



## Ensuring business respect for human rights in the political and regulatory sphere

November 2021



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## IOE Input on the UN Working Group's paper on responsible political engagement by business

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The International Organisation of Employers (IOE) welcomes the opportunity to contribute to the work of the UN Working Group on Business and Human Rights as it considers the development of an information note to examine links between corporate political engagement practices and responsible business conduct.

### **Introductory comments**

Whilst the aim of this work is to create an information note, care needs to be taken in the content of such note to ensure that the note is aligned with Article 19 of the Universal Declaration of Human Rights which states:

*Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.*

This is where the information note can have unintended consequences if this right is not at the heart of the Working Groups approach. At its center is the right to freedom of speech.

Labels used here in the call for inputs that talk of “corporate capture”, fail to recognize the legitimate role business and indeed any other actor in society all have in expressing views to either the government, the society and indeed to each other. Such labels should not be attached to the legitimate activities of advocacy or lobbying as they can be used to try and negate or even demonize legitimate points of view being expressed.

We don't see similar labels attaching to other groups such as civil society that are themselves as deeply engaged in the same advocacy and lobbying efforts as business. In fact, any guidance that the Working Group is considering should apply equally to all actors seeking to garner support to their ideas, not just a business or their organizations.

### **Specific comments**

#### **1. How should “corporate capture” and its connection with human rights be defined. What distinguishes legitimate corporate political engagement from undue political influence by businesses which carries human rights risks?**

Firstly, the term corporate capture should not be used. The “legitimacy” of advocacy and lobbying inputs to Governments by any group or person is for Governments themselves to

decide. There is no possible common definition that can be applied to the actions of any group attempting to speak its vision to government. The OECD has already elaborated its “Principles for transparency and Integrity in Lobbying” and more recently “Lobbying in the 21<sup>st</sup> Century” which provide clear guidance to companies with regards to how they should approach lobbying today. The reality is that Governments themselves need to think about how they see lobbying efforts and establish guidance for all actors to follow. This includes prohibiting corruptive behaviors such as bribery or inducements to curry favor over others. Issues like limiting or prohibiting financial contributions to politicians remains uneven across the globe and transparency around the lobby processes themselves are also far from uniform. However, at the same time, human rights impact of any positions proffered rely on the actual acceptance and implementation of those views by Government. To try and restrict anyone from having the ability to express a point of view can result in poor government decision-making based on not all points of view being heard or considered.

Secondly the question assumes that it is only a business that looks to exert undue political influence. That is untrue and misleading. Any group could be accused of that and to focus just on business paints them as a pariah which is undeserved.

Thirdly, the UNGPs are recommendations for all businesses to follow, without exception or exclusions. Involvement of all stakeholders in the policy-debate, - even more so if their operations include some areas where human rights are potentially at risk - is critical to ensuring that regulation is effective, proportionate, workable, and supported by credible evidence. The benefits of full stakeholder participation are widely recognized, as they bring everyone’s expertise, perspectives and ideas into the policy-making process and make it more likely for effective solutions to be found. This is also of particular importance for the implementation of the agenda 2030. Thus, all legal businesses should be heard, irrespective of sector or product.

**2. Are there specific examples of undue corporate influence that has led to government decision making that negatively impacts human rights? Are there specific sectors where this has taken place either in the global or domestic context? What solutions or measures have been taken to encourage responsible and transparent corporate engagement in global and national policy making?**

It is not possible to attribute to one actor the outcome of a government decision making process. Only the government controls that process and undertakes the balancing it is legitimately placed and required to do. The question here seems to suggest that business can come in and on its own so dominate the thinking of all members of a government to its point of view and that it creates government policy? That is simply not true in a situation where all voices can be heard. If it is the case that any person or group can have that effect, then there are failings by the State that must be addressed. Business should be conscious of the political and social context of any government with which it is engaging and ensure, by allowing others to be heard, either alone or in concert with business to avoid what would otherwise be a domination of the debate. Business prefers certainty and that is best ensured by Government policies that take a long-term view and are not subject to swings of approach as governments come and go. That is best achieved where policy enjoys broad support and is not simply to the benefit of one party

The same is true when it comes to sectors. The fact that a mine is approved, or a drilling license issued, or land sold etc is again a government decision. It is clear that lobbying must be done ethically without the bribery and corruption mentioned earlier and it may be that in making that decision someone could claim a negative human rights impact but that alone does not mean it was not the right decision for a Government to make.

Finally, there are important links to the work of the OECD in this and that of Transparency International.

In this last question is where any emphasis of the UN Working Group should lie i.e. “responsible and transparent engagement” i.e. the processes used by any group to express its point of view rather than assuming, especially with the benefit of hindsight, that the lobbying was done regardless of human rights. If that approach were to be taken no one could feel able to say anything to anyone.

**3. What measures can States take to prevent and address corporate activities that may undermine the States ability to protect human rights and businesses responsibility to respect human rights, including situations arising from trade and investment frameworks. For example, what types of lobbying/conflict of interest transparency and disclosure mechanisms are useful tools to provide greater transparency into corporate political activities?**

Again, any information note should apply to all involved in lobbying, not just business and their organizations as “capture,” if we are to use that term for a moment, can come from any group.

On the first question.

- States can consider such issues as their own human rights framework, human rights laws or instruments like a bill of rights and include requirements that legislation, regulation or any government decision making specifically requires the consideration of its human rights responsibilities to protect, promote and fulfill human rights.
- As part of its requests from society as to the proposed government action that they establish clearly the criteria they will apply to the assessing of inputs received, including the human rights implications of those views. This would help those submitting into the process to address human rights implications including the duty of respect
- Implement rules that limit or even prevent the making of political contributions of any kind to parties or candidates. This can include the reporting of donations or contributions made in cash or in kind.
- Rule of law is fundamental.
- Limit political spending to prescribed levels or fund parties electoral campaigns from general taxation.

Attached is the IOE paper on Human Rights and Trade agreements to assist in addressing this part of question 3.

On transparency tools, requirements that all donations made are publicly reported by governments, political parties or those contributing such as civil society groups and business. This reflects growing investor interest in knowing how funds are expended by way of political contributions. Similarly, Transparency International is now developing an index to assess the level of transparency of engagement. As we have seen with such new tools that assess company human rights performance, such indexes can help drive up transparency and reduce the risks of reputational damage.<sup>1</sup> Aimed largely at the US, Harvard Business Review's "A Board Members guide to Corporate political spending" draws on "The Conference Board's Handbook on Corporate Political Activity"<sup>2</sup>. this poses questions to Directors as to how to go about decisions in a way that supports more transparency. Again, there are also important linkages to the OECD guidance referred to above.

The Information note by the UN Working Group could therefore help bring more visibility to these existing tools rather than look to create new ones.

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

This is a very loaded question. What is "undue" and who is to determine that? Is it undue influence even if the desired outcome isn't realized? Who is to judge whether a company's engagement or indeed anyone's engagement negatively impact human rights? At this point all anyone is doing is putting forward a point of view. Government will then take a decision. Everyday engagements with governments occur. Some of these are known, many are not by all actors in society.

The good practices have already been outlined above. At the end of the day, it is States that perhaps need more guidance and give more transparency to decision making.

**5. What are key practical considerations for businesses when creating human rights due diligence processes that will take into account the impacts of their political activities? What does/might this look like in practice, including for global political engagement (e.g., corporate engagement with multilateral institutions or international treaty processes)? Do good practice examples exist (not necessarily framed in human rights "language")?**

This is a far-reaching question with many parts. Yes, companies should apply HRDD to this issue as they do for all others but that should on no way constrain their ability to put a point of view even if others don't like it. We are experiencing the negative side of this debate already in the negotiations, by States alone, of a possible treaty on Business and Human rights where civil society groups shout that business is undermining human rights by not simply accepting their points of view. Business prefers the UNGP approach. It is free to do so and far from undermining human rights is proposing, in their view a more successful way forward.

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<sup>1</sup> <https://hbr.org/amp/2015>

<sup>2</sup> <https://www.conference-board.org>

There is a real danger here of restricting freedoms rather than enhancing them by using “human rights” to shut down other views even though no one’s rights have been negatively impacted. The UN Working Group needs to be very careful in its articulation of any guidance the Information Note provides that this is not the unintended consequence of what it develops.

A lot of commentary exists around the issues of blue wash and corporate capture of the UN. It is impossible to substantiate the allegations but the making of them then calls on the UN to try and prove that the allegation is not true. Almost impossible to do. The UN has very clear rules around the acceptance of donations from any group outside a State. The sad reality is that it is the States themselves who are failing the UN system by not paying their annual dues and have reduced extra budgetary support for UN programs. Whilst the need for UN help shows no signs of declining, and in fact are increasing, the UN must try and fund these activities and that increasingly relies on external funders. Coupled with this is the fact that more and more agencies look externally for technical support and indeed talent (the revolving door argument) to help solve some of the problems they face.

It is natural that the more external the support, the more those supporters would like to be involved in how that support is realized on the ground. The UN itself could benefit from guidance as to how to manage that new and growing reality but at the same time without that external support the UN would be incapable of meeting its commitments to those in need. Thought should be given to exploring how the ILO manages this as the only UN institution that has a tripartite structure but a very robust public-private partnership approach that addresses how external contributions are received and applied to its programming and the transparency it provides.

**6. What are specific challenges rightsholders face in seeking remedy when harmed by policymaking resulting from corporate political engagement that is not rights-respecting?**

It would be impossible to prove that any lobby action or input created any harm. It is the Government that is responsible for taking the decision and are therefore responsible to provide remedy if human rights harm has occurred. There is no way that a third party is in any way linked to the outcome. It’s akin to trying to prove who the one voter was who was responsible for the election of a government.

**7. What less overt or lesser-known forms of undue influence or “corporate capture” should the Working Group consider when assessing this topic and making reformations? (e.g., corporate sponsorship of science and academic research, etc.).**

This again approaches to debate from the presumption that business is somehow dead set on acting improperly. Scientific and academic research is funded by a range of stakeholders. In fact, most universities would collapse without that support. Recent years have shown that attempting to use such investments to try and get support for a particular point of view has not helped the funder. Universities etc. need their own clear rules on the acceptance of third-party funding to ensure that their reputation as an institution is not compromised. Encouraging transparency around donations received and its use can help create a better understanding of what is occurring should be supported.

## **8. What are specific human rights risks posed by corporate capture to groups such as women and girls, indigenous communities and human rights defenders?**

The specific risks here rest with the Governments as and we repeat again, it is government that takes the decisions that arise here. Those risks do not often become clear until the government by laws or regulations etc. actually implements a policy. Yet again, what they ultimately considered in making the decision is unknown including the weight they gave to any input received.

### **Conclusion**

Business accepts that they like others need to have guidance as to how to properly go about lobbying and political engagement. More and more guidance has been made available to help them do so. Governments and indeed the UN and other multilateral organizations need to update their own requirements around lobbying and address their own members and staff where they fail to abide with or act in accordance with those standards.

Business is a legitimate actor in any society and has the same rights as any other to have a point of view and advocate or lobby in support of it. No labels should be used as a means of silencing or stifling debate even though others may not agree with the views being advanced.

Any Information Note therefore needs to strengthen voice and participation in policy making by all.

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