operating in any other country in the world (including non-adhering countries) is subject to the *Guidelines*, which are addressed to both parent companies and local entities according to the actual distribution of responsibilities among them.

In order to be in compliance with the Employment Chapter a company must show that it has taken steps to secure the rights, freedoms, principles and standards outlined in the ILO’s Fundamental Principles and that it has set in place appropriate systems and procedures to promote and uphold them throughout its supply chain. The ILO Tripartite

Declaration recognises that wages, benefits and conditions of work offered by multinational enterprises should not be less favourable to the workers than those offered by comparable employers in the country. Companies must ensure that they or their suppliers or sub-contractors even when they are hiring workers on short-term contracts or outsourcing labour that the wages paid are in conformity with Article 7 of the ICESCR which upholds ‘the right of everyone to the enjoyment of just and favourable conditions of work which ensure... a decent living for themselves and their families’.

Companies that fail to pay or pay insufficient levels of taxes or royalties or which offer or pay bribes or make unjustified facilitation payments to third parties to secure economic or commercial advantages may not only be in breach of the relevant chapters of the OECD Guidelines (Chapter VI Combating Bribery and Chapter IX Competition) but also, depending on the circumstances of the case, may be found to have contributed to the denial of economic and social rights outlined in the sustainable development clause (Chapter II (i)). The provision that calls on companies to abstain from ‘improper involvement in local political activities’ (Chapter II,11) highlights the risk companies may face when they associate themselves too closely with individual political figures or parties who may be responsible for human rights violations. In some cases such an association may lead to allegations of complicity on the part of the company or its employees for illegal acts or actions that are carried out by the company’s associate in violation of international human rights standards.

Companies which make false claims about respecting human rights in their public statements or codes of conduct may also be found to have breached the Guidelines (Chapter VII Consumer Interests).

Although a number of cases have been filed related to the rights of indigenous peoples or women’s rights, the Guidelines do not explicitly deal with these issues. A review of the human rights provisions of the Guidelines is likely to correct these and other omissions.

While they are not a substitute for national law and practice, the recommendations within the Guidelines are perceived in supplementary terms. From the Commentary on General Policies Chapter there is a clear expectation that companies will adhere to them. It is not enough for companies simply to meet domestic legal requirements of host countries when these are silent or else fall short of the human rights provisions in the Guidelines.

# Human Rights and the OECD Guidelines

The key human rights responsibilities for companies include but are not limited to the following:

Human Rights Standards	OECD Guidelines Chapter
<b>ICCPR</b>	
The right to life	Chapter II (i) and II (ii)
The right to be free from torture	Chapter II (ii)
The right to freedom of expression	Chapter II (ii)
The right to a fair trial	Chapter II (ii)
The right to receive and impart information	Chapters II (i), II(ii), III and V
<b>ICESCR</b>	
The right to food	Chapter II(i) and II(ii)
The right to health and a clean and healthy environment	Chapters II(i), II(ii) and V
The right to housing	Chapter II (i), II (ii) and V
The right to education	Chapter II (i) and II (ii)
<b>Core Labour Standards</b>	
Freedom of association and the effective recognition of the right to collective bargaining	Chapter IV
The elimination of all forms of forced or compulsory labour	Chapter IV
The effective abolition of child labour	Chapter IV
The elimination of discrimination in respect of employment and occupation	Chapter IV
The rights of the child	Chapters II(i), II (ii), IV and V

## Human Rights Illustrations of Human Rights Cases OECD Guidelines

**Avient Ltd, UK**

**Crimes against humanity and war crimes by a private military company**  
Chapter II(ii), II (xi)

Avient was contracted by the Kinshasa Government during the war to provide crews and maintenance to the Congolese Air Force. It was alleged that the company was directly involved in the indiscriminate bombing of civilians in the Province of Equateur, in the Democratic Republic of the Congo, which caused deaths, injury and mass population displacement. The company claimed that it was working within a contractual arrangement with the government. In 2004 the UK NCP dismissed the case but recommended that in future Avient should carefully consider the recommendations of the Guidelines, particularly Chapter II, before entering into contracts.

**Aker Kvaerner ASA, Norway**

**Right to life and freedom from torture and arbitrary arrest**  
Chapter II (ii)

Aker Kværner has, through their wholly-owned American subsidiary Aker Kværner Process Services Inc. (KPSI), carried out work for the U.S. Defense Department at the large American naval base in Guantanamo Bay, Cuba, since 1993. The work carried out by KPSI at the naval base included both the construction of prison cell cages, and maintenance, including water, drainage and power supply. After 11th September 2001, the United States had a camp for terror suspects built next to its base, 'Camp X-Ray', for the internment of people captured in connection with military operations in different parts of the world, including Afghanistan. The company was not contracted to run the prison, but assisted with repairing faulty water pipes, power supply etc. – facilities that were common to the naval base and the prison. According to reports by human rights organizations KPSI employees participated in hosing down cells to remove traces of urine, blood and excrement - a possible consequence of prisoners having been tortured in the cells. Human Rights Watch, Amnesty International and the International Committee of the Red Cross claimed that the facilities were run in a way that breached human rights. The indefinite deprivation of liberty of prisoners was also in conflict with Article 9 of the Universal Declaration of Human Rights: "No one shall be subjected to arbitrary arrest, detention or exile."

The Norwegian NCP issued a statement criticising Aker Kværner ASA for failing to comply with the human rights provision of the OECD Guidelines:

*"The operation of the company, at least partly, affected prisoners. The operation of the prison depended on maintenance of the sort of infrastructure [i.e. KPSI's work on water and drainage at Camp X-Ray] we are dealing with here."*

Aker Kværner, represented by KPSI, terminated its work at Guantanamo Bay in the spring of 2006, allegedly because it had been unsuccessful in its bid to renew the contract.

### **Georges Forrest International, Belgium and OM Group, USA**

- Economic and Social Rights:**
  - Food, health, education and housing, adequate standard of living**
  - Right to health and a clean and healthy environment**
  - Chapters II(ii), II (vi) and V**

The complaint alleged inter alia that the GTL/STL consortium, which included the Forrest Group, had endangered public health by processing minerals, including, on its own admission to a Belgian Senate Commission of Inquiry, radioactive minerals, near a residential area in the town of Lubumbashi, in the Democratic Republic of the Congo. Residents living nearby complained that they suffered from respiratory illnesses and irritation of the eyes. They were particularly concerned about the impact of air emissions from the plant on children. Preliminary tests had indicated high levels of cadmium, lead and manganese in the soil in the area but the company denied that their processing was to blame. The company refused to provide NGOs with a copy of its environmental management plan. The Belgian NCP concluded that the Forrest Group, which was the minority partner in GTL-STL, had not breached the Guidelines. Nevertheless the NCP recommended to the company that in future it should provide reliable, relevant and regular information about its activities and the measures taken in order to ensure compliance with Chapter V of the Guidelines concerning the environment. The US NCP refused to accept the case against the OM Group.

### **Ascendant Copper, Canada**

- Civil and Political Rights:**
  - Freedom to receive and impart information**
  - Freedom of opinion and expression**
  - Chapter II (i), II (ii), II (vi), II (vii), II (xi), III and V**

Since May 2004, the company had unsuccessfully tried to develop its Junin copper mining project situated in the biodiverse Toisan Range of northwestern Ecuador, in the Intag area. Opposition to mining by local government, most communities and NGOs prevented Ascendant from gaining access to the concession area. Ascendant had failed to secure the government's approval for its environmental impact statement which is required before exploration can begin. According to the NGOs, Ascendant allegedly failed to disclose material information to its shareholders about disputes with local communities over its mining concessions in Junin. The company was also allegedly involved in improper political activities in order to secure exemptions from environmental regulations. In 2006 the NGOs withdrew the complaint after the Canadian NCP failed to facilitate a transparent dialogue with the company. But local activists and community leaders allegedly continued to be subjected to intimidation and harassment by people working for the company.

### **Électricité de France (EDF)**

- Right to Non Discrimination**
  - Indigenous peoples' rights**
  - Forced evictions**
  - Chapter II(i), II (ii), V**

EDF was the majority partner in a consortium, was alleged to have breached the Guidelines with respect to the Nam Theun 2 Hydroelectric Project in Laos by failing to complete the environmental impact assessment until two years after the project had started; failing to deal with impacts of logging on indigenous people; and failing to avert negative health, social and economic impacts associated with the forced eviction of 3000 people. The French NCP issued a statement that on the basis of the evidence before it no breaches of the Guidelines could be attributed to EDF. Nevertheless the NCP called on EDF to take responsibility with the Government of Laos to ensure that mitigating measures were put in place. The French NCP also commented that multinational enterprises operating in countries with weaker environmental and social laws should follow the highest international standards. The NCP recommended EDF ensure that its labour practices conformed to the ILO's Fundamental Principles.

### **BAYER AG, Germany**

- Core Labour Rights:**
  - Abolition of child labour**
  - Elimination of forced labour**
  - Non-discrimination**
  - Right to education**
  - Chapters II (i), II (ii), II (vii) and IV**

It is alleged that cottonseed farms in South India which supply a Bayer subsidiary, ProAgro, have employed children in large numbers, predominantly girls aged between 6 and 14 years. Many of them work in bonded labour and are forced to stay with their employers for several years until a loan has been repaid. The children are exposed to large quantities of pesticide which put their health at risk. The case was accepted by the German NCP. Bayer claimed to have addressed the problem through an action plan. NGOs acknowledged that there has been a reduction in the number

of children, employed. However with the proposed expansion of the area under cultivation, there were fears that the incidence of child labour might increase. The NGOs have expressed concerns about Bayer's action plan: in their view it is insufficient and the monitoring system is fragmented and not transparent.



### Global Solutions (GSL), Australia

#### Children's Rights

#### Freedom from arbitrary detention

#### Rights of asylum seekers Chapters II (ii), VIII

The company, which manages immigration detention centres in Australia, was held to be in breach of the Guidelines for acquiescing in the detention of children and in the denial of their right to health and education. GSL was also accused of failing to act on recommendations of international human rights bodies in relation to the indiscriminate detention of asylum seekers. The complainants alleged that GSL (Australia), by acquiescing in the mandatory detention of asylum seekers without charge or judicial review, was complicit in subjecting them to a regime of indefinite and arbitrary detention in contravention of article 9 of the International Covenant on Civil and Political Rights. By unjustly penalising asylum seekers the detention regime was punitive and in contravention of article 31 of the 1951 Refugee Convention. Two days after the complaint was filed, the Australian Government announced that children and their families would be transferred from detention centres. The case was concluded in 2006 and GSL agreed to improve conditions at its detention centres.



### G-Star, Netherlands

#### Right of access to remedies and accountability

#### Chapters II (i), II (ii), III, IV

NGOs documented a series of problems with the Fibres and Fabrics International (FFI/JKPL) factories in Bangalore including excessive workloads and forced overtime. In July 2006, a court in Bangalore imposed a restraining order on the Indian labour organisations Munnade and Cividep and trade unions GATWE and NTUI to prevent them from circulating any information about conditions in the factories. In October 2006 the Clean Clothes Campaign and the India Committee of the Netherlands filed a complaint with the Dutch NCP concerning G-Star and its suppliers, FFI/JKPL. Soon after, the Dutch NGOs were summoned to appear in a Bangalore court to answer charges of cyber crime, acts of a racist and xenophobic nature and criminal defamation. According to OECD Watch the measures seem to have been taken solely to prevent Indian organisations and their Dutch counterparts from expressing concern about violations of labour rights in the Indian garment sector and thereby from seeking a remedy. At the time of writing October 2007, the case was pending before the Dutch NCP.



## How NCPs have dealt with alleged violations of human rights

NCPs have accepted complaints that deal with a wide range of human rights issues but their deliberations have not always been informed by expert opinion such as the reports of the UN Treaty Monitoring Bodies or, in the case of Burma/Myanmar, of the ILO.

The NCPs' final statements have generally not identified breaches of the Guidelines nor have they provided clear recommendations about how to ensure the future conduct of the companies. The inadequate way in which the majority of NCPs handled the complaints arising from the work of the UN Panel of Experts on the Illegal Exploitation of the Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo led to public demands for the procedures to be overhauled. After lengthy consultations →

### Burma/Myanmar

In March 2001 French trade unions filed a complaint with the French NCP about the conduct of the oil company Total FinaElf which they accused of participating in a joint venture with the Burmese military regime, knowing that forced labour was used for road building and maintenance connected to the joint venture's Yadana pipeline operation. After a general consultation with French companies operating in Burma/Myanmar the French NCP called on companies 'to do everything possible in order to avoid direct or indirect recourse to forced labour in the normal course of their operations, in their relations with sub-contractors or through future investments, particularly in zones with a strong military presence and in activities controlled by the military.' The NCP's recommendations fell far short of the ILO's appeal to governments to review their relations with Myanmar and to take appropriate measures to ensure that such relations do not perpetuate or extend the system of forced labour.

### Business and Conflict in the Democratic Republic of Congo – the UN Panel of Experts

During the second war in the Democratic Republic of Congo (DRC) between 1998-2003, multinational corporations were accused of prolonging the conflict and of profiting from it. A UN Panel of Experts appointed to investigate these allegations produced a series of reports and concluded that certain business activities had helped perpetuate the conflict and human rights abuses, and in its third report included an annex listing eighty-five companies which it considered to be in breach of the OECD Guidelines<sup>2</sup>.

Some of the companies were accused of directly entering into business relationships with armed groups by engaging in activities such as trading minerals and supplying arms. Others were accused of profiteering by securing lucrative concessions and contracts with little or no benefit to the Congolese people.

A number of cases were forwarded by the UN Panel to the relevant NCPs for investigation. NGOs also filed complaints. Most of the complaints were dismissed on various grounds: i) that there was insufficient evidence of a breach; ii) that the company was not engaged in investment-related activities; iii) that the UN Panel had 'resolved' the case; and/or iv) that the NCP had no fact-finding role.

→ about ethical dilemmas for companies highlighted in the UN Panel's report, the OECD developed a Risk Awareness Tool to guide companies working in countries with weak or non-existent governments.<sup>1</sup>

Initially the NCPs' recommendations often merely reiterated the human rights provisions of the Guidelines. They avoided declaring breaches and failed to offer specific advice about actions a company should take to remedy a problem and ensure compliance.

But the trend in more recent human rights cases suggests that there has been a shift in the approach of some NCPs who now appear to have a greater willingness to ensure that their statements are properly reasoned and in line with the position of expert bodies. They are more willing to declare a breach. There is also recognition by governments that if they wish to promote the Guidelines as the key CSR instrument then the quality of NCP statements and the relevance of their recommendations, particularly as regards the human rights provisions, have to be improved. As recommendations become more specific, NCPs have come to a realisation that they will have to monitor how companies have implemented them.

<sup>1</sup> OECD Risk Awareness Tool :available at: [http://www.oecd.org/document/6/0,3343,en\\_2649\\_34889\\_36887622\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/6/0,3343,en_2649_34889_36887622_1_1_1_1,00.html)

<sup>2</sup> Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo, April 12, 2001, May 22, 2002, October 16 2002, October 23, 2003.

## What can be deduced about the human rights responsibilities of business under the Guidelines?

As is clear from the work of Professor John Ruggie, the United Nations Secretary-General's for Business and Human Rights, society has increasingly higher expectations about the conduct of business. There is also a growing recognition that home states have a duty to protect against third-party abuses of rights, including by business entities operating abroad. These pressures are likely to result in more stringent interpretations of the Guidelines and better informed NCP statements and recommendations. Business groups have also come to accept their wider human rights responsibilities.

NCP statements do not have any immediate legal effect but they may give rise to legal actions. Complaints that have started as specific instances have ended up in criminal, civil or

administrative investigations or proceedings (e.g. inquiries and/or prosecutions have been initiated in relation to the following cases : BAE, Aker Kvaerner and Anvil Mining).

The status of financial institutions, banks and export credit agencies under the OECD Guidelines is currently being scrutinised by NCPs. Complaints have been filed against two banks for allegedly contributing *inter alia* to actual or potential environmentally harmful practices that could result in violations of human rights . The complaints concern the Swedish bank Nordea, in relation to a pulp mill in Uruguay, and the ANZ Bank for its support to a company allegedly responsible for devastating logging practices and repeated illegal conduct in Papua New Guinea.

**'All companies have the same responsibilities in weak governance zones as they do elsewhere. They are expected to obey the law, even if it is not enforced, and to respect the principles of relevant international instruments where national law is absent.'**

(International Organization of Employers, International Chamber of Commerce, & Business and Industry Advisory Committee to the OECD, Business and Human Rights: 'The Role of Business in Weak Governance Zones' December 2006).

## Criteria for assessing compliance with the human rights provisions of the Guidelines

The following selected indicators (“key questions”) have been formulated based on this more comprehensive understanding of human rights responsibilities of companies under the Guidelines. They are meant to help assess whether a company has the appropriate procedures and systems in place to ensure respect for human rights or to provide a remedy should a problem arise.

### Key questions arising from Human Rights Cases under the OECD Guidelines

#### General policies

- Does the company have a company-wide human rights policy?
- Does the company conduct a “Human Rights Risk Assessment”?
- How does senior management or the board come to a decision to proceed with the operation, loan or investment if there is perceived to be a high risk of contributing to:
  - \_ Serious or systematic human rights violations such as extra-judicial executions, torture, deprivation of liberty, forced or child labour?
  - \_ War crimes or crimes against humanity
  - \_ Major environmental damage
  - \_ Gross corruption
- What enhanced due diligence measure have been put in place to deal with heightened risks?
- What measures are undertaken to ensure or encourage its subsidiaries, contractors, sub-contractors or suppliers to comply with the company’s human rights policy?
- Does the company report on any human rights-related administrative, civil, or criminal complaints or actions initiated by any person against the company or its subsidiaries, contractors, or sub-contractors?
- Does the company have a whistleblower hotline/e-mail account?
- In the event of a human rights problem arising (e.g. strike by local workforce, occupation of company facilities, civilian unrest etc) does the company have a set of emergency procedures to prevent (its involvement in) human rights abuses?
- Does the company have a community liaison officer to deal with complaints in a timely and transparent manner?
- What relations does the company or its suppliers or sub-contractors have with local human rights NGOs?
- Does the company carry out audits on a regular basis of its human rights performance? If so, what mechanisms does it have in place for addressing problems identified in such audits?

#### Economic, Social and Cultural Rights

- Does the company throughout its supply chain operate an equal opportunities policy for its employees?
- Does it permit throughout its supply chain trade union activity?
- Does it have effective policies in place throughout its supply chain to prevent direct or indirect discrimination?
- Does it provide throughout its supply chain a living wage and decent workplace conditions?
- Does the company release its environmental management plans/environmental impact assessments to NGOs and to local community representatives?
- In the event of industrial accidents, spillages or accidental contamination does the company have a policy of remedying harm or providing compensation to affected people? Are these available on the company’s website?
- What policies does the company have to avoid displacement of local communities, particularly indigenous peoples from their lands or to ensure their continued access to and control over natural resources upon which their livelihoods depend?

## Civil and political rights

- Is the company operating in or intending to operate in or trade with countries known to have serious and persistent human rights problems?
- Has the company and the board carefully analysed its responses to the OECD's Risk Awareness Tool?
- Could the company's operations (investment, trading or other commercial activities) be perceived as directly or indirectly supporting human rights violations by government forces, rebel groups or others?
- Has the company adopted the Voluntary Principles on Human Rights and Security and has it taken the necessary steps to ensure that the relevant staff, including security personnel, is fully capable of implementing the policy?
- Does the company respect the right to freedom of expression of local communities and NGOs who may be opposed to aspects of their operations?
- Does the company have a policy of disclosing information about the company's structure, ownership and financial situation to the workforce and local community?
- In the event of harassment or legal and other threats to peaceful protest or legitimate opposition to its activities by community leaders, trade unions or NGOs, would the company publicly disassociate itself from such action?

## Security issues

- What are the company's policies for handling allegations of human rights abuse by employees or security personnel?
- Does the company assess risks to those within and outside the project site posed by its security arrangements?
- Does the company make reasonable inquiries to ensure that those providing security are not implicated in past human rights abuses?
- Does the company ensure its security personnel are appropriately trained in the use of force?
- Does the company ensure its security personnel are appropriately trained to interact with workers and the local community?
- What procedures does the company have in place for reporting on human rights abuses by government or rebel groups witnessed or reliably reported by its staff or its sub-contractors or suppliers?

Additional tools available to facilitate the use of the OECD Guidelines:

**Fact Sheet #1** in this series provides an introduction as to how the SRI community can make use of the OECD Guidelines.

**Fact Sheet #2** outlines the relevant content of the 10 chapters of the OECD Guidelines for the SRI community, making links to key CSR indicators and presenting key questions for use in developing a profile of a company's practices.

**Fact Sheet #4** goes into more depth on how the SRI community can assess adherence to the supply chain provision.

The fact sheet was written by Rights & Accountability in Development (RAID), a founding member of OECD Watch and authority on business and human rights. For further information see : [www.raid-uk.org](http://www.raid-uk.org)

**OECD Watch** is an international network of civil society organisations promoting corporate accountability. OECD Watch aims to inform the NGO community about policies and activities of the OECD's Investment Committee and to test the effectiveness of the OECD Guidelines for Multinational Enterprises. For more information visit [www.oecdwatch.org](http://www.oecdwatch.org).

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OECD Watch and Eurosif are working together to promote dialogue on better integration of the OECD Guidelines into SRI practice. To share your feedback on this fact sheet or other issues related to the Guidelines and SRI please contact [contact@eurosif.org](mailto:contact@eurosif.org) and [info@oecdwatch.org](mailto:info@oecdwatch.org).

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# The OECD Guidelines and Socially Responsible Investment

## Introduction

The Organisation for Economic Co-operation and Development's (OECD) Guidelines for Multinational Enterprises outline what OECD member governments agree are the basic components of responsible corporate conduct. They

cover a range of issues, including labour and human rights, bribery and corruption, the environment and information disclosure. These guidelines can be a useful tool for the socially responsible investment (SRI) community because of their

broad coverage of corporate social responsibility (CSR) issues, commitment from governments, and support from business, labour and some civil society groups. OECD Watch, a network of 70 international NGOs working on corporate

accountability, and Eurosif (the European Social Investment Forum) have partnered to develop a series of fact sheets to help investors and SRI agencies better understand the scope of the OECD Guidelines and facilitate their use.

Download the entire fact sheet series at [www.oecdwatch.org](http://www.oecdwatch.org) or [www.eurosif.org](http://www.eurosif.org).

## Fact Sheet

# 1 2 3 4

## Assessing Adherence to the OECD Guidelines' Supply Chain Provision

### Summary

The OECD Guidelines for Multinational Enterprises are recommendations addressed by governments to multinational enterprises that cover a broad range of corporate activities. This fact sheet, the fourth in a series of four, focuses on the Guidelines' provision on supply chain responsibility. Regardless of sector, following standards of good practice throughout supply chains is recognised to be one of the most important and challenging issues for multinational corporations that are serious about CSR.

Assessing such efforts is equally challenging for the SRI community. This fact sheet explains the content and relevance of the OECD Guidelines provision on supply chains to the assessment of corporate practices, proposing a more comprehensive understanding of supply chain responsibility. Key questions are presented to assist SRI rating agencies and analysts in evaluating companies' behaviour in relation to the supply chain provision recommendation.

## The OECD Guidelines' Supply Chain Provision

With an ever more globalised economy, it is increasingly common for businesses in many sectors to outsource "risky" activities. In addition, multinational companies

strongly influence business practices within their supply chains through the contract terms that they negotiate with or impose on their suppliers. After much

debate between business representatives and NGOs who had opposing views on the matter, OECD member states recognised the need to include supply chains

within the scope of the OECD Guidelines.

Therefore since 2000 the OECD Guidelines' include a provision (located in →

### OECD Commentary on Supply Chain Provision

- There are practical limitations to the ability of enterprises to influence the conduct of their business partners.
- The extent of these limitations depends on sectoral, enterprise and product characteristics such as the number of suppliers or other business partner, the structure and complexity of the supply chain and the market position of the enterprise vis-à-vis its supplier or other business partners.
- The influence enterprises may have on their supplier or business partners is normally restricted to the category of products or services they are sourcing.
- The scope for influencing business partner and the supply chain is greater in some instances than in others.
- Established or direct business relationships are the major object of this recommendation.

→ chapter 2, "General Policies") on the responsibility that companies have for upholding standards within their supply chains. The provision states that enterprises should "encourage, where practicable, business partners, including suppliers and sub-contractors, to apply

principles of corporate conduct compatible with the Guidelines."

In addition to the text of the provision, which, being the result of a compromise is quite vague, there is a "commentary" set out by the OECD to help interpret the provision [see box left].

## Understanding Supply Chains and Corporate Responsibility

Supply chains – those sequences of steps that, for example, bring raw materials, finished goods, information, and finances from supplier to manufacturer to trading houses to wholesaler to retailer to consumer – are understandably complex and diverse processes, shaped by the sector in which they are based. These flows, within and between companies, are also quite dynamic and likely to vary as the reality of supply chains are constantly changing (for instance due to developments in technology, quality assurance and pricing).

The garment and apparel sector, for example, is characterised by supply chains that are frequently managed through "arms

length" relationships and extensive sub-contracting. Long-term contracts between suppliers and global brands and major retailers are less common. By comparison, capital intensive industries, such as the aluminium sector, are recognised as being vertically integrated with long-term contracts in place.

The diversity of supply chains should be taken into account when developing criteria to assess business practices. It is therefore important to make use of not only general principles for supply chain responsibility valid for all sectors, but also more specific criteria to be determined for each sector grouping and indeed very specific indicators for individual sectors.

### Key Supply Chain Information

The following are selected examples of questions to be used to gather information on a company's supply chain. Note that this is no substitute for a thorough mapping process, informed by knowledge of the sector in which the company operates.

- Has the company mapped its entire supply chain? Are suppliers' details publicly disclosed or available upon request?
- How many suppliers does the company have? How many of them are direct suppliers (i.e., first tier)?
- Is the company in direct contact with its suppliers or does the company use intermediaries, such as trading houses?
- Where are suppliers located? Does the company's supply chain, for example, include activities in countries where there are issues of workers' rights or environmental standards violations?
- Who is the "chain governor"? Does the company, for example, act as a "bottleneck" that many suppliers have to work through to access markets? Or are there suppliers, on the contrary, more powerful and larger than the company?
- How "critical" is each supplier to the company? Is it the only or key supplier or one of many?
- What percentage of a supplier's capacity is taken up by production/service delivery to the company?
- How long has the company had a relationship with each business within its supply chain? A short relationship does not exempt a company from any responsibilities, however the longer the relationship the greater the sphere of influence.
- Does the company have licensing arrangements to source goods and services?

# The Supply Chain Provision in Practice - Narrowed Scope of Applicability

Interpretation has remained an ongoing point of debate and in 2003 the OECD's Committee on International Investment and Multinational Enterprises (CIME), now known as the Investment Committee, issued a statement indicating that the Guidelines apply only to investment, not trade, and that the applicability of the Guidelines rests on the presence of an "investment nexus", which would be assessed on a case-by-case basis. Not all of the National Contact Points (NCPs) of OECD member states, who are mandated to follow up on charges of violations of the Guidelines, supported the change. Many have also found the distinction between a trade relationship and an investment relationship

difficult to draw, and not representative of global business practice.

NGOs and unions have voiced concerns that the 2003 clarification by CIME resulted in a weakening of the Guidelines. They noted that companies often do have considerable influence on their suppliers even when there is no ownership or direct investment relationship.

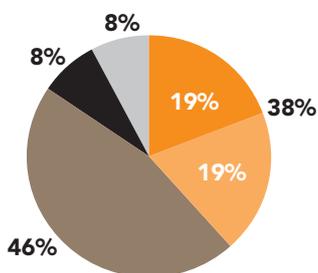
## Varied Interpretations Based on Investment Nexus Criteria

A significant number of cases of alleged Guidelines violations have been closed or rejected because the NCP concluded that the evidence of an "investment nexus" was insufficient. NGOs and

unions have raised concerns that rejecting these cases is unjust and has prevented the Guidelines from being used to their full potential. Furthermore, the ongoing lack of clarity around the "investment nexus" criteria has been used to shield companies from acting upon the supply chain provision of the Guidelines. For example, one NGO has pointed out that in complaints filed against companies operating in the Democratic Republic of Congo during wartime, activities originally defined as investment in the context of bilateral agreements were reclassified as trade by some NCPs to block a Guidelines' complaint.

As with other provisions contained within the

Guidelines, a complaint that has been filed on the basis of an alleged violation of the supply chain provision should be noted by SRI agencies and analysts seeking to gather information on corporate practices. Details of the complaint and the manner in which the company responds, for example, provide insight into the company's practices and its possible associated risks. SRI analysts should keep in mind that when a complaint is rejected on the grounds of "no investment nexus" this does not mean that no violation of the Guidelines/law took place within the supply chain, merely that no "investment nexus" was established (which, again, is a criteria that varies in interpretation from NCP to NCP).



## Cases of Alleged Supply Chain Provision Violations

Total number of cases filed by NGOs alleging violation of the OECD Supply Chain provision: 26.

- Number of these cases accepted: 10 (38%), ● 5 (19%) of which have reached conclusion
- Number of these cases rejected: 12 (46%)
- Number of these cases withdrawn by NGOs: 2 (8%)
- Number of these cases still pending initial assessment by NCP: 2 (8%)

Source: OECD Watch's Case Database, October 2007

## Examples of Alleged Violations of Supply Chain Responsibility

### Sector

Textile/Garment

### Description

In 2006 NGOs filed a complaint with the Dutch NCP charging that Indian suppliers of jeans company G-Star violated numerous workers' rights including freedom of association and collective bargaining and engaged in abusive and discriminatory practices.

Chemical

In 2004 NGOs filed a complaint with the German NCP alleging that Bayer used child labour in their supply chain in India.

Oil

In 2002 an NGO filed a complaint with the German NCP against the German Branch of Total Fina Elf charging the company with serious environmental damage as a result of practices within its pipeline operations in the Russian Federation.

Financial

In 2006 Norwegian and Argentinian NGOs filed a complaint with the Swedish and Norwegian NCPs against financial services group Nordea for their role in arranging possible financing for Finnish company Botnia's pulp mill project in Uruguay, where numerous rights/legal violations were alleged.

Source: OECD Watch's Case Alert Database

# Criteria for Assessing Supply Chain Responsibility

The OECD Guidelines' supply chain provision is limited by the "investment nexus" criteria and therefore has limitations as a tool for assessing corporate responsibility across supply chains. OECD Watch's position is that supply chain

responsibility should be considered regardless of whether it is an investment or trade relationship. OECD Watch recognises that in addition to the levels of influence a company exercises, for example when a direct investment relationship

or shareholder investment relationship exists between companies, there are other levels of influence that exist and carry responsibilities. The following selected indicators ("key questions") have been formulated based on this more comprehensive

understanding of supply chain responsibility. They are meant to help assess whether a company is engaged in a process to apply standards of good practice throughout its supply chain.

## Key questions on policy:

- Does the company have a policy towards its suppliers with relation to the implementation and monitoring of standards of good practice, for example as outlined in the OECD Guidelines? [see fact sheet #2 for more information on the content of the Guidelines]
- Does the company apply these policies throughout its supply chain, i.e., beyond the first tier of suppliers?
- Does this policy include a process for information provision and/or training for suppliers on social and environmental issues?

## Key questions on practice:

- If violations of CSR standards are reported, were they gross violations of human rights, workers rights, environmental standards?
- Are the reported violations incidental or structural problems? How often do violations take place? Continuously?
- Does the company work with its suppliers to develop and follow up on remediation plans to resolve outstanding issues?
- Is compliance to the CSR policy throughout the company's supply chain independently monitored and verified (for example, through participation in multi-stakeholder monitoring and verification schemes)?
- Do workers at all levels of the supply chain have access to a credible complaints mechanism to voice concerns about violations of standards of good practice?
- Does the CSR/compliance department influence decision making in other departments within the company which have an impact on standards of practice throughout the companies' supply chain? For example, are processes in place to ensure that purchasing practices (ex. prices paid to suppliers, schedules for delivery) do not compromise compliance with standards of good practice at suppliers' workplaces (ex. do prices paid allow for payment of a living wage to production workers? Do schedules necessitate excessive overtime?).
- Does the company cooperate with other companies to address issues of compliance with standards of good practice throughout the sector?

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**Fact Sheet #3** goes into more depth on how the SRI community can make use of the OECD Guidelines' human rights provision.

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