

UN Business & Human Rights Framework: Next steps

CIDSE Note for the UN Business & Human Rights Forum, 2-4 December 2013

As an international alliance of Catholic development agencies, CIDSE followed the work of the UN Special Representative for Human Rights and Transnational Corporations and Other Business Enterprises throughout the 2005-11 mandate. Many of our partner organisations in Africa, Asia and Latin America have direct experience of the harm that can occur if irresponsible companies ignore their impacts on human rights. Recognizing that for many affected communities the UN process has yet to deliver concrete improvements, this note sets out our priorities for action now to build successfully on the work of Professor Ruggie's mandate. A number of different mechanisms will need to be used effectively in the short, medium and longer term, to achieve the goal of ending human rights abuses caused by business activity and preventing new instances from occurring.

The UN Working Group on Business and Human Rights

The first three-year mandate of the Working Group will come to a close in 2014. While awareness-raising has been a necessary first step, it is important that systematic evaluation on the impact of the Guiding Principles is also built into the Working Group's strategy and reflected in their advice to governments and companies.

Developing an intergovernmental process towards a binding instrument

The UN OHCHR has commissioned research looking at how it can take forward its role of: *“Supporting or leading efforts to address any remaining protection gaps, for example when it comes to jurisdiction, including extraterritorial jurisdiction, over corporate involvement in gross human rights abuses, or any other relevant normative strengthening of corporate accountability”*. This is clearly welcome. There have been other suggestions for international approaches too, for example the Inter-American Commission on Human Rights is considering developing jurisprudence on the legal responsibility of home countries for the actions of their corporations abroad.

State implementation of the Guiding Principles

The Human Rights Council unanimously endorsed and adopted the UN Protect, Respect, Remedy Framework in June 2011 and the Guiding Principles implementing that Framework. However the progress of implementation at national level has been very slow. So far only one country has adopted an action plan for implementing the Guiding Principles and that plan is relatively weak when it comes to concrete actions and policies to deliver change. Experiences in countries such as Colombia and Peru have not been encouraging in terms of partner organisations' and communities' ability to get involved in key questions about the impact of businesses on human rights.

CIDSE RECOMMENDATIONS

1. States need to do much more to ensure that businesses respect human rights

Political will is the essential ingredient for ensuring that fewer abuses of human rights occur as a result of business activities. Given the centrality of the State's duty to protect, progress is needed for the Protect, Respect, Remedy Framework to be effective. **There is a clear value in intergovernmental action but this does not replace the need for immediate ongoing action at national level as well.** Alongside enforcement of existing laws, States need to do more now to translate the State duty to protect, the corporate responsibility to respect and access to remedy into meaningful action, otherwise the momentum for change will be lost. This should start with a thorough assessment of the adequacy of legal and policy frameworks and a clear strategy or plan to address gaps, developed with genuine input from civil society as well as business. For example, governments should be introducing requirements for due diligence, reviewing and improving access to justice now as part of the

implementation process. The UN Working Group has an important role to play here in their recommendations and feedback to States.

At the same time, recognising the gaps in the Guiding Principles, including those which the Special Representative himself acknowledged in 2011, **CIDSE supports the future development of a binding international treaty.** Several initiatives are calling for an international treaty or instrument, which could have a focus on but not be limited to gross human rights violations.¹ If we are to see wide-scale reductions in instances of human rights abuses as a result of business activities, it is important to make progress on both approaches in parallel, building on efforts to date.

2. Participation by local and national civil society groups should be at the heart of action to address business impact on human rights

One of the strengths of the UN Framework and the Guiding Principles is that they set out clearly that business impacts require a “smart mix” of policy responses by governments that goes beyond a voluntary corporate social responsibility approach and includes regulation. Here there is also recognition of the role of rights-holders themselves, if core business activities risk affecting their human rights. CIDSE members have raised awareness of the Guiding Principles with their partner organisations and networks as well as in discussion with governments on their approaches to implementation. Local communities and partners have emphasised the importance of improving access to justice for those harmed by business activities, as well as the need for effective extra-territorial actions by States where multi-national companies are based. A worrying trend however has been that those whose rights are most affected by transnational activities are not being involved in national discussions about how the Guiding Principles should be implemented. If this is not pro-actively addressed in policy processes then it is difficult to see how the framework will have a real impact on the existing status quo.

3. The Working Group should focus on evaluation of the impact of actions by States and companies towards effectively ending human rights abuses, and what still needs to change

It is clear that different companies and governments are at different stages when it comes to taking action on business and human rights. CIDSE is very aware of a need for urgency because communities and individuals are suffering abuses of their rights now as a result of business activity. We believe that it is important for future progress that the Working Group puts the issue of evaluation at the heart of its work, making targeted use of systematic research in specific contexts. Its role in ensuring that governments adequately reflect the “smart mix” of policy in order to meet their duty to protect is also important. All actors – governments, businesses and civil society need to be evaluating the impact of what they are doing. Robust and well-resourced monitoring and evaluation processes have to go hand in hand with measures for dissemination and implementation. This will mean there is evidence available as to which responses do not represent good practice and which approaches are effective. It will also provide a solid basis for recommendations by the Working Group in relation to the future development of international mechanisms.

Contacts at the Business and Human Rights Forum:

- Denise Auclair, CIDSE, +32.473.732.341
- Anne Lindsay, CAFOD, +44.778.965.2112
- Daniel Hostettler, Fastenopfer, +41.798.624.391
- Klaus Schilder, MISEREOR, +49.177.434.1642

¹ For example **Call for an international legally binding instrument on human rights, transnational corporations and other business enterprises**, People’s Forum on Human Rights and Business, Bangkok, November 5-7, 2013.

CIDSE is an international alliance of Catholic development agencies working together for global justice

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