

UN Working Group on Business and Human Rights

Call for inputs to Multi-stakeholder Consultation on “Corporate Influence in the Political and Regulatory Sphere”



Multi-stakeholder Consultation on “Corporate Influence in the Political and Regulatory Sphere”

Introduction

The Institution of Occupational Safety and Health (IOSH), the Chartered body for occupational safety and health professionals, with approximately 47,000 members in more than 130 countries, has a vision of ‘A safe and healthy world of work’. We are pleased to provide feedback to the UN Working Group on Business and Human Rights on ‘Corporate influence in the Political and Regulatory Sphere’.

As an international non-profit organisation, IOSH ethically influences important decisions that affect the safety, health and wellbeing of people at work worldwide. We responsibly collaborate with governments, advise policymakers, commission research, set standards, engage with global, regional and local organisations and run high-profile campaigns to promote awareness of occupational safety and health (OSH) issues. The IOSH Policy and Regulatory Engagement function provides a strong foundation for key policy responses and public policy initiatives that focus on the crucial role of OSH.

IOSH’s Written Input Response to the Questions

Our IOSH written input has been provided per each question as detailed below:

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?

IOSH understands that lobbying, advocacy, and engagement practices are essential to our notion of democracy. As that the dynamics of the relationship among business, society and politics are continually evolving so do the due diligence and oversight mechanisms associated to this activity. Businesses - and large corporates in particular - as part of their own agendas are increasingly present in the political and public policy domain making contributions to political parties, decision-making bodies, political committees or established governmental networks of influence. However, lobbying can also become distortive of the democratic process. This can be seen on the effects of businesses who don’t follow the rules of the corporate governance ‘game’ in a responsible and ethical manner, instead of safeguarding the interests for their shareholders, employees, customers and the communities in which they are established.

To this extent, examples of lobbying practices that do not consider respect for social human rights are on the rise, with some companies incurring in bad practices by persuading lawmakers to pass industry-friendly legislation that could erode workers’ rights and protections. From child labour in cocoa plantations^{1 2}, issues with cobalt supply chains³, to abusive working conditions of textile suppliers to the fashion industry⁴,

¹ [5] Oversight of Public and Private Initiatives to Eliminate Worst Forms of Child Labor in the Cocoa Sector in Côte d’Ivoire and Ghana. Tulane University Payson Center for International Development and Technology Transfer, 31 Mar. 2011, https://issuu.com/stevebutton/docs/tulane_final_report. Accessed 20 Oct. 2021.

² BBC. March 24, 2010. “Tracing the Bitter Truth of Chocolate and Child Labour.” Panorama, BBC, 24 Mar. 2010, <https://www.youtube.com/watch?v=LD85fPzLUjo>. Accessed 20 Oct. 2021.

³ The New Yorker. The Dark Side of Congo’s Cobalt Rush. May, 2021. New York. <https://www.newyorker.com/magazine/2021/05/31/the-dark-side-of-congos-cobalt-rush>

⁴ Profit Pakistan Today. Sons, bribes, perks, and jobs – the murky world of corporate lobbying in Pakistan. October, 2021. <https://profit.pakistantoday.com.pk/2021/10/25/sons-bribes-perks-and-jobs-the-murky-world-of-corporate-lobbying-in-pakistan/>

multinational corporations have a responsibility for – and profit from – failing to protect human rights in their global value chains.

IOSH sees a challenge on the way some publicly traded well-resourced companies operate. It is well-evidenced that companies with poor human rights records and lack of transparency on the protections they provided to their workforce can suffer severe reputational risk. This situation can escalate for those organisations operating in challenging socio-political circumstances or under the umbrella of regions with weak and long-standing rule of law. According to a recent World Benchmarking Alliance’s (WBA) research⁵, ‘only 20% of the assessed 1,000 companies disclose a high-level approach to lobbying and only 8% publish their spending on lobbying’. These figures tend to be even less transparent on issues that have the potential to affect workers’ working conditions. Poor practices of meaningful corporate disclosures should compel public policy, investors, civil society and other key stakeholders to push for greater transparency as otherwise they are far from obtaining a comprehensive picture of a company’s impact on sustainability issues.

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?

As corporate political engagement practices entail a wide and complex range of initiatives - including under-the-radar practices – it is critical that corporate political engagement is carried out responsibly, transparently, and ethically. Considering the historical lack of systematic attention⁶ to political lobbying and the disconnection between many companies’ public sustainability ambitions and their non-public lobbying efforts, policies and practices need to be followed to improve corporate transparency, accountability, and responsibility in the full spectrum of political involvements. This would mean an increased level of due diligence associated to the corporate policies and procedures for political engagement, public policy positions, political donations, lobbying activities and so on.

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| <ul style="list-style-type: none"> • Lobbying directly by companies, usually through their government affairs or public relations departments and in-house lobbyists |
| <ul style="list-style-type: none"> • Lobbying indirectly through industry associations |
| <ul style="list-style-type: none"> • Lobbying activities through contracting with professional lobbying or public relations firms, law firms and self-employed lobbyists mandated to represent a corporation’s interests. These firms or individuals, usually established in key decision-making hubs, have an in-depth knowledge of policy-making processes in a given country and are able to better navigate institutional complexities |
| <ul style="list-style-type: none"> • The direct provision of contributions to political parties, candidates and electoral campaigns |
| <ul style="list-style-type: none"> • The provision of contributions to political parties, candidates and electoral campaigns through trade associations and third-party organisations |
| <ul style="list-style-type: none"> • The provision of gifts, benefits and other advantages to influence policy makers |
| <ul style="list-style-type: none"> • The movement of public officials, business executives and experts between the public and private sectors (the so-called ‘revolving door’ phenomenon) |
| <ul style="list-style-type: none"> • The influence of special interests through participation in established institutional arrangements such as government advisory and expert groups |
| <ul style="list-style-type: none"> • The use of information activities on social media and in traditional media to shape policy debates, inform or persuade members of the public to put pressure on policy makers and indirectly influence the government’s decision-making process |
| <ul style="list-style-type: none"> • The financing of political advertising in both traditional and social media |
| <ul style="list-style-type: none"> • Funding or creating non-governmental organisations and grassroots organisations |
| <ul style="list-style-type: none"> • Funding academic institutions, think tanks, policy institutes, experts and practitioners that can provide knowledge on specific policy issues and propose solutions |
| <ul style="list-style-type: none"> • Engaging in voluntary business initiatives, global networks and alliances |

Source: Adapted from (OECD, 2021^[4]) and (PRI, 2018^[10]).

Table 1 Corporate political engagement practices⁷

On the matter of workers welfare, appropriate approaches to political engagement can be seen in calls for increased transparency of supply chains through regulatory-led interventions that look at providing a level playing-field either through collective action within a particular sector or through the adoption and

⁵ World Benchmarking Alliance. Social Transformation Baseline Assessment 2022. Geneva, January 2022.

⁶ Anastasiadis, S., Moon, J., & Humphreys, M. (2018). Lobbying and the Responsible Firm: Agenda-setting for a Freshly Conceptualized Field. *Business Ethics*, 27(3), 207-221. DOI: 10.1111/beer.12180

⁷ OECD/PRI (2022), *Regulating Corporate Political Engagement: Trends, Challenges and the Role for Investors*, OECD Publishing, Paris.

development of robust regulatory frameworks. Tragedies such as the Rana Plaza factory disaster in Bangladesh in 2013 and the Pakistan garment factory fires in 2012, triggered demands to better understand not only the working conditions workers in the garment industry and the responsibility of fashion brands, but exposed the political corruption and the power that the Bangladesh's multi-billion dollar ready-made garments industry held in the political scene. According to one estimate, during the Rana Plaza period a 10 percent of Bangladeshi legislators directly owned garment industries or have financial interests in the RMG industry⁸ with other legislators known for maintaining close financial ties with apparel owners, manufacturers and traders.

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?

As issues affecting decent work such as the health and safety of workers, forced labour and slavery, continue to remain marginalised political issues and therefore are insufficiently regulated, initiatives that look at raising awareness and concern about these practices among consumers, activists, investors and policymakers need to be promoted. Rising concern over supply chains, labour and occupational safety and health provisions and human rights have given birth to initiatives such as the Principle for Responsible Investment or the Corporate Human Rights Benchmark, to create public benchmarks of corporate human rights performance and to promote sustainable investment through the incorporation of environmental, social and governance issues.

In an era when customers, employees, and investors are increasingly scrutinising companies' disclosure on worker and social issues, this oversight must include greater disclosure of political spending. While calls for corporations to take on greater accountability for labour standards in their supply chains have intensified, political activities yet remain invisible to the public scrutiny. Moreover shareholders, employees, and society remain in the dark about corporate political spending impacting on workers' rights and protections. On occasions these practices are supported by the system; according to UN Principles for Responsible Investment (PRI)⁹, some national lobbying registers only apply to paid external lobbyist and don't cover employees acting as lobbyists. Likewise, the EU Transparency Register doesn't require the disclosures of lobbying meetings with policy assistants, staffers, advisors, and most of the Commission. This is utterly inconsistent in the view for improved corporate political transparency.

Even recent trends in countries adopting legislative measures to deploy due diligence processes, through existing international voluntary standards on responsible business conduct frameworks fall short in monitoring novel forms of political influence that could shape the agenda on decent work, respect for human rights and sustainability in global value and supply chains.

This is also consistent with our expressed narratives on EU consultations on Sustainable Corporate Governance, and the directors' accountability and responsibility duties towards integrating sustainability into corporate strategy and decision-making. To that extent, companies and their directors need to shift their approach towards a 'beyond compliance' approach, that ultimately benefits individuals, organisations, communities, and society by ensuring decisions consider social, ethical, financial and environmental impacts. It is for that reason, IOSH believes that a stronger emphasis needs to be placed on subtler forms of corporate political behaviour such as membership of trade associations, philanthropic donations, funding of academic research and think-tanks to name a few.

⁸ Jim Yardley, "Garment Trade Wields Power in Bangladesh" (24 July 2013), online: <[nytimes.com/2013/07/25/world/asia/garment-trade-wields-power-in-bangladesh.html](https://www.nytimes.com/2013/07/25/world/asia/garment-trade-wields-power-in-bangladesh.html)> [perma.cc/H667-39C5]

⁹ Akbik, S. Principles for Responsible Investment. Responsible political engagement should be at the heart of investors' stewardship. February, 2022. <https://www.unpri.org/pri-blog/responsible-political-engagement-should-be-at-the-heart-of-investors-stewardship/9521.article>

IOSH also believes on the need for shifting the current approach that has led to not “only an overall increase of lobbying but more lobbying by individual firms rather than through industry associations” for a fairer system that promotes lobbying through credible industry associations with a focus on the public good.

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

We are conscious that an easy solution would imply for companies to explicitly prohibit political contributions (even when this is permitted by existing laws), and by improving their transparency when actively participating in policy debates or engagement opportunities. The European Commission Transparency Register model could be used as a benchmark for recording all the governmental-related activities on the corporate website.

For those organisations that remain active in the political lobbying arena, it is recommended that responsible corporate political engagement is carried out within a framework of good corporate governance and commitments by the board to the highest standards of integrity, accountability, and transparency on the issue of human rights and transnational corporations and other business enterprises. This needs to be supported by designing and implementing policies and procedures, that provide firm assurance, compliance and integrity on the interactions of these companies in their political process.

We would like to refer to the ‘Bangladesh Accord’ on Fire and Building Safety and the follow-up pact, the ‘International Accord for Health and Safety in the Textile and Garment Industry’ that looks at extending the principles and protections to other countries with similar issues. Reproducing the fair balance composition of representatives from global trade unions and major apparel brands as part of these negotiations contributed to improved transparency on the business impact on political affairs. This practice could potentially be replicated to other regions that face similar issues. This is particularly the case in Pakistan’s apparel and textile industry that employs over 2 million workers and has well-evidenced practices of workers’ rights violations and political corruption which ultimately negatively affect safety and health standards in the factories.

At IOSH we have advocated on the increasing role that protection of human rights and occupational safety and health plays in trade and investment agreements¹⁰, with emphasis on ensuring that growth in trade never comes at the expense of worker protection. As historically, free trade agreements (FTAs) primarily sought to remove barriers to trade, covering social issue like occupational safety and health only indirectly, we believe that corporate-level lobbying on trade agreements is important, in particular for export and import practices in investment locations where regulations offered more ‘flexibility’ and potential to diminish workers protections.

We also see this as an opportunity for positively shaping the politics of trade agreements, considering how free trade agreements are dominated by a few large corporates¹¹ and financial development banks engaged in international trade, a stronger emphasis to support the ratification of international standards and occupational safety and health provisions of these agreements would constitute a ‘game-changer’.

¹⁰ Jones et al. A contribution to the Policy Hackathon on Model Provisions for Trade in Times of Crisis and Pandemic in Regional and other Trade Agreements. Available from: https://www.researchgate.net/publication/344467527_A_contribution_to_the_Policy_Hackathon_on_Model_Provisions_for_Trade_in_Times_of_Crisis_and_Pandemic_in_Regional_and_other_Trade_Agreements [accessed May 18 2022].

¹¹ Blanga-Gubbay, Michael & Conconi, Paola & Parenti, Mathieu, 2020. "Lobbying for Globalization," CEPR Discussion Papers 14597, C.E.P.R. Discussion Papers.

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?

The consequences of improper, negligent, or inadvertent engagement in political activities can be substantial for politically well-connected corporates. Amid growing legislation on due diligence matters and oversight from investors and boards, companies are becoming increasingly transparent about their political activities but there are specific practices that puts some segments of the workforce under risk.

This is the case of the mining sector that have traditionally faced a string of allegations over human rights abuses and environmental damage, mainly in Latin America, Asia and Africa where protections for workers are less developed. The extraction of cobalt, copper, lithium, manganese, nickel and zinc – core components for renewable energy technology – expected to rise in the next few years, many of the companies producing these minerals are confronting claims of human rights abuses¹², including some of the largest and most well-established corporates on the extractive sector. Migrant and indigenous mine workers together with communities in rural areas are usually ‘caught in the middle’ of the profit-making of these companies. Workers often suffer work-related illnesses and experience poor working conditions. The aggressive lobbying influence of the mining sector can be seen on weak regulatory frameworks that lack from a power balance between mining lobbyists and government structures. This is of particular relevance in regions with a strong economic dependence on the mining sector or for those sectors that are known for an abuse of sub-contracting practices that can lead to a decline of working conditions and workplace safety and health.

Another concerning group in which we would like the UN Working Group on Business and Human Rights to place a stronger emphasis relate to the conduct from some of the companies operating in the digital platform economy , that spend vast amounts of money, resources and corporate-related lobbyists to press legislatures and actively influence state regulation¹³. There are instances when they make the most of their political influence to deny basic fundamental rights in the form of unionisation to improve their working conditions. Gig economy’s lobbyists undermine social and workers’ rights¹⁴ while fiercely defending their business models, which rely on workers ‘labelled’ as independent contractors, who don’t receive the same job protections and benefits as employees. These practices were illustrated on the record-breaking money that a digital labour platform spent to pass Prop 22 (a Californian legislative development that help to avoid the classification of their workers as employees with full labour rights). We’ve witnessed other examples affecting the European region, when some of these platform companies intensified their lobbying efforts to remain exempt from the EU’s E-Commerce Directive and its Services Directive or more recently through the actions of business associations and major companies to influence legislation on imports of goods made with forced labour from persecuted Muslim minorities in China. In this context, technological advances and competition should not be an excuse for contributing to the erosion of labour and social rights.

Another area of concern relates to the power that some transnational companies and industry-sector groups hold, covering a diverse spectrum of agricultural, farming and food supply chain thanks to political lobbying and weak regulatory framework in which they operate. The *de facto* growing political market dominance that these corporations hold can lead to legislative developments that unethically put profits before worker safety, and sustainability. On many occasions, industries can rely on under-the-radar foreign labour, modern slavery or child labour practices in the different tiers of their supply chains.

Another emerging issue that we foresee is the increasing pressure that individuals, communities, and organisations that raise concerns over business-related risks and impacts might suffer. This can include

¹² Human Rights Watch. Extractive Industries: A New Accountability Agenda. May, 2013. <https://www.hrw.org/news/2013/05/21/extractive-industries-new-accountability-agenda>

¹³ Woodcock, Jamie. "The Impact of the Gig Economy." In *Work in the Age of Data*. Madrid: BBVA, 2019.

¹⁴ Corporate Europe Observatory. Über-influential? How the gig economy’s lobbyists undermine social and workers rights. September, 2019.

pressure against journalists, whistle-blowers alleging corruption or political malpractices, trade unions and workers representatives, and human rights advocates.

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?

IOSH does not have an opinion on this particular item.

7. What recommendations on this topic would you like the Working Group to include in its response

We recommend strengthening the implementation of human rights due diligence compliance practices as part of the unethical influence that corporations might exert over national and international decision-makers and public institutions, concentrating on social sustainability¹⁵ performance issues including human rights, fair labour practices, and occupational safety and health in operations and supply chains.

We would also like to see *'quick wins'* responsible practices being extended to other industries (e.g., corporates not serving former politicians, restricting contributions to trade associations and other organisations that lobby indirectly that lack from transparency, disclosure, or accountability principles, or improved transparency on how companies manage their corruption risks and tackle their impacts on human rights).

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¹⁵ Institution of Occupational Safety and Health. Catch the wave campaign. Leicester, 2022. <https://iosh.com/businesses/iosh-for-business/catch-the-wave/>