



**European Union**

**2017 United Nations Forum on Business and Human Rights**

**27-29 November 2017**

**Contribution of the European Union**

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### **Contribution of the European Union**

Over the past years, the European Union and others have advocated for a Forum on Business and Human Rights focussing on access to remedy, the third pillar of the UN Guiding Principles on Business and Human Rights.

In June 2017, we were pleased that the Human Rights Council adopted by consensus resolution 35/7 presented by Argentina, Ghana, Norway and the Russian Federation renewing the mandate of the UN Working Group on the issue of human rights and transnational corporations and other business enterprises and welcoming that the central theme of the 2017 UN Forum on Business and Human Rights would be “Realizing access to Remedy”. This provides a strong signal that we all need to continue efforts to ensure progress on access to remedy as we deliver on the wider agenda of Business and Human Rights. This is an ambitious agenda which requires a continued engagement from all stakeholders, States, business and civil society and the Forum remains this unique space for all to interact.

#### **"Access to remedy", linked to the "State duty to protect human rights" and the "Corporate responsibility to respect"**

Those who have suffered human rights violations by States as well as those that are victims of abuses by non-state actors have a right to access justice and a right to effective remedy. There are more and more voices calling for the need to address abuses connected to the activities of business enterprises both of domestic enterprises as well as companies headquartered abroad. Civil society organisations, human rights defenders, independent media and national human rights institutions have an important role in enabling the voices of victims of human rights violations and abuses to be heard.

It is unacceptable that any of those speaking out on behalf of the victims become subject to harassment, persecution and retaliation, and have to risk their own lives as they work for the promotion and protection of human rights. Human rights defenders indeed face specific risks when they try to help victims of abuses connected to activities of enterprises. During the 5th Forum on Business and Human Rights in 2016, we were particularly touched by the testimony of Laura Zuniga Cáceres, the daughter of murdered human rights defender Berta Cáceres. The EU calls for a thorough, transparent and expedite investigation into this and all other killings.

The testimonies of victims remind us that much more remains to be done across all regions to implement existing human rights obligations, as recalled in the UN Guiding Principles on Business and Human Rights. The commentary no. 26 to the UN Guiding Principles for instance provides that States *"should ensure that the provision of justice is not prevented by corruption of the judicial*

*process, that courts are independent of economic or political pressures from other State agents and from business actors, and that the legitimate and peaceful activities of human rights defenders are not obstructed* <sup>\*</sup>. This is one of the several provisions in the UN Guiding Principles recalling that the duties of States and the responsibilities of business are particularly relevant for progress on access to remedy.

The EU and EU Member States have a robust system in place. All EU Member States have ratified and are bound by the European Convention on Human Rights. European companies are bound by the existing national law which for its part has to be in line with the Convention's provisions. In this way the Convention's provisions have a factual impact when the respective national laws are invoked before the courts. Concerning access to courts for human rights abuses occurring outside the EU, the Brussels I Regulation establishes rules regulating the allocation of jurisdiction in civil or commercial disputes of a cross border nature, including civil liability disputes concerning the violation of human rights. We are taking steps towards further progress.

Following on the request made by the Council, the European Union Agency for Fundamental Rights (FRA) published, in April 2017, an opinion on "Improving access to remedy in the area of business and human rights at the EU level" <sup>†</sup>. As a follow up to the Agency's opinion, the European Commission has already proposed that this Agency could collect information on judicial and non-judicial mechanisms in the Member States concerning access to remedy for victims of business related violations.

Improving access to remedy is strongly connected to progress on the wider agenda of Business and Human Rights under the first and second pillars, respectively the "State duty to protect human rights" and the "Corporate responsibility to respect human rights", of the UN Guiding Principles on Business and Human Rights, which remains the authoritative framework to prevent abuses and ensure access to remedy when abuses occur.

It is encouraging that six years after their adoption by consensus in the Human Rights Council, we already have numerous examples of how these Guiding Principles have been integrated into the policies of international and regional organisations, Governments' national action plans, policies and regulations, and how these are being applied by many businesses around the world. As a sign of our commitment and to set a clear direction of work, the European Union adopted in June 2016 Council Conclusions on Business and Human Rights <sup>‡</sup>. Council Conclusions have also been adopted on related issues such as Responsible Global Value Chains <sup>§</sup> or Child Labour <sup>\*\*</sup>. The Business and Human Rights agenda is indeed one of the areas requiring coherence between what we do at home and abroad, and between various policies.

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<sup>\*</sup> [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

<sup>†</sup> <http://fra.europa.eu/en/opinion/2017/business-human-rights>

<sup>‡</sup> <http://www.consilium.europa.eu/en/press/press-releases/2016/06/20-fac-business-human-rights-conclusions/>

<sup>§</sup> <http://www.consilium.europa.eu/en/press/press-releases/2016/05/12-conclusions-on-responsible-global-value-chains/>

<sup>\*\*</sup> <http://www.consilium.europa.eu/en/press/press-releases/2016/06/20-fac-child-labour/>

## **Implementing the UN Guiding Principles on Business and Human Rights: policy coherence at home and abroad**

The EU is committed to mainstreaming human rights into all external aspects of EU policies in order to ensure better policy coherence. Much is being done to strengthen regulation and guidance at the EU level and by EU Member States; much is being done to work with States from across regions. At the heart of our efforts is our call on *"all business enterprises, both transnational and domestic, to comply with the UN Guiding Principles, the ILO Tripartite Declaration and the OECD Guidelines, inter alia by integrating human rights due diligence into their operations to better identify, prevent and mitigate human rights risks"*<sup>††</sup>. It is encouraging to see the number of business enterprises leading by example on due diligence, reporting and setting up grievance mechanisms. It is encouraging to see that, increasingly, States, business and civil society work together for concrete progress. As an international organisation member of the Group of Friends of the Montreux Document Forum, the EU is for instance pleased to see the operationalisation of the International Code of Conduct Association in Geneva as an oversight mechanism for Private Security Companies.

At the UN level, we see meaningful progress in the directions of work set out by UN Human Rights Council resolution 32/10 on "Business and Human Rights: improving accountability and access to remedy": this resolution presented by the core group (Argentina, Ghana, Norway, the Russian Federation) sent the needed signal and commitment from all States that effective and pragmatic steps can be taken without delay to ensure accountability and access to remedy. We commend the leadership of the High Commissioner for Human Rights and his office for the progress achieved in a limited time period with the Accountability and Remedy Project. Improving cooperation between States in cross-border cases is an essential component to ensure that victims or their relatives have access to remedy, and to allow for accountability. It is now for all of us to make the best possible use of the OHCHR-led Accountability and Remedy Project on judicial and non-judicial mechanisms, and several work streams of the Working Group on Business and Human Rights.

The Business and Human Rights agenda is an area which requires coherence across our policies in various areas with a smart mix of regulatory and voluntary measures. As one of the means to implement the provisions of the first pillar ("The state duty to protect human rights") and to implement existing obligations, we have taken the lead internationally on developing and adopting National Action Plans (NAPs) to implement the Guiding Principles or integrating the UN Guiding Principles into national CSR Strategies. We are pleased to see National Action Plans being developed and adopted across regions. The European Union has for instance developed a specific project on *"Responsible business conduct in Latin America and Caribbean"* to support the governments of Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico, Panama and Peru in the establishment and/or implementation of National Action Plans (NAP) on Business and Human

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<sup>††</sup> <http://www.consilium.europa.eu/en/press/press-releases/2015/07/20-fac-human-rights/>

Rights in line with the Santiago Declaration (2013) and the UN Guiding Principles on Business and Human Rights<sup>‡‡</sup>.

In addition, the EU has adopted legislative instruments such as a Directive on the disclosure of non-financial and diversity information: under EU law, beginning in 2018, companies will be required to disclose information on policies, risks and outcomes as regards environmental matters, social and employee-related aspects, respect for human rights, anti-corruption and bribery issues; the European Commission issued guidelines in June 2017 to support companies in fulfilling their reporting obligations<sup>§§</sup>. The EU has also passed a new regulation in May 2017 to stop conflict minerals and metals from being exported to the EU; to stop global and EU smelters and refiners from using conflict minerals; and to stop mine workers from being abused<sup>\*\*\*</sup>.

We have also set out clear objectives for ourselves to incorporate human rights in impact assessments for EU sectoral policies such as trade and development cooperation; to address our responsibilities as commercial actors (e.g. in public procurement) and when supporting or partnering with businesses (e.g. through export credit, trade promotion, or subsidies for the private sector). We are also supportive that International Financial Institutions (IFIs) ensure human rights compliance in their programme support and that their grievance mechanisms operate in line with the UN Guiding Principles on Business and Human Rights<sup>†††</sup>.

### **Business and Human Rights and the realization of the 2030 Agenda**

Progress on Business and Human Rights is connected to broader agendas such as the ambitious objectives set out in the 2030 Agenda. The Agenda calls upon all businesses to apply their creativity and innovation to solving sustainable development challenges, while protecting labour rights and environmental and health standards in accordance with relevant international standards and agreements, as well as initiatives such as the Guiding Principles on Business and Human Rights. The UN Guiding Principles on Business and Human Rights are important in this context because they clarify that “doing good” cannot replace or erase the responsibility of the private sector to do no harm.

At the Forum on Business and Human Rights in 2016, former UNSRSG John Ruggie invited business, and all of us, to focus on the relationship between the Sustainable Development Goals and the UN Guiding Principles on Business and Human Rights. His proposition to business as well as to all other actors is that *“respect for human rights, respect for the dignity of every person, is at the very core of the people part of sustainable development [...] and is also the key to ensuring a socially sustainable globalization, from which business stands to be a major beneficiary”<sup>††††</sup>*. Some business enterprises, including European companies, lead by example in the way they identify, prevent and mitigate human rights risks. Needless to say, much more remains to be done by all

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<sup>‡‡</sup> The EU Member States are at the forefront of the publication of National Actions Plans - 13 EU Member States have completed their NAPs, out of 18 globally <http://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx>

<sup>§§</sup> [http://europa.eu/rapid/press-release\\_IP-17-1702\\_en.htm](http://europa.eu/rapid/press-release_IP-17-1702_en.htm)

<sup>\*\*\*</sup> <http://ec.europa.eu/trade/policy/in-focus/conflict-minerals-regulation/>

<sup>†††</sup> <http://www.consilium.europa.eu/en/press/press-releases/2015/07/20-fac-human-rights/>

<sup>††††</sup> <http://www.ohchr.org/Documents/Issues/Business/ForumSession5/Statements/JohnRuggie.pdf>

enterprises worldwide to meet their responsibility to respect human rights. This is a positive and forward looking agenda.

### **Possible ways forward**

The EU will continue to cooperate with States and other stakeholders globally to implement the three pillars of the UN Guiding Principles on Business and Human Rights, the "The State duty to protect human rights", "The corporate responsibility to protect" and "Access to remedy".

The EU is also engaged in discussions on possible further legal elements developments. Rather than an "all-encompassing business and human rights negotiation" risking delaying progress, there are ways for the discussion to move towards international legal instruments as precision tools such as the ones advocated by Prof. John Ruggie, former Secretary-General's Special Representative for Business and Human Rights. In all cases, discussions should not serve as an excuse to avoid providing remedy for victims waiting for justice now.

We cannot emphasise enough that States must implement existing obligations. Some important questions need to be indeed addressed: how can victims be ensured access to justice and to remedy in cases of abuses related to business activities in a State where the legislation fails to comply with existing international human rights law? In a State where the judiciary system is not independent? In a State where corruption impacts negatively on the fulfilment of all human rights? Addressing these questions is essential if we want to respond to the legitimate expectations of victims of business related activities.

While discussions on the way forward may continue, it should also not serve as an excuse to delay implementation of existing obligations. The UN Guiding Principles on Business and Human Rights remain the authoritative and ambitious framework to guide our collective action to effectively prevent further abuses connected to business-related activities, and ensure access to justice and effective remedy. The European Union stands ready to continue working to confront this global challenge together with States, enterprises, trade unions, civil society organisations and human rights defenders from across regions.