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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Corporate influence in the political and regulatory sphere: Ensuring business practice in line with the Guiding Principles on Business and Human Rights

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, in accordance with Human Rights Council resolutions [17/4](#) and [44/15](#).

* [A/77/150](#).



Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises

Corporate influence in the political and regulatory sphere: ensuring business practice in line with the Guiding Principles on Business and Human Rights

Summary

In the present report, the Working Group on the issue of human rights and transnational corporations and other business enterprises discusses the implications of business political activities to influence the political and regulatory sphere, in the light of the Guiding Principles on Business and Human Rights. The report aims to delineate between modes of corporate political engagement that are responsible and rights-respecting and those that are likely to lead to or enable business-related human rights abuses. The Guiding Principles clarify various duties and responsibilities for States and businesses regarding the regulation and implementation of corporate political engagement and are an essential resource for ensuring that business engagement with political processes remains rights-respecting.

I. Introduction

Context, objective and methodology

1. In the present report, the Working Group on the issue of human rights and transnational corporations and other business enterprises (the Working Group on business and human rights)¹ examines business engagement with political processes around the world. The report aims to delineate between modes and regulatory contexts of corporate political engagement that are responsible and rights-respecting and those that are likely to lead to or enable business-related human rights abuses.

2. The private sector, along with other stakeholders, has a right to participate in policymaking. The key is that such participation should be conducted transparently and responsibly. However, where businesses engage political processes in support of policies that are inconsistent with respect for human rights – especially where the modes of engagement utilized and the surrounding regulatory contexts preclude adequate oversight – there is a significant risk of unmitigated human rights harms to individuals and communities and impairment of the State’s ability to safeguard against those harms.²

3. In the present report, the intent of the Working Group is to make clear that businesses’ political engagement activities have human rights impacts, as do all other aspects of business operations. As such, a State’s obligation to protect human rights and the business responsibility to respect human rights, as set out in the Guiding Principles on Business and Human Rights, should guide the way that businesses conduct and States regulate corporate political engagement. The Guiding Principles clarify the various duties and responsibilities of States and businesses regarding the regulation and implementation of corporate political engagement and are an essential resource for ensuring that business engagement with political processes remains rights-respecting.

4. It is unavoidable that policymaking will sometimes entail negative impacts for some rightsholders, as changes in policy do involve trade-offs. What the Guiding Principles call on businesses and governments to do is identify the negative impacts arising from their decisions, take steps to prevent and mitigate salient harms and assess if alternative options will be more rights-respecting. The Guiding Principles also call on businesses to know and show the impacts of their decisions. In the sphere of corporate political engagement, this extends to which factors influence a business’s political activities and whether the business considered human rights impacts when deciding to undertake those activities.

5. The present report is based on a consultative process involving various stakeholders, including civil society organizations, academics, businesses and State actors. After exploring ways in which corporate political engagement without adequate human rights due diligence can lead to unmitigated human rights harms, as well as examples of good practice in corporate political engagement, the report contains recommendations to States and businesses to ensure coherence between businesses’ political activities and their respective human rights duties and responsibilities.

¹ See www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx.

² See www.oecd.org/gov/ethics/regulating-corporate-political-engagement.pdf; see also www.oecd.org/gov/ethics/oecdprinciplesfortransparencyandintegrityinlobbying.htm; and www.oecd-ilibrary.org/sites/c6d8eff8-en/index.html?itemId=/content/publication/c6d8eff8-en&_csp_=381daa981c42f6b279b070444f653f78&itemIGO=oecd&itemContentType=book.

II. Key definitions

A. Defining corporate political engagement activities and related human rights harms

6. Civil society, academia, policymakers and others offer varying definitions of what constitutes political engagement that is responsible. These definitions may include emphases on political engagement that is “based on values of integrity, legitimacy, accountability and oversight, consistency and transparency” and which “[advances] the implementation of universal principles and values (such as those embodied in the United Nations Global Compact) in business practice.”³ Some definitions also utilize terms like “undue influence” or “corporate capture” to describe dynamics in which private actors “[attempt] to influence ... public policies and regulations ... whether by providing covert, deceptive or misleading evidence or data, by manipulating public opinion or by using other practices intended to manipulate the decisions of public officials”⁴ or “the means by which economic elites undermine the realization of human rights and environmental protection by exerting influence over domestic and international decision-makers and public institutions.”⁵

7. Rather than delving into specific definitions of these concepts, the present report focuses specifically on the human rights implications of corporate political engagement. The examples provided below explore how business attempts to engage political processes with the motivation of influencing those processes toward a business actor’s economic benefit may lead to human rights harms and how those harms can be prevented, mitigated and remedied.

8. There may be different ways in which corporate political engagement can lead to human rights harms. In some cases, businesses may knowingly engage in support for policy aims that they are aware will benefit the business at the expense of rightsholders. Closely related are situations of wilful blindness, in which businesses choose not to ask human rights questions about their political engagement because they know there is a significant likelihood of adverse impacts. In other situations, businesses may not have extended the concept of human rights due diligence and respect for human rights into their political activities and may not have considered how the Guiding Principles apply to such situations. In all such cases, the Guiding Principles are a key tool for both States and businesses to use in addressing potential adverse rights impacts linked to corporate political engagement. While non-business actors also have the capacity to engage political processes in ways that might be inconsistent with respect for human rights,⁶ political engagement by businesses and the application of the Guiding Principles are the focus of the present report.

9. The present report defines corporate political engagement to include several categories of activities undertaken by business to influence political processes. These include but are not limited to the following: corporate influence over policymakers and political processes; corporate influence over academia and the sciences; corporate influence over public narratives around political issues; and corporate influence over

³ See http://d306pr3pise04h.cloudfront.net/docs/news_events%2F8.1%2Frl_final.pdf.

⁴ See www.oecd-ilibrary.org/sites/e2448afa-en/index.html?itemId=/content/component/e2448afa-en.

⁵ Written input received from International Network for Economic, Social and Cultural Rights (ESCR-Net), available at www.ohchr.org/sites/default/files/documents/issues/executions/40th-anniversary/state-replies/2022-07-19/ESCRNet_Final_Submission_UNWG_BHR_Corporate_Capture_Nov_2021.pdf.

⁶ Written input received from International Organisation of Employers, available at www.ohchr.org/en/calls-for-input/2021/ensuring-business-respect-human-rights-political-and-regulatory-sphere-and.

the judiciary. This is in line with definitions offered by other observers.⁷ The report further draws on important work by other international experts, including the Organisation for Economic Co-operation and Development's Principles for Transparency and Integrity in Lobbying.⁸

10. The Working Group notes that business enterprises engage in political processes in all branches of government at the State and local levels, as well as in multilateral spaces, including regional and intergovernmental organizations. Moreover, while human rights harms linked to corporate political influence in Australia, the United States of America and Europe receive considerable attention, this phenomenon exists across the world. The Working Group has raised this issue in several country visits, including in Brazil,⁹ Ghana¹⁰ and Mexico.¹¹

B. Links between corporate political engagement and business-related human rights abuses

11. There is ample evidence of human rights harms resulting from irresponsible corporate political engagement. These impacts are experienced by people inside business entities' operations and value chains, as well as more broadly throughout society.

12. The global human rights community is increasingly documenting links between some forms of corporate political engagement and human rights abuses. For example, negative impacts on people and the planet may result from the following: instances of privatization of public services leading to environmental rights abuses;¹² lack of access to remedy for victims of business-related human rights abuses;¹³ weakened regulations and enforcement of frameworks protecting the environment¹⁴ and workers' rights;¹⁵ and the overall weakening of democratic institutions and processes.¹⁶ There are also numerous examples in the context of the current climate crisis and its implications for, among others, the rights to life, adequate food and housing, health and water.¹⁷

13. Where human rights harms result from corporate political engagement, the engagement strategies utilized are often lawful. For example, some legal modes of corporate political engagement – such as the practice of lobbying – may not be inherently risky from a human rights perspective but can carry such risks in contexts

⁷ See www.oecd.org/gov/ethics/regulating-corporate-political-engagement.pdf; and www.oecd-ilibrary.org/sites/c6d8eff8-en/index.html?itemId=/content/publication/c6d8eff8-en.

⁸ See www.oecd.org/gov/ethics/oecdprinciplesfortransparencyandintegrityinlobbying.htm.

⁹ A/HRC/32/45/Add.1.

¹⁰ A/HRC/26/25/Add.5.

¹¹ A/HRC/35/32/Add.2.

¹² See www.escri-net.org/news/2020/opinion-need-ensure-corporate-accountability-amidst-pandemic.

¹³ See www.opendemocracy.net/en/oureconomy/corporate-abuse-feminist-issue/; and www.escri-net.org/sites/default/files/manifestation_-_en.pdf.

¹⁴ See <https://static1.squarespace.com/static/583f3fca725e25fcd45aa446/t/5bd1ae764785d30eeb8fab04/1540468342612/Oral+statement+by+ICAR+and+SOMO+-+Article+15+on+Final+Provisions.pdf>; and <https://icar.squarespace.com/news/2018/4/25/end-the-corporate-hijacking-its-time-to-separate-oil-state>.

¹⁵ See www.somo.nl/wp-content/uploads/2018/01/Concept-note-Trade-and-corporate-capture.pdf.

¹⁶ Written input received from Public Eye, available at www.ohchr.org/en/calls-for-input/2021/ensuring-business-respect-human-rights-political-and-regulatory-sphere-and; see also https://corporateeurope.org/sites/default/files/ceo-captured-states-final_0.pdf; www.2030spotlight.org/sites/default/files/download/spotlight_170626_final_web.pdf.

¹⁷ See www.ohchr.org/Documents/Issues/ClimateChange/materials/KMBusiness.pdf; and www.unpri.org/pri-blog/time-must-be-called-on-negative-climate-lobbying/8259.article.

or circumstances where States or multilateral institutions have not enacted adequate transparency, disclosure, oversight or access requirements. As such, while businesses are required to comply with various rules and laws regarding their political activities and financing, the Guiding Principles go beyond compliance to requiring human rights due diligence, which is a separate responsibility.

14. The likelihood of corporate political engagement leading to adverse human rights impacts can be heightened where businesses' products or services pose elevated and inherent risks to the health of people and/or the environment. Examples may include the alcohol, tobacco, fossil fuel and ultra-processed food and beverage products industries – which are sometimes termed “unhealthy commodity industries”, based on their links to non-communicable diseases.¹⁸ Because strong regulatory action from States is crucial to safeguarding against potential human rights harms linked to unhealthy commodity industries, business efforts to influence policy in favour of these business interests may carry a particular risk of facilitating human rights harms. Many of the examples cited in the present report originate in these industries, although corporate political influence can lead to human rights harms in all business sectors, and numerous other industries are also discussed below.

15. In some sectors where corporate political influence has proved especially damaging, the international community has taken action to safeguard the integrity of political processes. In the tobacco sector, for example, extensive industry lobbying altered public health policy debates in ways that led to adverse human rights impacts for decades.¹⁹ In response, the World Health Organization Framework Convention on Tobacco Control included specific reference to the duty of State parties to “protect [public health] policies from commercial and other vested interests of the tobacco industry in accordance with national law,”²⁰ with related detailed instructions for implementing this safeguarding.²¹ Broadly, however, across geographies and industries, States and multilateral institutions have often not done enough to encourage or require businesses to achieve alignment between their political engagement activities and their human rights responsibilities under the Guiding Principles.

C. Non-transparency and the alignment gap

16. Human rights harms linked to corporate political influence may be likelier to occur where legal and institutional frameworks to ensure transparency are weak or not present. When businesses can engage political processes in the dark, their ability to carry out that engagement in ways that do not comply with their responsibility to respect human rights under the Guiding Principles is increased. Non-transparency thus allows for a related misalignment between some business entities' political activities and their public human rights commitments and responsibilities.²²

17. Insufficient transparency requirements can breed misalignment in multiple ways. In some cases, private actors may portray themselves publicly as committed to upholding human rights principles, while a lack of mandatory transparency frameworks allows them to knowingly lobby in secret for policies that would

¹⁸ Written input received by Global Health Advocacy Incubator, available at www.ohchr.org/en/calls-for-input/2021/ensuring-business-respect-human-rights-political-and-regulatory-sphere-and; see also <https://ncdalliance.org/why-ncds/covid-19/map-unhealthy-industry-responses>.

¹⁹ See <https://apps.who.int/iris/bitstream/handle/10665/268182/PMC2560805.pdf?sequence=1&isAllowed=y>.

²⁰ See <https://fctc.who.int/>.

²¹ See <https://untobaccocontrol.org/elearning/article53/>.

²² See <https://corpgov.law.harvard.edu/2019/03/14/2019-lobbying-disclosure-resolutions/>.

prioritize profits without factoring in the impact on human rights. In other cases, insufficient transparency and disclosure requirements may mean that businesses are not fully aware of the rights impacts of their political engagement because that engagement is shielded from the critical scrutiny of regulators and other outside observers.

18. Efforts to address the alignment gap are complicated by the fact that some States and multilateral spaces retain weak requirements for disclosure of political engagement by businesses. Examples are visible in domestic legislation on lobbying disclosures, as well as in the texts of some multilateral treaties. While the United Nations Convention against Corruption, for example, contains provisions related to safeguarding political processes from outside influence, many of these provisions are not mandatory.²³

D. Links between corporate political engagement and corruption

19. Finally, it bears noting that where well-resourced private actors engage with political processes, the risk of corruption is increased, as is the risk of corruption-related human rights harms. While acts of corruption and bribery are distinct from legitimate attempts to influence political processes, corporate political engagement remains “a significant risk area for bribery and corruption.”²⁴

20. While many forms of corporate political engagement are not inherently harmful or irresponsible, close contacts between businesses and political processes can provide opportunities for actors who would engage in bribery, fraud or other corrupt acts to do so. This is particularly the case where transparency and oversight requirements around corporate political engagement are lacking.²⁵ It is well established that transparency in public decision-making processes “reduces the likelihood of corrupt behaviour ... because it lowers the information barrier, allowing for scrutiny and monitoring,”²⁶ and that limited transparency can enable corruption to thrive.²⁷

21. The elevated risk of corruption associated with corporate political engagement represents an additional set of human rights risks; as the Working Group has detailed in a previous report, corruption in and of itself undermines the enjoyment of human rights and is linked to tangible human rights harms in the business context.²⁸

22. The Working Group has also noted previously the ongoing discussion around whether corporate capture constitutes corruption.²⁹ The answer to this question is complex, given the differing legality of corporate political activities across jurisdictions. What the Working Group has made clear, however, is that preventing private interests from exerting undue influence requires an increase in the transparency and independent oversight of political funding and decision-making.³⁰

23. The Working Group also notes that political corruption associated with corporate political engagement is often observed in less democratic and politically

²³ See www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf; articles 7(3), 7(4), 8(5) and 12(2).

²⁴ See www.antibriberyguidance.org/guidance/12-political-engagement.

²⁵ See www.cnbc.com/2018/11/27/corporations-risking-serious-corruption-by-failing-to-disclose-political-engagement-researchers-say.html.

²⁶ See www.unodc.org/e4j/en/anti-corruption/module-6/key-issues/transparency-as-a-precondition.html.

²⁷ See A/HRC/44/43, para. 14.

²⁸ Ibid, para. 1.

²⁹ Ibid, para. 72.

³⁰ Ibid, para. 73.

unstable environments, where the corruption risk is already elevated and political engagement by the private sector may be unregulated entirely. The Working Group received information regarding several instances of corporate political engagement facilitating alleged corruption and corresponding adverse rights impacts in contexts involving less democratic systems of government, especially in relation to public procurement and land acquisition processes. These include instances related to the export of coffee in Uganda and land seizures in Thailand.³¹ The Working Group has previously described both procurement and land acquisition as key areas of concern for public sector corruption.³²

III. Key manifestations of corporate political engagement: challenges and opportunities

24. The Working Group has examined some prominent modes of corporate political engagement and patterns that may lead to business-related human rights harms.

A. Corporate influence over policymakers and political actors

25. One common form of corporate political engagement involves attempts by business entities to influence policy through direct influence over policymakers and other political actors. This can be achieved in a variety of ways, including direct and indirect lobbying, contributions to political campaigns and “revolving-door” hiring practices.

B. Direct lobbying by businesses

26. Lobbying is generally defined as “oral or written communication with a public official to influence legislation, policy or administrative decisions.”³³ Lobbying of Governments and multilateral institutions by business can be carried out responsibly. However, where businesses lobby political processes in support of policy aims that would negatively affect rightsholders, serious adverse rights impacts can occur.

27. For example, evidence shows that direct lobbying in the oil and gas sector has contributed to shifting government policies away from the commitments of the Paris Agreement, despite contrary public positions from many oil and gas companies.³⁴ Other examples include some multinational companies reportedly having lobbied to shift energy projects in Africa away from off-grid and renewable energy technologies.³⁵ In Latin America, efforts to fight childhood obesity with required nutritional labelling and redesigned packaging for food products were obstructed for

³¹ See www.bloomberg.com/news/articles/2022-04-14/uganda-lawmakers-seek-reversal-of-controversial-coffee-deal; and https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/THA/INT_CERD_NGO_THA_47088_E.pdf.

³² [A/HRC/44/43](https://www.unhcr.org/refugees/44/43).

³³ See <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0379>.

³⁴ See https://share.ca/wp-content/uploads/2022/01/SHARE_climate_lobbying_3-1.pdf.

³⁵ See www.2030spotlight.org/sites/default/files/download/spotlight_170626_final_web.pdf#spotlight_170626_final_barrierearm.indd%3A.120162%3A5749; https://foe.org/blog/2013-11-75-african-groups-demand-obama-stop-pushing-dirty-en/#_ftn3.

years by lobbying from some multinational food and beverage companies.³⁶ Similar circumstances can be found in the legislative history of food labelling in the region.³⁷

28. At the multilateral level, civil society groups and other international experts have raised concerns about unmitigated adverse human rights impacts linked to direct lobbying in a variety of United Nations and European Union processes; examples provided by these observers include the Conference of the Parties to the United Nations Framework Convention on Climate Change, the United Nations Food Systems Summit, European Union trade negotiations with non-European Union countries, and the European Commission's regulation of the automotive industry.³⁸

29. Where direct lobbying practices do lead to human rights harms, a lack of sufficient transparency and integrity frameworks is often a factor. Only a minority of countries have addressed lobbying risks through such frameworks,³⁹ and the quality of disclosure requirements within existing lobbying regulations varies widely – not all disclosure is mandatory,⁴⁰ and definitions of who must register as a lobbyist are inconsistent and often narrow.⁴¹ Many lobbying disclosure frameworks also pertain specifically to monetary contributions and do not require disclosure of the nature of corporate policy engagements or specific lobbying positions or objectives.⁴² The result is too often a system that allows for incoherence between businesses' lobbying aims and human rights responsibilities.

30. In a broader sense, human rights risks may also be associated with lobbying practices where States and multilateral institutions fail to ensure balanced participation among different stakeholders in political decision-making processes. The Guiding Principles call for meaningful consultation with relevant stakeholders;⁴³ this extends to public policy forums. States and multilateral institutions should give greater attention to ensuring that consultations are balanced among businesses and other stakeholders, including civil society organizations, small and medium-sized enterprises, indigenous peoples' groups and other affected individuals and communities. Policymakers and legislators should "acknowledge the existence of

³⁶ Written input received by Oxfam, available at www.ohchr.org/en/calls-for-input/2021/ensuring-business-respect-human-rights-political-and-regulatory-sphere-and. See also <https://d-nb.info/1223247481/34>; and www.nytimes.com/2018/02/07/health/obesity-chile-sugar-regulations.html.

³⁷ See https://issuu.com/elpoderdelconsumidor/docs/alimentarnos_con_dudas_disfrazadas_de_ciencia; and www.cambridge.org/core/journals/public-health-nutrition/article/i-had-never-seen-so-many-lobbyists-food-industry-political-practices-during-the-development-of-a-new-nutrition-frontofpack-labelling-system-in-colombia/FF74104CE217DBE153224FF3E86B017C.

³⁸ Written input received from International Network for Economic, Social and Cultural Rights (ESCR-Net), available at www.ohchr.org/sites/default/files/documents/issues/executions/40th-anniversary/state-replies/2022-07-19/ESCRNet_Final_Submission_UNWG_BHR_Corporate_Capture_Nov_2021.pdf. See also www.corporateaccountability.org/wp-content/uploads/2019/12/COP25_CorpSpon_EN-FINAL.pdf; A/76/237; www.somo.nl/open-for-business-how-corporate-lobbyist-influence-the-en-indonesia-trade-negotiations/; and www.mindthegap.ngo/harmful-strategies/utilising-state-power/avoiding-regulations-through-corporate-lobbying/example-the-german-car-industrys-regulatory-capture/.

³⁹ See www.oecd-ilibrary.org/sites/c6d8eff8-en/index.html?itemId=/content/publication/c6d8eff8-en&csp=381daa981c42f6b279b070444f653f78&itemIGO=oecd&itemContentType=book.

⁴⁰ For example, the European Union lobbying Transparency Register was voluntary until 2021. See also www.ohchr.org/sites/default/files/2022-06/institution-of-occupational-safety-and-health.pdf; and www.thegoodlobby.eu/2021/05/17/the-eu-makes-the-transparency-register-mandatory-but-we-expected-better/.

⁴¹ See www.unpri.org/pri-blog/responsible-political-engagement-should-be-at-the-heart-of-investors-stewardship/9521.article and <https://sunlightfoundation.com/policy/lobbyingguidelines/>.

⁴² See <https://lobbyingdisclosure.house.gov/lda.html>; and www.govinfo.gov/content/pkg/PLAW-110publ81/pdf/PLAW-110publ81.pdf.

⁴³ See www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinessshr_en.pdf, Guiding Principle 18.

diverse legitimate interest groups and consider the costs and benefits [of participation] for these groups.”⁴⁴ This is crucial to understanding how political decisions may affect rightsholders and communities, as well as to upholding the right to participation in public affairs.⁴⁵

31. There are a number of positive practices that both businesses and States can implement to ensure that direct lobbying does not lead to unmitigated or unidentified salient human rights harms and/or corruption. For States, these practices usually entail regulatory and legislative actions to create an environment of transparency and oversight around corporate political engagement practices. These may include strong conflict-of-interest legislation, income and asset disclosure systems for public officials, comprehensive lobbying registration and disclosure frameworks and regulations to ensure equal and meaningful participation of civil society and other non-business stakeholders in political consultations. An instructive example regarding the food and beverage industry can be found in the Pan-American Health Organization’s road map for preventing and managing conflicts of interest in country-level nutrition programmes, which provides guidance for ministries of health on responsible engagement with non-State actors.⁴⁶

32. The simplest means by which businesses can achieve coherence between their lobbying activities and human rights responsibilities is by ensuring that lobbying aims are limited to policies that will not lead to adverse human rights impacts. Businesses knowing where their political engagement may carry human rights risks requires robust human rights due diligence processes as well as deliberate efforts to convey an understanding throughout the business enterprise that lobbying efforts have an impact on human rights.

33. Another positive lobbying practice for businesses is a commitment to comprehensive disclosure of lobbying spending and activities, regardless of legal obligation.⁴⁷ Investors are increasingly influential actors in this regard; investor resolutions related to corporate lobbying disclosure have increased considerably in recent years⁴⁸ and investor groups have published robust guidelines on climate lobbying, for example.⁴⁹

34. In addition, the Guiding Principles note that if a business enterprise “has leverage to prevent or mitigate [an adverse human rights impact] it should exercise it.” This can involve business enterprises engaging policymakers in support of policies that would strengthen human rights protections or lobbying in opposition to political and regulatory developments that threaten human rights, most often where there is a direct linkage to their business activity. For example, if a company sources a commodity from a country where the legal minimum age of work does not align with international law, and the company finds that child labour persists in its supply chain, it might lobby the Government to set a limit that aligns with international human rights law.

⁴⁴ See www.oecd-ilibrary.org/sites/7622b33f-en/index.html?itemId=/content/component/7622b33f-en.

⁴⁵ See www.ohchr.org/sites/default/files/Documents/Issues/PublicAffairs/GuidelinesRightParticipatePublicAffairs_web.pdf.

⁴⁶ See https://iris.paho.org/bitstream/handle/10665.2/55055/PAHONMHRF210014_eng.pdf?sequence=1&isAllowed=y.

⁴⁷ See <https://politicalaccountability.net/hifi/files/2020-CPA-Zicklin-Index.pdf>, p. 20.

⁴⁸ Written input received from Justine Nolan and Martijn Boersma, available at www.ohchr.org/en/calls-for-input/2021/ensuring-business-respect-human-rights-political-and-regulatory-sphere-and; see also <https://corpgov.law.harvard.edu/2019/03/14/2019-lobbying-disclosure-resolutions/>; and <https://politicalaccountability.net/hifi/files/2020-Proxy-Vote-Analysis-Report-CPA.pdf>.

⁴⁹ See https://climate-lobbying.com/wp-content/uploads/2022/03/2022_global-standard-responsible-climate-lobbying_APPENDIX.pdf.

35. Businesses may also lobby Government in favour of broader protections for the rights of their employees, customers and wider communities. Examples of this may include business actors lobbying for the passage of legislation protecting voting rights for minority voters⁵⁰ or undertaking policy advocacy in support of human rights protections for transgender people.⁵¹

C. Indirect lobbying via industry associations

36. Business entities also engage in indirect lobbying through participation in industry associations, which exist to represent collectively the commercial interests of industries.⁵² This type of lobbying occurs in multilateral institutions and in all branches of government. Like direct lobbying, indirect lobbying can be carried out in ways that are consistent with respect for human rights. However, industry associations may also lobby for policy changes that benefit the economic interests of their member companies at the expense of human rights.

37. The Working Group received information regarding various ways in which indirect lobbying has facilitated human rights harms. In Brazil, lobbying by agribusiness industry associations reportedly influenced the Government's decision to shift control over lands claimed by indigenous peoples from the country's National Indigenous Foundation to the Ministry of Agriculture, with negative impacts on the rights of indigenous Brazilians.⁵³ The largest United States industry association representing major electronics companies reportedly also lobbied against legislation that aims to reduce the trade of conflict minerals, despite public positions to the contrary from several key member companies.⁵⁴

38. Civil society advocates have also raised concerns over the presence of industry groups representing oil and gas companies at United Nations climate talks.⁵⁵ In the context of discussions around mandatory human rights due diligence at the European Union level, some companies have demonstrated misalignment between their human rights commitments and their political activities through connections to indirect lobbying aiming to weaken or oppose the development or adoption of mandatory human rights due diligence legislation.⁵⁶

39. Industry association lobbying has been particularly linked to efforts to roll back climate regulations.⁵⁷ Climate lobbying is now increasingly carried out by industry associations, and many companies reportedly "maintain extensive networks of trade

⁵⁰ See <https://thehill.com/business-a-lobbying/business-a-lobbying/563004-corporate-giants-call-on-congress-to-pass-voting/>.

⁵¹ See www.openglobalrights.org/business-impacts-on-trans-rights-demand-attention-and-action/.

⁵² See www.oecd.org/daf/competition/sectors/41646059.pdf.

⁵³ See www.ohchr.org/en/press-releases/2017/06/indigenous-and-environmental-rights-under-attack-brazil-un-and-inter; www.reuters.com/article/us-brazil-politics-agriculture-idUSKCN1OW00S; and www.reuters.com/article/us-brazil-politics-indigenous/brazils-bolsonaro-hands-indigenous-land-decisions-back-to-farm-sector-idUSKCN1TK37O.

⁵⁴ See www.ohchr.org/sites/default/files/2022-06/institute-for-human-rights-and-business.pdf; and www.globalwitness.org/en/archive/electronics-companies-must-break-us-chamber-conflict-minerals/.

⁵⁵ Written input received from Corporate Europe Observatory and ESCR-Net, available at www.ohchr.org/en/calls-for-input/2021/ensuring-business-respect-human-rights-political-and-regulatory-sphere-and. See also www.corporateaccountability.org/wp-content/uploads/2017/10/PollutingParis_COP23Report_2017.pdf.

⁵⁶ See <https://friendsoftheearth.eu/wp-content/uploads/2021/06/Off-the-Hook-Lobby-report.pdf>.

⁵⁷ See <https://influencemap.org/report/Corporate-capture-of-the-IMO-902bf81c05a0591c551f965020623fda>.

associations and lobbyists whose aggregate positions on climate are ... misaligned with their own.”⁵⁸

40. Where indirect lobbying is implicated in human rights harms, insufficient transparency requirements are often a factor. In many countries, industry associations are not required to disclose membership lists,⁵⁹ nor are companies required to disclose industry association memberships.⁶⁰ In some cases, businesses rely on this opacity to outsource to industry associations lobbying for policies that may conflict with their public human rights commitments and other public positions.⁶¹ Moreover, some lobbying and disclosure frameworks are limited in scope and regulate only direct lobbying, rendering indirect lobbying practices additionally opaque.⁶²

41. Like other businesses, industry associations should carry out human rights due diligence and consider the human rights impacts of their work, including by voluntarily disclosing lobbying spending and activities. Likewise, States can ensure that comprehensive lobbying disclosure and registration frameworks apply to industry associations in addition to corporate lobbyists and lobbying firms. Multilateral institutions can also ensure balanced participation of industry associations in spaces of negotiation or discussion, vis-à-vis smaller stakeholders.

42. For businesses, a crucial example of good practice is voluntary disclosure of industry association memberships, participation and activities, which allows for greater transparency around the full complement of business entities’ political engagement activities.⁶³ This may also include requiring approval by a board committee of dues and payments to industry associations.⁶⁴

43. Also important for businesses is the continuous review of industry association memberships to identify any inconsistencies between associations’ lobbying activities and businesses’ public human rights commitments and responsibilities under the Guiding Principles, followed by possible public withdrawal from an association if those inconsistencies are not resolved. Investors have contributed, in some instances, to improved alignment between member businesses’ human rights commitments and policies and industry association lobbying activities; examples of high-profile withdrawals from industry associations are a case in point.⁶⁵

D. “Revolving-door” hiring practices

44. Some hiring practices can also enable business actors to gain influence over political processes. One example is the “revolving door”, whereby businesses can achieve influence through promises of lucrative employment for officials working in

⁵⁸ See <https://influencemap.org/report/Trade-associations-and-climate-shareholders-make-themselves-heard-cf9db75c0a4e25555fafb0d84a152c23>.

⁵⁹ See <https://justcapital.com/news/the-state-of-disclosure-on-trade-association-memberships-in-corporate-america/>; and <https://thehill.com/blogs/pundits-blog/finance/275301-why-the-us-chamber-of-commerce-is-fighting-transparency>.

⁶⁰ See <https://justcapital.com/news/the-state-of-disclosure-on-trade-association-memberships-in-corporate-america/>.

⁶¹ See www.nytimes.com/2020/07/21/business/dealbook/political-donations-corporations.html.

⁶² See <https://corporateeurope.org/en/food-and-agriculture/2017/04/match-made-hell>.

⁶³ See www.intel.com/content/www/us/en/corporate-responsibility/csr-report-builder.html.

⁶⁴ See www.politicalaccountability.net/cpa-zicklin-index/; <https://bteam.org/assets/reports/Addressing-Trade-Association-Misalignment-on-Climate-Policy.pdf>; https://d306pr3pise04h.cloudfront.net/docs/issues_doc%2FEnvironment%2Fclimate%2FGuide_Responsible_Corporate_Engagement_Climate_Policy.pdf; and https://climate-lobbying.com/wp-content/uploads/2022/03/2022_global-standard-responsible-climate-lobbying_APPENDIX.pdf.

⁶⁵ See www.reuters.com/article/us-total-api/frances-total-quits-top-u-s-oil-lobby-in-climate-split-idUSKBN29K1LM.

State or multilateral institutions when they step down from their roles as public servants.⁶⁶

45. The revolving door from being a member of a Government or a multilateral institution to being a lobbyist may affect policymaking in a number of ways, namely: (a) public officials may be influenced in policymaking processes by the implicit or explicit prospective of a future lucrative position in the private sector;⁶⁷ and (b) public officials-turned-lobbyists may have a degree of access to information and lawmakers that is not available to most citizens.⁶⁸

46. This is a phenomenon affecting multilateral institutions, international organizations and national Governments. Revolving-door hiring practices are reportedly present within the European Union, for example, where existing ethics rules “are not slowing down the revolving door between the European Union’s civil service and companies that lobby it.”⁶⁹ Similar instances have reportedly taken place within the World Health Organization.⁷⁰

47. There are also “reverse-revolving-door” hiring practices, in which businesses attempt to place their own former employees within branches of government or multilateral institutions that interface with business, including those responsible for regulating business conduct.⁷¹ This may result in “the prioritization of corporate profits over the public interest in agency decision-making ... [threatening] the public’s trust in government.”⁷²

48. Revolving-door hiring practices have been shown to incentivize adverse impacts on human rights in certain circumstances. For example, in some cases these close relationships can enable former public officials who transition to the private sector to provide their former colleagues in government with draft legislative proposals that unfairly privilege the interests of businesses.⁷³ A key role of regulators is to sanction businesses that harm human rights; independent regulators are thus crucial to providing the remediation called for by the Guiding Principles. However, where regulatory bodies are tasked with assessing companies or sectors that employ large numbers of former public officials or government regulators, decisions about accountability and remedy may be overly permissive.⁷⁴

49. It is not the case that former public officials should never be allowed to work in the private sector, or that this pattern always leads to human rights harms. It is primarily when these practices are loosely regulated that serious risks of adverse human rights impacts may arise. Therefore, good practices to mitigate human rights risks associated with revolving-door hiring generally involve States and multilateral spaces mandating “cooling-off” periods, which require a minimum amount of time to

⁶⁶ See www.oecd.org/corruption/integrity-forum/academic-papers/Wirsching.pdf.

⁶⁷ See www.transparency.org/files/content/feature/2017_CombattingCorruptionInMiningApprovals_CaseStudy_RevolvingDoors.pdf.

⁶⁸ See <https://sticerd.lse.ac.uk/seminarpapers/pspe18102016.pdf>; and <https://bush.tamu.edu/wp-content/uploads/2020/02/CRS-Exec-Branch-Lobbying-Capstone-Final-Report-2017-2018.pdf>.

⁶⁹ See <https://corporateeurope.org/en/2020/10/facebook-friends-lobby-consultants>.

⁷⁰ <https://thewire.in/books/profit-before-people-the-case-against-the-soft-drink-industry>; and www.researchgate.net/publication/316464499_WHO_Transnational_industry_The_door_revolves_again.

⁷¹ See www.businessinsider.com/citis-government-job-bonus-for-jack-lew-2013-2; and www.thenation.com/article/archive/reverse-revolving-door-how-corporate-insiders-are-rewarded-upon-leaving-firms-congres/.

⁷² See <https://icar.ngo/wp-content/uploads/2021/01/ICAR-Day-One-Executive-Action-Demands-Final.pdf>.

⁷³ See www.npr.org/2014/02/13/276448190/a-closer-look-at-how-corporations-influence-congress.

⁷⁴ See www.brookings.edu/opinions/judge-rakoff-challenge-to-the-s-e-c-can-regulatory-capture-be-reversed/.

pass before individuals can move from regulatory bodies to the private sector or vice versa. Research indicates that for cooling-off periods to be effective, they must be reasonably long. With respect to legislators, this may include “an entire legislative cycle, after which there will be some turnover, especially among staff.”⁷⁵ In addition, revolving door regulations are most effective where they comprehensively restrict lobbying activities of all kinds during cooling-off periods.⁷⁶ Where regulations allow former regulators to serve as consultants to lobbying organizations without officially registering or identifying as lobbyists, the risk of human rights harms remains.⁷⁷

E. Corporate contributions to political parties, causes or campaigns

50. Corporate financial political contributions can also have an adverse impact on rightsholders. When businesses make contributions to individual politicians, political parties or political causes, they should assess the potential adverse human rights impacts linked to those decisions and also consider stances taken by politicians or political organizations that may run counter to respect for human rights.

51. While businesses may have the right to engage in political spending, depending on domestic laws and regulations, they must also be transparent about that spending and the human rights analysis behind those spending decisions. Civil society groups and other international observers have raised concerns that, in addition to the possibility of opening the door to instances of corruption, allowing corporate political contributions may introduce a more general “risk that some parties and candidates, once in office, will be more responsive to the interests of a particular group of donors rather than to the wider public interest.”⁷⁸ It has also been demonstrated that in some industries, the more often policymakers vote in line with corporate interests, the more campaign contributions they receive from those interests in the future.⁷⁹ This dynamic may result in negative human rights outcomes where business interests diverge from human rights priorities.⁸⁰

52. Here, too, secrecy is one factor determining the level of human rights risk associated with political engagement. Risks of adverse human rights impacts are elevated where private actors can make anonymous contributions to political causes. This includes contexts that maintain lax restrictions on direct political donations by private actors;⁸¹ anonymous contributions directly to political parties;⁸² anonymous contributions to third-party political advocacy groups;⁸³ and State programmes that obscure the sources and recipients of political spending.⁸⁴ This lack of transparency can enable businesses to advance political priorities that are inconsistent with their public human rights commitments and responsibilities under the Guiding Principles.

53. For States, positive practice regarding corporate political contributions generally involves enacting legislation to ensure that such contributions are transparent and subject to reasonable limits. For businesses, good practice may

⁷⁵ See www.citizen.org/article/slowing-the-federal-revolving-door/.

⁷⁶ See <https://mgaleg.maryland.gov/Pubs/LegisLegal/2021rs-ethics-guide.pdf>.

⁷⁷ See www.citizen.org/article/slowing-the-federal-revolving-door/.

⁷⁸ See https://read.oecd-ilibrary.org/governance/financing-democracy_9789264249455-en#page24.

⁷⁹ See www.pnas.org/content/117/10/5111.

⁸⁰ See <https://press.princeton.edu/books/paperback/9780691162423/affluence-and-influence>.

⁸¹ See <https://theconversation.com/australia-trails-way-behind-other-nations-in-regulating-political-donations-59597>.

⁸² See www.reuters.com/article/uk-safrica-politics/s-africa-tackles-secretive-party-funding-with-law-but-still-allows-anonymous-donors-idUSKBN29R1VS.

⁸³ See www.opensecrets.org/darkmoney/dark-money-basics.php; and www.opensecrets.org/news/2020/01/dark-money-10years-citizens-united/.

⁸⁴ See www.ft.com/content/28c89610-503c-11e9-b401-8d9ef1626294 (subscription needed).

involve restricting financial contributions only to those that are transparent and accountable. For example, this may mean prohibiting or restricting payments to so-called “dark money” groups that accept anonymous donations.⁸⁵ Corporate contributions to political causes are most transparent where all such expenditures are approved by company boards of directors; some companies retain this policy, and it is also required by law in some jurisdictions.⁸⁶ Some companies also take public stances against making political contributions of any kind, which is the surest way to avoid adverse rights impacts resulting from this category of political engagement.⁸⁷

54. In addition, some businesses make public contributions to political advocacy groups working toward policy changes that would strengthen human rights protections or otherwise ameliorate harms to human rights or health.⁸⁸ Here, too, businesses have opportunities to use leverage to influence policy around issues salient to their operations in directions that are consistent with human rights.

F. Corporate influence over academia and the sciences

55. Another category of corporate political engagement activities involves attempts by business entities to achieve policy change by influencing research and knowledge production, especially within institutions of higher education and scientific institutions. Here, too, business sponsorship of academic and scientific research may not be inherently problematic but can become so where research is utilized to mislead the public and policymakers in ways that have a negative impact on human rights.

56. There is a long history of business actors funding scientific research and studies relevant to their industries, and there are notable examples of sponsored science being more likely to produce results that are favourable to sponsoring companies’ business models and detrimental to the health and well-being of individuals and communities. For instance, the Organisation for Economic Co-operation and Development has found that the “relationship between soft drink consumption and negative health outcomes is four to five times weaker in studies funded by the food and beverage industry than in non-industry funded studies.”⁸⁹ There are also well-documented examples related to the climate crisis and the tobacco and agriculture industries.⁹⁰

57. This category of political engagement may also include attempts by business actors to cast doubt on the validity of existing research that suggests links between certain industries’ products or services and negative outcomes for health and human rights. For example, during the parliamentary consideration process around the creation of a tax on sugar-sweetened beverages in South Africa, sugar producers reportedly “[argued] that there was no research showing that sugar consumption was harmful to health.”⁹¹ Similarly, during discussions around implementation of front-of-package food and beverage labelling in the Caribbean region, Jamaican and regional industry associations reportedly worked to cast doubts on established scientific evidence around the effectiveness of the front-of-package food and

⁸⁵ See www.politicalaccountability.net/wp-content/uploads/2021/11/2021-CPA-Zicklin-Index.pdf.

⁸⁶ See www.politicalaccountability.net/cpa-zicklin-index/; and <https://ibclaw.in/section-182-of-the-companies-act-2013-prohibitions-and-restrictions-regarding-political-contributions/>.

⁸⁷ See www.ibm.com/policy/philosophy-and-governance-new/.

⁸⁸ See www.businessinsider.com/uber-ceo-company-to-donate-1-million-to-police-reform-2020-5.

⁸⁹ See www.oecd.org/gov/ethics/publicationsdocuments/Ways%20to%20influence%20public%20policies%20-%20Smokescreen.png; <https://globalizationandhealth.biomedcentral.com/track/pdf/10.1186/s12992-020-00647-3.pdf>; and <https://gh.bmj.com/content/bmjgh/6/8/e005662.full.pdf>.

⁹⁰ See www.merchantsofdoubt.org/.

⁹¹ See <https://globalizationandhealth.biomedcentral.com/track/pdf/10.1186/s12992-020-00647-3.pdf>.

beverage warning labelling model, particularly around a Jamaican study conducted by the Pan American Health Organization.⁹²

58. The risk that industry-sponsored research will lead to adverse human rights impacts is elevated when transparency and disclosure related to both financial and non-financial support for research are lacking.⁹³ Where such research is conducted and published without adequate transparency, the public and policymakers may not be aware of the human rights impacts of business activities, with implications for the rights to health,⁹⁴ a healthy environment⁹⁵ and adequate food.⁹⁶

59. There exist a number of recommended positive practices for researchers, sponsoring business entities and States to ensure that industry-sponsored research contributes to informing policymaking processes without influencing them in ways that carry possible risks of adverse human rights impacts. Many of these positive practices pertain to transparency requirements, human rights risk assessment processes, research funding structures and independent control over research outcomes.

60. Some examples include all parties “[committing] to sharing of research data arising from the research project”; undertaking thorough pre-emptive risk assessments of potential human rights impacts of the research; ensuring that impartial and objective scientific investigators retain control over design of studies and resulting research; ensuring that funding is not contingent upon research outcomes; and requiring full public disclosure of funding sources, financial interests and governance structures pertaining to the research, as well as all research findings.⁹⁷

61. States should also ensure that their policymaking relies on research that is unbiased and conducted transparently. Implementation of these and other objective and independent monitoring systems can help mitigate human rights risks associated with some forms of industry-sponsored science.

G. Corporate influence over public narratives around political issues

62. Another mode of corporate political engagement involves business entities seeking to influence public narratives around political issues, in turn creating policy change by influencing the outcome of elections and ballot referendums and creating public pressure on public officials. This can be achieved through various means, including both traditional and social media outlets. While attempts by businesses to influence public political narratives do not always carry human rights risks, such risks do arise when narratives are shifted in order to obscure business-related human rights harms or to give a false impression of public support behind business priorities that entail adverse human rights impacts.

63. One method by which business entities can influence public political narratives is through the use of public relations campaigns targeted at the general public, whether discharged internally or by contracted public relations firms.⁹⁸ Public

⁹² See <https://jamaica-gleaner.com/article/commentary/20210611/andres-constantin-front-package-warning-labels-caricom-can-either-follow>.

⁹³ See www.ncbi.nlm.nih.gov/pmc/articles/PMC6187765/; and www.tandfonline.com/doi/full/10.1080/03007995.2019.1570770.

⁹⁴ See <https://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2018.304510?journalCode=ajph>.

⁹⁵ See <https://public-accountability.org/report/offshore-shilling/>.

⁹⁶ See www.foodethicscouncil.org/app/uploads/Industry-sponsored_science_is_clouding_the_picture_of_how_food_systems_impact_health_IPES-Food.pdf.

⁹⁷ See www.ncbi.nlm.nih.gov/pmc/articles/PMC6767600/; and <https://pubmed.ncbi.nlm.nih.gov/19357216/>.

⁹⁸ See www.oecd.org/gov/ethics/publicationsdocuments/Ways%20to%20influence%20public%20policies%20-%20Smokescreen.png.

relations campaigns around political issues are a common and not inherently problematic business activity when the aims of a campaign do not conflict with human rights protections. In some cases, however, corporations have utilized public relations campaigns to influence policy by obscuring the human rights risks inherent to certain business practices. It is also worth noting that public relations firms are themselves business enterprises with responsibilities to respect human rights under the Guiding Principles.

64. This trend has been especially prevalent in the climate space.⁹⁹ Civil society groups report that fossil fuel companies have hired public relations firms to influence European Union policy by “promoting positive initiatives while the majority of the corporation’s polluting business model remains intact,” with the effect of causing “the European Commission’s 2030 climate and energy package [to side-line] energy efficiency and renewables.” The Malaysian Palm Oil Council reportedly contracted global public relations giant Havas to target a public relations campaign at the Conference of the Parties to the Framework Convention on Climate Change in Paris to deal with reputation issues and rebrand palm oil as a sustainable product.¹⁰⁰ This campaign, and a parallel one in Brussels, campaigners say, aimed to minimize the environmental impact of palm oil plantations, glossing over concerns related to destruction of forests and endangered species, child labour and forced labour.

65. Another narrative control strategy is “astroturfing”, which refers to businesses creating and/or funding purportedly non-profit, grass-roots organizations that in reality advance business agendas.¹⁰¹ This tactic aims to create a false or inflated impression of grass-roots support behind a political issue.¹⁰² Business entities can use astroturfing to influence policy debates in ways that are detrimental to human rights protections. For example, some technology companies have donated large sums of money to non-profit think tanks that support relaxed privacy restrictions on data collection from individual users;¹⁰³ these think tanks “are often quoted in the media as unbiased third parties and influence how policy is developed in Washington[, D.C.]” Some large oil and gas companies have also sponsored grass-roots campaigns to sway public opinion around fossil fuels and climate change in ways that are inconsistent with scientific consensus.¹⁰⁴

66. The false impression of grass-roots support behind political causes may increase the likelihood that policy changes take place. For example, civil society groups have documented instances of extensive industry-funded social media advertising campaigns advocating against ballot measures that would increase taxes on fossil fuel producers.¹⁰⁵

67. Good practice around influencing public narratives varies based on the strategy in question. “Public relations”, for example, is a broad umbrella term referring to efforts to influence public opinion through a wide variety of means. In some cases, this may involve good-faith efforts by business actors to transparently bring factual information to the public’s attention in an attempt to influence policy in ways that do not risk adverse human rights impacts. Alternatively, where business entities use

⁹⁹ See <https://news.climate.columbia.edu/2021/09/30/at-un-food-systems-summit-did-business-show-it-is-serious-about-addressing-the-crises-facing-global-food-systems/>; and <https://link.springer.com/article/10.1007/s10584-021-03244-4>.

¹⁰⁰ See <https://doi.org/10.4324/9781351121798>.

¹⁰¹ See https://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?article=2221&context=fac_artchop.

¹⁰² See <https://pure.strath.ac.uk/ws/portalfiles/portal/532527/HarkinsCSP376805.pdf>.

¹⁰³ See <https://news.bloomberglaw.com/tech-and-telecom-law/facebook-google-donate-heavily-to-privacy-advocacy-groups>.

¹⁰⁴ See www.nytimes.com/2020/11/11/climate/fti-consulting.html.

¹⁰⁵ See <https://influencemap.org/report/Climate-Change-and-Digital-Advertising-a40c8116160668aa2d865da2f5abe91b#1>.

public relations campaigns as means of obfuscating the truth and garnering support for policies that imperil human rights, this creates risk of adverse human rights impacts. The accuracy and transparency of information provided and its connections to potential human rights harms make all the difference.

68. Conversely, strategies that allow companies to create a false image of public support behind political positions may warrant legislative action to restrict their use. The lack of transparency inherent to these strategies allows for unaccountable corporate influence and creates an environment in which businesses that choose to do so face few barriers to engaging political processes in ways that risk adverse human rights impacts. This makes it difficult for “international lawmakers, officials and academic or public critics to determine which entity is trying to advance which goals,”¹⁰⁶ and may cause decision-makers to underestimate business-related human rights risks.

H. Corporate influence over the judiciary

69. Business actors may also be in a position to influence judicial processes. When carried out in service of aims that are inconsistent with the business responsibility to respect human rights, this practice poses risks to human rights and in particular to victims’ rights to access remedy.

70. In some cases, business entities may lobby public officials directly in order to influence the outcome of judicial processes against a business or prevent their initiation in the first place. This practice can carry human rights risks where businesses lobby States for a cessation of legal action against them related to business-related human rights abuses, for example. The Dow Chemical Company reportedly lobbied Indian government officials “for a cessation of all legal action [by the Government of India] against it in India” in relation to the Bhopal gas disaster.¹⁰⁷ Shell and Rio Tinto reportedly engaged in similar lobbying with the UK government, seeking support “to dismiss allegations of human rights abuses” in Nigeria and Papua New Guinea, respectively.¹⁰⁸ The largest United States industry association “wrote draft legislation designed to shield companies from liability related to the [coronavirus disease (COVID-19)] pandemic and distributed it to state and federal lawmakers.”¹⁰⁹ Eventually the United States Congress enacted the Safe to Work Act, which “makes it much harder for plaintiffs to sue ... for injuries relating to a coronavirus infection.”¹¹⁰

71. Business entities may also utilize courts themselves as avenues either to silence criticism or to influence political outcomes. For example, “strategic lawsuits against public participation” actions, generally in the form of libel, slander or restraint of business lawsuits, are those that “aim to intimidate and burden critics of a company in order to silence them and others who might speak up. ... [T]hey can drag on for years, draining the resources of environmental and human rights defenders and chilling legitimate criticism of the company’s conduct.”¹¹¹

¹⁰⁶ See https://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?article=2221&context=fac_artchop.

¹⁰⁷ See www.amnesty.org/download/Documents/8000/pol300012014en.pdf.

¹⁰⁸ See www.theguardian.com/business/2014/apr/06/shell-rio-tinto-human-rights-nigeria-kiobel.

¹⁰⁹ See www.washingtonpost.com/business/2020/08/25/americas-biggest-business-lobby-is-behind-republicans-push-shield-employers-coronavirus-liability/.

¹¹⁰ See www.forbes.com/sites/tomspiggle/2020/09/21/the-safe-to-work-act-not-so-safe-for-american-employees/?sh=52d5939f44fa.

¹¹¹ See <https://ccsi.columbia.edu/sites/default/files/content/docs/19%20CCSI%20Four%20pillars%20full%20report%20rhr.pdf>.

72. This strategy has been used in many places to target environmental activists and communities defending their rights in the context of business activities.¹¹² The Working Group has registered concern regarding the human rights impacts of the growing use of such strategic lawsuit actions across the world.¹¹³ Some businesses and industry associations have also resorted to a series of other legal tactics to avoid accountability or influence policy in ways that benefit business at the expense of human rights. Examples include the use of investor-State dispute settlement arrangements to block the implementation of public health regulations¹¹⁴ and procedural tactics to “delay or deny access to justice to rightsholders.”¹¹⁵

73. Preserving the integrity of judicial systems is a fundamental element of the rule of law. Where business actors engage with judicial processes in hopes of avoiding accountability, hampering access to justice for victims of business-related human rights or hindering the implementation of regulations on business that would protect human rights, the legitimacy, independence and impartiality of the judicial system are at stake. Best practice for businesses in engaging with judicial processes is thus to avoid utilizing or attempting to influence those processes in ways that themselves imperil human rights. For States, positive practice should include safeguarding judicial processes from outside influence, including by ensuring that lobbying efforts affect neither the initiation nor the outcome of judicial proceedings and that judicial processes cannot be weaponized by business enterprises against critics.

IV. Guiding Principles and corporate political engagement

74. The Guiding Principles have important implications for how States and multilateral spaces regulate and businesses implement corporate political engagement. The Guiding Principles call upon States and businesses to act in various ways to ensure that corporate political engagement does not have a negative impact on rightsholders, in particular the most vulnerable populations, including women, children, LGBTI+ persons, indigenous communities, peoples of colour and other minorities.

A. States’ obligations to protect human rights in corporate political engagement

75. A State’s duty to protect human rights under the Guiding Principles encompasses an obligation to ensure that business actors are able to engage with political processes without influencing them in ways that are inimical to human rights. Successfully discharging this obligation requires that States take various actions – including anti-corruption and public integrity measures, as the Working Group has previously expressed.¹¹⁶ As noted in the commentary to Guiding Principle 3, States

¹¹² See, for example, [A/HRC/41/43/add.1](#); [A/HRC/38/48/add.2](#); <https://icar.squarespace.com/news/2018/5/31/defending-dissent-slapp-lawsuits-and-the-fight-for-free-speech>; and <https://ccrjustice.org/home/blog/2015/06/17/legal-bullying-may-chill-speech-ultimately-cannot-stop-movement>; see also www.somo.nl/wp-content/uploads/2018/01/Justice-for-people-and-planet.pdf.

¹¹³ See [A/HRC/47/39/Add.2](#); and www.ohchr.org/en/statements/2022/02/critical-part-ungps-10-roadmap-increasing-protection-human-rights-defenders-face.

¹¹⁴ See www.ohchr.org/sites/default/files/2022-06/coalicion-latinoamericana-saludable.pdf; www.tobaccocontrolaws.org/litigation/decisions/ar-20151027-nobleza-piccardo-v.-provincia-; and www.tobaccocontrolaws.org/litigation/decisions/uy-20160708-philip-morris-srl-v-uruguay.

¹¹⁵ See <https://ccsi.columbia.edu/sites/default/files/content/docs/19%20CCSI%20Four%20pillars%20full%20report%20hr.pdf>.

¹¹⁶ See [A/HRC/44/43](#).

should utilize a “smart mix” of mandatory and voluntary measures to foster business respect for human rights, and this extends to measures pertaining to corporate political engagement.

76. The Guiding Principles reference the importance of transparency to preventing adverse business-related human rights impacts. Guiding Principles 1 and 3 note the State obligation to ensure transparency and encourage businesses to communicate publicly about how they address human rights impacts. This implies a State duty to ensure transparency in corporate political engagement, given that non-transparency is a facilitator of adverse rights impacts linked to corporate political activities. This may entail various legislative actions, including comprehensive lobbying disclosure requirements, strong conflict-of-interest laws, income and asset disclosure systems for public officials and bans on especially non-transparent forms of corporate political engagement. Crucially, these transparency requirements should be developed with a human rights lens in mind, in recognition of the human rights impacts of corporate political engagement.

77. Guiding Principle 3 notes that in fulfilling their duty to provide effective guidance to business enterprises on how to respect human rights throughout their operations, States should advise businesses on the importance of conducting human rights due diligence, noting explicitly that this practice also pertains to corporate political engagement practices. States’ encouragement of human rights due diligence by all business enterprises is thus an important step toward improving alignment between corporate political engagement and businesses’ human rights responsibilities under the Guiding Principles.¹¹⁷

78. States and multilateral institutions should enact mandatory human rights due diligence legislation and ensure it applies explicitly to corporate political engagement activities. As noted by the Working Group previously, “human rights due diligence provides a tool for achieving greater coherence and the appropriate balance, also in relation to responsible lobbying or legal activities, and to assessing and ensuring that no negative impacts on human rights will result from them. More guidance and clarification urgently need to be developed, particularly in the context of the emergence of mandatory human rights due diligence, which will likely see increased lobbying activity.”¹¹⁸

79. Guiding Principles 4, 5, and 6 note that State departments and agencies that shape business practice or interface with business, as well as entities owned or controlled by the State, should also operate in a manner that is consistent with States’ human rights obligations under the Guiding Principles.¹¹⁹ This has implications for a variety of different modes of interaction between the State and private business enterprises. For example, the transactions occurring in this State-business nexus, including public procurement contracts and legal carve-outs from generally applicable law (e.g., stabilization clauses or special economic zones), should be a particular point of focus for States in preventing corruption and ensuring public integrity in relation to corporate political engagement.

80. Another key duty of the State under the Guiding Principles is ensuring coherence between the State’s human rights obligations and the practices of its institutions. The commentary to Guiding Principle 8 notes that this means ensuring that State departments and agencies that shape business practices are “informed of

¹¹⁷ See www.ohchr.org/sites/default/files/documents/issues/business/workinggroupbusiness/wg-business-cfis/2021/responsible-corporate-political-engagement/2022-07-15/ITALY-BHR-May-2022.docx.

¹¹⁸ See www.ohchr.org/Documents/Issues/Business/UNGPs10/Stocktaking-reader-friendly.pdf.

¹¹⁹ See www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinessshr_en.pdf.

and act in a manner compatible with the Governments' human rights obligations." Guiding Principle 9 states that this includes the State "[maintaining] adequate domestic policy space to meet [its] human rights obligations when pursuing business-related policy objectives with other States or business enterprises..." These principles encompass a broad duty for States to ensure that their institutions are safeguarded against outside influence that carries risks of human rights harms.

B. Businesses' responsibilities to respect human rights in corporate political engagement

81. The commentary to Guiding Principle 16 describes a broad responsibility for businesses to "strive for coherence between their responsibility to respect human rights and policies and procedures that govern their wider business activities and relationships. This should include ... lobbying activities where human rights are at stake." This means that businesses must examine and anticipate the human rights impacts of their political activities – just as they must with all other aspects of business operations – and work to prevent, mitigate and remedy any adverse impacts accordingly. Carrying out the necessary human rights due diligence in respect of political activities is a key difference between corporate political engagement that is and is not rights-respecting.

82. The commentary to Guiding Principle 11 notes that the business responsibility to respect human rights "exists independently of States' abilities and/or willingness to fulfil their own human rights obligations and ... over and above compliance with national laws and regulations protecting human rights." As such, businesses should understand that their responsibility to respect human rights in their political engagement activities exists regardless of the legality of those activities.

83. Guiding Principle 13 also calls on businesses to avoid causing, contributing to or being directly linked to adverse human rights impacts and to seek to prevent or mitigate any adverse human rights impacts in those circumstances. The business responsibility to respect human rights thus applies throughout businesses' value chains and also outside of them. Whether a business's political engagement contributes to human rights harms within its own value chain or elsewhere in the wider community, business respect for human rights in political engagement practices means considering and accounting for all such potential impacts and ensuring that corporate political activities do not cause or contribute to them.

84. Human rights due diligence is the key method for businesses to identify human rights risks associated with their political engagement activities. Guiding Principle 15 denotes a responsibility for all businesses to conduct human rights due diligence "to identify, prevent, mitigate and account for how they address their impacts on human rights." This is how businesses position themselves to know that they are respecting human rights in practice. To date, human rights due diligence related to political engagement has been largely absent; as the Working Group has previously noted, corporate practice in the area of lobbying in particular "has shown a persistent lack of coherence or proper understanding of what human rights due diligence actually entails."¹²⁰

85. Guiding Principle 21 mentions businesses' responsibilities to show they are respecting human rights, by transparently communicating about their human rights due diligence processes and steps taken to prevent, mitigate and remedy any adverse human rights impacts identified. This responsibility extends to businesses' political activities and should include discussion of alternative approaches the business could

¹²⁰ See www.ohchr.org/Documents/Issues/Business/UNGPs10/Stocktaking-reader-friendly.pdf.

have taken to avoid adverse impacts and explanations of the human rights dimensions of decisions that were ultimately made.

86. Guiding Principle 16 notes that businesses should assure that policies and processes for ensuring respect for human rights are “approved at the most senior level of the business enterprise” and “embedded from the top of the business enterprise through all... functions, which otherwise may act without awareness or regard for human rights.” This has important implications for businesses’ approaches to their political engagement activities. It is crucial that departments responsible for sustainability, social impact, human rights, etc., not be siloed from departments responsible for political engagement, government relations, legal affairs, public relations, etc., nor from senior leadership teams or boards of directors. For businesses to properly account for the human rights impacts of their political engagement, open internal communication and accountability across divisions is critical.

C. Remedy and accountability in corporate political engagement

87. The Guiding Principles note that States and businesses have respective obligations and responsibilities to facilitate remedy for victims and accountability of perpetrators of business-related human rights abuses. This has various applications related to corporate political engagement practices, both in terms of providing effective remedy mechanisms for victims of human rights harms that may result from corporate political influence and for safeguarding remedy mechanisms themselves from such influence.

88. The Guiding Principles denote the duty of the State to ensure that victims of business-related human rights abuses have access to effective mechanisms for remedy and redress. This duty implies a wide-ranging obligation for States to ensure that the political engagement practices of businesses do not unduly influence or corrupt remedy and redress mechanisms. For example, the commentary to Guiding Principle 26 states that as part of providing effective State-based judicial mechanisms for providing redress to victims, States should “ensure that ... courts are independent of economic or political pressures from other State agents and from business actors” and that “procedures for the provision of remedy [are] impartial, protected from corruption and free from political or other attempts to influence the outcome.”

89. States should also ensure that State-based judicial and non-judicial grievance mechanisms acknowledge the full range of human rights harms that may result from corporate political engagement and are collectively equipped and empowered to redress them. Likewise, the State should recognize the role played by State agencies themselves when business-related human rights abuses result from corporate political influence, and the State should participate in and contribute to remediation processes, where appropriate.

90. More broadly, the State obligation to provide effective remedy and redress for victims means that States should ensure that any access they provide to business enterprises does not allow those enterprises to affect the initiation or outcome of State judicial and non-judicial processes intended to adjudicate responsibility and liability for alleged business-related human rights abuses. Businesses’ lobbying resources, relationships and expertise should have no bearing on how State mechanisms consider potential liability for adverse rights impacts. This may include a State’s duty to limit political engagement practices that have been demonstrated to have negative impact on victims’ rights to access remedy, such as revolving-door hiring.

91. In accordance with Guiding Principle 22, businesses also have a responsibility to “provide for or cooperate in [the] remediation [of adverse human rights impacts

they have caused or contributed to] through legitimate processes.”¹²¹ This should be understood to mean not only remedying adverse impacts resulting from corporate political engagement, but also avoiding corporate political engagement that aims to shield businesses from liability or to avoid the responsibility to cooperate in remediation.

92. This idea has relevance in the context of mandatory human rights due diligence regulations under development in the European Union, where corporations and industry associations have reportedly lobbied to weaken elements of the law related to civil liability;¹²² the most recent proposal from the European Commission would restrict civil liability to “direct suppliers, shielding companies from liability for abuses committed further down the chain and hence preventing access to justice for victims.”¹²³ A similar process reportedly also occurred with corporate lobbying around civil liability provisions in Germany’s Supply Chain Act.¹²⁴

93. Guiding Principle 29 also describes the responsibility of businesses to establish or participate in operational-level grievance mechanisms as a means of both identifying and remedying adverse human rights impacts; the mandates of such mechanisms should include scope to examine adverse impacts resulting from businesses’ political engagement activities.

94. Finally, the business responsibility to provide for remediation where necessary also encompasses a responsibility for businesses to refrain from lobbying for the cessation of State judicial or non-judicial proceedings intended to assess the business’s potential liability for business-related human rights abuses.

V. Conclusions

95. **Corporate actors have a legitimate role to play in political processes. Business entities are an important source of data and expert information for policymakers and have a right to attempt to influence policy, so long as that engagement is carried out responsibly. However, when businesses engage political processes in support of aims that are inconsistent with their responsibility to respect human rights, and where States fail to regulate such engagement sufficiently, this can facilitate business-related human rights abuses. This dynamic has a negative impact on human rights across the world, in both State and local governments and global and regional multilateral institutions and processes.**

96. **The accelerating pace of change across global society has given rise to new and unique patterns by which corporate political influence can lead to adverse human rights impacts. The ongoing COVID-19 pandemic has demonstrated how times of crisis can amplify human rights harms associated with corporate political engagement – for example, major pharmaceutical laboratories have reportedly provided COVID-19 vaccines in Latin America in exchange for legislative changes that favour the pharmaceutical industry,¹²⁵ and tobacco producers have reportedly lobbied Governments to protect tobacco as “an essential good” during the COVID-19 pandemic.¹²⁶**

¹²¹ See also www.ohchr.org/sites/default/files/2022-06/ecuador.doc.

¹²² See <https://corporatejustice.org/wp-content/uploads/2021/06/OffThe-Hook.pdf>.

¹²³ See www.hrw.org/news/2022/02/28/eu-disappointing-draft-corporate-due-diligence.

¹²⁴ See <https://corporatejustice.org/news/german-parliament-adopts-supply-chain-law/>.

¹²⁵ See <https://poderlatam.org/en/2021/03/pharmaceutical-companies-sold-vaccines-to-latin-american-with-legal-and-tax-benefits/>.

¹²⁶ See https://tobaccocontrol.bmj.com/content/31/Suppl_1/s33.

97. Going forward, businesses should engage with political processes in line with their responsibility to respect human rights under the Guiding Principles. Likewise, in keeping with their duty to protect human rights under the Guiding Principles, States and multilateral institutions should ensure that their legislative and regulatory frameworks regulate corporate political engagement practices in a way that promotes transparency and limits the possibility of resulting business-related human rights abuses. This will aid States and businesses in fulfilling their human rights duties and responsibilities and help to achieve anti-corruption commitments and the goals laid out in the 2030 Agenda for Sustainable Development and the Paris Agreement.

VI. Key recommendations for States and businesses

98. The recommendations below provide best practices for States and businesses to ensure that corporate political engagement is aligned with the Guiding Principles.

99. The Working Group makes the following recommendations for States (including as members of multilateral institutions):

(a) Provide guidance to businesses on the connection between corporate political engagement and human rights risks, and on the need to account for such impacts in human rights due diligence processes.¹²⁷ Clarify to businesses that human rights due diligence processes should cover political engagement-related human rights impacts throughout their supply and value chains, including any subsidiaries;

(b) Take steps to enact mandatory human rights due diligence legislation and ensure that all such legislation explicitly applies to all forms of corporate political engagement;

(c) Include specific reference to corporate political engagement and related human rights due diligence responsibilities of businesses in national action plans;¹²⁸

(d) Make government financial recovery support to businesses conditional upon robust commitments to responsible corporate political engagement practices in line with the Guiding Principles;¹²⁹

(e) Ensure State policy is made based on sound and independent research. Where policymaking relies on data provided by industry actors, ensure that data is accurate and transparently provided;

(f) Require all individuals and entities engaged in lobbying to enrol in mandatory lobbying registers and disclose information regarding lobbying activities, contacts and expenditures.¹³⁰ Utilize a comprehensive and robust definition of “lobbyist” that avoids creating loopholes, including by encompassing both paid and voluntary lobbyists;¹³¹

(g) Require timely disclosure by business entities of political expenditures and activities, including spending on lobbying, political contributions, political

¹²⁷ See www.ohchr.org/sites/default/files/2022-06/poland.docx; and www.ohchr.org/sites/default/files/2022-06/chile.docx.

¹²⁸ See www.ohchr.org/sites/default/files/2022-06/ecuador.doc.

¹²⁹ See www.ohchr.org/sites/default/files/Documents/Issues/Business/WG/Responsible-recovery-information-note.pdf.

¹³⁰ See <https://lobbyingtransparency.net/lobbyingtransparency.pdf>.

¹³¹ See www.oecd.org/corruption/ethics/Lobbying-Brochure.pdf.

advertising and third-party non-profit groups. Ideally, regulations should also require disclosure of official lobbying positions and objectives;¹³²

(h) Ensure that large corporate interests and industry associations are not disproportionately represented in lobby meetings with public officials. Commit to balanced consultations with other actors (civil society organizations, individual citizens, indigenous peoples' groups, etc.), including adequate and transparent dialogue with the public regarding legislative proposals;

(i) Enact independently monitored conflict-of-interest laws and income and asset disclosure systems for government officials and regulators to "provide greater transparency in policymaking processes";¹³³

(j) Ensure that judicial and non-judicial State-based grievance mechanisms are free from undue influence by all actors, including business enterprises. Endeavour to use such mechanisms to identify and redress adverse rights impacts resulting from corporate political engagement and to ensure that the duty of State agencies to participate in remediation processes is duly considered;

(k) Enact legislation against "strategic lawsuits against public participation" to prevent courts from being used as a mechanism to silence human rights defenders and others who draw attention to business-related human rights abuses. Ensure that such legislation cannot be weaponized by business enterprises to shield themselves from lawsuits from rightsholders;¹³⁴

(l) Introduce legislation to limit revolving-door and reverse-revolving-door hiring, including by enacting comprehensive "cooling-off" periods of a sufficient length;

(m) Ensure that multilateral institutions and multistakeholder spaces in which the State is a member take steps to prevent human rights harms resulting from corporate political engagement;

(n) Consider special, more stringent rules governing State interactions with unhealthy commodity industries and related lobbying groups, given the inherent human rights risks associated with these products.

100. The Working Group makes the following recommendations for business entities:

(a) Refrain from engaging with political processes in support of aims that are not consistent with the business responsibility to respect human rights;

(b) Implement robust human rights due diligence processes to ensure that all political engagement is aligned with the business's public human rights commitments and its responsibility to respect human rights under the Guiding Principles,¹³⁵ including by integrating political engagement as a salient category in existing human rights impact assessment processes. Ensure that such policies and processes are adopted throughout the business and across business relationship;

(c) Publicly communicate about human rights due diligence processes with respect to political engagement activities. Provide a level of information

¹³² See www.globalreporting.org/standards/media/1030/gri-415-public-policy-2016.pdf.

¹³³ See A/HRC/44/43.

¹³⁴ See www.lexology.com/library/detail.aspx?g=78c9eee0-72cd-42c9-b2cb-5eb53f2873e9.

¹³⁵ See www3.weforum.org/docs/WEF_IBC_Measuring_Stakeholder_Capitalism_Report_2020.pdf.

sufficient for outside observers to evaluate the adequacy of the human rights impact assessment process;

(d) Even where not required to by law, release annual political engagement reports with details of all political activities and political spending – including on political candidates and parties, lobbyists, industry associations and all other political organizations and actors;¹³⁶

(e) Require all political engagement to be approved by the business's board of directors and to be communicated internally and externally, including to third-party lobbyists and industry associations, and integrated into any contract with such parties. Provide tailored training on these commitments to employees and, where necessary, to business partners;

(f) Require that any political contributions made by businesses be approved by boards of directors and/or by shareholder resolutions;¹³⁷

(g) Exercise board-level oversight of how the business manages human rights risks related to political engagement activities. The board of directors should assign overall responsibility for ingraining respect for human rights into political engagement activities to the business's senior leadership, which should assign day-to-day oversight;

(h) Take steps to ensure that siloing of business divisions does not prevent the business's human rights responsibilities from being mainstreamed within divisions responsible for government relations. These may include human rights training for relevant teams, changes to key performance indicators and integration of human rights principles into risk assessment and management processes;

(i) Enact written policies to govern the business's political engagement practices, linked directly to the business's human rights policy commitments. Such policies provide “a means for evaluating the risks and benefits of political spending; measuring whether such spending is consistent and aligned with a business's overall goals and values; determining a rationale for the expenditures; and judging whether the spending achieves its goals”;¹³⁸

(j) Request that all industry associations and other third-party groups receiving money from the business report to the board of directors on association activities, including specific lobbying positions, candidates, pieces of legislation and policy changes supported by the association;¹³⁹

(k) Review industry association memberships to assess whether industry associations accurately represent the business's commitments to human rights and follow procedures to manage conflicts when the association's position differs from that of the business. Establish lobbying “red lines” that, if crossed by the industry association, will trigger the business's public withdrawal;

(l) Maintain effective operational-level grievance mechanisms and ensure that such mechanisms are actively identifying and looking to redress any adverse human rights impacts resulting from corporate political engagement activities.

¹³⁶ See <https://politicalaccountability.net/hifi/files/CPA-Wharton-Zicklin---model-code-of-conduct-for-corporate-political-spending---10-13-20-.pdf>; and www.globalreporting.org/standards/media/1030/gri-415-public-policy-2016.pdf.

¹³⁷ See www.oecd-ilibrary.org/governance/regulating-corporate-political-engagement_8c5615fe-en.

¹³⁸ See www.politicalaccountability.net/wp-content/uploads/2021/11/2021-CPA-Zicklin-Index.pdf.

¹³⁹ See www.politicalaccountability.net/hifi/files/CPA-Wharton-Zicklin---model-code-of-conduct-for-corporate-political-spending---10-13-20-.pdf.