

Lima Declaration on human rights and business



FIDH member organizations from Asia, Africa and the Americas meeting in Lima between 9 and 11 July 2012 in an international seminar « Human Rights and Business at Crossroads: Challenges and Perspectives » have adopted the following Declaration:

Participants have taken note of recent developments at the international and regional levels in the area of business and human rights, including the adoption by the UN Human Rights Council of the Guiding Principles on Business and Human Rights and the revision of the OECD Guidelines for Multinational Enterprises. We welcome the wide recognition by many States and private actors of the state duty to protect, the corporate responsibility to respect and the rights of victims to access an effective remedy, now reflected in a number of instruments and initiatives at national, regional and international levels. In addition to noting that such recognition nevertheless remains limited to certain regions of the world, participants express concerns about the limitation of those instruments and the inherent tensions between the current model of economic development and the protection of human rights. In particular, participants deplore their non-binding nature and the lack of sufficient guidance towards home States to address governance gaps, to prevent companies operating abroad from committing violations and ensure they can be held accountable for such violations. Participants are preoccupied by the risk of divergence of approaches in the interpretation and operationalization of these instruments and recall the need to interpret them in light of international human rights law and States' national constitutions.

Moreover, a conducive environment for international investment tends to limit the ability of States to exercise their duty to protect human rights against foreign investors, particularly as a result of international investment arbitration.

In spite of efforts undertaken over the last ten years to strengthen corporate accountability for human rights and environmental abuses, the reality faced by affected communities around the world remains alarming: human rights violations involving companies are still widespread, those responsible are not being held accountable and victims lack access to effective remedies at the national, regional, international levels. In particular, participants express their concern about negative and often irreparable damage caused by mega-projects and extractive industries on the rights related to land, labour rights, the rights to health, water and food, as well as on the rights of indigenous peoples.

While the rights to participation and consultation as well as the right to free, prior and informed consent of indigenous peoples are protected under international human rights law and by related case law, most investment projects are implemented without proper consultation of those potentially affected. Access to investment contracts, impacts assessments and other relevant documents remain generally very difficult to obtain, seriously impeding any hope of effective consultation. Transparency and access to information must be the rule. Moreover, the funders' financial constraints, the pressure for flexible investment contexts and the search for rapid return on investments make companies rush to implement projects as swiftly as possible, undermining effective consultation of local communities, while consultation continues to be perceived as an obstacle to so-called "development".

Participants are also concerned that while the duty to protect human rights and to conduct proper consultation of those concerned lies with the States, consultations are more and more being carried out by the companies themselves in the framework of "meaningful stakeholder engagement". Instead of preventing harmful impacts, companies and investors tend to prefer to compensate harm in a manner which is not systematic (in many cases, there is no compensation at all) or inadequate, in contradiction with the right to reparation and, above all, in contradiction with international standards to ensure the prevention of human rights abuses.

Furthermore, those opposing investment projects or protesting against their negative human rights impacts are not considered as legitimate interlocutors and are often facing repression, criminalization and in several countries extra-judicial executions by the military, the police or private security guards. The situation in Peru, where the seminar took place, strikingly illustrates this kind of situation, despite the existence of a legal framework protecting the right to consultation. Participants condemn the situation in Cajamarca, Peru, in particular the disproportionate use of force and call upon the Peruvian authorities to cease ongoing repression of protests linked with mega-projects in the extractive industry.

In light of the above, we therefore call on States:

- To regulate the activities of transnational corporations under their jurisdiction, including when acting abroad, thus exercising their extra-territorial human rights obligations;

- To suspend the activities of businesses when these cause – or may cause– human rights violations;
- To facilitate access to justice of victims of corporate abuse by removing practical and legal obstacles, including in home states of companies ;
- To uphold the principle of transparency and community participation and thus to incorporate in their domestic legislations provisions to ensure the conduct of adequate human rights impacts assessments of investment projects and to ensure such projects do not move forward without the consultation of affected communities and the free, prior and informed consent of affected indigenous communities;
- To protect the rights to freedom of expression, peaceful protest and assembly of human rights defenders and those protesting investment projects and refrain from abusively using criminal law against them;
- To adopt codes of conduct for security forces which, at a minimum, respect the UN Basic Principles on the use of force and firearms by law enforcement officials;
- To support further standard-setting at the international and regional level with a view to establish binding legal norms to ensure the protection of human rights in the context of corporate activities, including mechanisms to ensure corporate accountability;
- Respect precautionary measures related to business and human rights ordered by organs tasked with the promotion and protection of human rights, such as the Human Rights Council and the UN treaty-bodies.

We call on companies :

- to respect human rights at all times including where the State is failing to uphold its human rights obligations;
- to respect freedom of expression of those who are affected and refrain from encouraging repression and criminalization;
- to refrain from using any strategy, in the context of consultation processes, that may unduly pressure communities to provide consent or that may lead to the division of those affected and which undermines legitimate decision-making bodies within affected communities.

We Call on the UN Working group human rights and transnational corporations and other business enterprises :

- To take into account the views of those affected by business activities and draw lessons from actual cases of corporate-related human rights abuses, including when conducting country visits, in order to elaborate recommendations to States on how to uphold their duty to protect, including extra-territoriality, and to enhance victims' access to justice;

- To support further standard setting at UN level regarding the protection of human rights and the responsibilities of businesses;

Convinced that efforts should be pursued at national, regional and international levels, we agree on sharing expertise and experiences across the regions. In particular, we shall:

- ➔ Continue documenting and publicly denouncing cases of corporate-related human rights abuses and aim at intervening at earlier stages through, for instance: activating legal procedures to obtain access to information; conducting human rights impacts assessments of investment projects from communities' perspective; providing support to civil society mobilisation around actual or potential damage caused by mega-projects;
- ➔ Develop the necessary alliances to help determine causal relationships between corporate activities and damage caused to health and the environment of affected populations;
- ➔ Continue efforts to dialogue, whenever possible and appropriate, with companies, as well as with States, public agencies and other private actors involved with a view to prevent or remediate corporate-related abuses;
- ➔ Use all available provisions, in Constitutions, laws and regional and international standards, notably through litigation in order to consolidate protective norms and case law;
- ➔ Examine the possibility to hold companies' chief executives liable before the ICC when their companies are complicit of international crimes;
- ➔ Strategic litigation before civil and criminal courts should be part of a wider strategy, we are resolved to use all tools and mechanisms available to advance corporate accountability, including national and cross-continental mobilization, campaigns and protests, using and disseminating, amongst other tools, FIDH guide "Corporate Accountability for Human Rights Abuses". When relevant, we shall engage with shareholders, export credit agencies and investors, including international financial institutions, pension funds and regional and national development banks, to induce them to make sure projects they support do not harm human rights;
- ➔ Continue to submit information to relevant UN mechanisms in particular special procedures and treaty-bodies, regarding States' omissions to prevent corporate-related abuses to strengthen and develop jurisprudence in this field.

We also commit to:

At international / regional level:

- ➔ Continue our efforts to strengthen the international legal framework on business and human rights; our long-term objective being the adoption of

an international convention imposing binding obligations upon corporations and providing for an effective remedy to victims;

- ➔ Pursue efforts for the adoption of a convention on private military and security companies;
- ➔ Taking into account the limitation of its mandate, push the UN Working Group on business and human rights to interpret it in a progressive manner;
- ➔ Continue to push for the primacy of international human rights law in all relevant fora, including within international arbitration;
- ➔ Support the efforts towards an International tribunal for environment and economic crimes;
- ➔ Mobilize for the preservation of the integrity and independence of the Inter-American system for the protection of human rights and push for progressive developments in the field of business and human rights before other regional systems;
- ➔ Strengthen joint international advocacy efforts with FIDH on key and cross-cutting areas regarding corporate accountability.

At domestic level:

- ➔ Advocate for stronger domestic legislation to regulate business including extra-territorially through inter-alia mandatory due diligence requirements, and stronger disclosure requirements in particular on their environmental and human rights impacts. Such regulations should include mechanisms of independent verification of such reports and sanctions. Advocate for the adoption of adequate legal frameworks at national level, integrating the most progressive international and regional standards in the field of human rights and the environment, including free prior and informed consent of indigenous peoples;
- ➔ Given the abyssal imbalance of powers between affected communities and corporations, we will push for shifting the burden of proof when assessing the causal links between harm suffered and the companies' activities when victims bring legal suits against corporations;
- ➔ Promote participation of local communities and indigenous peoples in decision making processes regarding issues of concern to them, in particular with regard to the definition of protected areas (e.g. forests/land where commercial exploitation is prohibited); explore innovative forms of economic/development project's management, involving local authorities and communities;
- ➔ Advocate for the recognition of parent companies liability for the behavior of their subsidiary as a matter of principle;

- ➔ Push for a holistic assessment of the economic benefits of investment projects which duly takes into account the costs of environmental degradation and wider social impacts.

Regarding the OECD:

- ➔ Acknowledging that OECD National Contact Points still lack independence and impartiality in most countries, we are resolved to use those mechanisms when relevant, and push for their improvement;
- ➔ Closely monitor the OECD Investment Committee initiative on due diligence concept in relation to stakeholders engagement in extractive industries, as well as in the financial sector, to ensure that they reflect the highest international standards regarding in particular free, prior and informed consent of indigenous peoples . Would it not be the case, such process will have to be denounced.

FIDH and its participating member organisations:

Altsean-Burma

APDHB- Asamblea permanente de derechos humanos (Bolivia)

Aprodeh - Asociacion pro derechos humanos (Peru)

CALDH- Centro para la Acción Legal en Derechos Humanos (Guatemala)

CEDAL- Centro de Derechos y Desarrollo (Peru)

CCR- Center for Constitutional Rights (US)

CCS- Centro de Capacitacion Social (Panama)

CELS - Centro de Estudios Legales y Sociales (Argentina)

CEDHU - Comision ecumenica de derechos humanos (Ecuador)

CCAJAR- Colectivo de Abogados José Alvear Restrepo Colombia)

CENIDH- Centro Nicaragüense de Derechos Humanos (Nicaragua)

Justiça Global (Brazil)

INREDH- Fundación Regional de Asesoría en Derechos Humanos (Ecuador)

Kontra-S (Indonesia)

LHRC- Legal and Human Rights Centre (Tanzania)

LHR- Lawyers for Human Rights (South Africa)

KHIS - Korean House for International Solidarity, partner organisation (South Korea)

Observatorio Ciudadano (Chile)

PAHRA- Philippines Alliances of Human Rights Advocates (Philippines)