



DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS

OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

CONDUCTING BUSINESS WITH INTEGRITY IN WEAK GOVERNANCE ZONES: OECD INSTRUMENTS AND EXAMPLES FROM THE DRC

May 2004

Background

1. The Investment Committee has been asked on several occasions to consider multinational enterprises' activities in weak governance zones. In 2001, the Trade Union Advisory Committee to the OECD (TUAC) asked the Investment Committee and the National Contact Points to look at multinational enterprise operations in Myanmar. In response to this request (and in parallel with an International Labour Organisation investigation of accusations of forced labour in that country), the Investment Committee considered a report on the generic issues raised by operations in weak governance zones, with a particular emphasis on extractive industries. The report covered a wide range of issues, such as management of security forces and resettlement of local populations. It focused, in particular, on the fiscal dimensions of MNE investments. This report was published in May 2002 under the title "Multinational Enterprises in Situations of Violent Conflict and Widespread Human Rights Abuses".

2. Similar issues were brought to the Committee's attention by the United Nations Security Council's Expert Panel on the Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of Congo (DRC). Two of the Panel's reports referred prominently to the OECD Guidelines for Multinational Enterprises:

- In its October 2002 report (S/2002/1146), the Expert Panel claimed *inter alia* that 85 companies had not observed the OECD Guidelines for Multinational Enterprises and challenged the governments adhering to the Guidelines to use them to promote responsible business conduct by multinational enterprises with operations in the DRC. Many of the companies named in the report expressed concern about: the damage to their reputations caused by the Panel's accusations; the lack of precision (most companies did not know exactly what they were accused of); and the lack of due process and transparency in the Panel's procedures.
- In its final, October 2003 report (S/2003/1027), the Panel reported on its efforts to verify, reinforce and update its earlier findings. Some NGOs and companies expressed concern about the report's lack of transparency and of explanation of how and why companies were placed in the report's five "categories"¹.

1 The five categories are: 1. Resolved (meaning the Panel and the companies have found a "solution to the issues that led to their being listed in the October 2002 report"); 2. Provisional resolution; 3. Referred for

3. Both of these reports attracted considerable media attention and gave unprecedented visibility to the OECD Guidelines.

Objectives of the project

4. The project will seek to:

- Help the Investment Committee to make a useful contribution to the international debate on investment in zones of weak governance and violent conflict.
- Complement and reinforce the many other initiatives undertaken elsewhere in this area – notably the DAC Guidelines -- by drawing further on the OECD’s distinctive competence in business and public sector integrity;
- Help companies with business operations in such zones by providing them with terms of reference or risk management tool to help them conduct business in conformity with the OECD Guidelines and enhance their contributions to host societies; and
- Provide background analysis to assist the National Contact Points (NCPs) that are currently engaged with companies having investments in weak governance zones.

5. At the same time, the report will not seek to redress the problems -- perceived or real -- with the Expert Panel’s practices or findings. The report will not mention company names and will not attempt to confirm or disprove any of the Panel’s accusations regarding particular companies. The current project will further Investment Committee objectives – which include promoting good practices in investment policies and among multinational enterprises -- and will be conducted under the rules and procedures of the Investment Committee and of the National Contact Points.

Starting point and approach

6. The project will seek to clarify how companies can avoid contributing to the conditions that predispose a country to violence and how they can make a positive contribution to conflict prevention and to the broader economic development of countries with weak governance. The project will start from the premise that the problems observed in countries prone to violent conflict stem from numerous, inter-related sources – poverty, imperfect protection of rights (property rights, civil and political rights, labour rights, etc.), economic institutions (both public and private) that do not function well and, in some cases, natural resource wealth that provides the means and the motive for conflict. Multinational enterprises can play a role in both perpetrating these problems and in contributing to their solution.

7. As established in the 2002 report considered by the Investment Committee, some economic activities – when undertaken in contexts of weak governance institutions -- can provide both the “means and the motive” for violent conflict. Strong governance contexts feature a viable rights framework, effective political and civil processes, transparent and honest fiscal systems, transparent and accountable state-owned enterprises, a judicial system with the ability to impose the rule of law in all parts of the country and in all types of economic or social interaction. The contribution of the proposed report will be to draw out the practical considerations for companies wishing to conduct business in weak governance zones.

updating or further resolution; 4. Referred for further investigation; and 5. Parties that did not react to the report.

8. The situation in the DRC will be used to illustrate some of the concrete ethical dilemmas that companies face when attempting to conduct business in weak governance zones. Institutional shortcomings (which current reform efforts may go some way to redress) create a number of problems for the DRC – human development indicators suggest that the country has not succeeded in converting its mineral wealth into higher material, social and environmental well-being for its people. The country’s political and economic institutions have, so far, been unable to establish a workable basis for protecting the rights of the people of the DRC to benefit from this wealth. These rights – although officially enshrined in DRC law – have been undermined in a number of ways that responsible companies will want to avoid being party to. The OECD integrity instruments provide companies with guidance on how to avoid being involved – even inadvertently – in depriving the people of DRC of their rights and of their prospects for a better future.

9. The people of the DRC and the international community hope that the country is now emerging from recent severe episodes of violent conflict. In looking at the role of business in the extreme circumstances that have characterised this country’s recent past, the project will adopt a forward looking approach. It will try to help business to participate constructively in current reforms and to promote progress toward a more stable and peaceful future.

Proposed outline for the project

10. The OECD Guidelines for Multinational Enterprises contain general, aspirational principles as well as concrete suggestions in specific areas of business conduct (e.g. combating corruption, disclosure of information, co-operation with local communities and upholding good corporate governance principles). The first recommendation of the Guidelines (II.1) asks enterprises to “contribute to economic, social and environmental progress with a view to achieving sustainable development.” For business conduct in weak governance zones, this general recommendation could be read as promoting responsible business practice in a wide range of areas – e.g. corporate governance, choice and management of business partners, structuring relations with governments, the fight against corruption – that are central to determining whether investment processes are able to fulfil their promise of raising overall living standards. The project will examine this issue in a way that cuts across many of the issues covered by the Guidelines.

11. The project will follow two parallel tracks:

12. The *first track* will be analytical and will focus on a long-standing Investment Committee theme in the area of corporate responsibility – the interplay between corporate responsibility and government responsibility. The analytical material will be organised mainly around the OECD Guidelines and other OECD integrity instruments that have detailed provisions supporting the objectives of the Guidelines (see items 5-9 in the outline proposed in paragraph 14 for a list of the instruments). These instruments could be useful to companies in two ways: first, some of them contain recommendations on business practices that are addressed directly to companies; second, they all contain material that companies can use as a basis for risk assessment when analysing prospective investment decisions and when managing ongoing operations in countries where public sectors are not functioning well.

13. The OECD integrity instruments covered by the project enjoy significant political stature and legitimacy. All but two of the instruments have been adopted by the OECD Council and some have been adopted by other international organisations such as the Financial Stability Forum². The OECD Guidelines

2 The OECD Corporate Governance Principles have been adopted by the Financial Stability Forum as a standard for conducting ROSCs (Reports on Observance of Standards and Codes). The OECD Guidelines for the Corporate Governance Principles of State-owned Assets are closely related to and are being negotiated in parallel with the re-assessment of the OECD Corporate Governance Principles. Three of these instruments (the OECD Anti-bribery Convention and Recommendation and the OECD Corporate

provide comprehensive recommendations that seek to “enhance the contribution to sustainable development made by multinational enterprises”. By promoting the economic, social and environmental contributions of the business sector, they provide an umbrella for discussing the many facets of corporate responsibility. In particular, they offer a forum for exploring the combined implications for corporate responsibility of the entire package of OECD integrity instruments.

14. The proposed section headings are:

1. Introduction
2. Business, economic development and the rights framework
3. Business in weak governance zones
4. Business integrity -- the relevance of the OECD Guidelines and other OECD instruments
5. OECD Anti-Bribery Convention and Recommendations
6. OECD Corporate Governance Principles
7. Guidelines for the Corporate Governance of State-owned Assets³
8. Guidelines for Managing Conflict of Interest in the Public Sector
9. OECD Best Practices on Budget Transparency
10. Conclusions: Responsible conduct for companies, host governments, home governments and international organisations.

15. The *second track* will focus on the DRC as a case study. The case study will support and reinforce the points made in the first track. It will focus mainly on how OECD integrity instruments can be used to understand the business climate of countries like the DRC and to shed light on the ethical dilemmas companies are likely to encounter in such environments. This material might cover such areas as: overview of OECD-based companies’ operations in the DRC; corporate governance practices of companies with investments in the DRC; relations of state-owned enterprises in the mining sector with OECD-based companies; conducting business with public officials with conflicts of interest; multinational enterprises as taxpayers; and the business case for responsible investment in the DRC.

Use of the Expert Panel’s Reports and other information sources on the DRC

16. Despite recent progress, the DRC continues to be a non-transparent country. The Investment Committee, in the course of its fact-finding work on this project, will inevitably encounter obstacles created by this lack of transparency.

17. The Expert Panel’s October 2002 and October 2003 reports (as well as the addendum to the 2002 report, which contains company and country submissions to the Panel) will be one source of information, to be used in conjunction with numerous other sources (see below).

Governance Principles) are mentioned in the Commentary of the OECD Guidelines for Multinational Enterprises.

3 These Guidelines are scheduled to be finalised in early 2005.

18. Several companies and transparency NGOs have offered to co-operate with the Investment Committee after the Committee's decision to prepare a report was made public.

19. Other possible sources of information might include:

- International organisations: IMF reports on the DRC (the DRC recently agreed to the release of the "Staff Report for the 2003 Article IV Consultation in February 2003); other DRC reports are also available on the IMF site; World Bank web site. E.g. Democratic Republic of Congo – Interim Poverty Reduction Strategy Paper and related staff assessments; studies by the International Labour Organisation.
- Company websites;
- Information provided by companies, NGOs and trade unions;
- Information from stock exchanges;
- Internet sites providing information on the mining sector (e.g. Infomine);
- Various NGO reports on the DRC.

Partnerships and co-operation

20. This project would be carried out in cooperation with other OECD bodies and with outside organisations.

- It would be coordinated with the CPDC (Conflict, Peace, and Development Co-operation) Network in consultation with the DAC Governance Network (GOVNET) -- they would be asked to comment on or contribute to the drafts. The CPDC has published the *OECD DAC Guidelines on Helping Prevent Violent Conflict (2001)* endorsed with a policy statement by Development Ministers and Agency Heads in 2001 which recommends work on how business can actively help prevent violent conflict. These guidelines encourage governments to forge, "partnership(s) with business – domestic and international – to raise awareness of how firms can be good corporate citizens, avoid feeding the negative dynamics of conflict, and make positive economic and social contributions to preventing violence." The CPDC has this issue as part of its current work programme.
- The work programme of the GOVNET covers most areas of public governance and much of its work is highly relevant to this project.
- The newly created Initiative for Central Africa (INICA) hosted by the OECD (www.inica.org) has already undertaken work on the DRC and would also be kept informed and involved.
- The UN Global Compact – which has already looked at business and conflict in the context of its Policy Dialogues -- has expressed an interest in cooperating on this work. Ideas for cooperation include joint UN-OECD promotional events in Africa or in other regions where conflict is an issue.
- The Bureaux of the various OECD bodies having responsibility for the integrity instruments has been informed of the project and invited to contribute.

Proposed timeline

21. The timeline proposed for this project is as follows:

- September 2004: First draft – which presents issues raised by DRC fact finding work and asks delegates for guidance on how these issues might be addressed – is available for consideration by the Investment Committee;
- December 2004: Second draft for consideration by the Investment Committee in consultation with BIAC, TUAC and NGOs;
- Spring 2005: Reviews by stakeholders and interested non-members, and finalisation.