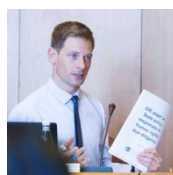
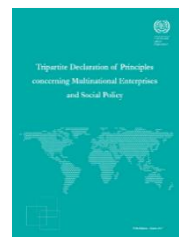
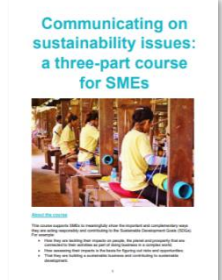
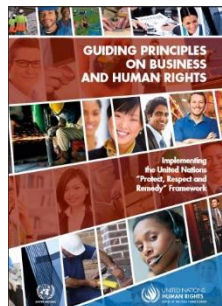


NEWSLETTER

(Vol. 8, No. 3)

Human Rights & Responsible Business Conduct

January 2020



January 2020

Editorial - IOE at 100!



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THE IOE IS EXTREMELY PROUD to celebrate its 100 year anniversary in 2020 and we would like to thank our many colleagues, friends and partners for their unwavering support of our work over the years.

Back in 1920 the world was in a parlous state, ravaged by the First World War and the devastating losses of life and the destruction of one billion machines needed to get industry back on its feet. Having been at the coalface of labour and social policy developments through the Second World War, the Cold War, the process of decolonisation, the third and fourth industrial revolutions, the moon landings, as well as numerous military conflicts, political revolutions and humanitarian crises, the IOE has brought the representative voice of business to global policy-making and has worked - often behind the scenes - to support its members to help achieve decent work and social justice in their countries.

Fast forward to today and we remain at the forefront of the world's most pressing challenges from protecting human and labour rights globally to promoting fair migration practices and averting the climate crisis. Our commitment to advancing progress remains as strong as ever. In practice, this means understanding and balancing the perspectives of all our members who routinely operate in extremely varied contexts (from to Albania and Ghana to the Philippines and Venezuela) and who, for often political reasons, can see progress in their countries wax and wane.

While some may interpret the IOE's positions as "conservative" at a time when "radicalism" is needed, we represent more than 50 million companies through our 158 member federations that include the world's biggest MNEs and family-run SMEs which operate domestically. Advancing progress means understanding the different realities facing the broad business community, not just the visible bigger companies. What's more, our age and experience gives us a unique understanding of how best multilateralism can advance the human rights and decent work agendas. The recipe is not overly complex: (i) strong political commitment (from the top to the bottom and sideways), (ii) rigorous fact-based evidence of the issues at hand, and (iii) a realistic sense of how to translate lofty goals into practical and implementable action that reflects each country's context, engages local actors and does not result in negligible impacts or unintended consequences for rights-holders on the ground.

The IOE has been making this point - and different versions of it - for 100 years and is confident that our engagement has helped lead to more practical policy-making. Equally, this milestone invites reflection on how the world and the IOE has changed in the last 100 years and what lessons we can take from our efforts to bring the business voice to evolving policy debates on responsible business conduct and human rights. We will continue to advocate for "implementation coherence" by States of their many existing international commitments. And for our part we will continue to support companies to respect human rights and engage with relevant stakeholders to address the root causes of systemic issues such as child and forced labor, as well as overlooked challenges such as informality. It promises to be a busy new century for the IOE. We look forward to working with you!

Mthunzi Mdwaba

Chair, IOE Policy Working Group

Legal & policy developments



European Union



- In December, **the Finnish Presidency of the Council of the EU** proposed an **"Agenda for Action for the EU"** on business and human rights following a one-day conference on the topic in Brussels (organised jointly with Shift).
- In its proposed agenda, Finland recommends that the EU should develop a "Joint Action Plan on Business and Human Rights in order to facilitate more strategic, comprehensive and effective EU action." Among the measures envisaged, it recommends introducing regulation on mandatory human rights due diligence and identifying "how access to remedy may be enhanced through broader regulation on human rights due diligence."
- Germany, which takes up the six-month EU Presidency from July to December 2020 after Croatia (which follows Finland from January to June 2020), is expected to match Finland's commitment to introduce EU-wide mandatory human rights due diligence.



- **Professor John Ruggie** (author of the UNGPs, left) delivered a **keynote speech** at the Brussels conference in which he explained that "the ascent of Pillar I (the State duty to protect human rights) is underway." He added that many current mandatory measures to put the UNGPs into practice "leave a lot to the imagination – of company staff, consulting firms, and civil society actors among others. More should be done to specify what meaningful implementation looks like, in order to avoid contributing to the proliferation of self-defined standards and storytelling by firms. Also, with limited exceptions currently no direct consequences follow from non-compliance."

- **IGWG:** Referring briefly to the UN Treaty process (led by Ecuador), Professor Ruggie reiterated his view that "this is far too complex and too contested a domain for such an endeavor to produce meaningful results," adding that "nothing I have seen in the five years of negotiations suggest otherwise."



- **Other documents that informed the EU-level conference & a wider push for legislation**

- **Perspectives paper** for the Finnish Presidency Conference on 2 December 2019.
- Business letters:
 - o 3 cocoa companies & other stakeholders call for human rights & environmental due diligence requirements: **Call for legislation & joint position** on EU policy approach.
 - o 42 German companies **call** for mandatory human rights & environmental due diligence legislation.
- **CSO letter:** 100 CSOs demand human rights & environmental due diligence legislation.
- **Investor letter:** 71 investors call call for mandatory human rights due diligence.

- **Looking ahead - important EU dates (tbc)**

- 18 March: the EU Commission is expected to launch a proposal for binding human rights due diligence.
- During the fourth quarter of 2020, it will also launch a proposal for a new directive on sustainable corporate governance.
- In early October, Germany's Presidency of the Council of the EU is expected to hold an EU supply chain conference in Potsdam.
- There are also plans to revise the EU Non-financial Reporting Directive.





- In November 2019, the European Commission launched **Due Diligence Ready!** - an online portal to help companies check the sources of the metals and minerals entering their supply chains (part of their due diligence process). The portal helps facilitate compliance with the EU Regulation on Responsible Sourcing of Conflict Minerals (effective from 1 January 2021).

- Also in November, the EU issued a **new Regulation on “Sustainability-related disclosures in the financial services sector” (DSR Regulation)**.
 - Under the law, financial market participants and financial advisers will be required to disclose specific information regarding their approaches to integrate sustainability risks and the consideration of adverse sustainability impacts in their investment decisions and investment or insurance advice.
 - The regulation includes a requirement to conduct “adequate due diligence prior to making investments,” as well as an assessment of all relevant sustainability risks that might have a relevant material negative impact on the financial return of an investment or advice.
 - The regulation mandates transparency of adverse sustainability impacts at both the entity (i.e. asset manager) level and the financial product level.
 - It will apply from 10 March 2021, with product rules to be implemented by the end of December 2022.



- In December, the EU's Agency for Fundamental Rights (FRA) released a paper on **“Business-related human rights abuse reported in the EU and available remedies.”** The paper follows an EC request for examples of how victims can access remedy for corporate-related harms across EU Member States to help determine what future EU actions may be needed to strengthen access to remedy.



Finland

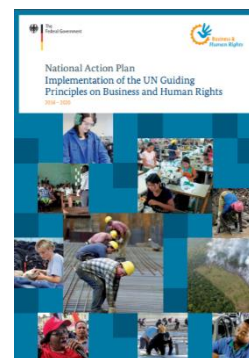
- In the autumn of 2019, Finland's Ministry of Economic Affairs and Employment **announced** that it had commissioned an analysis on how to incorporate human rights and environmental due diligence into law. The analysis, which will be published by 31 May 2020, will examine how a duty of due diligence would function in the framework of the existing national legislation and the consequences of non-compliance.
- A cross-ministerial steering group is preparing the analysis, which will include engagement with relevant stakeholders including from Business. Finland's Committee on Corporate Social Responsibility is acting as an advisory body.
- The government has reiterated it will also take measures to pursue the same objectives in the EU.





Germany

- The German government is carrying out a review of company compliance with its 2016 national action plan (NAP) in which it said it would examine introducing mandatory human rights due diligence if at least 50% of German companies with more than 500 employees are not conducting due diligence in their operations by 2020.
- In December, the Labour Ministry said that out of the 3,000 companies contacted to describe their due diligence efforts, 464 had answered the government's NAP survey. A second phase of NAP monitoring is starting in January with the final results expected in the summer.
- Last December, the German Ministers for Labour and for Development **announced** that they are developing key points for a supply chain law. This came after the conservative party's CDU Congress **called** for human rights due diligence regulation.
- In addition to national efforts, the German government is considering pushing for mandatory human rights due diligence at the EU level when it assumes the EU presidency in the second half of 2020.



- In September 2019, the German Federal Ministry of Economic Cooperation and Development (BMZ) introduced a state-regulated environmental label for "**Green Button**" certified textiles.

- The Green Button is a **logo** that serves as evidence that the textile products concerned were manufactured and placed on the market in a socially and environmentally sustainable manner. The Government is responsible for determining the requirements for Green Button certification.

- For more information visit the website: <https://www.gruener-knopf.de/>



Hong Kong

- In December, the Stock Exchange of Hong Kong Limited issued **tougher ESG reporting requirements** on listed companies that build on their "comply or explain" provisions. Among the changes are amendments to the Listing Rules and ESG Guide, as well as the introduction of new rules to the Corporate Governance Code. The revised requirements will take effect from July 2020
- The strengthened measures derive from **a consultation** on the "Review of the Environmental, Social and Governance (ESG) Reporting Guide and Related Listing Rules."



Indonesia

- The Indonesian Government **said** in October 2019 that it is establishing guidelines for companies operating in Indonesia to respect human rights as part of its national action plan (NAP). The guidelines, which are expected to be released before 2021, will focus initially on the plantations, mining and tourism sectors. It is not clear if companies would face penalties for failing to comply with the guidelines.





Malaysia

- Malaysia's Minister for Human Resources **said** in October that his ministry is proposing a new chapter on forced labour under the Employment Act 1955 to protect the rights of workers.
- M. Kulasegaran's response came after US Customs and Border Protection blocked the import of disposable rubber gloves from WRP Asia, a Malaysian company suspected to have been made with forced labour.
- The Government has also **said** that all Malaysian industries need to adhere to social compliance audits by 2021.



Norway

- In November, Norway's Ethics Information Committee released **a report** that recommends a new regulation on "the right to know and enterprises transparency about supply chains and due diligence with respect to human rights and decent work."
- The Committee, chaired by a Law Professor at the University of Oslo and appointed by the Norwegian Government in June 2018 to consider if the government should introduce a law on business and human rights, concluded that "mandatory legislation is necessary."
- It also issued a draft Act to "ensure that consumers, organisations, trade unions and others have access to information about fundamental human rights and working conditions in enterprises and supply chains and shall contribute to promoting enterprises' respect for fundamental human rights and decent work."
- The draft law would apply to enterprises that offer goods and services in Norway. The Committee's definition of "fundamental human rights" are those expressed in the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the ILO's core conventions on fundamental rights and principles at work. In addition, the definition of "decent work" is "work that respects fundamental human rights, protects health, safety and the environment in the workplace and provides a living wage."
- Under the draft act larger companies - those that meet two of the following conditions: (i) a sales income of NOK 70 million; (ii) total assets of NOK 35 million; and/or (iii) 50 full time employees or more - "shall exercise due diligence in order to identify, prevent and mitigate any possible adverse impact on fundamental human rights and decent work and account for how they address any adverse impacts."
- **Likely next steps:** after a period of consultation on the Committee's recommendations of around three months, the government will decide if it wishes to send a proposal for new legislation to the Norwegian parliament.



- In addition, in January Norway's Business Minister **announced** that the Government is examining whether to enact a **Modern Slavery law** similar to the UK's Act. Torbjørn Røe Isaksen (left) said that such a law would be aimed to prevent workers being exposed to "modern day slavery," including forced labour, human trafficking, sexual exploitation, organ theft and child labour.

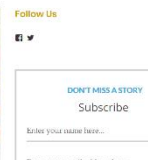


The Philippines

- In December, the Philippines' Commission on Human Rights became the **first human rights body** to decide that fossil fuel companies can be held legally liable for human rights harms linked to climate change.
- The Commission made the **announcement** as it published **its conclusions** to a nearly three-year national inquiry into the links between climate change and human rights. The inquiry came in response to a 2016 petition from Greenpeace South-East Asia and other local groups.

Carbon Majors Can Be Held Liable for Human Rights Violations, Philippines Commission Rules

Home / Featured International / Carbon Majors Can Be Held Liable for Human Rights Violations, Philippines Commission Rules



Switzerland

- On 18 December 2019, the Swiss Parliament's upper house (the Council of States) introduced and approved its own "**counter-proposal**" adding a twist to the debate on possible new human rights and environmental legislation for Swiss-headquartered companies.
- The Swiss "Responsible Business Initiative" now centres on three different proposals:
 - The "**popular initiative**" launched by **NGOs** in 2016. It proposes a new article to the Swiss Constitution on the "responsibility of business" under which Swiss headquartered companies and those under their control must respect internationally-recognized human rights and international environmental standards at home and abroad. In addition, they would be obliged to carry out "appropriate" due diligence and they would be liable for harms they or the companies their control cause.
 - A "**counter-proposal**" approved by the National Council (the Parliament's lower house), which is similar to the "popular initiative" but would limit parent company liability through a proposed subsidiary clause.
 - A new government-backed "**counter-proposal**" approved by the Council of States (the upper house). This proposal broadly reflects existing European supply chain regulation and would introduce reporting requirements and some subject-specific due diligence on conflict minerals and child labour.
- Next steps:**
 - The National Council and Council of States will see if they can agree on one "counter-proposal." The National Council is expected to discuss the topic in March and the Council of States is expected to discuss it in June.
 - If both houses in the Parliament reach consensus on a "counter-proposal," supporters of the "popular initiative" would likely be asked to withdraw their initiative – thus allowing for the Parliament-supported "counter-proposal" to become law.
 - If no agreement is reached between the National Council and Council of States on a "counter-proposal" and/or if supporters of the "popular initiative" refuse to withdraw their initiative, then the "popular initiative" will be put to a public referendum in the autumn (likely in November 2020). If approved by referendum, the "popular initiative" would become law.
 - From 1848 to 2010, 47% of popular initiatives have led to modifications of Swiss legislation.
 - Click [here](#) to read a short history of this process.





- Following a review of the UK Modern Slavery Act, the Home Office has selected the Business and Human Rights Resource Centre (**BHRRC**) to carry out an audit of how companies are complying with Section 54 the 2015 legislation.
- BHRRC will check whether companies with an annual turnover above £36 million have produced a modern slavery statement on what they are doing to tackle modern slavery in their supply chains and whether it meets the minimum legal requirements set out in [Section 54 of the Act](#). It will also consider whether company statements meet the key standards set out in the Home Office's 2017 statutory guidance '[Transparency in Supply Chains etc. A Practical Guide](#)'.
- BHRRC has run an independent **Modern Slavery Registry** of more than 10,000 company statements since 2016, publishing regular analysis including ratings of FTSE 100 companies.



- In October 2019, the **US blacklisted** 28 Chinese organisations (including government agencies and technology companies that specialise in surveillance equipment) for their alleged involvement in abuses against ethnic Uighurs in Xinjiang province.
- The organisations, which **include** video surveillance company Hikvision and artificial intelligence companies Megvii Technology and SenseTime, were added to a so-called Entity List, which bars them from buying products from US companies without approval from Washington.
- The move came after the Trump administration added telecommunications giant Huawei to the Entity List in May 2019 because of security fears over its products.



- In September, the US Customs and Border Protection (**CBP**) blocked the import of five products made by companies in five different countries suspected of using forced labour.
- The CBP issued five Withhold Release Orders (WROs) for the following five items: rubber gloves made by a company in Malaysia; gold from artisanal mines in Democratic Republic of Congo; clothes produced by a firm in Xinjiang (China); diamonds from the Marange Diamond Fields in Zimbabwe; and bone black (charred animal bones) manufactured by a business in Brazil.
- Under the 2016 the Trade Facilitation and Trade Enforcement Act (**TFTEA**), which amended the 1930 Tariff Act, it is illegal to import goods into the United States that are made entirely or in part by forced labor - which includes prison work, bonded labor and child labor.
- Prior to the latest crackdown, the CBP had issued seven WROs since 2016, including chemical compounds, peeled garlic and toys from China, and cotton from Turkmenistan.
- A company hit with a withhold release order can decide to reroute the shipment and try to sell their products elsewhere or persuade CBP to change its decision by providing documents to demonstrate due diligence and argue the goods are slavery-free.

- After more than a decade of debate, Congress passed a **bipartisan bill** in October 2019 to update federal anti-money laundering laws and end the incorporation of anonymous companies in the USA. The **bill**, which heads to the Senate and has the support of the White House, notes that "secret shell companies have facilitated terrorism, proliferation financing, drug and human trafficking, money laundering, tax evasion, counterfeiting, piracy, securities fraud, financial fraud, and acts of foreign corruption."
- Other bills on corporate ownership transparency legislation are also being considered: the Aircraft Ownership Transparency Act of 2019 (**H.R.393**); and the Secure Government Buildings from Espionage Act of 2019 (**H.R.392**).

Historic US vote to tackle shell company secrecy

October 24, 2019 by Nick Shaxson [Leave a Comment](#)



- In November, a US Senator introduced a first-of-its-kind bill to restrict access to the US financial system for those individuals and companies most responsible for exacerbating climate change. The **Targeting Environmental and Climate Recklessness Act** is in the first stage of the legislative process. It will typically be considered by committee before it is possibly sent on to the House or Senate as a whole. Its chances of being passed are reportedly low.

- The US State Department is developing **guidance for exporters** of items with intended and unintended surveillance capabilities. The **guidance** - entitled "US Government Guidance for the Export of Hardware, Software and Technology with Surveillance Capabilities and/or parts/know-how" - will help businesses understand the Government's human rights concerns with those exports.



UN Treaty process (IGWG chaired by Ecuador)

- The UN's Inter-Governmental Working Group on transnational corporations & other business enterprises with respect to human rights (IGWG) met from 14 to 18 October 2019.

During its **5th session**, the IGWG discussed & negotiated on a **Revised Draft Treaty** prepared by the Chair (Ecuador).



- What happened?**
 - Click [here](#) to read the IOE's Update from the IGWG's 5th session in October 2019 (members only - password access required!)
 - The IOE, BIAC & Business Europe issued the following **Joint business response to the Revised Draft Treaty**.
- Next steps:**
 - Ecuador will release a "second Revised Draft Treaty" by the end of June 2020.
 - It will also present a "document that contains an outline of the key issues and a structure of the revised draft which can serve as a tool to assist direct negotiations."
 - A 6th session of the IGWG will be held in 2020 (likely in October) during which States are encouraged to negotiate on the preparation of a "third draft legally binding instrument" (on the basis of the "second Revised Draft Treaty").
 - Ecuador is inviting "a group of experts from different regions, legal systems and fields of expertise to provide independent expertise and advise" in relation to preparing the second Revised Draft Treaty. No further clarity on this was provided.

Corporate Human Rights Benchmark



- In November, the Corporate Human Rights Benchmark (CHRB) released its **third** human rights rank of 200 of the largest global companies across four sectors: agricultural products, apparel, extractives and ICT manufacturing.
- The 2019 benchmark, which added ICT companies for the first time, looks at six indicators: ranging from “governance and policies” and “grievance mechanisms” to “transparency.”



- While the overall average score in 2019 was 24.3%, the score for the 100 original companies moved from an average of 18% in 2017 to almost 32% in 2019.
- A group of investors and civil society organisations launched the CHRB in 2013 to publicly rank companies' human rights policies, processes and performance. Last year it was merged into the World Benchmarking Alliance (WBA), which itself is developing benchmarks to compare companies' contribution to the Sustainable Development Goals.
- In 2020, the CHRB will benchmark five sectors by adding Automobile Manufacturing companies.

Spotlight on the link between human rights & climate change



- In September, 16 children from 12 countries (including the world-renowned climate activist Greta Thunberg - left) filed an **official complaint** to the UN Committee on the Rights of the Child to protest against the lack of government action on the climate crisis.
- Backed by UNICEF, they accused five countries - Argentina, Brazil, France, Germany and Turkey - of failing to tackle the climate crisis, thereby constituting a violation of child rights. They also urged the independent

body to order Member States to take action to protect children from the devastating impacts of climate change.

- As a result, the UN Committee will have to investigate before making recommendations to those States against which the complaint was made.
- French President Emmanuel Macron reportedly **called** the children's move a "very radical stance", which was "likely [to] antagonize societies."

Equator Principles - 4th version adopted



- In November, Equator Principles Financial Institutions adopted a **fourth version of the Equator Principles** (EP4) that provides an updated financial industry benchmark to determine, assess and manage environmental and social risk in project financing.
- The **changes**, which take effect on 1 July, include the application of the Equator Principles to a broader range of financial products, a greater degree of consistency between high income OECD countries and other jurisdictions and substantive new requirements in relation to human rights, climate change and impacts on Indigenous Peoples.

OECD updates

- In October, the OECD released new **guidance for banks** to help them implement the OECD MNE Guidelines. The guidance encourages banks and other financial sector actors to act responsibly and it seeks to hold them accountable for adverse social and environmental impacts associated with their activities. It clarifies the expectations of banks, particularly in situations when a bank has “contributed” to an adverse impact through its lending or underwriting and explains what role a bank should play in remediating adverse impacts associated with its activities.
- This is the OECD's second guidance paper on responsible business conduct in the financial sector, following the 2017 **guidance for institutional investors**.

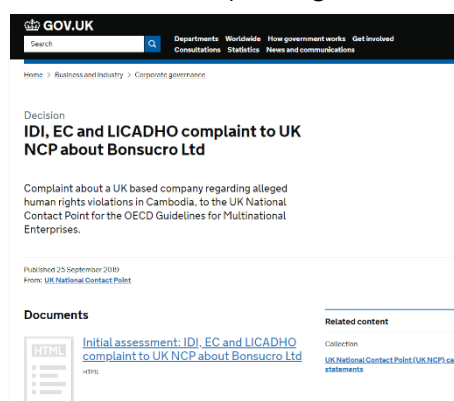


- In October, Swiss Bank **Credit Suisse** agreed to include the protection of indigenous communities' rights into its internal guidelines on project financing following a mediation process with the Society for Threatened Peoples (STP) facilitated by the Swiss National Contact Point. The STP filed a complaint against Credit Suisse with the Swiss NCP in 2017 because, at the time, the bank maintained business relations with companies that built the Dakota Access Pipeline (DAPL) in the USA. The development of the pipeline triggered protests by thousands of indigenous people and water activists over its ecological risks. Credit Suisse agreed to incorporate the UN's concept of “free, prior and informed consent” (FPIC) into its internal sector-specific guidelines on oil, gas, mining, forestry and agriculture, as well as to mention key components in its public summaries of these policies.

- In September, the UK National Contact Point **ruled admissible** a complaint against the sugar industry's sustainability certification body, Bonsucro. The decision establishes that London-based Bonsucro is bound by OECD standards on responsible business conduct. It has ramifications for other industry sustainability associations, which have grown in response to consumer demand for ethically sourced products.



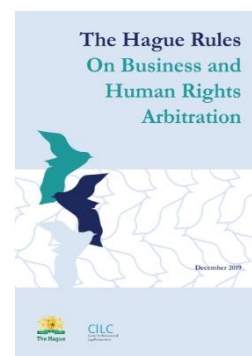
The complaint against Bonsucro was filed in March 2019 on behalf of more than 700 displaced Cambodian families by **Inclusive Development International**, Equitable Cambodia and the Cambodian League for the Promotion and Defense of Human Rights (LICADHO). It alleged that the sugar association violated the OECD MNE Guidelines by failing to hold its member company, Mitr Phol, accountable after the Thai sugar giant grabbed the families' land and left them homeless and destitute. With Bonsucro's public stamp of approval, Mitr Phol's biggest customers could advertise their sugar as responsibly sourced. Bonsucro **responded** that it “intends to accept the offer of mediation by the OECD UK NCP” and that the decision of the UK NCP to accept this case “is not a finding against Bonsucro and does not mean that the NCP considers Bonsucro has acted inconsistently with the OECD Guidelines.”





Update on Business & Human Rights Arbitration initiative

- In December, a private group of lawyers and academics launched **the Hague Rules on Business and Human Rights Arbitration** that provide a set of rules for the arbitration of business and human rights disputes.
- The five-year project - hosted by the Centre for International Legal Cooperation (**CILC**), funded by the City of The Hague and supported by the Dutch Ministry of Foreign Affairs - aims to create an international private judicial dispute resolution avenue available to claimants and defendants involved in business and human rights issues. Supporters believe the Hague Rules can contribute to filling a judicial remedy gap in the UN Guiding Principles on Business & Human Rights.



Europe's first BHR academic centre opens

- In November, Europe's first business and human rights centre at a business school opened in Geneva. The Geneva Center for Business and Human Rights (**GCBHR**) will work with companies to identify business models that enable profits and principles to co-exist. It collaborates with the NYU Stern Center for Business and Human Rights.
- The centre is currently running **two projects**: the first focused on benchmarks for the financial sector, and the second on artisanal mining of cobalt, which is in increasing demand for batteries in the automotive industry.

Online database launched to help NGOs monitor working conditions in the apparel and footwear sector



- NGO **ICAR** has launched **ApparelData.org**, a free online data directory that connects advocates seeking to improve working conditions in the apparel and footwear industry with publicly accessible data that can make their efforts more effective. Previously only available as an excel sheet, ApparelData.org is a user-friendly, searchable online database that arose from a roundtable hosted by ICAR and C&A Foundation.

Dates for the Diary!

- 25-28 February:** ILO Technical Meeting on Achieving Decent Work in Global Supply Chains (**Geneva**).
- 22 April:** IOE-BDA-DeutschePostDHL "International Business & Human Rights Conference" (**Bonn, Germany**)
- More information will be sent to members ASAP.
- 25 May - 5 June:** 109th International Labour Conference (**Geneva**).
- 16-18 November:** UN Forum on Business & Human Rights in Geneva.

