

**Endorsement of indigenous peoples' organizations and networks *preliminary* comments on the OECD "Consultation Draft: Targeted update of the OECD Guidelines for Multinational Enterprises and their Implementation Procedures"**

The European Network on Indigenous Peoples ([ENIP](#)), a network of European Organizations which collectively strive to ensure that all European actors fulfil, respect and protect the rights of indigenous peoples globally, fully endorses the [preliminary comments](#) submitted jointly by 64 indigenous peoples organizations and networks on the OECD 'Consultation Draft: Targeted update of the OECD Guidelines for Multinational Enterprises and their Implementation Procedures'.

We hereby echo the critical issues raised in the indigenous rights-holders' submission in relation to: 1) the Guidelines revision/update process, 2) the contents of the current draft, and 3) the implementation of the Guidelines, that must be addressed if the Guidelines are to realize their function of ensuring responsible business conduct and respect for international human rights law.

The first issue relates to the process of updating the Guidelines. We echo indigenous peoples call for direct consultations with them on their revision. This is an essential requirement for all standards addressing activities that have a significant impact on their rights and well-being. As their submission highlights, and as is abundantly evident from existing complaints to national and international bodies, indigenous peoples are disproportionately and at times profoundly impacted -even to the point of threatening their cultural and physical survival- by the activities of MNEs, including those from OECD countries. This direct impact on their rights should trigger the duty of the OECD to consult with indigenous peoples in order to ensure that their rights are adequately recognized and protected under its Guidelines. Doing so would be in keeping with the guidance issued to the OECD in 2011 by the UN Special Rapporteur on the rights of indigenous peoples and with human rights law more generally on the obligations of international organizations.<sup>1</sup> It would also be consistent with the practice of other international organizations that have all consulted directly with indigenous peoples when developing or revising their safeguard policies, including the IFC (2012), World Bank (2016), Green Climate Fund (GCF) (on-going), and, as in the case of the GCF, have established formal advisory bodies to ensure indigenous peoples can not only input into such policy development processes but can subsequently continue to provide input on their implementation.

The second issue raised in the submission is the need for indigenous peoples' collective rights to be explicitly addressed in the Guidelines. We echo the submission's point that while a reference to the UN Declaration on the Rights of Indigenous Peoples is necessary and welcome, it is not sufficient to provide guidance to OECD MNEs whose operations impact on indigenous peoples. The UN Special Rapporteur on the rights of indigenous peoples explained to the OECD that in the case of indigenous peoples "human rights 'due diligence' requires an assessment of land title – which will not be self-evident to companies in many cases". Likewise, ensuring free prior and informed consent (FPIC) is obtained through indigenous peoples' representative institutions<sup>2</sup> should be a requirement under the

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<sup>1</sup> For the 2011 comments of the UN Special Rapporteur see <http://unsr.jamesanaya.org/?p=435>. See also CESCR General comment No. 26 (2022) on land and economic, social and cultural right E/C.12/GC/26 (2023) paras 41-7.

<sup>2</sup> Where indigenous peoples have developed FPIC protocols and laws these must also be respected, see [FPIC.pdf \(enip.eu\)](#).

Guidelines for projects impacting on indigenous peoples' territories, way of life and rights, including their right to a health environment. Since the last revision of the OECD MNE Guidelines in 2011, these and other basic human rights protections have been incorporated into the safeguards policies of all organizations who seek to uphold their reputations on the international stage. We therefore concur that it is imperative for this OECD Guideline revision process to explicitly "include indigenous peoples' rights within the human rights that businesses have responsibility for, and need to conform to". Likewise, we reiterate the need for specific consideration for the characteristics of indigenous rights' defenders and the collective dimension of harm caused, including rendering good faith consultations and FPIC impossible, when they are persecuted, criminalized or killed. Direct consultation with indigenous peoples is the appropriate and indeed only means to identify and agree on text that ensures OECD MNEs respect their self-determination based territorial, self-governance, cultural and environmental rights and that effective protections are in place for indigenous rights defenders.

Finally, the indigenous peoples' submission addresses a matter that is fundamental to the credibility and relevance of the OECD MNE Guidelines in the coming decade and beyond, namely ensuring that the standards it affirms are effectively implemented in practice. There is widespread acknowledgement, including by the OECD itself, that this is not currently the case. To address this deficiency, indigenous peoples have put forward a constructive proposal to link the implementation of the OECD Guidelines with specific national legislation, including due diligence legislation. ENIP supports this suggestion for a second level of implementation in cases where mediation fails or NCP recommendations are not implemented in a satisfactory manner, as absent this type of meaningful follow-up in such scenarios NCPs will be increasingly regarded as ineffective grievance mechanisms.

We therefore strongly urge the OECD to consult directly with indigenous peoples in good faith and address the critical issues detailed in their submission to ensure that the Guidelines and their implementation procedures are fit for purpose, are consistent with developments in international human rights and environmental law, and genuinely promote responsible business conduct.

This endorsement of the indigenous peoples' submission to the OECD is made by [ENIP](#) on behalf of its member organizations: the Grupo de Trabajo Intercultural [Almáciga](#), the International Work Group for Indigenous Affairs ([IWGIA](#)), the Forest Peoples Programme ([FPP](#)), and the Institut für Ökologie und Aktions-Ethnologie e.V. ([infoe](#)).



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