

# Human Rights & Responsible Business Conduct

September 2019



## Editorial

WE HAVE EMERGED from the busy ILO centenary celebrations during the International Labor Conference in June with renewed purpose and energy to continue promoting the decent work and business and human rights agendas.

The ILO's 100th anniversary is an important milestone and in June we saw the adoption of a new **ILO Convention** and **Recommendation** to combat violence and harassment in the workplace. We are also inching ever closer to the first universal ratification of an ILO Convention - No. 182 on eliminating the worst forms of child labour. To spur action to address this scourge, the UN General Assembly has declared 2021 as "the Year for the Elimination of Child Labour."

At the same time, it is important to reflect that high-level Geneva discussions can, at times, seem far removed from reality. It is, thus, our mission to connect the raft of global standards and expectations with lived experiences on the ground. This means applying far greater effort to engage with national and local actors, including harnessing the power of the IOE network, so that actions by multilateral institutions and Governments (as duty-bearers and often as donors) target the conditions and contexts behind the myriad challenges we face. Or to put it more simply, we need to take a more bottom-up approach. This is essential for the success and relevance of the ILO in its next 100 years and the work of other organisations.

**Mthunzi Mdwaba**

Chair, IOE Policy Working Group



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**Above photos:** ILO centenary discussion on eliminating child labour (left); and ITUC and IOE heads Sharan Burrows and Roberto Suárez Santos reaffirm the social partners' commitment to the ILO's mission (right).

## Legal & policy developments



### European Union



- In June, the European Commission published new **guidelines** on corporate reporting on climate-related information as part of its **Sustainable Finance Action Plan**. According to the EC **press release**, the guidelines provide companies with practical recommendations on: (a) "how to better report the impact that their activities are having on the climate;" and (b) "the impact of climate change on their business."
- Also that month, the Technical Expert Group on Sustainable Finance (**TEG**) - a group of 35 members from civil society, academia, business and the finance sector - published three reports:

- A unified EU classification system ("**a taxonomy**") for environmentally-sustainable economic activities. This **report** aims to provide practical guidance for policy-makers, industry and investors on how best to support and invest in economic activities that contribute to achieving a climate neutral economy.



- The Taxonomy is described as a tool that can help investors to comply with **the regulation** on "disclosures relating to sustainable investments and sustainability risks" that the European Parliament and Council passed in April.
- It is also referenced in the **draft InvestEU regulation** as a framework to aid in monitoring the InvestEU fund's contribution to climate targets.
- NB:** The report's recommendations are also designed to inform / be embedded in future EU legislation to implement the taxonomy – known as the "**Taxonomy Regulation**," which would establish a framework to facilitate sustainable investment.
- UNPRI commentary:** "The EU taxonomy: a generational shift for responsible investment."



- A report on an **EU Green Bond Standard**, which recommends clear and comparable criteria for issuing green bonds. In particular, by linking it to the taxonomy, it will determine which climate and environmentally-friendly activities should be eligible for funding via an EU Green Bond. The European Commission expects this to boost the green bond market, allowing investors to scale up sustainable and green investment.

- A report on **EU climate benchmarks and benchmarks' ESG disclosures**. This sets out two main things:
  - The methodology and minimum technical requirements for indices to help investors adopt a climate-conscious investment strategy, and address the risk of "greenwashing;" and
  - Disclosure requirements by benchmark providers in relation to ESG factors and their alignment with the Paris Agreement on Climate Change. The report also relates to the EC's proposal on low-carbon benchmarks.



## Finland

- In June, the Finnish government **outlined** its goals to introduce human rights due diligence (HRDD) legislation at both the national and the EU level. In its government programme, Finland explained that it "will conduct a study with the goal of adopting a mandatory HRDD law. The law is based on a due diligence obligation that covers both domestic and transnational activities. The study will be conducted with employers' associations, entrepreneurs associations and employees organizations, taking into consideration the position of SMEs."
- The announcement follows a civil society national campaign for due diligence legislation since September 2018 (see photo on the right).
- Finland's "EU presidency" began in July and runs until the end of the year.

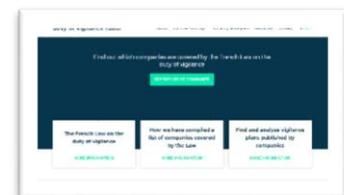


## France

- NGOs in France have launched **a website** to identify the companies covered by the French "duty of vigilance law" that was adopted in 2017. Sherpa and CCFD-Terre Solidaire (with the support of Business & Human Rights Resource Centre) created the website to check whether the companies subject to the law have published their vigilance plan and to analyse their vigilance measures.

At the same time, the NGOs are calling on French authorities to:

- Publish the list of companies subject to the duty of vigilance;
- Make all vigilance plans accessible on a public database;
- Strengthen transparency requirements to make financial and non-financial data on companies more accessible; and
- Lower and simplify application thresholds.



- In June, French business association **E-DH** published a study "**Application of the Law on the Duty of Vigilance (Vigilance plans 2018-19)**" that analysed companies' practices in the first two years of the law coming into effect. The report also identifies challenges that companies face in applying the law.

## Kenya

- In June, the Kenyan Government published its **National Action Plan on Business and Human Rights** (NAP) – the first by an African country. Among the proposals is a human rights due diligence requirement. The NAP says: "The government will require businesses to carry out comprehensive human rights due diligence including through conducting comprehensive and credible human rights impact assessments before they commence their operations and continuously review the assessment to ensure that they prevent, address and redress any human rights violations. Such impact assessment should involve meaningful consultation with potentially affected groups and other relevant stakeholders and include particular gendered impacts."
- The development of the NAP was led by Kenya's Office of the Attorney General & Department of Justice. The African member of the UN Working Group on Business & Human Rights, Githu Muigai, previously served as Attorney General to the Government (2011-2018).



## The Netherlands

- In May, the Dutch Senate **adopted** the Child Labour Due Diligence Law that requires companies selling goods or services to Dutch consumers (including companies registered outside the Netherlands) to identify and prevent child labour in their supply chains.
- Information about the law:
  - The new Dutch law introduces a general duty of care to prevent the supply of goods or services which have been produced using child labour. This duty is different to the "duty of care" in tort law in common law jurisdictions, which is a specific duty owed to a particular person. Here, it concerns a generic duty to exercise due diligence.
  - In carrying out its due diligence, a company has to determine whether there is a reasonable suspicion that a product or service involves child labour. If such a suspicion exists, it has to develop and implement an action plan. The investigation must be based on sources that are "reasonably knowable and consultable." Similar to other human rights due diligence legislation, the law requires companies to produce a statement which declares that the company has conducted due diligence.



- Several details (concerning interpretation and implementation of the law) are still yet to be determined by a "General Administrative Order" - an executive responsibility of the Government that requires approval by both Chambers of the Dutch Parliament.
- **FAQ on the Child Labour Due Diligence Law.**
- NGO commentary: "**Going Dutch.**"
- At the same time, Dutch NGOs are urging the Government to introduce broader due diligence legislation in accordance with the OECD Guidelines for Multinational Enterprises.

## Norway

- A commission set up by the Norwegian Government in December 2018 to assess the merits of new reporting legislation on human rights has released a mid-term report calling for the Government to adopt such a law. The Commission on Information on Ethics, which is chaired by a Law Professor at the University of Oslo, is still looking into the details of the proposed law, including its scope and enforcement procedures. It will present its final report at the end of the year. Following this, the Government will decide if it wishes to follow the Commission's recommendations and propose a new legislation to the Parliament.
- We understand that the Commission is exploring if companies should be obliged to disclose the manufacturing sites of their products, how their suppliers address social and environmental risks, and how the company follows up on supply chain issues. The Commission undertook a study visit to the UK and France to discuss their respective Modern Slavery Act and Vigilance Law.





## Switzerland

- In June, the Swiss Parliament's lower house (the **National Council** / House of Representatives) voted overwhelmingly (109-69) to stick with its "counter-proposal" bill on responsible business (which it earlier approved in June 2018). The bill would introduce mandatory human rights due diligence for Swiss-based companies, as well as making parent companies legally liable under civil law towards their subsidiaries.
- Shortly afterwards, the Conference of the Ministers of Economic Affairs in the 26 Swiss cantons – considered a heavyweight in Swiss politics – also came out in support of the "counter-proposal."
- The bill now returns to the Council of States (the Senate – upper house) in September, which in March voted against holding a discussion on it, while also rejecting a separate "popular initiative" on responsible business conduct that was launched by a coalition of NGOs. The Senate can either revise its decision and enter into a discussion on the "counter-proposal" bill or end the parliamentary process to allow for a popular vote on the bill in early 2020 (a national referendum).
- One survey earlier this year suggested that more than 80% of Swiss citizens support such a law. The "counter-proposal" bill also has the support of Swiss companies including Coop & Migros, some Swiss business associations, and **a group of 22** Swiss and foreign institutional investors, who represent assets under management of CHF 395 billion.



## UK

- In July, the UK Government published **its response** to an independent review of the 2015 Modern Slavery Act, in which it accepted most of the proposed recommendations.
- There is also an **open consultation** process on proposed changes to the Act, including the statement on transparency in supply chains required under Section 54 which would increase the burden on reporting companies and provide some teeth in relation to compliance.
- **Things to look out for:**
  - The focus of reforms is on how to improve the quality of statements, with the key question being whether companies should be required to report on the following six areas outlined in Section 54 (currently they are "recommended" to do so):
    - (i) the organisation's structure, its business and its supply chains;
    - (ii) its policies in relation to slavery and human trafficking;
    - (iii) its due diligence processes in relation to slavery and human trafficking in its business and supply chains;
    - (iv) the parts of its business and supply chains where there is a risk of slavery and human trafficking taking place, and the steps it has taken to assess and manage that risk;
    - (v) its effectiveness in ensuring that slavery and human trafficking is not taking place in its business or supply chains, measured against such performance indicators as it considers appropriate; and
    - (vi) the training about slavery and human trafficking available to its staff.



**HELP FREE THE UK FROM  
MODERN  
SLAVERY**

- New statutory guidance will be issued in 2020, which will: (a) include a template of information expected in an annual statement; (b) encourage due diligence beyond Tiers 1 and 2; and (c) encourage companies to outline plans for the next year, as well as detailing actions taken.
- The government will launch a dedicated website or free "reporting service" where companies will have to upload their annual statements.
- Company boards will retain collective responsibility for non-compliance, with potentially one individual board member being made accountable for modern slavery reporting, who could potentially be disqualifiable.
- There could be one common deadline for reporting.
- The Government proposes keeping a list of companies covered by Section 54 (currently some 17,000 firms).
- The Government may adopt proportionate civil penalties to create incentives for reporting starting with a warning letter and ending with a fine. NB: companies found to be non-compliant in the Government's current audit of reporting currently "risk being publicly named" and shamed.
- The Act will also apply to public sector firms, although the £36 million threshold (applicable to private firms) may be amended.
- **Analysis: Independent adviser, Herbert Smith Freehills and Modern Slavery Register**
- A group of UK NGOs are **calling** for the review process of the Modern Slavery Act to serve as a catalyst for a broader UK law on human Rights due diligence.



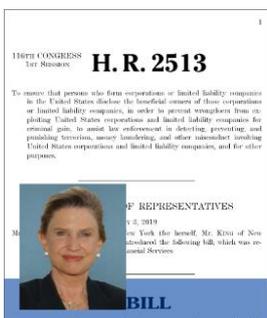
USA

- In July, a Congressional Subcommittee on Investor Protection, Entrepreneurship and Capital Markets held **a hearing on a series of bills** that would all require public companies to disclose more information on climate policies, political expenditures and human rights. While actual legislation may still be some way off, the debates highlight the increasing appetite for greater ESG regulation in the USA.

The proposed bill on human rights is the **"Corporate Human Rights Risk Assessment, Prevention and Mitigation Act of 2019."** Under this proposal, publicly-listed companies would be required to conduct human rights due diligence in their operations and value chains; rank any risks and impacts based on their severity; and report annually on their findings and responses to the Securities and Exchange Commission (SEC).



The other debated bills: ESG Disclosure Simplification Act of 2019; Shareholder Protection Act of 2019; Climate Risk Disclosure Act of 2019; and Country by Country Tax Payment Disclosure.



- Earlier in May, three members of Congress introduced a bill entitled **"the Corporate Transparency Act" (H.R.2513)** that would require companies to disclose their true, beneficial owners in the USA at the time the company is formed to prevent bad actors from using anonymous shell companies to thwart law enforcement and hide their illicit activities. Supporters call the draft bill a critical step to fight tax evasion, corruption, human rights abuses, and money laundering of the sort exposed in the Panama Papers. **Others** have criticised the bill for being too vague, too burdensome on SMEs and for having privacy implications.



## Myanmar

- In August, an independent UN fact-finding mission published **a report** that examined “the economic interests of the Myanmar military” in which it urged the international community to sever ties with Myanmar’s military and the vast web of companies it controls and relies on and called for an investigation into genocide committed by the military government. The Mission said the revenues the military earns from domestic and foreign business deals substantially enhances its ability to carry out gross violations of human rights with impunity.
- A business and human rights expert, who worked on the USA State Department-commissioned investigation into atrocity crimes in Myanmar, posted the following **blog** in August on what the UN report means for companies operating in Myanmar. Its message is: “If businesses are to act responsibly in Myanmar, they should play a role in advocating for a truth-telling and accountability process.”



## UN Updates

### UN Treaty process (IGWG chaired by Ecuador)



- On 18<sup>th</sup> July, Ecuador released the "**Revised Draft Treaty**" for States to negotiated on during the **fifth session of the Inter-Governmental Working Group (IGWG)**, which takes place in Geneva from 14<sup>th</sup> to 18<sup>th</sup> October 2019. During the 5<sup>th</sup> session, States are also expected to have a second "briefing" on the **Draft Optional Protocol**, which Ecuador released in the summer of 2018.
- The Revised Draft Treaty is a modified version of the 2018 **Zero Draft Treaty**, which itself derived from the 2017 "**Elements**" paper for a draft legally-binding instrument. reflects many comments made by States during the IGWG's 4<sup>th</sup> session in October 2018. It also reflects comments made by civil society organisations and academia, and - to a lesser extent - business (the IOE's points that are reflected are those that mirror what others said).
- The IOE is currently preparing a response to the Revised Draft Treaty, in consultation with its members. Please email Peter Hall if you have any questions about this: [hall@ioe-emp.com](mailto:hall@ioe-emp.com).
- **Reminder:** here's what **the IOE and other business organisations** said about last year's Zero Draft Treaty.



### Dutch NCP report on oil & gas sector

- In April, in **a first-of-its-kind report**, the Dutch National Contact Point (NCP) published its findings into the Dutch oil and gas sector's compliance with the OECD Guidelines for Multinational Enterprises. In its report requested by the Dutch Government, the NCP concluded that "implementation of the OECD Guidelines in the Dutch oil and gas sector is poor." It added that the degree of transparency provided by the sector is "insufficient" and out of line with the OECD Guidelines and it detected "shortcomings among specific companies as well as specific sub-sectors within the industry."



## New ILO Convention & Recommendation on Violence & Harassment at Work

- In June, the Centenary International Labour Conference adopted a new **ILO Convention** and **Recommendation** to combat violence and harassment in the workplace. It is the first international treaty on violence and harassment.
- **The new standard** aims to protect workers and employees, irrespective of their contractual status. It includes persons in training, interns and apprentices, workers whose employment has been terminated, volunteers, job seekers and job applicants.
- It covers violence and harassment occurring in the workplace; places where a worker is paid, takes a rest or meal break, or uses sanitary, washing or changing facilities; during work-related trips, travel, training, events or social activities; work-related communications (including through information and communication technologies), in employer-provided accommodation; and when commuting to and from work.



It also recognizes that violence and harassment may involve third parties.

- The new ILO Convention (no. 190) will enter into force 12 months after two member States have ratified it. The Recommendation, which is not legally binding, provides guidelines on how the Convention could be applied.



## updates

### SME workshop report

- The IOE held a workshop in April with small and medium-sized enterprises (SMEs) and IOE members to explore their experiences, challenges and good practices in implementing the UN Guiding Principles on Business and Human Rights (UNGPs). The 14 participating SMEs came from a range of sectors and countries. They combined both a commercial and values-driven mission and most were linked to exports.
- Click [here](#) to read a summary of the report. Our thanks to Shift and the participants on a great discussion.



### New human rights guide by Chilean member

- In April, Confederación de la Producción y del Comercio (CPC) – the IOE's member in Chile – and Acción Empresas, the UN Global Compact in collaboration with the ILO and Centro Vincular) published a company guidance on human rights management based on the UNGPs.
- Click [here](#) to read the Spanish guidance for companies.

## Spotlight on Financial & Investment Community



- **The Equator Principles**, a social and environmental risk management framework adopted by financial institutions meant to provide a minimum standard for due diligence, is undergoing a review. In July, the Equator Principles Association released its **new draft of the Equator Principles**, which is expected to result in a fourth version of the framework – known as "EP4" – by the end of 2019.
- The review focusses on four thematic areas: (i) Social impact and human rights; (ii) Climate change; (iii) Designated Countries and Applicable Standards; and (iv) Scope of applicability of the EPs.
- Equator Principles Financial Institutions (EPFIs) will vote on a final draft of the EP4. Once agreed, EP4 would be implemented by all EPFIs following an initial transition period.



- **BankTrack**, an NGO working in the field of private sector banks and sustainability, **announced in June** that it is preparing its next benchmark of 50 of the largest commercial banks with an assessment on their implementation of the UNGPs.
- Banks will be assessed against 14 criteria across four categories assessing their human rights policies; due diligence processes; their reporting on human rights impacts; and approach to remedying adverse impacts. They will receive a full score (1), half score (0.5) or no score (0) for each category, leading to a total score of between 0 and 14.
- The 2019 update, the first since 2016, will expand the report's geographic reach to include the largest banks in Africa, Russia and India. It will also include new criteria on whether banks report human rights indicators and whether they have a process in place to identify situations when they have caused or contributed to a human rights impact and have a responsibility to remedy the problem.



- **News emerged in June** that 50 signatories to the **UN Principles for Responsible Investment** risk being delisted next year for failing to follow its six principles on actions to incorporate ESG issues into investment practice.
- Last year PRI put 180 signatories, which are asset owners and managers, on notice after an annual audit suggested they had not demonstrated a minimum standard of responsible investment activity. It gave them two years to improve their performance. 88 have reportedly met the minimum requirements this year. PRI is also working with 42 signatories who are on track to do so by 2020. However, 50 groups with \$1tn in assets have failed to engage and are at risk delisting.
- Signatories commit to six principles designed to embed environmental, social and governance considerations into mainstream investing and hold invested companies to account on ESG failures. They must file an annual report to PRI detailing their progress.



- **Finally...** UNGPs author John Ruggie gave **a speech** in April on driving ESG investing into the mainstream. He addressed the importance of combining ESG criteria with financial analytics to manage risk and create shared value.

## Corporate Human Rights Benchmark



- The Corporate Human Rights Benchmark (**CHR B**), launched in 2013 by investors and civil society organisations as a public rank of corporate human rights performance, is being merged into the World Benchmarking Alliance (**WBA**), which itself is developing benchmarks to compare companies' performance on the SDGs.
- CHR B will continue to produce stand-alone benchmarks of "high-human-rights-risk sectors." In addition, it will work with the WBA team to support assessments of all 2,000 companies against key human rights criteria, drawing on the existing CHR B methodologies. More information can be found in the **WBA Transformations document**.
- CHR B's **2019 rank** is assessing 200 companies from the agricultural products, apparel, extractive and ICT manufacturing industries. It will be launched on 15<sup>th</sup> or 19<sup>th</sup> November in London (tbc) with a US launch on 10<sup>th</sup> December in New York.
- CHR B is also developing its methodology for a rank of 25 leading automobile manufacturing methodology in 2020, with company selection aligned with the WBA's future Corporate Climate Action Benchmark for the sector.
- The WBA's first set of benchmarks will be published in 2019 and 2020, covering food and agriculture, climate and energy, digital inclusion and gender equality and empowerment.



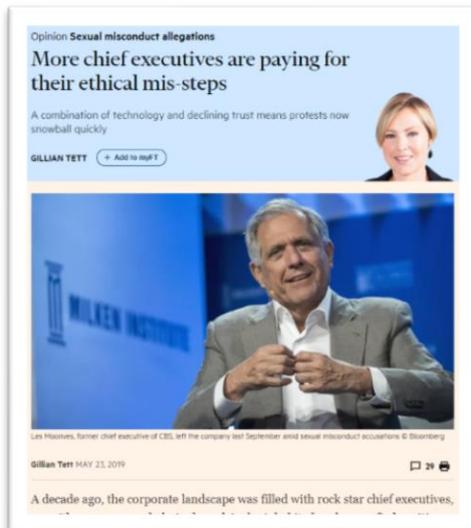
## U.S. Business Roundtable releases its "statement of purpose of a corporation"

- In August, the Business Roundtable - an association of CEOs of America's leading companies that "works to promote a thriving U.S. economy and expanded opportunity for all Americans through sound public policy" - released a statement on "**the Purpose of a Corporation**."
- The statement, signed by 181 CEOs including Jamie Dimon (chairman of JPMorgan Chase, and chairman of Business Roundtable - pictured above) moves away from shareholder primacy and includes a commitment to customers, employees, suppliers and communities.
- The statement marks the first time the nearly 50-year-old group has replaced maximising shareholder value as its priority with a more inclusive vision that takes account of other stakeholders. "Shareholder primacy" was an ethos championed by Nobel Prize-winning economist Milton Friedman and has been the foundation of corporate purpose.
- The **new mission statement** comes at a time when companies are increasingly taking stances on issues outside of the corporate sphere due to pressure from activists amplified by social media and demands from their own employees.

## Uber executive pay linked to diversity goals

In July, Uber **announced** that it will link pay for some senior executives to progress made toward improving diversity. Diversity will be used as one "key metric" to assess performance and determine executive compensation for senior leaders, the firm said. The policy also sets a target to increase the number of women in senior roles to 35% by 2022. Other tech firms including Microsoft have also tied some executive pay to improving diversity.





## Study finds more CEOs sacked for ethical reasons instead of financial performance

In May, Strategy& (the consulting arm of PwC) released its latest **survey on CEOs** showing that for the first time in the study's history, more CEOs were dismissed for ethical lapses than for financial performance or board struggles.

In 2018, 39% of CEO departures were due to ethical issues, such as "fraud, bribery, insider trading, environmental disasters, inflated resumes, and sexual indiscretions", while bad financial performance only

accounted for 35%. It is now ethics, not financial metrics, that are most likely to cause a top executive to be fired. **The Financial Times newspaper** adds that "this tally does not include those who were jumped before they were pushed."

**Why?** PwC analysts see little tangible proof that today's CEOs are actually behaving less ethically than their predecessors. Instead, they blame a factor that never used to be discussed much at business schools: culture, or a shift in standards and expectations.

## Update on the Bangladesh Accord

- In May, the Bangladesh Supreme Court accepted an agreement negotiated by the Accord and the Bangladesh Garment Manufacturers and Exporters Association (BGMEA) and endorsed by the Bangladesh Government. The agreement enables the Accord to operate in Bangladesh for another year and provides for a BGMEA team to work closely with the Accord to learn the core functions of Accord operations.
- **In May 2020** the Ready-Made Garment (RMG) Sustainability Council will implement all aspects of the Accord operations including inspections, remediation, safety training of workers, complaint mechanism and public reporting.



## Dates for the Diary!

- **14-18 October:** 5th Session of the IGWG on TNCs and OBEs (Ecuador-led UN Treaty process) in Geneva
- **25-27 November:** UN Forum on Business & Human Rights in Geneva
  - **NB:** Register early because spaces are limited this year due to building working at the Palais des Nations – click [here](#) to register!
  - The IOE will organise some events in the margins of the Forum (for example the Monday evening reception for business only) and it has a joint session in the **official Forum programme**. More info to follow.
  - The UN Forum itself is free to attend, **BUT** all participants are expected to cover their own travel and accommodation costs.

