



## **Joint Recommendations to the United Nations Working Group on Business & Human Rights**

**Geneva, 8 December 2011**

### **INTRODUCTION**

The International Organisation of Employers (IOE), the International Chamber of Commerce (ICC) and the Business and Industry Advisory Committee (BIAC) to the OECD, which together form the most representative voice of global business, welcome the opportunity to submit joint recommendations to the United Nations Working Group on the issue of human rights and transnational corporations and other business enterprises.

Our organizations were actively engaged in the mandate of the Special Representative of the Secretary-General (SRSG) on business and human rights and, like many others, endorsed both the UN “Protect, Respect, Remedy” framework and the Guiding Principles on Business and Human Rights as the basis for the ongoing and progressive implementation of the UN framework.

Business is committed to meeting its responsibility to respect human rights and we fully expect that States and other stakeholders will do the same within their respective duties and responsibilities. Our organizations are also committed to working with the UN Human Rights Council, the Office of the High Commissioner for Human Rights, the UN Working Group and other stakeholders to advance the dissemination and implementation of the framework and the Guiding Principles in a way that creates a sense of ownership of the issues among our members, which is essential in achieving broad adoption and implementation of the Guiding Principles.

In that spirit, we are pleased to submit the following recommendations on the work program of the UN Working Group to carry out their mandate over the next three years. Our recommendations address four areas: 1) the UN Working Group process; 2) underlying characteristics of the Guiding Principles that should to guide the Working Group; 3) general comments relevant to all three pillars of the framework; and 4) specific recommendations under each pillar.

### **1. UN WORKING GROUP PROCESS**

Business welcomed and strongly supported the pragmatic approach that the SRSG adopted throughout his mandate that allowed the framework and the Guiding Principles to emerge through a robust and open consultation process involving all stakeholders. The open communication and consultative approach were clearly significant factors in the success of the SRSG mandate and should be continued by the UN Working Group. The call for input on the work program of the UN Working Group is a welcome indicator that the group will continue the open dialogue with relevant stakeholders and we hope that this approach will continue.

The Guiding Principles set out comprehensive recommendations to States and to enterprises, but applying those recommendations in practice in a wide variety of circumstances will require ongoing consultation on the full spectrum of issues. Given this, we believe that the Working Group process should be based on dialogue and consultation among all the relevant stakeholders in order to build trust and successfully promote adoption and implementation of the Principles. This type of approach would sustain business engagement in the implementation of the Principles by ensuring that companies have the necessary space and time to apply the Principles in ways that reflect their particular circumstances.

## 2. UNDERLYING CHARACTERISTICS

Part of the strength of the Guiding Principles is that they have important underlying characteristics that will help to support their long-term success:

- The Guiding Principles are universal: they apply to all countries, all States and all companies, regardless of their size, location or ownership, including public, private and State-owned enterprises. This establishes a global level playing field and avoids discriminatory standards.
- The Guiding Principles clearly distinguish between the roles of States and business enterprises: the State duties to respect, protect and fulfill human rights are fundamentally different from the corporate responsibility to respect. Companies cannot and should not take on the role of States.
- The Guiding Principles elaborate existing standards and do not seek to create new international legal obligations or to assign legal liability.
- The Guiding Principles are flexible and avoid a “one-size fits all” approach: the Principles present a flexible framework that can be adapted to different circumstances.
- The Guiding Principles are practical and reflect the “principled pragmatism” adopted by the SRSG, focusing on ways to implement and use the Guiding Principles in practical ways that may not address all issues all at once, but move the process forward in an effective and sustainable manner.
- The Guiding Principles are, relatively, short and simple: they are written directly for their target audiences, and use simple and commonly understood terms to explain the issues.
- The Guiding Principles are enduring: they express principles that will be relevant over the long term and can be applied to the continuously evolving range of issues that States and business enterprises will face. The Principles set out objectives that companies should strive to achieve, and recognize that full implementation will take time and constitutes an on-going process.

Efforts to promote the adoption and implementation of the Guiding Principles should reflect these same characteristics to ensure that the process remains internally consistent.

## 3. GENERAL COMMENTS

As it works to advance the adoption and implementation of the UN Protect, Respect, Remedy framework, the UN Working Group should apply the four following strategies: First, the Working Group should ensure that it takes a balanced approach that seeks to advance efforts in each of the three pillars of the framework in tandem. As stated by the SRSG, “each pillar is an essential component in an inter-related and dynamic system”, and so the Working Group should expend equal amounts of attention and effort to promote adoption and implementation of the principles on the State duty, the corporate responsibility and access to remedies.

Second, the Working Group should focus initially on disseminating and raising awareness of the Guiding Principles. While the mandate of the SRSG was very effective in reaching out to a broad array of stakeholders, this group still represented only a tiny fraction of the relevant actors in the public and private sectors. Significant and sustained efforts to promote the Guiding Principles will be required to reach a much broader audience, particularly in the countries and regions where human rights abuses are most prevalent. An obvious need in this regard is translating the Guiding Principles into a wide range of languages to ensure that they are accessible by as many people as possible.

Third, the Working Group should continue the practice of the SRSG of traveling to different regions in order to engage directly with stakeholders in affected communities. Similarly, the Working Group should consider holding the annual meetings of the UN Forum on Business and Human Rights in different regions, focusing on regions with elevated risks of human rights abuses.

Finally, the Working Group should proactively engage with other Special Procedures mandate-holders of the UN Human Rights Council that address aspects of business and human rights to ensure that their recommendations or other findings are consistent with the UN framework and the Guiding Principles. The Working Group should also recognize the role of the ILO in promoting the 1998 Declaration and managing its follow-up procedures.

## **SPECIFIC COMMENTS**

### **State Duty to Protect**

The State duties to respect, protect and fulfill human rights and other fundamental freedoms remain the most important factors in ensuring that all people are free to enjoy their human rights. Only States have the ability to develop a positive national position on human rights that can set the tone and direction for all other actors in their countries. The respective obligations of States and enterprises should be seen as mutually supportive and intrinsically linked, particularly since the ability of companies to respect human rights can be directly affected by the actions of States.

In relation to the State duty to protect, the Working Group should examine the underlying causes of human rights abuses identified by the SRSG in his first interim report (2006), namely low income levels, conflict, weak governance, systemic corruption and lack of individual liberty. Additionally, the Working Group should consider the human rights implications of high levels of informality, which is an all too common symptom of weak governance and pervasive corruption.

Another aspect of the State duty that the Working Group should study is the widespread failure of States to consistently implement and effectively enforce their national laws. Far too many countries exhibit a significant gap between the nominal legal standards and the actual practice of their citizens, enterprises and public institutions. The Working Group should support efforts by countries to establish a culture of compliance that can close this gap and strengthen the rule of law.

### **Corporate Responsibility to Respect**

Under the corporate responsibility to respect, the work program of the UN Working Group should reflect the fact that, as stated in the SRSG's final report, the international community is in the early stages of this journey, that this is a new policy domain and that business and human rights is significantly different and more complex than the traditional human rights agenda. This calls for adequate time for the Guiding Principles to be studied, understood and implemented in practice.

As stated above, the most pressing need under the corporate responsibility pillar is disseminating the Guiding Principles and raising awareness of them in the private sector. In this area, the IOE, ICC and BIAC would be pleased to work with the Working Group to reach out to our respective members in over 150 countries around the world. Additionally, the Working Group should disseminate and promote the Interpretive Guide on the corporate responsibility pillar that was recently released by the Office of the High Commissioner for Human Rights. The Interpretive Guide presents an authoritative interpretation of the Guiding Principles related to the corporate responsibility to respect and should be promoted in conjunction with the Principles themselves.

On a point related to interpretation of the Guiding Principles, the Working Group could also usefully help to raise awareness on an important substantive point in Guiding Principle 13 that appears to have been misunderstood by some stakeholders, which is the distinction between Principle 13(a): *“avoid causing or contributing to adverse human rights impacts through their own activities,”* and Principle 13(b): *“seek to prevent or mitigate adverse human rights impacts that are directly linked...by their business relationships, even where the enterprise has not contributed to that impact.”*

Some stakeholders appear to have mistakenly read the Guiding Principles to mean that the mere presence of a business relationship means that an enterprise has “contributed to” an adverse impact caused by a business partner, when, in fact, the key issue is the actual impact, not the business relationship. For example, if an enterprise acts in a way that compels a business partner to cause an adverse impact, the enterprise will have “contributed” to that impact. However, the SRSB has confirmed that the mere presence of a business relationship does not – by itself – mean that an enterprise has “contributed” to an adverse impact that a business partner may cause. Instead, the business relationship creates the *leverage* that the enterprise can use to “seek to prevent or mitigate” future adverse impacts by the business partner.

Since a proper understanding of this distinction is critical to correctly defining the scope of corporate responsibility, the Working Group should help to correctly explain the distinction between “contributing to” an adverse impact and using the leverage of a business relationship to “seek to prevent or mitigate” an adverse impact caused by a business partner.

### **Access to Remedies**

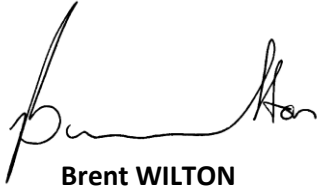
Access to remedies is obviously very closely linked with the State duty to protect human rights, and so the Working Group should promote the access to remedies pillar in conjunction with its work on the State duty to protect. The Working Group should seek ways to advance the rule of law as a critical element in the protection of human rights, and should seek to improve adherence to human rights laws as well as ways for even the poorest people to seek redress through judicial mechanisms.

The work plan of the Working Group related to access to remedies should recognize that, while judicial and non-judicial mechanisms are linked, judicial mechanisms are fundamentally different and more vital to addressing abuses than non-judicial mechanisms. This is because only judicial mechanisms bring the power of the State to bear in addressing human rights abuses, with the authority to imprison or fine abusers, order remediation and set legal precedents for that jurisdiction. As with the State duty to protect, the Working Group should examine the role of pervasive corruption in undermining access to judicial remedies and the rule of law in general.

In the context on non-judicial grievance mechanisms, the Working Group should promote stakeholder engagement processes that can be used effectively to prevent issues from becoming disputes in the first place. Operational-level grievance mechanisms should be established at the local level to be as close as possible to the affected communities.

## CONCLUSION

Our organizations reaffirm our longstanding commitment on human rights issues and look forward to future opportunities to work with the Un Working Group, the Office of the High Commissioner for Human Rights and other stakeholders to advance the adoption and implementation of the UN framework on business and human rights and the UN Guiding Principles.



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## **ABOUT THE IOE, ICC AND BIAC**

### **International Organisation of Employers (IOE)**

The IOE, the largest network of the private sector in the world, is a membership organization that promotes the interests of employers and their organizations from all over the world at the international level through representation, information and advice. The IOE provides leadership for the business community in all areas of social and labour policy and proactively participates in international policy development that seeks to create a framework that underpins enterprise creation and development. It provides an international forum that brings together national employers' organizations and their members from around the world and facilitates the exchange and transfer of information, experience and good practice amongst the business community globally. The IOE was founded in 1920 and today represents 150 national members in 143 countries.

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### **International Chamber of Commerce (ICC)**

ICC is the world business organization, a representative body that speaks with authority on behalf of enterprises from all sectors in every part of the world. The fundamental mission of ICC is to promote an open international trade and investment system and the market economy, and to help business corporations meet the challenges and opportunities of globalization. Business leaders and experts drawn from ICC's global membership establish the business stance on broad issues of trade and investment policy as well as on vital technical subjects. ICC was founded in 1919. Today it groups thousands of member companies and associations from 130 countries.

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### **Business and Industry Advisory Committee (BIAC) to the OECD**

BIAC is an independent international business association that was established to provide business advice to the government policymakers at Organization for Economic Cooperation and Development (OECD) on the full range of issues related to globalization and the world economy. BIAC promotes the interests of business by engaging, understanding and advising policy makers on a broad range of issues. Through its 37 policy groups covering most aspects of OECD work, BIAC members participate in meetings, global forums and consultations with the OECD leadership, government delegates, committees and working groups. BIAC was founded in 1962 and established formal relations with the OECD that year, and today represents 49 national business organizations from 34 OECD member countries and 7 major non-member economies.

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