

CSR & HUMAN RIGHTS NEWSLETTER

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In this newsletter

1. Editorial Linda Kromjong
2. Draft OECD Guidance On Due Diligence
3. ISO 26000 – a brief update
4. Debrief from 2016 Business and Human Rights Conference – Atlanta
5. SMEs and Human Rights survey
6. Human Rights, Sustainability Reporting and Responsible Business Conduct – What does business need to know?
7. Next meeting of the Intergovernmental Working Group on Business and Human Rights
8. New members in the UN Working Group on Business and Human Rights

Editorial

The Review Process of the ILO MNE Declaration has started

The ILO Governing Body decided in March 2016 to establish a tripartite ad hoc working group of eight members representing governments, four members representing workers and four members representing employers to review the text of the ILO MNE Declaration including its annex and addenda as well as the interpretation procedure. The aim is to provide recommendations for an up-date for possible adoption by the Governing Body in March 2017. The Working Group needs to agree in consensus on these recommendations (see in more detail IOE CSR & Human Rights Newsletter, Vol. 5, No 1 from March 2016).

The first meeting of the tripartite ad hoc working group took place from 3-5 October 2016 in Geneva. The objective in the first meeting was to identify areas in the Declaration which need to be updated. As a second step, the ILO will draft proposals for changes in the areas identified, which will be discussed and agreed on in the next meeting of the tripartite ad hoc working group, to take place from 23 to 25 January 2017.

Despite an extensive wish list for updates from workers and governments, the tripartite ad hoc working group could agree to ask the ILO to provide the next meeting of the group with an (updated) text on the following areas, among others:

- A new paragraph on migrant workers
- A new paragraph on forced labour
- A new paragraph on labour administration
- A reference to supply chains in the introduction
- A reference to the SDGs
- References to selected relevant International Labour Standards
- A reference to the UN Guiding principles, an explanation of the UN "protect-respect-remedy" framework as well as a paragraph on human rights due diligence.

The IOE will inform its members and partner companies about the ILO's outcome report for the meeting and will undertake consultations prior to the next meeting in January.

Yours sincerely,



Linda Kromjong
Secretary-General

Draft OECD Guidance On Due Diligence

In June 2016 the OECD Working Party on Responsible Business Conduct launched the "OECD Draft Due Diligence Guidance for Responsible Business Conduct". The aim of this initiative is to develop a common approach on due diligence in order to mainstream due diligence processes across business operations and to provide a common reference point for companies. The OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights call on companies to carry out risk-based due diligence but they do not include detailed instructions on how this should be managed in practice. The OECD Working Party on Responsible Business Conduct intends to fill this gap.

The draft contains a very detailed description of the due diligence components and tries to clarify the steps a company should complete in order to implement a proper process. Many detailed requirements are listed in legal wording over 53 pages. For instance, companies should publish a complex "Responsible Business Conduct Policy Commitment" and they should implement a comprehensive grievance mechanism. The general guidance also includes due diligence modules that address cross-cutting issues, such as wages, forced labour, informal workers, etc.

This new OECD guidance can assume great significance since many OECD states have developed National Action Plans on Business and Human Rights (NAPs) which require companies to implement a human rights due diligence process. In doing so companies should comply with the existing international standards, including non-binding standards. Since wide-ly-accepted, cross-sectoral guidance on due diligence does not exist, the new OECD guidance would be highly relevant for companies in practice. Furthermore, the OECD has a very high level of credibility and the OECD National Contact Points would observe the new specifications of the new guidance.

The BDA is concerned about the new approach the OECD is taking with regard to the new due diligence guidance. The draft guidance is not in line with the language of the OECD Guidelines and goes beyond the provisions agreed upon in the Guidelines. In fact, the OECD is developing a new "Responsible Business Conduct" standard. The requirements in the draft guidance are too demanding and currently the vast majority of German mid-sized companies – and also many "CSR-frontrunners" – would not be in line with it. On the contrary, the exist-ing OECD Guidelines and the UN GP give companies sufficient space to develop their tailor-made human rights due diligence process. This approach should be maintained. Therefore, it should be clarified in the draft guidance that National Contact Points should not take this text as a reference, since the aim of the document should only be to give practical advice to companies and to provide clarity about the realistic expectations and limitations companies face.

In view of these concerns, the OECD should work very closely with BIAC and the business community to ensure that the new guidance is drafted properly, and that it remains practical and realistic for companies around the world.

Paul Noll, Deputy Director, Confederation of German Employers (BDA)

ISO 26000 - a brief update

Every three to five years all ISO standards are systematically reviewed by the member countries. In October 2016 it is time for the international standard ISO 26000:2010 Guidance on social responsibility and the 163 members will be asked if they want to keep the standard as it is or if they would like it to be revised. In parallel, the ISO 26000 Post Publication Organization (PPO) will conduct its annual survey to find out more about how ISO 26000 has been used. The result of the vote and survey will be discussed with the PPO Stakeholder Advisory Group where the IOE, ILO and many others offer their advice. The PPO will then finalise the recommendations to be sent to the ISO Technical Management Board who decide the next steps, especially based on the systematic review vote. There is also support for and use of the standard in developing countries, and we expect and hope that many member countries will participate in the vote. So far, some users of the standard have indicated that, for example, the guidance on governance, connection to quality, inclusion of the Sustainable Development Goals, the revision of OECD Guidelines, and the UN Guiding Principles on Business and Human Rights are sufficient reason to justify the revision of ISO 26000. Others argue that the current practical framework in ISO 26000 works well and that a costly and difficult revision process is not necessary. It will be the ISO member bodies and Technical Management Board who will decide on whether or not to revise the standard.

If the outcome is to revise ISO 26000, the new version will be available at the earliest in the year 2020. Hopefully any revision process that takes place will be as inclusive and stakeholder-balanced as the previous one, in which 450 experts and 200 observers from 99 countries and 40 international organisations handled more than 25,000 written comments.

Staffan Söderberg, Vice Chair, ISO 26000 Post Publication Organization, ISO26000.info

Debrief from the 2016 Business and Human Rights Conference – Atlanta

For the ninth time, the Coca-Cola-Company hosted a high-level joint Business and Human Rights Conference sponsored by the U.S. Council for International Business, the U.S. Chamber of Commerce and the International Organisation of Employers. The one-and-a-half-day event on 22 and 23 September in Atlanta focused on a number of cutting-edge issues such as developments on the state duty to protect (Pillar 1), evolving corporate reporting frameworks related to adverse human rights impacts (Pillar 2) and emerging practice in providing access to effective remedy (Pillar 3).

Some of the key issues highlighted in the debate were, for instance, the human rights impact of changes in employment patterns, the need to engage with SMEs and to give them the tools they need to meet their responsibility to respect human rights, and the important role that governments have to play and the need for them to lead by example. It was emphasised that businesses often have a much more global vision than governments and that business is often well ahead in comparison to governments. Strategies were discussed to push the debate on business and human rights further into the board rooms, to raise awareness among colleagues and to facilitate learning. The importance of effective operational grievance mechanisms, which are often much quicker and better able to settle issues than legal proceedings, was stressed as was the need for these mechanisms to be legitimate. Participants exchanged experiences on the challenges encountered when reporting on human rights risks, as this still entails huge risks for legal proceedings as well as in terms of repudiation. The proliferation of tools and standards was addressed as was the need for businesses to have legal certainty as well as predictability. Moreover, the unintended consequences of initiatives and legislation were highlighted. International developments in the sphere such as, for instance, the follow-up to the 2016 discussion in the International Labour Conference on Decent Work in Global Supply Chains of the review of the ILO MNE Declaration, were discussed.

The tenth Atlanta Business and Human Rights Conference will take place on 14 and 15 September 2017 in Atlanta.

Editors' Note:

IOE members and partner companies are invited to contribute articles on CSR and human rights developments in their countries or enterprises, to share information on conferences and publications within the global business community, as well as to use this newsletter to exchange worldwide experience and best practice.

Please contact Matthias Thorns (thorns@ioe-emp.org) with your submissions.

Save the Date: IOE – Randstad – VON-NCW Business and Human Rights Conference, 19 April 2017, Amsterdam

IOE, Randstad and VON-NCW are jointly organising a Business and Human Rights Conference on 19 April 2017 in Amsterdam.

Among others the key themes will be:

- Ethical Recruitment
- Human Rights in the Supply Chains
- Implementing the SDGs – the role of the private sector

The conference will bring together a large number of very high-level speakers and experts. More information will be provided in due course.

SMEs and Human Rights survey

The IOE jointly with the ILO, co-sponsored by the UN Working Group on Business and Human Rights, is conducting a survey on SMEs and Human Rights. The purpose of this survey is to inform a report to be presented at the UN Forum on Business and Human Rights. We are conducting this short survey to better understand how SMEs are dealing with business and human rights, what their challenges are and what kind of support they need.

Access the survey by clicking on the following link:

<https://www.surveymonkey.com/r/7QFMQX3>

The survey is in English, French and Spanish. We kindly invite you to circulate this survey to your SME members and to encourage them to participate in it. It should take no longer than 20 minutes complete. The survey is fully anonymous. The deadline for completing the survey is 21 October 2016.

REGISTER NOW: Human Rights, Sustainability Reporting and Responsible Business Conduct – What does business need to know? A workshop for companies, employers' and business organisations on 18 – 19 October 2016 in Johannesburg

The IOE jointly with GRI, GBI, Centro Vincular and BUSA is organising a workshop on business and human rights on 18 and 19 October in Johannesburg. The aim of the workshop is:

to provide information on national, regional and global trends and developments regarding business & human rights, sustainability reporting and responsible business conduct.

to raise awareness of the content of the main international instruments, initiatives and policies and their impact on companies, such as the UN Guiding Principles on Business and Human Rights, GRI, UN Global Compact, ISO 26000, ILO MNE Declaration and the OECD Guidelines for Multinational Enterprises.

to provide companies with guidance on how to implement the UN Guiding Principles "step by step" and how to start sustainability reporting.

to assist employers' organisations in developing a policy strategy and service offer in the area of human rights, sustainability reporting and responsible business conduct.

to know where and how to get support.

Registration is still possible with Ms. Anetha Awuku: awuku@ioe-emp.org

A similar workshop will be held on 1 and 2 December in Jakarta. The national partner there is APINDO.



Co-funded by the European Union

Registration for the 2016 UN Forum on Business and Human Rights is open

Registration for the 2016 UN Forum on Business and Human Rights (14-16 November, Geneva, Switzerland) has opened. The IOE encourages you to participate in the world's largest annual gathering on business and human rights. The IOE would like to ask IOE Members to inform their company members about the event. Although the number of business participants increased last year, it is important to ensure that business is adequately represented in the meeting.

The title for this year's Forum is "Leadership and Leverage: Embedding human rights in the rules and relationships that drive the global economy". It will examine three main areas:

1. State leadership and leverage: discussions will focus on the need for Governments to step up their efforts to protect human rights and lead by example in their own business-related operations.
2. Business leadership and leverage: the sessions will unpack the dual concepts of leadership and leverage across the company value chain and in their relationships with various stakeholders.
3. The role of financial institutions: participants will take a closer look at how human rights intersect with capital markets and will explore the responsibility of the finance community in fostering respect for human rights.

The IOE will also organise side events on the follow-up to the 2016 ILC discussion on decent work in global supply chains as well as on SMEs & human rights. Moreover, the IOE, jointly with other business organisations, will organise a business meeting on 14 November 2016 at 18:30, followed by a reception.

Please register for the 2016 UN Forum on Business and Human Rights at the following link:

<http://www.ohchr.org/EN/Issues/Business/Forum/Pages/2016ForumBHR.aspx>

Next meeting of the Intergovernmental Working Group on Business and Human Rights

The second meeting of the Intergovernmental Working Group on Business and Human Rights will take place in Geneva from 24 to 28 October 2016. The Intergovernmental Working Group (IWG) was established through resolution A/HRC/RES/26/9, adopted by the Human Rights Council on 26 June 2014. The IWG is mandated to "elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises". The chair of the IWG is Ambassador María Fernanda Espinosa, Permanent Mission of the Republic of Ecuador to the United Nations in Geneva.

Resolution A/HRC/RES/26/9 provides that "the first two sessions of the open-ended inter-governmental working group shall be dedicated to conducting constructive deliberations on the content, scope, nature and form of the future international instrument". Thus, the second session of the IWG will continue to elaborate on the scope of the instrument and particularly on the question of whether the proposed treaty should only address transnational companies (as provided in the Human Rights Council's Resolution) or all companies. The meeting will also focus on the issue of access to remedy and particularly extraterritorial jurisdiction. The IOE will represent business throughout the IWG and also participate in several IWG panels. Jointly with ICC, BIAC and WBCSD the IOE has also provided a submission to the IWG with further considerations on the treaty process from the main international business organisations. The submission can be found at the following link:

[UN TREATY PROCESS ON BUSINESS AND HUMAN RIGHTS: Further considerations by the international business community on a way](#)

New members in the UN Working Group on Business and Human Rights

After Puvan Selvanathan and Margaret Jungk stepped down from the UN Working Group on Business and Human Rights, two new members joined the Group:

Surya Deva has replaced Puvan, representing the Asian region in the Working Group. Surya Deva is an Associate Professor at the School of Law of City University of Hong Kong. More information can be found at the following link: <http://www.ohchr.org/EN/Issues/Business/Pages/Members.aspx#deva>

Anita Ramasastry has replaced Margaret Jungk, representing the Western countries in the UN Working Group. She is the Roland L. Hjorth Professor of Law and the Director of the Graduate Program in Sustainable International Development at the University of Washington School Of Law. More information can be found at the following link:

<http://www.ohchr.org/EN/Issues/Business/Pages/Members.aspx#ramasastry>



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