



8 December 2011

## UN Working Group on Business and Human Rights

**Council of Global Unions**  
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Trade unions welcome the adoption of the UN Guiding Principles on Business and Human Rights and the establishment of the UN Working Group on Human Rights and Transnational Corporations and Other Business Enterprises. We also welcome the invitation that you have extended for proposals for you to take into account when establishing your work programme.

We wish to make the following suggestions:

First, we urge that the first pillar of the Framework, the state duty to protect human rights, be given its due consideration and place in your work. In particular there are two areas that we would want you to consider with respect to the first pillar. The first is the growing governance gap in labour protection. The second is the use of government mechanisms to bring pressure on business to respect human rights.

The evolution of business practice and organisation has contributed to changing relationships under which work is performed. Work relationships are increasingly contingent and indirect. These changes have had a negative effect on the ability of workers to realise their rights and to defend them. Often these changes occur where business organisations structure their organisations and relationships in ways that dilute or avoid the legal obligations of the employer. Recent decisions by the ILO Committee on Freedom of Association and the ILO Committee of Experts on the Application of Conventions and Recommendations have highlighted the deliberate use of indirect employment systems in particular cases to prevent workers from effectively exercising their human rights to freedom of association and collective bargaining. The areas of concerns are the failure of labour law to keep pace with the changing organisation of work, the failure of the state to apply the law and the failure of the state to provide workers with an adequate remedy when the law is violated.

A second area of work in the first pillar concerns the full use of mechanisms available to the state to influence business to respect human rights internationally. This would include measure such as export credits, investment agreements, and official investment insurance or guarantees.

With respect to the second pillar, the corporate responsibility to respect, there should be recognition within the Working Group that one of the greatest human rights impacts of business activity on human rights is through labour practices. In this regard there are several areas of work that we could suggest. One concerns the responsibility for the relationships under which work is performed by business relations of the business enterprise. Another is the responsibility of the business enterprises with respect to collective bargaining. Collective bargaining requires positive action by the business enterprise if the right of the workers is to be realized. Because of this, the general prescription to “do no harm” will not be sufficient guidance to determine an adverse impact on this human right.

We are concerned that the Working Group might prematurely promote “best practices” by companies. Simply lengthening the catalogue of “best practices” will mean little and constitutes a retreat to CSR. Many company activities in the name of “CSR” are unilaterally determined responses to public relations problems. The refreshing approach of the Guiding Principles, when contrasted with that habit, is that it focuses

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on real and concrete human rights issues and obligations and not with vague, and usually “top down” notions of “doing good”. We would suggest that any practices be subject to critical examination with respect to whether they are actually consistent with “due diligence”.

With respect the third pillar, the access to remedy, we would hope to see more development of the effectiveness criteria for non-judicial mechanisms. We remain concerned that the promotion of non-judicial mechanisms that do not meet these criteria may undermine rights and interfere with the development of industrial relations in a specific context.

Sincerely,

Jim Baker  
Co-ordinator