



Fédération internationale des ligues des droits de l'Homme

ORGANISATION INTERNATIONALE NON GOUVERNEMENTALE AYANT STATUT CONSULTATIF AUPRES DES NATIONS UNIES, DE L'UNESCO,
DU CONSEIL DE L'EUROPE ET D'OBSERVATEUR AUPRES DE LA COMMISSION AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

International Federation
for Human Rights

Federación Internacional
de los Derechos Humanos

الغدرالية الدولية لحقوق الانسان

Contribution to the EU Multi-stakeholder Forum on CSR, 10 February 2009

The International Federation for Human Rights (FIDH) is an international NGO gathering together 155 national human rights organizations throughout the world. FIDH is working for the respect of all human rights enshrined in the 1948 Universal Declaration, civil and political rights as well as economic, social and cultural rights. Since over a decade, FIDH has been working to enhance the responsibility of corporations with regard to human rights. FIDH has been advocating for a global instrument on business and human rights and has encouraged the European Union to adopt a regulatory framework for Corporate Social Responsibility (CSR)¹. FIDH is a member of the European Coalition for Corporate Justice (ECCJ).

Business and in particular transnational corporations have an impact - which can be both positive and negative - on the enjoyment of human rights. It is now admitted that corporations do have the responsibility to, at least, respect human rights where they operate². However, while responsible businesses do not necessarily benefit from their efforts to respect human rights, those involved in human rights violations are not being adequately sanctioned. Some examples: a number of European businesses have adopted codes of conduct and monitoring systems, however it is nearly impossible for the consumers to distinguish between window dressing initiatives and truly responsible policies of companies. As a result, good players are not advantaged by the market. On the contrary, companies involved in human rights violations remain largely unpunished: when European companies supply authoritative regimes with technologies enabling the control and repression of dissenting voices, they are not sanctioned for complicity in human rights violations. FIDH believes that market pressures and voluntary CSR initiatives alone are not sufficient to make companies respect human rights.

FIDH has been defending for years that industrialized countries have a duty to act to better control the corporate actors domiciled in their jurisdictions, as host countries are often unable or unwilling to do so. As an important number of the world's biggest transnational corporations have their headquarters in the European Union, the EU and the the EU member states have a particular role to play to make sure European companies act in conformity with human rights.

In June 2008, the UN Human Rights Council adopted the report of Professor John Ruggie, Special Representative of the UN Secretary General on Business and Human Rights (SRSG), and renewed the mandate of the SRSG for three years in order to « operationalize » his framework. The framework proposed by Professor Ruggie, whose work has been constantly supported by the EU,

¹ FIDH, Corporate Social Responsibility in the EU : Bringing the Regulatory Approach Back In, December 2006 available at: <http://www.fidh.org/spip.php?article6247>

² Protect, Respect and Remedy, A Framework for Business and Human Rights, Report of the Special Representative of the UN Secretary General on Business and Human Rights, A/HRC/8/5, April 2008, available at: <http://www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf>

includes 3 main principles:

- The duty of the State to protect all human rights from abuses committed by or involving corporations;
- The responsibility of corporations to respect human rights;
- The need for greater access of victims to effective remedies.

It is time for the EU and the European member states to take steps to discharge their duty to protect human rights from abuses by European transnational corporations. As outlined by the SRSR, there is a diverse array of policy domains through which States may fulfill their duty to protect with respect to business activities including how to foster a corporate culture respectful of human rights at home and abroad.

Some of the steps that the EU should take to support respect for human rights by corporations include: encourage transparency and reporting, make sure that human rights are duly taken into account in public procurement, and in all support to investments in third countries. At the same time, the EU and EU member states should put in place mechanisms to sanction the corporations that are involved in human rights abuses

1) Encourage responsible behavior by corporations

The European Commission often considers that the business case for CSR is sufficient to encourage companies to adopt CSR policies. FIDH believes that the EU should strengthen the incentives for companies acting responsibly by supporting market pressures on companies. Two such measures would include: increase transparency by making mandatory CSR reporting thus enabling stakeholders and in particular consumers to be better informed about CSR performances of companies; make sure public procurement favors responsible business.

➤ Encourage transparency and reporting at the EU Level

Some EU countries have introduced mandatory reporting on non-financial matters for certain categories of companies. This is the case for example of France, Sweden and the UK. Many European corporations among the biggest ones are producing annually a CSR report. However, this reporting rely on the information given by the company itself and it is extremely difficult to compare companies without common reporting standards.

We recommend that non-financial reporting be made mandatory for all European multinational corporations in order to create a level playing field for all companies. Non-financial reporting should be accompanied by :

- the definition of common standards for reporting based on internationally agreed rules and standards;
- public access to information on company and product CSR performance;
- independent monitoring and verification.

FIDH believes increased disclosure would encourage companies to upgrade their policies and systems as these would be rewarded by the shareholders and the consumers.

➤ Encourage responsible public procurement:

FIDH believes the EU and European members states should make use of public procurements to favor environmentally and socially responsible business. The public authorities of the EU member states and the Commission should indeed use the opportunities provided by the revised Public Procurement Directives of 2004 to advance CSR by applying social and environmental clauses to their contract. As a first step we recommend that an evaluation be done of the transpositions of these directives into national law. Second, it would desirable to go further and to clearly exclude from public contracts companies that are not respecting internationally agreed social and human rights standards.

The guide on social consideration in public procurement that the European Commission is currently drafting and which should be completed by spring 2009 should also include clear recommendations to public buyers to require from their suppliers a high level of transparency, respect for internationally agreed labor and human rights standards in their whole supply chain.

➤ **Grant investment support to companies respectful of human rights**

The EU and EU members states are supporting investment in third countries through various means, all these policies should include human rights.

Export-credit agencies (ECAs), which finance and guarantee exports and investments in foreign countries are not consistently requiring companies to respect human rights. FIDH believes respect for human rights should be a criteria of all EU member states ECAs for granting support to corporations.

As a result of the revision of the environmental and social standards of the European Investment Bank (EIB), respect for human rights of the supported projects has been included. FIDH welcomes this evolution and calls on the EIB to make sure currently supported project do not harm human rights.

FIDH believes that all these measures would ultimately benefit to companies that are discharging their responsibility to respect human rights and thus encourage all companies to upgrade their practices.

2) Increase Corporate Accountability for Human Rights Violations

At the time being, while the companies that are taking steps to make sure human rights are respected in their operations are not necessarily rewarded by the market, those being involved in human rights abuses are not being adequately sanctioned. It is part of the duty to protect of the EU and EU member states to put in place redress mechanisms so that corporations involved in human rights violations be penalized and victims of such human rights violations get access to effective remedies.

It is often the case that where a human rights violation involving business occurs, victims often lack access to remedies. Indeed, the host states are often unwilling or unable to sanction the responsible corporation. Reinforcing accountability mechanisms at the European level would constitute an important signal to victims of human rights abuses.

Some form of accountability already exists as it would possible for victims of human rights violations to seek redress against European interests in European courts on the basis of Regulation (EC) n° 44/2001 of 22 December 2000, which provides that national courts of the EU member states must accept jurisdiction over civil liability claims filed against any defendant, including corporations, domiciled in their territory wherever the damage took place and whatever the nationality of the claimants. However, in practice, the access of victims to EU national courts is extremely difficult. One major obstacle lies in the relation between the company domiciled in an EU member state and the actual offender, often a subsidiary which is a distinct legal entity, or a supplier.

FIDH supports the proposals put forward by the European Coalition for Corporate Justice (ECCJ) that parent company liability be extended so that responsibility for human rights violations be allocated to the company having the right to control the entity that actually violated human rights. and that a duty of care of the parent company throughout its sphere of responsibility be established³.

³ See ECCJ, Fair Law Report, 2008, available at: http://www.corporatejustice.org/IMG/pdf/ECCJ_FairLaw.pdf

The EU could also envisage the establishment of a monitoring mechanism at the EU level, which would undertake independent inquiries on CSR-related issues at the request of stakeholder groups and companies.

At the global level, the EU should support the drafting of an international instrument on Business and Human Rights which would further clarify the respective responsibilities of States, both of the home state and the host state, and of corporations with regard to human rights. Simultaneously, the EU should support the establishment of a global mechanism, which could receive information and complaints on business-related human rights violations. Such a mechanism would enable victims who face obstacles in accessing justice at home as well as in the home state of the parent corporation to access an effective remedy. This mechanism would also contribute to clarifying on the basis of concrete cases what due diligence of corporations with regard to human rights means.