

**To:** Mr. Damilola Olawuyi, Chairperson, Working Group on business and human rights  
Ms. Maria Fernanda Garza, Chairperson, the International Chamber of Commerce  
Ms. Pamela Coke-Hamilton, Executive Director, the World Trade Organization  
International Trade Centre  
Mr. Roberto Suárez Santos, Secretary-General, the International Organization of  
Employers

27 November 2023

**Subject:** Addressing the disregard for small and medium-sized entrepreneurs' concerns at the 12<sup>th</sup> Forum's discourse

Your Excellencies,

We are compelled to express our profound concerns and disappointment regarding the handling of our session proposal for the 2023 UN 12<sup>th</sup> Forum on Business and Human Rights. Our proposed session, "Human Rights and SMB Entrepreneurs," aimed to introduce a vital human-centric perspective to the discourse on small and medium-sized entrepreneurs (SMEs). Regrettably, it appears that our proposal has been co-opted and significantly altered, undermining the essence of our human-centric approach.

From July until the end of October, the session was listed in the official program under the title "Challenges and Opportunities: Small and Medium-Sized Enterprises and Human Rights." This title, while closely resembling our original proposal, lacked the emphasis on entrepreneurs as right holders and victims of human rights violations, which was a core aspect of our human-centric approach. Subsequently, the title was changed to "Small and Medium Enterprises as Agents of Change," further deviating from our proposed focus and effectively undermining the human-centric idea for the discussion. Our proposal included the involvement of entrepreneurs willing to share their experiences as panelists, which would have greatly enriched the Forum's discourse by emphasizing their dual role as both duty bearers and rights holders.

The session, as it currently stands, is scheduled for Tuesday, November 28, at 10:00 CET. It is organized by the Working Group on Business and Human Rights (WGBizHRs) in collaboration with the World Trade Organization International Trade Centre (ITC), the International Organization of Employers (IOE), and the International Chamber of Commerce (ICC). The session's current description and objectives, while addressing the challenges SMEs face in implementing the [UN Guiding Principles on Business and Human Rights](#) (UNGPs), do not capture the essence of our proposal, which was to highlight the unique human rights challenges and opportunities faced by entrepreneurs.

The manner in which our proposal was seemingly co-opted and transformed by the OHCHR secretariat and WGBizHRs is deeply concerning. It underscores the necessity of vigilance and advocacy to ensure that the voices and rights of SMEs, and particularly entrepreneurs, are adequately represented and protected in these international forums. We urge the OHCHR secretariat and WGBizHRs to address these concerns with the seriousness they deserve. It is vital that the integrity of the Forum's selection process is upheld, and that all stakeholders, including SMB entrepreneurs, are given a fair and equitable platform to voice their unique challenges and contributions to the business and human rights discourse.

It is crucial to acknowledge that the UNGPs, designed in 2011 for corporations with their vast resources as the duty bearers to implement the United Nations “Protect, Respect and Remedy” Framework, based on and integrated with a Risk-Based Approach (RBA), have been predominantly advantageous to these entities. This reality places smaller entities at a significant disadvantage. The UNGPs, existing in an ambiguous legal space without formal adoption by the United Nations, have led to the accelerated development of the Legally Binding Instrument (LBI) on Business and Human Rights. This process, occurring outside traditional frameworks, represents a new trend in multilateralism with implications that are yet to be fully understood.

While we are fully embracing the concept and goals of UNGPs and future LBI, our concerns extend to the current framing of the LBI, particularly regarding its potential unintended consequences for entrepreneurs. There is an urgent need for special protection status for entrepreneurs, akin to other groups like those labeled as terrorists and human rights defenders. Entrepreneurs often face stringent Anti-Money Laundering (AML) and Financing of Terrorism (FT) regulations, frequently without due process and presumption of innocence, due to the nature of proceedings promoted by the Financial Action Task Force (FATF).

The father of the UNGPs, the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, in his final draft of the UNGPs (A/HRC/17/31), emphasized that the UNGPs, while universally applicable, were not intended as a one-size-fits-all solution. The diversity of the global business landscape, encompassing 192 United Nations Member States, 80,000 transnational enterprises, and countless millions of national firms, most of which are small and medium-sized enterprises, necessitates a more nuanced approach to implementation. The current trend of imposing the UNGPs on SMEs, particularly in supply chain contexts, potentially exacerbates their vulnerabilities and overlooks the unique challenges they face.

### **Erosion of Entrepreneurial Rights**

Entrepreneurial rights have been increasingly eroded, particularly in developing nations and countries with weak democratic governance. This erosion has manifested in unfair trials, loss of property, financial instability, and diminished innovation and job creation for entrepreneurs. These challenges have not only stifled entrepreneurial freedom but also heightened vulnerability to corruption, extortion, and abuse of power from officials enforcing regulatory frameworks. The impact of this erosion is profound, affecting the very

fabric of entrepreneurial spirit and innovation that drives economic growth and social development.

### **Concerns Over UNGPs and Regulatory Frameworks**

It is crucial to acknowledge that the United Nations Guiding Principles on Business and Human Rights (UNGPs), designed in 2011 for corporations, have been predominantly advantageous to entities with vast resources. These Principles, while universally applicable, were not intended as a one-size-fits-all solution. The diversity of the global business landscape, encompassing 192 United Nations Member States, 80,000 transnational enterprises, and countless millions of national firms, most of which are small and medium-sized enterprises, necessitates a more nuanced approach to implementation.

The UNGPs, developed by a single expert and existing in an ambiguous legal space without formal adoption by the United Nations, have led to the accelerated development of the Legally Binding Instrument (LBI) on Business and Human Rights. This process, occurring outside traditional frameworks, represents a new trend in multilateralism with implications yet to be fully understood.

### **The Role and Impact of FATF Regulations**

Our concerns extend to the integration of UNGPs-related regulatory frameworks with the Risk-Based Approach promoted by FATF. Entrepreneurs often face stringent AML and FT regulations, frequently without due process and presumption of innocence, due to the nature of proceedings promoted by FATF. These regulations, while crucial for maintaining the integrity of the international financial system, often result in burdensome compliance for SMEs and entrepreneurs.

FATF has [acknowledged](#) the need to address these unintended consequences, which include violations of fundamental human rights such as fair trial, due process, freedoms of expression, religion, assembly, and association, and violations of property rights and privacy, as well as rule of law principles. Regrettably, the Working Group on Business and Human Rights appears to shy away from acknowledging such unintended consequences for SMEs.

### **Call for Action**

We urge the UN Forum on Business and Human Rights and the Working Group to reconsider the framing of these discussions and to acknowledge the unique challenges faced by SMEs in the context of UNGPs and FATF regulations. It is imperative that we advocate for a balanced approach that respects the rights of entrepreneurs and ensures their protection under international human rights law.

We look forward to engaging in a constructive dialogue to address these pressing issues and to ensure that the voices and rights of entrepreneurs are adequately represented and protected in international forums.

Yours sincerely,



Sharof Azizov

Founder and Secretary of the Board

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