

Regional Seminar on Business and Human Rights

7-8 September 2016

Gefinor Rotana-Beirut-Lebanon

CONCEPT NOTE

Introduction:

The Universal Declaration on Human Rights, in its preamble, proclaimed that “every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.”¹ Although it does not specifically mention business, this reference indirectly alludes to the role that a variety of participative actors in any given society can play in upholding human rights.²

The private sector is an increasingly vital force in enabling the economic and social development that is so inextricably connected with human rights and security. Companies – sometimes intentionally, but more often inadvertently – can also impede the realization of human rights, directly or indirectly, as a result of their own actions.³

International human rights standards have traditionally been the responsibility of governments, aimed at regulating relations between the State and individuals and groups. But with the increased role of corporate actors, nationally and internationally, the issue of

¹ <http://www.un.org/en/universal-declaration-human-rights/>

² http://www.ohchr.org/Documents/Press/HC_contribution_on_Business_and_HR.pdf

³ http://www.ohchr.org/Documents/Press/HC_contribution_on_Business_and_HR.pdf



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business' impact on the enjoyment of human rights has been placed on the agenda of the United Nations.⁴

In order to address the inadequacies of the traditional resource pool for development, the post-2015 Agenda and, consequently, the Sustainable Development Goals (SDGs), focused on the private sector as a key partner in financing and driving development. The SDGs specifically aim to “encourage and promote effective public, public-private and civil society partnerships, building on the experience and resourcing strategies of partnerships” (Goal 17, Target 17).⁵

In the Arab region, the outsourcing of public services, public-private partnerships (PPPs), and privatization has become an increasingly popular means to finance and operate infrastructure projects and public services.⁶ For example, the Guide on Public-Private Partnership in Lebanon published by the Higher Council for Privatization, claims that PPPs are the only available means to fund and develop the Lebanese infrastructure, even linking it to the question of combatting unemployment and brain drain.⁷

However, in reality, private sector involvement in development has had a mixed track record. There are many cases of PPPs (in which infrastructure or public services are provided by the private sector), for instance, that have poorly prioritized and squandered development resources. Without mechanisms for private sector accountability, the Arab region will continue to be burdened with projects that fail to produce real development benefits and fail to promote democratic ownership of development, human rights, and socioeconomic equality.⁸

Business Accountability towards Human Rights: HRC's Guiding Principles

In June 2008, the Human Rights Council adopted a resolution in which it stated that: “transnational corporations and other business enterprises have a responsibility to respect

⁴ <http://www.ohchr.org/EN/Issues/Business/Pages/BusinessIndex.aspx>

⁵ <https://sustainabledevelopment.un.org/?menu=1300>

⁶ ANND, *Mutual Accountability Manual*, ANND, March, 2016, <http://www.socialwatch.org/sites/default/files/392-annd-eng.pdf>

⁷ “Guide on Public Private Partnerships in Lebanon,” Higher Council for Privatization, 2013, http://www.hcp.gov.lb/pictures/pdf/News0.9128229_final%20guide_13Feb2014_website.pdf

⁸ ANND, *Mutual Accountability Manual*, ANND, March, 2016, <http://www.socialwatch.org/sites/default/files/392-annd-eng.pdf>



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human rights.”⁹ For the first time, States, which bear the primary obligation for the realization of human rights, recognized that business must also play its part.¹⁰

On 16 June 2011, the Member States of the UN Human Rights Council unanimously endorsed the UN Guiding Principles on Business and Human Rights,¹¹ with overwhelming support from civil society organizations and the global business community. The Guiding Principles were designed to clarify the roles and responsibilities of companies and States in addressing business-related harm, functioning like a blueprint to guide efforts by governments and companies to improve their practices.

The Guiding Principles are grounded in recognition of:

- (a) States’ existing obligations to respect, protect and fulfill human rights and fundamental freedoms;
- (b) The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights;
- (c) The need for rights and obligations to be matched to appropriate and effective remedies when breached.

According to the decision, “[these] Guiding Principles apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure.”¹²

The Human Rights Council Forum on Business and Human Rights Fourth session on 16–18 November 2015¹³ recommended several tools for measuring State implementation of the Guiding Principles, such as national action plans on business and human rights and national baseline assessments. It was also argued that the universal periodic review (UPR) process of the HRC could be one mechanism to monitor State implementation. SDG indicators could also be a tool to measure such actions. In this respect, human rights institutions and CSOs in general could play a greater role in engaging with States.

⁹ Human Rights Council Resolution 8/7, 18 June 2008.

¹⁰ http://www.ohchr.org/Documents/Press/HC_contribution_on_Business_and_HR.pdf

¹¹ https://www.unglobalcompact.org/docs/issues_doc/human_rights/A.HRC.17.RES.17.4.pdf

¹² http://www.ohchr.org/Documents/Issues/Business/A-HRC-17-31_AEV.pdf

¹³ http://www.ohchr.org/Documents/Issues/Business/A.HRC.FBHR.2015.2_AEV.pdf



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The Forum on Business and Human Rights was established by the UN Human Rights Council, under paragraph 12 of its resolution 17/4,¹⁴ under the guidance of the Working Group on the issue of human rights and transnational corporations and other business enterprises. The Forum is open to all relevant stakeholder groups, including States, the wider United Nations system, intergovernmental and regional organizations, businesses, labor unions, national human rights institutions, non-governmental organizations, and affected stakeholders, among others. The 2016 UN Forum on Business and Human Rights will take place in Geneva between 14 and 16 November 2016.¹⁵

Maastricht Principles on Extraterritorial Obligations in the Area of ESCR:

One important aspect of the foundational principles that impacts developing countries in particular is the extraterritorial obligations (ETOs) of states with regards to the activities of business enterprises domiciled in their territory and/or jurisdiction. Despite the universality of human rights, many States still interpret their human rights obligations as being applicable only within their own borders. This attempt to limit obligations territorially has led to gaps in human rights protection in various international political processes and a lack of adequate regulation for the protection of human rights.¹⁶

The “Maastricht Principles on extraterritorial obligations in the area of ESCR” were set on 28 September 2011 by a conference of experts from universities and organizations located in all regions of the world. The Maastricht Principles reiterate the obligations of States to take deliberate, concrete and targeted steps, separately, and jointly through international cooperation, to create an international enabling environment conducive to the universal fulfilment of ESCRs. The Principles lay down the States obligations to respect, protect and fulfill ESCRs extraterritorially.

Towards a Legally Binding Instrument:

On 26 June 2014, The United Nations Human Rights Council (HRC) at its 26th session adopted, through a vote, a historic and significant resolution to start a process for an

¹⁴ http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/17/4

¹⁵ <http://www.ohchr.org/EN/Issues/Business/Forum/Pages/ForumonBusinessandHumanRights.aspx>

¹⁶ http://www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx_drblob_pi1%5BdownloadUId%5D=23



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international legally instrument on TNCs, officially entitled “Elaboration of an international legally binding instrument on Transnational Corporations and other Business Enterprises with respect to Human Rights” (A/HRC/26/L.22).

The resolution provides for the establishment of an open-ended intergovernmental working group (IWG) that is mandated with elaborating an international legally binding instrument to regulate, in international human rights law, the activities of TNCs and other business enterprises.

The resolution also makes reference as well to the important role of civil society actors in “promoting corporate social responsibility and in preventing, mitigating, and seeking remedy for adverse human rights impacts of transnational corporations (TNCs) and other business enterprises.”¹⁷

Seminar on Business and Human Rights

As part of the Pilot Project for the Promotion of Social Dialogue in the Southern Mediterranean Neighborhood, in collaboration with ITUC and other partners, ANND will hold a regional seminar on Business and Human Rights to discuss issues related to the business community’s responsibility in upholding human rights. The seminar will take place in the first week of September 2016.

The seminar will bring together human rights experts and defenders as well as representatives of CSOs and Trade Unions from the Arab Region to look at human rights challenges under the specific economic, social, and political environment and the contribution of social dialogue to improve human rights compliance. In particular, the seminar will look into the role of CSOs in upholding human rights standards in PPPs, other partnerships, and privatization initiatives.

¹⁷ http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/26/9



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