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## **Amnesty International Public Statement**

23 May 2011  
AI Index: IOR 30/001/2011

### **The 2010-11 Update of the OECD Guidelines for Multinational Enterprises has come to an end: the OECD must now turn into effective implementation**

The 2010-11 update of the OECD Guidelines for Multinational Enterprises (the Guidelines) has now come to an end. The revised text will be adopted during the OECD Ministerial Meeting of 25-26 May, 2011. Amnesty International made a sustained contribution to this process in the hope of achieving strong and comprehensive standards on the responsibilities of business enterprises with regards to human rights, and the organization welcomes the important achievements of the update. At the same time, Amnesty International also wishes to express its disappointment in relation to a number of missed opportunities, and the resulting gaps and shortcomings in the revised text.

As a result of the review process, the Guidelines have a separate human rights chapter containing standards on the minimum expected conduct of enterprises with regards to human rights. This is largely in line with the Guiding Principles of the UN Special Representative on Business and Human Rights,<sup>1</sup> and constitutes a minimum basis for corporate conduct from which stronger, more comprehensive guidance should be elaborated. In this context, the revised Guidelines constitute a significant first step. The new text clearly and unambiguously establishes that enterprises should respect human rights wherever they operate. It explicitly states that enterprises should avoid causing or contributing to human rights abuses, and should put in place and implement adequate human rights due diligence processes to ensure this. Importantly, it is clear in the text that human rights due diligence is a differentiated process from standard corporate risk management processes, aimed at identifying and preventing or mitigating risks posed by the enterprise to the rights of individuals and communities, and not just to their profits. The text points at the International Bill of Human Rights and UN instruments dealing with the rights of Indigenous Peoples, persons belonging to national, ethnic, religious and linguistic minorities, women, children, persons with disabilities and migrant workers and their families as the normative framework by which companies should be guided. Other significant improvements have been introduced elsewhere in the text, such as the clarification on the scope and applicability of the Guidelines, which now clearly extend to an enterprise's impacts throughout its global operations and to all its business

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<sup>1</sup> Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, A/HRC/17/31, 21 March 2011.

relationships, and the responsibility to exercise due diligence to prevent adverse impacts with regards to almost all matters covered in the Guidelines.

While acknowledging the important progress made, Amnesty International would also highlight challenges. Despite the clear statements that enterprises should assess their actual or potential adverse impacts on human rights, the revised text fails to provide guidance on key aspects of what would constitute an adequate impact assessment process. They fail to include adequate standards on disclosure and consultation with affected or potentially affected communities, including specific requirements for consultation with indigenous communities and free, prior and informed consent. The new provision on stakeholder engagement is welcome, but more guidance was necessary to ensure enterprises engage with communities in a manner and spirit that renders this engagement truly meaningful.

Apart from the substantive aspects of the human rights chapter, Amnesty International believes that the greatest shortcomings by far relate to the feeble progress made on the institutional arrangements and implementation procedures of the Guidelines. After 10 years in operation, much has been learnt about what works and what does not work with regards to the functioning of National Contact Points (NCPs). These lessons should have informed the review process with a view to strengthening and providing clearer parameters for NCP performance. The role of NCPs is key to ensuring effective adherence by enterprises to the Guidelines, and therefore for the success of the Guidelines as an instrument. However, the reality is that many NCPs grossly under-perform. Although this may be due to the capacity and will of individual NCPs, much is due to the defects and shortcomings of the institutional architecture within which NCPs operate. Measures were required to ensure that those NCPs that lag behind are brought up to at least as high a level as the best performing NCPs. However, the update did not meet expectations in this regard. Despite strong encouragement by NGOs, neither mandatory oversight nor peer review mechanisms are expressly required. There is no clarification about the role of NCPs in making recommendations on observance of the Guidelines or on monitoring and following up on agreements and recommendations. No consequences for companies who fail to comply with the Guidelines or refuse to engage in mediation are specified. The absence of minimum standards to ensure the effectiveness of the implementation procedures and their coherent application across adhering States, risk undermining the value and meaning of the substantive improvements made elsewhere in the Guidelines and with it, the effectiveness and credibility of the instrument as a whole.

Many important issues were not addressed, or where inadequately addressed, due to the accelerated pace of the review process, in which quality was sometimes sacrificed in the name of promptness. This also had an impact on the extent to which key external experts could participate and provide their input, and governments could give them careful consideration. It also meant that groups with a direct stake in the standards under consideration, such as women's or Indigenous Peoples' groups were not consulted. While Amnesty International appreciates the need to adhere to a timely process, we believe that simple measures could have been taken which would have brought more credibility to the review process.

The update process revealed the existing tensions between those governments committed to securing stronger standards on business and human rights, and those less willing to advance standards in this area. Regrettably, many of the laggard governments are already legally bound by UN human rights treaties and as such, are required to take all appropriate measures to protect individuals and communities from the harmful activities of non-state actors, including companies. Amnesty International urges the OECD and adhering states to continue developing standards on business and human rights, building from and capitalizing on the many achievements of this review process, as well as identifying and addressing shortcomings and gaps. The OECD must ensure that any future work in the area of business and human rights takes due account of and is in line with key international standards, developments, and advice in this field. In this regard, it is paramount that the OECD draw from, seek and consider the input and advice of a wide pool of UN experts such as UN Special Rapporteurs and members of Human Rights Treaty Bodies. Furthermore, the OECD must ensure that any new or

complementary policy development process is transparent and inclusive, ensuring ample opportunity for external expert input and advice and consultation with groups with a direct stake in the standards under review.

The OECD and its member states must also ensure that they maintain policy coherence across the various policy areas they work on and that the commitment towards human rights demonstrated in the revised Guidelines is replicated and appropriately reflected in other relevant OECD standards and policies. This is particularly relevant with regards to the current review of the *Recommendation on Common Approaches on the Environment and Officially Supported Export Credits* (the Common Approaches).<sup>2</sup> The Common Approaches contain recommendations to member States regarding the standards national Export Credit Agencies (ECAs) should apply with regards to the environmental impact of projects they support, but they currently make no reference to human rights. Standards ECAs impose on projects they support have a direct effect on the manner in which enterprises behave, and it is only logical to expect that the revised Common Approaches reflect the same commitment to ensure enterprises respect human rights as that now embodied in the Guidelines. As a minimum, this document should lay down a due diligence framework to ensure ECAs do not support commercial activity that may cause or contribute to human rights abuses.

Amnesty International views the Guidelines within the broader international efforts to develop standards for holding corporations to account for their adverse impacts on individuals, communities and the environment, wherever in the world they operate. States are bound by international human rights law to protect individuals and communities from abuses of their human rights by non-state actors, including enterprises, and it is in this context that the Guidelines and their practical value must be judged. Going forward, implementation procedures must continue to be examined and revised with a view to rendering them more effective and more coherent across nations. Adhering governments must also ensure relevant government departments take due account of and give teeth to the outcome of specific-instance procedures when deciding, for example, on whether to grant export credits or provide other forms of investment assistance to companies. In the meantime, NCPs must raise their game and show that the resources put into this review have been well spent. As they celebrate the end of this year-long review process and the OECD's 50<sup>th</sup> anniversary, adhering governments, their NCPs and the OECD Investment Committee must commit to turning the new Guidelines into a practical reality by making sure enterprises abide by their terms in practice.

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<sup>2</sup> [http://www.oecd.org/officialdocuments/displaydocumentpdf?cote=TAD/ECG\(2007\)9&doclanguage=en](http://www.oecd.org/officialdocuments/displaydocumentpdf?cote=TAD/ECG(2007)9&doclanguage=en)