

CSR & HUMAN RIGHTS NEWSLETTER

August 2017



Editorial

THE SPRING / summer period has seen a flurry of activity on human rights and CSR. The UN remains very active with its work on access to remedy, which is also the main focus of the UN Forum on Business and Human Rights (27-29 November), and there are many efforts by various actors to translate the Sustainable Development Goals to business.



However, there are **two critical developments** that require IOE members' attention and active engagement over the next few months:

1. **ISO: Developments concerning Social Responsibility and OSH:**
 - For more info, see page 4 of this newsletter.
 - Please also refer to the communication sent to IOE members on 2 August.
2. **The third session of the UN Treaty process on business and human rights (23-27 October):**
 - For more info, see page 2 of this newsletter.

We are focusing our efforts on these developments and will continue to update members on our position and our requested action of you.

This newsletter also includes updates on national legal developments, notably in Australia where the Government announced in August that it would create legislation on modern slavery, and the IOE's position on the Global Deal spearheaded by the Swedish Government.

Please let myself and Peter Hall (hall@ioe-emp.com) know if you have any queries.

I wish everyone a good return from your holidays and a productive autumn.

Yours sincerely,



Linda Kromjong
 Secretary-General

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UN activities

UN Treaty process on business & human rights (led by Ecuador)



Background:

- The Intergovernmental Working Group (IGWG) meets for its third session in Geneva from 23 to 27 October.
- Ahead of the third session, Ecuador (as Chairperson-Rapporteur) will prepare "elements for the draft legally binding instrument for substantive negotiations at the commencement of the third session of the working group on the subject, taking into consideration the discussions held at its first two sessions".
- Ecuador says it will make the "elements" public one month before the third session (around 23 September).
- Its acting Ambassador told the IOE that it will not share any information before then. To date, others including OHCHR, the UN Working Group and many Governments have not seen the draft elements. We continue to work hard to get information so we can prepare a meaningful response ahead of October.
- Please note that the Government of Ecuador is under-resourced, disorganised and very slow to share information – even with OHCHR which provides logistical and technical support.
- The IOE and some of our members participated in the first two general sessions on the potential scope of a treaty in 2015 and 2016. Our future engagement/response needs to be based on the latest developments (ie: responding to the "elements" paper that Ecuador is preparing).

Planned IOE action – prior to the October session:

- Get the "elements" paper and share it with members, outlining the main points/issues.
- Convene a call/webinar to discuss our position/response and tactics – early Sept (date tbc).
- Assist members to actively communicate this position with national Governments, ahead of session.
- Liaise with other business organisations and companies to develop a shared position.
- Prepare for the IGWG's session in October: talking points, tactics etc.



OHCHR's project on State-based non-judicial grievance mechanisms

- IOE members are encouraged to complete an **OHCHR questionnaire** on State-based non-judicial mechanisms relevant to business and human rights.
- There are 7 questions that aim to find out different experiences of labour inspectorates, national contact points under the OECD Guidelines for Multinational Enterprises, and/or other State-based non-judicial mechanisms.
- Deadline to complete the questionnaire (in ENG, FRE & SPA): **15 September 2017**.
- Background:
 - The questionnaire is part of OHCHR's broader "Accountability and Remedy Project" (ARP), which seeks to improve accountability and access to remedy in cases of business involvement in human rights abuses. The project is mandated by the UN Human Rights Council.
 - OHCHR is currently gathering information about the effectiveness of "State-based non-judicial mechanisms" in different jurisdictions. This project – known as ARP II – follows OHCHR's previous work on "domestic law remedies in cases of business involvement in severe human rights abuses" (ARP I).
 - The ARP II project may result in recommendations to Governments, as well as possible follow-up projects to help ensure implementation of any guidance.

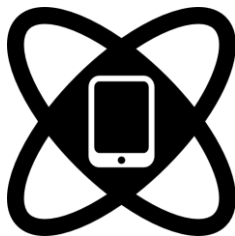
CESCR General Comment No. 24

- In June, the UN Committee on Economic, Social and Cultural Rights (CESCR) published its **General Comment No. 24** on "State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities."
- The General Comment covers many topics, including: non-discrimination, trade and investment, tax, public procurement, indigenous peoples, corruption, privatisation of public services, intellectual property rights, extraterritorial obligations, mandatory human rights due diligence, and the minimum and living wage.
- Most contentious elements:
 - It says States should "require" companies to exercise human rights due diligence and it incorrectly attributes this requirement to the UNGPs (something we repeatedly pointed out as inaccurate).
 - It devotes a section to States' extraterritorial obligations under the Covenant, in which it refers to trade and investment agreements, financial and tax treaties, judicial cooperation, and mandatory human rights due diligence (notably in the extractive industry).
 - It encourages States to establish "minimum wages consistent with living wage and fair remuneration."
 - It suggests that the "shifting the burden of proof" in judicial cases "may be justified" in some situations.
 - It refers, unhelpfully, to the corporate sector's "sphere of influence", a term/approach that **Professor John Ruggie** opposed when developing the UNGPs.

- The IOE engaged with the Committee to try and ensure that it stayed within the boundaries of the UNGPs and not mis-quote them. We spoke about the major limitations of extra-territorial obligations and the challenges and unforeseen consequences of mandatory human rights due diligence.

UN Working Group on Business & Human Rights

- Click [here](#) to read about the Working Group's (WG) new project on "human rights defenders". The WG is gathering ideas on how to encourage companies to support human rights defenders, including by developing guidance. The IOE is actively engaging in this initiative, which is developing over 2017/18.
- New reports:
 - Best practices and how to improve on the effectiveness of cross-border cooperation between States with respect to law enforcement on the issue of business and human rights – **To read, click on report to the Human Rights Council (no. A/HRC/35/33)**
 - Challenges and opportunities: Small and medium-sized enterprises (SMEs) and human rights – **To read, click on report to the Human Rights Council (no. A/HRC/35/32)**. See also the **Executive Summary**.



New \$5 million Microsoft / OHCHR partnership

- In May, Microsoft and OHCHR announced a partnership to develop and use technology to help tackle human rights issues.
- As part of the agreement, Microsoft will provide a grant of \$5 million (USD) to support the work of the UN Human Rights Office in the development and use advanced technology designed to better predict, analyze and respond to critical human rights situations, that are proliferating in many parts of the world and growing in complexity.
- Click [here](#) to read more.

Sustainable Development Goals (SDGs)

There are various attempts to translate the SDGs to business. One key focus area is how to demonstrate that implementing the UN Guiding Principles on Business and Human Rights (UNGPs) means contributing positively to the achievement of the SDGs.



Some key messages on this topic:

- The SDGs are a CEO-level issue and have the potential to bring human rights risk (ie: the "people" part of the SDGs) to the attention of the C-Suite. In addition, the SDGs have helped give essential visibility to sustainability functions within a company.
- However, the SDGs have not been written for business and there is a major challenge – given the many targets etc. – in translating their applicability to the private sector.
- Implementing the UNGPs means that a company is making a positive contribution to the SDGs. For example, to mitigate harm to people means realising human rights and to remove barriers means empowerment and opportunities for people.
- Collective action / joint industry initiatives also help create leverage for business to make a meaningful contribution. The SDGs concern many systemic issues that cannot be solved by one actor – be it a Government, let alone one company – by itself.
- In relating the SDGs to one's core business, companies should resist looking at different SDG indicators/frameworks first, but instead examine their own businesses – products, systems, staff composition, operating contexts, etc. - and look at how this relates to the different 17 goals. This is less confusing to business.

Useful links:

- The Global Business and Sustainable Development Commission published a [report](#) to outline the case for business to respect human rights and help achieve the SDGs.
- Commentary: [What do the SDGs have to do with Corporate Respect for Human Rights?](#)
- Respect for Human Rights: [Creating a Holistic Framework for Business Contributions to the SDGs](#).
- UN Working Group recommendations: [10 key recommendations to Governments and businesses: Embedding "protect, respect, remedy" in SDGs implementation](#)

ISO: Important developments



Below are important developments regarding the work of the International Organization for Standardization (ISO) on social responsibility - two ongoing and one new - which require employers and business' urgent and ongoing attention and action:

Click [here](#) to read the IOE's position on the three developments below

1. Ongoing: ISO 26000 – systematic review

- The ISO Technical Management Board will decide on whether to "revise" or "confirm" ISO 26000 on 19 September 2017.
- Requested action:**
 - If you have not already done so, please get in touch ASAP with your country's member of the **ISO Technical Management Board (TMB)** and lobby them to "confirm" ISO 26000 during the meeting on 19 September and not "revise" (not even a "light revision"). Click [here](#) to read the IOE's points on ISO 26000.
 - Revising ISO 26000 could precipitate a major substance change to the guidance so that it becomes standardized; certifiable; subject to audit; and/or used for regulatory or contractual purposes. This would not advance social responsibility but merely add unhelpful burdens on companies, especially SMEs.
 - Given the very recent development of **IWA 26** (see below), there is no need to further amend ISO 26000.

2. New: Proposal for a new ISO Technical Committee on Social Responsibility

- The Swedish ISO member, SIS, has submitted an even more worrying and far-reaching **proposal** to create a new and permanent ISO "Technical Committee on Social Responsibility."
- Such a Committee could allow ISO to further change the nature/scope of ISO 26000 and create a raft of new standards, some of which would likely be certifiable and apply to management systems on social responsibility.
- The deadline for national standards bodies to vote on this proposal is: 10 October 2017.
 - Click [here](#) to read the SIS proposal
 - Click [here](#) to see the IOE's position on this proposal
 - Click [here](#) to read the joint IOE-ITUC letter to ISO to oppose this proposal
- Requested action:**
 - We urge you to immediately lobby your national standards body ASAP to vote against this terrible proposal. Please contact them early in case they decide to vote in the coming weeks.
 - Please contact other relevant stakeholders in your country, including your members, and urge them to also lobby the national standards body to vote against this proposal.

3. Ongoing: New standard on OSH management systems (ISO 45001)

- In July, ISO members approved a problematic "Draft International Standard" (DIS) on occupational health and safety management systems.
- The relevant ISO Committee (**ISO/PC 283**) is holding one (possibly last) meeting to go through the draft standard in Malaysia from 18 to 23 September.
- Requested action:**
 - We urge our members, especially those based in Southeast Asia, to attend and actively participate in the ISO Committee meeting in Malaysia.
 - It is the last opportunity to introduce changes to make the standard more acceptable for companies.

New: IWA 26 - Using ISO 26000 in management systems

In August, ISO published "**IWA 26:2017**" – an international workshop agreement that enables companies and organisations to use the ISO 26000:2010 guidance in their existing management systems.

The 36-page document, which costs approx. \$US 120, was drafted by ISO members (led by **SIS**) with the input of external stakeholders, including some IOE members. IWA 26 aims to:

- Improve the performance of a management system by incorporating social responsibility guidance;
- Improve social responsibility performance by using a structured management system approach.

IOE view: While it has some useful elements, it is a confusing document at times. Most importantly, though, its arrival illustrates why revising ISO 26000 is illogical and poorly timed.

IWA 26 will exist for 6 years, after which it will be withdrawn or further developed (if an ISO member proposes this).

National legal developments



France

- Following the creation in February of the French corporate "duty of vigilance" law in relation to human rights, health and safety and the environment, we recommend that you read [this commentary](#) by two legal experts who are trying to counter the current misguided understanding of the UNGPs in France.



Australia

Modern slavery legislation

- In August, Australia's Minister for Justice **announced** that the Government will require "large businesses" to report annually on their actions to address modern slavery.
- The government has issued a **discussion paper**, and opened a process of **consultations** on the formulation of modern slavery legislation in Australia.
- The Australian Chamber of Commerce and Industry (ACCI) **welcomed** the consultative approach and stressed the need for government to work with business to develop an effective reporting framework.
- Deadline to provide submissions on the design of legislation: 20 October 2017.
- Important considerations:
 - What the threshold will be for reporting obligations, and which cohort of Australia's largest businesses will be required to report? As canvassed the revenue threshold for reporting would be set at \$100 million AUD (\$78.3 million USD), picking up around 2,000 of Australia's largest companies. Employers have previously called for a target cohort of 100 - 200 companies, and a much higher revenue threshold, however there are also already calls to lower the proposed threshold and to require reporting from a much larger cohort of companies.
 - Whether Australia should have a modern slavery Commissioner, as applies in the UK, and what the powers and responsibilities of such a position would be?
 - Whether there should be remedies and penalties against companies, and compensation for victims of modern slavery?
- Click [here](#) to see which companies are supporting this proposed law.

Parliamentary inquiry in modern slavery

- In parallel, the Australian Parliament's **inquiry** into the establishment of modern slavery legislation continues and is due to report by early December. Public hearings are underway and have closely examined the UK Modern Slavery Act (2015) and experiences of that law.
- The Government Committee visited the UK to learn about its law. Also, Kevin Hyland, the UK Anti-Slavery Commissioner, gave **evidence** to the Australian Parliamentary inquiry.
- The Committee is being urged to redress perceived 'inadequacies' in the UK Modern Slavery Act, in particular seeking reporting obligations and remedies beyond those provided for under the UK law. Developments in other nations (e.g. France, the Netherlands and USA) have been noted but with less engagement.
- An interim report on supply chain considerations is expected shortly, summarising issues raised to the Committee.
- ACCI** made a **submission** to the inquiry, and gave **evidence** in early August.
- A different Parliamentary **inquiry** into human trafficking, slavery and slavery-like practices **reported** in July 2017. This cross party inquiry made a range of recommendations encompassing human trafficking, slavery and slavery-like practices, largely addressing practices that are criminal in nature.

A separate human trafficking and slavery inquiry

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UK: Modern Slavery Act

- Two year's after the introduction of the UK Modern Slavery Act, **consultants** and **civil society** are providing an assessment of company reports on the law's Transparency in Supply Chains clause (TISC) – section 54.
- Click [here](#) to visit the UK "Modern Slavery Registry"

Italy

- Human Rights International Corner (HRIC) has conducted **an assessment of the Italian national action plan (NAP)** on business and human rights (published in December 2016), with a specific focus on the commitment to "conduct a comprehensive study of the Law 231/2001 in order to evaluate potential extension of the scope and application of the administrative liability of legal entities."

Mexico

- During the summer, nine NGOs declined to endorse Mexico's draft national action plan (NAP) on business and human rights, citing its absence of due diligence & transparency requirements on companies.
- In a **letter** to the UN Working Group, they highlight the NAP's failure to recognize "the obligation"* for enterprises to conduct human rights due diligence processes in their operations and value chains (including beneficial ownership) to identify, avoid, mitigate and remediate damage.
- *Although laws that require companies to carry out human rights due diligence are emerging in some countries, the UNGPs say that companies have a "responsibility" to carry out human rights due diligence, not an obligation. **UNGP 4**, however, spells out instances where States may wish to "require" human rights due diligence such as when business enterprises "are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies."



Report from IOE joint BizHumanRights conference in April

The IOE, together with the global staffing and recruitment company **Randstad** and the Dutch national employers' federation **VNO-NCW**, hosted a business and human rights conference in Amsterdam in April. Some 150 people – mainly from business – attended the event, which also included the participation of Dutch Trade and Development Minister Lilianne Ploumen. Click [here](#) to read the summary report from this conference.

G20 German Presidency

The German Presidency of the G20 in 2017 culminated in a Declaration that included a specific chapter on "sustainable global supply chains". The G20 committed "to fostering implementation of labour, social and environmental standards and human rights in line with internationally recognised frameworks" such as the UNGPs, MNE Declaration and OECD Guidelines. It also pledged to "work towards" establishing policy frameworks, such as national action plans (NAPs), and underline the responsibility of business to exercise due diligence, as well as the importance of fair and decent wages and social dialogue. It also pledged to take "immediate and effective measures" to eliminate child labour by 2025, forced labour, human trafficking and all forms of modern slavery.



- Click [here](#) to read the final G20 Leaders' Communiqué / Declaration.
- Click [here](#) to read the joint B20/L20 statement.



The Global Deal – IOE position

- What?** A global initiative – set up by the Swedish Government – that aims to encourage governments, businesses, unions and other organisations to make commitments to enhance social dialogue.
- The IOE's position:** "Regrettably, this is an initiative on social dialogue that was not developed with the involvement of the social partners. We are concerned that **the Global Deal** does not provide real or measurable added-value and that it draws attention away from and complicates efforts in implementing existing tools, instruments and processes both within and outside of the ILO."
- The IOE, together with BIAC, continue to monitor the Global Deal's work and output.

Upcoming events



IOE workshop on "Responsible Business Conduct" (18-19 September, Ghana)

- The IOE, GRI and Centro Vincular will lead a two-day workshop in Kumasi, Ghana.
- **Aim:** To raise awareness and deepen understanding of the main international business and human rights initiatives and instruments on promoting responsible business conduct and transparent reporting.
- Click [here](#) to see the "draft agenda"
- For more information, contact: Anetha Awuku (awuku@ioe-emp.com), Peter Hall (hall@ioe-emp.com) & Matias Espinosa (espinosa@ioe-emp.com)

IOE workshop on "Responsible Business Conduct" (17-18 October, Tanzania)

- The IOE, GRI and Centro Vincular will lead a two-day workshop in Tanzania.
- **Aim:** To raise awareness and deepen understanding of the main international business and human rights initiatives and instruments on promoting responsible business conduct and transparent reporting.
- For more information, contact: Anetha Awuku (awuku@ioe-emp.com), Peter Hall (hall@ioe-emp.com) & Matias Espinosa (espinosa@ioe-emp.com)

Third Inter-Governmental Working Group session on the International Treaty on Business & Human Rights (23-27 October, Geneva)

- Ahead of the third session in October, Ecuador (as Chairperson-Rapporteur) will prepare "elements for the draft legally binding instrument for substantive negotiations at the commencement of the third session of the working group on the subject, taking into consideration the discussions held at its first two sessions".
- Ecuador said that it will make its "elements" paper public approximately one month before the event (ie: mid-late September).
- Click [here](#) to read a summary report from a roundtable discussion on "elements of a possible binding international instrument on business and human rights" (convened by Notre Dame University in May).
- **IGWG website:** <http://www.ohchr.org/EN/HRBodies/HRC/WGTransCorp/Pages/IGWGOnTNC.aspx>

ILO Expert Meeting on Export Processing Zones (21-23 November, Geneva)

- Eight employers representatives will take part in an ILO tripartite "Meeting of Experts to promote decent work & protection of fundamental principles & rights at work for workers in Export Processing Zones" (EPZs).
- The ILO Governing Body approved the meeting at its November 2016 session (GB.328/INS/5/1(Add)), as part of its follow-up to the 2016 ILC resolution concerning decent work in global supply chains.
- The aim of the three-day meeting is to:
 - Understand the different characteristics of EPZs, especially those linked to global supply chains.
 - Provide "outcomes" that will help with the design and implementation of the ILO's "action plan" * to promote decent work in EPZs, including those linked to global supply chains.
- *The ILO action plan may lead to:
 - Development of social & environmental performance indicators for investment promotion agencies;
 - Guidance on how to address the problems of application of international labour standards in EPZs through tripartite dialogue and following the CEACR comments related to EPZs;
 - Collaboration with international organizations to provide policy advice and technical assistance on applying sustainable development models for EPZs; and
- The Office will prepare a background report ahead of the Meeting of Experts.
- This meeting follows previous ILO discussions on this subject, such as the Tripartite Meeting of Export Processing Zone-Operating Countries ([Geneva, 1998](#)) and the Governing Body's discussion at its 286th Session ([March 2003](#)) on employment and social policy in respect of export processing zones.

2017 UN Forum on Business & Human Rights (27-29 November, Geneva)

- The central theme is: "**Realizing Access to Remedy**".
- The IOE submitted joint sessions proposals on (i) Leverage and access to remedy; and (ii) Breaking out of the BizHR "echo chamber"
- The IOE has **urged** the Forum organisers to ensure a critical mass of female voices in the programme.
- As in past years, the IOE plans to convene a business evening event on Monday 27 November.

Third UN Regional Consultation for Latin America and Caribbean (12-14 December, Santiago)

- This consultation is being convened by the UN Working Group on Business & Human Rights (Dante Pesce). For more information, please contact Ms. Alejandra Parra at the regional office of OHCHR (parra.consultora@ohchr.org)