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Speech by the President of the Conference of INGOs at the Council of Europe High-Level seminar on Human Rights and Business: “Promoting the effective implementation of global and regional instruments”, Strasbourg, 9 June 2017

Director,

Dear participants,

The Conference of INGOs of the Council of Europe has tackled the issue of respect for human rights by business head on and joined you, Ambassadors, in promoting Recommendation (2016) 3. Like you, ladies and gentlemen, we want the Council of Europe's recommendations and the UN's principles, which are both based on the three principles of protecting, respecting and remedying, to be properly implemented. To that end, we also call on national parliaments to pass regulations which will facilitate and require such respect.

Workers are key players in businesses but they are increasingly becoming the victims of an economic model that flouts fundamental rights. We cannot ignore the growing number of poor workers and we must bear in mind that respect for human dignity is one of the founding principles of our Human Rights Convention. In this connection, I see the need for two things at national level:

- establish a link and dialogue between the public antipoverty strategy and the national plan on human rights and business;
- organise broad public consultation processes concerning national action plans for human rights and business.

During its winter session, the Conference of INGOs held a side event on the regulation of the activities of multinationals for better respect for human rights and local development, which was attended by the Chair of the Committee of Ministers' Rapporteur Group on Human Rights, representatives of the Parliamentary Assembly, experts and INGOs. My message and my contribution today are therefore based on the key ideas expressed at that event by the guest speakers and on the recommendation which we are going to adopt during the summer session and which will, of course, be addressed to all Council of Europe bodies and the INGOs that are members of the Conference.

The effective implementation of the Committee of Ministers' recommendation is vital in Europe and for Europe. We must all take action to reduce the gap between recommendations and regulations and what actually happens on the ground. Only that way, through a results-based approach, will we be able to enhance social cohesion and respect for rights within the member states.

The basic principle is that the drafting of common instruments, both within businesses and within given geographical areas, should involve direct dialogue with the local society and the

civil society bodies defending the rights of the persons concerned. Shared responsibility takes shape through high-quality dialogue between the stakeholders concerned.

The question today is as follows: how can we work together to ensure that the Committee of Ministers' recommendation is a living legal instrument? From the examples of the other recommendations, we all know that measures which merely recommend action have limited impact within the member states because they are non-binding. Given the discrepancies between practices and standards, we also know that a binding instrument on respect for human rights by business with government support would not be immediately operational.

Recommendation (2016) 3 makes provision for its implementation to be examined no later than five years after its adoption. We therefore strongly urge the Committee of Ministers to establish an appropriate monitoring mechanism with regard to several criteria. At present, various steering committees are confronted with governments transmitting data irregularly and with a lack of uniformity in the data transmitted. The monitoring instrument would need to be able to communicate well in advance the criteria that would be applied in monitoring so that governments applied the same criteria in their national analyses. That would ensure that the data gathered within the member states were of the kind expected by the Council of Europe. The monitoring should be conducted by a group of independent experts and civil society. Naturally, if a body of this kind were to come into being, I would delegate the NGOs which are experts in this area.

Many transnational companies, whose head offices are located in Europe, invest in countries in Africa, Asia and Latin America, in their regional development, industrial expansion and the exploitation of their natural resources, thus creating major development potential for the countries and their inhabitants. We must ensure that transnational companies show full respect for human rights, both in the countries where they are headquartered and also in those in which they operate and to whose social and economic development they contribute. We must move towards a general obligation to draw up reciprocity agreements with local civil societies during impact assessments for industrial installations. While guides on respect for the right to free, informed and enlightened consent do exist, a requirement for reciprocity agreements would be a step forward.

Given this situation, it is essential to clarify and strengthen the legal links between parent companies and subsidiaries on the one hand and also between parent companies/subsidiaries and subcontractors on the other so as to combat any impunity here. Measures must be modelled on regulations based on the clear principles of separation and autonomy of companies. Standards must always be geared towards improvements.

It is also necessary to be very clear about the provisions designed to facilitate access to justice by victims and give effect to the rights of administrative and judicial appeal provided for in the recommendation. As the Commissioner for Human Rights indicated, the rights under greatest threat involve the right to privacy and to freedom of expression, the right to occupational safety and health and children's right not to work – modern slavery still exists – and also relate to the privatisation of services previously provided by the public authorities. We should place particular emphasis on the latter point, as it is not discussed enough. When a local or regional authority delegates its tasks to a private company (which increasingly frequently just involves public procurement tender processes), what oversight mechanisms do the authorities put in place to safeguard the fundamental rights of the

population concerned? Mere quality control based on customer satisfaction is not enough, unless the quality criteria are extended to include the various human rights, but that would seem to depend on the context.

Ensuring respect for environmental and social rights must be included in companies' plans and projects and in the conditions for their funding. At national level, banks and insurance companies should make funding for projects developed by companies conditional upon respect for human rights and fundamental freedoms. This is a priority requirement in the case of the rights of indigenous peoples. For the time being, only a few banks (five) have developed policies of this kind.

In conclusion, I would underline that the success of this recommendation will obviously depend on the willingness of businesses and the authorities to enhance respect for human rights. Above all, however, it will be determined by the watchfulness of civil society, its know-how and the pressure it exerts to ensure that things move forward in the right direction. I must urge the national and local NGOs concerned to ensure that Council of Europe member states take the necessary legislative and regulatory measures and set up suitable mechanisms for the proper implementation of the Committee of Ministers' recommendation, the legal impact of which will be strengthened by relevant monitoring mechanisms.

Thank you for your attention.

Anna Rurka