IOE input to the 2019 General Assembly report of the UN Working Group on Business and Human Rights on "policy coherence in government action to protect against business-related human rights abuse"

1. Introduction

The International Organisation of Employers (IOE) is the largest private sector network in the world, representing more than 50 million companies across social and labour policy fora such as the ILO, the UN and its various agencies, and the G7/G20.

The IOE attaches great importance to business and human rights and is actively engaged in endorsing, promoting and disseminating the UN Guiding Principles on Business and Human Rights (UNGPs), as well as other Government-backed instruments on responsible business conduct, among our members and networks. We help businesses of all sizes to meet their responsibility to respect human rights in line with the UNGPs and to make a positive contribution to the Sustainable Development Goals (SDGs).

Respecting and advancing human rights is a priority for the international business community and the IOE strongly argues for preserving the approach outlined by the UNGPs.

2. Input for the report

The IOE appreciates the opportunity to provide the UN Working Group on Business and Human Rights with a short submission in response to its call for input for its report to the UN General Assembly on "policy coherence in government action to protect against business-related human rights abuse." This is a very important topic and we welcome the UN Working Group's efforts to maintain a spotlight on it.

We would like to make some points in relation to the guiding questions for business organisations and business associations:

1. What are the concrete policy coherence challenges you and your member companies see in practice in regard to business and human rights?

- **We have global policy coherence and must preserve this:** There have been many years of hard work by Governments, international organisations, business and civil society to ensure policy coherence of the global authoritative standards - such as between the relevant Government-backed standards (the UNGPs, the OECD Guidelines for Multinational Enterprises and the ILO's MNE Declaration), as well as other relevant initiatives and tools (i.e. International Finance Corporation Performance Standards, the UN Global Compact's 10 Principles, the Global Reporting Initiative, ISO 26000 Guidance on Social Responsibility, the Voluntary Principles on Security and Human Rights, the work of the Thun Group of Banks, etc.). This coherence and alignment of international standards should be acknowledged and, crucially, preserved.

- **Far greater focus is needed to push *all* States to implement these (coherent) standards on the ground in a way that brings "implementation coherence" across the world and avoids unintended consequences:** It is far easier for business to respect human rights when Governments do their job to protect human rights. The overall approach to most States' policy making appears patchy, uncoordinated and aimed squarely at business activities. Many States are not meeting their existing human rights obligations or doing enough to address underlying challenges in their jurisdiction - all of which lie at the root of many human rights harms. Policy coherence does not mean that Governments need to introduce new policies and laws per se. Companies do not exist or operate within a legal or policy vacuum* and for the most part, the challenge is the lack of implementation and enforcement of existing policies and regulations by Governments. Therefore, the problem is not the absence of more binding international instruments on business and human rights, but States' failure and/or lack of capacity to implement and enforce their own domestic laws and existing international human and labour rights obligations. What is needed is for more States to meet their existing obligations required under the UNGPs, and more effective and comprehensive law enforcement in general with improved access to remedy for victims in their jurisdictions. The focus needs to be on pressuring, encouraging and supporting *all* Governments to ensure an enabling environment for *all* companies to respect human rights and ensure they can provide jobs and other vital services and products to society. This fundamental challenge requires much greater focus on the part of all actors with a stake in the success of the business and human rights agenda. Regrettably, many initiatives (however well-intentioned) distract from this critical and practical policy implementation work. One practical suggestion is to encourage more States to use the Human Rights Council's "Universal Periodic Review" process to encourage better State implementation of their existing international human rights obligations as they relate to business impacts.

- **More effort is needed to ensure coherence across Government departments (such as through NAPs):** National action plans on business and human rights (NAPs) can be a useful vehicle to bring different arms of the Government (i.e. relevant ministries and agencies), the Parliament, the national human rights institutions, business and civil society together to ensure coherence across the Government and State machinery. Our members often explain that high-level political messages, which express positive State intentions to address human

rights challenges, are not supported by the actions of relevant ministries / agencies on the ground. As such, all too often the rhetoric does not match reality. All State efforts and initiatives to address business-related human rights challenges should include meaningful and regular consultation with business**.

- **The informal economy:** *The obvious and important exception to the point about formal business is in the informal economy. The ILO estimates that the informal economy comprises more than half of the global labour force and more than 90% of Micro and Small Enterprises (MSEs) worldwide. Informality is an important characteristic of labour markets in the world with millions of economic units operating and hundreds of millions of workers pursuing their livelihoods in conditions of informality. Informality is a systemic human rights and development challenge that can disproportionately affect women and vulnerable/marginalised groups such as ethnic and religious minorities, children, persons with disabilities, migrant workers and their families, and refugees. It encompasses a wide variety of situations and forms across and within economies. The transition to formalization needs to be tailored to specific circumstances that different countries, categories of economic units, and workers and their families face. Far greater focus – such as partnerships between Government, employers/business, civil society and the testing of new ideas – should be applied to reducing informality.

- **SMEs:** To date, most awareness-raising and capacity-building efforts have focused on the world's largest companies, with SMEs often an afterthought in policy-setting discussions and implementation initiatives on responsible business conduct/human rights. Yet, SMEs form the backbone of national economies and the global supply chains of large companies. They account for about 90% of all businesses (according to the International Finance Corporation) and they contribute up to 45% of total employment (according to the World Bank). Their collective contribution to society and the planet is huge.

  SMEs repeatedly tell us that Government policy routinely makes it harder for SMEs to be created, to exist day-to-day and/or to grow. This is because of onerous regulation and tax codes, a challenging and unstable economic environment and lack of access to credit or e-commerce opportunities. Corruption can also be a big challenge for SMEs.

  At the same time, the challenge for them is not so much the human rights principles and guidelines themselves, but the ability of SME owners and managers to identify and translate this information into operational procedures that fit their context and the available assistance (or lack thereof) to support SME in implementing them. The conventional approach to tackling many human rights challenges - such as forced labour, human trafficking, and recruitment practices - tends to put SMEs on the receiving end of top-down supply chain standards imposed by large companies with little in the way of direct engagement or support to assist these firms in integrating new business practices or tackling the wider challenges identified above.

2. Is there an effort on the part of the government, in which your member companies are domiciled, to improve policy coherence in the area of business and human rights? If so, what is the nature of the process and have you or your member companies been involved? What were the challenges and opportunities encountered?

3. Have improvements in policy coherence, including through development of NAPs or other policy frameworks, impacted on the business practices of your member companies and, if so, in what ways? Please provide examples.

4. What role should industry associations play to strengthen rather than undermine the governments' efforts to enhance policy coherence in promoting business respect for human rights?

- Care should be given to ensure that all the different forms of business engagement in State policy making are not viewed in the same negative basket of corporate lobbying or perceived "corporate capture". Effective policy making and policy coherence requires engaging with business because companies are directly affected by Government / Parliament decisions and policies and they can provide practical input on the viability and impacts such measures.

- ** Representative employers' organisations in each country are an indispensable way to bring the business voice to State policy making and policy review efforts. With its 156 national employers' federations in 147 countries representing more than 50 million companies, the IOE is able to continue to support State efforts to engage with business in such policy-making processes.

- Employers' organisations play a key role in promoting uptake of the UNGPs in the following ways:
  o Awareness-raising of the standards and expectations of business to their members (which include sectoral associations and companies of all sizes).
  o Capacity-building efforts and training.
  o Advice on individual cases.
  o Facilitation of experience sharing.
  o Building coalitions to address systemic issues.
  o Representation of business interests vis-à-vis Governments, international organisations, ranking/benchmark initiatives and private initiatives.
  o Bridging MNEs and local suppliers.

- I would also like to refer you to a 2018 blog by the President of USCIB entitled: "UN's private-sector phobia prevents it from hitting its lofty goals." This blog outlines why UN engagement with business is critical for achieving the SDGs and would equally apply to individual State engagement with business on the ground.

5. Are there any linkages made to encourage policy coherence in promoting responsible business conduct as part of the efforts to engage the corporate sector to contribute towards the Sustainable Development Goals?

- To ensure coherence with the UNGPs and the SDGs, State measures should carefully balance the twin goals of responsible business conduct whereby companies "do no harm" and they can also "do good."

- An incentive-based approach that recognises a company's responsibility alongside others, its relationship to a harm and its position within the supply chain allows for flexible, collaborative and creative solutions in a way that rigid requirements and coercive measures do not. Partnerships between all stakeholders are essential to address the many systemic human rights challenges.

- Business-driven actions, supported by voluntary guidelines and tools, are an effective way to ensure that human rights risks are integrated into core company activities. Under the current approach reflected by the UNGPs, efforts to embed respect for human rights are advancing and improving every year aided by collective experience and greater clarity on how to overcome specific challenges. This creative approach should not be undermined. Neither should the importance of business-driven responses that allow a company to link its efforts to respect human rights to the core business and thereby develop initiatives tailor-made to its specific situations. Doing so can lead to new business ideas and innovations that can advance positive outcomes for people at scale, which is a more effective way to ensure deeper and more widespread respect for human rights. Current company efforts should be better recognised, understood and promoted instead of tying commitments to laws that are rigid, prescriptive and have unintended consequences.

- A key lesson resulting from many company's due diligence efforts especially in relation to global supply chains is that the "policeman" approach (such as enforcing contractual obligations on suppliers and social audits alone) often delivers limited results or improvements especially on complex and systemic issues that do not affect just one company but are widespread. Leading practice, instead, shows that it is a more impactful to rights-holders to incentivise business to engage in a "partnering" approach with their partners and other actors to address human rights issues on the ground. This means trying to strengthen relationships and engagement with relevant stakeholders such as local government, affected communities and suppliers or producers at the local level. State policy making and coherence has great influence over whether companies are encouraged to engage in such as partnership model or if they are, in fact, incentivised to "police" their supply chains due to policy initiatives that push for increased liability on some firms in relation to their supply chain.

6. **Please provide any other relevant information relating to policy coherence to protect against business-related human rights abuse that you think that the Working Group should take into account in its preparation of the report to the General Assembly.**

- During the call with business associations on 17th May, the Working Group mentioned Export Processing Zones. As such, we would like to make some points about special economic zones/export processing zones as they relate to labour and human rights.

- The conclusions from an ILO Meeting of Experts on how "to promote decent work and protection of fundamental principles and rights at work for workers in export processing zones" in November 2017 clearly stated that there are "limited recent empirical studies on EPZs in general, on the decent work impacts of EPZs and on the promotion of decent work and protection of fundamental principles and rights at work for workers in EPZs." The conclusions added that the "approximately ten-year gap in knowledge on how EPZs affect decent work, as well as the heterogeneity of EPZs, underscore the need for up-to-date information and counsel against a one-size-fits-all approach."[1] The Working Group should be cognizant of this information gap.

- In addition, we would like to highlight that EPZs are, to a large extent, a policy response to regulatory burdens, inefficient administration and a lack of development and investment in the country and its people. At the same time, the information available shows that EPZs often provide better working conditions, benefits and training for workers than jobs in the national economy.

- What is needed, therefore, are not laws, regulations and policies that include provisions on respect for human rights which specifically target EPZs, but an approach that retains the positive elements of an EPZ and drives stronger linkages between enterprises in EPZs and producers in the broader economy. For example, measures to improve labour law enforcement, labour inspection and labour administration coverage, social dialogue and investment in education and skills development should not separate out EPZs from the broader national economy. Furthermore, efforts should focus on broad regulatory and market reforms to ensure efficient labour laws with the right degree of flexibility, as well as greater economic development outside of EPZs to build the capacity of domestic firms to improve production so that there is less need to import products duty free; and greater efforts to support domestic firms to access EPZs.

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[1] Conclusions from ILO Meeting of Experts on EPZs (November 2017): http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---ifp_seed/documents/publication/wcms_605081.pdf