



International Organisation of Employers  
Organisation Internationale des Employeurs  
Organización Internacional de Empleadores  
*The Global Voice of Business*



# International Business and Human Rights Conference

**Wednesday 18 April 2018**

**MEDEF, 55 Avenue Bosquet, 75007 Paris**

## Conference summary

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### Introduction

Some 100 business representatives participated in the IOE's sixth "International Business and Human Rights Conference" jointly convened this year in Paris on 18<sup>th</sup> April by the IOE, MEDEF and Sodexo.

The one-day conference examined important elements of the corporate responsibility to respect human rights, such as:

- State policy making on business and human rights;
- Human rights due diligence;
- Supply chain risk management;
- Stakeholder engagement;
- Access to remedy; and
- Business' contribution to the Sustainable Development Goals (SDGs).

The event followed the Chatham House rule, in which "information disclosed during the conference may be reported by those present, but the source of that information may not be explicitly or implicitly identified."

The next joint IOE conference on business and human rights will be hosted by the Coca-Cola Company in Atlanta on 13-14 September 2018.

### State policy making on business and human rights

Participants discussed the impact of State policy measures on driving the business and human rights agenda and how business can understand the trend from soft standards to hard law. The question was raised whether new laws concerning the human rights due diligence process are giving effect to the UN Guiding Principles on Business and Human Rights (UNGPs) or if they are re-defining the responsibility to respect human rights. A discussion also took place on how governments and the business community can engage effectively to shape practical and effective policies regarding human rights.

One participant explained that the UNGPs make clear that States should consider the full range of measures – voluntary and mandatory, national and international – to foster respect for human rights (referred to as the "smart mix" in the UNGPs) and added that multi-stakeholder dialogue is part of the fabric of business and human rights. In response, another participant commented that many had not understood Pillar 1 of the UNGPs (the State duty to protect human rights) as an invitation for Governments to introduce additional legislation on companies, but instead that they should start by implementing existing ones.

It was suggested that we should expect new international norms to be created at some point. In fact, Professor John Ruggie did not rule this out when the UNGPs were endorsed in 2011, which marked the "end of the beginning" in his words. However, it remains to be seen what the scope, form, focus and timing for any new norm would be. The point was made that States, in multilateral fora at the international and regional level, do not appear to have a coherent and clear vision on how to implement the UNGPs. Instead, we see a variety of steps and measures being taken by some Governments on business and human rights. One important initiative - the UN Treaty initiative led by Ecuador to establish a binding instrument on transnational corporations and other business enterprises - is a cause of much concern and confusion. Against this backdrop, two large policy-related questions remain: (i) what can be done to ensure that all States fulfil their existing obligations in their own jurisdictions; and (ii) how to get more companies to respect human rights around the world in a more standardised way? It was suggested that business should try to engage more with Governments where they do business to apply pressure on them to address national-level human rights challenges.

## Human rights due diligence

The second session explored how companies can carry out "effective" and "reasonable" human rights due diligence which is meaningful in practice and complies with emerging regulation.<sup>1</sup> Company representatives described the actions they are taking to meaningfully know and show that they respect human rights in practice. They described how they embed and operationalise human rights due diligence and risk management internally and how this work allows them to comply with laws and how it squares with internal expectations and the growing expectations of regulators, business partners and other external stakeholders.

It was noted from the outset that human rights due diligence is not a new exercise; companies have a history of considering and managing their risk appetite as it concerns society and other issues. What the UNGPs brought, however, was an important refocusing of the concept of risk so that companies started to examine risk to people not risk to business – although the two naturally converge.

Human rights due diligence is an ongoing risk management process that enables a company to identify, prevent, mitigate and account for how it addresses its adverse human rights impacts. It includes four steps: (i) assessing actual and potential human rights impacts; (ii) integrating and acting on the findings; (iii) tracking the company's responses; and (iv) communicating about how impacts are addressed. In addition, engaging with potentially impacted stakeholders is a practice that cuts across the due diligence process.

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<sup>1</sup> For example, two recent French laws - "Sapin II" and "[Devoir de Vigilance](#)" - impose on companies systemic due diligence and risk management requirements regarding business integrity, human rights and environmental risks.



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The way in which companies are carrying out human rights due diligence in practice reflects their size, structure and sector, as well as their operational context and their previous engagement on human rights. Some concrete examples of how companies started embedding human rights due diligence in their companies – prior to the emergence of laws – include:

- One company started by focusing on internal information-sharing and training on human rights, including by setting up a working group of various business functions including legal affairs, business development and sustainability. It also hired external consultants with human rights expertise to carry out impact assessments and it complemented this work by creating specific taskforces on the various laws.
- Another company focused on its operations in one particularly challenging country. It quickly learned that by examining the broader picture and looking at human rights risks in the lifecycle of one of its products (not just undertaking a general human rights impact assessment using an externally-developed tool) it could better understand its risks and set up more productive conversations across the relevant company teams.
- Another company used a merger as an opportunity to consider its human rights risks. It leveraged the endorsement of the UNGPs in 2011 as a way to draw wider internal attention to the need to respect human rights and to continue to grow awareness it invited Professor John Ruggie to address the company's Executive Committee. By bringing in an authoritative external voice to senior leadership, the topic grew in importance internally and led to a decision to revise the company Code of Conduct as well as efforts to ensure the company did not separate out its core business and social responsibility functions.
- Another company that faced external pressure and scrutiny on its human rights impacts adopted a bottom-up, country approach to its management of human rights risk. It focused on translating the company's policies and the broad human rights terminology into practical action for an operations manager to understand what issues like forced labour mean in practice and what should be done to prevent and address it.

While the creation of a law may be a trigger for companies to undertake human rights due diligence in the future, a so-called "burning platform" (management jargon to describe the urgency of a situation to change company behaviour) can also be an important reason why a company undertakes or strengthens its due diligence efforts. "Burning platforms" can be externally-imposed, such as when a firm faces a lawsuit or a complaint lodged with a non-judicial mechanism like a National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises. Equally, companies may decide to create their own "burning platform" experience to kick-start the journey such as by bringing in an external expert to discuss the importance of the topic with the company's Board of Directors, soliciting views from stakeholders on a materiality map and ensuring that human rights is included in this discussion, or soliciting input from investors who are focused on the company's longer-term sustainability.

Experiences of stakeholder engagement led some companies to pro-actively build strong dialogue with NGOs and trade unions before an issue or crisis arises. This allows a company to learn about issues before they escalate and cause potential reputational damage. Other companies explained that respect for human rights is not a competitive issue and, therefore, it is important to engage in collaborative initiatives with other companies especially when faced with systemic issues in challenging regions. Furthermore, stakeholder engagement also includes internal, cross-functional dialogue and having conversations with colleagues who may not be particularly knowledgeable or advanced on this topic. For example, one company included a proposal to ensure workers have a living wage in its company policies, which initially made for tough conversations with the human resources department. Another developed a guide for lawyers on how to identify human rights issues when negotiating deals and transactions because the human rights expert is unlikely to be involved in those actions. A key

lesson is that you need to be resilient and accept that you are unlikely to get praise for conducting the first human rights impact assessment for example. However, with time people start to see the value of this work.

Other key takeaway points from the discussion included:

- With regard to new laws, companies should focus their efforts on carrying out the human rights due diligence process and not allow compliance with the law alone to drive their action. By conducting human rights due diligence a company can comply with the law and also meet the requests of various stakeholders, including NGOs and benchmarks.
- It is important to think about the company's own salient human rights risks and not just follow the pattern of NGO campaigns. For example, modern slavery may not be the top issue for every company and the company should own its discourse and engagement with others. Linked to this, a company should consider how to prioritise its efforts based on the severity of the impact.
- It is important to build in the business case for respecting human rights. It takes time and effort to get a company to carry out human rights due diligence and the merits of doing so should be clearly explained from the outset.
- Companies should start internally (ie: invest time in engaging with senior managers and operational teams) and not rush to their supply chains.
- Companies should build on what already exists with their policies and processes;
- Cross-functional dialogue and training is an important upfront investment so different company functions know and understand the issues they are looking for.
- Be practical, realistic and humble. When engaging with smaller suppliers invest time to listen to their stories, challenges and perspectives rather than rushing to audit or train them on human rights without their buy-in. Some companies hold "supplier days" in which they try to better understand how factories handle labour issues for example. Carefully consider how to frame your engagement with suppliers so you strike a partnership-style tone, not a policeman approach. It is can be more effective not to use the term "human rights" but instead speak about "socio-security and ethics" and recognise that smaller suppliers may prefer training and incentives over audits or questionnaires because they have the feeling that they have the physical person coming to give them consulting in some respect.
- Don't give up and bring business colleagues into the conversation as much as possible. Eventually the conversation will stick.

## Supply chain risk management

The third session examined how companies can best identify and address problems in global supply chains. It focused on the practical approaches, beyond traditional social compliance auditing, that companies can take to ensure appropriate due diligence and effective means to address risks in multiple tiers of their supply chains.

Moving beyond the first tier poses particular challenges such as a lack of visibility and reduced leverage to help make improvements. While audits have their place and are unlikely to end as a common-business practice any time soon, participants explained that buyers and retailers can complement their audits with other measures so they act more in partnership with suppliers and less as a policeman. Complementary approaches include: providing additional resources to suppliers to help build their capacity, listening to their challenges, offering training, providing rewards and incentives for improvements; and working in collaboration with other buyers to leverage change.

One company explained that it divides up its suppliers according to whether they are "strategic suppliers" or "non-strategic suppliers" and it carefully considers the best moments / opportunities that it has to exercise leverage with them. For example, it provides long- and mid-term incentives to those suppliers that are key to the business and it has introduced a training module for its non-strategic suppliers. To get beyond the first and second tier, it has also joined a business initiative to work in partnership with others. On top of this, it will require strategic suppliers to tell it the names of two of their suppliers. The company also communicates its expectations of suppliers through specific contract provisions and when issues are identified it insists on a supplier implementing a corrective action plan before it works with it again.

Another company spoke about the importance of having as much direct communication with workers in its supply chain as possible by spreading the use of posters (produced in local languages) across factories that it sources from to provide workers with information on how to communicate allegations of harms, such as through hotlines. Engaging with NGOs and trade unions in countries where firms have operations also helps bring issues to a company's attention. Furthermore, international framework agreements (IFAs) can provide additional sets of eyes on the supply chain and allow Global Union Federations to bring issues in the supply chain directly to a company's attention privately rather than creating a public campaign in response to an issue.

A business association spoke about the merits of taking collective action to share information on suppliers and reduce audit fatigue by having more shareable audits of suppliers for companies operating in the same sector and region. This can be complemented by common Codes of Conducts and capacity-building efforts with KPIs that drive impact.

## **Stakeholder engagement**

The fourth session focused on the importance of stakeholder engagement. Participants discussed with whom a company should consult and engage with to help it respond to human rights risk. This session drilled down on what a good company approach to stakeholder engagement looks like in reality. This component of human rights due diligence, contained in emerging laws and evolving standards, can present challenges concerning how to engage effectively with civil society actors but it may also offer opportunities for developing robust means of identifying and addressing risks.

From the outset, it was made clear that stakeholder engagement is not necessarily complicated, but it is a lengthy process and it requires a lot of work. Therefore, companies should carefully think about the value of engaging with different stakeholders, including who and how. For example, there is difference between high-level and ground-level stakeholder engagement. Engaging with a variety of stakeholders can also help make a company humble in its work and ensure it gets recognition from credible voices when it prevents or addresses harms.

One company described how it engages with colleagues internally by trying to break down the silos between management, operations and support. While it took the company two years to develop a human rights policy and cross-functional committee this was critical embedding work that meant that the company was able to address complex human rights risks more meaningfully. The company also referred to the power of the messenger:

companies may need to draw on external advice/voices from NGOs and investors etc. because of the natural instinct for bosses to listen intently to outsiders.

Another company explained that engaging with international expert bodies and NGOs allowed it to improve its understanding of complex human rights risks, specifically forced labour. It learned about how much it costs workers to get a job and where the charges lie (ie: the eco-system that thrives on charging workers to get a job from lending agencies to medical facilities). From this it could see that although at the group level a company may have leverage, when you break it down to individual recruitment agencies or suppliers the leverage becomes very small. Therefore, it made sense to partner with others that also face the same challenges. Partnering and sharing sensitive information with other companies on common salient issues, such as forced labour and ethical recruitment, is an effective way to address systemic issues that are not unique to one firm and, importantly, it does not constitute a breach of competition or anti-trust law.

However, it was also pointed out that there is a potential trap: a company could get overwhelmed by the number of initiatives and stakeholders on the many different human rights topics. The advice was to not spread oneself too thin and focus instead on the company's salient human rights impacts.

## **Access to remedy**

Participants heard about the application of two different types of remedy mechanisms - examples of a National Contact Point (NCP) case and operational-level grievance mechanisms - and what challenges companies had to overcome to bring about effective remediation for all parties.

One company explained that entering into NCP mediation can help build trust between complainants and the company and help solve grievances. However, there are challenges such as the need for neutrality and confidentiality of the proceedings and outcome, the length of the process, as well as concerns over forum shopping and the fact that a settlement can leave a company exposed to others seeking to extort money from the firm by raising spurious claims. Furthermore, the case can bring unbalanced public exposure from activists that have their own, often anti-business, agenda.

Participants also heard experiences of company operational-level grievance mechanisms. Resources are needed for a company to create and run such a grievance mechanism, which serve two dual purposes: (i) they help address individual complaints; and (ii) they serve as a useful warning / source of information that helps a company better identify and respond to harms and, as such, they can feed into the company's human rights due diligence process. When setting up their grievance mechanism, companies should follow the "effectiveness criteria" under UNGP 31, which was road-tested by companies before the UNGPs were launched.

It was stressed that for a company to know that its operational-level grievance mechanism is working well, it should expect the number of complaints to rise early on and then, if the company is responding properly, the number of complaints should naturally fall over time. Another important point to note is that a company grievance mechanism is meaningless if workers and communities do not either know about it or believe in the process. This means

that a company should examine its culture – as evidenced by company issues over sexual harassment claims – and carefully consider if employees are likely to blow the whistle on the wrongful acts of staff in reality. Similarly, it is important to tailor the complaint mechanism to the stakeholders on the ground so they can raise complaints. Rather than establishing a grievance mechanism at the headquarter level, companies should try pilots to test local ones.

Participants also discussed the challenges in establishing an effective operational-level grievance mechanism. For example, the question was asked how a company can ensure that there is an operational-level complaint mechanism at each tier of the supply chain and how to ensure that complaints do not leapfrog /escalate to their headquarter level but get addressed quickly and effectively at the local level? Also, what should a company do if ardent NGOs hijack the mechanism for their campaigning purposes which have nothing to do with individual complaints? In such situations, a company should consider this, paradoxically, as a helpful dialogue tool as it can help stop blockages and most public/costly action by NGOs. Another challenge raised is how to involve "stakeholders" in the design of the process, when in reality it is very difficult to identify the correct stakeholders to engage with at the local level? Also, operational-level grievance mechanisms can come into conflict with other engagement processes with affected stakeholders. For example, trade unions tend not to support "speak-up" systems or other forms of enterprise-level dialogue with workers as they see this as competition with the traditional collective bargaining process. A final big challenge facing large companies is how to operate multiple operational-level grievance mechanisms and be able to disaggregate the data received so that clear patterns and issues are identified and there is no double-counting.

## **Business' contribution to the Sustainable Development Goals (SDGs)**

The final session of the conference explored how respect for human rights can shape business' role in achieving the Sustainable Development Goals (SDGs). SDG 17 states that "a successful sustainable development agenda requires partnerships between governments, the private sector and civil society. These inclusive partnerships built upon principles and values, a shared vision, and shared goals that place people and the planet at the centre, are needed at the global, regional, national and local level." In addition, paragraph 67 of the 2030 Agenda calls on "all businesses to apply their creativity and innovation to solving sustainable development challenges" and commits States to "foster a dynamic and well-functioning business sector, while protecting labour rights and environmental and health standards in accordance with international standards and agreements and other ongoing related initiatives, such as the Guiding Principles on Business and Human Rights..." This session, therefore, explored the centrality of respect for human rights to the private sector's contribution to the SDGs.

Introductory points focused on a number of challenges. While the SDGs are the so-called "north star" for some, currently the SDGs and business and human rights agendas are being discussed separately including by policy makers and business. For example, company foundations tend to focus on the SDGs and everyday business tends to focus on respect for human rights. Policy-makers also risk driving business respect for human rights down a strictly risk management/legal compliance direction where companies are incentivised to focus on "doing no harm" and their ability to "do good" (as befits the SDG narrative) gets lost or undervalued. There are also fears that SDG fatigue is already setting in and that reporting on human rights and the SDGs does not actually matter to investors. On top of this, some



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businesses face accusations that they are using the SDGs to try and "rainbow wash" their reputations. Furthermore, companies face a legitimate challenge in balancing all the different elements under the SDGs at the same time. For example, a company may wish to reduce waste when manufacturing its products and legitimately decide that it is cleaner environmentally and more cost effective to turn to automation for this. However, doing so threatens job losses and the ability to help lift workers and families out of poverty.

Despite these concerns, participants explained that contributing to the SDGs and respecting human rights come from the same family if you look at them in the right way. It was explained that companies can implement the UNGPs and contribute to the SDGs by doing no harm in their own operations while simultaneously having a transformative positive impact by using their leverage to ensure their suppliers and business partners also respect human rights. One company explained that after calculating how many people its business impacts on generally including customers, workers in the supply chain and communities (some 2 million people), it could focus its due diligence efforts more comprehensively on the risk of its operations and business relationships to people, including its salient human rights risks.

While companies and business associations struggle with the SDG and human rights frameworks, there is clear complementarity between the two and the SDGs also offer business and brilliant opportunity to have different dialogue and engagement with Governments on social issues. Similarly, the SDGs offer an opportunity for companies to take a more holistic approach to their core business and sustainability functions and to integrate the way they measure their financial and social value. One participant concluded that it is not for business to save the world but to preserve their existence as sustainable companies with a social licence to operate.