

**OECD Watch guidance for civil society:
Why and how to contribute to the OECD’s public consultation on
the targeted update of the OECD Guidelines for Multinational Enterprises**

Why is participating in this public consultation important?

The OECD Guidelines for Multinational Enterprises (Guidelines) are the world’s leading standard on responsible business conduct. They are useful for civil society in a range of ways, from helping them explain international RBC expectations to rightsholders or companies, strengthen advocacy with governments including regarding corporate due diligence laws, and support communities in seeking remedy for harms. Although the standards are strong, they are outdated on a range of key topics, from climate change to human rights defenders, digitalization, and taxation among others. The OECD is in a process of updating the Guidelines and is seeking public input on its most recent draft of targeted updates. **It is vital that civil society participate in the consultation to tell the OECD that a revision is needed and urge further edits to strengthen the text.**

- To learn about the OECD, the Guidelines, and OECD Watch, please read sections 1-5 below.
- To learn why the OECD is considering updating the Guidelines and what OECD Watch thinks about the update and latest proposed draft, please read sections 6-8 below.
- Finally, to learn how to participate in the public consultation and read OECD Watch’s guidance on priority topics, please read sections 9-10 below.

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1. What is the OECD?

The [Organisation for Economic Cooperation and Development](#) (OECD) is a multilateral institution (like the United Nations, World Trade Organisation, etc.) led by state governments. The OECD focuses on promoting economic development around the world. It is also renowned for developing *standards of best practice* on a wide range of development-related topics, including [responsible business conduct](#) (RBC).

2. What are the OECD Guidelines?

The [OECD Guidelines for Multinational Enterprises](#) (Guidelines) are the world's leading standard on RBC. The Guidelines are a set of recommendations from the OECD member governments to multinational enterprises (MNEs) on how to conduct business responsibly.

The Guidelines are divided into two parts:

- Part I sets out the recommendations, or standards, on RBC. In 11 topic-based chapters, the Guidelines explain what enterprises “should” do to conduct business responsibly.
- Part II establishes expectations for how governments should implement the Guidelines. Each government that is a member of the OECD or that chooses to adhere to the Guidelines is expected to establish an office called a National Contact Point (NCP) to promote the Guidelines to businesses and other stakeholders (including civil society) and help resolve disputes (complaints) alleging that an MNE has not met the Guidelines' standards.

3. What features of the Guidelines make them a strong standard on RBC?

Several unique aspects of the Guidelines make them a strong and impactful standard on RBC:

- Government-backing: The Guidelines are not just a wish-list of civil society; they are standards authored and backed by the 50 states adhering to the Guidelines.
- Broad sector coverage: The Guidelines apply to MNEs in *all* sectors (including production and service sectors), not just a few specific sectors.
- Broad issue coverage: The standards address a wide range of RBC issues, not just a couple, from human rights, environment, and employment, to taxation, disclosure, and technology.
- Broad territorial scope: The Guidelines apply extraterritorially to MNEs' operations and value chains around the world. Specifically, the Guidelines apply to MNEs headquartered in the 50 states currently adhering to the Guidelines wherever they or their value chains are active in the world, and also to MNEs headquartered in any country when they operate in one of those 50 states.
- Broad coverage of all MNEs causing, contributing to, or directly linked to impacts: The Guidelines apply not only to MNEs that themselves cause adverse impacts to people or the planet, but also to MNEs that contribute to or are directly linked to such impacts through their business relationships.
 - Coverage of MNEs' value chains: As a direct implication of the above, the Guidelines are applicable not only to the company directly causing harm, but also to the parent company and related brands, auditors, investors, lenders, buyers, consultants, platforms, joint ventures, and other business partners for their own particular responsibility for the harms occurring in their value chains.
- Built in grievance mechanism: Finally, unlike other standards, the Guidelines include a complaint mechanism that can facilitate access to remedy for people adversely impacted by business conduct. Civil society and other stakeholders can (and do) file complaints to the NCPs alleging

that an MNE has breached the standards. The NCPs are expected to help resolve the complaint, including by helping facilitate access to remedy where expected under the Guidelines' standards.

4. How are the Guidelines useful for civil society?

The Guidelines are a useful tool for rightsholders and civil society for many important activities, including:

- Raising communities' awareness of their rights and corporations' responsibilities: The Guidelines can be used to support communities and workers in understanding both their rights and the expectations governments have for how businesses *should* respect human rights, avoid environmental harm, and otherwise operate responsibly.
- Guiding engagement with companies: If a company's activity is harming a community or workers, the Guidelines can be used during dialogue with the company to help impacted rightsholders explain how the enterprise is falling short of international, state-endorsed best practice on RBC.
- Supporting advocacy to strengthen law and policy on RBC: Many civil society groups are actively seeking binding requirements for better corporate conduct, or other policies to strengthen accountability for adverse business impacts. The OECD Guidelines and associated [due diligence guidance](#) can be (and are being) used by civil society and policymakers alike as a reference or model for draft laws on corporate human rights and environmental due diligence.
- Seeking accountability and remedy for harm: The NCP complaint mechanism can be a useful option for seeking remedy for communities or workers adversely impacted by business activity.

5. What is OECD Watch and how does it relate to the Guidelines?

[OECD Watch](#) is a global network of over 130 civil society organisations from more than 50 countries. We are recognised (including in the text of the Guidelines, Part II) as the representative of civil society at the OECD Investment Committee, which is the committee responsible for the Guidelines. OECD Watch helps communities and civil society understand and use the Guidelines. OECD Watch also advises the OECD and adhering governments on how to improve uptake of the Guidelines by MNEs and strengthen implementation by NCPs.

6. Why is the OECD considering updating the Guidelines?

For several years, OECD Watch has urged the OECD to update the Guidelines because, while impactful, they are *out of date* on many topics and *do not address at all* several issues of top concern related to business and human rights. For example, the Guidelines are outdated in their RBC expectations on technology and disclosure, and they do not mention key issues like climate change, human rights defenders, or land rights.

Following extensive advocacy by OECD Watch and other stakeholders, in late 2020, the OECD launched a "[stocktaking](#)" to study whether the Guidelines remain fit for purpose. [Input from OECD Watch](#) as well as NCPs, numerous civil society organisations, and other diverse stakeholders [showed](#) that there are many gaps in the Guidelines' standards (Part I) and implementation expectations (Part II). In 2022, the OECD agreed to consider undertaking a "targeted update" of the Guidelines to close gaps and modernize the text. **From 13 January 2023 to 10 February 2023, the OECD is holding a [public consultation](#) to seek public input on the latest draft ([consultation draft](#)) of its proposed edits to the Guidelines.**

7. Does OECD Watch support an update of the Guidelines?

Yes, OECD Watch strongly supports the idea of updating the Guidelines. The Guidelines are seriously out of date in many ways, and we have urged governments adhering to the Guidelines not to pass by this opportunity to update them. OECD Watch has been representing the voice of civil society during the stocktaking and update debates at the OECD. For the past several months, we have been proposing detailed edits to strengthen the draft text. Many of our concerns are being addressed, but not all of our edits have been accepted, or accepted in full.

8. Does OECD Watch support the current consultation draft of the Guidelines?

On many issues, the latest consultation draft is better than the current 2011 version of the Guidelines. However, on many critical topics, edits have not yet been agreed; the proposed edits do not go far enough; or the proposed edits could even be negative in the current global context. Critical amendments are still needed to the consultation draft before the OECD should adopt updated text.

9. How can civil society help encourage the strongest possible update of the Guidelines?

As said, the OECD is holding a public consultation from 13 January 2023 to 10 February 2023. Businesses may urge that a revision *not* take place at all and/or that standards be relaxed on critical areas. For this reason, **it is critical that as many civil society groups as possible participate in the consultation to urge that a strong and progressive update takes place.**

OECD Watch asks civil society to do the following:

- 1) Participate in the public consultation by filling out [this submission form](#).
- 2) In the submission form, use the “General Comments” section to (at minimum; please free to add other comments):
 - a. Urge that the OECD revise the 2011 Guidelines. There is some risk the OECD governments will not agree, even after all their preparatory work, to revise the text, so it is important that civil society continue to urge a revision for the reasons stated above – that although the Guidelines have been a valuable tool for civil society and rightsholders, they are out of date and incomplete, and their value will greatly increase if they are updated.
 - b. Acknowledge that while the consultation draft is, on the whole, stronger than the 2011 text, serious concerns remain and many issues still need to be addressed, as set out below.
- 3) Next, in the submission form, use each relevant chapter section to comment on the specific topics you feel still need to be addressed in the chapters.
 - a. To guide you in this, please see below OECD Watch’s top comments *by issue* (we also note the Guidelines chapters relevant to these issues, to help you make comments on these issues *by chapter* as requested in the submission form). **But please do not copy-paste OECD Watch’s text verbatim, as this could cause the OECD to pay less regard to your submission. They OECD seeks unique submissions; so please use your own words!**
 - b. **Please also use your own expertise** to read the [consultation draft](#) and, where helpful, compare it to the [current 2011 Guidelines](#) (available in numerous languages) on issues of importance to you to make your own suggestions.
 - i. **Please just remember** that the Guidelines are a broad and timeless instrument that cannot (and probably should not) go into deep detail on certain issues at the expense of others. Also remember that the OECD governments have agreed

only to undertake “targeted updates,” not a full overhaul of all chapters. Therefore, please try to keep your suggestions concise and limited to the most critical issues.

- c. Please refer wherever relevant to parallel international or regional instruments and/or initiatives, and explain if these should either be cited in the Guidelines directly, or simply used by the OECD to them in updating the text.
- 4) Consider screenshotting/copy-pasting your submission into a letter to progressive businesses/industry associations or OECD governments you engage with to ask their support.
- 5) **Encourage other civil society to participate in the public consultation.**

Please contact OECD Watch anytime if you have questions: just email Marian Ingrams at m.ingrams@oecdwatch.org.

10. What are OECD Watch’s priorities to strengthen the text?

For well over two years, OECD Watch has been pushing for updated standards on [many topics](#) (scroll down for topic-specific briefs), ranging from the definition and importance of meaningful engagement including with individuals or groups experiencing marginalization or vulnerability, to the importance of corporate disclosure of RBC issues, to the importance of animal welfare in connection with RBC due diligence, to the nexus between corruption and other RBC impacts. We have also been urging critical updates on the expectations for how NCPs should implement the Guidelines.

Here below is guidance on priority topics for update. For each topic, we indicate the chapter(s) in which edits should appear in the Guidelines text (and correspondingly, in the sections of the public consultation submission form). **As said, please use this guidance and your own expertise to fill out the submission form in your own words!** Please also of course feel free to make submissions on any topic of priority for you that is not listed below. If you think OECD Watch should prioritise a topic that you don’t see listed, please write Marian Ingrams to let OECD watch know; we will make our submission on the last date possible in order to incorporate expert input from you and other civil society.

Priority topics

- Climate change and environmental impacts
- Human rights and environmental defenders
- Indigenous Peoples rights
- Land rights
- Digitalisation and RBC
- Taxation
- Expectations for NCPs to implement the Guidelines
- Miscellaneous (including focus on marginalised groups and gender, and various technical issues)

10.1 Climate change and environmental impacts

The OECD has made extensive edits to Chapter VI (Environment). Important new additions include language identifying climate change as an adverse impact subject to due diligence, language identifying numerous other adverse environmental impacts including related to conservation, biodiversity, and animal welfare, and language on remediation of environmental impacts. Nevertheless, serious shortcomings remain that should be addressed.

- **Due diligence focus:** The chapeau and various paragraphs of chapter VI should be rephrased and reorganized in correct alignment with the six steps of due diligence. In several places in

paragraphs 2-5, the suggested actions are lower than what is expected under the due diligence provisions. For example, paragraph 3 suggests that companies should only “seek to” address environment-related impacts on workers and communities, but due diligence expects them to actually address and remediate (not just seek to) impacts they cause or contribute to. The topics also appear out of order in a confusing manner.

- Link between environmental and human rights impacts: The chapeau and paragraphs 1 and 3, and commentary between 60 and 63, should explicitly highlight the correlation between adverse environmental impacts and violation of human rights. Currently, the narrow mentions of health and safety leave out critical focus on the nexus between projects impacting the environment and MNEs’ violation of a *wide array* of human rights. Paragraph 1 should call for enterprises to integrate their environmental due diligence with their human rights due diligence in order efficiently and completely to identify and address all human rights impacts that may be associated with their actual or potential adverse environmental impacts. Commentary should elaborate an illustrative but non-exhaustive list of the range of human rights commonly impacted in connection with adverse environmental impacts, to include rights to equality, life and security, freedom of movement, ownership of property, health and wellbeing (food, housing, etc.), education, and land, among others.
- Definition of environmental impact: Proposed text in commentary 62 would limit the definition of what can be considered an environmental impact to something that is “known or foreseeable” (even though there can obviously be unforeseen impacts/accidents; such a limitation does not exist in Chapter IV for human rights impacts) and something that has a “significant effect” on an ecosystem (it is not clear what “significant” means in this context, nor why the normal due diligence process of categorizing impacts in terms of severity and likelihood (both defined terms) is not explained). This text needs to be corrected.
- Climate change: The addition of language on climate change, especially including references to scope 1, 2 and 3 emissions, is already a win. But improvements are needed. For example, the chapter focuses inadequate attention on climate change *adaptation*, particularly by explicitly calling for enterprises to respect communities’ own ability to adapt to climate change. Adaptation is a global necessity at this stage, and enterprises whose mode or product of business challenges communities’ own adaptability must be guided towards improving their adaptation efforts. OECD Watch urges civil society interested in climate change to look at these paragraphs and make additional concrete and specific suggestions based on your own expertise.
- Just transition: Paragraph 3 and commentary 63’s reference to and definition of “just transition” are inadequate. From prior drafts, the language around just transition has been weakened and is increasingly narrow and non-specific. A clearer and broader definition of just transition could and should be supplied. Enterprises should transition towards producing and/or using renewable sources of energy; mitigate any adverse impacts on workers, communities, and consumers from both that transition *as well as* the production or use of renewable energy; and promote equitable access to benefits derived from exploiting natural resources, particularly for impacted communities.

10.2 Human rights and environmental defenders

OECD Watch is deeply concerned by the current language proposed on human rights defenders. We believe the text added in Chapter II (General Policies) should be reframed significantly, and that further references and guidance on defenders is needed in both chapters IV (Human Rights) and VI (Environment).

- Definition of retaliation/expectations regarding respect for defenders: Chapter II paragraph 10 and commentary 14 should be reframed to align with other leading instruments and initiatives

defining corporate expectations on human rights defenders. Of note, the problematic term “undue pressure” not found in other international texts should be deleted (when is pressure on human rights defenders ever “due”?), and the text should implicitly or explicitly recognize the right of defenders to protest *any* business activity, not only activity that is illegal or inconsistent with the Guidelines. The text should also outline what safeguards enterprises should adopt, including proactive steps to engage with defenders and discourage business relationships, including states, from retaliating against defenders. Among the examples of retaliation given, language on SLAPP suits should be preserved, and language on sexual/gender-related harassment should be added.

- OECD Watch strongly urges the OECD to consult relevant international entities (such UN Special Rapporteurs, the UN Working Group on Business and Human Rights, the OHCHR, and international finance institutions, among others) as well as expert civil society to ensure coherence and consistency on the language on defenders.
- Reference to defenders in chapter IV (Human Rights): In chapter IV, a *new* commentary paragraph should be added either between commentaries 41 and 42 or between 45 and 46 outlining the importance of respecting the rights of defenders and including them in due diligence.
- Reference to defenders in chapter VI (Environment): Language should be added in the commentary of the environment chapter highlighting to enterprises the particular vulnerability of environmental and land rights defenders and calling for heightened attention to the expectations laid out for enterprises in chapters II and IV vis-à-vis defenders.

10.3 Indigenous Peoples’ rights

The consultation draft includes some additions on Indigenous Peoples rights, but the changes made are minor and inadequate given the heightened threats to Indigenous Peoples’ lives and livelihoods and the correlation between respecting Indigenous Peoples’ rights and avoiding harm to climate change and the environment.

- Clarify the rights of Indigenous Peoples: In chapter IV (Human Rights), commentary 40 should be modified to clarify that enterprises should respect human rights, including those elaborated in UN instruments or other guidance on the rights of numerous individuals and groups, including national or ethnic, religious and linguistic minorities; women; children; sexual and gender minorities; persons with disabilities; migrant workers and their families; Indigenous Peoples, and others. The paragraph should note that some individuals or groups possess *unique* rights, such as Indigenous Peoples, whose particular rights such as to free prior and informed consent, self determination, and culture (all of which should be enumerated explicitly in the commentary) have been recognised in a body of international jurisprudence (the text should reference more instruments than just UNDRIP). The commentary should call on enterprises to respect the unique rights of *self-identified* Indigenous Peoples. The paragraph should further explain that enterprises may need to take additional steps both to remove barriers to participation by, and identify and address adverse impacts on, individuals or groups experiencing marginalization or vulnerability (as defined in Chapter II; see in the *Miscellaneous* section of this guidance below).
- Highlight respect for Indigenous Peoples’ land rights: (see below).

10.4 Land rights

The OECD has proposed adding a reference in chapter VI (Environment) to the Voluntary Guidelines for the Responsible Governance of Tenure (VGGTs) and the VGGT’s guidance on investments doing no harm and safeguarding against dispossession of legitimate tenure right holders. While positive that the OECD

is considering adding language on land rights, the current proposed text does not go far enough, in part because it means the Guidelines do not themselves set a standard regarding land rights, but only refer to another standard. An explicit expectation, plus accompanying explanatory guidance, are needed.

- New expectation and explanatory commentary on land rights: Paragraph 1 or 3 of Chapter VI (Environment) should be adapted and a *new* commentary added between commentaries 60 and 63 to set new expectations and guidance for MNEs on respecting land rights. The new paragraph text should call for enterprises to safeguard against dispossession of legitimate tenure right holders in alignment with expectations for enterprises in the VGGTs and respect the unique internationally recognised land rights of Indigenous Peoples. Commentary should explain that land security underpins the realisation of numerous human rights, and therefore that respect of land rights, in particular the internationally recognised rights of Indigenous Peoples, is an essential precursor to respecting other human rights. The new commentary should define “legitimate tenure holders” and elaborate on the vulnerability of and particular need for enterprises to identify and address potential or actual impacts to the tenure rights of customary and communal tenure holders as well as women. The commentary should note (with reference to Chapter IV) that Indigenous Peoples have unique internationally recognised rights closely linked to land and territories, including their rights to free prior and informed consent, self-determination, and culture. The commentary should call for enterprises to respect self-identified Indigenous Peoples’ internationally recognised rights, including when those rights could be impacted in connection with the enterprise’s adverse environmental impacts. The commentary should also highlight the particular vulnerability of human rights defenders that are defending land and environment from adverse business impacts.

10.5 Digitalisation and RBC

The OECD recognizes that the extremely outdated chapter IX (Science and Technology) needs modernization, and the OECD is endeavoring to update the chapter in a timeless manner to preserve its applicability in future. But they are still focusing on some rights/issues (privacy) to the exclusion of others, using language not always in alignment with other relevant instruments, and not correcting an outdated “tone” praising the merits of technology. OECD Watch encourages civil society focused on technology to suggest further technical edits to the core paragraphs and commentary on Chapter IX (Science, Technology and Innovation) as well as VIII (Consumer Interests). We urge only that you try *not* to demand language on specific narrow topics to the exclusion of others, but help echo our ask for broad, “eternal” language that can cover all types of impacts and set the correct tone of avoiding harm.

- Reframe tone to highlight and focus on due diligence to identify and address adverse impacts: In chapter IX (Science, Technology and Innovation), the chapeau and/or paragraph 1 as well as commentary 97 should spell out more clearly that the development and use of technology can result in diverse adverse impacts to the environment and human rights (including workers’ rights, and not only the right to privacy), and that all enterprises should undertake due diligence to identify and address such adverse impact. Commentary should underscore that the text’s emphasis on encouraging MNEs to share technological know-how and promote technological and scientific innovation *is balanced with* an equal emphasis on calling for enterprises to identify and prevent or mitigate adverse RBC impacts caused, contributed to, or directly linked to their engagement with technology. Commentary should give illustrative (and non-exhaustive) examples of the range of environmental, social, and human rights harms resulting from the various ways enterprises engage with technology (as creators, sellers, users, licensors, etc.), and acknowledge that impacts evolve quickly as do technologies.
- Data handling (personal and non-personal): In chapter IX (Science, Technology and Innovation), paragraph 2 and commentary 98 among others should ensure proper protection and personal

control over personal data, with language aligning with relevant national, regional, and international legal instruments and standards on data protection. The commentary should elaborate on the diverse adverse social and human rights impacts (not only data theft and privacy breaches) that can result from irresponsible use of data, broadly.

- Downstream due diligence: Chapter IX (Science, Technology and Innovation), commentary 100 should include a reference to downstream adverse impacts associated with misuse by *government entities*.
- Consumer protection: Chapter VIII (Consumer Interests) commentary 88, as well as commentary in Chapter IX as appropriate, should be expanded to explain, including using examples from new technologies, the new text in Chapter VIII paragraph 4 on avoiding practices that subvert consumer choice in ways that harm consumers or competition.

10.6 Taxation

For years, OECD Watch has urged that language in the Guidelines be strengthened to encourage more responsible corporate tax practices. Individual OECD governments have recently expressed interest in revisions on this topic, but as yet the OECD has made minimal updates in the text. A strong push from civil society is necessary to show governments that the Guidelines are behind new norms on responsible tax practices and should therefore be updated.

- Inclusion of tax practices under due diligence: In chapter II (General Policies) commentary 17, the text should make clear that the due diligence provisions of the Guidelines *do apply* to the Taxation chapter (currently, the Taxation chapter is excluded from coverage). Policymakers, businesses, and civil society alike increasingly recognize that enterprise's tax practices can have serious negative impacts on RBC issues such as human rights and environmental protection, and that responsible tax planning should involve due diligence to identify and address how the enterprise's tax practices may exacerbate such adverse impacts.
- Tax avoidance: Text in chapter XI (Taxation) paragraph 1 and commentary 102 should be amended to call more explicitly on enterprises to avoid exploiting gaps between the spirit and letter of the law in home and host countries to reduce their tax liability (i.e. avoid taxes) in the countries in which their activities take place. The text should call on enterprises to avoid structuring transactions in a way that will have tax results that are inconsistent with the underlying economic consequences of the transaction, and avoid using shell or letterbox companies for tax minimisation purposes. The text should elaborate on the meaning of transactions whose tax results are inconsistent with the underlying economic consequences of the transaction. Critically, the text should call out such transactions, and/or the exploitation of gaps between the letter and spirit of applicable tax laws, as irresponsible where it unduly seeks to minimize the enterprise's tax liability.
- Link between tax avoidance and other RBC impacts: In chapter XI (Taxation), paragraph 2 and commentary 104 should be updated with text calling on enterprises to ensure their tax risk management strategies take into account risk to rightsholders, not (only) the enterprise, as well as the duty of governments in whose countries the enterprise's activities take place to provide essential public services and ensure appropriate infrastructure for economic development. Commentary on tax governance should propose that corporate boards consider the UN Sustainable Development Goals and the ability of countries to increase their domestic resource mobilization in planning the enterprise's tax practices. Commentary should also note that irresponsible or unethical tax planning especially harms those most vulnerable in society including the poor, children, women, the aged, etc.
- Transparency of tax practices: In chapter XI (Taxation), commentary 105 should include text seeking transparency of information relevant to identify whether the enterprise is engaging in

transactions whose tax results are inconsistent with the underlying economic consequences of the transaction, and relevant to evaluate potential adverse RBC impacts linked to the enterprise's tax practices.

10.7 Expectations for NCPs to implement the Guidelines

NCPs' implementation of the Guidelines, particularly in handling complaints, has a critical influence in how well enterprises take up the standards and address their adverse impacts, including in relation to specific instances of harm to workers or communities. The OECD has made a number of improvements already in the Procedural Guidance, but the most important issues to OECD Watch, outlined below, are still inadequately addressed. We urge civil society to propose revisions to improve these issues in the Guidelines.

- Admissibility criteria: In Part II, pgs. 71-72, the admissibility criteria should be redrafted to make them more understandable for notifiers and implementable by NCPs. Critically, the admissibility criteria should set a low threshold to accepting plausible complaints. The NCP's analysis at the initial assessment stage should assess *eligibility* of the claim, not its merits, and should consider simply whether the allegations are plausible and covered by the chapters of the Guidelines, whether the complainant has an interest in the matter, and whether the company is covered by the Guidelines and subject to the complaint handling services of that NCP.
- Transparency: Transparency is a core effectiveness criterium for NCPs and a vital element of ensuring a successful and impartial complaint process. In Part II at pgs. 65, 66, 68, 69, and especially 74-75, language should be reframed to consistently prioritise transparency over confidentiality. In pages 74-75, the text should be reframed to (among other things) state not only that "the Procedures do not prevent the submitter from publishing its own initial submission, nor do they prevent the parties from communicating about the existence of the specific instance, or discussing information or documents shared by the other party with their advisors to the specific instance, provided these advisors do not themselves further disclose such information," but also to state that *NCPs' own rules of procedure* may not prevent these actions, either.
- Follow-up: Follow-up monitoring is critical to ensuring enterprises carry out agreements reached and recommendations given. While the consultation draft includes strengthened language on follow-up, the changes are still insufficient. In Part II, pages 59, 74, and 76 should specify that NCPs should *by default* undertake follow up unless not warranted for a particular case. Follow-up monitoring should ideally occur until the issues have been addressed and any agreement between the parties, including for provision of remedy, and recommendations from the NCP have been implemented. Critically, the NCP's follow-up statement(s) should *evaluate* whether the enterprise (or, where applicable, the parties) have implemented agreements reached and recommendations given.
- Determinations: In Part II at pages 59 and 74, text should be added encouraging ("should") or, at a minimum, permitting ("may") NCPs to issue determinations on whether enterprises have met the Guidelines standards or, where relevant, implemented recommendations made or agreements reached between the parties. OECD Watch considers determinations critical to ensuring meaningful outcomes in complaints. Since many (but not all) NCPs already routinely issue such determinations, it is vital that the text propose them at least as an option ("may") for all NCPs.
- Consequences: In Part II at pages 59 and 74, text should be added encouraging ("should") or, at a minimum, permitting ("may") NCPs to request that consequences be applied against companies that fail to engage in good faith in the complaint process, including by failing to

implement agreements reached. Some NCPs already do this; there is no reason it should be not highlighted minimally as an option (“may”) for all NCPs.

- Role of NCPs/outcomes of complaints: In Part II at page 66, the text should explain with respect to the outcome of complaints and the role of NCPs that although NCPs lack (unless otherwise authorised by domestic law) the ability to provide remedy or require remediation by enterprises, the Procedures allow them to issue determinations on enterprises’ alignment with the Guidelines, encourage enterprises to support remediation where expected under the Guidelines, and request consequences for enterprise that fail to engage in good faith in the process.

10.8 Miscellaneous

Finally, a number of other important issues should be addressed better in the text of the Guidelines:

- Individuals or groups experiencing marginalisation and vulnerability; intersectionality: A few chapters should be added to ensure enterprises particularly lower barriers for and identify potential adverse impacts to individuals or groups experiencing marginalisation or vulnerability, and explain the need for focus on intersectionality.
 - In chapter II (General Policies), commentary 28 should define a non-exhaustive list of individuals or groups that may experience marginalisation or vulnerability to include women, children, sexual and gender minorities, Indigenous Peoples, people subject to discrimination based on descent such as caste discrimination, migrants, and human rights defenders, among others. Where it is necessary to refer to these groups, the OECD should consistently describe them as individuals or groups “experiencing” marginalization or vulnerability, not individuals or groups that “are marginalised or vulnerable.”
 - In chapter IV commentary 40 and 45, language should be tweaked to ensure coverage of the following topics: that enterprises should respect human rights, engage meaningfully with all stakeholders including as a part of due diligence, remove barriers to engagement especially for individuals or groups experiencing marginalization or vulnerability, and take into account how individuals may experience impacts differently as a result of intersecting aspects of their identity.
- Gender: Impacts on women and sexual and gender minorities could be drawn out in a few places in the text, especially in chapters II (General Policies), IV (Human Rights), V (Employment and Industrial Relations), and VI (Environment).
- Meaningful stakeholder engagement: In chapter II (General Policies) paragraph 16 and commentary 28, the OECD should strengthen the explanation of what makes stakeholder engagement meaningful, including by calling for engagement to be safe, undertaken in an ongoing manner from before business decisions impacting rightsholders have been taken, and ensuring engagement involves human rights defenders and opponents of the business activity.
- Definition of Multinational Enterprise: In chapter II (General Policies) paragraph 4, the OECD should delete the proposed text applying the Guidelines to “companies or other entities conducting *a significant amount of* business in more than one country,” as this could significantly and unhelpfully narrow the scope and number of enterprises covered by the Guidelines and complaints.
- Responsible disengagement: A *new* commentary should be added in chapter II (General Policies) between commentary 25 and 26 explaining that enterprises should disengage responsibly whenever they disengage, for any reason, and clarifying what responsible disengagement should entail.

- Downstream scope of due diligence: In chapter II (General Policies) commentary 18, the OECD should ensure the final commentary adopted makes clear that due diligence covers impacts directly linked to an enterprise through its downstream business relationships.
- Language on the “shift” from directly linked to contributing: In chapter II (General Policies), language on contribution to impacts and the “shift” from directly linked to contributing has been added in paragraph 16. This is positive, but important tweaks are needed, as follows: “An enterprise’s relationship to adverse impact is not static. It may change, for example as situations evolve, *as foreseeability of adverse impacts increases*, and depending upon the degree to which due diligence and steps taken to address identified risks and impacts *actually* decrease the risk of the impacts occurring.”
- Interlinkage between adverse impacts under the various Guidelines chapters: Adverse impacts under any one chapter of the Guidelines are usually related to adverse impacts in other chapters. For example, environmental or corruption-related impacts often have human rights impacts. Various of the chapters’ chapeaux and commentary could be amended to underscore the interlinkages between each chapter and the other chapters in the Guidelines. Similarly, commentary 41 to Chapter IV (Human Rights) could be amended to state explicitly that enterprises should take care to address adverse human rights impacts arising from their impacts covered in other chapters of the Guidelines such as Environment, Corruption, Science and Technology, etc.
- Disclosure of RBC issues: Amendments could be made in chapter III to strengthen expectations on disclosure of RBC issues and ensure non-financial disclosures of RBC issues are consistently identified as potentially financially material. OECD Watch encourages civil society with expertise on the subject disclosure to consider proposing edits to improve MNE standards in the text.
- Corruption and adverse impacts on RBC issues: The OECD has already made a number of improvements to the Anti-bribery chapter, particularly by expanding its scope to cover all forms of corruption and not just bribery. OECD Watch encourages civil society with expertise on the subject of corruption to consider proposing edits to improve MNE standards in the text.
- Competition and adverse impacts on other RBC issues: Amendments could be made in chapter X (Competition) to underscore that enterprises should endeavor not to use competition laws as an excuse to avoid working together to address adverse impacts in a sector, and also be aware of how monopolization adversely impacts human rights and other issues covered in the Guidelines. OECD Watch encourages civil society with expertise on the technical subject of competition to consider proposing edits to improve MNE standards in the text.
- Animal welfare: OECD Watch encourages groups with expertise on animal welfare to suggest edits to strengthen the latest proposed text on animal welfare in the Environment Chapter.
- Employment and Industrial Relations: OECD Watch is supporting the submissions of the [Trade Union Advisory Committee](#) to the OECD (the official representative of trade unions) regarding edits to Chapter V (Employment and Industrial Relations). Civil society focused on workers’ rights and employment issues are encouraged to propose edits on topics of priority.