

UN Business & Human Rights Framework: More action required at national and international level to stop human rights abuses by business

CIDSE briefing note, December 2014

The UN Protect, Respect and Remedy Framework and its Guiding Principles set out clearly that business impacts require a “smart mix” of policy responses that includes not only voluntary measures but also regulation. CIDSE and its member organizations believe that if the Framework and Principles are implemented effectively in this way, they could be a valuable tool for reducing the risk of human rights abuses. We are already actively engaged in national debates on Business and Human Rights Action Plans, in countries including Austria, Belgium, France, Germany, Ireland, Switzerland and the UK, and working with our partners to monitor and evaluate the situation on the ground. The new process towards an international legally binding instrument, if thoughtfully developed, could provide an important additional tool to ensure that businesses respect human rights.

Implementation of the Guiding Principles to date is insufficient, particularly on priority issues

Implementation of the Guiding Principles by States and companies has been very slow, on all continents including Europe which has seen some progress towards National Action Plans. And States’ efforts so far have given little attention to concrete actions to protect women and men seeking to defend their rights in the face of harmful corporate practice or legal measures to improve access to remedy.

During the development of the Guiding Principles we highlighted the urgency of these issues. A wide number of communities and individuals are still suffering abuses and violations of a range of human rights now as a result of business activity, including labor rights and rights to land, livelihood, health, a clean environment, and peaceful protest. By some measures, the situation has even worsened since 2011, as for cases of social conflict, criminalization of protest related to business investments and killings of human rights defenders. For those communities, it is hard to see any change on the ground as a result of the UN process. Access to justice and remedy continues to be denied to communities in numerous countries. This highlights the need for effective extraterritorial actions by States where multinational companies are based, as well as national due diligence obligations for parent companies applying to their relationships with subsidiaries and subcontractors.

New political commitments for national and international action must deliver results

The June 2014 session of the UN Human Rights Council saw the adoption of two complementary resolutions: one continuing the existing Guiding Principles approach, the other establishing a new inter-governmental working group to begin the process of elaborating an international legally binding instrument on business and human rights. CIDSE members believe both approaches are needed: delivering short- and medium-term changes as well as working to longer-term timeframes, and by implementing the broader framework as well as strengthening it with targeted further steps. In this light, there can be a mutually beneficial dynamic between what is happening at national and international levels.

In discussions during the June session, there was general recognition by States of continuing gaps in the UN business and human rights framework and the limitations of current practice, particularly in relation to ensuring access to justice. The desire to better protect human rights defenders was highlighted by many. The resolution extending the mandate of the Business & Human Rights Working Group emphasized the role of civil society and access to remedy. Following on from the session, some States have signaled their intention to intensify work on these issues in their national or regional context. The EU announced a commitment to further develop European legislation. These steps are very welcome, but for the reasons highlighted above they have to deliver results.

There is potential to include new concrete measures in National Action Plans

A number of governments are working to finalize National Action Plans (including France and Switzerland) or are starting to develop such plans (including Belgium, Germany, Ireland and the United States). The EU will also revise its Action Plan on Human Rights & Democracy as well as its strategy on corporate social responsibility. The UK is due to review its existing Business and Human Rights Action Plan in 2015.

This work is providing the context for serious assessments of legislative frameworks in the line of the “smart mix”, carried out by governments, civil society or other actors.¹ Several initiatives of note have been put forward in the National Action Plans that have been finalized, such as the set-up in Denmark of an inter-ministerial group on extraterritoriality, as well as the set-up in Finland of a complaints mechanism concerning human rights violations by state-owned companies.

At the same time, the biggest weakness in National Action Plans published to date is a lack of concrete actions. Public commitments and good analysis about the current state of play are not yet translating into measures that will make a difference on the ground. US and EU governments have insisted that implementation of the Guiding Principles should take priority over discussions towards an international legally binding instrument. So we will be looking to their implementation of the Guiding Principles for effective legislative measures and enforcement at national level that convincingly address the shortcomings now generally acknowledged, which underpinned the decision by other States to open a process towards an international instrument.

Some innovative national legislative developments are being proposed

In France, the government is considering tabling a legal proposal, introduced by members of parliament, which could establish a duty of care for multinational corporations, to prevent damages to the environment, health and human rights within all their economic relationships.² Parliamentary committees in Switzerland have requested that their government put forward measures on due diligence and access to justice.

The European Union recently agreed legislation on corporate reporting that is a step forward especially in relation to supply chains, though it contains exemptions that could weaken its ability to be an effective measure for change. The transposition of the reporting directive in European countries might be an opportunity to take action towards stronger, binding due diligence requirements at national level. A proposed EU regulation on responsible sourcing of minerals is also under discussion.³ In the United Kingdom, the Modern Slavery Bill under discussion includes a measure to require reporting by listed and non-listed companies on actions to identify and address slavery and forced labor in their supply chains.

New national legislative measures could provide a strong power of example and serve as references in discussions on the design of a future international instrument. If governments make progress at national level, this will also enhance their credibility in discussions at the international level. Some governments have argued that they cannot put into place national legislative measures while others do not, for competitiveness reasons. The treaty process provides a new space to build bridges between individual national measures and international approaches that could contribute to establishing a level playing field.

The treaty process can provide a complementary opportunity to strengthen the UN framework

Civil society and Church voices across the globe are demanding more effective responses. For our partners in countries around the world, a thoughtfully developed international legally binding instrument would represent an important additional tool to support their struggles and help them to press national governments to ensure that businesses respect human rights.

A international legally binding instrument could address corporate legal liability for violations of human rights, both as an incentive for businesses to undertake proper human rights due diligence, and to repair harm done where they fail. This could build upon and strengthen the approach to human rights due diligence articulated in the UN Guiding Principles. Addressing the shared responsibilities of multiple States and businesses in preventing and remedying situations of human rights abuses, such as the Rana Plaza disaster, could remove obstacles to individual States and businesses moving independently of others. With an effective monitoring and follow-up mechanism, this could make a real difference on the ground.

Positions are evolving: some States who did not support the resolution are now considering becoming observers of the process. All States should be at the table and engage in constructive discussions at this start of a new chapter in the strengthening of the UN business and human rights framework.

The ultimate value and future credibility of both the Guiding Principles and a new international instrument will be seen in the extent to which they lead to actions at national and international level which stop the occurrence of human rights abuses by businesses.

Governments should both move forward with national measures including human rights due diligence requirements, and support the international process towards a binding instrument.

¹ Recent contributions from CIDSE members include MISEREOR et al., [*Global Business and Human Rights: Putting Germany to the Test*](#) (February 2014); CCFD-Terre Solidaire et al., [*Questionnaire to French CAC40 companies on the UN Guiding Principles*](#) (June 2014) and Trócaire, [*Developing a Comprehensive Irish National Action Plan*](#) (October 2014).

² [*Proposition de loi n°1524, Devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre*](#), nov. 2013.

³ See the related statement by 70 Catholic bishops from Europe, Africa, Asia and Latin America: [*We need supply chain due diligence to stop complicity in funding conflicts*](#), October 2014.