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# **DRAFT REPORT**

on corporate liability for serious human rights abuses in third countries  
(2015/2315(INI))

Committee on Foreign Affairs

Rapporteur: Ignazio Corrao

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## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

### on corporate liability for serious human rights abuses in third countries (2015/2315(INI))

*The European Parliament,*

- having regard to the Universal Declaration of Human Rights (UDHR) and other United Nations (UN) human rights treaties and instruments, in particular the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, adopted in New York on 16 December 1966,
- having regard to the European Convention on Human Rights,
- having regard to Article 47 of the Charter of Fundamental Rights of the European Union,
- having regard to Articles 2, 3, 8, 21, 23 and 114 of the Treaty on European Union (TEU),
- having regard to Articles 81, 82, 83, 208 and 352 of the Treaty on the Functioning of the European Union (TFEU),
- having regard to the EU Strategic Framework on Human Rights and Democracy as adopted by the Foreign Affairs Council on 25 June 2012<sup>1</sup>, and to the Action Plan on Human Rights and Democracy 2015-2019 adopted by the Council on 20 July 2015<sup>2</sup>,
- having regard to the European Union's Human Rights Guidelines,
- having regard to its urgency resolutions on cases of breaches of human rights, democracy and the rule of law,
- having regard to its resolution of 17 December 2015 on the Annual Report on Human Rights and Democracy in the World 2014 and the European Union's policy on the matter<sup>3</sup>,
- having regard to its resolution of 12 March 2015 on the Annual Report on Human Rights and Democracy in the World 2013 and the European Union's policy on the matter<sup>4</sup>,
- having regard to UN Human Rights Council Resolution 26/9 of 26 June 2014, in which the UNHRC decided to establish an open-ended intergovernmental working group with the aim of drawing up an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights<sup>5</sup>,

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<sup>1</sup> <http://data.consilium.europa.eu/doc/document/ST-11855-2012-INIT/en/pdf>

<sup>2</sup> <http://data.consilium.europa.eu/doc/document/ST-10897-2015-INIT/en/pdf>

<sup>3</sup> Texts adopted, P8\_TA(2015)0470.

<sup>4</sup> Texts adopted, P8\_TA(2015)0076.

<sup>5</sup> <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/082/52/PDF/G1408252.pdf?OpenElement>

- having regard to the United Nations Guiding Principles on Business and Human Rights (UNGPs), the Organisation for Economic Cooperation and Development’s (OECD) revised Guidelines for Multinational Enterprises, the International Labour Organisation’s (ILO) Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, the Framework of the International Integrated Reporting Council (IIRC), the ten principles of the United Nations Global Compact, and the International Organisation for Standardisation’s ISO 26000 standard on ‘Guidance on Social Responsibility’,
  - having regard to the ‘Realising Long-term Value for Companies and Investors’ project<sup>1</sup>, currently being implemented under the UN Principles for Responsible Investment (PRI) initiative and the UN Global Compact,
  - having regard to the Commission Green Paper entitled ‘Promoting a European framework for corporate social responsibility’<sup>2</sup> and the definition of corporate social responsibility contained therein,
  - having regard to Rule 52 of its Rules of Procedure,
  - having regard to the report of the Committee on Foreign Affairs (A8-0000/2016),
- A. whereas the EU is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities; and whereas its action on the international scene (including its trade policy) ‘shall be guided by [these] principles’;
  - B. whereas the UN Guiding Principles on Business and Human Rights apply to all states and to all business enterprises, whether transnational or other, regardless of their size, sector, location, ownership and structure;
  - C. whereas the UN Global Compact<sup>3</sup>, comprising ten principles, asks corporations to embrace, support and enact, within their sphere of influence, a set of core values in the areas of human rights, labour standards, the environment and the fight against corruption, making a commitment to those values and integrating them into their business operations on a voluntary basis;
  - D. whereas corporations are one of the major players in economic globalisation and international trade and are required to comply with all applicable laws and to respect human rights;
  - E. whereas, however, these business enterprises may at times cause or contribute to human rights violations and affect the rights of vulnerable groups such as minorities, indigenous people, women and children or contribute to environmental problems;
  - F. whereas there is a serious and concrete risk of corporate practices resulting in forced labour, and sexual and child exploitation;

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<sup>1</sup> <http://www.unpri.org/whatsnew/realising-long-term-value-for-companies-and-investors/>

<sup>2</sup> COM(2001)0366.

<sup>3</sup> <https://www.unglobalcompact.org/what-is-gc/mission/principles>

- G. whereas a significant number of corporations operating in third countries are based in Europe, are owned by European corporations, have assets or goods in Europe or control other corporations in Europe; whereas there is a practice whereby European corporations outsource activities to local suppliers or use goods or services in their production chains that have been produced or provided by other corporations in countries where human rights standards are lower or enforcement and victim protection are legally or factually lacking;
- H. whereas, where human rights are breached, appropriate and effective remedies are required; whereas a fairer and more effective remedies system is needed under domestic law to deal with human rights violations committed by business enterprises;
1. Is deeply concerned at the human rights violations committed in third countries by corporations and business enterprises;
  2. Reaffirms the urgent need to act in a continuous, effective and coherent manner at all levels, including national and European level, in order to effectively address the legal problems resulting from the extra-territorial dimension of companies and of their conduct, and the related uncertainty as to where the liability for human rights violations lies;
  3. Welcomes the adoption of the UNGPs; emphasises that the UNGPs were agreed unanimously in the UN with the full support of EU Member States, the ILO and the International Chamber of Commerce, including support for the concept of a ‘smart mix’ of regulatory and voluntary action;
  4. Recognises the UN Global Compact, the ISO 26000 standard on social responsibility, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy and the OECD Guidelines for Multinational Enterprises as tools which can mobilise responsibility in the business activities of enterprises;
  5. Calls on companies to integrate the findings of their human rights due diligence processes into policies and procedures, with resources and authority assigned accordingly, and to communicate their commitment and actions externally, in order to identify, prevent and mitigate any negative human rights impact of their activities;
  6. Recognises the major importance of CSR and welcomes the growing use of instruments based on CSR and the self-commitment by corporations; strongly emphasises, however, that avoiding violations of human rights is not a matter of charity or something to be done on a voluntary basis but a legal obligation on enterprises and their management, wherever they may act and whatever their size or industrial sector;
  7. Recalls that, if companies find that they have caused or contributed to harm, they must provide for or participate in effective remedy processes for the individuals and communities affected;
  8. Welcomes the practice of incorporating responsibility for respecting human rights into binding contractual requirements between companies and their corporate and private clients and suppliers; notes that such requirements can, in most cases, be enforced by judicial means;

9. Warmly welcomes the preparation of a binding UN Treaty on Business and Human Rights, and strongly calls for the EU Member States and the EU itself to promote and take part in this process;
10. Recalls the different but complementary roles of states and companies with regard to human rights protection; recalls that states have a duty to protect everyone within their jurisdiction, including against human rights abuses committed by companies, even if they operate in third countries; strongly recalls that, where human rights abuses occur, the victims' states must grant them access to an effective remedy, and points out that the EU shares that duty with regard to areas of exclusive or shared competence;
11. Calls for policy coherence on business and human rights at all levels: within different EU institutions, between the institutions, and between the EU and its Member States;
12. Calls on all national and international authorities to ensure that binding instruments devoted to the effective protection of human rights in this field are adopted as a matter of urgency and as widely as possible, and that all obligations stemming from the abovementioned international rules are enforced;
13. Calls on the Member States to implement the UNGPs swiftly and robustly, including by developing National Action Plans; deplors that, notwithstanding the Commission's 2001 CSR communication, only a few Member States have adopted CSR statements or policies that mention human rights or have published their plans on business and human rights;
14. Calls for the Member States to legislate in a coherent, holistic, effective and binding manner in order to meet their duty to prevent, investigate, punish and redress human rights violations, including those perpetrated in third countries, directly or indirectly, by corporations acting under their jurisdiction;
15. Calls on the Member States to lay down clear requirements as to the fact that companies domiciled in their territory and/or jurisdiction must respect human rights throughout their operations, in every country and context in which they operate; considers that they should ensure that they have systems in place to assess risks and mitigate potential negative impacts related to human rights, labour, environmental protection and disaster-related aspects of their operations and value chains, and periodically assess the adequacy of such laws and address any shortcomings;
16. Calls on the Member States to compel companies that use raw materials or commodities that might originate in conflict-affected areas (for example, so-called conflict minerals) to disclose their sourcing and use of such materials;
17. Takes note with satisfaction that, as a result of the revision of the existing Accounting Directives regarding the disclosure of non-financial and diversity information, large companies and groups will be required, as from 2017, to disclose information on policies, risks and results as regards their respect for human rights and related issues; urges the Member States to implement the Revised Accounting Directive by 6 December 2016;
18. Calls on the Member States to take any appropriate steps to ensure, through judicial,

administrative, legislative or other appropriate means, that when such human rights violations occur, those affected have access to an effective remedy, piercing the veil of the legal personality, when a corporation based in the EU holds, directs or controls companies that are responsible for human rights violations in third countries; calls on the Member States to take appropriate steps to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy;

19. Considers that collective redress mechanisms could potentially decrease the costs of litigation for victims of human rights infringements; welcomes the recommendation on collective redress adopted by the Commission<sup>1</sup> and regrets that only a few Member States have complied with it; urges all Member States to comply with this recommendation;
20. Is aware that ‘corporate responsibility’ is not a stand-alone issue, but one that touches upon a wide range of different legal and political areas;
21. Requests that the Commission take all the necessary and possible steps as a matter of urgency to act in a holistic and coherent manner in order to introduce concrete rules on corporate responsibility for human rights violations in third countries;
22. Welcomes the non-binding private sector initiatives for responsible supply chain management introduced by the Commission’s services, but stresses that non-binding private sector initiatives are by themselves not sufficient; calls for urgent binding and enforceable rules and related sanctions and independent monitoring mechanisms;
23. Welcomes the new Generalised Scheme of Preferences Regulation (GSP+), which entered into force on 1 January 2014<sup>2</sup>, as a key EU trade policy instrument to promote human and labour rights, environmental protection and good governance in vulnerable developing countries; welcomes, in particular, the stringent and systematic GSP+ monitoring mechanism and calls for a focus on effective implementation at national level of the conventions listed in the convention;
24. Strongly calls for the systematic inclusion in trade and investment agreements of rules on corporate liability for violations of human rights, to be implemented at national level, and of references to internationally recognised principles and guidelines;
25. Urges the building of a consistent body of law, including rules governing access to justice, jurisdiction, the recognition and enforcement of judicial decisions in civil and commercial matters, the applicable law, and judicial assistance in cross-border situations involving third countries;
26. Calls for the extension of jurisdictional rules under the Brussels I Regulation<sup>3</sup> to third country defendants in actions against parent companies domiciled in the Union;
27. Calls for the establishment of a necessity forum (*forum necessitatis*), which would allow claims to be brought before the courts of the Member States in situations where there

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<sup>1</sup> OJ L 201, 26.7.2013, p. 60.

<sup>2</sup> <http://ec.europa.eu/trade/policy/countries-and-regions/development/generalised-scheme-of-preferences/>

<sup>3</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3A133054>

would be a risk of denial of justice if no access to court were foreseen in the EU, where proceedings proved impossible in a third country, or where an applicant could not reasonably be expected to initiate or conduct proceedings in that state and the dispute had a sufficient connection with the Member State of the court seized;

28. Calls for the establishment of cases of jurisdiction based on the presence of the defendant's assets in the Union;
29. Recalls that, when human rights violations are perpetrated by corporations, this action often involves personal criminal liability and calls for those responsible for such crimes to be prosecuted at whatever level;
30. Calls on the Council and the Commission to act in accordance with Article 83 of the TFEU, in order to establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crimes with a cross-border dimension pertaining to serious human right violations in third countries committed by corporations, given the nature and impact of such offences and the special need to combat them on a common basis;
31. Recommends the creation of an 'abuse-free' product brand at EU level, participation in which would be on a voluntary basis, monitored by an independent body governed by strict rules and endowed with powers of inspection, devoted to verifying and certifying that no abuse has been committed at any stage in the chain of production of the relevant good;
32. Instructs its President to forward this report to the Council, the Commission, the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy, and the EEAS.