

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

11 October 2021

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Surya Deva
Chairperson

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