**Council of Europe Steering Committee for Human Rights - Drafting Group on Human Rights and Business**

**Corporate responsibility in the field of human rights:**

**Statement of proposals and suggestions of issues for further consideration from the European Network of National Human Rights Institutions (ENNHRI)**

**June 2014**

1. National human rights institutions (NHRIs) are independent public bodies established at national level under the UN Paris Principles with responsibility for promoting and protecting human rights. Over 100 countries worldwide have NHRIs, of which more than two thirds are designated as ‘A’ status, meaning they are accredited as fully meeting the Paris Principles’ requirements of independence, objectivity, and pluralism.
2. The European Network of National Human Rights Institutions (ENNHRI) is Europe’s regional association of NHRIs, comprising 41 members and functions as one of the four Regional Coordinating Committees of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), NHRIs’ global association.[[1]](#footnote-1)

1. The Steering Committee on Human Rights (CDDH) and its Drafting Group on Business and Human Rights have called for comments and proposals concerning the elaboration by the Council of Europe of one or more non-binding instruments in the area of business and human rights.[[2]](#footnote-2) In response, and in light of the list of the indicative detailed list of issues for further debate agreed by CDDH-CORP in February 2014, ENNHRI presents the following observations and recommendations.

**General comments**

1. ENNHRI strongly supports the adoption of Recommendation(s) by the Council of Europe to give reinforcement at the European regional level to the UN Protect Respect Remedy framework.
2. ENNHRI recognizes that measures to promote and protect at European regional level and within the UN should where possible operate in synergy. The current deliberations of the UN Human Rights Council on human rights and business, including with regard to the future mandate of the UN Working Group on Transnational Corporations and Other Business Enterprises, and the outcome of those deliberations, are therefore a relevant consideration in deciding on measures to be adopted by the Council of Europe.
3. Equally, however, ENNHRI recalls the autonomy of the Council of Europe, and that the UN Guiding Principles, as all human rights instruments, represent a minimum threshold and do not preclude the adoption of additional measures, where needed, in line with States’ fundamental duty to protect and uphold human rights within their jurisdiction and through international cooperation.
4. In this context, ENNHRI observes that, in spite of the UN Human Rights Council’s 2011 endorsement of the UN Guiding Principles, human rights abuses resulting from or linked to activities of businesses (including businesses registered or present in Council of Europe member States) continue to escalate in many countries across the world. At the same time, measures taken by states and businesses, including those of Council of Europe member States, to prevent and remediate such impacts remain in most cases entirely inadequate. Impunity for business-related human rights abuses remains pervasive.
5. Accordingly, ENNHRI observes the need for states, transnational corporations, and other business enterprises, to scale up their efforts *by an order of magnitude*, with support from other stakeholders, to meet in full their respective duties and responsibilities under the UN framework and Guiding Principles.

**Principal recommendation**

1. In ENNHRI’s assessment the principal value of engagement by the Council of Europe in the area of business and human rights lies in its potential, at regional level,
   1. To stimulate and support increased awareness, understanding and effective implementation of the UN Guiding Principles on Business and Human Rights, through the conduct of regular dialogue between member States and stakeholders, based on reporting on a common basis
   2. To identify, through such a process of continuing dialogue, exchange of information gaps in protection and, where needed, appropriate measures to address such gaps.
2. Accordingly, ENNHRI strongly urges the adoption of a Recommendation to Member States
   1. Recalling the UN Framework and Guiding Principles, and the need for member States to ensure their full implementation through appropriate measures at national level
   2. Recommending States to prepare National Action Plans on Business and Human rights to address all three pillars of the UNGPs
   3. Providing guidance on a human rights-based approach for the development of National Action Plans in the form of an Explanatory Memorandum
   4. Providing for a follow-up procedure, based on a written questionnaire, to consist of regular dialogue and progress reporting by member States with input from stakeholders.

**ITEM B: Obstacles to access to justice and remedies for victims of business-related human rights abuses**

1. Concerning access to justice, ENNHRI urges the adoption of a Recommendation, which should request member States to ensure full implementation of Pillar III of the UN Framework, and identify, by way of an Explanatory Memorandum, the types of legal and other impediments that may obstruct effective access to remedy by victims of business-related human rights abuses, including for victims located outside Council of Europe member States’ territorial jurisdiction, and measures that can be taken to help to avoid or minimise these. Such guidance should draw on published studies documenting such obstacles to access to justice.[[3]](#footnote-3)
2. The Recommendation should provide for a follow-up procedure, based on written questionnaire, to consist of regular dialogue and progress reporting by member States with input from stakeholders.
3. Guidance provided should highlight matters including
   1. the issue of *forum necessitatis* for human rights violations within Member States
   2. Practical hurdles such as legal costs and language barriers.

**ITEM E: The promotion of due diligence**

1. In line with Pillar II of the UN Framework, ENNHRI proposes the adoption by the Council of Europe of an instrument recommending to member States that, with regard to corporations based or operating in their jurisdictions, through appropriate legal and other policy measures at national level they:
   1. Require such corporations, or at minimum a relevant class of corporations, to make a policy commitment to respect human rights
   2. Require such corporations to undertake human rights due diligence, in a manner and format appropriate to their size and complexity, and the nature and context of their operations
   3. Require such corporations to report on human rights impacts and measures taken to prevent and remediate them, in an appropriate format
   4. Require such corporations to make provision for the remediation of any harm to human rights for which they are responsible.
2. The Recommendation should provide for a follow-up procedure, based on written questionnaire, to consist of regular dialogue and progress reporting by member States with input from stakeholders.

**ITEM G. The role of stakeholders and social partners, including NHRIs**

1. ENNHRI requests that appropriate references to NHRIs, their mandate on business and human rights under the UN Paris Principles, and their potential to contribute to protection and respect for human rights in the business sector, including by promoting effective implementation of the UN Guiding Principles, be mainstreamed throughout any Recommendation(s) adopted. Due regard should be had, in this context, to the ICC’s Edinburgh Declaration of 2010 and ENNHRI’s Berlin Declaration of 2012.[[4]](#footnote-4)

**ITEM A: Existing obligations and engagements of Member states**

1. Any Recommendation(s) to be adopted should recall member States’ existing obligations under Council of Europe treaties and other instruments in the context of human rights and business, including under the European Convention on Human Rights and European Social Charter, since these give further expression in the European regional context to the rights enshrined in global instruments such as the Universal Declaration of Human Rights and provide the legal basis from which the UN Protect Respect Remedy framework and the UN Guiding Principles on Business and Human Rights are derived.
2. Specific reference should be made to:
   1. the obligations of Member states under Articles 6 and 13 ECHR
   2. the potential role of other existing substantive rights under the ECHR in addressing business-related human rights abuses should be highlighted, e.g. servitude (Art. 4), discrimination (Art. 14), freedom of association (trade unions, Art. 11) and privacy (Art. 8)
   3. the general duty of States to secure protection of the Convention rights (Art.1).

1. <http://nhri.ohchr.org/EN/Pages/default.aspx>. [↑](#footnote-ref-1)
2. CDDH-CORP, Meeting Report, Drafting Group on Human Rights and Business, 2nd meeting, 12-14 February 2014, CDDH-CORP(2014)R2; CDDH-CORP, Relevant Excerpts from the 80th Meeting of the CDDH (Oslo, 8-10 April 2014), CDDH-CORP(2014)09. [↑](#footnote-ref-2)
3. E.g. ICAR, CORE, ECCJ, The Third Pillar : Access to Judicial Remedies for Human Rights Violations by Transnational Business, <http://accountabilityroundtable.org/analysis/the-third-pillar-access-to-judicial-remedies-for-human-rights-violations-by-transnational-business/> ; Amnesty International, Injustice Incorporated: Corporate Abuses and the Human Right to Remedy, <http://www.amnesty.org/en/library/asset/POL30/001/2014/en/33454c09-79af-4643-9e8e-1ee8c972e360/pol300012014en.pdf> ; International Commission of Jurists reports on Access to Justice with regard to business and human rights, available via <http://www.icj.org/category/publications/access-to-justice-human-rights-abuses-involving-corporations>. [↑](#footnote-ref-3)
4. Accessible via <http://nhri.ohchr.org/EN/Themes/BusinessHR/Pages/Home.aspx> . [↑](#footnote-ref-4)