

## Identified gap in the OECD Guidelines: environment & climate change

**Outcome sought:** Broad and comprehensive stocktaking of the OECD Guidelines for Multinational Enterprises (Guidelines) that addresses gaps on the environment and climate change.

**Problem: The OECD Guidelines do not set adequate expectations for MNEs on avoiding harmful impacts to the environment and contribution to climate change**

Environmental destruction and climate change have caused devastating effects including significant biodiversity loss, with a recent report finding that the global wildlife population has reduced by two-thirds over the last 50 years.<sup>1</sup> Climate change and environmental destruction also threaten the effective enjoyment of numerous human rights, including the rights to life, water and sanitation, food, health, housing, self-determination, culture, and development.<sup>2</sup> MNEs are responsible for almost a fifth of climate-changing carbon emissions,<sup>3</sup> particularly those operating in the pollution-intensive agriculture, transport, extractive, manufacturing, and apparel sectors. Scientists have called on society to enact transformative policy to meet the 1.5 degree global warming target set in the Paris Climate Agreement and avoid the real threat of over 1 million more species becoming extinct in coming decades.<sup>4</sup> Given the recognition of MNEs damaging impacts on climate and environmental degradation, it is widely acknowledged that such transformative changes must affect MNEs, too.

Despite the importance of the environment and its vulnerability to harmful business impacts, the OECD Guidelines – the pre-eminent standard for businesses in all sectors on responsible business conduct (RBC) – do not adequately clarify expectations for MNEs around avoidance of adverse environmental harm. Unlike the Human Rights chapter (IV), the Environment chapter (VI) does not impose clear expectations on MNEs to prevent, mitigate, and remedy harm to the environment and protect biodiversity in all its forms. The chapter does not identify the leading types of harmful environmental impacts MNEs should avoid, including: contribution to climate change; deforestation including especially of native forests; destruction of biodiversity; pollution of water, land, and air; harmful use of pesticides and fertilizers; overuse of water; destruction of UNESCO World Heritage sites and other protected areas; development of genetically modified foods; impacts from fossil fuel extraction; and others. Instead, it calls in positive terms for MNEs to implement environmental management processes, continually improve their environmental performance, and train workers, etc. The current framing makes it difficult to hold MNEs accountable for their actual adverse environmental impacts. The Environment chapter also no longer reflects current expectations for MNEs to reduce GHG emissions under the Paris Agreement, and it does not clarify how responsibility might be attributed to the financial and investment sectors for funding projects that have significant climate impacts. Chapter VI does not reflect the close nexus between avoidance of environmental impacts and respect for human rights by MNEs. The chapter does not call on MNEs to avoid political lobbying aimed at lowering environmental standards and regulations. Also absent in the Guidelines is a clear mandate for MNEs to avoid causing or being complicit in harms to environmental defenders.

**Impact of the problem: Lack of clear standards for MNEs on respecting the environment and lack of remedy for impacted rightsholders**

The gaps in the OECD Guidelines on the environment have two main consequences:

- 1) A lack of clarity in norms and expectations for MNEs regarding respecting the environment and avoiding contribution to climate change; and
- 2) Diminished grounds on which to seek remedy via the National Contact Point (NCP) grievance mechanism and less predictability of complaint outcomes.



- a. OECD Watch's experience with NCP complaints shows that it is difficult to apply the current Guidelines' text to seek accountability for MNEs' failures to prevent, mitigate, and remediate environmental impacts. Many environment and climate change-related cases demonstrate that there is a lack of clarity regarding exactly how environmental/climate standards and expectations apply to MNEs, what the disclosure requirements are for MNEs' total GHG emissions, and what information must be provided to consumers to enable informed decision-making based on MNEs' environment/climate impacts.
- b. NCP complaints concerning MNEs' contributions to climate change are increasing. Since 2017, six complaints have sought to clarify MNEs' responsibilities to report on and reduce their GHG emissions. The increase shows greater need for standards and accountability on the issue and does not confirm that all NCPs would accept claims related to climate change.

### Parallel laws and standards

The stocktaking on gaps in the OECD Guidelines on the environment and climate change could consider developments in the following standards and guidelines:

- International environmental agreements, including the Global Pact for the Environment (currently under negotiation), Paris Agreement, and Katowice Climate Package. The latter recognise the important role of the private sector in reducing GHG emissions.
- Draft international agreements, namely the Second Revised Draft of the Binding Treaty on the Activities of Transnational Corporations and Other Business Enterprises (2020, which includes environmental harms in the definition of 'human rights abuse', requires MNEs to undertake environmental and human rights due diligence, and requires reporting on environmental standards in MNEs' operations and business relationships.
- Several OECD due diligence guidance papers; for example, the OECD's multisector Due Diligence Guidance for Responsible Business Conduct, the OECD-FAO Guidance for Responsible Agricultural Supply Chains, and OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector, which refer to measuring, reducing, and reporting of GHG emissions.
- Industry standards, including the Greenhouse Gas Protocol (an international standard for the corporate accounting and reporting of GHG emissions) and the International Finance Corporation's (IFC) Performance Standards (PS). IFC PS 1, 3 and 4 require companies to identify their environmental impacts and implement alternatives to reduce their GHG emissions.

### Why ensuring a comprehensive stocktaking on gaps is important

The OECD Guidelines, originally drafted in 1976, have not been revised since 2011 and are out of date in many ways. Ten years of implementation of the current text of the Guidelines have revealed numerous gaps in the text that cause both a serious lack of clarity and coherence in international norms on key elements of responsible business conduct, and diminish victims' chances for remedy and accountability via the NCPs. Meanwhile, recent developments in RBC standards made beyond the OECD Investment Committee are threatening to make the OECD Guidelines comparatively less useful or even obsolete. The OECD Investment Committee's Working Party on Responsible Business Conduct (WPRBC), responsible for the OECD Guidelines, has begun a stocktaking to identify what gaps exist in the Guidelines and assess whether steps are needed to address them. A comprehensive stocktaking that addresses all the gaps identified by civil society and other stakeholders is essential to evaluate whether the Guidelines are still fit for purpose.

### Who needs to act?

OECD Watch urges governments to show commitment to keeping the OECD Guidelines up to date with evolving issues in the field of business and human rights – and acknowledge civil society’s concerns regarding the current limitations in the Guidelines’ standards and the NCP complaint system – by ensuring that the stocktaking studies all the issues of concern to civil society. OECD Watch also urges that states ensure the final stocktaking report responds to each concern raised by civil society. OECD Watch welcomes the stocktaking and stands ready to support the review process and any further steps taken to address gaps identified.

### 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 adverse impacts around the globe. For more information, please visit [www.oecdwatch.org](http://www.oecdwatch.org).

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<sup>1</sup> WWF, (2020), Living Planet Report 2020 - Bending the curve of biodiversity loss. Almond, R.E.A., Grooten M. and Petersen, T. (Eds). WWF, Gland, Switzerland.

<sup>2</sup> Office of the United Nations High Commissioner for Human Rights, ‘OHCHR and climate change’, available at: <https://www.ohchr.org/en/issues/hrandclimatechange/pages/hrclimatechangeindex.aspx#:~:text=States%20have%20a%20human%20rights.enjoy%20lives%20of%20human%20dignity>.

<sup>3</sup> Zhang, Z., Guan, D., Wang, R. *et al.* (2020), Embodied carbon emissions in the supply chains of multinational enterprises. *Nature Climate Change*, **10**, 1096–1101.

<sup>4</sup> Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, (2019), Global Assessment Report on Biodiversity and Ecosystem Services, available at: <https://www.un.org/sustainabledevelopment/blog/2019/05/nature-decline-unprecedented-report/>