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## **2010 Update of the OECD Guidelines for Multinational Enterprises**

### **Amnesty International key demands on human rights standards for the revised OECD Guidelines**

**6 October 2010**

The OECD Guidelines for Multinational Enterprises (the Guidelines) can be a very valuable tool for setting standards for corporate conduct at the international level. A strong human rights component of the Guidelines can make a significant contribution to the protection of human rights. For this reason, Amnesty International welcomes the commitment expressed in the Terms of Reference for the Review to develop more elaborated guidance on human rights. Amnesty International is committed to follow and contribute to the review of the Guidelines and looks forward to providing input to the process as it progresses. On occasion of the first consultation meeting of the Working Party of the Investment Committee on the Review of the Guidelines, Amnesty International would like to draw the Working Party's attention to a number of fundamental issues concerning human rights:

**1) Human rights chapter:** Amnesty International calls and supports current proposals for the introduction of a separate chapter on human rights to the Guidelines, and the concomitant review and update of relevant provisions in other chapters of the Guidelines to maintain consistency with the Human Rights chapter.

**2) Applicable human rights standards:** It is now widely acknowledged that enterprises can have adverse impacts on all human rights. As the Special Representative of the UN Secretary-General on Business and Human Rights, Professor John Ruggie has said: *"Because business enterprises can impact virtually all internationally recognized rights, the corporate responsibility to respect encompasses the entire spectrum of such rights."*<sup>1</sup> The Guidelines

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<sup>1</sup> Updating the Guidelines for Multinational Enterprises Discussion Paper for OECD Roundtable on Corporate Responsibility, 30 June – 1 July 2010 (hereafter, Discussion Paper for OECD Roundtable), para 9.

must therefore refer to the full range of human rights and not to a limited set of them.<sup>2</sup>

**3) Scope of companies' responsibility to respect human rights:** The Guidelines must incorporate the principle that all companies should – at a minimum – respect all human rights.<sup>3</sup> The corporate responsibility to respect human rights entails refraining from actions the aim or effect of which is directly infringing or undermining the enjoyment of human rights, or curtailing the ability of States to protect those rights. As part of their responsibility to respect human rights, companies must exercise adequate human rights due diligence. Companies should also ensure that they do not undermine existing legal guarantees or institutional mechanisms established to protect human rights; that they do not oppose measures to protect human rights or otherwise encourage laws, policies or measures that would undermine the effective protection of human rights.

**4) Companies' human rights due diligence.** Due diligence processes are vital to ensuring respect for human rights and the Guidelines should incorporate the principle that companies should, as part of their responsibility to respect human rights, exercise adequate human rights due diligence.<sup>4</sup> Due diligence is an ongoing process involving active and positive measures to identify, prevent and address actual or potential risks that corporate activities and operations may pose to human rights, and ensure any adverse human rights impacts are prevented or mitigated. Adequate due diligence includes adopting a policy commitment to respect human rights, having adequate human rights policies integrated, implemented and monitored throughout the company, assessing potential impacts of the company's activities on human rights, developing action plans to prevent human rights abuses, and providing means of engagement with affected communities.<sup>5</sup> Human rights due diligence should be conceived primarily as a preventative process: its primary role must be to prevent adverse human rights impacts.

**5) Indigenous Peoples' rights:** The Guidelines must make clear that companies should respect the rights of Indigenous Peoples. The proposed text to enhance

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<sup>2</sup> These include the Universal Declaration of Human Rights, the core UN Human Rights Conventions (as defined by the UN Office of the High Commissioner for Human Rights, <http://www2.ohchr.org/english/law/index.htm>), the core ILO conventions, and UN Declarations such as the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). All of these instruments must be read in conjunction with the work of UN expert bodies such as Treaty Bodies and Special Procedures which provide useful interpretation and guidance on how to respect and implement such standards.

<sup>3</sup> The SRSG has highlighted that the corporate responsibility to respect human rights “*constitutes a universally applicable human rights responsibility for all companies in all situations*”. Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Business and Human Rights: Further steps towards the operationalization of the “Protect, Respect and Remedy” Framework, A/HRC/14/27, 9 April 2010, para 65. See also, Discussion Paper for OECD Roundtable, para 6.

<sup>4</sup> The importance of due diligence processes has been emphasized by Professor John Ruggie: “*The updated Guidelines should affirm that the appropriate response by business enterprises to managing the risks of infringing the rights of others is to exercise human rights due diligence*”. Discussion paper for OECD Roundtable, para 12.

<sup>5</sup> Discussion paper for OECD Roundtable, para 14.

protection of Indigenous Peoples' rights should draw from the UN Declaration on the Rights of Indigenous Peoples. In particular, the right to Free, Prior and Informed Consent must be respected. As the Guidelines update is supposed to help "*multinational enterprises identify, prevent and remedy negative human rights impacts which may result from their operations*", it is important that they provide clear guidance on the standards expected to be maintained in the interaction of companies with Indigenous Peoples.

**6) Complicity:** Companies should avoid any activity that might result in their complicity in human rights abuses committed by other parties. Where companies become aware of human rights abuses being committed in or around their operations, they should actively promote respect for human rights, including by recording and reporting such abuses to the relevant national authorities and/or international bodies.

**7) Conflicts between local and international law:** When companies face a situation whereby local laws are not compatible with international human rights standards they should strive to find ways to respect human rights and they should be able to demonstrate that they have done this. Professor John Ruggie has highlighted that "*the corporate responsibility to respect human rights exists independently of States' duties or capacities...*"<sup>6</sup> Companies cannot rely on national legislation to absolve them from the responsibility to respect human rights. Enterprises should be encouraged to adopt corporate policies and practices designed to comply with international human rights standards, and to conduct their operations accordingly. If necessary, enterprises should refrain from aspects of their operations that would result in contravention of international human rights standards, so as to ensure that they do not abuse human rights and are not complicit in human rights abuses by others.

**8) Implementation procedures:** States must ensure greater compliance with the Guidelines. To this end, the procedural chapter must be significantly strengthened. Without a strong mechanism to monitor and enforce compliance with the Guidelines and impose consequences on companies found to have breached them, the Guidelines lack effectiveness and credibility. Much more robust and effective compliance mechanisms are needed and Amnesty International supports the calls and proposals made by OECD Watch in this regard. In particular, Amnesty International urges States to expand the complaints' admissibility criteria which is currently too narrowly defined by a rigid "investment nexus" principle. States should also look at ways of securing adherence to the Guidelines by additional measures to the NCP system, such as by withholding State investment support to companies that fail to engage with the NCP or implement its recommendations, and encourage greater

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<sup>6</sup> Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Business and Human Rights: Further steps towards the operationalization of the "Protect, Respect and Remedy" Framework, A/HRC/14/27, 9 April 2010, para 65. See also, Discussion Paper for OECD Roundtable, para 6.

cooperation between States both on implementation and systems for addressing breaches of the Guidelines.