

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Strasbourg, 29 September 2015

CDDH-CORP(2015)R5

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

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

Meeting report

5th meeting
23 – 25 September 2015

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 fifth meeting in Strasbourg from 23 to 25 September 2015 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](#). 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

2. The Secretariat informed the participants about recent relevant national and international developments, including the adoption of national action plans by Council of Europe member States which were not represented, the recent "Status report of implementation of the UN Guiding Principles on Business and Human Rights" by the European Commission of July 2015, as well as its participation in a recent seminar on "Access to justice in the EU for victims of corporate related human rights abuses" organised by the Tilburg Law School. It also informed participants about the new module "Business and human rights" of the Council of Europe HELP Programme (Human Rights Education for Legal Professionals). Germany, Hungary, Norway and the Ukraine informed the participants about the ongoing elaboration of their national action plans on business and human rights, while Finland and the United Kingdom reported about follow-up activities on their already existing plans. France informed about the recent state of play in the legislation process concerning due diligence requirements for companies. Switzerland provided information on a forthcoming conference entitled "Towards guaranteeing equal access for women to justice" which is co-organised by the Swiss Federal Office for gender equality and the Gender Equality Commission of the Council of Europe (GEC) (Bern, 15-16 October 2015). ACCESS Facility informed the Group about its Model Curriculum for the Advanced Training for Company-Community Mediation in Complex Environments, piloted this summer in Cape Town.

3. The representative of OHCHR informed about its "Accountability and Remedy Project" which aims to enhance accountability and access to remedy particularly in cases of business involvement with severe human rights abuses. A series of consultations on the project is planned to prepare recommendations to the Human Rights Council in 2016 and all stakeholders are encouraged to participate in those consultations. OHCHR also briefed participants about the first session of the inter-governmental working group to elaborate a legally binding instrument on human rights and transnational corporations which took place from 6 - 10 July 2015, as well as about the forthcoming Fourth UN Forum on Business and Human Rights (Geneva, 16-18 November 2015).

Item 3: Information about the 83rd CDDH meeting (17-19 June 2015)

4. The Secretariat informed participants about the discussion the CDDH had on the draft recommendation and the guidance given to the Group at the 83rd CDDH meeting in June 2015 (see document CDDH-CORP(2015)03).

Item 4: Elaboration of one or more non-binding instruments on human rights and business

5. The Group continued the discussion of the draft recommendation, taking into account the guidance provided by the CDDH at its last meeting in June 2015, in particular that the chapters previously undiscussed should be included in the text, but that the overall length of the draft recommendation should be reduced (see document CDDH(2015)R83, para. 13). The draft instrument as discussed and revised by the Group appears in Appendix III.

6. The Group instructed the Secretariat to revise the draft explanatory memorandum in light of the comments made in writing by participants as well as changes made in the draft recommendation at the present meeting. It instructed the Secretariat to circulate a revised and updated version of the explanatory memorandum by **20 October 2015**, with the possibility to make further written comments by **31 October 2015** (comments should be sent to: Corinne.Gavrilovic@coe.int).

Item 5: Other business

7. The Group noted that the Chair will be unable to attend the Fourth UN Forum on Business and Human Rights on behalf of the CDDH, and instructed the Secretariat to liaise with the Vice-Chair about a possible attendance. The CDDH-CORP will hold its sixth and final meeting in Strasbourg from 2 to 4 November 2015.

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APPENDIX I
LIST OF PARTICIPANTS

MEMBER STATES/ETATS MEMBRES

ALBANIA / ALBANIE

Brunilda LILO, State Advocate, Ministry of Justice

AUSTRIA / AUTRICHE

Eva FEHRINGER, Deputy Head International and European Social Policy and Labour Law

BELGIUM/ BELGIQUE

Ricardo PARRONDO RAMOS, Ministère de la Justice Direction générale Législation

FINLAND/FINLANDE

Krista OINONEN, Legal Counsellor, Deputy Director, Unit for Human Rights Courts and Conventions, Legal Service, Ministry for Foreign Affairs

FRANCE

Hugo WAVRIN, Ministère des Affaires étrangères, Direction des affaires juridiques

GERMANY / ALLEMAGNE

Gabriele SCHERER, Federal Ministry of Justice and Consumer Protection

HUNGARY / HONGRIE

Zoltán TALLÓDI, Agent before ECHR, Ministry of Public Administration and Justice

LATVIA / LETTONIE

Natalja FREIMANE, Third Secretary, Representative before European Court of Human Rights, Ministry of Foreign Affairs

THE NETHERLANDS / PAYS-BAS

Rene LEFEBER (*Chair*), Legal Counsel, Ministry of Foreign Affairs, International Law Division

Gilles GOEDHART, Senior Policy Officer Business and Human Rights, Ministry of Foreign Affairs, Department of Multilateral Institutions and Human Rights

NORWAY/NORVEGE

Helle KLEM, Ministry of Foreign Affairs

POLAND / POLOGNE

Marta BIELINSKA, Ministry of Foreign Affairs

RUSSIAN FEDERATION / FEDERATION DE RUSSIE

Vladislav ERMAKOV, Ministry of Foreign Affairs

SWITZERLAND/SUISSE

Rodrigo RODRIGUEZ, Attorney-at-Law, Scientific Adviser, Federal Department of Justice and Police, Federal Office of Justice

TURKEY / TURQUIE

Ms. Sevgi ATEŞ, Assistant Expert, Ministry of Labour and Social Security

UKRAINE

Oleksiy ILNITSKYI, Cancellor of the Ministry for Foreign Affairs

UNITED KINGDOM / ROYAUME-UNI

Stephen LOWE, Head, Business and Human Rights, Freedom of Expression Team, Human Rights and Democracy Department at the Foreign and Commonwealth Office

PARTICIPANTS**Conference of INGOs of the Council of Europe / Conférence des OING du Conseil de l'Europe**

Jean-Bernard MARIE

JAPAN / JAPON

Wakana FUJITA, Chargée de mission, Consulat Général du Japon

MEXICO / MEXIQUE

Diego SANDOVAL PIMENTEL, Deputy to the Permanent Observer, Permanent Mission of Mexico to the Council of Europe

OBSERVERS / OBSERVATEURS**Amnesty International**

Gabriela QUIJANO, Business and Human Rights Legal Adviser, Global Thematic Issues

International Commission of Jurists (ICJ) / Commission internationale de Juristes (CIJ)

Carlos LOPEZ, Senior Legal Advisor

International Federation of Human Rights / Fédération internationale des Ligues des Droits de l'Homme (FIDH)

Matthias SANT'ANA , member of FIDH's member organisation in Belgium

International Organisation of Employers / Organisation internationale des employeurs (OIE)

Matthias THORNS, Senior Adviser

ACCESS Facility

Serge BRONKHORST, Managing Director

European Trade Union Confederation (ETUC) / Confédération européenne des syndicats (CES)

Klaus LÖRCHER, Human Rights Adviser

The European Coalition for Corporate Justice (ECCJ) / La Coalition Européenne pour la Responsabilité Sociale et Environnementale des Entreprises (ECCJ)

Marilyn CROSER, member of the ECCJ Steering Group and Director of the UK Corporate Responsibility Coalition

Office of the High Commissioner for Human Rights (OHCHR)

Lene WENDLAND, Adviser on Business & Human Rights, Research and Right to Development Division, Office of the High Commissioner for Human Rights

UNICEF

Patrick GEARY

European Social Charter / Charte sociale européenne

Florent DUPLOUY

Children's Rights Division / Division des Droits des Enfants

Mikael POUTIERS

SECRETARIAT

Alfonso DE SALAS, Secretary to the CDDH, Head of Division, Human Rights Intergovernmental Cooperation Division / Division de la coopération intergouvernementale en matière de droits de l'Homme

Matthias KLOTH, Secretary to the CDDH-CORP, Administrator, Cooperation with International institutions and Civil Society Division / Division de la coopération avec les institutions internationales et la société civile

Merete BJERREGAARD, Administrator / Administratrice, Human Rights Intergovernmental Cooperation Division / Division de la coopération intergouvernementale en matière de droits de l'Homme

Christy RUSH, Study Visitor / Visiteur d'étude

Corinne GAVRILOVIC, Assistant/Assistante, Human Rights Intergovernmental Cooperation Division / Division de la coopération intergouvernementale en matière de droits de l'Homme

INTERPRETERS / INTERPRETES

Julia TANNER

Didier JUNGLING

Bettina LUDEWIG

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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
- Item 3:** Information about the 83rd CDDH meeting (17–19 June 2015)
- Item 4:** Elaboration of one or more non-binding instruments on human rights and business
- Item 5:** Other business

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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]];

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.

[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, 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 with due regard to different gender-related risks.

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. Member States which have not expressed their consent to be bound by a convention referred to in this Recommendation should consider doing so.

[3a. Member States should give due consideration to statements, general comments, recommendations and thematic commentaries relating to human rights provisions of the relevant international and regional conventions provided by the competent monitoring bodies.]

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 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, 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. The State duty to protect human rights

17. Member States should:

- Apply such measures as may be necessary to require business enterprises operating within their territorial jurisdiction to respect human rights;
- Apply such measures as may be necessary to require, as appropriate, 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.

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 undertake an effective prosecution, 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 business-related 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. The corporate responsibility to respect human rights

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.

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. This implies 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, in consultation with relevant stakeholders, including in particular those whose rights might be impacted, 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 provide regular, or as when needed, information on their efforts on corporate responsibility to respect human rights.

[19a. Member States should encourage and, where appropriate, require business enterprises to conduct, as part of their human rights due diligence processes, project-specific human rights impact assessments which comprise effective and meaningful consultation with relevant stakeholders, in particular individuals and communities likely to be affected by these projects.]

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, that may be integrated into existing due diligence procedures, when member States:

- 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, to business enterprises;
- 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.

Member States should evaluate the measures taken and respond to any deficiencies, as necessary. They should provide for adequate 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, if they have not yet done so, human rights clauses in their trade and investment agreements or in other relevant conventions.]

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 domiciled within their jurisdiction do not trade 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.

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-affected 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.

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.

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.

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 by business enterprises [under their jurisdiction] 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 initiating the procedure for accession.

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 enterprises 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.

[36a. Where a member State owns or controls a business enterprise, or contracts with a business enterprise to provide public services, each member State should apply such

legislative and other measures as may be necessary to ensure that civil claims in connection with human rights abuses by such enterprises may be brought before its domestic courts, and that it will not invoke any privileges or immunities if the claim is brought before a domestic court.]

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 appropriate measures as may be necessary to ensure that their domestic courts refrain from applying a law that is incompatible with human rights, particularly the obligations under the European Convention on Human Rights, for example because it denies or limits access to remedy for business-related human rights abuses]

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 of whether business enterprises can be held liable under criminal or other equivalent law, member States should consider applying 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 that would constitute serious 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.

iii. Administrative remedies

47a. Member States should apply such legislative and other measures as may be necessary to ensure that decisions of competent authorities [such as those] granting support, delivering services or granting export licenses to business enterprises: (a) take into account human

rights risks, for example, on the basis of a human rights impact assessment; [(b) are made public;] and (b) are subject to administrative [or judicial] review.

[47b. Member States should apply such legislative and other measures as may be necessary to ensure that individuals and communities likely to be directly affected, trade unions and non-governmental organisations with a legitimate interest for administrative or judicial review of decisions as referred to in paragraph [47a.], if there are credible allegations that gross human rights violations are being committed in connection with the business activities that form the basis for such decisions.]

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. Member States should ensure that the rights of workers are protected throughout the operations of business enterprises.

58. Member States should reinforce efforts to meet their obligations with regard to workers under the UN Covenant on Economic, Social and Cultural Rights, the European Convention on Human Rights, the (revised) European Social Charter, the fundamental conventions of the International Labour Organisation concerning in particular the freedom of association, the right to collective bargaining, the prohibition of discrimination, child and forced labour, as well as all other relevant international instruments, including those relating

to the health and safety of workers and people working in the informal economy. Member States which have not yet ratified these instruments should consider doing so.

59. Member States should involve social partners in the elaboration and implementation of policies on matters which are particularly sensitive with regard to workers' rights.

[VI. Special measures

59a. Member States should pay particular attention to the rights and needs of, as well as the challenges faced by, individuals from groups or populations that may be at heightened risk of becoming vulnerable or marginalized.

1. Protection of children]

60. Member States [should ensure] that the rights of children are 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 consideration 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 child labour, and other relevant international instruments.

62. Member States should involve all relevant stakeholders in the elaboration and implementation of policies on matters which are particularly sensitive with regard to children's rights, such as measures provided for by the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (ETS No. 201).

[63. Recognising that children often lack access to relevant information and face particular difficulties in exercising their right to be heard, Member States should, in particular:

(a) [encourage or, where appropriate, require] that business enterprises specifically consider the rights of the child when carrying out human rights due diligence;

(b) implement measures to remove social, economic and juridical barriers so that children can have access to effective judicial mechanisms without discrimination of any kind, in accordance with the Guidelines of the Committee of Ministers of the Council of Europe on Child Friendly Justice;

(c) specifically consider the rights of children in their National Action Plans.]

2. Protection of indigenous peoples

64. Member States should require that business enterprises respect the rights of indigenous peoples, as defined by international standards, when operating within their territorial jurisdiction and, as appropriate, throughout their operations abroad when domiciled in their jurisdiction.

65. Member States should reinforce efforts to meet their commitments with regard to business and the rights of indigenous peoples under the United Nations Declaration on the Rights of Indigenous Peoples of 13 September 2007, the ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries of 27 June 1989, and any other international instrument providing protection to the rights and culture of indigenous peoples. 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 encourage or, where appropriate, require that business enterprises domiciled within their jurisdiction: (a) respect the rights and interests of indigenous peoples, and (b) consult and cooperate in good faith in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilisation or exploitation of mineral, water or other resources. With regard to business enterprises conducting substantial activities within their jurisdiction, member States should apply such measures in respect of those activities.

67. Member States should pay special attention to the rights of indigenous peoples in their National Action Plans.

VIII. Protection of human rights defenders

70. Member States should ensure that the 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 unlawful. 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 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.