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IOE Comments on the Corporate Human Rights Benchmark Initiative (CHRB)

The International Organisation of Employers (IOE) attaches great importance to business and human rights. The IOE was actively engaged in the mandate of the UN Secretary-General's Special Representative on business and human rights, endorsed both the UN "Protect, Respect, Remedy" framework and the UN Guiding Principles on Business and Human Rights, and has actively contributed to the dissemination and implementation of the framework and the UN Guiding Principles. The IOE argues for preserving the approach agreed by these principles and provides the following comments on the Corporate Human Rights Benchmark (CHRB).

I. Comments on the Process

A proper consultation process is key to ensuring the quality of the CHRB and the support and buy-in from stakeholders. The IOE appreciates the consultation process launched by the Institute for Human Rights and Business (IHRB) and its collaborators. However, the process is insufficient for three reasons:

- *The Timeline and Schedule for Consultations are deficient:* The consultation process established by IHRB is too short for stakeholders to thoughtfully participate. The consultation is planned for less than two months during peak holiday season. Such a short timeframe is insufficient to establish a viable engagement with stakeholders, or obtain feedback from a meaningful representation of companies and business federations. Moreover, companies normally do their reporting annually at the end of Q1/ beginning of Q2. Thus, the data for the first benchmarking will be from the year 2014, if the proposed timeline were to be kept. Starting the process next May would give time for proper consultation and follow up and ensure that up-to-date data are taken into account.
- *A Single Consultation is not sufficient for a meaningful stakeholder engagement or dialogue:* The process contemplates only one round of consultations, directly followed by the launch of the portal in October 2015. In order for the process to establish a meaningful dialogue that will result in support from the business community and other stakeholders, a comprehensive system of consultations should be deployed. There is also the question of how far the portal can sufficiently reflect the comments from the consultation, considering it will go online in October - a mere month after the close of the consultations.
- *Involvement of business organisations:* Because major investors are involved in the project, companies may feel less comfortable directly participating in commenting on the draft CHRB. Thus, employers' organisations play a critical role in providing a consolidated business position and should therefore be consulted worldwide. However, outreach to employers' organisations has been insufficient. The tight timeline also does

not allow employers' organisations to undertake a meaningful consultation process with their own member companies.

II. Comments on the Content

- *The CHRB should not lead to a duplication of standards, nor should it place an excessive burden on business to comply with divergent and potentially competing directives:* In addition to the Global Reporting Initiative (*GRI*), the Reporting and Assurance Frameworks Initiative (*RAFI*) already advanced a dedicated framework to report on human rights issues in line with the United Nations Guiding Principles on Business and Human Rights, which is supported by sixty-seven investors representing \$3.91 trillion assets under management. The first companies are reporting in line with the *RAFI* framework. Thus, the CHRB should be fully based on the *RAFI* framework and should not go beyond it in order to ensure that companies are not burdened with additional and unjustified reporting obligations.
- *The CHRB must respect the need for confidentiality:* Some information, such as bonuses and incentive schemes, internal structures or grievance cases, may be confidential and not appropriate for display in a public portal.
- *Some of the KPIs are inappropriate and should be deleted:*
 - The KPI regarding “diminishing” percentage of temporary workers (D.1.3) ignores the fact that making use of temporary contracts is not a human rights violation, nor does it violate the OECD Guidelines for Multinational Enterprises either.
 - Use of the term “neutrality” in the context of human rights and freedom of association is highly inappropriate for any instrument that is contemplated to be used internationally. Neutrality is a uniquely U.S. phenomenon promoted by the U.S. trade unions and is interpreted as requiring silence on the part of employers in the context of union organizing efforts. That concept is in fact wholly inconsistent with the principles of freedom of association as they are defined at the international level. Indeed, the free exchange of ideas, information and opinions are fundamental to the existence of a free trade union movement. Including a KPI on neutrality regarding employee trade union membership ignores the fact that the principles of freedom of association as defined at the international level promote the free exchange of information and ideas regardless of their source or affinity. Indeed, such freedom of expression and opinion is encouraged so long as its manifestation does not interfere with an employee’s free choice.
 - It is inappropriate to include a reference to a “living wage” in any of the KPI. There is no clarity with respect to what constitutes a “living wage” and there is no internationally adopted and accepted living wage given the wide disparity in socio-economic conditions around the world. This KPI, therefore, presents a considerable uncertainty and seeks to measure something that does not in fact exist.

- *Some of the KPIs are inappropriate and should be revised:*
 - The KPI of having 40% of women in the company's governance bodies (D.1.7) does not take into account sector-specific differences and challenges with regard to the progressive increase of the percentage of female board members. It also disregards needs associated with other groups that may be underrepresented. A more broad assessment regarding diversity should be considered in lieu of quotas.
 - The KPI on land use (D.1.13) does not take into account the tripartite-agreed approach of ILO Convention 169 on balancing the rights of different interest groups.
- The section on adverse events opens the doors for false allegations and campaigns. Instead of following John Ruggie's approach of "knowing-and-showing" the CHRB will go back to the old and obsolete "naming-and-shaming" approach. The organisers of the CHRB will be in the counterproductive position of judging who is right – the organisation which puts forward the claim or the company concerned. Thus, this section should be taken out of the CHRB.
- Because the CHRB will focus only on the 500 biggest companies, it deepens the misconception that business and human rights is only a subject for the largest and well-known MNEs. However, the UNGPs were developed with the expectation that they apply universally to all businesses. Thus, the CHRB goes against the comprehensive approach of the UNGPs.

III. Conclusions

- The consultation on the Corporate Human Rights Benchmark should be the first step in a much deeper and exhaustive consultation process in which the methodology and content are placed under scrutiny.
- Business enterprises and employers' organisations must play a key role in the consultation process. Employers' organisations have the mandate to speak on behalf of the business community as a whole and are able to give comprehensive feedback on the CHRB.
- The limitations of the CHRB should be further stressed. It should be made absolutely clear that the Benchmark will not be the perfect measurement of companies' performances.
- **Because of the outlined challenges and shortcomings, the CHRB must be voluntary. This means that if a company decides not to participate, it should not be ranked. This is an absolute precondition for IOE support for the CHRB.**