



CONTRIBUTION TO THE ITALIAN NATIONAL ACTION PLAN ON BUSINESS AND HUMAN RIGHTS 2016-2021

HRIC, ECCJ, MANI TESE and FIDH warmly welcome the release of the Italian National Action Plan on Business and Human Rights 2016-2021 and the launch of a public consultation. We consider the released Plan as a step forward in the implementation of the UN Guiding Principles on Business and Human Rights.

The purpose of the present contribution is to provide proposals that aim to introduce mandatory Human Rights Due Diligence (HRDD) and a higher degree of non-financial reporting into national legislation. Moreover, following the previous contribution presented by HRIC in January 2016¹, We will focus on concrete proposals to overcome the main categories of existing barriers to Italian judicial remedies for victims of business-related human rights abuses.

General comments and specific recommendations for feasible long and/or short-term improvements will be pointed out.

GENERAL COMMENTS AND RECOMMENDATIONS

- *Pag.8, Part II-C, NAP English version*

We welcome the promotion of a «*due diligence process with particular focus on SMEs*»² among the main national priorities stated in the Italian NAP.

However, it should be reminded that - in accordance with the UNGPs related provisions - the priority should be to introduce mandatory Human Rights Due Diligence in the Italian legislation. In the same line, the Council of Europe Recommendation calls on States to encourage or, where appropriate, require that business enterprises domiciled within their jurisdiction apply Human Rights Due Diligence throughout their operations.³ To this regard, it is worth mentioning the draft

¹ HRIC Contribution to the Italian Action Plan on Business and Human Rights, January 2016:
http://media.wix.com/ugd/6c779a_23632619d7fd456aaaa4434551f1ef54.pdf

² Pag.8, Part II-C, NAP English version

³ CoE Recommendation, 2016, para. 20

law adopted by the French National Assembly so far including the provision of a mandatory HRDD for large transnational companies and the following proposal of a European Directive on mandatory DD, supported by the French Parliament and by other national Parliaments across Europe, such as the Italian Senate.

- *Pag.9, Part III, NAP English version regarding 'Government Expectations':*

«The Italian Government recognizes the importance of supporting voluntary approaches of human rights respect and promotion by business as fundamental ways towards the growing of new corporate cultures and strategies inspired by social values and sustainable principles.»⁴

It has been notable that the Italian Government would support voluntary initiatives of respecting and promoting human rights by companies and other business entities. However, the NAP should mainly be based on regulatory measures, which could be more likely to effectively and efficiently address the major existing governance gaps. In this way the NAP can be consistent with the 'smart mix' approach defined by Prof. John Ruggie that is also central in the EU CSR Strategy currently under revision.

It is worth mentioning the ongoing process for the drafting of an international legally binding instrument on transnational corporations and other business enterprises within the UN Human Rights Council and supported by some States, CSOs and NGOs.

«In conducting this activity, which allows to foresee and avoid potential negative human right impact on individuals and communities, companies should refer at a minimum to internationally recognized human rights, as expressed in the International Bill of Human Rights and those set out in the International Labour Organization's Declaration on Fundamental principles and Right at Work and the ILO Tripartite Declaration on Principles concerning Multinational Enterprises and Social Policy. Furthermore, depending on circumstances, companies may want to consider additional international instruments and standards (such as the international humanitarian law in case of conflicts or other UN human rights treaties).»⁵

The minimum reference to existing international legal instruments should be made to the ones referred to by the UNGPs as the legal basis of the corporate responsibility to respect, such as the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Universal Declaration on Human Rights (UDHR) and the ILO's Declaration of Fundamental Principles and Rights at Work, as settled in UNGP No. 12.

«Companies are also exhorted to disclose their non-financial information on the basis of the UN Guiding Principles, the OECD Guidelines on Multinational Enterprises and the Tripartite ILO Declaration, as well as on the basis of other recognized European and International frameworks and standards such as EMAS, the UN Global Compact, ISO26000 and the Global Reporting Initiative.»⁶

We consider the Directive 2014/95/EU of the European Parliament and of the Council of the European Union on the disclosure of non-financial and diversity information as an innovative

⁴ Pag.9, Part III, NAP English version

⁵ Pag.9, Part III, NAP English version

⁶ Pag.9, Part III, NAP English version

“incentive” to promote more accountable and sustainable behaviours among companies and other business entities.

Considering the inhomogeneity of the diffused reporting frameworks, the NAP should mention a list of recommended reporting guidelines and standards in order to concretely facilitate the disclosure process. We consider the UNGPs Reporting Framework as particularly relevant and suitable in order to enable an adequate disclosure process.

Moreover, in order to ensure the effective respect of the reporting obligations by the concerned companies, Italy should set up an *ad hoc* monitoring system.

- *Pag. 10, Part IV, NAP English version*

- *Expedite, in agreement with the Parliament, the process of establishment of an independent National Human Rights Institution in adherence with the 1993 Paris Principles and the approval of the draft law introducing the crime of torture in the Penal Code, in line with the 1984 UN Convention on the prohibition of Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment; [...]*
- *Conduct a comprehensive overview and monitoring of the implementation in the domestic legal framework of legally binding international and regional human rights instruments and soft law standards, with particular focus on human rights and business;*⁷

We welcome the establishment of an independent National Human Rights Institution in Italy in adherence with the 1993 Paris Principles. After about 30 years from the ratification of the UN Convention on the prohibition of Torture in Italy, the approval of the draft law introducing the crime of torture in the Italian Criminal Code would also positively impact on the safeguarding of business-related human rights.

Concerning the mapping and monitoring of hard and soft laws instruments related to business and human rights, We encourage the introduction of more detailed information, particularly regarding the timing and methodologies of the monitoring process.

- *Pag.25, GPs 25 & 26, NAP English version regarding access to judicial remedies*

*«As far human rights abuses by business, the Italian government must indeed guarantee that victims of human rights abuses by business may exercise their right to effective remedy. The right to an effective remedy is a human right, which has to be guaranteed by a competent, independent, and impartial authority established by law.»*⁸

The NAP should include legislative measures to ensure that domestic courts can hear civil claims from business-related human rights abuses against companies domiciled in their jurisdiction. The NAP could explore different legal and judicial mechanisms to go beyond the corporate veil in order to hold a company accountable for remedy for human rights violations by its subsidiaries. Moreover, the NAP should contain measures to reverse the burden of proof and to require companies to demonstrate that they took all reasonable steps to prevent the damage or that they were not in control of the activities that caused the harm. The NAP should also improve rules addressing the disclosure of evidence.

⁷ Pag.10, Part IV, NAP English version

⁸ Pag.25, GPs 25 & 26, NAP English version

In doing so the NAP could take in account the Maastricht Principles for extraterritorial obligations of States in the Area of Economic, Social and Cultural Rights (ETO)⁹ with particular attention at the Principle No.9¹⁰.

PLANNED MEASURES

- *Set up a working group under the responsibility of the Ministry of Justice with the task of:*
 - ✓ *Conduct a review of the legal mechanisms and develop a practical and comprehensive toolkit of the remedies available in domestic law;*
 - ✓ *Identify eventual gaps and/or existing barriers jeopardising access to judicial remedy for victims of business-related human rights abuses especially with regard to extraterritorial violations also basing on the relation between parent company and subsidiary;*
 - ✓ *Evaluate the introduction of relevant additional legislative measures to strengthen access to effective remedy both in civil, administrative and criminal law;*
- *Expedite the process of approval of the reform of the justice system currently under debate and providing for i) remedies against the excessive length of civil proceedings; ii) measures to strengthen special courts for enterprises by extending their competence to consumer protection-related claims, misleading advertising and unfair competition; iii) special court sections for human rights (especially children rights) and family issues; iv) introduction of criminal provisions against economic crimes, also committed abroad;*
- *Ensure swift approval of legislation introducing class action and encourage further improvements for victims of mass abuses of human rights and serious environmental damages;*
- *Activate and support training courses for judges and lawyers on the legal implications of business and human rights;*
- *Keep adequate level of funding for legal aid and guarantee its access also to non-national and non-resident claimants, in particular irregular migrants victims of crimes perpetrated by organised criminal network, such as trafficking and smuggling and allow them to denounce crimes irrespectively of their status or situation.¹¹*

HRIC, ECCJ, MANI TESE and FIDH welcome the Planned Measures related to Guiding Principles 25 and 26 as a first step towards a more effective access to judicial remedies.

In line with the planned measures and in order to overcome the national barriers for victims, We outline that:

1) the Working Group to be set up under the responsibility of the Ministry of Justice should include consultations with all the stakeholders and the documents produced by the Working Group should be made available with sufficient margin for reaction;

2) Italian law should define the level and extent of mandatory Human Rights Due Diligence required from corporations. With a mechanism similar to Law 231/2001, the parent company should be required prove that it has established and implemented effective Human Rights Due

⁹ http://www.etoconsortium.org/nc/en/main-navigation/library/maastrichtprinciples/?tx_drblob_pi1%5BdownloadUid%5D=23

¹⁰ Principle No. 9 points out the obligation of States to «respect, protect and fulfil economic, social and cultural rights in situations: i) over which it exercises authority or effective control whether or not such control is exercised in accordance with international law; ii) over which State acts or omissions bring about foreseeable effects on the enjoyment of economic, social and cultural rights whether within or outside its territory; iii) in which the State, acting separately or jointly, whether through its executive, legislative or judicial branches, is in a position to exercise decisive influence or to take measures to realize economic, social and cultural rights extraterritorially, in accordance with international law».

¹¹ Pag. 25-26, GPs 25 & 26, NAP English version

Diligence, otherwise it will arise a presumption of direct civil liability in case of a human rights violation committed by its subsidiary company;

3) in order to facilitate access to evidence in case of gross violations of human rights, the scope of Article 210 C.p.c. should be expanded in order to empower the judge to order the disclosure of information in the company's possession at least in the context of civil cases related to human rights violations;¹²

4) the specialized section in the field of business so called 'Tribunale delle imprese' should be competent for civil transnational claims for business-related human rights violations.

- *Pag. 29, Part V, NAP English version*

«Within CIDU, a Business and Human Rights Steering Group (BHRSG) will be set up to monitor the progressive implementation of the Action Plan, coordinate the work and propose future reviews. CIDU and the Steering Group will work jointly with a Consultative body composed of all relevant non-institutional stakeholders (business community, trade unions, NGOs and civil society organizations, representatives of academia and individual experts).»¹³

Finally, We strongly encourage a high level of participation of all the relevant stakeholders and, particularly, of civil society organisations, in the subsequent elaboration and implementation of the NAP.

We hope and trust that you will take our comments and recommendations into consideration.

***HRIC (Human Rights International Corner)** is an innovative legal network of professionals, researchers and experts in Human Rights, engaged in supporting and promoting fundamental rights and principles worldwide. This contribution was drafted by the following members: Marta Bordignon, Giacomo Maria Cremonesi, Maddalena Neglia, Martina Rogato.*

*With 21 member groups, representing over 250 organisations from 15 countries, the **European Coalition for Corporate Justice (ECCJ)** is the only European coalition bringing together European campaigns and national platforms of NGOs, trade unions, consumer organisations and academics to promote corporate accountability. ECCJ and its members have been monitoring and providing recommendations for the implementation of the UNGPs by the EU and its Member States.*

***MANI TESE** is an Italian development NGO operating at national and international level to further justice, solidarity, promotion of human rights and respect among people. Since its foundation in 1964, Mani Tese has pursued this aim by raising public awareness on the causes of poverty in the South, lobbying policy makers and institutions and implementing development projects which, beside responding to the needs of the poor, may initiate a process of self determination and self reliance.*

***FIDH** is an international human rights NGO federating 178 organizations from 120 countries. Since 1922, FIDH has been defending all civil, political, economic, social and cultural rights as set out in the Universal Declaration of Human Rights. FIDH acts in conjunction with its member and partner organisations. Its*

¹² Pag.7-8, HRIC Contribution to the Italian Action Plan on Business and Human Rights, January 2016:

http://media.wix.com/ugd/6c779a_23632619d7fd456aaaa4434551f1ef54.pdf

¹³ Pag. 29, Part V, NAP English version

actions are founded on three strategic pillars: securing the freedom and capacity to act for human rights defenders, the universality of rights and their effectiveness. FIDH's work is directed at States as primary human rights guarantors. However, it also addresses non-State actors such as armed groups and multinational corporations. FIDH is committed to holding individual perpetrators of international crimes to account through the international criminal justice system.