

Human Rights & Responsible Business Conduct

December 2018

Editorial

ANOTHER BUSY year draws to a close with a flurry of developments, including the introduction of the **Australian Modern Slavery Act**, the release of the **2nd Corporate Human Benchmark**, and the **appointment of a CEO** for the new Centre for Sport and Human Rights. The business and human rights agenda is marching forward and pushing in many directions. For my part, I was pleased to meet the new UN High Commissioner for Human Rights, Michelle Bachelet, in November to introduce the IOE and its 50 million company members and to reiterate our commitment to support implementation of the UN Guiding Principles on Business & Human Rights.

Given the hive of activity, the **UN Forum on Business and Human Rights** last month was a good way to take the temperature of different stakeholders on the main policy and practical implementation efforts of the UNGPs. Three of my main take-aways from this year's townhall gathering are:

- First, the business community continues to demonstrate its firm commitment to respect human rights. It is encouraging that business made up 29% of the UN Forum's overall attendance (up from 24%). Looking ahead, we need to ensure a broader mix of voices are represented in various initiatives, including that of SMEs and bigger companies from across Asia, Africa and Latin America.
- Second, we need to focus more explicitly on challenges at the local level - where most of the problems lie - and drive at practical solutions to *these* issues. While transnational policy-making is popular, no global initiative will derive meaningful impact without a continual focus on the basics at the national and ground level such as the need to strengthen national law, public governance systems and institutions, and access to remedy for victims locally. Research suggests that the main factors that impede many States from taking action on business and human rights are a lack of understanding of the topic within the Government and challenges of coordinating government departments.
- Third, in spite of the awakening across many societies to the hardships facing women (such as the #MeToo campaign), there is a long way to go before women and girls are treated fairly and equally. At the Forum a lawyer from Cameroon explained movingly that women continue to be treated like property. This fact alone demonstrates the huge challenge to change societal attitudes in many parts of the world and the need for increased State leadership to protect and support women and girls, more opportunities for women and greater diversity. Business has a role to play in this regard also.

Wishing you all a restful holiday season and many thanks for your support of the IOE's work this year.

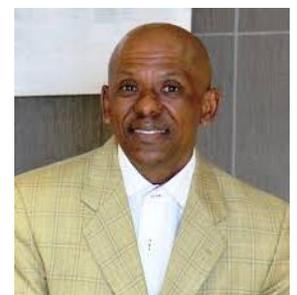
Mthunzi Mdwaba

Chair, IOE Policy Working Group



In this newsletter

1. Editorial
- 2-3. National legal & policy developments
- 4-8. UN updates
9. OECD & other updates
10. Upcoming events in 2019



National legal / policy developments



Australia: At the end of November, the Australian Parliament passed the Modern Slavery Bill marking the end of the parliamentary process before the bill receives formal assent and comes into force.



The new bill creates an annual reporting requirement for companies in Australia with a minimum annual consolidated revenue of \$(A) 100 million (some 3,000 companies) to report publicly on the actions taken to address modern slavery risks in their operations and supply chains.

The first reporting year is expected to be from 1 July 2019 to 30 June 2020. Companies will need to have their "modern slavery statements" signed off at the board level and make them available to the public via the Minister for Home Affairs and a Government-administered public register within six months of their respective financial years. According to **Norton Rose Fulbright**, this statement should detail:

- The identity of the reporting entity;
- The structure, operations and supply chains of the reporting entity;
- The risks of modern slavery practices in the operations and supply chains of the reporting entity, and any entities that the reporting entity owns or controls;
- The actions taken by the reporting entity and any entity that the reporting entity owns or controls, to assess and address those risks;
- How the reporting entity assesses the effectiveness of such actions;
- The process of consultation with any entities the reporting entity owns or controls or is issuing a joint modern slavery statement with; and
- Any other information that the reporting entity, or the entity giving the statement, considers relevant.

The Senate also introduced a mechanism by which the Home Affairs Minister can require an explanation or remedial action if he/she is reasonably satisfied that an entity has failed to comply with the reporting requirement. Following that, the Minister may publish the details of the non-compliance.



The term "modern slavery" encompasses slavery, servitude, the worst forms of child labour, forced labour, human trafficking, debt bondage, slavery like practices, forced marriage and deceptive recruiting for labour or services. Australia is also the first country to recognise orphanage trafficking as a form of modern slavery in this law.

For its part, the government previously said it will also start publishing an annual statement on possible modern slavery risks in commonwealth procurement with the Home Affairs department producing the annual statement on behalf of the government.

REMINDER: In June, a separate Modern Slavery bill was passed by the New South Wales state Parliament (known as "**the NSW Act**") that requires commercial organisations with at least one employee in NSW, and who have a total annual turnover of at least \$50 million, will be required to publish an annual modern slavery statement.



Canada: In December, an MP tabled a **Modern Slavery Bill** to require Canadian companies to publicly report annually on measures they have taken to reduce the risk of child labour and forced labour in their supply chains. The proposed bill would also give the Canadian Border Service Agency the power to ban products and impose fines up to \$250,000.

Company measures expected to be disclosed include the firm's policies on child and forced labour; its activities that carry a risk of this type of labour; and how it trains its employees.

The federal government would have powers to investigate any reports that are potentially untruthful, and it is expected that NGOs would play a role in keeping track of which companies are complying with the legislation.



The tabled bill follows **a Senate report in October** that recommended that the Canadian government should create legislation to end all child and forced labour in supply chains. There is also an intergovernmental MOU between the UK, Australia, the USA, Canada New Zealand on eliminating modern slavery. The Canadian government will respond by February 2019.



Norway: The Government in Oslo has established a commission to assess if Norway should introduce new reporting legislation on responsible business conduct. The Commission on Information on Ethics 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, which is chaired by a Law Professor at the University of Oslo, has undertaken a study visit to the UK and France to discuss their respective Modern Slavery Act and Vigilance Law. It is set to publish a report in late 2019, and it will then be up to the Government to consider if it wishes to propose legislation.



Switzerland: In November, the Swiss Government published the-first-of-its-kind **human rights guidelines for the commodity sector**. The document states that firms in the commodities sector should conduct due diligence of their impacts around the world, develop policies that clearly state their commitment to human rights, review existing business relationships and take steps to mitigate harmful impacts of their activities. The Swiss commodities trading sector has become a global hub for the movement of oil, metals, grains and other commodities. It has also attracted criticism for the way it operates in developing economies.



ILO - Tobacco sector

In November, the ILO Governing Body decided (after many discussions that began in March 2017) that the Organization will continue to engage with the tobacco sector through an **integrated strategy**, while working on resource mobilization from various sources, including the private sector.





UN Updates

UN Treaty process (IGWG chaired by Ecuador)



The UN's Inter-Governmental Working Group on transnational corporations and other business enterprises with respect to human rights (IGWG) met for its **fourth session** from 15 to 19 October 2018 in Geneva.

The purpose of the fourth session was for States to “negotiate” on the **Zero Draft Treaty** prepared by the Chair of the IGWG (Ecuador) in July. There was also a presentation of the **Draft Optional Protocol**, which Ecuador released (without prior warning) in September.

IOE engagement

- Prior to the fourth session, the IOE released a **joint business response** to the Zero Draft Treaty and Draft Optional Protocol, which it drafted together with Business at OECD (BIAC), Business Europe and the International Chamber of Commerce (ICC).
- The IOE also participated in the fourth session all week, supported by USCIB and Littler. It explained that the business community firmly rejects the Zero Draft Treaty and the Draft Optional Protocol and that both texts do not provide a sound basis for a possible future standard on business & human rights. It also outlined its concerns with each Article.



State engagement

- 92x States participated in the fourth session (compared with 99 in 2017 and 80 in 2016).
- The session was less dominated by NGOs/academics and less focused on process concerns. Participating States largely provided general comments on the Articles, either by stating their concerns with the provisions and by raising questions on others.

Most problematic Articles in the Zero Draft Treaty based on State interventions: Scope (Article 3); Definitions (Article 4); Jurisdiction (Article 5); Rights of Victims (Article 8); Prevention (Article 9); Legal Liability (Article 10); and Institutional Arrangements (Article 14).

Breakdown of State participation/engagement:

- States that actively participated and expressed broad support for the IGWG;
- States that actively participated but either reserved their position on the Zero Draft Treaty or were ambiguous on their overall position;
- States that participated but only to put on the record their substance and process concerns;
- States that were in the room but said nothing (or very little of substance);
- States that did not participate.

Analysis

- On the one hand, some will argue that the fact that the IGWG has held a “negotiation” (or at least a discussion) on the Zero Draft Treaty means that the IGWG's work - led by Ecuador - is a legitimate and sound basis for a future UN treaty.
- On the other hand, State interventions showed that it would be difficult for such an instrument (in its current form) to gain broad-based political support to achieve its aims. It was not at all clear that all participating States were actually “negotiating” on the Zero Draft Treaty. Many States provided initial comments and raised questions while reserving their position on it.



What next?

- The Chair (Ecuador) will release a Revised Draft Treaty by the end of June 2019.
- A fifth session of the IGWG will be held in 2019 (likely in October) during which States will negotiate on the Revised Draft Treaty and there will be a second “briefing” of the Draft Optional Protocol. Ecuador will also present an updated “programme of work” for this session.
- States and other relevant stakeholder are invited to submit comments and proposals on the current Zero Draft Treaty by the end of February 2019.
- Ecuador will hold “informal consultations” with Governments, regional groups, intergovernmental organisations, UN mechanisms, civil society and other relevant stakeholders before the IGWG’s fifth session.

Much depends on what Ecuador does next – 4x points to follow closely:

- The scope:** The vast majority of States (including business) said that a Treaty should cover “all business enterprises” and not be focused on TNCs only or “business activities of a transnational character”.
- IGWG versus UNGPs approach?** Many States observed that the Zero Draft Treaty does not even cite the UNGPs. They also stated that any future legally-binding instrument should build on the UNGPs and not undermine them.
- The process:** It is not clear how the IGWG Chair (Ecuador) will prepare a Revised Draft Treaty on the basis of the discussion held in the 4th session, submissions made afterwards by stakeholders, and future informal consultations. Which States’ interventions will shape the Revised Draft Treaty and which will not? Will Ecuador start to acknowledge the business community’s many points and concerns? Added to the confusion, Ecuador will have its fifth Ambassador to Geneva since the IGWG was established.
- Entry into force?** It is not clear how many States would need to ratify the Treaty for it to come into force. We understand the IGWG can itself determine how many States will need to sign up to and ratify the Treaty for it to come into effect. The figure could be as low as 20-30 States.
 - Key questions: does Ecuador (and fellow IGWG supporters) want to quickly push through a Treaty that broadly reflects the Zero Draft Treaty text and has low State support? Or will Ecuador change tack and try to build broader political consensus to seek to achieve a Treaty with higher rates of ratification, which would mean making a number of substantive and possibly procedural changes?



Any questions? Email Peter Hall: hall@ioe-emp.com



Roundup: UN Forum on Business & Human Rights

IOE members from around the world participated in many sessions during the **UN Forum** in November, including in regional focused sessions such as on Africa, Asia and Latin

America, as well as a discussion on how human rights due diligence applies to labour rights.

The IOE also led a session, chaired by Renate Hornung-Draus (BDA), on how to widen an uptake on the UNGPs with a **spotlight on SMEs**. This session feeds into the IOE’s ongoing work on how to support SMEs to respect human rights in line with their respective size, capacity, resources, and impact on human rights. In the closing plenary, Mthunzi Mdwaba concluded that the north star for the business and human rights movement going forward needs to be a collective focus on delivering impact on the ground at the local level.



USCIB opinion piece:

"UN's private-sector phobia prevents it from hitting its lofty goals"

In a commentary to the US political website, the Hill, Peter Robinson, the CEO and President of the United States Council for International Business (left) - dispelled **six common myths** about perceived business influence over global policy-making which is leading to some governments, activist groups and UN staff seeking to freeze out the private sector from meaningful engagement in key international discussions. The six myths are:

- **Myth 1:** Since business seeks profit, its interests are inherently at odds with the public interest.
- **Myth 2:** Business involvement in inter-governmental deliberations must be "managed" as a "risk."
- **Myth 3:** Having business organizations in the room results in "undue influence" and "interference" with policy outcomes.
- **Myth 4:** Business is unaccountable and operates in a non-transparent manner, and it must therefore divulge confidential information.
- **Myth 5:** Business has a disproportionate influence in the UN already, crowding out other important interests.
- **Myth 6:** Business-funded research is inherently biased and thus unacceptable as a basis for policy-making.

Peter's key message: business needs to be at the table because business is part of the solution.

IOE marks the 70th anniversary of the UDHR

On 10th December (International Human Rights Day), the global employers' community celebrated the 70th anniversary of the Universal Declaration of Human Rights (UDHR).

The UDHR reflects an international commitment towards the acceptance of a universal and effective recognition of basic human rights. It is the world's most translated document, available in more than **500 languages**.



The Declaration reflects an international commitment towards the values of equality, justice and human dignity and a common understanding of the basic rights all people should enjoy. It consists of 30 articles affirming individuals' rights which, although not legally binding in themselves, have served as a foundation for many national laws and international treaties. As such, it is also a key reference for business.

IOE message: The 70th anniversary is a call for action to increase efforts to implement the UDHR. In too many countries and regions in the world, people - including employers - do not enjoy the rights granted to them by the UDHR. Efforts need to increase to improve its impact on the ground. Human rights are everyone's business. Promoting respect for human rights - under the UNGPs - remains a key priority for the IOE, which represents more than 50 million companies and celebrates its centenary in 2020. We are committed to work with governments and all stakeholders to change realities on the ground.

- Visit the IOE's **YouTube channel** and hear what our members around the world have to say!
- OHCHR's dedicated website: **www.standup4humanrights.org**

OHCHR's 3rd Access to Remedy Project

The UN Human Rights Office (OHCHR) has kicked off its **Third Access to Remedy Project** (ARP III), to "identify and analyse challenges, opportunities, best practices and lessons learned with regard to non-state-based grievance mechanisms that are relevant for the respect by business enterprises for human rights."

In November, it launched a **questionnaire** (available in English, French, and Spanish) to help it understand how to enhance the effectiveness of non-State-based grievance mechanisms in cases of business-related human rights abuses. **NB:** Responses will be kept confidential.



The types of questions asked in the questionnaire include:

- The category of non-State-based grievance mechanism, such as:
 - A mechanism established and administered by a company;
 - A mechanism developed by an industry, multi-stakeholder, or other collaborative initiative (i.e. a mechanism 'external' to a company); or
 - A mechanism associated with a development finance institution.
- The sector;
- The nature of the grievance;
- The factors that led to the use of this mechanism:
 - Quicker, cheaper, or easier to access than State-based mechanisms (e.g. courts);
 - Insufficient resources (e.g. financial resources) to access other mechanisms;
 - Belief that alerting the company would prevent future abuse and provide a remedy.
- Concerns or challenges with using the mechanism:
 - Lack of independence from those responsible for harm;
 - Lack of transparency or predictability of process;
 - Fear of retaliation;
 - The gravity of the harm lent itself to resolution by a State-based mechanism;
- What remedial outcomes were sought by the person (or persons) raising the grievance?
 - Financial compensation;
 - Preventative process (e.g. guarantee of non-repetition, increased safeguards, etc.);
 - Non-financial remedy (e.g. restoration of taken property, etc.);
- What steps are taken to ensure that users have easy access to the mechanism;
- What measures are taken to ensure that actual and potential users, their friends and family, human rights defenders, and others are protected from retaliation or intimidation;
- What kind of remedies are available through this mechanism (e.g. financial compensation, restoring livelihoods/property, future compliance & prevention programmes, apologies);
- What involvement (if any) affected stakeholder groups have in the selection, design or implementation of remedies;
- Does the mechanism coordinate with other non-State-based grievance mechanisms or State-based grievance mechanisms when these other mechanisms could also be used to address the same grievance (e.g. by sharing investigatory functions or evidence)? If so, how?

Useful links:

- [ARP III Open Process Questionnaire \(in ENG, FRE & SPA\)](#) = Deadline 31st March 2019!
- [ARP III Paper on Scope and Programme of Work](#)





UN Working Group report on human rights due diligence

In October, the UN Working Group released its report on human rights due diligence. Among its many points, the report (A/73/163) stresses the role of Governments and investors by stating that “evidence of what constitute some of the strongest drivers for changing business practice beyond the pioneers suggests that investors and Governments have a key role to play.”

The UN Working Group explained that “business enterprises can no longer cite a lack of knowledge as an excuse for not getting started with human rights due diligence.” It also calls for laws on human rights due diligence and guidance to SMEs.

The report recommends that States should use “legislation to create incentives to exercise due diligence, including through mandatory requirements, while taking into account elements to drive effective implementation by businesses and promote level playing fields.” It also urges Governments to provide “guidance to business enterprises, including small and medium-sized enterprises, on human rights due diligence tailored to local contexts.”

As part of its input to the report, the IOE prepared a paper on State policy responses to human rights due diligence to input - available in [English](#) and [Spanish](#).

Useful links:

- [Full report](#) and [Executive summary](#)
- Companion paper I: [Background note and elaborating on key aspects](#)
- Companion paper II: [Getting started, emerging practices, tools and resources](#)



Spotlight on the work of OHCHR in Kenya

The UN's Human Rights Office (OHCHR) in Kenya has been helping an impoverished community of 5,000 residents in the [Owino Uhuru](#) shantytown in Mombasa to seek redress over harms suffered from toxic pollution from a battery smelting plant.



OHCHR has supported the community as part of its mandate to help implement the UNGPs and protect civic space. It has supported the class action suit brought against two companies and the Kenyan Government. It has also provided a bridge with the Kenya authorities to urge protection of an environmental grassroots group (Centre for Justice, Governance and Environmental Action - CJEA) that advocates for the rights of communities poisoned by toxic chemicals from Kenya's extractive industries.

The Department of Justice is working with OHCHR to draft a national action plan (NAP) on business and human rights that will protect both local communities and their environment. Together with the Kenya National Human Rights Commission, civil society and the private sector, Kenya is one of the first Governments to take such an initiative in Africa. Click [here](#) to read the story.

OECD update

- Christine Kaufmann (right) has been appointed the new Chair of the OECD Working Party on Responsible Business Conduct, starting in January 2019. Ms Kaufmann is a professor at the University of Zurich and the founder of its Centre of Human Rights Studies. She specialises in the financial sector, trade law and international investment law and has experience with the National Contact Points system having served as co-Chair of the Advisory Board of the Swiss NCP. Ms. Kaufmann will lead the Working Party to promote the OECD Guidelines for Multinational Enterprises and help develop and promote due diligence for responsible supply chains.
- In October the first ever OECD Guidelines **case on corporate tax avoidance** was filed against the Dutch shell companies of American oil giant Chevron. Dutch union FNV and global unions Public Services International (PSI), International Transport Workers' Federation (ITF), and IndustriALL filed a **joint complaint** to the Dutch NCP in which they accuse Chevron of using Dutch letterbox companies to avoid paying taxes owed in Nigeria, Argentina, and Venezuela.



Corporate Human Rights Benchmark - Results of 2nd Rank

In November, the Corporate Human Rights Benchmark (CHRB) released its second rank of 101 of the world's largest companies in three sectors: agricultural products, apparel and extractives to try and determine which companies are performing best on human rights issues.

The top five scoring companies are the same as in 2017; Adidas, BHP Billiton, Marks and Spencer, Rio Tinto and

Unilever. The CHRB team expressed concern that they are leaving the 'average' company further behind, with over a quarter of companies scoring less than 10% and almost two thirds of companies scoring less than 30%.

Companies were chosen on the basis of their size (market capitalisation) and revenues, as well as geographic and industry balance. Click to read the **"Key findings"** report of the 2018 rank.

New Guidance for Companies on Human Rights Defenders

In September, the Business & Human Rights Resource Center and International Service for Human Rights released a detailed **guidance** on business support for civic freedoms and human rights defenders. The guidance, entitled **"Shared space under pressure"**, encourages companies to engage and act – carefully but deliberately – in ensuring the protection of civic freedoms and respect for the rule of law.



New! Business **statement** in support of civil freedoms, human rights defenders and the rule of law.



Professor John Ruggie on Kofi Annan’s contributions to business and human rights

In August, Kofi Annan, the former UN secretary-general and Nobel laureate, died at the age of 80.

Professor John Ruggie, who served as his Special Representative on the subject of business and human rights - which resulted in the development of the UNGPs - wrote this [tribute to Mr Annan](#).

Project launched to better align work of corporate reporting bodies

Leading corporate reporting bodies have launch **two-year project** to better align the frameworks in the ESG reporting space (SASB, GRI, CDP, etc.) and frameworks that promote further integration between non-financial and financial reporting (IIRC, CDSB, etc.).

The participants of the **Corporate Reporting Dialogue** are committed to ensuring the corporate reporting landscape is easily navigable, responds to the needs of report preparers and users and conducive of efficient and effective corporate reporting.



Participants include: CDP, Climate Disclosure Standards Board, Financial Accounting Standards Board (observer), Global Reporting Initiative, International Accounting Standards Board, International Integrated Reporting Council, International Organization for Standardization, and Sustainability Accounting Standards Board.

IOE plans for 2019 – Save the Date!

As part of the IOE's ongoing work to support national employers' organizations and their members on human rights, we are planning a series of workshops/events in Madrid (hosted jointly with CEOE) on the following dates:



- **Monday 1 April:** Workshop on giving SMEs the right tools & support to respect human rights (*closed event*).
- **Tuesday 2 April:** Workshop on the types of support national employers' organisations need to provide tools and services to help their members respect human rights (*closed event*).
- **Wednesday 3 April:** The IOE's seventh "International Conference on Business & Human Rights" (*business only*).

More information about these workshops/events will be made public in the coming months. If you have any questions, please contact Peter Hall (hall@ioe-emp.com).