Parliamentary Assembly
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Resolution 2311 (2019)[1]

Human rights and business – what follow-up to Committee of Ministers Recommendation CM/Rec(2016)3?

Parliamentary Assembly

1. The Parliamentary Assembly recalls its Resolution 1757 (2010) and Recommendation 1936 (2010) on human rights and business, as well as its Resolution 1993 (2014) on decent work for all and Recommendation 2123 (2018) on strengthening international regulations against trade in goods used for torture and the death penalty.

2. The Assembly notes that transnational or multinational companies are increasingly influential. They can benefit society and contribute to the realisation of human rights, for example by ensuring a values- and principles-based approach to doing business and by operating in ways that meet their fundamental responsibilities in the areas of human rights, labour, environment and anti-corruption, as well as by creating employment and paying taxes. They can also, however, be implicated in human rights abuses, such as exploitative or hazardous working conditions, forced labour and child labour, pollution, employment discrimination and surveillance of employees while at work. Many of the alleged human rights abuses in which businesses are involved occur in third countries, especially outside Europe, making it very difficult for victims to seek remedies. However, children or foreign nationals (both Europeans and non-Europeans) for example, are also exploited inside Europe (including as victims of trafficking), which requires enhanced vigilance and protection from the relevant national authorities.

3. The Council of Europe has adopted a number of conventions covering a wide range of issues of direct relevance to business activities, such as social and economic rights, bioethics, the information society, children's rights, combating corruption and trafficking in human beings. Moreover, although the European Convention on Human Rights (ETS No. 5, "the Convention") does not allow an individual alleging a violation of his/her rights by a privately owned company to bring a case against that company before the European Court of Human Rights ("the Court"), the Court has accepted that the Convention may in some cases have direct effect between private parties, especially if the State Party to the Convention does not fulfil its "positive obligations".

4. Over the past few decades, attempts to define the responsibilities of businesses in the area of human rights protection were principally based on the concept of "corporate social responsibility" and voluntary approaches. Nevertheless, although the primary duty to protect human rights lies with States and although there is still no legally binding instrument on business accountability for human rights abuses, it is now widely recognised that businesses hold responsibilities in this area.

5. The Assembly notes that the United Nations Guiding Principles on Business and Human Rights: Implementing the United Nations "Respect, Protect and Remedy" Framework, ("the United Nations Guiding Principles"), endorsed by the United Nations Human Rights Council in 2011, have been a big step forward in this respect. This set of guidelines for States and companies has been the first universally recognised standard in this area. It is based on three pillars: the State duty to protect human rights, the corporate responsibility to respect human rights and the right of victims to access an effective remedy.

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1. *Text adopted by the Standing Committee*, acting on behalf of the Assembly, on 29 November 2019 (see Doc. 15004, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Elshad Hasanov; and Doc. 15005, opinion of the Committee on Social Affairs, Health and Sustainable Development, rapporteur: Mr Mikayel Melkumyan).
See also Recommendation 2166 (2019).

6. The Assembly notes that soon after the adoption of the United Nations Guiding Principles, States were encouraged to develop action plans on their national implementation (National Action Plans – NAPs), which are policy documents identifying priorities and actions that States adopt in order to comply with international and national standards on business and human rights. The Assembly notes that only 18 member States of the Council of Europe have adopted NAPs (Belgium, Czech Republic, Denmark, Finland, France, Germany, Ireland, Italy, Lithuania, Luxembourg, the Netherlands, Norway, Poland, Slovenia, Spain, Sweden, Switzerland and the United Kingdom), almost all of which are members of the European Union.

7. The Assembly welcomes the adoption of Committee of Ministers Recommendation CM/Rec(2016)3 on human rights and business on 2 March 2016 and stresses the importance of its role in encouraging member States of the Council of Europe to implement the United Nations Guiding Principles at the regional level. It welcomes the fact that some Council of Europe member States – mainly European Union member States – have adopted comprehensive measures to implement this recommendation, including legislative measures imposing a duty to implement human rights due diligence procedures in business enterprises.

8. The Assembly therefore urges Council of Europe member States to take all the necessary measures to implement the United Nations Guiding Principles and Recommendation CM/Rec(2016)3 on human rights and business, and in particular to:

8.1. develop NAPs, if they have not yet done so, and to review and update them on a regular basis, in a transparent process and in consultation with businesses, business organisations, trade unions, non-governmental organisations, national human rights institutions and other relevant stakeholders;

8.2. share NAPs and good practices related to the implementation of the United Nations Guiding Principles and Recommendation CM/Rec(2016)3 with other Council of Europe member States, in particular through the shared information system which is being developed within the Council of Europe;

8.3. ensure translation and a wide dissemination of these two instruments, as well as the European Social Charter (ETS No. 35 and No. 163), especially within relevant State authorities, State agencies and business enterprises;

8.4. review their national legislation, practice and policies to ensure that they comply with the requirements stemming from these two instruments; in doing so, national parliaments and governments should pay particular attention to:

8.4.1. a State's responsibility in the context of its commercial activities, including its responsibility for State-owned or -controlled companies and State agencies, and for giving support to certain companies and privatising the delivery of certain services;

8.4.2. potential risks of human rights abuses by businesses operating abroad;

8.4.3. potential risks of human rights abuses by businesses conducting operations in conflict-affected areas;

8.4.4. the need to adopt legislation on businesses' responsibilities for their activities having an adverse impact on human rights, in particular through developing human rights due diligence procedures for businesses;

8.4.5. the need to provide judicial (civil, criminal and administrative) as well as extra-judicial remedies for victims of human rights abuses by businesses;

8.4.6. gender-related risks and the needs of vulnerable or marginalised individuals and groups (such as migrant workers, children, indigenous people, minorities, persons with disabilities and human rights defenders);

8.4.7. the need to provide appropriate information, training and workshops on human rights issues in third countries to businesses wishing to operate in such countries and to diplomatic and consular staff assigned to them;

8.5. based on the above-mentioned legal instruments and the European Social Charter, enhance the powers and capacity of labour inspectorates to detect and investigate cases of human rights abuses at national level, with a view to better protecting vulnerable population groups from inhuman and degrading treatment, violence, forced labour and exploitation.

9. In line with its Recommendation 2123 (2018), the Assembly calls on member States of the Council of Europe to take all the necessary measures to prohibit businesses domiciled within their jurisdiction from trading in goods which have no practical use other than for the purpose of capital punishment, torture, or other cruel, inhuman or degrading treatment or punishment and to regulate their trade in goods that can be abused for such purposes.

10. Moreover, the Assembly invites member States of the Council of Europe to support the adoption of a legally binding instrument on business activities and human rights, which is now being examined by the United Nations Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights.

11. The Assembly also calls on member States of the Council of Europe to enhance their co-operation with other international organisations, in particular the United Nations, the International Labour Organization (ILO), the Organisation for Economic Co-operation and Development (OECD) and the European Union, in order to consolidate coherent standards on businesses' responsibilities in the area of human rights protection and promote implementation of the United Nations Guiding Principles. In particular, member States should continue to support the work of the United Nations and its Working Group on the issue of human rights and transnational corporations and other business enterprises.