

Civil Society Key Messages prepared for the 15th OECD Forum on responsible mineral supply chains, May 2-6 2022

The key messages are grouped into five themes: Critical Minerals; Civil space and fundamental freedoms; Implementation and Follow-up of the OECD due diligence guidance: where do we stand?; Going from an downstream to an upstream perspective ; Responsible Supply Chains of Minerals and new technologies

Key messages were first drafted in 2019 by a global network of civil society organizations participating in the OECD Forum. In the lead up to the 2022 Forum, three civil society consultations were held via which these key messages were updated. Overall, civil society expressed disappointment that most concerns raised in 2019 were of equal relevance in 2022. This suggests that progress on meaningful implementation of the Guidance is either poor or wanting and that corresponding positive impacts in mining and mining-affected communities are limited or intangible.

Civil society is recommending that, as a first step, the OECD Secretariat develop jointly with civil society a clear action plan to concretely address the concerns below and that the implementation of that plan be monitored and reported on year on year.

Critical Minerals

1. **Climate policies in the Global North should not happen at the expense of the Global South.** The Global South is not a reservoir for the North's hunger for raw materials nor should it be excluded from emerging circular economies. Issues of equity and justice in global supply chains should feature more prominently in the OECD Forum and other similar forums. The OECD Forum should consider cooperating with relevant initiatives to promote the creation of conditions for investment in circular economy infrastructure and systems in the Global South.

Civic space and fundamental freedoms

2. **Threats to civil society are increasing. This poses a direct threat to responsible sourcing. We call upon all companies and states to support the protection of civil society space:** violence, intimidation, interference and surveillance have all become live issues for both human rights and natural resource NGOs. In the last few years, several CSOs have been threatened in relation to their work to implement or promote the OECD Guidance.
3. **Only meaningful engagement with civil society is to everyone's benefit:** Private sector responses to civil society can too often seem disdainful or disingenuous. In some cases, providers of due diligence and traceability services are publicly discrediting local civil society actors as a means to shield themselves from criticism and/or to avoid accountability. Civil Society's watchdog role of bringing in critical perspectives where they are needed and offering valuable input from the ground on issues of efficacy is vital. It must be respected. Consultation with CSOs must therefore be open, meaningful and accessible. If a company professes to be

interested in the same ends as CSOs critiquing the sector, meaningful engagement is required and evidence of that commitment.

4. **We are too few speaking for too many with too little:** Whilst civil society is key to responsible minerals sourcing monitoring and reporting, it is drastically under resourced to represent the multiple constituencies that it needs to, both in terms of means, opportunities to input and obstacles to overcome. More opportunities must be made available for communities directly affected by issues discussed at these conferences to have access to relevant information and to make themselves heard directly and by all. Barriers to participation (including travel restrictions) need to be seriously considered when planning for these conferences. More resources should be allocated to enable CSOs to do their work without interference, particularly those groups working at the grassroots level with communities in resource rich but conflict affected environments.
5. **Gender considerations must be integrated into supply chain due diligence and related decision-making structures:** Women are all too often excluded from responsible sourcing considerations. Throughout the supply chain and in the mining sector, women tend to have fewer assets or direct access to financing, less decision-making power and often occupy its least remunerated functions. This needs to be acknowledged when carrying out due diligence. Gender integration includes consultation on all matters, capacity enhancement, the development of gender-inclusive policies and provision of dedicated resources in addition to all other aspects of the *Stakeholder Statement on Implementing Gender-Responsive Due Diligence and Ensuring the Human Rights of Women in Mineral Supply Chains*.ⁱ There is a growing body of evidence demonstrating that women are disproportionately negatively affected by climate change, which renders the implementation of gender-responsive policies and practices as relates to responsible global supply chains all the more important.ⁱⁱ

Implementation and Follow-up of the OECD due diligence guidance: where do we stand?

6. **“We’ll do it tomorrow” translates to “you will be left to suffer for now”:** Abuses are happening now and demand immediate action. Private sector actors and governments are moving too slowly in implementing due diligence norms. After a decade, increased awareness and participation in the OECD has not seen the required improved industry practice or improvements for communities.
7. **False or empty marketing that misrepresents corporate engagement with, or impacts on, human rights and development are self-defeating:** In the absence of transparent supply chains and public reporting any claims about impacts of a given sector or company on the ground are extremely questionable, at best. If companies and industry associations continue to make such claims they will lose consumer trust. Further, in the absence of the implementation of its monitoring and evaluation system, evidence of the OECD Guidance’s impact on human rights and security is woefully lacking more than a decade -on.
8. **Opacity of industry schemes on implementation is seen as lack of meaningful implementation and accountability:** The private sector is outsourcing its responsibility to do due diligence on their supply chains instead of doing it themselves as is required by the OECD Guidance and expected by civil society. There

is too little evidence of risk-based identification, mitigation and public reporting about supply chains by companies themselves to render due diligence implementation meaningful. As well, an overreliance on industry schemes risks eroding the credibility of meaningful due diligence efforts and undermining consumer trust.ⁱⁱⁱ The opacity of schemes and/or partial implementation of due diligence translate into lack of progress and potentially negative impacts on the ground that may further penalize producing communities.^{iv}

9. **Drop fixating on the issues, focus on the ethics:** For decades companies have been asked to engage with the impacts of their sourcing on universal values – be they the right to life or freedom from torture, child labour or conflict financing - in short, the full spectrum of human rights and environmental harms. However, private sector engagement on such issues is rarely if ever translated into a company-wide responsible sourcing protocols and practices but remains fixated on specific issues in specific geographies. This is reactive business conduct not responsible business conduct. Human rights violations can and do occur in both large-scale mining (LSM) and artisanal & small-scale mining (ASM) contexts.^v All companies sourcing from CAHRA's must provide evidence via their Step 5 reports of applying OECD Due Diligence.^{vi} Recycled and synthetically produced minerals should be subject to the same levels of scrutiny as newly mined minerals. Moreover, LSM must be held to account for its responsibility – often codified in national legislation – to contribute to community development.
10. **The right to a healthy environment is a fundamental human right:** We call for a global transition to sustainable, green value chains and climate-smart mining. The risks identified in Annex II of the OECD's Due Diligence Guidance should be extended to include extensive damage to, destruction of or loss of ecosystems and environments. Women and men in ASM communities should be well supported and incentivized to transition to more environmentally conscious practices to minimize their individual and collective footprint. This transition needs to be pragmatic and adapted to the realities of small and artisanal producers who bear the disproportionate burden of market expectations and new systems.
11. **A focus on environmental risks should not come at the expense of existing OECD Guidance Annex II risks:** A full decade after its adoption, the implementation of the Guidance and the attenuation of its existing Annex II risks, which represent the most severe human rights violations, is woefully inadequate. We need to ensure that these most fundamental priorities of the Guidance are fully implemented and that private sector actors do not engage in avoidance (“de-risking”) where risk mitigation is feasible.
12. **De-risking** undermines the intent of the Guidance and ensures that marginalized supply chain actors and communities are excluded from the formal market and vulnerable to predation and abuse, particularly women. Likewise, the exclusion or **red-flagging** of entire countries or geographic regions as a de-risking strategy not only goes against the intent of the Guidance but is harmful to vulnerable supply chain actors and communities. The realization of the OECD Guidance's development and security objectives require engagement to contribute to and to sustain progressive improvements along mineral supply chains and in mining communities.
13. **Financial markets and institutions must engage in due diligence:** Commodity traders, investors and banks must be brought into the due diligence framework or

risk further financing instability. Their engagement is also critical as financial exclusion is key barrier to formalization and legality for millions of artisanal miners globally.

14. **OECD adherent states must take action or risk turning the OECD into a talk shop:** Lack of progress in achieving the aims of this Forum highlights the need for a more binding approach to implementation. At a minimum, OECD adherent states must regularly and publicly report on progress in their respective jurisdictions.
15. **Policy and regulatory environments in producer countries continue to prevent the legalisation and inclusive formalisation of ASM:** This includes the tendency of mining reforms to benefit LSM at the expense of ASM, the criminalisation of ASM, discrimination against women and marginalized groups, legal ambiguity around ASM, heavy tax or administrative burdens, exclusion from the financial sector, slow mine site validations and enforcement against private sector actors that seek to exploit illicit channels in violation of the OECD Guidance. Moreover, a single framework that encompasses respect for all human rights should be considered.

Going from a downstream to an upstream perspective

16. **We need to stop viewing upstream from a downstream perspective:** Too much of the cost and labour burden of doing due diligence is placed on upstream actors with insufficient focus on downstream and mid-stream efforts. This has allowed downstream actors to exhibit weak commitment, disproportionately placing all due diligence risks and costs upstream.^{vii}
17. **Responsible mineral supply chains require LSM and ASM to work together:** Conflict prevention, risk identification and mitigation require cooperation between LSM and ASM. As well, given the low volumes that are typical of ASM, cooperation could introduce efficiencies that render the scale of responsible ASM supply chains more attainable. (e.g. the provision of financing; transport; administrative & support to obtain legal authorizations; environmental studies etc.)
18. **Purely market driven solutions overlook root causes and their limitations should be recognized.** The more conflict-affected or high-risk the environment or the more marginalized a producer community, the more root causes hinder successful uptake of due diligence, scale and sustainability of (pilot) initiatives. A rights-based development approach is required to address underlying systemic issues such as the criminalization of the poor and landless, resource grabbing (including land and water), endemic poverty tax and administrative burdens and trade imbalances. Corporate accountability and market forces must be leveraged but cannot and should not lead development or their impacts will be short lived.

Responsible Supply Chains of Minerals and new technologies

19. **Technology is a tool not a panacea.** Technology continues to be looked to as the solution to many complex data and logistics issues inherent in this sector. Whilst technology can support development and due diligence initiatives, treating it as a “solution” is always a mistake and yet often repeated. It raises many issues: technology cannot substitute effective laws and standards; it must be appropriate to

the operating conditions in-country to avoid treating development aid as a private sector research and development grant; security risks in the transmission of data must be seriously managed; conflicts between the commodification of data, local ownership and empowerment as well as the sustainable information flows needed for due diligence must be managed; the impact of its use on trust and capacity building must be considered; and the sustainability of systems that are dependent on a single host for their continued functioning must be addressed. Above all else, technology must serve the realization of development objectives of producer communities and nations.^{viii}

ⁱ See Gender draft stakeholder statement and recommendations in: *Implementing Gender-Responsive Due Diligence and ensuring the human rights of women in Mineral Supply Chains*. Statement proposed to the OECD forum. <https://mneguidelines.oecd.org/Stakeholder-Statement-Implementing-Gender-Responsive-Due-Diligence-and-ensuring-human-rights-of-women-in-Mineral-Supply-Chains.pdf>

ⁱⁱ United Nations Climate Change, Introduction to Gender & Climate Change <https://unfccc.int/gender>

ⁱⁱⁱ The ITSCI Laundromat <https://www.globalwitness.org/en/campaigns/natural-resource-governance/itsci-laundromat/>

^{iv} Global Witness Statement on OECD Alignment Assessment of Industry Programmes with the OECD Minerals Guidance <https://www.globalwitness.org/en/press-releases/global-witness-statement-oecd-alignment-assessment-industry-programmes-oecd-minerals-guidance/>

^v Russia : The Next Frontier for Conflict Diamonds

<https://impacttransform.org/en/russia-next-frontier-conflict-diamonds/> ; Russian diamonds and the war in Ukraine <https://ipisresearch.be/publication/russian-diamonds-and-the-war-in-ukraine/>

^{vi} The LME Responsible Sourcing Position Paper: A Joint NGO Statement

<https://www.globalwitness.org/en/press-releases/lme-responsible-sourcing-position-paper-joint-ngo-statement/>

^{vii} USSENI, Jamal (2019) *Proposition d'une approche de partage de cout de la diligence raisonnable sur la chaine d'approvisionnement des minerais. De l'amont à l'aval. Cas de la R.D.Congo*. Save Act Mine. Pour information, contacter : saveactmine@gmail.com

^{viii} What Does Blockchain Mean for the Future of Responsible Mineral Sourcing?

<https://www.globalwitness.org/en/blog/what-does-blockchain-mean-future-responsible-mineral-sourcing/>