



Geneva, 26 January 2011

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, are pleased to submit the attached joint comments and recommendations on the draft “Guiding Principles for the Implementation of the United Nations ‘Protect, Respect and Remedy’ Framework.”

We have followed the mandate of Prof. John Ruggie, the UN Special Representative of the Secretary General (SRSG) on business and human rights, closely and contributed to his work wherever possible. We have welcomed his reports to the UN Human Rights Council and, like others, have endorsed the UN framework, which establishes a clear division between the role of States and companies. We also welcomed the pragmatic approach adopted by the SRSG that allowed the framework to emerge through a robust and open consultation with all stakeholders.

We hope that these recommendations are helpful in finalizing Guiding Principles that clearly address the key role of the State as the primary duty bearer of human rights in their own jurisdiction, as well as the corporate responsibility to respect in a way that can be developed and sustained by all companies. Building on our previous submissions to the SRSG, the attached comments express some concerns on the content and breadth of some of the language of the draft guiding principles. It is important that expectations are clearly expressed and they are applicable to all enterprises regardless of size, ownership or location. The guiding principles must reflect the reality that the State duties to respect, protect and promote human rights are critical, particularly since many of the high risk situations faced by enterprises are caused the failure of the State to respect human rights.

Our organizations remain committed to working with the SRSG and the UN Human Rights Council, and will work to advance the framework in a way that creates a sense of ownership of the framework among our members, which we see as a key factor in its success. 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.

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Antonio PEÑALOSA
IOE Secretary-General

Handwritten signature of Jean-Guy Carrier in black ink.

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JOINT IOE-ICC-BIAC COMMENTS ON THE DRAFT GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

GENERAL COMMENTS

Business continues to support the UN "Protect, Respect and Remedy" framework and its underlying philosophy, which clearly differentiates the State duty to protect human rights and the corporate responsibility to respect human rights. We also support the approach taken by the SRSB that the three pillars of the framework are interlinked and that all parties need to meet their respective responsibilities for the framework to be effective.

We believe that the State duty to protect – in conjunction with the additional State duties to respect and promote human rights – remains the most important factor in ensuring that all people are free to enjoy their human rights. This is because 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.

As the draft Report makes clear, the Guiding Principles (GP) elaborate the implications of existing standards and practices into practical guidance, and do not create new international legal obligations. The GPs are also not a scheme for attributing legal liability or setting legal norms, and the corporate responsibility to respect is a social expectation but has no legal implications. Business supports this approach and believes that it could be useful to all actors – business, governments and other stakeholders – in order to implement measures to address human rights issues effectively.

We also agree that the GPs should be universal and apply to all countries and all companies, including State-owned enterprises, in an impartial manner, which we see as being crucial for the success of the framework by setting a level playing field. In addition, business welcomes the general acknowledgement that one size does not fit all in terms of the application of the GPs in different situations and circumstances, and that companies will apply the GPs differently depending on a range of factors, including the operating context and nature of its activities. This view could be further reflected in the individual principles to ensure that the application of the GPs is flexible enough to reflect different conditions and circumstances, and that it will be possible for companies to meet the principles through a variety of means based on what they determine to be the most effective approach in any given situation.

We also welcome the recognition expressed in the GPs that the area of business and human rights is an emerging field that will continue to evolve over time. Similarly, it must be acknowledged that the GPs set out objectives that companies should strive to achieve, and that use of the GPs by companies will take time and constitutes an on-going process.

COMMENTS ON THE PREFACE

- In the effort to summarize the considerable amount of work that the mandate has achieved and the numerous consultations that have taken place over six years, we believe that the Preface omits some critical issues related to the larger context that the framework is intended to address. The Preface should thus be expanded to include more background and information on the context in which the mandate and the framework were developed, include references to the situations identified by the SRSG where human rights abuses usually occur: conflict zones, weak governance, pervasive corruption and lack of individual freedoms.
- Such a discussion on the larger context would help to establish the rationale behind the “Protect, Respect and Remedy” framework and the essential role of the State duty to protect as complementary and inter-related to the corporate responsibility to protect.
- Rather than moving directly into a discussion of business, the preface should first address the broader context of where human rights abuses have been most common (as identified by the SRSG in his first interim report), including situations of conflict, weak governance, pervasive corruption and lack of individual freedoms. This discussion would establish the rationale behind the framework and importance of the State duty to protect as complementary and inter-related to the corporate responsibility to respect.
- The Preface uses the phrase “institutional misalignments” on a number of occasions but it is not clear what this term means. In our view, business and human rights are not inherently in conflict and indeed, depend on the same regulatory framework to thrive: the rule of law, independent courts, individual liberty, freedom from arbitrary government action, etc. Similarly, human rights and international trade and investment are not inherently in conflict, i.e. there is no automatic policy incoherence between human rights and international commerce.
- In our view, the fundamental problem is the failure of States to meet their international human rights commitments and to implement and effectively enforce national laws protecting such rights. As a result, the top priority should be what States do in their own countries, i.e. at home: States need to put into place the national laws and institutions that are necessary to protect human rights for all actors in their countries.
- The discussion on the overseas activities of global companies in the Preface is complicated by the use of the word “extraterritorial,” when what seems to be intended is simply the international activities of businesses. The use of the term “extraterritorial” in this context is likely to be confused with the strict extraterritorial application of law and/or jurisdiction, which raises fundamental concerns for business due to the significant risk of conflicting legal requirements that this creates. Business believes that States should be encouraged to work through multilateral or bilateral approaches in order to avoid conflicting requirements, and that unilateral approaches and extraterritorial application of law in particular, should be avoided.

COMMENTS ON THE INTRODUCTION

- The Introduction expresses a number of fundamental points that are important to the framework, so it would be useful to clarify how the Introduction relates to the rest of the Guiding Principles.
- In point (a), we believe that the expression of the State duties to promote and protect should also include the State duty to “respect” human right in recognition of the many situations where the State itself is the cause of human rights abuses. It should also make clear that the State duty to protect human rights applies equally to the activities of all actors, including the government itself, business enterprises and other organs of society.
- The Introduction should also state that the GPs are universal, meaning that they apply to all States and all companies regardless of size or location, including State-owned enterprises.

COMMENTS ON THE STATE DUTY TO PROTECT

FOUNDATIONAL PRINCIPLES:

- 1) As currently drafted, the State duty in GP1 has been narrowed somewhat from what has been previously expressed in the mandate. Additionally, the State duty should also encompass the State duties to “respect” and “promote” human rights in order to capture the full obligations as expressed in the commentary and reflect the fact that many of the high risk situations faced by business are caused by the failure of States to respect and promote human rights.

Thus the State duty should be expressed as: *“States must respect and promote human rights, and protect against abuses by third parties, including business, in their territory and/or jurisdiction by taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, regulation and adjudication.”*

Commentary:

- The State duty should be expressed as the duty to *“protect against abuses by third parties, including business”* and make clear that the State should protect against abuses by all actors in the country, including business.
- 2) One concern with GP2 is that it is not universal: as it is written now it only applies to companies with “global operations”, which detracts from the larger objective of having the GPs apply equally to all enterprises, regardless of size. The principle should remove the words *“throughout their global operations”* and replace the phrase with *“wherever they operate”*, which would not change the meaning of the principle but would make it apply equally to all companies. The particular situation of “global” companies could then be addressed in the commentary. Additionally the term “subsidiaries and other legal entities” may need to be clarified as such entities may have separate legal status and governance systems.

Commentary:

- If GP2 is modified to make it universally applicable, the commentary should be edited to reflect that while also noting the particular situation of global companies. The commentary should use the same language as the principle: *"States should encourage business enterprises..."* rather than "ensure" or "require".
- As expressed in our comments on the Preface, the use of the term "extraterritorial" rather than "international" in this context is likely to be confused with its more common understanding: the strict extraterritorial application of law and/or jurisdiction.
- Indeed, the exercise of extraterritorial jurisdiction raises fundamental concerns for business since it generally intrudes in the domestic affairs of other states and, by its very nature, may confront business with conflicting requirements from the extraterritorial legislation on the one hand, and local legislation on the other.
- Additionally, the extensive focus on "extraterritorial" action may undermine the fundamental message behind GP1: that each State must protect human rights in its own country. The GPs section on Remedies should explicitly recognize that grievances based on alleged violations of human rights are best addressed locally. The case of business and human rights requires focused, local solutions, which is implicitly acknowledged in GP 23 and 24).
- States should be encouraged to work through multilateral institutions and/or direct bilateral discussions with other States where appropriate and should be discouraged from taking unilateral approaches. As it reads now, the Commentary could be perceived as an encouragement for states to enact extraterritorial measures.
- Indeed, the entire discussion of "jurisdiction" may be better suited to the discussion on remedies.

ENSURING POLICY COHERENCE:

- 3) GP3 should make clear that commercial policies are not inherently in conflict with human rights policies. States can and do respect and effectively protect human rights while also establishing effective policies to promote economic development. As stated above, a primary source of conflict comes not from the policies themselves but rather from the fact that many States do not implement or enforce their own national laws that protect human rights.
- 4) Similarly, GP4 should make clear that bilateral investment treaties, free trade agreements and investment contracts are not inherently in conflict with human rights policies. All treaties between States entail some degree of reduced sovereignty – that is the one of the main reasons States enter into such treaties in the first place. Again, the key issue is usually less about adequate "policy space" and more about the failure to consistently implement and effectively enforce national laws to protect human rights. To put it another way: it is the lack of will, not the lack of means.

FOSTERING BUSINESS RESPECT FOR HUMAN RIGHTS:

- 5) The key element of fostering business respect for human rights is by fostering a broader societal respect for human rights. Companies – including the huge numbers of self-employed and small and medium-sized companies that make up the vast majority of employment around the world – are much more likely to respect human rights where the State, other civil institutions and society as a whole also respect human rights. GP5 should thus be expanded to make clear that States should:

- *Implement national laws that reflect their international human rights commitments and that require all actors, including business enterprises, to respect human rights;*
- *Strengthen the rule of law and establish a culture of compliance so that all actors, including business, comply with national laws on human rights as a matter of course;*
- *Address systemic problems that undermine the rule of law, particularly pervasive corruption and high levels of informality where they exist.*

Additionally, we support efforts to encourage companies to communicate their human rights performance, but are concerned about calls for requirements to communicate since this would force a one-size fits all approach. “...and where appropriate requiring” should be removed.

Commentary:

- The commentary for GP5 should express the primary need for the State to develop a operating environment that encourages all actors to respect human rights. The appropriate laws need to be in place, those laws need to be consistently implemented and effectively enforced, and systemic problems like rampant corruption and widespread informality need to be addressed and resolved. States cannot foster respect for human rights laws if they don't foster respect for any other laws, which is why a culture of compliance is so critical.
- The commentary to GP 5 states that “guidance to business...should indicate expected outcomes; advice on appropriate methods...”. Business believes that this recommendation is too prescriptive, and is difficult to reconcile with the notion that the appropriate means of addressing human rights risks is highly dependent on prevailing circumstances. It should be left to companies to find the most suitable way to improve their human rights performance.
- The discussion on corporate and securities law in the commentary should recognize that such laws do not seek to address any of the many areas where business is regulated, including labor and industrial relations, environment, consumer protection and human rights since all business enterprises must comply with national laws in these areas.
- We support the call for greater clarity in other relevant laws and policies, including property rights and land titles. This should be expanded to serve as an example of where informality, including the lack of legal title to property, can lead to conflicts and dilemma situations.
- As stated above, we support efforts to encourage companies to communicate their human rights performance, but are concerned about calls for requirements in this

area for a number of reasons. First, this is a new and still evolving area, so the content and format of any such communication may still be unknown in many cases. Second, requirements invariably lead to a one-size fits all approach, whereas the most effective form and content of business communication may vary considerably from one situation to the next.

THE STATE-BASED NEXUS:

- 6) In many sectors and in many countries, State-owned enterprises have become dominant players in the market, so we welcome the call for State-owned enterprises to be held to the same standards and expectations as all companies.

Commentary:

- As with the discussion on requiring communication, we question the utility of calling for requiring human rights due diligence when the issue is still emerging and many questions remain about what due diligence processes will be the most effective in practice.
- 7) The term “outsource” may not be universally understood and may not fully encompass the range of issues being discussed here. It would be useful to use alternative wording such as “contracting” or “privatizing” in GP7 and the commentary.
 - 8) As in previous principles, we support efforts of States to “*encourage*” respect but are concerned about the use of the word “*ensure*” in this context since it would have to entail legal requirements in many areas that are still emerging and evolving, and would likely lead to a one size fits all approach.

COMMERCIAL TRANSACTIONS OF THE STATE:

- 9) Any such procurement policies would need clear and objective criteria and would need to be applied evenly and consistently in order to prevent discrimination and protectionism.

SUPPORTING BUSINESS RESPECT FOR HUMAN RIGHTS IN CONFLICT-AFFECTED AREAS:

- 10) Conflict-affected areas are only one of the four main situations identified by the SRSG as where human rights abuses are most likely to occur, with the other situations being weak governance zones, rampant corruption and lack of individual freedoms. GP10 should be expanded to also address these other situations to ensure that the GPs fully reflect what business is likely to face in practice.

Additionally, these sets of issues again reflect the need for the GPs to call on States to respect, as well as protect, human rights, since they all arise when States fail to respect human rights in their own activities.

GP10 should, as the first step, call for States to end conflicts by working through multilateral organizations like the UN Security Council, which was established for precisely this purpose.

Commentary:

- The commentary is dominated by a discussion of “home” and “host” States, which strongly implies that the principle applies mainly, if not exclusively, to foreign companies operating in the area. This is highly problematic since it undermines the concept that the principles are universal and ignores the fact that the vast majority of companies operating in any such situations are local firms. The principle and the commentary should clearly state that they apply to all companies operating in a conflict zone. The commentary should also call for multilateral responses to conflict situations.

MULTILATERAL INSTITUTIONS:

- 11) The focus of this principle should be expanded to discuss how States should use multilateral institutions on human rights to hold their member States accountable to their international human rights commitments. Many multilateral institutions have developed comprehensive and effective supervisory mechanisms that help to ensure that member States meet the obligations that they have assumed by being a member and by ratifying relevant treaties.

In that sense, the principle on multilateral institutions should start with a discussion on the need for human rights institutions to ensure that their member States meet their human rights obligations and for other institutions, such as the UN Security Council, to work effectively to resolve conflicts and other threats to peace and security.

COMMENTS ON THE CORPORATE RESPONSIBILITY TO RESPECT

As a general comment, a number of the principles in this section include phrases like “*companies need to*” or “*must*”, which confuses the legal status of the text. These should be revised so that the text consistently expresses recommendations by using “*should*”.

FOUNDATIONAL PRINCIPLES:

- 12) Business supports the corporate responsibility to respect as defined in principle 12 and believes that it could be further enhanced by including the phrase used previously in the mandate: “*This means do no harm.*”

- a) This point correctly refers to “...the principles [emphasis added] expressed in the *International Bill of Human Rights...*” and to be consistent, it should refer to the “*ILO Declaration on the Fundamental Principles and Rights at Work*” rather than the core conventions directly since the Declaration was specifically developed to express the principles of the core conventions.

It is also vital to make clear that these core Conventions are international treaties addressed to governments. Furthermore, when ratified by governments, it requires them to respect their strict legal detail. Enterprises are not legally bound by the Conventions nor by the ILO 1998 Declaration, all of which have been drafted for

States. It is equally important that the GPs recognize the exclusive mandate and role of the ILO for the supervision of its International Labour Standards.

- b) We agree that the responsibility to respect applies across a business enterprise's activities, but the phrase *"and through its relationships with third parties associated with those activities"* is impossibly broad and would include organizations and activities wholly unrelated to the company and divorced from its actions and decisions.

The principle should be revised to read: *"Applies across a business enterprise's activities and where, through its own actions and decisions, it has caused or contributed to impacts by others."*

- c) We fully agree that the corporate responsibility to respect applies to all companies regardless of size and ownership, but this principle should also include location. This is one of the key universal elements of the GPs and should be supported by all the other principles.

Commentary:

- The commentary should also focus on the principles of international human rights instruments and the 1998 ILO Declaration on Fundamental Principles and Rights at Work. International treaties, including the two human rights covenants and the eight ILO core conventions, are addressed to States and, as such, they contain obligations for States not for companies. Moreover, enterprises cannot be requested or expected to apply international conventions or treaties that have not been ratified by the State in which they operate, since such conventions can only take effect through the enactment and implementation of national law.
- GP 12 refers to the eight ILO core Conventions but the commentary refers to the eight core Conventions "coupled" with the 1998 ILO Declaration on Fundamental Principles and Rights at Work, which may be confusing. The GPs should be based on the 1998 Declaration since it expresses the principles of the core conventions in a manner and context that was agreed through the ILO's tripartite process.
- The commentary will need to clarify what is meant by "international humanitarian law" and how it applies to companies since the vast majority of business enterprises have had little to no experience with the laws and customs of war.
- The commentary should also be revised to read: *"The scope of the corporate responsibility to respect human rights applies across a business enterprise's activities and where, through its own actions and decisions, it has caused or contributed to impacts by others."*
- We strongly agree that perceived "influence" is not a rational or practical basis for attributing responsibility, and that the scope of responsibility relates to its own activities and *"...where, through its own actions and decisions, it has caused or contributed to impacts by others."*
- The term "corporate group" is unclear, which makes the paragraph unclear, and needs to be defined.

- 13) This principle should be modified to reflect the revised scope of the responsibility: “....any adverse human rights impacts of their activities or where, through its own actions and decisions, they have caused or contributed to impacts by others.”

Commentary:

- We support the approach taken that, while the responsibility is the same for all companies – regardless of size, location or ownership, the means by which they meet that responsibility will vary according to their circumstances: no one size fits all.
- A prevention approach is needed for SMEs and awareness-raising would be useful as a first step.

- 14) Companies should have the flexibility to determine the contents of a policy statement as well as the manner in which it is communicated.

Commentary:

- Aspects of the commentary seem geared more for large companies with multiple functions. In order to maintain the universal application of the principles, the commentary should be edited to be relevant for both large and small enterprises. For example: “...and, **where relevant**, should be supported by training...”
- The examples related to “policies and procedures that set financial and other performance incentives for personnel, as well as those that shape procurement decisions and lobbying practices” are too detailed for the level of the GPs and should be removed.

HUMAN RIGHTS DUE DILIGENCE:

- 15) GP 15(c) should be revised to reflect the clarified scope of the responsibility: “Should include a business enterprise’s own activities and where, through its own actions and decisions, it has caused or contributed to impacts by others.”

Commentary:

- It might be useful in the commentary to explain that “operating context” refers to high risk countries.
- The Commentary provides that conducting due diligence, in and of itself, should not automatically and fully absolve a company from liability. We can understand this, but the Commentary should also acknowledge that companies should not incur additional legal exposure for doing the right thing (for example litigation based on the reporting of results of such due diligence). The GP should therefore make clear that conducting human rights due diligence should not lead to additional legal exposure for a company.
- We fully support the recognition in the Commentary that it is not possible for companies with large numbers of suppliers to review all of their suppliers and that

priority should be given to areas of heightened human rights risk and believe it is important to retain this point.

- The GPs correctly recognize that the steps a company has to take with respect to human rights due diligence depend on its size and the circumstances. It would be very helpful if the Commentary could state more explicitly that due diligence processes in SME's, particularly small companies that have no relevant international activities or exposure, can be very limited and will not involve substantial administrative burdens or costs.

16) Similarly, GP16 should be revised to reflect the clarified scope of the responsibility: *"In order to become aware of human rights risks generated through their activities and **where, through its own actions and decisions, it has caused or contributed to impacts by others, business enterprises should...of those activities.**"*

17) While "potential" impacts are relevant for the earlier steps in the due diligence process, companies would only need to "prevent and mitigate" actual adverse impacts. Thus the word "potential" should be deleted.

Commentary:

- We support the commentary on working with suppliers and believe that it sets out a rational and practical approach based on where a business enterprise, through its own actions and decisions, has caused or contributed to impacts by a supplier. It also recognizes that the purchase or transaction itself does not create that cause or contribution.

18) This principle and the commentary should clarify that it is up to each company to design its own internal mechanisms.

19) Companies should not be expected to communicate publically on "potential" impacts. Thus the words *"and potential"* should be deleted.

Commentary:

- The paragraph on periodic public reporting causes some concern. First, it detracts from the larger discussion on communication. Second, it undermines the universal application of the principles since reporting is limited to a relatively small number of global companies. Additionally, the phrase "whose activities pose significant risks to human rights" is rather vague and needs to be clarified. The example of the *"operating environment"* may not help as this would imply that every business enterprise based in a high risk country should engage in periodic public reporting.

REMEDATION:

20) The commentary on GP 20 should include the word *"internal"* in the sentence: *"Business enterprises should have **internal** procedures..."*

ISSUES OF CONTEXT:

21) The principle should be revised slightly to clarify the points being made, stating that business enterprises should:

- a) Comply with relevant national laws regardless of whether they are enforced or not;*
- b) Observe the principles of international human rights where national law is weak or absent;*
- c) Where national law conflicts with internationally recognized human rights, seek ways to honor the principles of such rights;*

As stated previously, the principles will need to provide additional clarification on the meaning and implications of respecting the principles of international humanitarian law since most companies will not be familiar with this body of international law.

22) No comments.

COMMENTS ON ACCESS TO REMEDY

FOUNDATIONAL PRINCIPLE:

23) The principle should be expanded to make clear that all such remedies should be independent and free from political influence, impartial and objective, and protected from corruption and other attempts to influence the outcome.

STATE-BASED JUDICIAL MECHANISMS:

24) The principle or the commentary should express the view that State-based judicial mechanisms are the basis of any system of remedies and should be given the highest priority by States. As with GP23, this principle should be expanded to make clear that State-based judicial mechanisms should be independent and free from political influence, impartial and objective, and protected from corruption and other attempts to influence the outcome.

Commentary:

- The Commentary states that corporate separateness (“the way in which legal responsibility is attributed amongst members of a corporate group”) is a legal barrier that can prevent legitimate claimants from accessing remedy. We disagree with this view. We believe that corporate separateness is a notion that for sound economic and legal reasons has been widely accepted as a cornerstone of corporate law in many jurisdictions around the globe. Disregard for corporate separateness in a group setting would therefore undermine one of the foundations of most corporate law systems, would be at odds with the notion set out in GP 5 that a company is in principle only responsible for its own acts and omissions, and would ignore the reality that in many corporate groups, subsidiaries have a high level of autonomy in decisions regarding their operations. The commentary additionally does not seem to take sufficient account of the fact that, where this has been necessary in incidental cases of manifest abuse of corporate separateness, courts in many jurisdictions have found ways to offer redress.

- We believe that the other barriers mentioned in the Commentary to GP 24, (lack of financial support for bringing up claims and the impossibility to bring mass claims (class actions)) are at odds with the concept of the Framework that legal solutions should be a last resort. The Commentary is too general and doesn't take into account that in many jurisdictions there are no such problems, nor does it sufficiently take into account the legitimate interest of actors, including business, not to be confronted with frivolous claims. Furthermore, as local solutions are the best means to remedy possible infringements, this commentary should in particular be addressed to domestic institutions.
- The commentary on legal barriers should include informality, which prevents people from obtaining the legal status and/or documents necessary to access courts. This can include a lack of a birth certificate or the clear title to property needed to make a claim.
- The discussion of "home" and "host" States in this context is confusing and takes away from the central principle that States should ensure effective domestic judicial mechanisms. This point should be deleted.
- The Commentary on practical barriers should include corruption and political influence of the judicial process, which are the two biggest practical barriers.

STATE-BASED NON-JUDICIAL GRIEVANCE MECHANISMS:

25) No comments.

NON-STATE-BASED GRIEVANCE MECHANISMS:

26) This principle may need to be clarified in terms of what **States** would be asked to do regarding **non-State mechanisms**. It would seem more appropriate to let the groups involved – enterprises acting alone, in groups or with other stakeholders – to determine how their own mechanisms should function to ensure that they are appropriate to the needs and circumstances of those involved.

27) Considerable flexibility will be required to allow companies to test a variety of approaches related to operational-level mechanism in order to determine what would work best in any given situation or context.

Additionally, the notion of impacted "communities" seems problematic since any mechanism should only apply to those **individuals** in the community that were actually impacted by the company's actions. This text may be intended to address situations where entire communities, such as indigenous groups, do not have legal title to their land and thus their rights are not recognized by the State. But it must be made clear that company mechanisms cannot substitute for the failure of a State to provide legal status or clear property rights for groups of citizens. Thus, the text should be revised to read: *"...for individuals who were adversely impacted by the business enterprise."*

Commentary:

- The commentary should be expanded to explain how stakeholder engagement processes can be an effective mechanism to address concerns before the rise to the level of a “grievance”.
- The final paragraph of the commentary should be revised to read: “...*should not be used to undermine the role of legitimate trade unions, **where relevant**, ...*” since the majority of workers and employees globally are not associated with a union.

28) It is not clear that all collaborative or multi-stakeholder initiatives should develop grievance mechanisms. While it may be appropriate for some, it may not be appropriate for others that only seek to undertake certain tasks or are designed primarily to share and exchange information. Even many codes of conduct developed through such initiatives are designed to be applied independently by each company that uses it. This principle should be revised to clarify that it will not be useful or relevant for every such initiative to develop a grievance mechanism.

EFFECTIVE CRITERIA FOR NON-JUDICIAL GRIEVANCE MECHANISMS:

29) No comments.

COMMENTS ON A FOLLOW UP MECHANISM

We believe that any follow up mechanisms to the mandate should reflect the fact that, as stated in the SRSG 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 differs significantly from and is more complex than the traditional human rights agenda. This calls for a new approach in any follow up mechanism, as well as adequate time for the guiding principles to be studied, understood and implemented in practice.

On the overall approach, we believe that the issue of business and human rights would be best served by continuing the very open, transparent and consultative approach adopted by the Special Representative during his mandate, which was crucial to the success of the mandate. The final 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 a follow up mechanism based on dialogue and consultation among the relevant stakeholders would be the most effective approach at this stage.

We also believe that any follow up mechanism should continue the approach of “principled pragmatism” adopted by the Special Representative. This means looking for ways to implement and use the guiding principles in practical ways that may not address all issues all at once, but moves the process forward in an effective and sustainable manner.

In our view, proposals to establish a new mandate and/or a new complaints receiving mechanism as part of the follow up would run counter to both of the above objectives and would seriously undermine the significant progress achieved under the Special Representative.

ABOUT THE IOE, ICC AND BIAC

About the International Organisation of Employers (IOE)

The IOE 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 144 national members in 138 countries.

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About the 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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About the 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 41 national members in the 34 OECD countries.

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