

Panel III: Obligations and responsibilities of TNCs and other business enterprises with respect to human rights

Examples of international instruments addressing obligations and responsibilities of private actors.

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The ILO is pleased to share its work as the global tripartite standard-setting authority in the world of work, and its experience in using these international labour standards to enhance business respect for human rights and decent work.

In my intervention I would like to highlight three types of ILO instruments and how these work in relation to obligations and responsibilities of enterprises with respect to human rights:

- 1) international labour standards
- 2) fundamental principles and rights at work
- 3) specific instrument in relation to MNE, namely the ILO Tripartite Declaration of Principles concerning multinational enterprises and social policy.

1) International labour standards - the tripartite constituents of the ILO have since 1919 developed, negotiated and adopted 189 Conventions, 6 protocols and 204 recommendations. The objectives of these international labour standards are to protect workers while promoting economic growth and job creation. Various human rights recognized in the Universal Declaration and two Covenants and other international human rights instruments are implemented through international labour standards. Obligations and responsibilities for enterprises are included in these international treaties and when a state ratifies an ILO Convention, it has the obligation to apply these obligations in law and practices. These ILO standards help States implement their human rights obligations, including through mechanisms for labour administration, inspection and enforcement, which stimulates business compliance with the national law. All enterprises operating in a national territory are subject to these laws and should comply with the law. The ILO supervisory mechanism examines whether the ratifying State complies with its obligations to apply in law and practice the obligations enshrined in the ratified conventions. International labour standards provide a global level playing field for businesses as the same minimum requirements fall upon them in all countries where they may have operations, if the governments ensure that these obligations are enforced and inspected and overall respect for the rule of law is promoted. Governments have the primary responsibility of creating the nexus between ILS and businesses, through implementation of frameworks and mechanisms at national level. Complaints-based mechanisms to which Members that ratify Conventions are subject under the rules of ILO membership often focus on violations at

enterprise/workplace level, but refer to state responsibility to ensure compliance with the national framework.

2) **Fundamental principles and rights at work** - is a special category of obligations as these rights apply in all member States without the ratification process of the underlying core conventions. Through the 1998 Declaration on Fundamental Principles and rights at work, ILO Members renewed their commitment to respect, promote and realize the following principles and rights at work: freedom of association and collective bargaining, the elimination of all forms of forced and compulsory labour; the effective abolition of child labour, and the elimination of discrimination in respect of employment and occupation. All actors in society - including enterprises - are called upon to respect and contribute to the realization of these fundamental rights, irrespective of whether national laws and enforcement mechanisms are in place. These fundamental principles and rights at work constitute the four labour principles of the UN Global Compact which business are called upon to uphold and are cited among the human rights that business have the responsibility to respect according to the Guiding Principles on business and human rights.

For the rights of freedom of association and collective bargaining, the ILO Governing Body's Committee on Freedom of Association (CFA) is a special complaints mechanism. While aimed again at the responsibility of States to ensure the overall legal framework for the protection of these fundamental rights, the CFA often also has an impact upon businesses and their actions at workplace level.

3) ILO instrument that directly speaks to enterprises and more precisely multinational enterprises is the **ILO's Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration)**. The MNE Declaration gives guidance in the form of recommendations in the areas of employment, training, conditions of work and life (which includes occupational safety and health, wages and conditions of work), and industrial relations, clearly highlighting the distinct roles and responsibilities of governments (home and host countries), business (multinational and national) and social partners. Its principles are all derived from ILS and highlight the importance of dialogue at different levels between these actors to maximize the benefits and reduce the adverse effects of business operations. All parties are called upon to observe these principles on a voluntary basis in the understanding that they do not limit or affect obligations arising out of a ratification of any ILO Convention.

The MNE Declaration incorporates the fundamental principles and rights at work and calls on all parties to contribute to the realization of the 1998 Declaration. It also calls on all parties to respect the Universal Declaration of Human rights and the corresponding international covenants as well as the constitution of the ILO. It works through a mechanism of strengthening the role of government to legislate and build an enabling environment for sustainable enterprises; and it calls on business to obey national laws and regulations, respect international standards and align its policies and practices with national development priorities.

This global instrument has the most comprehensive chapter on industrial relations that includes eg the principle stipulating that *governments of host countries when offering special*

incentives to attract foreign investment, should not include in these incentives any limitation of the workers' freedom of association or the right to organize and bargain collectively (para 46). It also includes the principle that calls upon enterprises to set up grievance mechanisms and procedure to deal with grievances, indicating that this is particularly relevant when operating in countries that do not abide by the principles of ILO conventions pertaining to freedom of association, the right to organize and bargain collectively, to discrimination and to child labour and to forced labour (para 58). So the underlying mechanism of this instrument is to stimulate the strengthening of the legislative and public policy framework in the country while at the same time conferring responsibilities to enterprises and stimulating dialogue among all parties.

On these three types of instruments, ILO provides awareness-raising, capacity building and technical support in ILO member States to each of its tripartite constituents: governments, employers and workers, and stimulates the exchange of experiences among all parties.

We stand ready to further engage with the Open-ended Intergovernmental Working Group to share the ILO experiences so that ILO standards, instruments and mechanisms can be taken into account in the OEIGWG's mandate to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises.