

Summary of expert consultation — UN Working Group on Business and Human Rights

Ensuring business respect for human rights in the political and regulatory sphere and preventing “corporate capture”

Background

On 12 August 2021, the UN Working Group on Business and Human Rights (“the Working Group”) convened a virtual meeting of more than 20 international experts on the topic of linkages between corporate political engagement practices and responsible business conduct. The discussion explored how to encourage responsible corporate political engagement and how to prevent what constitutes undue political influence by businesses—sometimes termed “corporate capture”. The consultation also explored how corporate political engagement may, at times, undermine and be inconsistent with the corporate responsibility to respect human rights set out by the UN Guiding Principles on Business and Human Rights (“the Guiding Principles”). This summary of the meeting has been anonymized in accordance with the Chatham House Rule.

Key theme: defining “corporate capture”

Participants discussed how they and the organisations they represent define “corporate capture.” The discussion touched on the differences between rights-respecting corporate political engagement and undue political influence by businesses which may cause, contribute or be linked to adverse human rights impacts. Participants discussed what it looks like when businesses do and do not respect human rights when engaging in political activities such as lobbying and supporting and financing candidates for office.

- Definitions offered by participants for the term “corporate capture” differed somewhat in their wording. Participants largely agreed that corporate capture is a process whereby business interests aim to gain undue influence over policymaking, regulatory, judicial, or other political processes in order to maximize profits, often at the cost of human rights and environmental justice. Participants agreed that while the Guiding Principles do not contain the words “corporate capture”, they are clear that companies should embed respect for human rights in all aspects of their business operations, which includes political engagement and government relations activities.
- Participants identified examples of tactics used by businesses pursuing undue influence over political processes, which in turn, may also have negative human rights impacts. These included:
 - Revolving door hiring practices, in which business interests attempt to buy influence over regulators through promises of lucrative employment when they leave a regulatory agency.
 - Reverse revolving door practices, in which business interests attempt to have their own employees or lobbyists placed within a regulatory agency responsible for overseeing the business.

- Trade associations lobbying for policies that are likely to undermine human rights protections, even where those policies are inconsistent with the public statements of the associations' member companies.
- Participants noted that the tobacco industry is an instructive example with a history of pursuing undue political influence. The World Health Organization Framework Convention on Tobacco Control (WHO FCTC) takes this dynamic into account via its [Article 5.3](#), which calls on State parties to “protect [public health] policies from commercial and other vested interests of the tobacco industry.” Participants offered that the FCTC’s [materials on implementing Article 5.3](#) are a useful model for understanding how the Guiding Principles can be operationalized with respect to corporate capture.
- The discussion mentioned some examples of good practice in political engagement by business, including:
 - Businesses enacting policies against making political contributions of any kind.
 - Businesses leaving trade associations that do not lobby in line with the businesses’ human rights policies and commitments.
 - Businesses engaging policymakers in support of human rights protections, which is especially relevant where States are themselves the perpetrators of human rights harms and in the process leverage business tools in doing so (e.g., internet shutdowns, surveillance technology, etc.).
- Participants cautioned that sometimes what looks like good practice in corporate political engagement can serve to further capture state processes. One example offered was public support from a business for progressive but unrealistic legislation in order to deflect scrutiny from ongoing business practices that may be linked to human rights abuses.

Key theme: corporate political engagement around the world

While the political activities of businesses in the United States and Europe received considerable attention in the discussion, participants agreed that this is a global issue:

- Participants noted that in some cases where positive steps have been taken by States to limit the ability of US or Europe-based businesses to attain undue political influence in their home countries, those businesses are not bound by those same rules in their operations overseas, especially in the global South.
- The discussion also covered concerns about corporate presence in international treaty negotiations, where industry personnel or business associations sometimes represent State actors. The lack of uniform international guidance prohibiting this conduct was presented as an obstacle to ensuring true business respect for human rights in line with the UN Guiding Principles.
- Participants noted that multistakeholder spaces around the world, including industry-driven multistakeholder Initiatives (MSIs), can provide businesses with a backdoor to undue influence over the State actors involved in these spaces. It was noted that this can be especially problematic with respect to parastatal companies run by private investors in

MSI spaces, where the company serves on occasion as the State actor and other times as the corporate representative.

- The discussion also raised the issue of corporate influence within international multilateral institutions. Participants stated that this is of special concern with respect to environmental and climate issues, noting that fossil fuel companies have funded meetings held by multilateral institutions, and have been invited to participate. Some participants were highly critical of corporations participating in multilateral discussions which involved setting regulations that affect them, and called for introducing recommended rules of engagement for private sector actors in multi stakeholder spaces.

Key theme: transparency and aligning corporate political action with announced policy

The discussion also covered the disconnect that can occur between public human rights commitments made by one arm of a company and inconsistent political activities from another arm of the company. The moderator asked how consistency can be achieved in this regard.

- Participants agreed that the largest issue is transparency—when a private actor transparently engages in a public process, the chances for undue influence are radically reduced. While there are legitimate reasons for industry representatives to dialogue with political processes (providing complex industry information to legislators, for example), that process must be public. If the process is secretive, that creates a problem for ensuring that decision making is done in a way that is consistent with businesses’ public statements regarding human rights and the environment.
- Participants agreed that disclosure of corporate political contributions and lobbying spending should be mandatory; without that information, stakeholders cannot hold corporations accountable. Participants noted the [Center for Political Accountability Model Code of Conduct for Corporate Political Spending](#) as a potential model for such transparency regulations. Some participants recommended that this disclosure should go beyond simply amounts spent and should also include firms’ full written lobbying and campaign financing, including stated objectives and lobbying positions.
- Participants said there were not enough useful existing laws or standards on disclosure of corporate political activity, whether domestically or internationally. They pointed to [Global Reporting Initiative Standard 415](#) on political contributions as one positive example.
- The discussion noted that beyond transparency, the notion of alignment between businesses’ political activities and their public human rights commitments is gaining momentum. Participants pointed to a [framework produced by the World Economic Forum](#) and major auditing firms on this topic. They also noted a growing trend of companies releasing political engagement reports, and suggested that civil society should press companies for improvement and expansion of these reports.
- The discussion also pointed out transparency and alignment issues with trade associations. Participants said that associations often do not disclose their memberships, and some then go on to lobby for policies that carry negative human rights impacts and

are out of step with the public human rights commitments of their member companies. Participants described this as a “loophole” that allows companies to contribute toward lobbying for policies that prioritize profits over the protection of human rights without being publicly associated with those lobbying efforts; they provided examples from the oil, garment, and agriculture industries. Some participants noted that trade association membership should be transparent, and that companies should commit publicly to a maximum threshold for specific kinds of political engagement by trade associations, after which the company would withdraw from the association.

- Participants stated that for companies to achieve internal alignment between their human rights policies and political activities, individuals working in these areas (e.g., sustainability and government affairs) should talk to each other and understand each other’s work. Further, participants said, company boards of directors should oversee key political decisions and ensure that they square with other elements of company policy.

Key theme: full global implementation of existing mechanisms

The group discussed several mechanisms that exist for the purpose of preventing undue business influence in the political process but are implemented only partially around the world. Participants agreed that these mechanisms need stronger uptake globally.

- US-based participants noted that the fight against undue influence in the US has relied on the effectiveness of Freedom of Information (FOI) and public records laws which apply only in a handful of states. They emphasized that standard public records laws and nationwide FOI laws, as well as analogous legislation around the world, are important.
- Many participants advocated for revolving door ethics policies in governments around the world. Officials leaving an administration for a private company should not be allowed to represent that company to the government until the next administration takes office, participants said. Likewise, when individuals move from the private sector into government, they should be required to recuse themselves from all decisions involving former employers or clients.
- Participants also discussed and recommended embedding accountability mechanisms related to corporate sponsorship and engagement into multilateral institutions. These would constitute rules of engagement for private sector actors in various activities such as standard setting, treaty negotiations, and other forms of multilateral decision making.

Key theme: new areas of undue political influence

The discussion addressed newer or lesser-known areas of undue political influence, beyond lobbying and donations to political campaigns. Participants also discussed new actors in this space, both as potential agents of undue political influence and as potential allies in the quest to prevent irresponsible political engagement by business.

- Participants described quiet corporate sponsorship of academic and scientific research—also called “smoke-screening”—as an area of concern. They described companies

undermining science or promoting inaccurate science in order to advance business-friendly narratives and cast doubt on the scientific consensus around human rights impacts of business operations. This is accomplished through the funding of alternative research or through selective disclosure of data only to friendly researchers.

- Participants described parallel “astroturfing” efforts by corporations to create the false impression of widespread grassroots support for a particular cause. Identifying these astroturfing entities, the group said, is key to understanding which actors are operating in pursuit of undue influence and which are genuinely operating in the public interest.
- Some participants noted that undue corporate influence can extend to business influence in the judicial branch, including through instrumentalizing courts through the use of Strategic Lawsuit Against Public Participation (SLAPP) actions to silence critics of corporations.
- The group noted that unique forms of undue business influence appear in moments of crisis, including some related to vaccine provision during the current COVID-19 pandemic.
- The discussion also identified institutional investors as newer actors in the corporate political engagement space with the potential to both further undue corporate political influence and to fight against it. On one hand, participants said, the scope for corporate lobbying is currently being expanded through trade and investment agreements (TIAs), which often feature Investor-State Dispute Settlement (ISDS) clauses that allow corporations to bring cases against States if State policies may constrain business investment in the name of labor, human rights and environmental protections. Participants suggested that these are privileged forums that allow corporate lobbying on a scale that is not accessible to individuals or even domestic companies, and that guidelines should be developed for how States and corporations should understand these clauses, to ensure that they do not contribute to negative human rights impacts, in line with [Guiding Principle 9](#) and the Working Group’s [reporting on this topic](#).
- Participants also described the promise of recruiting investors as actors who can use their leverage to ensure companies align their political engagement practices with their human rights responsibilities. The group pointed out that while there are institutional investors engaging companies on human rights issues and lobbying issues, these investors are generally siloed from each other. Participants described a need for benchmarks that investors can use to evaluate corporate political practices as a facet of a company’s overall human rights due diligence performance.
- Participants also noted insurance companies as a potentially promising new actor capable in blunting some of the adverse impacts of undue corporate political influence.