

## Submission to the Working Party on Responsible Business Conduct

### OECD Watch calls on OECD member and adherent states to ensure businesses act responsibly during the global COVID-19 crisis

The COVID-19 pandemic is a global crisis deeply impacting men and women's rights to health, livelihood and dignity, particularly for vulnerable workers in supply chains and communities impacted by major development projects. While the virus has underscored the duty of states to raise public awareness and protect public health, it has also highlighted the responsibility of corporations to respect human rights in how they address both the public health and economic impacts of the crisis. Many of the communities and workers that are most vulnerable to the health and economic impacts of COVID-19 play a vital role in the supply chains that feed and sustain the OECD member and adherent states.

OECD Watch calls on the OECD member and adherent states represented in the OECD Working Party on Responsible Business Conduct ("WPRBC") to ensure that all of the OECD's internal discussions and public guidance on COVID-19 comprehensively address the importance of responsible business conduct ("RBC") in the global community's crisis response. OECD Watch urges the states in the OECD WPRBC to take action to ensure multinational enterprises ("MNEs") address risks and impacts to workers, their families, and affected communities across their supply chains and through their business relationships. OECD member and adherent states should also use the opportunity provided by the crisis to promote a new model for business that will transform existing harmful business practices for a sustainable future.

#### Impacts of COVID-19 on vulnerable workers in supply chains

Workers in supply chains in the agriculture, garment, mining, technology, and other sectors are facing severe impacts from the corona virus. Many of these workers were already exposed to precarious conditions, unstable contracts, long working hours, very low wages, dangerous work, and even forced or bonded labour. Now, too many corporate responses to COVID-19 are deepening these impacts. Many companies whose production outputs are disrupted have fired workers without warning or adequate severance packages.<sup>1</sup> Other companies called to expedite production of essential products have pushed workers to work overtime without increased pay or adequate (or any) protections against the virus.<sup>2</sup> Communities living near major infrastructure projects have also suffered as a result of business activity during the crisis.<sup>3</sup> Individuals already particularly vulnerable because of gender, ethnicity, race, caste, age, social status, migrant or refugee status, poverty, or other factor of discrimination are at increased risk.

Workers and their families are dying from the loss of economic livelihood resulting from the pandemic and from the inadequate protections against the virus afforded them during work. Loss of economic livelihoods can be deadlier for many people than COVID 19 in the long run, and by some estimates, half a billion people could fall into poverty from the disease.<sup>4</sup> This risk has to be mitigated

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<sup>1</sup> See, e.g., Business & Human Rights Resource Centre, "Major apparel brands delay & cancel orders in response to pandemic, risking livelihoods of millions of garment workers in their supply chain," <https://tinyurl.com/tb93lqr>.

<sup>2</sup> See, e.g., Swedwatch, "Agricultural workers exposed to COVID-19 infection risks in Ecuador and Peru," <https://tinyurl.com/v8vr5ss>.

<sup>3</sup> See, e.g., MiningWatch Canada, "COVID-19: Mining Companies Putting Workers and Communities at Greater Risk," <https://tinyurl.com/s8g96vs>.

<sup>4</sup> Oxfam, *Dignity not Destitution*, (9 April 2020), <https://www.oxfam.org/en/press-releases/half-billion-people-could-be-pushed-poverty-coronavirus-warns-oxfam>.

to the greatest extent possible, both for the protection of human rights and the preservation of economic sustainability and prosperity in the long term.

### **What the OECD Guidelines expect of MNEs during the coronavirus crisis**

The OECD Guidelines for Multinational Enterprises (“Guidelines”) are the leading international standard for responsible business conduct and call on corporations to respect the human rights of those affected by their activities, apply good corporate governance practices throughout their enterprise groups, and carry out risk-based due diligence to identify, prevent and mitigate the actual and potential adverse impacts of their business activities. In times of crisis as in all times, the Guidelines expect enterprises to avoid causing or contributing to adverse impacts and to prevent or mitigate impacts directly linked to them through their business relationships. In all their actions, enterprises should engage relevant stakeholders to ensure their views are taken into account in all planning that will impact them.<sup>5</sup>

OECD member and adherent countries have a fundamental obligation to ensure businesses registered or operating in their jurisdictions meet these expectations. During the Covid-19 pandemic more than ever, the states of the WPRBC must call on MNEs of all types, sizes and sectors to act responsibly, ensure their business activities do not expose workers or their families to harm, and respect the rights of those impacted by their activities.

### **Priority actions for the OECD during the COVID-19 crisis**

The OECD’s expectations for companies in the Guidelines must be translated into tangible action. OECD Watch calls on the states of the WPRBC to ensure the OECD issues practical guidance on COVID-19 emphasizing the importance of RBC in the global community’s response:

#### OECD guidance

- The WPRBC should develop guidance or an advisory for governments and companies on the best way to deal with the health and economic needs of workers, their families, and impacted communities, whether due to non-WHO compliant work conditions in some cases, or to massive loss of work and income in others. Particular focus should be given to vulnerable workers such as women, minorities, migrants, and informal workers including day labourers and home workers. The advisory should be regularly updated.

#### OECD expertise centre

- The OECD should set up a temporary expertise centre during the time of the crisis and its aftermath for companies and governments to consult on supporting workers in global supply chains on the basis of the evolving advisory mentioned above.

### **Ensuring responsible disengagement during the pandemic**

As with any business decision, the UN Guiding Principles and OECD Guidelines expect companies to conduct due diligence on potential adverse impacts of disengagement. As with the entire due diligence process, (potentially) affected rights-holders and other stakeholders should be meaningfully involved in the decision-making process around disengagement. Companies should also work together at the industry level and in multi-stakeholder initiatives to pool resources and leverage to address the challenge. The OECD Guidelines require companies to identify risks and prevent adverse impacts resulting from a decision to stop producing, building or buying something. Potential adverse impacts from disengagement include loss of jobs and income for workers, with ripple effects on the

<sup>5</sup> OECD (2011), OECD Guidelines for Multinational Enterprises, General Policies principles 1, 6, 10–12, 14, <http://dx.doi.org/10.1787/9789264115415-en>.

rights to health and education for workers and their families; loss of tax revenues, with ripple effects on public services; lack of remediation for previously experienced harms; and other local social and economic impacts resulting from a hasty departure. If companies do ultimately decide to disengage or cancel orders, the OECD Guidelines due diligence provisions expect companies to mitigate the negative impacts of that decision. Mitigation measures could include advancing payments to suppliers for orders already made before slowly reducing orders, easing payment terms, providing guarantees to continue the business relationship when the crisis has subsided, and ensuring ongoing compensation to workers for the duration of the period of unemployment. Companies should also provide reasonable notice of the disengagement to workers and relevant government authorities.

If it implements proper and genuine due diligence, a company may avoid causing or contributing to adverse impacts by its disengagement. However, the OECD Guidelines are clear that if a company causes or contributes to an adverse impact as a result of its decision to disengage, it is responsible for remediating the impact to the extent of its contribution. The company's responsibility to remediate its impacts remains even after the company has disengaged from the relationship, and the responsibility is not lessened by the role the crisis played in its decision-making.

### **Other key steps for responsible conduct during the COVID-19 crisis**

OECD Watch also urges states in the WPRBC to ensure MNEs operating in or from their jurisdictions take the following steps to protect workers and other impacted people:

1. Implement good corporate governance practices:
  - Stop seeking tax alleviation that jeopardizes public budgets when governments are already struggling to afford essential public goods and services needed to protect lives.
  - Prohibit payout of executive bonuses, repurchase of shares, and payment of dividends during the crisis.
2. Ensure supply chain transparency during the crisis:
  - Disclose factory lists, other production sites, ordering practices, and worker groups most at risk to enable governments, civil society, and companies themselves to identify where decreased or increased orders may impact workers' rights and act to uphold those rights.
3. Avoid upstream worker layoffs and supplier closures:
  - Continue supplier relationships whenever possible, committing to pay orders of already produced goods or goods in production. Show maximum flexibility towards COVID-19-linked delays in delivery and avoid causing major layoffs or invoking penalty clauses for reasonable delays.
    - Instead of immediately terminating supplier contracts, seek increased financing from financial institutions to sustain partnerships. For financiers, ensure financing extensions to companies so they can protect supply chain workers.
  - Support suppliers and their workers with on-time payments and longer-term contracts.
  - Engage with workers, directly or through unions, community groups and civil society organisations, to understand and address their needs in designing responses to the crisis. Particularly collect and address input from marginalized workers such as women, minorities, migrants, and informal workers including day labourers and home workers.
4. Protect workers still at work:
  - Ensure safe working conditions, facilitating physical distancing in factories and fields and distributing proper protective equipment and training workers to mitigate exposure to COVID-19.
  - Provide flexible hours and remote work wherever possible to respect physical distancing requirements of the WHO and allow workers to meet caregiving responsibilities.

- Shut down non-essential operations that cannot ensure WHO-compliant physical distancing conditions (such as underground mines) while providing ongoing financial support for workers temporarily prevented from working.
  - Do not exploit lower consumer prices to impose conditions on suppliers that will require them to pay workers less than a living wage.
  - Ensure paid sick leave and paid family and medical leave are available for all workers.
  - Where housing is provided through work, ensure safe housing conditions for workers.
  - When needed, support the provision of health care, food and other basic necessities in cooperation with public service providers.
5. If cancellation of supplier contracts is legal and absolutely necessary, ensure it is done responsibly:
- First evaluate all possible options for alternatives to disengagement.
  - Identify and assess potential adverse impacts associated with a decision to disengage or cancel orders.
  - Formulate a responsible exit strategy in consultation with potentially impacted rights-holders and other stakeholders; meaningful consultation should be timely and regular.
  - Remediate any impacts the company has caused or contributed to and motivate business relations to remedy past harms in a directly linked scenario.
  - Ensure workers receive ongoing compensation for the duration of the unemployment.
  - Offer workers the opportunity to return to the same roles and pay levels after the crisis.
  - Offer workers training and capacity building or microcredit to mitigate loss of employment.
  - Take steps to support the continuation of social services.
  - Ensure that, when factories reopen, deadlines for orders are reassessed to prevent workers from working mandatory overtime to make up for delays, and that workers facing debts are not subjected to bonded labour schemes.

### **Transforming business models for a more sustainable future**

The COVID-19 crisis offers governments the chance to forge a sustainable future that is more resilient to crises like pandemics by developing new regulations to help businesses prioritize the public good over centralized profits. Several initiatives to strengthen RBC are already under active discussion around the world, including adoption of national, regional, and international mandatory human rights due diligence laws; closure of corporate tax loopholes; improvement of supply chain transparency; and reinstatement of limitations on certain financial transactions to promote the flow of profits back into national economies. The WPRBC is a champion of RBC, and thus OECD Watch calls on it to support these and similar initiatives to increase and strengthen governance frameworks that promote responsible business.

### **Conclusion**

The COVID-19 pandemic is harming supply chain workers, families, and communities around the world. OECD Watch urges the OECD WPRBC to rally member and adherent states to ensure the OECD and businesses do their part to limit the impact of the crisis, and lay the path to more sustainable business models in future.

### **About OECD Watch**

OECD Watch is a global network with over 130 member organisations in more than 50 countries. Founded in 2003, OECD Watch's primary aim is to help support CSO activities related to the OECD Guidelines and the work of the OECD's Investment Committee. Membership consists of a diverse

range of civil society organisations – from human rights to environmental and development organisations, from grassroots groups to large, international NGOs – bound together by their commitment to ensuring that business activity contributes to sustainable development and poverty eradication, and that corporations are held accountable for their actions around the globe. For more information, please visit [www.oecdwatch.org](http://www.oecdwatch.org).

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