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# 14<sup>th</sup> Informal ASEM Seminar on Human Rights

## *Human Rights and Businesses*

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### Key Messages

While States remain the main duty bearers of human rights obligations, the private sector has a growing responsibility to ensure the protection and promotion of human rights in all its activities.

The 14<sup>th</sup> Informal ASEM Seminar on Human Rights was organised by the Asia-Europe Foundation (ASEF), the Raoul Wallenberg Institute (as delegated by the Swedish Ministry for Foreign Affairs), the French Ministry of Foreign Affairs and International Development and the Philippine Department of Foreign Affairs. It was hosted by the Ministry of Foreign Affairs of Vietnam and brought together over 125 official government representatives and civil society experts, representing 47 ASEM members to discuss the protection and promotion of human rights in the business sector. Additional events at the Seminar included side-events on *Collective Bargaining* and on *National Action Plans on Business and Human Rights*. In addition, a panel discussion was organised on the role of the private sector in protecting migrant workers' rights during the closing plenary session.

There was an overall consensus that the **UN Guiding Principles on Human Rights and Business (UNGPs) provide a common framework of globally agreed principles that should be promoted and consistently applied across all ASEM member countries** as a means of framing policies and practices at the national and regional level. **All ASEM members should develop National Action Plans (NAPs) to implement the UNGPs effectively.**

At the country level, **existing legislations that protect human rights should be strengthened and effectively implemented.** In order to achieve government policy coherence, **business-related human rights should integrated into the portfolios of all government departments that touch upon the subject.** States should put human rights and business on the agenda of international meetings and inter-regional dialogue, including those meetings that take place on trade, exports and investment. **Regional mechanisms that document, evaluate and share best practices in human rights and business are required to strengthen policy coherence across Asia and Europe; such an institution could be set up at the ASEM level.**

**By failing to protect human rights, businesses can lose their social license to operate which can have disruptive consequences for their operations.** The issue of **corporate governance is key for strong compliance measures to be incorporated** and some multinational enterprises (MNEs) are increasingly motivated to incorporate human rights into their core business activities. In comparison, small and medium enterprises (SMEs) may lack the financial resources and technical know-how to incorporate human rights concerns into their daily business operations. **Governments need to build awareness and sensitise businesses, particularly SMEs, to their human rights responsibilities.** **Clarity on concepts regarding CSR and human rights in business will help create a consensus of understanding and assist in the engagement of companies.**

**Companies should conduct both detailed human rights due diligence and impact assessments in their value chain management.** As various industry codes of conduct are already imposed on suppliers there needs to be a coordinated approach for social audits which can enhance the implementation process on business and human rights by companies in their value chain management. States themselves purchase a large variety of products and services through **State-led procurement systems which can be an effective tool to promote and build awareness on corporate responsibility for human rights among companies which do business with state agencies.**

Remedy– as defined in the UNGPs – can take on various characteristics and functions but a **focus upon the risks and effects on the victim may be a good frame for articulating an effective remedy.** Victims of business-related human rights abuses face a range of legal and practical barriers in their access to effective remedy and may need support in receiving the requisite knowledge, skills and resources to do so. It is important to extend **full protection to human rights defenders working in the area of corporate accountability** and human rights and business; **awareness-raising amongst national law enforcement and judicial authorities is required in this regard.**

States should encourage support both judicial and non-judicial mechanisms. When **non-judicial (both State-based and non-State based) grievance mechanisms are engaged, adequate protection to the victims and efforts to ensure fairness in both process and outcome are required** and efforts to ensure transparency, such as the effective application of freedom of information legislation need to be strengthened.

States and international organisations should support and work with multi-stakeholder initiatives (MSIs) to learn what human rights means to business. **MSIs can bridge the 'language gaps' between policy makers and businesses by emphasising a specific objective or context in which companies operate, through reference to risk management, minimum wages, occupational health and safety.** In addition to helping businesses align their activities with the UNGPs, MSIs should develop a roster of good practices with regard to the operationalisation of human rights in business practices.

The Seminar convened 4 working groups for direct and in-depth discussion on the relationship between businesses and human rights protection. The working groups focused on the *state duty to protect human rights against violations by businesses; corporate responsibility and its contribution to human rights implementation; monitoring, reporting and access to remedies; and multi-stakeholder cooperation.* Detailed reports of the individual working group discussions can be found in the complete Seminar Report, which will be circulated by the organisers.

#### General Recommendations to ASEM Countries

1. States should implement the UNGPs at the national level and develop National Action Plans (NAPs) on human rights and business which are fully inclusive, participatory and transparent.
2. States should adhere to their existing international human rights and labour commitments by improving the implementation of national legislation that promote and protect human rights. National reporting on human rights in business should be incorporated into existing processes such as the Universal Periodic Review and other treaty reporting.
3. States need to identify appropriate measures to regulate and engage with Multi-National Enterprises (MNEs) and Small and Medium Enterprises (SMEs) to ensure compliance of human rights standards.
  - a) All companies should be required to report on the non-financial impact of their activities both at home and abroad. Human rights impact assessments should be a requirement for all new business developments.
  - b) SMEs should be encouraged to participate in the United Nations Global Compact's national networks as these can support businesses in their CSR and human rights commitments.

- c) Business responsibilities on human rights protection should be integrated into start-up support and advice provided by public agencies to new companies, especially SMEs.
  - d) States should consider developing soft incentives (such as preferential treatment in public procurement or in exports support) as a means to encourage businesses to adopt good practices.
- 4. Human rights impact and diligence is important in supply chain management. Corporate human rights codes for suppliers could be standardized to cover most of the requirements that are applicable to all companies. Simplified compliance requirements will allow for a harmonized base for social audits.
- 5. When governments act as investors, procure goods or privatise the delivery of public services, they should aim to safeguard human rights by:
  - a) Following a socially-responsible investment approach that encompasses human rights in all State investment policies;
  - b) Ensuring transparency in the public procurement process as a precondition of monitoring and accountability;
  - c) Incorporating human rights impact assessment into privatisation processes;
  - d) Integrating human rights standards into public awarded contracts and service user agreements (for example, through the AAAQ or Availability, Accessibility, Acceptability and Quality criteria).
- 6. Independence, integrity and impartiality of the judiciary and the judicial system are critical to ensuring access to effective remedy. Transparency and access to information are imperative to ensure victims are fully aware of the facts as well as the processes available to them. It is the State's duty to ensure that this is maintained as part of a strong rule of law. In addition, States should support non-judicial mechanisms which are an important complement to judicial grievance mechanisms and can have both remedial and preventive functions.
- 7. Strengthening the capacity of victims as well as civil society groups (NGOS, trade unions) and other institutions such as national human rights institutions (NHRIs) that can support them in their pursuit of remedies is necessary. Free legal aid for victims bringing human rights-related cases is one means of ensuring this.
- 8. To enable NHRIs fulfill their Paris Principles mandate on human rights and business, certain measures are needed, such as:
  - a) Safeguarding the independence of NHRIs;
  - b) Ensuring NHRI mandates are adequate to address and remedy human rights and business – related abuses;
  - c) Training and resources to work on human rights and business issues.
- 9. The UNGPs note that multi-stakeholder initiatives (MSIs) have important contributions to make to the field of business and human rights. Governments and intergovernmental organisations should work with MSIs to share best practice of the corporate responsibility to respect human rights and assist firms in exercising human rights due diligence. MSIs can help States and intergovernmental organisations reach across the legal and policy limitations of international law and focus on what human rights means to business.
- 10. MSIs are not an end in themselves. Their effectiveness is dependent on their internal dynamics and governance, and on their level of transparency and accountability to all stakeholders. In this regard,
  - a) MSIs need to engage SMEs also and not just large businesses;
  - b) National Action Plans must include the role MSIs can play;
  - c) MSIs themselves may need to be aligned with the guiding principles. They may need to have their own grievance and reporting mechanisms.