



## **UN Business & Human Rights Framework: Developing an intergovernmental process towards a binding instrument**

**CIDSE briefing note, April 2014**

**Implementation** at national level of the 2008 UN Protect, Respect and Remedy Framework and their 2011 Guiding Principles has been very **slow**, on all continents including Europe which has seen some progress towards National Action Plans. Given the centrality of the State duty to protect, States need to do much more to ensure that businesses respect human rights. The UN Framework and Guiding Principles set out clearly that business impacts require a “**smart mix**” of policy responses that goes beyond voluntary standards and includes regulation. Yet States’ efforts so far have given little attention to legal measures. **Evaluation** of the **impact** of actions by companies and governments towards ending human rights abuses will help to assess remaining gaps requiring complementary further steps in order to strengthen the collective framework.

There is **urgency**, because a wide number of communities and individuals are suffering abuses now as a result of business activity. There are continuing cases where operations of companies have **violated a range of human rights**, including labour rights and rights to land, livelihood, health, a clean environment, and peaceful protest, constituting a large scale of abuses. Civil society and Church voices across the globe are demanding more effective responses. The growing impatience in many countries has been marked by the Ecuador initiative for a binding instrument and statement to the Human Rights Council supported by 85 States.

Drawing from our work with partner organisations in Latin America, Africa and Asia, we highlight several pressing issues:

### **Lack of significant improvements on the ground**

By some measures, the situation has even worsened since 2011. Social conflict and criminalization of protest related to business investments are on the rise, in line with the overall negative trend highlighted by the UN Special Rapporteur on Human Rights Defenders (December 2013 report). **Access to justice** and remedy continues to be denied to communities in numerous countries, also highlighting the need for effective **extraterritorial actions** by States where multinational companies are based. For example in Tanzania and Papua New Guinea, citizens who were bringing court cases against international mining companies have been asked to give up legal proceedings in order to access company grievance mechanisms and sign onerous confidentiality agreements in return for very little.

### **Voluntary standards fail to prevent abuses**

Experience to date shows that voluntary measures to implement **human rights due diligence** – which could prevent abuses – concern mainly responsible companies, rather than those with a record of negative human rights impacts. For example in many countries, States do not have access to all relevant information on the social, environmental and human rights impacts of planned company operations, in

order to carry out a genuine Free, Prior and Informed Consent process with indigenous and affected communities. In the Philippines, company failure to carry out credible impact assessments has contributed to social conflict in which environmentalists and indigenous peoples' representatives have been killed for opposing mining projects.

### **Difficulty for States to enact national regulation**

In a number of countries and instances, lobbying by powerful companies prevents or weakens State regulation – a challenging reality for the “smart mix” approach. For example in Honduras, once a company has been granted a concession, it has the right to decide whether it will allow government officials to enter or not for inspection purposes. In the European Union, recently agreed legislation on corporate reporting, while a step forward especially in relation to supply chains, contains exemptions that could weaken its ability to be an effective measure for change.

### **Lack of level playing field for businesses**

Even where national regulation has been achieved, companies face differing requirements that can advantage the most irresponsible companies. This approach is also out of step with the reality of increasingly complex global corporate structures and business relationships.

## **WAYS FORWARD**

John Ruggie characterized the adoption of the UN Guiding Principles as the “end of beginning.” His January 2014 briefing concludes that international legal developments in business and human rights are not out of reach, and that the Human Rights Council should start “*to gain greater clarity on the key questions that any future legal instrument might address.*” 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 in parallel both on implementation of the Guiding Principles, and in discussions on a binding international instrument**, building on efforts to date.

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