Shaping Policy
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# Submission by IHRB to the UN Working Group

## Political Engagement

31 May 2022

### *1. What is your understanding of undue corporate influence in policy and regulatory matters? What challenges have you observed? Could you think of any concrete examples in activities or operations of your organization?*

The Institute for Human Rights and Business (IHRB) welcomes the opportunity to contribute to the ongoing actions of the UN Working Group on the important issue of corporate influence in policy and regulatory matters. With respect to understandings of undue corporate influence in these matters, our views align with points raised in the Summary of the Working Group's expert consultation on this issue.[1]

One issue not specifically mentioned in the Summary report concerns the reality that because companies in most cases have significantly more financial resources than civil society and other organisations, they are better able to dedicate more time and human resources to attracting the attention of government representatives for their positions and provide financial support for specific elected officials. In addition, our own research and involvement in a number of human rights initiatives involving business has highlighted how the financial power of corporate actors has given their representatives stronger positions to participate, for example, in key stages of processes involving negotiations with governments and civil society actors around new standards and systems to monitor corporate performance. While this may not on its own constitute "undue influence", it must be given serious consideration, in particular, given the fact that many governments continue to disregard civil society groups, and in some cases object to their presence in policy making processes and international negotiations, arguing that only governments are legitimate representatives of the people and the civil society has no role. The role of business associations in putting forward positions that run counter to international standards or stated views by leading companies also requires further consideration in this context. A well-known example can be seen in the positions that leading business associations took against legislation relating to conflict minerals even as leading companies who were members of the same associations spoke favourably on the need for such actions.[2]

1 https://www.ohchr.org/sites/default/files/2022-03/UN-WG-Expert-Meeting-Summary-Responsible-Corporate-Political-Engagement.pdf

2 https://www.globalwitness.org/en/archive/electronics-companies-must-break-us-chamber-conflict-minerals/

## *2. Do you think there is a kind of political engagement by businesses that could be defined as appropriate or necessary? Could you please share concrete examples?*

There are multiple instances in which businesses have taken public policy and broader advocacy positions that were consistent with support for international human rights standards. Recent examples can be seen in the way leading companies have spoken out against and responded to systematic racism and police abuse against black and other minority groups, as well as their public support for the LGBTI community, equal marriage rights, rights relating to women's health, and sustainable development objectives among others.

Additional examples include the steps companies have taken to support workers in Ukraine during the present conflict, and the decisions by hundreds of companies to withdraw or suspend their operations in the Russian Federation due to their concerns over the current crisis. It should be noted that such decisions cannot be taken lightly, and require heightened due diligence, to ensure that there is no unintended harm as a consequence. It is also the case that such actions are frequently episodic and driven by the news cycle, and not necessarily systematic, nor applied evenly across the world.

## *3. What measures could States take to prevent and address corporate political activities that may undermine the State's ability to protect human rights and businesses' responsibility to respect human rights?*

At the very least, States should require greater transparency from companies about their lobbying activities. There should be clear information about the amount of money being contributed as political contributions, the causes that companies support, and lobbying positions the companies advocate. While it is appreciated that in some instances that may not be possible because of the need for corporate secrecy or competitive pressures, in general, companies need to be clearer, and rather than relying on companies to be transparent through moral suasion, stock market authorities can require companies to be more transparent, provided the companies are publicly-listed. States should also be clear in publicizing when specific corporate lobbying may in practice result in the undermining of human rights standards. The 2021 report by the OECD on Lobbying in the 21st Century: Transparency, Integrity and Access, offers useful analysis and recommendations in this area.[3]

## *4. What are good practices that business could implement to avoid undue political influence or engaging in political activities that negatively impact human rights?*

Top line good practice principles in this area include:

- Greater transparency.
- Clearer explanation of how companies have arrived at specific positions.
- Confidential dialogue with affected parties to cover areas that cannot be made public.
- Clearer information about mitigating steps being taken to ensure that harm to human rights is minimized.

Honouring the principle of not recruiting former bureaucrats or politicians until a sufficient time period has lapsed since the person has left office.

3 https://www.oecd.org/corruption-integrity/reports/lobbying-in-the-21st-century-c6d8eff8-en.html

The 2022 report by the Principles for Responsible Investment on The Investor Case for Responsible Engagement includes helpful points and resources relating to good practices and further actions by the investor community that can help foster more responsible corporate actions in this area.[4]

## *5. What are the specific human rights risks posed by corporate influence in the political and regulatory sphere to groups in most vulnerable situations such as women and girls, indigenous communities, human rights defenders, persons with disabilities, persons with different sexual orientation or gender identity or migrant workers?*

There are multiple risks to groups in vulnerable situations linked to corporate influence in political and regulatory spheres. These risks are seen in cases involving invocation of eminent domain to take over land, filing of SLAPP suits against human rights defenders objecting to a company's business practices, and the erosion of safety rules placing disabled community in harm's way. They are also visible in trends that see the strengthening of laws that prosecute same-sex relationships, the imposing of onerous conditions on migrant workers, or laws that undermine women's rights (such as restricting the hours of work, or industries in which they can work, or sexual and reproductive rights). These are only some examples of where regulatory overreach can undermine human rights, and silence or acquiescence on the part of companies can result in significant harms to vulnerable individuals and communities.

## *6. How does corporate influence in the political and regulatory sphere impact the ability of victims of business-related human rights abuses to seek access to effective remedies? What specific challenges do rightsholders face in accessing effective remedy?*

The most effective remedy is access to a functioning court system. Companies can make it harder for rights-holders to access the same by using procedural tactics to delay hearings of important matters, which can raise costs, or potentially keep people detained for much longer than would otherwise be the case if trials were to be held more efficiently. Companies' vast resources can be used to delay processes by engaging communities in long discussions and procedural negotiations, while continuing projects they are bound by deadlines to implement. In choosing the civil society groups they engage with, companies can place barriers that these groups may find it difficult to overcome, such as locating consultations in the capital city, to travel where from remote areas the cost may become a prohibitive barrier.

## *7. What recommendations on this topic would you like the Working Group to include in its report?*

Any recommendations should acknowledge that as legitimate non-state actors, companies have the right to lobby, to influence public policy, and to negotiate for better terms – through tax, tariff, or other measures. But any steps the companies undertake should be transparent, and if those measures are to be confidential, the government should act in the best public interest.

4 https://www.unpri.org/download?ac=15716