

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 or www.eurosif.org.

Fact Sheet

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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.



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 (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
ICCPR	
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
ICESCR	
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)
Core Labour Standards	
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

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

Avient Ltd, UK

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.

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

Aker Kvaerner ASA, Norway

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 Guidelines².

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.¹

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.

¹ OECD Risk Awareness Tool :available at: http://www.oecd.org/document/6/0,3343,en_2649_34889_36887622_1_1_1_1,00.html

² 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

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.

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.

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 and info@oecdwatch.org.

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