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**Sent:** Friday, February 7, 2020 10:03 AM
**To:** WG-Business OHCHR
**Cc:** 'Anita Ramasastry'; dante.pesce@vincular.cl
**Subject:** CALL FOR INPUT – Connecting the BHR and anti-corruption

Dear Madam/Sir,

Further to your call for input regarding corruption and business human rights I have the following observations (referring to the questions posed in the Multi-stakeholder consultation and call for inputs ‘Connecting the business and human rights and anti-corruption agendas’ paper):

Question 1:

I feel corruption is not a specific to large (infrastructural or extractive) projects, although it may be most ‘visible’ and harmful to the reputation of business if revealed in those projects. Often, the bribes are larger in these projects too and initiatives like EITI mainly focus on these projects. However, the consequences of corruption for human rights are much broader and occur in many sectors, for example in connection with public supervision of health and safety of workers or environmental issues. It is often connected with the way of doing business and living wage issues regarding public servants and thus more pervasive and harmful to human rights than in large footprint projects. It may be even more harmful to human rights as the bribes are smaller, often accepted within society and thus much more difficult to discover and weed out than larger bribes.

Question 2:

Several countries have adopted laws and supporting guidance to counter corruption abroad (e.g. UK, US, Spain and Brazil). That said, the emphasis is often on enforcement and not so much on providing guidance and capacity building. For example, the Netherlands requires companies to declare adherence to the OECD guidelines for trade missions, but does not educate companies or at least explains what it expects in connection with this adherence. Furthermore, in connection with enforcement (corruption is often a criminal offence) public prosecutors often encounter difficulties in enforcement, especially in host states which do not avail over basic rule of law observance or where (high placed) state officials are involved in the bribes. Furthermore, low traceability of funds complicates things even further. New technologies, for example blockchain, may be necessary to enhance this traceability next to existing initiatives like EITI.

It seems good to align corruption and business human rights because corruption often facilitates human rights abuse, for example because public supervision is hampered by it. Thus, it may be interesting to compare (best) practices in both areas, for example regarding due diligence and see how approaches in the corruption and business human rights arena may be aligned and mutually reinforce each other. This may require connecting both topics in practice, government action and academic research as both are mainly considered to be separate to date. However, this does not necessarily mean governments should adopt comparable laws and enforcement in both areas. Corruption allegations often trigger inward looking responses from business and a focus on legal compliance and defenses. Regarding human rights abuse (in which severe sanctions are often not in place yet or not deployed in practice) companies tend to have a more outward looking response in which they try to address the issue, sometimes in collaboration with stakeholders. Thus, it may be questionable whether comparable sanctions as deployed in corruption as such will be helpful in the business human arena. This may especially be true as only large bribes in large project are prone to such sanctions in practice leaving most bribes unsanctioned whereas those may be as (or because of their larger prevalence even more) harmful to human rights. Thus, I feel governments should incentivize concerted action by business in both areas especially by making better use of best practices in markets (for example in export credit, procurement, subsidies and public supervision) which do have impact ‘on the ground’. If desired I am happy to further elaborate on this.

Question 3:

See the observation under 2.

Question 4:

I feel business should align action in corruption and human rights as both are intertwined. Concerted action in both areas would be helpful, for example by aligning due diligence processes in both areas and have them mutually reinforce each other. However, this does not mean a ‘one size fits all’ approach is helpful. Corruption and human rights due diligence are not the same and just adding a human rights component to existing corruption due diligence is not effective. Business need experts from both fields to align due diligence and improve it in both areas.

Question 5:

It depends where corruption occurs whether and how it affects access to remedy for victims. This is obvious if it occurs in the national court system. The use of non-state dispute resolution mechanisms, for example dialogue based mechanisms/complaint mechanisms or binding mechanisms like arbitration (or even better a combination of those in an effective remedy eco-system) may assist to tackle this issue. However, corruption may have adverse consequences for remedy in other areas too. For example, access to information on abuses residing with public supervisors may also be hampered by corruption. Finally, police and/or security forces may also hamper access to remedy by raising (practical) barriers to raise human rights issues because of corruption.

Question 7:

As corruption and human rights abuse may reinforce each other, legislative action to counter corruption may assist in preventing human rights abuse. However, this is not necessarily true for all regulatory measures in the corruption arena. As elaborated under 2 a focus on severe sanctions for corruption may not assist in solutions for human rights abuse. However, other regulatory measures focusing on best practices in markets (see under 2) may be helpful. In both areas whistleblower protection or protection against retaliation is important, so legislation in the corruption area which amounts to this may also support human rights compliance.

Question 8:

I feel this is a very important point. As elaborated under 2 I feel governments should make use of best practices in markets in both areas to incentivize concerted action in these fields by business. These best practices not only include practice on the ground but also managerial and legal approaches (for example contractual frameworks). By doing so governments may generate most impact on the ground. These best practices may (or should ideally) stem from multi-stakeholder collaboration.

Question 9:

As governments financial institutions may incentivize best practices as referred to under 2 and 8.

Question 10:

These bodies may assess whether practices, for example in connection with due diligence, in the corruption and human rights area may be aligned and how concerted approaches may be incentivized. They may also play a role in capacity building and incentivizing piloting for such concerted approaches.

I hope this is helpful and may assist in your work on the report. I am happy to answer any questions you may have.

Kind regards,

Martijn Scheltema

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