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IOE Preliminary remarks to the Report of the UNWG on Business and Human Rights

“State, financial actors and human rights in Latin America and the Caribbean: progress and challenges in integrating a human rights approach in financial policies, regulations and practices in the region”

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Introduction

Over the past decade, the broad institutional uptake of human rights due diligence by various actors ranging from companies themselves, but extending to business and industry platforms, investors, States, and multilateral lenders has contributed to fulfilling one of the central objectives of the United Nations Guiding Principles on Business and Human Rights (UNGPs) by fostering convergence among the many different institutions that shape business conduct. Corporate human rights due diligence has paved the way for key developments, with increasing backing from businesses, including investors, financial institutions and business organisations.

Among these organisations, financial actors are important intermediaries at the heart of wealth and credit creation by mobilising savings for lending to businesses and individuals. This allows the private sector and the economy to create jobs, foster innovation and increase the standards of living. Equally, public financial actors and international financial institutions are central lenders. Public finance institutions—including finance ministries, tax and customs agencies, central banks, government lenders, and public pension funds—can however face profound fiscal imbalances and systemic financial failures. It is therefore the responsibility of governments to have sound financial policies that increase transparency, provide an enabling environment for investment and increase economic growth opportunities.

Human rights are the foundation for sustainable investment and address the Social in Environmental, Social and Governance (ESG) functions. Over the past years, due diligence has entered financial regulation, for example, in the European Union taxonomy and sustainable finance regulation. The UN Working Group on the issue of human rights and transnational corporations and other business enterprises recognised that “financial actors have an unparalleled ability to influence companies and scale up on the implementation of the Guiding Principles”. This has led to the creation and diffusion of positive spillover effects in the private sector and society.

Today, financial actors are increasingly recognising their responsibility under the UNGPs. Financial actors are probing companies they finance or invest in about how their business models and decision-making processes integrate respect for human rights – a development supported partly by the increased use of ESG criteria in investment processes.

The private sector is fully aware of its role as **positive transformative power** of change. However, the private sector cannot do it all alone. States, public and international financial actors are key in supporting alignment and preparing investors for relevant due diligence regulations. The UNGPs have been used in responsible investment for years, but only by a subset of investors. A level playing field for responsible investment is emerging thanks to the UNGPs, but this requests a stronger commitment by States.

The **International Organisations of Employers (IOE)** appreciates the opportunity to provide input for the Working Group's study on *"State, financial actors and human rights in Latin America and the Caribbean: progress and challenges in incorporating a human rights approach into financial policies, regulations and practices in the region"*. Recognising the role of financial actors as key drivers for advancing business respect for human rights. Below are **major challenges and opportunities** in incorporating a human rights approach into financial policies, regulations and practices in Latin America and the Caribbean (LAC) although these can be extended to other regions.

Existing major challenges

1. One of the major issues for business remains on **how to engage with the finance sector without losing access to finance due to perceived potential human rights risks**. Access to credit remains one of the main challenges for Small and Medium Enterprises (SMEs). The finance sector can sometimes face difficulties in providing credit which is essential for companies, notably Small and Medium Enterprises (SMEs) in order to launch businesses, grow and thrive and create wealth and employment. In such cases, microcredit or intrafamily loans are most of the time the only, yet unsustainable, form of financing to launch a business. Linked to this challenge, the financial sector is engaging more and more in ESG criteria, but also it is requesting companies for reporting on a quarterly basis which makes it challenging for companies to have the time to develop sustainability strategies. Consequently, the current extensive requirements from financial actors on companies have the potential to create unintended consequences.
2. When it comes to **investment in important infrastructure projects in the region** (e.g., power stations, hydroelectric dams, etc), companies are often facing **challenging situations about the final State's decision to act**. This can put both companies and financial actors in complex situations of trade-offs which should ultimately rest on governments' decisions, not businesses. In particular, when companies have duly completed their Human Rights Impact Assessment (HRIA) and due diligence process, but different interests are at stake, the ultimate decision and trade-off rest on the government, not on the financial company. Consequently, financial companies should not refuse loans to companies when the government have thoroughly decided to act in a certain way, and neither should they be blamed or suffer reputational and other damages to follow the government's legitim decision.
3. **Access to finance for the informal sector continues to remain out of the debate** on integrating a human rights approach in financial policies, regulations and practices in the region. According to the International Labour Organization (ILO) latest data, the regional informality rate in the fourth quarter of 2021 in Latin America and the Caribbean was almost 50 per cent, close to the 2019 record. In other words, almost one in two workers in the region is informal. Businesses operating in the informal economy cannot apply for loans or credit as they do not exist officially. This is extremely problematic not only in LAC but in other regions of the world with high levels of informality, well as bribery and corruption. Corruption is pervasive in large-scale projects seeking outside funding, especially those in autocratic countries, carried out by state-owned enterprises, or overseen by politically connected individuals. Corruption and bribery profoundly affect both business and vulnerable communities—

either by misdirecting funds that could be spent on private and public investment, healthcare, education, or other public goods or by preventing participation in the democratic process. Against this backdrop, financial actors can be key drivers for advancing business respect for human rights through funding and loaning opportunities for SMEs. However, for this to happen, there is a need for **an enabling environment for business as well as a transition from informality to formality**. Unless States do not effectively address the root causes of informality and weak governance, it remains extremely difficult to tackle informality and ultimately uphold human rights in these regions.

4. Another critical challenge for companies is **data providers' lack of coherence among ESG metrics**. Because of a lack of clarity and coherence about social criteria metrics and many environmental and governance indicators, companies cannot effectively capture and reflect via ESG metrics their extensive effort in respecting and promoting human rights. Similarly, most financial actors fail to connect human rights standards and processes with ESG criteria and investment practices due to a lack of understanding of social indicators, which include human rights. This problem is not new. There are currently over 600 ESG provisions globally, and this lack of standardisation and interoperability marks a significant challenge for financial institutions and businesses looking for investment. Similarly, there continues to be an inconsistent integration of the Guiding Principles across various reporting frameworks, benchmarks and other data and research products used by investors to assess companies. Human rights policy commitments are growing among investors, and human rights reporting frameworks and models support their efforts to assess and engage companies on human rights. However, human rights should be addressed in a more systematic or principled way among the institutional investor community. **There is a need for greater coherence and alignment of ESG benchmarks, data providers and reporting frameworks with the UNGPs to reach the potential of investment institutions and leverage better human rights performance by companies.**
5. Another significant challenge regarding incorporating human rights approaches in Latin America and the Caribbean is SMEs' lack of financing, knowledge and capacity building. **Discrimination in lending practices**, particularly to entrepreneurs, can also have significant consequences and represent a human rights violation as entire lending institutions may deny customers access to finance based on race, religion, or gender. In LAC, as in other regions of the world, a key priority remains to **raise awareness and provide capacity building to promote respect for human rights** more broadly across value chains, including among SMEs challenged by limited resources and few practical, tailored tools. The UNGPs recognise that SMEs may have less capacity and more informal processes and management structures than larger companies, so their respective human rights policies and processes will take different forms. It is important to bear in mind that SMEs are less likely to obtain bank loans than large firms, making it difficult for them to grow and expand and, ultimately, have greater financial means to dedicate to human rights due diligence (HRDD). There is, consequently, a **direct link between and need for further uptake of human rights and an enabling environment for business that allows financing for SMEs. States should therefore support capacity building for small and medium-sized enterprises to build up their knowledge and resources to meet the due diligence expectations and access to remedy**. They should also support investment firms on respecting human rights throughout their investment activities, including how this relates to fiduciary duties and broader sustainability and ESG investing.
6. There has been significant progress in investor uptake of the Guiding Principles over the past decade, bolstered by increased efforts from certain standard-setting bodies seeking to create an enabling environment for the rights-respecting investment. Nonetheless, further uptake of the Guiding Principles among **governments and standard-setting bodies** has at the same time been inconsistent and insufficient. There is widespread **misalignment** between legal frameworks for investment decision-

making and the Guiding Principles, as well as weak enforcement of existing environmental and social requirements where these exist. There remains a **capacity gap** across State institutions and multilateral entities, including the United Nations, when speaking out about investor responsibility and accountability for human rights. **An enabling environment for rights-respecting investment must be encouraged and promoted at national and international levels.**

7. The **development of innovation** to further increase financial inclusion is key, and development banking must continue playing a leading role in innovation for promoting **financial inclusion** in LAC. Notably, the financing of SMEs represents the heart of the economy and the development of innovation to further financial inclusion. It is essential to promote financial inclusion through innovative policies of development banking. The central role of financial innovation in fostering inclusion rests on the role of development banking and public banking. Indeed, an important part of their mandate is to promote financial development to foster economic development. There is a broad space for innovation and advancement toward improving the inclusion levels of the region. There is a need for a solid institutional framework that guarantees its continuity, the fields of action shared among development banking and other sectors, and the potential of technology platforms to lower costs and create instruments. **To do so, we should develop instruments capable of adapting to the needs of different risk management schemes that the productive structures of these countries have.**
8. For investors, the greatest challenge is not only **the accessibility of data but also managing expectations**. Data is important but engaging with companies and helping them to have and share best practices is as much critical to promote good corporate performance. Investors need to engage and drive companies to demonstrate good performance by sharing successful stories on how business practices have been improved in order to switch the narrative to a positive one.

Opportunities

1. When it comes to opportunities, there is a need to **leverage the financial sector and the momentum of the increasing focus of investors on environmental, social, and governance (ESG) factors**. In parallel to the corporate responsibility to respect human rights, financial institutions should also have a better integration of human rights due diligence into business relationships, considering the leverage they have in providing services and influencing public and private economic actors as it has been outlined in the UNGPs+10 Roadmap.
2. Greater inclusion of human rights in economic and fiscal policies of countries in LAC, notably regional and international financial systems, including **further integration of human rights due diligence** into projects financed by development finance and international financial institutions, must be increased as its levels remain currently low. HRDD is not only a responsibility of business and state actors but also a process that international financial institutions must undertake. HRDD should also be included as a tool for managing risks to people in mega-infrastructure projects. **Key international financial institutions must do better and show leadership. A greater alignment with the Guiding Principles is needed.**
3. **Reinforcing States' support and capacity building to business and employer organisations** is of paramount importance. The UNGPs call on businesses to "know and show", yet, despite all the private sector's goodwill, most SMEs cannot afford to engage in due diligence processes and effectively promote human rights if States do not provide the necessary knowledge, tools and resources to support them. In meeting their state duty to protect, UNGP3 call on states to provide guidance to enterprises on respecting human rights. As part of this standard of conduct, policymakers and standard-setting

bodies must support the private sector to tackle systemic human rights risks and create an enabling environment for responsible business conduct that is grounded in respect for human rights and access to remedy for affected stakeholders.

The private sector, including employer organisations, their affiliates and other companies have been extremely active in upholding and advancing human rights in the region. Below is one example of best practices and initiatives from COHEP, the Honduran Council of Private Enterprise, in incorporating a human rights approach into financial policies, regulations and practices in the region:

Example of best practices from COHEP

- As part of **COHEP's strong commitment** to advancing human rights and responsible business conduct (RBC), COHEP adhered to the UN Global Compact initiative in 2018 which has provided an opportunity to align their core strategies and operations with the ten universal principles related to human rights, labour, environment, and anti-corruption. Equally, COHEP and FUNDAHRSE have signed a Memorandum of Understanding (MoU) to collaborate and establish the Global Compact Local Network in Honduras. Lastly, COHEP is strongly engaged in the work of the IOE Policy Working Group on Human Rights and Responsible Business Conduct which provides key expertise and guidance on RBC, human rights and CSR matters and trends for both EOs and companies to advance the BHR agenda forward.
- In 2020, COHEP adopted a **general human rights commitment** through its Institutional Business and Human Policy, and as a result, a work plan was structured, with the purpose of contributing to the national economic and social development through the strengthening of Free Enterprise, and together with their members, COHEP is committed to providing guidance to the business community, promote the integration of human rights due diligence practices and promote dialogue and articulation with stakeholders in the field of human rights. (For more information on COHEP policy, you can download the document [here](#).)

As part of our COHEP's BHR commitment and Policy, the promotion and respect for human rights, RBC and anti-corruption practices among their members and the business community is undertaken through the following main measures:

1. Raise awareness through capacity building with their member organisations and the business sector on respect for Human Rights, the integration of due diligence into business practices and the need for rights and obligations to be accompanied by adequate and effective remedies in the event of non-compliance.
 2. Communicate the United Nations Framework on Business and Human Rights that establishes the State's duty to Protect, the Corporate Responsibility to Respect and the Duty to Remedy, as well as the implementation of this framework through the UNGPs.
 3. Promote respect for human rights with national and international actors with whom COHEP interacts.
 4. Publish our institutional policy, follow up on its implementation and communicate the actions carried out within the framework of the policy.
- COHEP has adopted and developed **different tools and guidelines** for the business community, and are as follows:
 1. COHEP has established a partnership with the Office of Activities for Employers (ACT / EMP) of the ILO, CEGESTI and the Responsible Business Conduct project in Latin America and the Caribbean Project (RBCLAC), to develop a [Corporate Self-Diagnosis Tool](#), with the objective to measure labour compliance, through a human right's due diligence process. The purpose of the self-diagnosis tool is to ensure that the companies can measure their performance and compliance through a labour standards perspective, and in turn, the results obtained will

allow businesses to identify good practices, possible violations and/or changes/adjustments that must be addressed to make progress and transform their policies and processes to guarantee compliance in their work performance.

2. COHEP developed **guidance tools** for companies to facilitate the integration of human rights and due diligence in business practices such as for example the ["Guide of Good Practices for the Integration of Respect on Human Rights in the supply chain of the Commercial, Industrial and Services Sector in Honduras"](#).
- Regarding COHEP's action on the **integration of ESG risk assessments in human rights due diligence**, COHEP launched in June 2022 an initiative called "Human Rights Management Working Group"; with the purpose of providing specialised support to participating businesses and/or member organisations for the implementation of tools that allow them to create a corporate culture of human rights, based on the identification and management of the risks that their activities may generate in human rights. Participating companies are assigned an advisor to assist them: (1) in the development or review of the company's human rights policy; (2) in the development of a human rights impact assessment, which will allow them to have clarity on the existing risks in their operations and business relationships; and (3) to review or develop grievance mechanisms aligned with the good practices established by Principle 31 of the UNGPs.

*As part of the initiative, COHEP has incorporated **the financial sector through a bank**. Currently, COHEP is assisting the bank to review all its policies and regulations related to Human Rights, Anticorruption and Bribery policy, code of ethics and other relevant policies. Also, the bank has integrated into its business model how they promote financial inclusion and accessibility, on their products and services under the ESG criteria. For example, the bank has implemented an assessment through the Environmental and Social Risk Analysis System (SARAS), which is part of the Socio-environmental Policy, where they identify, evaluate, manage, and monitor the risks of the credit portfolio, which focuses on the systematic and structured improvement of the socio-environmental performance of their clients. More information is available [here](#).*

*This COHEP initiative mentioned above has also integrated as part of its activities the development of **grievance mechanisms** with participating companies and member organizations. This project is ongoing and will be finalised in December 2022.*

In December 2021, the UN Working Group on Business and Human Rights launched a roadmap for the better implementation of the UN Guiding Principles (UNGPs 10+ Roadmap), including an addendum ["Taking stock of investor implementation of the UN Guiding Principles on Business and Human Rights"](#). This roadmap and the recommendations included in this stock-taking exercise offer opportunities to address human rights risks related to the financial sector. Key focus areas should be the strengthening of an enabling environment for responsible business practices for financial actors, greater coherence on ESG metrics for companies, better integration of human rights due diligence from financial institutions, the promotion of collective action in this sector, as well as continuous awareness raising and capacity building from States to advance the business and human rights agenda.

Through advocacy support and its active engagement in endorsing, promoting and disseminating among its members and networks the UN Guiding Principles on Business and Human Rights (UNGPs), as well as other government-backed instruments on responsible business conduct, IOE will actively continue to provide the vital to advance the Business and Human Rights and Responsible Business Conduct agenda.