

OPEN-ENDED INTERGOVERNMENTAL WORKING GROUP ON TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS ENTERPRISES WITH RESPECT TO HUMAN RIGHTS

PANEL: ENHANCING THE RESPONSIBILITY OF TNC'S AND OTHER BUSINESS ENTERPRISES TO RESPECT HUMAN RIGHTS, INCLUDING PREVENTION, MITIGATION, AND REMEDIATION

STATEMENT OF THOMAS M. MACKALL, SODEXO, GROUP VICE PRESIDENT, GLOBAL LABOUR RELATIONS

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Thank you, Madame Ambassador. Thank you to my colleagues on the panel for your participation. Thank you to the delegates for your attendance and interest in this event. Thank you all for the opportunity to offer one perspective from the business community on this very important topic.

Sodexo is headquartered in France. Sodexo has approximately 420,000 employees in 80 different countries, which I believe makes us the world's 18th largest employer.

Since our founding in 1966, Sodexo has had both a business and social mission. Today, the two parts of our mission are these: to improve the quality of life of all those we serve, and to contribute to the economic, social, and environmental development of the cities, regions, and countries where we operate.

So, respect for human rights is an essential aspect of who we are as a company. We believe, and I believe personally, that respect for human rights is critically important for all businesses in every part of the world.

It is important to note that Sodexo is not alone in recognizing the importance of this issue. Sodexo regularly conducts stakeholder surveys, which surveys clients and prospective clients including businesses of many types. In the most recent survey, "respect for human rights" and "business integrity" were identified as two of the five most material factors to the respondents.

Our results are consistent with the results of other recent evidence regarding the attitudes of the business community. For example, a survey by the WBCSD found:

- 95% of respondents are familiar with the UN Guiding Principles on Business and Human Rights;
- 90% of respondents believe that an organization's business strategy should include explicit consideration to respecting human rights;
- 60% of respondents have a standalone public human rights statement or policy in place;
- Two thirds of respondents have in place programs, policies or regulations that explicitly encourage the implementation of UN Guiding Principles or other guidelines;
- 75% of respondents have processes in place to assess potential human rights impacts;
- Two thirds of respondents employ measures to monitor and track their human rights performance;
- 92% of respondents undertake formal stakeholder engagement;

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- 70% of respondents communicate their human rights performance to stakeholders;
- 75% of respondents think that the management of human rights issues will become more important to their company in the next two years.

WBCSD, Scaling Up Action on Human Rights: Operationalizing the UN Guiding Principles on Business and Human Rights.

The WBCSD results are consistent with a survey conducted by The Economist, which found that 83% of businesses agree that human rights matter for both business and government, and 71% stated that they believed their responsibilities to respect human rights goes beyond simple obedience of the law. The Economist Intelligence Unit, The Road from Principles to Practice: Today's Challenges for Business in Respecting Human Rights.

I want to make three basic points in the remainder of my remarks.

1. The most critical work to be done is to equip individual states to fulfill their duty to protect human rights.
2. Any work to promote respect for human rights must include all businesses, not simply transnational corporations or other businesses that may have a transnational character.
3. Since they were passed in 2011, the UN Guiding Principles have had a huge impact on business, which is committing tremendous resources and energy to operationalizing these guidelines. Any work in this area must be fair and firm in its support for the work of companies and continuing the momentum in this area.

The first pillar of the UN Guiding Principles framework is the duty of states to protect human rights. Article 3 of the Principles provides that countries have to enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps.

A comprehensive human rights regulatory and legal framework by countries applicable to all societal actors, including all businesses, is critical to enhancing remedies and promoting respect for human rights. The most valuable work is to provide support and resources to enable host states to implement their respective commitments and duties to protect human rights.

Any company operating in any state is subject to the laws of at least the host state. The most effective way to encourage respect for human rights and to enhance remedies for human rights violations is for the host states to have regimes that include robust human rights protections.

What does this mean? What would this require?

1. Substantive alignment between the laws of the host state and human rights standards. So long as there is a substantive gap between what host states may require of its citizens and

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the standards for protecting human rights, there will be concerns and risks. States should eliminate the gap.

2. Host states should have clear rules defining what behaviors are expected, what behaviors are unlawful, and what the liabilities and penalties are for violations.
3. Host states must have effective and integral inspection and enforcement capabilities.
4. The legal system of the host state must provide for timely redress of allegations and violations.
5. The legal processes and system of justice in the host state must be fair and be legally and effectively open to all persons.
6. The host state should also have systems that assess and address barriers to remedies and consider non-judicial options such as adherence to the OECD MNE Guidelines and establishment of National Contact points.

Some may suggest that this is impractical, that some host states may lack the resources or the will to go down this path. But this is why the work of and support from the UN and other groups is so important.

- National Action Plans are an example today of energetic engagement of governments, business, and other stakeholders to implement the pillars of the guiding principles, and can be a powerful tool in enabling host countries to protect human rights.
- The supervisory machinery of the UN Human Rights Council could be improved to require governments to take steps to implement their duty and to report on their progress.
- International groups or bodies could provide support in developing these frameworks, such as the OSCE has done in the Balkans or the work that has been done to help develop health care and other legal systems in Africa.
- Fellow states committed to protecting human rights can provide support: Technical cooperation, exchanges of experience, national action plan exchanges. These are just a few suggestions.

Any work with respect to business must include all businesses, not simply transnational corporations or businesses with a transnational character.

First, it is critically important for host states to take effective measures to bring all businesses operating in their country under effective regulation. The scope of the informal economy is very large in some countries, estimated to be as high as 92% of the Indian economy for example. Companies that evade regulation through graft or other means can readily avoid meeting even their legal obligations to their employees such as paying minimum wage, making contributions to retirement or health funds, or meeting health and safety standards, let alone operate to help raise standards. As a company that operates locally, provides services locally, competes for business locally, and competes for talent locally, Sodexo has seen first-hand how the presence of a substantial informal economy can depress market standards and accelerate a race to the bottom led by people competing unfairly. This can have a direct adverse impact on people.

The International Labour Conference of the ILO has recently recognized this as well:

[T]he high incidence of the informal economy in all its aspects is a major challenge for the rights of workers, including the fundamental principles and rights at work, and for social protection, decent working conditions, inclusive development and the rule of law, and has a negative impact on the development of sustainable enterprises, public revenues and governments' scope of action, particularly with regard to economic, social and environmental policies, the soundness of institutions and fair competition in national and international markets ...”

Recommendation 204: Recommendation Concerning the Transition from the Formal to the Informal Economy (June 2015). It is therefore critically important to equip host states to cast their net more broadly and minimize the informal economy.

Second, simply focusing on transnational companies or companies with a transnational character, and therefore excluding domestic companies, by definition limits the potential reach of the protect, respect, and remedy framework embodied in the UN Guiding Principles. And, creating what would effectively be two different standards or differing sets of obligations for transnational and domestic businesses also threatens to undermine what the UN Guiding Principles are trying to achieve. Let me give you an example of what I mean.

Sodexo's Supply Chain Inclusion Program is part of our commitment to have positive impacts on local communities. Sodexo works in many countries throughout the world in order to integrate Small & Medium Enterprises (SMEs) into our supply chain. This work is often carried out in conjunction with local organizations such as local Authorities, clients, NGOs or Associations. This program aims to help SME's boost their quality and competitiveness through training, enabling them to become a qualified supplier to Sodexo. Sodexo is committed to expanding our engagement and purchasing spend with SME's. This program has specific actions towards women and socially excluded communities.

Presently, our Supply Chain Inclusion program has already been deployed in 32 countries where Sodexo is present. During the Clinton Global Initiative's last annual conference, we announced our intention to spend One Billion US Dollars globally with over 5000 SME's, at least 1500 of which are run by women. We expect this program to be deployed in 42 countries by 2016 and have targeted deployment in all 80 countries where we operate by 2020.

These SME's are in most instances local companies, not transnational companies or companies with a transnational character. Now, if these companies are not by law or regulation held to the same standards as a transnational company such as Sodexo, then this program takes on significant additional risk for Sodexo. Because such companies would effectively be outside the scope of mechanisms to enforce a state's duty to protect human rights, the duty to protect human rights would be effectively shift to Sodexo, which would bear all of the risk of violations within the supply chain. Indeed, the only real incentive that such a company may have to respect human rights, other than the altruism of its owners, would be the incentives they perceive to be associated with our supply chain.

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One matter cited by this working group in its formation was the stated concern that transnational companies are subject only to soft law. Yet, excluding domestic companies from the scope of work essentially relies upon the soft law of supply chain management by large companies to incent smaller companies to respect human rights. These unintended consequences can be avoided by including all businesses within the scope of work to promote respect for human rights.

My third point is that the UN Guiding Principles are already having a tremendous impact on the business community and any work should help to sustain the momentum that is building within the business community.

The multi-stakeholder work engaged as part of the National Action Plans in many countries are bringing governments, businesses, and other stakeholders together like never before. Any work should encourage this engagement.

Companies with resources to do so are working hard to develop due diligence and remedy programs. But not all companies have those resources. The work of the Open-Ended Intergovernmental Working Group should help governments provide support to companies who need guidance and direction about creating appropriate due diligence programs.

All of us in this room agree that victims of human rights violations should have fair, effective, and prompt access to justice. Any work should equip host states to provide this. Most of us must also agree that the UN Guiding Principles, which were passed with unanimous support, represent a major step forward in this area, and indeed they have generated real momentum for greater and more effective work by business to demonstrate respect for human rights. I believe that any work must clearly support the purpose and framework of the UN Guiding Principles and recognize the good work that is already being done as a result of them.

Thank you, Madame Ambassador.