

## Caste extracts from the OECD Watch [report](#): Get Fit Closing gaps in the OECD Guidelines to make them fit for purpose

### Standards gap #1 Marginalised/disadvantaged groups

In the past ten years, practitioners have become increasingly aware of the fact that irresponsible business conduct can have particularly harmful impacts on marginalised or disadvantaged groups such as Indigenous Peoples, women, people of low caste, children, migrants, and others. Even within these groups, business conduct can affect group members differently because of intersecting aspects of their identity: for example, while all women may face increased risk of sexual harassment through business failure to safeguard them at the workplace, women of low-caste may experience it more often because of their dual vulnerable identity traits as female and low-caste.

The fact that harmful business conduct affects different groups differently is a problem the Guidelines should explicitly address. Two related challenges should also be drawn out:

First, the marginalisation of these groups, which makes them more vulnerable to impacts, also makes the harms more invisible; and Second, the group's disadvantaged position also generates higher barriers for them in understanding their rights and seeking and achieving remedy.

The particular risks and barriers certain groups face should necessitate clear guidance for MNEs, in the OECD Guidelines, on why and how businesses can impact these groups differently, and the importance of adopting specialised due diligence to address the harms.

... (pg 34) ...

Businesses also rarely take into account how women (and others) with intersecting identity traits subject to discrimination (e.g. race, caste, age, disability, etc.) may suffer impacts differently.

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### **CASTE**

Caste-based discrimination affects more than 260 million people worldwide, not only people in South Asia, but also in Africa, Asia, the Middle East, the Pacific, and in diaspora communities in countries such as the UK and US. Caste-discrimination affects workers in all sectors, including especially the agriculture, leather, garments, carpet weaving, natural stone, mineral

processing, and construction sectors, as well as industrial sectors like the IT sector. Many MNEs discriminate against people of low-caste through their suppliers by engaging low-caste people as forced labourers or paying them less than minimum wage; not supporting low-caste workers to collectively organise or participate in trade unions; disproportionately tasking low-caste workers with more dangerous, dirty, and unhealthy tasks; failing to ensure equal representation of low-caste people in management; and tolerating caste-based harassment and bullying in the workplace while creating caste segregated work stations, eating and drinking places, and hostel facilities.

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#### GAPS IN THE GUIDELINES

Despite the different and disproportionate impacts MNEs have on women and LGBTQ+ people, the Guidelines do not use the word “gender” at all and only mention “women” three times. The language on women primarily appears in the Employment chapter, leaving out discussion of impacts on women as community members. The scant and narrow coverage of gender leaves out many important considerations MNEs should take into account about how their activities can adversely impact women & LGBTQ+ people. Similarly, while the Guidelines mention that MNEs should respect the rights of Indigenous Peoples outlined in other international conventions, they do not specifically acknowledge key rights like the rights to self-determination and free, prior and informed consent, nor identify the special care MNEs must take in due diligence to identify particular impacts to Indigenous Peoples, avoid impacts, and ensure complete and appropriate remedy for impacts not avoided. In the same manner, the Guidelines do not specifically include people of low caste among those disadvantaged or marginalised people with whom MNEs should take special care during due diligence.

The lack of specific mention of “caste discrimination” contributes to the invisibility of this stigmatized issue and group. Meanwhile, while the Guidelines call on MNEs to contribute to abolishing child labour, they do not give meaningful guidance on how child labour may creep unsuspected into MNE value chains and how MNEs should address this by changing practices that inadvertently cause children to be forced to work. The Guidelines also do not emphasize how children as community members may be adversely and differently impacted, even when they are not engaged in child labour. The Guidelines mention children’s rights among other rights protected by UN instruments, but do not identify children among vulnerable groups particularly critical to consult through stakeholder engagement. The Guidelines also highlight children as consumers, without underscoring the particular protections children may need from harmful products and services.

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## Recommendations

A few targeted changes to the Guidelines would strengthen expectations for MNEs on respecting the rights of marginalised and disadvantaged groups. Meanwhile, accompanying statements or guidance documents from the OECD could further clarify application by MNEs in practice.

For example, Chapter II on General Policies should better reflect all six steps of due diligence that have been clarified in the OECD's Due Diligence Guidance for Responsible Business Conduct. Critically, a principle and accompanying commentary should clarify the particular care needed during due diligence and stakeholder engagement to ensure that marginalised and disadvantaged peoples - including workers as well as community members - are meaningfully consulted to help identify impacts, develop steps to prevent or mitigate them, and propose remedies that will meet their needs as well as those of other impacted rightsholders.

**Chapter II** on Disclosure should clarify that enterprises "should" (not merely "are encouraged to") disclose their potential and actual environmental and social impacts, as well as their due diligence steps to address those. **The chapter should call for disclosure disaggregated to reflect particularly vulnerable groups, such as women, people of low-caste, and migrants.**

Chapter IV on Human Rights should explicitly identify the rights of marginalised and disadvantaged groups, such as Indigenous Peoples rights, that are particularly at risk to corporate misconduct.

**Chapter V** on Industrial and Employment Relations should include more expanded reference to the due diligence needed to respect the rights of workers particularly vulnerable to harm, **such as women and people of low caste.**

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## STANDARDS GAP #2 Human rights defenders

### Recommendations

Small changes to the Guidelines would go a long way in helping MNEs avoid impacts to defenders and helping NCPs anticipate and respond to reprisals linked to complaints. Of note:

Chapter II on General Policies, which currently too narrowly calls for MNEs to "refrain from discriminatory or disciplinary action against workers who make bona fide reports to management," should be broadened to call on MNEs to respect the right of all individuals to peacefully protest adverse business activities. This should include community members including Indigenous Peoples, land rights and environmental defenders, NGO staff, workers, human rights attorneys, journalists,

and whistle-blowers within corporations alleging human rights or environmental harm, tax avoidance/evasion, or corruption, and others.

Principles or commentary in Chapter II and/or IV on Human rights should further clarify that MNEs should avoid both actions and omissions (e.g. failures to stop business partners and states acting for MNEs' benefit) that can harm human rights defenders, and use leverage to encourage any partners harming defenders to cease. Commentary should note particular vulnerabilities for defenders from marginalised and disadvantaged groups such as women, Indigenous Peoples, and people of low caste. Enterprises should be encouraged to help enable defenders to protest business activity safely.

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#### Standards Gap #5 – Labour Rights

Serious wage and employment inequalities persist across geography, gender, and age lines, though the adverse impacts are felt more prominently by vulnerable groups such as women, migrants, people of low caste, and non-unionized workers. Increased automation is displacing workers world-wide. Digitalization and the rise of new peer-to-peer work platforms are introducing new disadvantages for workers to access labour rights. Meanwhile, natural disasters such as the global Covid-19 pandemic have also exposed how deeply the system is tilted towards protecting shareholders rights versus rights and well-being of workers.

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The Guidelines also don't adequately clarify the risks – and special due diligence needed – for disadvantaged or marginalised workers including women, homeworkers, people of low caste, migrant workers, and others.

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The chapter should also broaden reference to marginalised and disadvantaged workers, such as by specifically mentioning non-discrimination based on caste.

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#### STANDARDS GAP #8 Disclosure

In addition to impacts to rights holders, the chapter also fails to call for country-by-country reporting, disclosure of targets on greenhouse gas emissions and climate impacts, beneficial ownership and corporate structure, profits earned and taxes paid, value chain partners and wages

paid, and employment and impact data disaggregated to reveal disparate impacts on relevant marginalised or disadvantaged people including women and people of low caste.

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Recommendations...

The Disclosure chapter should eliminate the current distinction between material MNEs “should” disclose (principles 1 and 2) and material that MNEs are merely “encouraged to” disclose (principle 3). The chapter should instead call clearly (“should”) for companies to disclose environmental, social, and governance information, including their findings and actions at all steps of the due diligence process, country-by-country reporting, greenhouse gas emissions and climate targets, beneficial ownership and corporate structure, profits earned and taxes paid, value chain partners and wages paid, and employment and impact data disaggregated to reveal impacts on relevant marginalised or disadvantaged people including women and people of low caste.

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### Conclusion

The Guidelines give no specific guidance to MNEs on the particular care needed to respect the human rights of marginalized and disadvantaged groups such as women, Indigenous Peoples, children, and people of low caste. They also do not call out the rise in harms to human rights defenders, including via the actions or inactions of businesses.