

## Event Summary:

### *Towards a legally binding instrument on Business and Human Rights*

European Parliament, Wednesday 2 September 2015

On 2 September 2015, the S&D Group of the European Parliament organised a seminar discussing the importance of a UN legally binding instrument on business and human rights and the next steps towards it.

Titled '*Towards a legally binding instrument on Business and Human Rights*', the event took place in Brussels, at the European Parliament, and brought together Members of the European Parliament (MEPs), representatives of national, European and international institutions, business and human rights experts and civil society organisations (CSOs).

The debate began with an analysis of the Treaty's role and the impact it could have on the lives of those whose rights have been infringed on by irresponsible companies. Participants then discussed the relationship between the UN Guiding Principles on business and human rights (UNGPs) and a UN legally binding instrument, with a majority of speakers testifying to their complimentary nature. After hearing interventions from a multitude of stakeholders, including people directly affected by corporate impunity, the seminar ended with the conclusion that although some progress has been made much more needs to be done, including a clearer show of leadership and support for the UN Treaty at regional, national and EU level, and across all EU and Member State (MS) institutions, policies and initiatives, together with a higher standard of responsibility at both a business and consumer level.

MEP Ramon Jauregui Atondo, who opened discussions together with MEP Elena Valenciano, stressed that we must create a society that can both reward and punish corporate behaviour, and develop an international framework that will balance voluntary with binding rules rooted in the '*Protect, Respect and Remedy*' dimensions of the UN Guiding Principles on Business and Human Rights (UNGPs). MEP Jauregui explained that solely relying on voluntary measures has translated into a break from accountability for companies and has created a "dangerous conceptual confusion" between social responsibility and social marketing. He warned that human rights infringements occur more and more often and that if we do not install binding regulatory measures we might lose the social and labour rights we have acquired during the 20<sup>th</sup> century. MEP Jauregui pointed out the huge social, geophysical, economical and environmental impact company activity has on society and restated that companies need to be held accountable for their actions. He concluded by saying that sovereignty in making decisions for the EU people needs to belong to the EU institutions and not corporations and that he believes the UN Treaty will restore the power balance and ensure companies contribute to building a better society.

In his address, MEP Antonio Panzeri conveyed that one of the main reasons behind developing an internationally binding legal instrument is the complexity of today's world: we live in a society that has become more global, but also supports a higher degree of economic fragmentation. The current socio-economical context, said MEP Panzeri, has led to businesses being almost impossible to

control when working through subcontractors and subsidiaries, and to people whose rights are being infringed facing enormous barriers when seeking justice.

Mr Panzeri's reminder that States have a duty to take all possible political and regulatory measures in order to protect and preserve human rights was also echoed by Human Rights Expert, Professor Olivier de Schutter. Professor de Schutter drew the room's attention to the fact that countries need to focus both internally and externally when developing their human rights agenda and not overlook their extraterritorial obligations. He added that states should also consider lifting the veil on corporations and supporting effective business disclosure regarding activities performed through subcontractors and subsidiaries as a human rights priority. At the same time, Professor de Schutter clarified that improving access to justice for victims needs equal attention and that there are ways in which European regulation could be interpreted to make it possible for national jurisdictions to receive legal action from victims against European TNCs irrespective of the country in which they are operating. He explained that the Treaty presents the possibility of going beyond country level provisions and of opening new avenues for victims to take companies who do not respect human rights to an international court. Professor de Schutter added that as the failure of states to protect human rights is mainly found in the transnational character and activities of companies, the Treaty would also be an essential tool in giving MS courts the legal standing to help world-wide victims of abuse.

Sharan Burrow, speaking on behalf of the International Trade Union Confederation (ITUC), spoke in favour of a binding UN Treaty and stated that human rights due diligence and remedy for victims will not become a reality without binding legal instruments and competent enforcement mechanisms. Ms Burrow outlined that ITUC's demands are simple: decent minimum wages, competent social protection schemes, collective bargaining tools, efficient grievance mechanisms, and laws guaranteeing corporate compliance.

[ECCJ Coordinator Jerome Chaplier, asked the question of whether the EU actually walks the talk when it comes to business and human rights.](#) Mr Chaplier explained that for a victim to access judicial remedy in transnational cases they have to face a major jurisdictional challenge, take on the added impediment of living in states with weak governance and lack of independent justice, go against the complex corporate structures of multinational corporations separated in multiple legal entities with limited liability, and, finally, overcome great practical and financial barriers.

Mr Chaplier then focused on [the first UN Treaty Intergovernmental Working Group \(IGWG\) meeting in Geneva, July 2015](#). Referring to the very low turnout of European States and the [EU delegation's decision to step out of negotiations when one of its negotiating conditions was not met](#), Mr. Chaplier commented that it is difficult not to interpret the July chain of events as a negative signal from the EU, spelling out that economic interests prevail over human rights, when a week after leaving the room in Geneva, the EU [repeated its eagerness to conclude negotiations on TTIP and its mechanisms](#), aimed at protecting companies and investors. He added that ECCJ believes that those whose rights are violated by European companies deserve more than [an EU 'empty chair policy'](#).

In his conclusion Mr Chaplier related that the next steps which need to be taken towards a binding UN instrument on Business and Human Rights require global action and involve the EU, its institutions and Member States working together with national governments all around the world, in an open and democratic Treaty process that includes, and consults with, civil society organisations and victims of irresponsible business behaviour. He launched a call for action to the European

Parliament and its Members to make public their formal support for the Treaty and to monitor the debate in Geneva and the position of the European External Action Service (EEAS) and the EU Permanent Mission at the UN, as well as that of the European Commission.

Speaking on behalf of affected communities in Nigeria, Mr Godwin Ojo remarked that the “oil boom” in Nigeria has turned into “oil doom” for the country due to “corporate greed”. Mr Ojo gave evidence to the difficulty of victims to access justice, particularly in developing countries, where the justice system is often corrupt and easy to influence.

Laying out the importance of the UNGPs and the creation of National Action Plans for their implementation, MEP Richard Howitt described the idea that human right law is voluntary as a misunderstanding of the mere concept of human rights. He added that progress has been made at MS level when it comes to UNGPs implementation but much more is still needed, mentioning the recent French Duty of Vigilance Bill as a positive example. More information on the developments in France was then provided by French MP Dominique Potier. Mr Potier explained that the purpose of the bill is to address legal loopholes created by companies’ ability to run their business through subcontractors and subsidiaries, adding that it is high time to raise EU standards for both companies and consumers and lift the veil on TNCs.

Petro Ortun from the European Commission’s Directorate-General for Internal Market, Entrepreneurship and SMEs (DG GROW) mentioned the renewed CSR strategy the Commission is working on, saying that they are focusing on a multistakeholder strategy for business and human rights and will involve all parties concerned in the consultation process. Mr Ortun did not give a specific date for when the new CSR strategy will be published in 2016.

The meeting also benefited from the presence of the Ecuadorian Ambassador to the UN in Geneva, Maria Fernanda Espinosa, who is leading talks on the Treaty and chaired the July 2015 IGWG. Her Excellency expressed her desire for an inclusive process that can depend on the EU as a leading debate partner, specifying that for the development process to be a successful one, all states must equally engage in the IGWG sessions, with next session taking place in October 2016.

In support of the UN Treaty and stronger EU legislation guaranteeing human rights protection, MEP Marie Arena commented that human rights are more important than market competitiveness of EU companies. Mr Arena then criticised the European Commission for proposing voluntary measures on the subject of conflict minerals, and not following Parliament’s direction for mandatory regulation.

The last two speakers, Peter Sorensen, Head of the EU Delegation to the UN in Geneva and Riccardo Serri, EEAS Division on Human Rights, restated the EU’s commitment to protecting human rights and contributing to the process of developing international regulations. Mr Sorensen added that the EU went to the IGWG meeting in Geneva with the primary but non-exclusive focus of supporting better UNGPs implementation. He concluded with saying that he hopes future UN Treaty consultations will be based on cooperation and overcome initial hurdles.

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