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CONSEIL DE L'EUROPE

Strasbourg, 27 February 2015

CDDH-CORP(2015)R4

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

**DRAFTING GROUP ON HUMAN RIGHTS AND BUSINESS
(CDDH-CORP)**

Meeting report

4th meeting

25 February (9.30 a.m.) – 27 February 2015 (1 p.m.)

Council of Europe, Agora – Room G05

Item 1: Opening of the meeting and adoption of the agenda

1. The CDDH Drafting Group on Human Rights and Business (CDDH-CORP) held its fourth meeting in Strasbourg from 25 to 27 February 2014 with Mr René LEFEBER (Netherlands) in the Chair. The list of participants can be found in [Appendix I](#). The agenda as adopted appears in [Appendix II](#).
2. The Chair welcomed the participants, in particular those who had not attended the previous meetings, and recalled the tasks that the Group was entrusted to achieve in the framework of its terms of reference.

Item 2: Information on recent relevant national and international developments

3. The Secretariat informed the participants about the discussion of the work of the Group at the 83rd meeting of the CDDH in November 2014 (see document CDDH-CORP(2014)13), as well as the presentation by the Chair and the Secretariat of the work of the Group at recent conferences and seminars (see document CDDH-CORP(2014)14). It also reported on the recent exchange of views of the Committee of Ministers with experts from capitals on human rights questions and the United Nations of 12 February 2015, which had as a thematic focus the issue of business and human rights.
4. The Secretariat also gave an update on the adoption of national action plans by Council of Europe member states not represented, notably concerning Lithuania. The representative of Finland informed the Group about the recent adoption of the Finnish national action plan and its availability in English. The representatives of France, Germany, Hungary, Latvia, Norway, Switzerland and Ukraine provided information on the status of preparation of their respective national action plans and the translation of the UN Guiding Principles on Business and Human Rights in their national language. The representatives of the Netherlands and the United Kingdom informed the Group about ongoing activities after the adoption of their respective national action plans, such as the convening of stakeholder meetings to discuss a possible revision of such plans, or engagements with third states which are in the course of developing such plans to provide guidance and share experiences.
5. The representative of the Netherlands also informed the Group about his country's intention to make business and human rights one of the priorities for its upcoming presidency of the Council of the European Union in January 2016.
6. The representative of the Office of the United Nations High Commissioner for Human Rights presented the current status of its respective work in the field, in particular the third UN Forum on Business and Human Rights in Geneva (1-3 December 2014), a recent regional forum on business and human rights in Africa (Addis Abeba, 16-18 September 2014) and a forthcoming regional forum in Asia in 2015. She gave information about the first meeting of the Open-ended Intergovernmental Working Group on the elaboration of a legally binding instrument on transnational corporations and other business enterprises with respect to human rights, established by the Human Rights Council in June 2014, which will be held later this year. Moreover, she also briefed the Group about the OHCHR's business accountability and remedy project.
7. The representative of the European Commission informed the Group about recent developments in the European Union, including its forthcoming corporate social responsibility strategy for the period 2015-2020.

Item 3: Elaboration of one or more non-binding instruments

8. The Group continued the discussion of the draft recommendation, taking into account the guidance provided by the CDDH at its last meeting in November 2014, in particular the CDDH's comments that the length of the draft recommendation should be reduced, and that certain issues should rather be included in the explanatory memorandum that accompanies the draft recommendation (see document CDDH(2014)R82, para. 16). The draft instrument as discussed and revised by the Group appears in Appendix III.

9. The Group noted that the results of the fourth meeting will be discussed by the CDDH at its 83rd meeting (17 - 19 June 2015). On the basis of the discussion, the CDDH may wish to provide new instructions to the Group for its fifth meeting in September. In view of that meeting, the Group decided to ask the CDDH for guidance whether:

- In addition to the already existing sub-chapters on “Civil liability on business-related human rights abuses” and “Criminal liability for business-related human rights abuses”, the CDDH-CORP should also cover in the recommendation access to remedies under administrative law in view of the fact that any paragraphs on this issue would still have to be drafted;
- The sections on special measures for workers, indigenous people and children should be maintained in the draft recommendation in view of the fact that no in-depth discussion of these sections has yet taken place.

The Secretariat was instructed to revise the language of paragraph 46 of the draft recommendation, with the aim of ensuring coherence with the case-law of the European Court of Human Rights.

10. The Group instructed the Secretariat, together with the Chair, to revise and edit the draft recommendation in the light of the guidance given in June by the CDDH, and send a revised version of the instrument by 15 July 2015.

11. The Group also instructed the Secretariat, together with the Chair, to complete the draft explanatory memorandum for the recommendation in light of the progress made at the current meeting, and circulate a revised version by 30 May 2015. It decided that further comments on this memorandum should then be made by members and observers to the Secretariat (Matthias.Kloth@coe.int; Corinne.Gavrilovic@coe.int) by 31 August 2015.

Item 4: Other business

12. The CDDH-CORP will hold its fifth and final meeting in Strasbourg from 23 to 25 September 2015.

APPENDIX I
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APPENDIX II

Agenda

Item 1: Opening of the meeting and adoption of the agenda

Item 2: Information on recent relevant national and international developments

Working document:

Report on the Council of Europe participation to the 3rd United Nations Forum on Business and Human Rights (CDDH-CORP(2014)14)

Item 3: Elaboration of one or more non-binding instruments on human rights and business

Working documents:

Draft recommendation of the Committee of Ministers to member States on human rights and business (Appendix III to document CDDH-CORP(2014)R3)

Draft explanatory memorandum for the draft Committee of Ministers recommendation to member States on human rights and business (CDDH-CORP(2015)01)

Comments on the draft explanatory memorandum by members and observers (CDDH-CORP(2015)02)

Reference documents:

Relevant excerpt of the report of the 82nd CDDH plenary meeting (CDDH-CORP(2014)13)

Corporate social responsibility in the field of human rights – Proposals and suggestions of issues for further consideration (updated version, June 2014 (CDDH-CORP(2014)007add.))

Existing obligations of member States under Council of Europe treaties and other instruments in the context of human rights and business (CDDH-CORP(2014)08)

Item 4: Other business

APPENDIX III

Recommendation of the Committee of Ministers to member States on human rights and business

[a]¹ The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe;

[b] Considering that the aim of the Council of Europe is to achieve a greater unity among its member States, *inter alia*, by promoting common standards and developing actions in the field of human rights;

[c] Believing in the economic and social progress as a means to promote the aims of the Council of Europe;

[d] Reaffirming its commitment to the protection of all human rights stated in the European Convention on Human Rights and the European Social Charter, including the revised European Social Charter;

[e] Recalling the member States' obligation to secure to everyone within their jurisdiction the rights and freedoms defined in the European Convention on Human Rights, including providing an effective remedy before a national authority for violation of those rights and freedoms, and their obligations arising, as far as they have ratified them, from the (revised) European Social Charter as well as from other European and international human rights instruments;

[f] Reaffirming that all human rights and fundamental freedoms are universal, indivisible, interdependent and interrelated;

[g] Recognising that business enterprises have a responsibility to respect human rights [and to [effectively] contribute to their realisation];

[h] [Recognising that corporate liability for human rights abuses is not precluded by international law [and may potentially extend to] / [, including] international crimes, such as genocide, war crimes and crimes against humanity] // [Recognising that international law does not preclude that business enterprises be held liable for international crimes such as genocide, war crimes and crimes against humanity] // [Recognising that business enterprises may be held liable for human rights abuses, potentially extending to crimes under international law such as genocide, war crimes, crimes against humanity, torture and inhuman or degrading treatment, enforced disappearances, unlawful killing, and forced labour and slavery]];

[i] Considering the United Nations "Protect, Respect and Remedy" Framework, welcomed by the United Nations Human Rights Council on 18 June 2008, and the United Nations "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect, and Remedy'" Framework,

¹ Note by the Secretariat, to be removed from the final version: preambular paragraphs are provisionally numbered only for reasons of convenience during the negotiation process and will be deleted in the final document.

endorsed by the United Nations Human Rights Council on 16 June 2011 (“the UN Guiding Principles on Business and Human Rights”);

[[j] Considering the United Nations Committee on the Rights of the Child’s General comment No. 16 on State obligations regarding the impact of the business sector on children’s rights addressed in 2013 to all States that have ratified the United Nations Convention on the Rights of the Child;]

[k] Recalling its Declaration on the UN Guiding Principles on Business and Human Rights of 16 April 2014 and, in particular, that their effective implementation, by both States and business enterprises, is essential to ensure respect for human rights in the business context;

[l] Reaffirming its willingness to contribute to the implementation and development of the UN Guiding Principles on Business and Human Rights at the European level by making a further step to effectively prevent and remedy business-related human rights abuses;

Recommends that the governments of the member States:

1. review their national legislation and practice to ensure that they comply with the legal requirements, principles and further guidance set out in the appendix, and evaluate the effectiveness of the measures taken at regular intervals;
2. ensure, by appropriate means and action, a wide dissemination of this Recommendation among competent authorities and stakeholders, with a view to raising awareness of the corporate responsibility to respect human rights and contribute to their realisation;
3. share examples of good practices related to the implementation of this Recommendation with a view to their inclusion in a shared information system, established and maintained by the Council of Europe, which is accessible to the public, including through reference to existing information systems;
4. share plans on the national implementation of the UN Guiding Principles on Business and Human Rights (“National action plans”), including revised national action plans as well as their best practices concerning the development and review of national action plans in a shared information system, established and maintained by the Council of Europe, which is accessible to the public, including through reference to existing information systems;
5. examine, within the Committee of Ministers the implementation of this Recommendation three years after its adoption, with the participation of all relevant stakeholders, including the business organisations and enterprises, national human rights institutions, trade unions and non-governmental organisations.

Appendix to the Recommendation

I. Implementation of the UN Guiding Principles on Business and Human Rights

a. General Measures

1. Member States should effectively implement the UN Guiding Principles on Business and Human Rights as the current globally agreed baseline in the field of business and human rights, which rests on three pillars:

- States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms ("The State duty to protect human rights");
- The role of business enterprises as specialised organs of society performing specialised functions, required to comply with all applicable laws and to respect human rights ("The corporate responsibility to respect human rights");
- The need for rights and obligations to be matched to appropriate and effective remedies when breached ("Access to remedy").

2. They should implement the UN Guiding Principles on Business and Human Rights as well as this Recommendation in a non-discriminatory manner.

3. In their implementation of the UN Guiding Principles on Business and Human Rights, member States should take into account the full spectrum of international human rights standards and ensure consistency and coherence at all levels of government.

4. In addition to their own implementation of the UN Guiding Principles on Business and Human Rights, member States should set out clearly the expectation that all business enterprises, which are domiciled or operate within their jurisdiction, to likewise implement these Principles throughout their operations.

5. Where necessary, member States should foster the translation and dissemination of the UN Guiding Principles, particularly in specific sectors or with regard to certain types of business enterprises where awareness is not yet sufficiently advanced, or in relation to which the risk of human rights abuses is high.

6. Member States should [encourage] / [require] third countries to implement the UN Guiding Principles on Business and Human Rights and other relevant international standards. They should also consider developing partnerships with or offering other support to countries seeking to implement those standards.

7. Member States should offer advice and support to third countries wishing to strengthen, in line with the UN Guiding Principles on Business and Human Rights, their own judicial and non-judicial grievance mechanisms and to reduce barriers to remedies against business-related human rights abuses within their jurisdiction.

8. Member States should support the work of the United Nations, including in particular the UN Working Group on Business and Human Rights, to promote the effective and comprehensive dissemination and implementation of the UN Guiding Principles on Business and Human Rights.

b. National action plans

9. If they have not yet done so, member States should develop and adopt plans on the national implementation of the UN Guiding Principles on Business and Human Rights (“National action plans”) which address all three pillars of those Principles and this Recommendation. They should ensure their publication and wide distribution.

10. In the process of developing such national action plans, member States should refer to the available guidance, including that provided by the UN Working Group on Business and Human Rights as well as seek the expertise and involvement of all stakeholders, including business organisations and enterprises, national human rights institutions, trade unions and non-governmental organisations.

11. With the participation of all stakeholders, member States should continuously monitor the implementation of their national action plans and, periodically evaluate and update them. Bearing in mind that a suitable model may vary from State to State, member States should share their best practices concerning the development and review of national action plans amongst each other, with third countries and relevant stakeholders.

II. Measures to promote the State duty to protect human rights

12. Member states should ensure that everyone within their jurisdiction may easily have access to information about existing human rights in the context of corporate responsibility in a language which they can understand.

13. Within their jurisdiction, member States have a duty [in certain circumstances] to protect individuals against human rights abuses by third parties, including business enterprises. This includes their positive and procedural obligations under the European Convention on Human Rights (ETS No. 5), as applied and interpreted by the European Court of Human Rights. Such obligations consist of requirements to prevent human rights violations where the competent authorities had known or ought to have known of a [real] risk of such violations, to undertake an independent and impartial, adequate, prompt and expeditious official investigation where such violations are alleged to have occurred, to prosecute where the outcome of an investigation warrants this, and to take all appropriate measures to establish accessible and effective mechanisms which require that the victims of such violations receive prompt and adequate reparation for the harm suffered.

14. The (revised) European Social Charter (ETS Nos. 35 and 163)[, as applied and interpreted by the European Committee of Social Rights], is another key legal instrument that affords protection against [corporate] / [business-related]² human rights abuses. Member States which have not yet ratified the (revised) European Social Charter and the Additional Protocol to the European Social Charter providing for a system of collective complaints (ETS No. 158) should consider doing so. Those which have ratified these instruments should consider increasing the number of accepted provisions. [Member States should endeavour to respect the (revised) European Social Charter, in particular with regard to the rights of workers, even where they are not yet bound by particular provisions.]

15. In line with their international obligations, member States should ensure that their laws relating to employment are effectively implemented and require business enterprises not to discriminate against employees on any grounds, such as sex, sexual orientation and gender identity, race, colour, age, language, religion, political or other opinion, national and social origin, association with a national minority, trade union membership or activity, disability, property, birth or other status.

16. Member States should ensure that their legislation creates conditions that are conducive to the respect for human rights by business enterprises and do not create barriers to effective accountability and remedy for business-related human rights abuses. They should evaluate new relevant legislation with regard to any impact on human rights.

[III. Measures to promote the corporate responsibility to respect human rights]

17. [Member States should:

- Apply such measures as may be necessary to require all business enterprises operating within their territorial jurisdiction to respect human rights;
- Apply such measures as may be necessary to require, as appropriate, all business enterprises domiciled in their jurisdiction to respect human rights throughout their operations abroad;
- Encourage and support these business enterprises by other means to respect human rights throughout their operations.]

18. Member States should apply such measures as may be necessary to encourage or, where appropriate, require that:

- business enterprises domiciled within their jurisdiction carry out human rights due diligence throughout their operations;
- business enterprises conducting substantial activities within their jurisdiction carry out human rights due diligence in respect of such activities.

² Note by the Secretariat, to be removed from the final version: Two alternatives are reflected in this paragraph; the CDDH-CORP will come back to this issue at its next meeting. In the following, only the term ‘business-related human rights abuses’ is being used for reasons of brevity, it being understood that, whichever of the two alternatives is being chosen, it will apply consistently throughout the whole text. Note that this issue arises only in the English version.

19. Member States should encourage [and, where appropriate, require] business enterprises referred to in paragraph 18 to display greater transparency in order to enable them better to “know and show” their corporate responsibility to respect human rights. They should further encourage [and, where appropriate, require] such business enterprises to meet this responsibility by putting in place a respective policy commitment, a human rights due-diligence process to identify, prevent, mitigate, and account for how they address their impacts on human rights, as well as processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute. Member States should also encourage [and, where appropriate, require] such business enterprises to include information on their efforts on corporate responsibility to respect human rights in, for example, their annual reports.

20. Member States should adopt effective enforcement measures, with respect to human rights and business standards, and ensure that relevant regulatory bodies are engaged to this end.

[21. Member States should apply additional measures to require business enterprises to respect human rights, including, where appropriate, by carrying out human rights due diligence, if they:

- Own or control business enterprises;
- Grant substantial support and deliver services through agencies, such as export credit agencies and official investment insurance or guarantee agencies;
- Grant export licenses to business enterprises;
- Conduct commercial transactions with business enterprises, including through the conclusion of public procurement contracts;
- Privatised the delivery of services that may impact upon the enjoyment of human rights.]

22. Member States should evaluate the measures taken in this regard and respond to any deficiencies, as necessary. They should provide for consequences if such respect for human rights is not honoured.

23. Before concluding and during the term of trade and investment agreements, member States should consider possible human rights impacts of such agreements and take appropriate steps to mitigate and address identified risks of adverse human rights impacts. As part of those steps, member States should incorporate human rights clauses in their trade and investment treaties.

24. In order not to facilitate the administration of capital punishment or torture in third countries by providing goods which could be used to carry out such acts, member States should ensure that business enterprises referred to in paragraph 18 do not trade in equipment which has no practical use other than for the purpose of capital punishment, torture, or other cruel, inhuman or degrading treatment or punishment.

25. Member States should, when business enterprises referred to in paragraph 18 are represented in a trade mission to member States and third countries, address and discuss possible adverse effects future operations might have on the human rights situation in those countries and require participating companies to respect the UN Guiding Principles or the OECD Guidelines for Multinational Enterprises.

26. Member States should advise, for example, through their competent ministries or diplomatic or consular missions, business enterprises which intend to operate in a third country on sensitive human rights issues, including challenges faced by individuals from groups or populations that may be at heightened risks of becoming vulnerable or marginalised, and with due regard that may be faced by women and men.

27. Member States should be in a position to inform business enterprises referred to in paragraph 18 on the potential human rights impacts of carrying out operations in conflict areas, and in other sectors or areas that involve high risk of negative human rights impact and provide assistance to these business enterprises, in line with relevant international instruments, such as the OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones or the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict Affected and High-Risk Areas. Member States should facilitate business enterprises' adherence to sector-specific standards, such as the Voluntary Principles on Security and Human Rights and the International Code of Conduct for Private Security Providers. Member States should consider performing a sector-risk analysis in order to identify the sectors that are most at risk of getting involved in negative impact on human rights.

28. Where appropriate, member States should promote, support and participate in training and workshops for business enterprises and their local trading partners as well as impacted communities, including the demonstration of human rights due diligence in their business activities in third countries. This should be done in cooperation with business organisations and enterprises, national human rights institutions, trade unions and non-governmental organisations.

29. Member States should offer training on business and human rights for governmental officials whose tasks are relevant to the issue of corporate responsibility, such as for example diplomatic and consular staff assigned to working in third countries with a sensitive human rights situation.

IV. Measures to promote access to remedy

a. Access to judicial mechanisms

30. Member States should review, on a regular basis, the effective implementation of their obligations under Articles 6 and 13 of the European Convention on Human Rights, and other international and European human rights instruments, to grant to everyone access to court in the determination of his civil rights, as well as to everyone whose rights have been violated under these instruments an effective remedy before a national authority, including where such violation arises from business activity.

[31. Member States should identify and remove any barriers in their legal system to remedy in cases of business-related human rights abuses, irrespective of where the abuse occurred.]

i. Civil liability for business-related human rights abuses

32. Member States should apply such legislative or other measures as may be necessary to ensure that human rights abuses caused [or contributed to] by business enterprises give rise to civil liability under their respective laws.

33. Member States which have not expressed their consent to be bound by the Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters of 30 October 2007 (the “Lugano Convention”) should consider doing so.

34. Member States should apply such legislative or other measures as may be necessary to ensure that their domestic courts have jurisdiction over civil claims related to business-related human rights abuses against business enterprises domiciled within their jurisdiction, irrespective of where the abuse occurred. The doctrine of *forum non conveniens* should not be applied in these cases.

35. Member States should consider allowing their domestic courts to exercise jurisdiction over civil claims related to business-related human rights abuses against subsidiaries, wherever based, of business enterprises domiciled within their jurisdiction, if such claims are closely connected with civil claims against the latter enterprises.

36. Where business enterprise are not domiciled within their jurisdiction, member States should consider allowing their domestic courts to exercise jurisdiction over civil claims related to business-related human rights abuses against such a business enterprise, if manifestly no other effective forum guaranteeing a fair trial is available (*forum necessitatis*) and there is a sufficient connection to the member State concerned.

37. Member States should apply such legislative and other measures as may be necessary to ensure that civil claims related to business-related human rights abuses against business enterprises subject to their jurisdiction are not unduly restricted by the application of doctrines such as “the act of state” or “political question”.

38. Member States should also consider adopting measures that allow entities such as foundations, associations, trade unions and other organisations to bring claims on behalf of alleged victims.

[39. Member States should apply such legislative or other measures as may be necessary to ensure that their domestic courts apply the applicable law consistent with the European Convention on Human Rights, and other international and European human rights instruments.]

[40. Member States should apply such legislative or other measures as may be necessary to ensure that their domestic courts assess human rights due diligence on the basis of the law where the business enterprise is domiciled.]

41. When alleged victims of business-related human rights abuses bring civil claims related to such abuses against business enterprises, member States should ensure that their legal systems sufficiently guarantee an equality of arms within the meaning of Article 6 of the European Convention on Human Rights. In particular, they should provide in their legal systems for legal aid schemes regarding claims concerning such abuses. Such legal aid should be obtainable in a manner that is practical and effective.

42. Member States should consider possible solutions for the collective determination of similar cases in respect of business-related human rights abuses.

43. Member States should consider revising their civil procedures where the applicable rules impede the access to information in the possession of the defendant or a third party, if such information is relevant for victims of business-related human rights abuses to substantiate their claims, with due regard for confidentiality considerations.

ii. Criminal liability for business-related human rights abuses

44. Member States should consider applying such legislative and other measures as may be necessary to ensure that business enterprises can be held liable under their criminal law or other equivalent law for the commission of:

- Crimes under international law;
- Offences established in accordance with treaties, such as the Criminal Law Convention on Corruption (ETS No. 173), the Convention on Cybercrime (ETS No. 185), the Convention on Action against Human Trafficking (ETS No. 197), the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (ETS No. 201), the Convention on Preventing and Combating Violence against Women and Domestic Violence (ETS No. 210), the United Nations Convention against Transnational Organised Crime of 15 November 2000, and the United Nations Convention against Corruption of 31 October 2003, and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography; Member States which have not yet expressed their consent to be bound by these conventions should consider doing so;
- Other serious business-related human rights abuses.

Such measures should also ensure that business enterprises can be held liable for their participation in the commission of such crimes.

[45. Irrespective whether business enterprises can be held liable under criminal or other equivalent law, member States should apply such legislative and other measures as may be necessary to ensure that representatives of business enterprises can be held criminally liable for the commission of crimes under international law, offences established in accordance with international agreements, and other acts and omissions in respect of business-related human rights abuses.]

46. Irrespective of whether or not they are directed against natural or legal persons, investigations are to satisfy the effectiveness criteria under the European Convention on Human Rights, *i.e.* they are to be adequate, thorough, impartial and independent, prompt, and contain an element of public scrutiny, including the effective participation of victims in the investigation. Member States have a duty to prosecute where the outcome of an investigation warrants this. Given that victims are entitled to request an effective official investigation, any decision not to start an investigation, or to stay an investigation or prosecution is to be sufficiently reasoned.

47. Member States should ensure that statutes of limitations shall not apply to crimes under international law in respect of business enterprises where they do not apply to natural persons.

b. Access to non-judicial mechanisms

48. Member States should assist in raising awareness of and in facilitating access to non-judicial grievance mechanisms, and contribute to knowledge sharing of the available non-judicial grievance mechanisms.

49. In order to ensure the effectiveness of non-judicial grievance mechanisms, member States should provide for their own mechanisms to meet the effectiveness criteria listed in Principle 31 of the UN Guiding Principles on Business and Human Rights and the enforceability of their decisions. They should encourage non-State based non-judicial grievance mechanisms to ensure that they also meet these criteria.

50. Member States should evaluate the adequacy and availability of State-based non-judicial mechanisms, such as labor inspectorates, consumer protection authorities and environmental agencies, national human rights institutions, ombudsperson institutions and national equality bodies, as well as the remedies they may provide for. This could include extending the mandate of existing State-based non-judicial bodies or creating new ones with the capacity to receive and adjudicate complaints of business-related human rights abuses and afford reparations to the victims.

51. Member States which have not yet done so should take steps to adhere to and/or implement the Guidelines for Multinational Enterprises of the Organisation for Economic Cooperation and Development (OECD Guidelines). They should support the effective implementation of the Tripartite declaration of principles concerning multinational enterprises and social policy of the International Labour Organisation.

52. Those member States which have implemented the OECD Guidelines should ensure the effectiveness of their National Contact Points (NCPs) established under those Guidelines, in particular by making available human and financial resources so that they can carry out their responsibilities; ensuring that the NCPs are visible, accessible, transparent, accountable and impartial; promoting dialogue-based approaches; [allowing the NCPs to carry out investigations on their own motion]; considering whether to make public the recommendations of NCPs; and that such recommendations are

taken into account by governmental authorities in their decisions on public procurement, export credits or investment guarantees.

53. Member States should encourage business enterprises referred to in paragraph 18 to establish their own grievance mechanisms in line with the effectiveness criteria in Principle 31 of the UN Guiding Principles. Where such mechanisms are being put in place, it should be ensured that they are not used to impede the alleged victim's access to the regular court system or State-based non-judicial mechanisms.

c. General measures

54. In order to improve the access to remedies for victims of business-related human rights abuses, member States should fulfil their obligations of judicial co-operation amongst each other or with third countries, including criminal investigations, mutual legal assistance, exchange of information and data, collection of evidence as well as the recognition and enforcement of judgments, in a manner consistent with the human rights of all parties involved in the proceedings. To that end, member States are encouraged to intensify their cooperation, amongst each other and with third countries and with non-State based non-judicial grievance mechanisms, beyond their existing obligations. Moreover, member States should undertake more efforts to support each other through technical cooperation and the exchange of experiences.

55. Member States should provide for sufficient resources and consider developing special guidance and training for judges, prosecutors, inspectors, arbitrators and mediators to deal with business-related human rights abuses, in particular those which have a transnational component.

56. Alleged victims of business-related human rights abuses within the territorial jurisdiction of member States should have general access to information about the content of the respective human rights as well as about existing judicial and non-judicial remedies in a language which they can understand.

[V. Special measures to protect workers

57. Because of their particular vulnerability in the globalised economy, member States should ensure that the human rights of workers are especially protected throughout the operations of business enterprises.

58. In view of their obligations under the UN Covenant on Economic, Social and Cultural Rights of 19 December 1966, they should thereby take into account of the respective General comments. Member States should also reinforce efforts to meet their obligations with regard to workers under the European Convention on Human Rights, the (revised) European Social Charter, the conventions of the International Labour Organisation concerning in particular the freedom of association, the prohibition discrimination, child and forced labour as well as all other relevant international instruments including especially the health and safety of workers.

59. Member States should [encourage] / [require] relevant stakeholders such as national human rights institutions and trade unions to participate in the elaboration and implementation of policies on matters which are particularly sensitive with regard to workers' rights.]

VI. Special measures to protect children

60. Because of their particular vulnerability, member States [should ensure] that the human rights of children are especially protected throughout the operations of business enterprises.

61. In view of their obligations under the UN Convention on the Rights of the Child of 20 November 1989[and its Optional Protocols], they should thereby take into account General comment No. 16 on State obligations regarding the impact of the business sector on children's rights adopted by the UN Committee on the Rights of the Child. Member States should also reinforce efforts to meet their obligations with regard to children under the European Convention on Human Rights, the (revised) European Social Charter, the conventions of the International Labour Organisation concerning the abolition of child labour, and other relevant international instruments.

62. Member States should [encourage] / [require] business enterprises to participate in the elaboration and implementation of policies on matters which are particularly sensitive with regard to children's rights, such as for example those measures provided for by the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (ETS No. 201).

[63. Member states should implement measures to remove social, economic and juridical barriers so that children can have access to effective judicial mechanisms without discrimination of any kind. Children and their representatives should be provided with information about remedies, both of judicial and non judicial nature, they should be allowed to initiate proceedings in their own right and have access to legal aid and the support of lawyers and legal aid providers in bringing cases against business enterprises to ensure equality of arms.]

VII. Special measure to protect indigenous peoples and communities

64. [Because of their particular vulnerability,] / [With reference to the special rights of indigenous peoples and communities as defined in international standards,]member States [should ensure] that the human rights of indigenous peoples and communities are [especially]protected throughout the operations of business enterprises. [Because of the particular vulnerability of indigenous peoples and communities, member States should formulate and implement legislative and other measures to [encourage] / [require] all business enterprises domiciled[or carrying out substantial business activities] within their jurisdiction to especially protect the rights of indigenous peoples and communities throughout their operations.]

65. Member states should reinforce efforts to meet their commitments with regard to business and the human rights of indigenous peoples and communities under the United Nations Declaration on the Rights of Indigenous Peoples of 13 September 2007, the ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries of 27 June 1989, [the UN Convention on Racial Discrimination

[and any other provision of international treaties [specifically aimed at] / [referring to] the preservation of the rights and culture of indigenous peoples and communities. [Member states which have not yet ratified these conventions are invited to do so.]

[66. Member states should apply such legislative and other measures as may be necessary to ensure that the free, prior, and informed consent of indigenous peoples and communities [within their jurisdiction]is obtained for operations of business enterprises, which take place on territories traditionally owned or otherwise occupied or used by those peoples and communities or which otherwise negatively affect their living conditions.]

[67. Member States should apply such legislative and other measures as may be necessary to ensure that business enterprises domiciled [or carrying out substantial business-activities] in their jurisdiction (a) respect the rights and interests of indigenous peoples and communities, and (b) establish mutually agreed terms with indigenous peoples and communities [when] / [prior to] accessing [land and/or]natural resources on territories traditionally owned or otherwise occupied or used by those peoples and communities or traditional knowledge associated with those resources that is held by those peoples and communities.]

68. Member states should pay special attention to the human rights of indigenous peoples and communities in their national action plans[on human rights and business].

VIII. The role of human rights defenders[and civil society]

69. Member States should [themselves and should][encourage] / [require] business enterprises to consult and seek the expertise of human rights defenders[and civil society], in particular national human rights institutions, when identifying and assessing potential adverse human rights impacts of their activities or their business relationships.

70. Member States should ensure that the legitimate and peaceful activities of human rights defenders within their jurisdiction who focus on business-related impacts on human rights are not obstructed, whether through political pressure, harassment, politically motivated economic compulsion or otherwise. In particular, the fundamental rights enjoyed by human rights defenders in accordance with Article 10 and Article 11 of the European Convention on Human Rights must be respected.

71. Member States should [protect and]also support, for example through[the establishment of rapid response mechanisms and the issuance of specific guidance for] their diplomatic and consular missions, the work of human rights defenders who focus on business-related impacts on human rights in third countries, in accordance with existing international and European standards.

[IX. Consultation

72. Member States should make clear to business enterprises that human rights due diligence processes must include, where appropriate, project-specific human rights impact assessments and effective and meaningful consultation with individuals and communities likely to be affected by these projects. This is particularly relevant to, though not exclusive of, industrial and infrastructure projects

and projects requiring the use of large extensions of land or the exploitation of natural resources.

73. Human rights impact assessments should be carried out prior to the initiation of a project and regularly throughout the project's entire life cycle. Affected individuals and communities should be involved at every stage of the impact assessment process and should be consulted regarding potential impacts, prevention, mitigation and remedial measures. They should have access to full, clear, timely and objective information on all relevant aspects of the planned activities. In carrying out impact assessments, business enterprises should be required to give special consideration to potential impacts on the human rights of women and of certain groups, such as children, migrant workers, Indigenous peoples, minorities and women within those groups, who, due to their specific circumstances, might require special measures to ensure respect for the relevant international human rights standards applicable to them.]