

## **Business & human rights: Engaging new action at international and national levels**

**CIDSE note, 4 July 2014**

On 26 June, the UN Human Rights Council adopted by majority vote a resolution that will establish a new inter-governmental working group with the mandate to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises.<sup>i</sup>

For organizations working with communities and individuals currently suffering abuses and violations of their human rights as a result of business activity, this is a very important development. 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.

### **1. How did the resolution for a legal instrument come about?**

The Human Rights Council session had on its agenda a review of the UN business & human rights framework, three years after the 2011 adoption of the Guiding Principles and at the end of the first mandate of the UN Business & Human Rights Working Group. This was the starting point for a second resolution, adopted by consensus on 27 June, which continues the existing approach.<sup>ii</sup>

During the session, there was general recognition by States of continuing gaps in the framework, particularly in relation to ensuring access to justice. The desire to better protect human rights defenders was also highlighted. However, there were differences of views among States concerning a decision to work towards a legal instrument. There were negotiations to have a single resolution opening new discussions on issues relevant to a legal instrument, but these failed as they did not establish a clear roadmap towards a legal instrument.

The 2011 UN resolution included text recognizing the role of the Guiding Principles as a contribution to enhancing standards and practice, “without foreclosing any other long-term development, including further enhancement of standards.” The resolution for a legal instrument, initiated by Ecuador and co-sponsored by South Africa, Bolivia, Cuba, and Venezuela, grew out of acknowledgements of the limitations in current practice, the lack of progress in remedy for victims, and the reality of weak national regulation unable to guarantee accountability for powerful global corporations.

Global civil society action and mobilization played a strong part in making the resolution possible.<sup>iii</sup>

### **2. What were the dynamics around the vote on the resolution?**

20 countries in favor: *Algeria, Benin, Burkina Faso, China, Congo, Cuba, Ethiopia, India,<sup>iv</sup> Indonesia, Ivory Coast, Kazakhstan, Kenya, Morocco, Namibia, Pakistan, Philippines, Russian Federation, South Africa, Venezuela, Vietnam.*

The fact that four of the five BRICS countries voted for the resolution provides a strong argument that “emerging economies” with an increasing number of transnational corporations are ready to support a legal instrument, showing the possibility to achieve a global level playing field.

13 countries abstaining: *Argentina, Botswana, Brazil, Chile, Costa Rica, Gabon, Kuwait, Maldives, Mexico, Peru, Saudi Arabia, Sierra Leone, United Arab Emirates.*

A number of countries were facing pressure from countries opposed and had concerns about the potential impact on private foreign investment.

14 countries against: *Austria, Czech Republic, Estonia, France, Germany, Ireland, Italy, Japan, Macedonia, Montenegro, Republic of Korea, Romania, United Kingdom, United States of America.*

The common position of the EU<sup>v</sup> and that of the US was that implementation of the Guiding Principles should be given more time. They also argued that an inter-governmental working group would not be effective in developing an instrument, but would be subject to a divisive North-South dynamic. For this reason, they stated they would not participate in the working group if established. They expressed reservations about an instrument de facto focusing on transnational corporations, recalling abuses committed by businesses registered at domestic level.

Other actors: The *Holy See* made a statement early in the session in favor of a legal instrument.<sup>vi</sup>

### 3. What now at international level?

Developing a legal instrument is a process that can take five to ten years. There are many open questions on the content and scope of the instrument that will need to be discussed and agreed. Issues include prevention and protection of human rights defenders, access to justice, corporate legal liability, extraterritorial actions in the context of global corporate structures and business relationships, and an effective monitoring and follow-up mechanism. The instrument's ultimate value in stopping the occurrence of human rights abuses by businesses will depend on how the international community actually takes this process forward.

The resolution states that the intergovernmental working group should hold its first five-day session before September 2015. The first two sessions of the working group should be dedicated to conducting constructive deliberations on the content, scope, nature and form of the future international instrument. And its first meeting should serve to collect inputs from States and relevant stakeholders. The Chairperson should prepare elements for the draft legally binding instrument for substantive negotiations at the commencement of the third session.

With regards to government participation in the working group, some governments will no doubt receive pressure from businesses opposed to a legal instrument. At the same time, in experience with international human rights treaties and conventions, there are examples where some states have not been supportive at the beginning, but have engaged at a later stage.

### 4. What now at national level?

Adoption, ratification, and implementation of an international legally binding instrument are still a number of years away. Progress in situations including protection for human rights defenders and access to remedy on the ground will still require new measures at national level in parallel. An international instrument can create conditions for consistent and across the board national actions that are always needed to put into practice standards set at the international level.

There is a risk that States will argue that national action must be put on hold until international action is secured. At the same time, the opening of a process towards an international legally binding instrument can contribute to creating new opportunities for legal measures at national level.

There is a new dynamic in discussions, with States having increased their expressions of recognition of the concerns about access to remedy and protection of human rights defenders. States can now be pressed to show how they are responding to these concerns, particularly if they are not participating in the inter-governmental working group. The EU explanation of its vote contains a commitment to further development European policies and legislation.

Organizations working both at international and national levels will need to draw the links between work on national business & human rights implementation, and the process towards a legal instrument, as these can be complementary and both are needed. They will also need to continue to assess the progress and potential in work at the different levels, building on efforts to date.

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See also: [CIDSE statement](#) on the outcomes of the Human Rights Council, 30 June 2014.

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<sup>i</sup> Resolution A/HRC/RES/26/9.

<sup>ii</sup> Resolution A/HRC/RES/26/22.

<sup>iii</sup> Including many civil society groups, with leadership by the [Treaty Alliance](#).

<sup>iv</sup> See Explanation of vote ([India](#)).

<sup>v</sup> See Explanation of vote ([EU](#)).

<sup>vi</sup> See [Statement](#) of the Permanent Observer of the Holy See to the United Nations in Geneva, 11 June 2014.