



Monthly commemorative march, 7 months after the collapse of the Brumadinho dam, Brazil, 25 August 2019.

STRENGTHENING LEGAL FRAMEWORKS ON BUSINESS AND HUMAN RIGHTS

THE IMPERATIVE FOR BINDING LEGISLATION TO PROTECT
PEOPLE AND THE ENVIRONMENT

INTRODUCTION

Rooted in our direct work with women and men, communities and workers negatively affected by certain business operations, and in their experiences and proposals, **CIDSE and its members advocate for strengthening legal frameworks to support responsible business activity by setting clear obligations for all, based on the principle of shared responsibility.**

Some businesses and financial institutions are already taking steps to meet their responsibility to respect human rights and the environment in their global operations, subsidiaries, portfolios and/or supply chains. However, too many others are linked to serious

abuses. Exploitative working conditions, including modern slavery and child labour; gender discrimination and violence; violations of trade union and workers' rights; corruption and tax evasion; toxic pollution; rampant destruction of forests; the climate crisis; land grabs and evictions of indigenous peoples and local communities; and violent attacks on human rights; environmental and land defenders are widespread in the global value chains of companies conducting business in the European Union and worldwide. Women, children, indigenous peoples, workers and their unions, human rights defenders and marginalised groups are particularly affected.

ACTION URGENTLY NEEDED TO PROTECT HUMANITY AND OUR COMMON HOME

The nature and impacts of global business require action at multiple levels. The reliance on a voluntary approach to promote business respect for human rights and the environment has proven insufficient and does not prevent abuses of human rights and environmental damages. New measures are urgently needed to help **address gaps and insufficiencies in the global legal framework**, which has not kept up with evolutions in the global economic and business reality, and to help redress the current imbalances between the rights and obligations of business. Development and adoption of binding regulation would complement and greatly strengthen the impact of existing actions that governments and businesses have taken to implement the UN Guiding Principles on Business and Human Rights.

Today, there is no binding international legal framework to establish the legal accountability of transnational corporations and other business enterprises in the area of human rights and environmental protection, nor is there any guaranteed access to justice and remedies for populations affected by the activities. At regional level in the European Union, there are no cross-sectoral laws requiring companies and financial institutions to identify, prevent, mitigate and account for human rights abuses and environmental damage of their operations, subsidiaries or value chains.

MOMENTUM LEADING TO DECISIVE MILESTONES IN 2020

Around the world, policy makers, business leaders, academics, campaigners and citizens are supporting legislative change to end irresponsible corporate practices. There is a growing trend in Europe and beyond towards introducing mandatory human rights and environmental due diligence at the national level: legislative reforms and debates are advancing in the Netherlands, Switzerland and Germany, Finland, Norway, Spain, Belgium, Luxembourg, the United Kingdom, Sweden, Denmark and Austria, as well as in Canada. At the United Nations, a treaty is being developed to regulate the activities of transnational corporations and other business enterprises in international human rights law.

It is now time for the EU to build on these precedents and harmonise the expectations towards companies in law. New binding EU legislation will contribute to giving consumers, savers, retail investors and stakeholders at large the much-needed confidence that products, services or financial products are free from human rights abuses and environmental damage. In parallel, following on from the 5th session of international negotiations on a revised draft text with participation by 90 States, this is a decisive moment for the process towards shaping a UN Treaty that can bring value to global efforts towards preventing adverse human rights effects of business activities and providing access to justice for affected people and communities.

CHURCH VOICES GROWING FOR ACTION

CIDSE, its members and partners have been actively working on **substantive issues**. The report “Making a Killing” highlights the experiences of land, environment and indigenous defenders, the violence against them and lack of global accountability. The report “Vigilance on the Menu” documents specific risks in the agribusiness sector to food sovereignty, human rights and the environment, and how to apply the duty of vigilance obligation; while the reports “Regulating Corporations to Ensure the Right to Food” and “I Padroni della Terra” examine land grabs, their impact on the right to food and the lack of access to justice.

Our members have been active in raising **public awareness** and support for the Treaty, European and national action, including via campaigns “For Our Common Home – Defend the Defenders in the Amazon” from Development & Peace in Canada; “Defend People Under Attack” from Trócaire in Ireland; “Regaining Control over Transnational Corporations” from CCFD-Terre Solidaire in France, “Stop Child Labour” from DKA in Austria; “Against Profits Without Conscience” from Misereor in Germany; and “Let’s Close the Scissors of Inequality” from FOCSIV-Volontari nel Mondo in Italy; as well as via analyses “‘A la Carte’ Justice for Transnational Corporations?” from CCFD-Terre Solidaire in France; and « De l’or d’origine douteuse acheté par une raffinerie suisse » from Fastenopfer in Switzerland.

In recent months, Church actors at global, European, Latin American and African level have been speaking out in favor of stronger international regulation of business. During the May 2019 Vatican visit to the Brumadinho mine waste dam collapse site in Brazil, the need to develop models that respect nature, the lives of people and a future for our youth was strongly emphasised. In October, the Pan-African continental bishops conference SECAM called on governments and the international community to ensure corporations respect human rights. And later in the same month, the Commission of the Bishops' Conferences of the European Union (COMECE) called on the European Union to adopt binding and effective human rights legislation for EU-based transnational

companies to ensure compliance of their actions throughout the entire supply chain with legal, social and environmental standards.

As organisations strongly involved at national as well as European level, CIDSE and its members have experienced how national and European developments can be greatly strengthened by steps forward at global level on the UN Treaty. National and European legal measures already in place, or under development, also point to the types of provisions that the UN Treaty could help to extend worldwide, creating a level playing field for business, and improving the level of protection of human rights for all.

KEY OBJECTIVES AND ELEMENTS FOR STRENGTHENING LEGAL FRAMEWORKS

New legal measures should be able to make an effective contribution in the following ways:

» PROTECT THE RIGHTS OF WORKERS AND COMMUNITIES, PREVENTING DISASTERS DUE TO CORPORATE NEGLIGENCE



Villagers rescuing a cow after the collapse of the Brumadinho dam, Brazil, 2019.

The *collapse of the Samarco dam*, managed by Vale and BHP Billiton Brasil Ltda, near Mariana, Brazil in November 2015, caused the deaths of 19 people and the worst environmental disaster in the country's history, that to this day affects the livelihoods of people in the region. The Mariana disaster highlighted a huge gap in the international justice system – still today, many of the victims are waiting for justice domestically, while legal action has only just begun in the U.K. to determine the international responsibility of BHP Billiton. Four years later, the collapse of Vale's nearby *Córrego do Feijão dam in Brumadinho*, caused the deaths of close to 300 workers and other people, and widespread pollution of the surrounding environment and major rivers. Vale S.A. did not take the necessary preventive measures to resolve the growing risk of rupture. The negligence of Vale S.A., not only relates to its own responsibility, but also the responsibility of its business partners, both direct and indirect,¹ including the German auditing company TÜV SÜD as well as European banks financing Vale.

In 2017, France adopted a law on the duty of vigilance and became the first country to pass legislation to invoke the civil liability of corporations for violations of human rights and environmental law caused by their activities, including their subsidiaries, suppliers and subcontractors abroad. The **French duty of vigilance law** applies to a company's activities and that of its business relationships as defined by the law. Under French law, the concept of established business relationship covers all types of relations between professionals defined as stable, regular relationships, with or without contract.²

- **Scope of application:** International law already states that the State's duty is to protect against human rights abuses in the context of all business activities. This is also consistent with the growing momentum at national level in legislation concerning human rights due diligence. At the same time, the emphasis on **transnational activity** of enterprises remains important, as experience shows that this is where we face the biggest challenges and accountability gaps: complex business structures, jurisdictional restraints, divergent legal systems and levels of enforcement resulting in corporations being able to avoid legal liability.

- According to the **UN Guiding Principles**, human rights due diligence should cover all types of business involvement in negative human rights impacts: causation, contribution and direct links to its operations, products and services. The 2018 **OECD Due Diligence Guidance for Responsible Business Conduct** affirms this standard by recommending that enterprises “develop and implement plans to seek to prevent or mitigate actual or potential adverse impacts on Responsible Business Conduct issues which are directly linked to the enterprise's operations, products or services by business relationships.”³ As conflict-affected areas present heightened risks of business involvement in human rights abuses,⁴ human rights due diligence needs to include particular attention to **occupied and conflict-affected areas**.

¹ Joint Letter by Civil Society Groups to Companies Linked to the Activities of Vale S.A., February 2019.

² French corporate duty of vigilance law: Frequently Asked Questions, European Coalition for Corporate Justice, 2017.

³ Due Diligence Guidance for Responsible Business Conduct, OECD, 2018, 3.2.

⁴ Statement on the implications of the Guiding Principles on Business and Human Rights in the context of Israeli settlements in the Occupied Palestinian Territory, UN Working Group on the issue of human rights and transnational corporations and other business enterprises, 2014.

- Rights holders, in particular workers, their unions and affected communities should be involved in the negotiation and implementation of due diligence plans. **Women** face disproportionate and particular impacts of business activity. This means articulating the requirement for meaningful participation of potentially affected women, women's organisations, women human rights defenders and gender experts in all stages of human rights due diligence.⁵
- **Administrative liability** – such as fines, the temporary exclusion from public procurement, external trade promotion or subsidies – is needed when abuses result from companies' failure to comply with human rights due diligence requirements.

With respect to **civil liability**, the principle of the French duty of vigilance law should be followed that covers established business relationships, which do not necessarily require direct contractual relationships. The French law is more effective, as it prevents corporations from evading liability by inventing more complex supply chain structures without direct contractual relationships. Other countries are also developing this type of legislation. As CIDSE, we see this as very helpful, and believe that this approach should be a global threshold. Liability should explicitly refer to all **business relationships**, including those related to supply, export, services, insurance, finance and investment. Liability should also apply when business fails to **comply with due diligence requirements**.

⁵ *Gender dimensions of the Guiding Principles on Business and Human Rights*, UN Working Group on the issue of human rights and transnational corporations and other business enterprises, A/HRC/41/43 para. 45(d), May 2019.



Attention for the safety and well-being of the people involved in mining operations as well as the respect for fundamental human rights of the members of the local communities and those who champion their causes are indeed non-negotiable principles. Mere corporate social responsibility is not sufficient.

Pope Francis, May 2019, after meeting a victim of the January 2019 Vale mine waste dam collapse in Brumadinho, Minas Gerais, Brazil



» AVOID CONFLICTS BY GUARANTEEING THE RIGHT TO CONSENT OF INDIGENOUS AND AFFECTED PEOPLES

A mining project by Transworld Energy and Minerals, a subsidiary of the Australian company MRC, in the *Xolobeni community of South Africa* would have necessitated the removal of about 70 households from a farming community. It would have disrupted the social fabric of the community and been a traumatic disruption of residents' connection to the land and to their ancestors. On an environmental level, the mining would have devastated water supply, air quality, grassland, and marine ecosystems. After 15 years of contestation by mining-affected communities claiming their *Right to Say No*, in November 2018 a judgment in Pretoria High Court determined that mining companies must comply with the Interim Protection of Informal Land Rights Act before they can have mining rights under the MPRDA, the mining law. Because of South Africa's apartheid and colonial past, IPILRA requires community consent before any deprivation of land rights.⁶

Over 180 European companies are exploiting land located abroad, the great majority for the purpose of developing agribusiness. The Belgian agricultural investment firm SIAT (Société d'Investissement pour l'Agriculture Tropicale) is active in agribusiness on three continents, investing abroad in subsidiaries in order to exploit farmlands. The *Côte d'Ivoire* government granted it a concession of 11,000 hectares to operate a *rubber monoculture farm*, to the detriment of the people in the villages of Famienkro, Koffessou-Groumania and Timbo who live on the land and derive their livelihood from it. These farmers who made a living from working the land suddenly saw their income and access to food be conditioned to performing hard work for a foreign company that came and set up on their territory without consulting anybody, and without the local population giving their consent, nor any compensation provided for their loss.⁷

- At a time in which indigenous peoples are coming under increasing pressure from business activities affecting their lands, health and livelihoods, they and other affected communities must be at the forefront of decision-making processes that determine the type of development that can take place on their land. **Free, Prior, and Informed Consent** (FPIC) is an internationally accepted right. The normative framework of FPIC consists of a series of international legal instruments including the UN Declaration

on the Rights of Indigenous Peoples, the International Labour Organization Convention 169, and the Convention on Biological Diversity, as well as national laws.⁸ There is a need to give special attention to those facing heightened risks of violations of human rights violations, and important to note that they are often most marginalised from decisions affecting their lives, including mechanisms for Free, Prior and Informed Consent.



Demonstration in Pretoria, South Africa, 2018.

⁶ *Historic Court Case on the Right to Say No to Mining*, Amadiba Crisis Committee, 2018; *Mantashe appeals against Xolobeni right to say no to mining*, Karibu, September 2019.

⁷ *Regulating corporations to ensure the right to food: Towards the end of business as usual?* Entraide & Fraternité, 2018.

⁸ *Free, Prior and Informed Consent*, Food and Agricultural Organization of the United Nations.

» SECURE THE NECESSARY SPACE FOR WOMEN AND MEN DEFENDING HUMAN RIGHTS
AND THE ENVIRONMENT

Protest against the Hidroituango hydroelectric dam project, Colombia.

In 2018, tens of thousands of people had to evacuate their homes in **Colombia** after heavy floods at **Hidroituango**, the country's largest **hydroelectric dam project**, built by the Empresas Públicas de Medellín in the Cauca River basin, its electricity destined for the large mining companies with concessions in the region. The project has financial involvement of several global and European banks and suppliers (including from Germany, France, Spain and Sweden). Many locals in the region long opposed the project, which has disrupted agriculture and fishing since the license was granted in 2009. The project also threatens historical memory, as the reservoir would forever conceal the remains and fate of missing persons, victims of the conflict. Local organisations have suffered from numerous cases of violence against their leaders, including threats, attacks and two murders. 2018 was the most violent year for those defending human rights, land and environmental rights in Colombia, with 805 acts of aggression, including 155 killings. Indigenous and Afro-descendant leaders are particularly vulnerable, while attacks against women defenders increased by over 60%. Moreover, by July 2019, the non-governmental programme "We are Defenders" registered a **49% increase of individual attacks** going from 397 in the first half of 2018 to 591 in the same period of 2019, showing a tendency to rapidly augment attempts of repression. Women defenders face gendered and sexualized attacks, including smear campaigns; sexual assault, and harassment of their children.⁹

Also in 2018, 24 **Latin American States** concluded the legally binding **Escazú treaty**, which promises strict measures to protect land rights and environmental activists against threats and physical violence. The treaty states, among other things, that conservationists have the right to "life, personal integrity, freedom of speech, peaceful manifestation and freedom of movement". The agreement enshrines the rights of access to information, participation in decision-making and access to justice in environmental matters, in line with Principle 10 of the Rio Declaration on Environment and Development (1992). In Europe, the same principle is enshrined in the Aarhus Convention (2001).¹⁰

⁹ [Water, bossen en bergen kunnen zichzelf niet beschermen. Iemand moet het voor hen doen](#), Mondiaal Nieuws (Broederlijk Delen), 2018; [Colombia: International statement condemning attacks and threats against Afro-Colombian and indigenous leaders](#), European organizations and networks, May 2019; Global Analysis 2018, Frontline Defenders.

¹⁰ [Wat doet Europa voor de veiligheid van activisten in Latijns-Amerika?](#), Broederlijk Delen, 2018.

- Recognition of the role of human rights and environmental defenders is essential to the implementation of the Sustainable Development Goals and Agenda 2030. However, in a context of increasing threats, more concrete responses are necessary. Attention to **environmental aspects** is essential, as many of our partner organisations experience threats while working to ensure protection of human rights related to the environment, as illustrated above by the Hidroituango dam case.
- **Adequate and effective measures** to protect defenders are urgently needed, for example adopting legislative provisions that prohibit interference, including through use of public or

private security forces, with the activities of any person who seeks to exercise his or her right to peacefully protest against and denounce abuses linked to corporate activity; refraining from restrictive laws and establishing specific measures to protect against any form of criminalisation and obstruction to their work, including gender-specific violence; and fully, promptly and independently investigating and punishing attacks and intimidation of human rights defenders. The specific threats and harms experienced by **women** human rights defenders need to be addressed. Due diligence measures should include special attention to those defending human rights and the environment, and should include **assessments** of gendered impacts.

» STRENGTHEN INTERNATIONAL COOPERATION TO ENSURE ACCESS TO JUSTICE, CLOSING GAPS OF IMPUNITY

The Belgian company ETEX/Eternit was a shareholder of five asbestos product factories in India between 1989 and 2001. In 1998, Belgium introduced a ban on asbestos, and ETEX/Eternit subsequently sold its Indian subsidiary. Workers at the *Kymore, Madhya Pradesh asbestos fibre cement factory* face risks of exposure, and some former workers and their family members have reported symptoms of asbestos-related diseases, which can take between 15 and 40 years to manifest. Communities that live near the Kymore factory also face risks of exposure from sources including asbestos waste dump. Children face a great risk, with playing fields on grounds under which asbestos waste lies placing them at risk of exposure. Allegedly, there is no information of the negative health effects of asbestos in those areas, and insufficient or non adequately equipped medical centres at or near the factory to diagnose and treat asbestos-related diseases. Since April 2017, an Asbestos fund in Belgium has been processing victims' claims and granting compensation connected with asbestos-related diseases and exposure, but only domestically. Some victims of the asbestos pollution in Kymore, such as former workers or those living near the factory, have allegedly been offered compensation, however others have not. Some workers are allegedly afraid of reporting exposure to asbestos or the health effects for fear of job losses or other adverse actions.¹¹

- If a company fails to respect its obligations and abuses do occur, avenues must be available to hold it to account in court and for victims of abuses to receive justice and remedy. It is extremely important that people affected have a choice in which **jurisdiction** they bring their claims. This is a serious answer to the known legal obstacles caused by complex corporate structures and relationships, and an important step towards closing the gap of impunity and avoidance of liability, as illustrated above by the Kymore asbestos fibre cement factory case. **Applicable law** should be the one most protective for affected people. In this context, reference to **extraterritorial obligations** would strengthen legal certainty and reflect well the shared responsibility of host and home States in our global, interdependent world.
- We highlight the importance of provisions on **access to information**, such as on corporate structures and activities which is often in the possession of corporations, that can substantiate claims of victims and be crucial to determine the role of corporations in human rights abuses. **Reversal of the burden of proof** is a crucial measure, in the context of huge power and resource asymmetries between corporations and affected communities. It should not be unduly limited by existing domestic law which may represent an obstacle to justice. Special provisions are needed to ensure **gender equality and equal access to justice**.

¹¹ [Communication to the Government of India](#), UN Working Group on the issue of human rights and transnational corporations and other business enterprises, March 2019.



Rights and benefits should not be disposable. The Decent Work Agenda today is part and parcel of the global development agenda and it is universally applicable, regardless of countries' economic, social or political status. Labour should have its legal and political framework based on just ethical principles that bear real political, legal and economic consequences.

Archbishop Auza, Permanent Observer of the Holy See to the United Nations, April 2019 UN General Assembly commemoration of the 100th anniversary of the International Labour Organization

Children face a great risk, with playing fields on grounds under which asbestos waste lies placing them at risk of exposure. India.



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» ENSURE TRADE AND INVESTMENT CAN SERVE TO SUPPORT THE ENJOYMENT OF HUMAN RIGHTS AND A HEALTHY CLIMATE AND ENVIRONMENT, RATHER THAN INFRINGE UPON THEM



Large areas of the *Amazon region* suffer from illegal deforestation, land grabbing and slave labor, due to cattle raising, large-scale farming and mining operations. Conflicts between governments, rural communities, indigenous groups, and ranchers over land rights have been exacerbated by global demand for beef, soya, sugar, ethanol, timber or minerals. The situation of human rights and environmental defenders has dramatically worsened. The “Agreement in Principle” on a *trade agreement* between the *EU and Mercosur* was published in June 2019, before the Sustainability Impact Assessment was available. The agreement would expand Mercosur exports of beef, soy, sugar cane and ethanol, and thereby aggravate human rights violations, deforestation of the Amazon and climate change. The chapter on sustainable development is ineffective and would not prevent such harm, as it is excluded from the dispute settlement mechanism and the possibility of sanctions.

In *Indonesia*, *trade and investment agreements* with Australia, the European Union, and Singapore are under discussion. These agreements could increase demand for the export of palm oil, while business operations are leading to biodiversity loss, contributing to climate change, creating conflicts with communities, and are marked by human and labor rights violations. In 2018, the Indonesian Constitutional Court ruled that issues of trade, economy and investment fall under Article 11 of the Constitution which states: “The President in making other international agreements which have a broad and fundamental consequences for the lives of the people related to the burden of state finances, and / or require changes or the formation of laws, must be approved by the House of Representatives.” However, there is not yet a sufficient legal basis requiring comprehensive impact assessments relating to the economy, social, environment and human rights, before giving approval.¹²

¹² Statement on the Court Verdict concerning the International Treaty Law, Indonesia for Global Justice, November 2018.



All companies should establish ways of monitoring their supply chains to ensure that the products they buy, create or sell are produced in a socially and environmentally sustainable manner.

Final document of the Synod on the Amazon and integral ecology, October 2019

- Trade and investment agreements are reinforcing a power and legal imbalance, including privileged access for corporate actors to arbitration tribunals through the Investor-State Dispute Settlement Mechanism (ISDS), allowing corporations to drive decisions on national regulation on labor rights, health and environmental standards, while communities whose rights

have been abused struggle to have access to justice. **Relevant agreements by States must be compatible with human rights obligations. A specific clause on the primacy of human rights obligations, notably in trade and investment agreements,**¹³ would better clarify this relationship, adding to regulatory certainty and a stable legal environment. Such a clause should, inter alia, require human rights and sustainability impact assessments prior to the start of trade negotiations. CIDSE supports the call to abolish Investor-State Dispute Settlement mechanisms. As long as ISDS exists, it must respect the primacy of human rights over investors' interests.

» ENFORCEMENT

Enforcement mechanisms will be crucial to the success of new legal measures at all levels. Resourcing a range of international, regional and national entities, including National Human Rights Institutions and labour tribunals, as well as stepping up monitoring systems will be an important part of making progress. **Regional and international action and mechanisms** are necessary to address important acknowledged gaps and help to strengthen national judicial systems. A **balanced articulation** between the national, regional and international levels of action will be needed for legal instruments to work effectively in practice.

CONCLUSION

We call on all States and other actors concerned to **formulate constructive proposals and move forward** in the development of legal frameworks at national, European and international level, making significant advances in line with the urgency of numerous situations. The ultimate benchmark must be the potential of the legal provisions and their effective implementation to help put a stop to corporate-related human rights abuses.

We call on States and other actors concerned to engage with a spirit of determination and a sense of responsibility for the common good. European States should advance until the promise that **“Business practices, consumption and production patterns by EU businesses and consumers should not contribute indirectly to human rights violations or environmental degradation elsewhere in the world”** outlined in the January 2019 European Commission reflection paper on the Sustainable Development Goals, is fulfilled. At the same time, all States in the international community should advance **until the “mandate to elaborate an international legally binding instrument” established by the UN Human Rights Council Resolution 26/9 is fulfilled.**

As Catholic development agencies actively involved in the development of policies and laws on business and human rights, we will continue to offer advice and support to our own governments and other members of the European Union and United Nations to help them to meet this important objective.

¹³ Ensuring the Primacy of Human Rights in Trade and Investment Policies: Model clauses for a UN Treaty on transnational corporations, other businesses and human rights, Prof. Markus Krajewski, University of Erlangen-Nürnberg, March 2017.

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CIDSE is an international family of Catholic social justice organisations, working together to promote justice, harness the power of global solidarity and create transformational change to end poverty and inequalities. We do this by challenging systemic injustice and inequity as well as destruction of nature. We believe in a world where every human being has the right to live in dignity.

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