



The positive and negative human rights impacts of non-state actors

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31 July 2014

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Work Package No. 7 – Deliverable No. 1

Due date	31 July 2014
Submission date	31 July 2014
Dissemination level	PU
Lead Beneficiary	University of Nottingham
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Executive summary

This report on **the positive and negative human rights impacts of non-state actors (NSAs)** is the first deliverable in Work Package 7 (WP7), ‘Engagement with Private Actors, TNCs and Civil Society’, of the FP7 project, ‘Fostering Human Rights among European Policies’, FRAME.¹ It is essentially a mapping exercise to identify and analyse positive and negative human rights impacts of NSAs consistent with Task 1 in the description of work for WP7.

The human rights impacts of four main *vertical* groupings of NSAs are mapped: 1) the double-edged role of businesses, including trans-national corporations (TNCs) and financial services, in creating opportunities for advancing individual human rights, but also their corporate social responsibility for human rights violations; 2) the contribution of civil society, including non-governmental organisations (NGOs), and stakeholders representing the interests of women, minority groups and children, in protecting and promoting human rights; 3) the increasingly important influence of dynamic international financial institutions (IFIs); and 4) the role of human rights defenders (HRDs) in identifying human rights abuses and building trust. Human rights impacts of each of these groups of NSAs are analysed *horizontally* by reference to areas including, *inter alia*, the rights of the person, labour rights, the rights of children, gender equality, non-discrimination, indigenous peoples’ rights, and the rights of peoples to their culture, religion/belief and language.²

In recent decades the growing influence of NSAs on human rights, and the need for international organisations to engage with them, has been widely recognised, but defining NSAs has presented a difficult challenge. Following an introduction setting out the aims and methodology of the report, the first general part, Chapters II-V, reflects on the challenge of defining NSAs and considers to what extent the international human rights regime encompasses the broad categorisation of NSAs in this report. It also discusses the EU’s approach to engagement with NSAs, the cross-cutting issue of the media, and the measurement of NSA impacts on human rights. In the following parts, Chapters VI-IX, the report analyses the positive and negative human rights impacts of each of the identified *vertical* groupings of NSAs by reference to the *horizontal* areas referred to above.

The report concludes in Chapter X with a summary of the main findings in respect of the four groups of NSAs. The conclusion highlights several significant points that assist our understanding of both the positive and negative human rights impacts of these different types of NSAs. Overall, the report provides a broad foundation for the next stages of research in WP7, which will involve a critical assessment of the EU’s engagement with NSAs and an exploration of the need for deeper institutionalised engagement in meeting the challenges of protecting and promoting human rights in EU internal and external policies.

¹ See FRAME <www.fp7-frame.eu> last accessed on 17 June 2014.

² The list of horizontal areas in this report has evolved from the indicative listing of areas in the original description of work for WP7. Each researcher used the listing as a point of reference when identifying human rights impacts in the relevant areas referred to in the work description.

Table of contents

Executive summary	ii
I. Introduction	1
A. Mapping NSA impacts on the promotion and protection of human rights	1
B. Methodology.....	4
II. Non-state actors in the international legal system.....	6
A. General context.....	6
B. Definition of non-state actors.....	6
C. Positioning of non-state actors in the international legal system	9
III. Non-state actors in the EU context.....	11
A. General context.....	11
B. Legal and policy basis for EU engagement with non-state actors	13
IV. Role of the media, the Internet and social media	16
V. Measuring the human rights impacts of non-state actors	20
VI. Business, financial services and transnational corporations	24
A. General context.....	24
B. EU engagement with businesses	28
C. Human rights impacts	31
1. Positive human rights impacts	31
2. Negative human rights impacts	46
D. Financial services and human rights	59
1. Positive human rights impacts	61
2. Negative human rights impacts	65
VII. Civil society and non-governmental organisations.....	76
A. General context.....	76
B. EU engagement with civil society	77
C. Human rights impacts	82
1. Positive human rights impacts	82
2. Negative human rights impacts	87
VIII. International financial institutions.....	92
A. General context – the main international financial institutions.....	92
1. The World Bank and the International Monetary Fund	93

2.	The European Investment Bank.....	96
3.	The European Bank for Reconstruction and Development	98
B.	Human rights impacts	99
1.	Positive human rights impacts	99
2.	Negative human rights impacts	103
IX.	Individual human rights defenders	106
A.	General context.....	106
B.	EU engagement with human rights defenders	108
C.	Human rights impacts	109
1.	Positive human rights impacts	109
2.	Negative human rights impacts	112
X.	Conclusion.....	114
	Bibliography	116
A.	Literature	116
B.	Official publications	130
C.	Case law	141
D.	Legislation	142
E.	Other reports and statements	143

Glossary of abbreviations and acronyms

ACP – African, Caribbean and Pacific Group of States
ASM – Artisanal and small-scale miners
CERD – International Convention on the Elimination of All Forms of Discrimination
CFREU – Charter of Fundamental Rights of the European Union
COHOM – Council Working Party on Human Rights
CoE – Council of Europe
CSOs – Civil society organisations
CSR – Corporate social responsibility
DCI – Development Cooperation Instrument
EBRD – European Bank for Reconstruction and Development
ECB – European Central Bank
ECHR – European Convention on Human Rights
ECJ – European Court of Justice
ECtHR – European Court of Human Rights
ECSR – European Committee of Social Rights
EEAS – European External Action Service
EED – European Endowment for Democracy
EIB – European Investment Bank
EIB-CM – European Investment Bank Complaints Mechanism Division
EIDHR – European Instrument for Democracy and Human Rights
EITI – Extractive Industries Transparency Initiative
EP – European Parliament
ETOs – Extraterritorial human rights obligations
EU – European Union
FLA – Fair Labor Association
FORB – Freedom of Religion or Belief
HRBAD – Human rights-based approach to development
HRC – United Nations Human Rights Council
HRCS – Human rights country strategies
HRDs – Human rights defenders
HRIA – Human Rights Impact Assessment
HRW – Human Rights Watch
IACHR – Inter-American Court of Human Rights
ICJ – International Court of Justice
IFA – International Framework Agreement
ICT – Information and Communication Technology
ICCPR – International Covenant on Civil and Political Rights
ICESCR – International Covenant on Economic, Social and Cultural Rights

IEO – International Monetary Fund Independent Evaluation Office
IFIs – International Financial Institutions
IHL – International Humanitarian Law
ILO – International Labour Organisation
IMF – International Monetary Fund
LGBTI – Lesbian, Gay, Bisexual, Transgender and Intersex persons
MDBs – Multilateral Development Banks
MDGs – Millennium Development Goals
MNCs – Multinational Corporations
MNEs – Multinational Enterprises
NGOs – Non-governmental organisations
NSAs – Non-state actors
OECD – Organisation for Economic Cooperation and Development
OHCHR – Office of the UN High Commissioner for Human Rights
OSCE – Organisation for Security and Cooperation in Europe
OSCE/ODIHR – OSCE Office for Democratic Institutions and Human Rights
PCM – Project Complaints Mechanism of the EBRD
PRSP – Poverty Reduction Strategy Paper
RLS – Ratcheting Labour Standards
SAPs – Structural Adjustment Policies
SMEs – Small and medium-sized enterprises
TCA – Transnational Company Agreement
TEU – Treaty on European Union
TFEU – Treaty on the Functioning of the European Union
TNCs – Transnational corporations
UDHR – Universal Declaration on Human Rights
UN – United Nations
UNCTAD – United Nations Conference on Trade and Development
UNGC – UN Global Compact
UNICEF – United Nations Children's Fund
UPR – Universal Periodic Review
WB – World Bank

I. Introduction

A. Mapping NSA impacts on the promotion and protection of human rights

Over recent decades, as the pace of globalisation has accelerated, international relations have increasingly been characterised not only by a proliferation of international institutions, new groupings of states – such as the G20 – and realignments of states,³ but also by the rise of influential non-state actors (NSAs), such as transnational corporations (TNCs) and non-governmental organisations (NGOs). With the growth of interdependence between states and international institutions, a variety of NSAs at the local, national, regional and global level, some established, others emergent, have gained prominence in global governance.

The rise of NSAs has challenged the orthodox understanding of states as the main actors in the international legal order. NSAs are no longer in a position of ‘secondary subjects’, ‘objects’ or ‘participants’, with no responsibilities for human rights promotion and protection.⁴ Some NSAs, such as NGOs and human rights defenders (HRDs), have established legitimacy through monitoring and reporting on human rights violations and advocating for human rights. Others, such as the largest TNCs and financial services actors, have extended their global reach and amassed huge resources, raising questions about the extent to which they should be held accountable for human rights violations for which they may be responsible.

This increase in the influence of NSAs can be traced to a number of key developments on the international scene. P. Alston has identified several factors, including, *inter alia*: 1) privatisation in areas such as defence and security; 2) capital mobilisation and private foreign investment flows; 3) trade liberalisation and its employment consequences; 4) the expanding horizon of multilateral institutions; and 5) the unleashing of civil society. Each of these factors has contributed to the development and expansion of influence of NSAs in the international order and a change of role, or even a decline in influence, of nation states and regional groups of states.⁵

As P. Alston and R. Goodman point out, ‘these developments have increased the risk that a human rights regime that addresses itself effectively only to states will become increasingly marginalised in the years

³ For example, the realignment within Europe post-1991.

⁴ Higgins R., *Problems and Process: International Law and how we use it* (Oxford: Clarendon Press, 1995) 49; Lindblom A.-K., ‘Non-Governmental Organizations and Non-State Actors in International Law’ in Reinalda B. (ed), *The Ashgate Research Companion to Non-State Actors* (Surrey: Ashgate, 2011) 147-160.

⁵ Alston P., ‘The “Not-a-Cat” Syndrome: Can the International Human Rights Regime Accommodate Non-State Actors?’ in Alston P. (ed), *Non-State Actors and Human Rights* (Oxford: OUP, 2005) 3-37. For more information on which factors have contributed to the development of NSAs, see also e.g. Reinisch A., ‘The Changing International Legal Framework for Dealing with Non-State Actors’ in Alston P. (ed), *Non-State Actors and Human Rights* (Oxford: OUP, 2005) 37-92; Lindblom A.-K., *ibid*; Alston P. and Goodman R., *International Human Rights* (Oxford: OUP, 2013) 1461.

ahead'.⁶ The growing power and influence of NSAs beyond the borders of states has led to calls to re-think the basic foundation of conventional human rights law that places human rights obligations principally on the territorial state.⁷ As a corollary to this, it is increasingly acknowledged today that human rights can give rise to what have become known as *extraterritorial obligations*,⁸ i.e. obligations that a state owes to individuals beyond its borders.⁹ Such extraterritorial obligations are seen to include an obligation incumbent on states to protect individuals and groups in other states from the conduct of those NSAs that they are in a position to regulate or to influence.¹⁰

As globalisation and the growing impact of NSAs have come to challenge state-centred human rights law, efforts have been made to widen the circle of human rights duty-bearers *beyond states*, to include, *inter*

⁶ Alston and Goodman, *ibid*, 1461.

⁷ Vandenhole W., 'Emerging Normative Frameworks on Transnational Human Rights Obligations' (2012) Robert Schuman Centre for Advanced Studies, Global Governance Programme, EUI Working Paper RSCAS 2012/17, 2, available at <<http://cadmus.eui.eu/handle/1814/21874>> last accessed on 10 June 2014.

⁸ The term 'extraterritorial human rights obligations' (ETOs) is used here in the meaning denoted to it in the 'Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights', adopted on 28 September 2011 (published in (2010) 29 *Netherlands Quarterly of Human Rights* 4, 578-590). The Maastricht Principles represent an international expert opinion, restating and clarifying existing human rights law in relation to ETOs. For the purposes of the Principles, extraterritorial obligations include the following: a) obligations relating to the acts and omissions of a state, within or beyond its territory, that have effects on the enjoyment of human rights outside of that state's territory; and b) obligations of a global character that are set out in the Charter of the United Nations and human rights instruments to take action, separately, and jointly through international cooperation, to realise human rights universally (Para. 8).

⁹ See, e.g., HRC, *Sergio Ruben López Burgos v. Uruguay*, Communication No. 52/1979, UN Doc. CCPR/C/OP/1 (1981), Para. 12(3); HRC, *Lilian Celiberti de Casariego v. Uruguay*, Communication No. 56/1979, UN Doc. CCPR/C/13/D/56/1979 (1981), Para. 10(3); IACHR, *Coard v. United States*, Case 10.951, 109/99 (1999), 29 Para. 37; ECtHR (GC, Preliminary Objections), *Loizidou v. Turkey*, No. 15318/89 (1995), Para. 62; ECtHR, *Drozdz and Janousek v. France and Spain*, No. 12747/87 (1992), Para. 91; ECtHR, *Cyprus v. Turkey*, No. 25781/94 (2001), Para. 78; and ICJ, *Case concerning the application of the Convention on the Prevention and Punishment of the Crime of Genocide*, (Bosnia and Herzegovina v. Yugoslavia), ICJ Reports (1996) 3, Para. 31. For discussion on ETOs, see e.g., Langford M., Vandenhole W., Scheinin M. and van Genugten W. (eds), *Global justice, state duties: the extraterritorial scope of economic, social, and cultural rights in international law* (Cambridge: Cambridge University Press, 2013); Vandenhole W. and Gibney M. (eds), *Litigating Transnational Human Rights Obligations: Alternative Judgments* (Oxon: Routledge, 2013); Salomon M. E., Tostensen A. and Vandenhole W. (eds), *Casting the Net Wider: Human Rights, Development and New Duty-Bearers* (Antwerp-Oxford: Intersentia, 2007); de Schutter O. *et al.*, 'Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights' (2012) 34 *Human Rights Quarterly* 4, 1084-1168; Skogly S. I., *Beyond National Borders – States' Human Rights Obligations in International Cooperation* (Antwerp: Intersentia, 2006); Vandenhole W., 'Economic, Social and Cultural Rights in the CRC: Is There a Legal Obligation to Cooperate Internationally for Development?' (2007) 17 *International Journal of Children's Rights* 1, 23-63; Vandenhole W., 'Third State Obligations Under the ICESCR: A Case Study of EU Sugar Policy' (2007) 76 *Nordic Journal of International Law* 1, 71-98; and Skogly S. I. and Gibney M., 'Transnational Human Rights Obligations' (2002) 24 *Human Rights Quarterly* 3, 781-798.

¹⁰ See, e.g., 'Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights', (2010) 29 *Netherlands Quarterly of Human Rights* 4, 578-590, Para 2; and Khalfan A., 'Division of Responsibility amongst States' in Langford M. *et al*, *ibid*, 299-332 at 309-313. See, also, HRC, Concluding Observations on Germany, UN Doc. CCPR/C/DEU/CO/6, 12 November 2012, Paras. 13 and 16; CESCR; HRC, Concluding Observations on Austria, UN Doc. E/C.12/AUT/CO/4, 13 December 2013, Para. 12; ICESCR, General Comment No. 14 (Art. 12) on the right to the highest attainable standard of health, UN Doc. E/C.12/2000/4 (2000), Para. 39; and ICESCR, General Comment No. 15 (Arts. 11 and 12) on the right to water, UN Doc. E/C.12/2002/11 (2002), Para. 33.

alia, international organisations and TNCs. Several initiatives have been taken over recent decades to clarify and demarcate the human rights obligations and/or responsibilities of these different types of other duty-bearers.¹¹ Although none of these initiatives has gained legally binding force, such soft law initiatives can be seen to reflect the current ‘new governance’ thinking on the human rights obligations of such actors and a growing interest in addressing their human rights impact.¹²

The increasing significance of NSAs in global governance poses important challenges for EU institutional actors and the member states. This is especially relevant because the protection and promotion of human rights is now at the forefront of all of the EU’s internal and external policies. Wider and deeper engagement with NSAs offers fresh opportunities for working with various actors to advance human rights, but it also gives rise to new challenges that the EU must engage with problematic actors who may directly or indirectly be responsible for violating human rights whilst simultaneously seeking to ensure coherence and effectiveness in its internal and external actions.

It is in the context of these opportunities and challenges that WP7, ‘Engagement with Private Actors, TNCs and Civil Society’, aims to provide a deeper understanding of NSAs and their positive and negative impacts on human rights. Furthermore, it seeks to identify examples of mechanisms and methods that can be used to engage with NSAs with a view to enhancing their positive human rights impacts while preventing and mitigating their adverse human rights impacts. The starting point, therefore, is a mapping exercise, 7.1, in which we identify and analyse positive and negative impacts of NSAs on human rights. This report provides a foundation for forthcoming reports on the EU’s engagement with NSAs. These include, 7.2, a report on

¹¹ See, e.g., Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie, ‘Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework’, UN Doc. A/HRC/17/31, 21 March 2011; Sub-Commission on the Promotion and Protection of Human Rights, ‘Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights’, UN Doc. E/CN.4/Sub.2/2003/12/Rev.2, 26 August 2003; CoE, ‘Accountability of international organisations for human rights violations’, Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the CoE, Report, Doc. 13370, 17 December 2013; Update of the OECD Guidelines for Multinational Enterprises, 2011, available at <http://www.oecd.org/document/33/0,3746,en_2649_34889_44086753_1_1_1_1,00.html> last accessed 30 July 2013; the ‘Tilburg Guiding Principles on World Bank, IMF and Human Rights’, drafted by a group of experts in October 2001 and April 2002, see van Genugten W. J. M., Flinterman C., Hunt P., and Mathews S., ‘Tilburg Guiding Principles on World Bank, IMF and Human Rights’ in van Genugten W. J. M., Flinterman C., Hunt P., and Mathews S. (eds), *World Bank, IMF and Human Rights* (Nijmegen: Wolf Legal Publishers, 2003) 249-257. For accounts of human rights obligations and accountability of NSAs, see e.g., Skogly S. I., ‘The Human Rights Obligations of the World Bank and the IMF’ in van Genugten W. J. M., Flinterman C., Hunt P., and Mathews S. (eds), *World Bank, IMF and Human Rights* (Nijmegen: Wolf Legal Publishers, 2003) 45-78 at 50-53; Clapham A., *Human Rights Obligations of Non-State Actors* (Oxford: OUP, 2006); Kinley D. and Chambers R., ‘The UN Human Rights Norms for Corporations: The Private Implications of Public International Law’ (2006) 6 *Human Rights Law Review* 3, 447-497; Wouters J., Brems E., Smis S. and Schmitt P. (eds), *Accountability for Human Rights Violations by International Organisations* (Antwerp: Intersentia, 2010); Rossi I., *Legal Status of Non-Governmental Organizations in International Law* (Antwerp: Intersentia, 2010); Buhmann K., ‘Corporate Social Responsibility and Business Responsibilities for Human Rights’ (2007) 25 *Nordisk Tidsskrift for Menneskerettigheter* 4, 331-352; and McBeth A., *International Economic Actors and Human Rights* (Oxon: Routledge, 2010).

¹² Vandenhoe, W., ‘Emerging Normative Frameworks on Transnational Human Rights Obligations’ (2012) Robert Schuman Centre for Advanced Studies, Global Governance Programme, EUI Working Paper RSCAS 17/2012, 2, available at <<http://cadmus.eui.eu/handle/1814/21874>> last accessed on 10 June 2014.

enhancing the contribution of EU institutions and Member States, NGOs and IFIs, and 7.3, a report examining methods that the EU can use to strengthen its engagement with NSAs.

B. Methodology

This report relies on desk research to identify and analyse the human rights impacts of NSAs. In order to provide the necessary context for the main mapping exercise, Chapters VI-IX, a general part has been included, Chapters II-V, which contains description and analysis of the following:

- II. The place of NSAs in the international legal system, including definitions of NSAs;
- III. The legal and policy basis for the EU's engagement with NSAs;
- IV. The cross-cutting role of the media, including the Internet and social media;
- V. Measuring human rights impacts of non-state actors.

Chapters II-V provide a reference point for the mapping of the positive and negative human rights impacts of the four *vertical* groupings identified in the description of work for WP7 in Chapters VI-IX, namely:

- VI. Business, financial services and transnational corporations;
- VII. Civil society and non-governmental organisations;
- VIII. International financial institutions;
- IX. Individual human rights defenders.

Each of the vertical chapters contains a general context section and, where relevant to the mapping, an introduction to EU engagement, which provides a foundation for the forthcoming WP7 reports focusing on engagement with NSAs. This is followed by sections identifying the positive and negative human rights impacts of each of these vertical groupings of NSAs by reference to cross-cutting or *horizontal* areas, including, *inter alia*, the rights of the person, labour rights, the rights of children, gender equality, non-discrimination, indigenous peoples' rights, and the rights of peoples to their culture, religion/belief and language.

As outlined in the Executive Summary of this report,¹³ the list of horizontal areas in this report has evolved from the indicative listing of areas in the original description of work for WP7. Each researcher used the listing as a point of reference when identifying human rights impacts in the relevant areas referred to in the work description.

The main issues identified in the impact analysis in the mapping are summarised in the conclusion, Chapter X. Cross-cutting impacts and linkages between the vertical groupings of NSAs are discussed with reference to examples from the horizontal areas.

¹³ See note 2 above.

Finally, as the majority of the chapters have been written collaboratively, and involve more than one FRAME partner, the authors of each part are not identified separately. The full listing of authors in alphabetical order is on the front sheet of the report.

II. Non-state actors in the international legal system

A. General context

Although NSAs have a growing role within the international legal system, defining them has many difficulties. This Chapter aims to reflect on these difficulties and to outline the position of NSAs in the international human rights system. It will also consider to what extent this legal system encompasses a broad categorisation of NSAs, which is the basis for the mapping in Chapters VI–IX of this report.

In order to do so, this Chapter examines definitions of NSAs in the context of the mapping exercise. It seeks to identify the complications of accommodating NSAs, as defined, in the international human rights system both for the purposes of protecting and promoting human rights and also holding NSAs accountable for negative human rights impacts. It provides a reference point for consideration of the EU's approach to NSAs in Chapter III below.

B. Definition of non-state actors

Although NSAs have been a widely debated topic in scholarly research over recent decades, there is a plurality of views on how they should be defined. Current understanding about the concept of a 'non-state actor' is that it is a 'term of political science and sociology, but not a legal term of art'.¹⁴ It may be argued that it is possible to readily identify with the concept because its usage has become so widespread. However, this does not resolve the issue of how to define the concept of NSAs, which in practice has proved elusive. Indeed, this situation is a consequence of the fact that NSAs are not a homogenous group of actors and the term itself does not positively indicate any common features.¹⁵ The term NSA is inherently negative – all actors other than states may be included – or what P. Alston describes as the 'not-a-cat syndrome', meaning that the term is often left undefined and understood solely by the exclusion of these actors from the community of states.¹⁶

For example, we have included the European Investment Bank (EIB) as an NSA in Chapter VIII of this report, on international financial institutions (IFIs), even though it is owned by the EU and represents the interests of the Member States. The EIB is included on the basis that it operates by borrowing on the

¹⁴ Peters A., Koechlin L. and Fenner Zinkernagel G., 'Non-state actors as standard-setters: framing the issue in an interdisciplinary fashion' in Peters A., Koechlin L., Förster T. and Fenner Zinkernagel G., *Non-State Actors as Standard-Setters* (Cambridge: CUP, 2009) 1-32, at 14.

¹⁵ Ronen Y., 'Human Rights Obligations of Territorial Non-State Actors' (2013) 41 *Cornell International Law Journal* 1, 21-50, at 25.

¹⁶ Alston P. 'The "Not-a-Cat" Syndrome: Can the International Human Rights Regime Accommodate Non-State Actors?' in Alston P. (ed), *Non-State Actors and Human Rights* (Oxford: OUP, 2005) 3-37. For more legal guidance, see International Law Association (ILA), First Report of the Committee on Non-State Actors in International Law, The Hague Conference, 'Non-State Actors in International Law: Aims, Approach and Scope of Project and Legal Issues' (2010) available at <<http://www.ila-hq.org/en/committees/index.cfm/cid/1023>> last accessed on 6 May 2014.

capital markets rather than from the EU's budget and has decision-making independence within the EU's organisational system.¹⁷ It can therefore be deemed, like the World Bank, to be an NSA created by states.

As a consequence, the notion of an NSA may encompass almost every actor within society functioning autonomously, or semi-autonomously, from states. For example, rebel groups, irregular armed groups and liberation movements may be included.¹⁸ Moreover, in the context of UN Security Council resolutions, in particular in response to the attacks of 11 September 2001, the term NSA may be associated with terrorist groups.¹⁹ The human rights impacts of such groups are not considered directly in WP7 because of their disparate nature but we need to be aware of any direct and indirect impacts, for example, if their activities hinder the work of NGOs or weaken civil society.

Moreover, the term NSA includes financial market actors as well as business enterprises that operate across borders, known generically as TNCs.²⁰ It is also attributed to a growing number of international actors, including, *inter alia*, IFIs, certain mercenary and private security firms, as well as natural and legal persons who qualify as 'foreign investors'.²¹ It includes not only NGOs but also localised or indigenous civil society organisations (CSOs) and individual human rights defenders (HRDs).

Within the UN, and in scholarly debate, it is clear that the definition of NSAs is an actor-based one. This approach opens the way for consideration of NSAs' direct or indirect obligations and/or potential breaches of those obligations. For example, NSAs, who are legal persons, such as businesses, may be rights holders under international human rights law.²²

In the field of business and human rights, the role of TNCs and other business enterprises is usually not considered to engender specific 'hard' obligations to protect or fulfil human rights. Instead, there is a mere corporate social responsibility to *respect* human rights.²³

¹⁷ See the EIB website, available at <<http://www.eib.org/about/structure/index.htm>> last accessed on 29 July 2014.

¹⁸ Zegveld L., *The Accountability of Armed Organised Groups in International Law* (Cambridge: CUP, 2002) 148.

¹⁹ See for example, with respect to Hezbollah, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Representative of the Secretary-General on Human Rights of Internally Displaced Persons, and Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, Mission to Lebanon and Israel, HRC, Para. 19, UN Doc A/HRC/2/7 (2 October 2006).

²⁰ Sagafi-nejad T. and Dunning J. H., *The UN and Transnational Corporations: From Code of Conduct to Global Compact* (Bloomington: Indiana University Press, 2008) 2-3.

²¹ International Law Association (ILA), First Report of the Committee on Non-State Actors in International Law, The Hague Conference, 'Non-State Actors in International Law: Aims, Approach and Scope of Project and Legal Issues' (2010) under '2. Working Definitions' at 'a. Non-state Actor', available at <<http://www.ila-hq.org/en/committees/index.cfm/cid/1023>> last accessed on 6 May 2014.

²² In respect of the right of property, for example, under the first paragraph of Art. 1 of the Protocol to the ECHR: 'Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law'.

²³ See, Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework', UN Doc. A/HRC/17/31, 21 March 2011.

The problematic nature of NSAs has resulted in several, sometimes contradictory, attempts to offer a unified definition in scholarly literature. While some texts emphasise factors relating to NSAs' independence from states, other suggested definitions, by contrast, focus on their relevance and importance for the transnational dimension of international relations and their impact and power within that realm. The former school of thought attempts to examine the concept from a legal perspective with a focus on accountability and legitimacy,²⁴ whereas the latter highlights the importance of studying NSAs from multiple disciplines and to focus on their ability to contribute to international governance.²⁵

Differences in approaches to defining NSAs can be illustrated by the following examples. On the one hand, B. Arts applies the term to: 'all those actors that are not (representatives of) states, yet that operate at the international level and are potentially relevant to international relations'.²⁶ On the other hand, D. Josselin and W. Wallace include all organisations which are: (1) largely or entirely autonomous from central government funding and control; emanating from civil society, or from the market economy, or from political impulses beyond state control and direction; (2) operating as, or participating in, networks which extend across the boundaries of two or more states – thus engaging in 'transnational' relations, linking political systems, economies, societies; (3) acting in ways which affect political outcomes, either within one or more states or within international institutions – either purposefully or semi-purposefully either as their primary objective or as one aspect of their activities.²⁷

For the purposes of this report, a wide inclusive approach to defining NSAs is preferred, to include all autonomous or semi-autonomous actors – including organisations, civil society movements and individuals, such as HRDs – operating at transnational, national and/or sub-national levels, whose activities have, directly or indirectly, impacts on human rights. It is an approach that is consistent with emerging EU policy, in particular in respect of CSOs, discussed in Chapter III below. On this basis, for the purposes of the research in WP7, we have positively identified four broad groupings of NSAs for our mapping analysis: (1) businesses, including TNCs and financial services actors; (2) CSOs and NGOs; (3) IFIs; and (4) HRDs. Inevitably, these groupings do not include all NSAs but this wide conception of NSA activity, including, for example, the media and the Internet, see Chapter IV below, will form part of the context for our analysis.

²⁴ E.g. Clapham A., *Human Rights Obligations of Non-State Actors* (Oxford, OUP 2006) 156.

²⁵ E.g. Calame P., 'Non-State Actors and World Governance, Forum for a New World Governance Discussion Paper' (2008) Forum for a New World Governance, available at <<http://www.world-governance.org/spip.php?rubrique37>> last accessed on 6 May 2014; see also Reinalda B., Arts B. and Noortmann M., 'Non-state Actors in International Relations: Do They Matter?' in Arts B., Noortmann M. and Reinald B. (eds), *Non-state Actors in International Relations* (Aldershot: Ashgate, 2001) 1-8.

²⁶ Arts B., 'Non-State Actors in Global Governance: Three Faces of Power' (2003) Max Planck Project Group on Common Goods, Bonn, Working Paper 2003/4, 5, available at <http://www.coll.mpg.de/pdf_dat/2003_04online.pdf> last accessed on 6 May 2014.

²⁷ Josselin D. and Wallace W., 'Non-state Actors in World Politics: A Framework' in Josselin D. and Wallace W. (eds), *Non-state Actors in World Politics* (New York: Palgrave, 2001) 1-20.

C. Positioning of non-state actors in the international legal system

An obvious absence of a clear view on what unifying features NSAs have in common also relates to their personality and subjectivity in the international legal system. Apart from the obstacles identified above, the international legal system has difficulties in accommodating NSAs, namely, due to the centrality of the system as built around binding states through customary international law and a network of treaty obligations to which, in the majority of cases, only states can become parties.²⁸ In this state-centric system of international law, with the principle of state sovereignty as one of its cornerstones, where states, or organisations created by states, can be described as the only entities possessing ‘full’ legal personality, the existing human rights catalogue, by definition, is understood in a domain of relationship between state and individual.

However, even though the international legal system operates with states as the main reference point, some NSAs, such as businesses, may be rights holders as ‘legal persons’ and, more generally, human rights *per se* are unlimited in their addressees, that is, they may be applicable regardless of who is in a position to cause human rights impacts. Thus, Y. Ronen distinguishes between the present international legal system, which formally imposes human rights obligations only on states, and the concept of human rights as such, which is not necessarily limited to states but may include anyone capable of infringing upon human rights as an addressee.²⁹

That means, optimally, that protection from human rights violations should be extended to all situations where these rights are at stake, irrespective of who represents the threat, i.e. whether it is a state, business, IFI or NGO.³⁰

P. Alston has explained the challenge posed by NSAs as follows:³¹

‘[T]he international human rights regime’s aspiration to ensure the accountability of all major actors will be severely compromised in the years ahead if it does not succeed in devising a considerably more effective framework than currently exists in order to take adequate account of the roles played by some non-state actors. In practice, if not in theory, too many of them currently escape the net cast by international human rights norms and institutional arrangements’.

This argument points out the alleged lack of accountability for human rights violations of NSAs as a consequence of the traditional approach to international human rights law, discussed above.

Beyond the argument that human rights obligations are unlimited in their addressees, that is, regardless of who is in a position to cause human rights impacts, there is another reason for imposing human rights

²⁸ Alston P. and Goodman R., *International Human Rights* (Oxford: OUP, 2013) 1431.

²⁹ Ronen Y., ‘Human Rights Obligations of Territorial Non-State Actors’ (2013) 46 *Cornell International Law Journal* 1, 21-50, at 21.

³⁰ *Ibid*, at 25.

³¹ Alston P., *Non-State Actors and Human Rights* (Oxford: OUP, 2005) 6.

obligations on NSAs. This relates to their increasingly widening powers.³² For example, if we consider the resources of the largest TNCs, it is estimated that 37 of the world's 100 largest economies are TNCs.³³

In conclusion, the case for holding diverse groups of NSAs accountable for human rights violations for which they are responsible has been crystallising over recent years, however it is still far from being generally accepted. Some progress is, nevertheless, visible in an apparent increase in the use of non-binding means of addressing human rights responsibilities. On the more distant horizon, there is the prospect of further progress not merely in promoting but also, potentially, in enforcing human rights compliance even in situations where NSAs are not formally bound by human rights obligations.

³² Ronen Y., 'Human Rights Obligations of Territorial Non-State Actors' (2013) 46 *Cornell International Law Journal* 1, 21-50, at 21. See also Nolan A., 'Addressing Economic and Social Rights Violations by Non-State Actors through the Role of the State: A Comparison of Regional Approaches to the "Obligation to Protect"' (2009) 2 *Human Rights Law Review* 9, 225-255; De Brabandere E., 'Non-State Actors, State-Centrism and Human Rights Obligations' (2009) 22 *Leiden Journal of International Law* 1, 191-209.

³³ Transnational Institute, 'State of Power 2014: Exposing the Davos Class' (2014), available at <http://www.tni.org/sites/www.tni.org/files/download/state_of_power_hyperlinked_0.pdf> last accessed on 9 June 2014. For instance, when comparing top companies' revenues with the countries' GDP, already in 2010, Wal-Mart's revenues were on par with Norway's GDP, or, for instance, both Exxon Mobil and Chevron took in greater revenues than the entire GDP of Romania. See Global Policy Forum, 'Comparison of the World's 25 Largest Corporations with the GDP of Selected Countries' (2010), available at <http://www.globalpolicy.org/images/pdfs/Comparison_of_Corporations_with_GDP_of_Countries_table.pdf> last accessed on 9 June 2014.

III. Non-state actors in the EU context

A. General context

NSAs are an important component of the EU's policies, and their role as stakeholders in human rights issues both within and beyond the EU's borders has been increasingly acknowledged as a core element of the EU's legitimacy as an actor.³⁴ In this respect, the increasing recognition of the role that NSAs play in human rights protection and promotion has been explicitly stated in numerous EU policy documents. On the input legitimacy side, NSAs, such as the social partners, contribute to the advancement of human rights-based policies within the EU by enhancing legitimacy through consultations, for instance, at various stages of the legislative process. On the output legitimacy side, NSAs have committed to and been granted responsibility for monitoring and implementing numerous EU-financed projects targeting human rights both within the EU and also to strengthen the effectiveness of EU development policy in third countries.³⁵ Furthermore, the wide ranging EU-NGO forums have become an institutionalised part of the process of Human Rights Dialogues and Consultations with third countries.³⁶

This Chapter aims to outline the EU's understanding of NSAs in its policies and the legal basis for their mutual engagement. Analysis of the application of EU law and policy to NSAs, including the EU's approach to engagement with them, is highly relevant to the mapping exercise in Chapters VI-IX below and the research to be undertaken for WP7 more generally.

Following the entry into force of the Lisbon Treaty in 2009, one of the main roles of the EU is to promote democracy and human rights worldwide in line with Article 21(1) of the Treaty on European Union (TEU), which defines democracy, the rule of law and the universality and indivisibility of human rights and fundamental freedoms as guiding principles of the EU's action on the international scene. The EU is also committed, under Article 11(1) TEU, to 'give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action' both internal and external.

Moreover, the elevation of the Charter of Fundamental Rights of the European Union (CFREU) to the 'same legal value' as the Treaties, under Article 6(1) TEU, strengthens the obligations on the EU in its

³⁴ See e.g. Finke B., 'Civil society participation in EU governance' (2007) 2 *Living Reviews in European Governance* 2, 1-42, available at <<http://europeangovernance.livingreviews.org/Articles/lreg-2007-2/download/lreg-2007-2Color.pdf>> last accessed on 14 June 2014; Kohler-Koch B. and Finke B., 'The Institutional Shaping of EU-Society Relations: A Contribution to Democracy via Participation' (2007) 3 *Journal of Civil Society* 3, 205-221; Voltolini B., 'The role of non-state actors in EU policies towards the Israeli-Palestinian conflict' (2012) European Union Institute for Security Studies, Occasional Paper 99, available at <http://www.iss.europa.eu/uploads/media/The_role_of_non-state_actors_in_EU_policies_towards_the_Israeli-Palestinian_conflict.pdf> last accessed on 1 May 2014; Heidbreder E. G., 'Civil Society Participation in EU Governance' (2012) 7 *Living Reviews in European Governance* 2, 1-42.

³⁵ Voltolini, *ibid.*

³⁶ See the EEAS website, available at <http://eeas.europa.eu/human_rights/cooperation_with_ngo/index_en.htm> last accessed on 29 July 2014.

engagement with NSAs.³⁷ In particular, the CFREU applies to all actions of the EU institutions and bodies with no limitations in terms of geographical definition.³⁸

Besides these core legal developments – and in light of the finalised draft accession agreement of the EU to the European Convention on Human Rights (ECHR) – the EU has focused on improving its internal and external human rights policies.³⁹

In December 2011, the EU presented a new policy approach to respond to global human rights challenges. The Joint Communication of the European Commission and EU High Representative for Foreign Affairs and Security Policy, ‘Human Rights and Democracy at the Heart of EU External Action – towards a more effective approach’ (hereinafter ‘the Joint Communication’) spells out the need for coherence in mainstreaming human rights into the EU’s external policies.⁴⁰

Furthermore, 2012 was a landmark year for EU policies on human rights and democracy with the appointment of the first ever EU Special Representative for Human Rights and the adoption of the EU Strategic Framework and Action Plan on Human Rights and Democracy (hereinafter the ‘Strategic Framework’), according to which ‘the EU will promote human rights in all areas of its external action without exception’.⁴¹

The Joint Communication elaborates further on working in partnership with civil society. It notes that the EU ‘needs to work closely with civil society and to draw on its expertise and alternative channels of communication. Engagement with civil society can still take place in countries even where there is little or no reasonable prospect of engaging effectively with a government’.⁴²

³⁷ See, generally, Peers S., Hervey T., Kenner J. and Ward A. (eds), *The Charter of Fundamental Rights. A Commentary* (Oxford: Hart Publishing, 2014).

³⁸ Guild E., Carrera S., den Hertog L. and Parkin J., ‘Implementation of the EU Charter of Fundamental Rights and its Impact on EU Home Affairs Agencies’, Centre for European Policy Studies, 25 October 2011, available at <<http://www.ceps.be/book/implementation-eu-charter-fundamental-rights-and-its-impact-eu-home-affairs-agencies>> last accessed on 6 May 2014; Moreno-Lax V. and Costello C., ‘The Extraterritorial Application of the EU Charter of Fundamental Rights: From Territoriality to Facticity, the Effectiveness Model’ in Peers *et al*, *ibid*, 1657-1684. For more general debate on extraterritoriality see, Besson S., ‘The Extraterritoriality of the European Convention on Human Rights: Why Human Rights Depend on Jurisdiction and What Jurisdiction Amounts to’ (2012) 25 *Leiden Journal of International Law* 4, 857-884; Milanovic, M., *Extraterritorial Application of Human Rights Treaties* (Oxford: OUP, 2011).

³⁹ See, *inter alia*, Gragl P., ‘Agreement on the Accession of the European Union to the European Convention on Human Rights’ in Peers S., Hervey T., Kenner J. and Ward A. (eds), *The Charter of Fundamental Rights. A Commentary* (Oxford: Hart Publishing, 2014) 1727-1824.

⁴⁰ Joint Communication by the Commission and the HRFASP, ‘Human rights and democracy at the heart of the EU external action – towards a more effective approach’ COM(2011) 886 final.

⁴¹ Council Conclusions on Human Rights and Democracy, 3179th Foreign Affairs Council meeting, Luxembourg, 25 June 2012, available at <http://europa.eu/rapid/press-release_PRE5-12-282_en.htm?locale=en> last accessed on 4 May 2014.

⁴² Joint Communication by the Commission and the HRFASP, ‘Human rights and democracy at the heart of the EU external action – towards a more effective approach’ COM(2011) 886 final, p.9.

The EU's approach to consultations with international and local human rights NGOs is described as 'systematic' in all aspects of the EU's human rights policy. One of the central aims is to support conditions in third countries 'that will enable civil society to operate freely'.⁴³

The EU is also committed to being more proactive in 'supporting' HRDs and will continue to 'speak out' on specific human rights situations and violations. HRDs are described as 'indispensable allies' of the EU in the worldwide promotion and protection of human rights and key interlocutors for EU Delegations and the diplomatic missions of EU member states in third countries. These activities are complemented by financial assistance from the European Instrument for Democracy and Human Rights (EIDHR), which is to be delivered more speedily to meet the needs of CSOs.⁴⁴

The Joint Communication also stresses the importance of EU engagement with business in the implementation of their Corporate Social Responsibility (CSR) to respect human rights as defined in the UN Guiding Principles on Business and Human Rights.⁴⁵

The Strategic Framework sets out principles, objectives and priorities to improve the effectiveness and consistency of EU policy as a whole and offers detailed guidance on how to ensure human rights are taken into account in all aspects of the EU's policies. It commits to deepening the EU's cooperation with civil society and to 'build new partnerships to adapt to changing circumstances'. It regards a 'vigorous and independent' civil society as 'essential to the functioning of democracy and the implementation of human rights'. It declares that 'effective engagement with civil society is a cornerstone of a successful human rights policy'.⁴⁶ At the same time, priorities for EU action in third countries for the first time are based on tailor-made Human Rights Country Strategies (HRCS), which should serve as a main reference point for the EU's engagement with civil society and other NSAs.

It is therefore obvious that the rapid legal and policy development of EU human rights policy requires an analysis of where the disparate types of NSAs fit in the EU's broader human rights framework. This is necessary not only for the purpose of analysing the potential for a more fruitful engagement with NSAs in meeting the challenges of protecting and promoting human rights in EU external relations and internal policies, but also in preventing and mitigating any adverse human rights impacts of NSAs' activities.

B. Legal and policy basis for EU engagement with non-state actors

The EU has attempted to provide a detailed practical, rather than theoretical, definition of terms such as NSAs and CSOs. For example, the Cotonou Partnership Agreement, 2000, between the European Community and the African, Caribbean and Pacific group of states (ACP), as revised, is the first major EU agreement that enshrines the participation of a wide range of NSAs as one of the basic principles for

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*, pp.12-13.

⁴⁶ Council Conclusions on Human Rights and Democracy, 3179th Foreign Affairs Council meeting, Luxembourg, 25 June 2012, available at <http://europa.eu/rapid/press-release_PRES-12-282_en.htm?locale=en> last accessed on 4 May 2014. Strategic Framework, p.3.

cooperation. NSAs are defined in Article 4 as including the: ‘Private sector; economic and social partners, including trade union organisations; civil society in all its forms according to national characteristics’. Under Article 6 of the revised agreement, 2010, NSAs, are formally included within the ‘actors of cooperation’ alongside the EU and its member states and the ACP states.⁴⁷

Further, and much more explicit, reference to NSAs can be found in the 2002 Commission Communication on Participation of Non-State Actors in European Community Development Policy. It states that the term NSA is used to describe a range of organisations that:⁴⁸

‘[b]ring together the principal, existing or emerging, structures of the society outside the government and public administration. NSAs are created voluntarily by citizens, their aim being to promote an issue or an interest, either general or specific. They are independent of the state and can be profit or non-profit-making organisations. The following are examples of NSAs: Non-Governmental Organisations/Community Based Organisations (NGO/CBO) and their representative platforms in different sectors, social partners (trade unions, employers associations), private sector associations and business organisations, associations of churches and confessional movements, universities, cultural associations, media’.

Next, in the 2006 European Consensus on Development, the role of NSAs was acknowledged in a section on ‘the participation of civil society’, where it is stated that:⁴⁹

‘[T]he EU supports the broad participation of all stakeholders in countries’ development and encourages all parts of society to take part. Civil society, including economic and social partners such as trade unions, employers’ organisations and the private sector, NGOs and other non-state actors of partner countries in particular play a vital role as promoters of democracy, social justice and human rights. The EU will enhance its support for building capacity of non-state actors in order to strengthen their voice in the development process and to advance political, social and economic dialogue. The important role of European civil society will be recognised as well; to that end, the EU will pay particular attention to development education and raising awareness among EU citizens’.

Article 24.2 of the 2006 Development Cooperation Instrument (DCI) outlines a detailed list of organisations eligible for the Commission’s financial support. NSAs are considered to include.⁵⁰

⁴⁷ Partnership agreement between the members of the ACP Group of States on the one part, and the European Community and its Member States, on the other part, signed in Cotonou on 23 June 2000, 2000/483/EC, OJ 2000 L317/3 as rectified in OJ 2004 L385/88. The Agreement has been revised twice: OJ 2006 L209/26 (entered into force 1 July 2008); and OJ 2010 L287/3 (applicable on a provisional basis from 1 November 2010).

⁴⁸ Commission, ‘Participation of Non-State Actors in EC Development Policy’, COM (2002) 598, 5.

⁴⁹ Joint statement by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission on European Union Development Policy: ‘The European Consensus’ (2006/C 46/01).

⁵⁰ Commission Regulation (EC) No 1905/2006 of the European Parliament and of the Council of 18 December 2006 establishing a financing instrument for development cooperation [2006] OJ 2006 L 378/41. See also Sharma B., Foresti M. and Wild L., ‘Engaging non state actors in new aid modalities’ (2009) Overseas Development Institute, Reference Document No 12, available at

'[N]ongovernmental organisations, organisations representing indigenous peoples, organisations representing national and/or ethnic minorities, local traders' associations and citizens' groups, cooperatives, trade unions, organisations representing economic and social interests, organisations fighting corruption and fraud and promoting good governance, civil rights organisations and organisations combating discrimination, local organisations (including networks) involved in decentralised regional cooperation and integration, consumer organisations, women's and youth organisations, teaching, cultural, research and scientific organisations, universities, churches and religious associations and communities, the media and any nongovernmental associations and independent foundations, including independent political foundations'.

More specifically, within the framework of the DCI, the EU has introduced a new thematic programme, entitled 'Non-State Actors and Local Authorities in Development', which aims to better involve these actors, both from the EU and developing countries.⁵¹ However, this programme does not introduce any further definition, or clarification, of the term of NSA. Instead, it uses the DCI definition as a basis.

The Commission Communication on increasing the impact of EU Development Policy, introduced as part of the Agenda for Change, 2011, builds on the language in the DCI, but puts stronger emphasis on linking good governance and human rights aspects with enhanced conditionality.⁵² The role of NSAs is acknowledged in the following section:⁵³

'Should a country loosen its commitment to human rights and democracy, the EU should strengthen its cooperation with non-state actors and local authorities and use forms of aid that provide the poor with the support they need. At the same time, the EU should maintain dialogue with government and non-state actors. In some cases, stricter conditionality will be warranted'.

In a follow-up Communication issued in 2012, the Commission gives a clearer view of what the EU means by the term CSO:⁵⁴

'The concept of 'CSO' embraces a wide range of actors with different roles and mandates. Definitions vary over time and across institutions and countries. The EU considers CSOs to include all non-State, not-for-profit structures, non-partisan and non-violent, through which people organise to pursue shared objectives and ideals, whether political, cultural, social or economic. Operating from the local to the national, regional and international levels, they comprise urban and rural, formal and informal organisations. The EU values CSOs' diversity and specificities; it

<http://ec.europa.eu/europeaid/infopoint/publications/europeaid/254a_en.htm> last accessed on 6 May 2014; Reinalda B. (ed), *The Ashgate Research Companion to Non-State Actors* (Surrey: Ashgate, 2011).

⁵¹ This programme has its legal basis in Art. 14 of Commission Regulation (EC) No 1905/2006 of the European Parliament and of the Council of 18 December 2006 establishing a financing instrument for development cooperation [2006] OJ 2006 L 378/41

⁵² Commission 'The Communication on the Increasing the impact of EU Development Policy: an Agenda for Change' COM (2011) 637, Brussels.

⁵³ *Ibid.*

⁵⁴ Commission, 'The roots of democracy and sustainable development: Europe's engagement with Civil Society in external relations' (Communication) COM(2012) 492 final, Brussels.

engages with accountable and transparent CSOs which share its commitment to social progress and to the fundamental values of peace, freedom, equal rights and human dignity’.

CSOs falling within this definition include:⁵⁵

‘Membership-based, cause-based and service-oriented CSOs. Among them, community-based organisations, non-governmental organisations, faith-based organisations, foundations, research institutions, gender and LGBT organisations, cooperatives, professional and business associations, and the not-for-profit media. Trade unions and employers’ organisations, the so-called social partners, constitute a specific category of CSOs’.

In conclusion, the EU uses the term NSAs as it allows it to include actors who are not necessarily always considered as CSOs. This term, therefore, can be stretched according to the context and specific needs of the EU’s policies, including involving HRDs. As B. Sharma, M. Foresti and L. Wild note:⁵⁶

‘[T]he [EU] has begun to use the term Non-State Actors (NSAs) rather than civil society to broaden the term to emphasise the inclusion of the private sector and other economic and social partners, such as trade unions, religious organisations and universities, according to context specific national characteristics and the functions they fulfil. Thus, NSAs not only fulfil a service delivery function and advocacy but may also include watchdog/oversight/monitoring organisations and information providers such as the media’.

IV. Role of the media, the Internet and social media

Some of the actors and phenomena addressed in this study are not easily categorised in the vertical mapping but are important for the general context. One such cross-cutting issue is the role of media, the Internet and the social media, which is seen as relevant to all the actors and many of the phenomena discussed in the study. Actors within the media, the Internet and social media, with the exception of state-controlled media, may be seen as *NSAs themselves* (as business enterprises or, where they operate on a non-profit basis, as civil society actors) with clear impacts on the realisation of human rights, but they must also be addressed as *tools* and *channels* for human rights impact by the NSAs reviewed in this study.

Through providing a forum for different voices to be heard and by exposing human rights violations, the media plays a significant role in the protection and promotion of human rights.⁵⁷ The role of the free, independent and pluralistic media as ‘public watchdogs’ and in disseminating information is seen as vital for the upholding of democratic societies and the realisation of human rights, with media exposure of human rights violations functioning often as the first step for effective human rights accountability.⁵⁸ As

⁵⁵ *Ibid.*

⁵⁶ Sharma B., Foresti M. and Wild L., ‘Engaging non state actors in new aid modalities’ (2009), Overseas Development Institute, Reference Document No 12, available at <<http://workspace.unpan.org/sites/internet/Documents/UNPAN039292.pdf>> last accessed on 6 May 2014.

⁵⁷ Hammarberg T., ‘Foreword’ in Hammarberg T. et al., *Human Rights and a Changing Media Landscape* (Strasbourg: Council of Europe, 2011) 7-20, at 7.

⁵⁸ *Ibid.*

one author notes, '[n]ot without reason, the media have been called the Fourth Estate – an essential addition to the powers of the executive, the legislature and the judiciary'.⁵⁹

The traditional media can, as well, successfully complement the newer forms of dissemination provided by Information and Communication Technology (ICT) in the promotion and protection of human rights.⁶⁰ A case in point in this regard was the visibility and follow-up given by the traditional media to the dissemination of information by Wiki Leaks, seen as a catalyst to a series of uprisings against authoritarian regimes during the so-called Arab Spring in 2011.⁶¹

The Internet, and social media, is seen to have revolutionised the free flow of, and access to, information and the realisation of freedom of expression.⁶² The Internet is regarded as a tool to increase transparency over the powerful and to facilitate democratic nation-building by providing a channel for active participation by citizens.⁶³ As a consequence, it is recognised that the Internet has significant instrumental value in the realisation of human rights and in contributing to societal development. The Human Rights Council, among others, acknowledges that the 'global and open nature of the Internet' is 'a driving force in accelerating progress towards development in its various forms'.⁶⁴ The Internet, and the social media, has also provided channels for cooperation among actors of civil society to, for example, coordinate aid efforts or other joint actions, to network and to provide early warnings of human rights violations.⁶⁵ First-hand accounts by individuals and CSOs dispersed through mobile technology during humanitarian crises or natural catastrophes have proven valuable in disseminating up-to-date information on human rights disasters.⁶⁶

⁵⁹ Hammarberg T., 'Foreword' in Hammarberg T. et al., *Human Rights and a Changing Media Landscape* (Strasbourg: Council of Europe, 2011) 7-20, at 7.

⁶⁰ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, UN Doc. A/66/290, 10 August 2011, Para. 13.

⁶¹ Amnesty International, *Amnesty International Report 2011: The State of the World's Human Rights* (London: Amnesty International, 2011) xii-xiii.

⁶² Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, UN Doc. A/66/290, 10 August 2011, Para. 10. For a discussion, see, e.g., Rowland D., 'Virtual World, Real Rights? Human Rights and the Internet' in Odello M. and Cavandoli S. (eds), *Emerging Areas of Human Rights in the 21st Century: The Role of the Universal Declaration of Human Rights* (Oxon: Routledge, 2011) 7-23, at 7-8.

⁶³ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, UN Doc. A/66/290, 10 August 2011, Para. 12.

⁶⁴ UN Human Rights Council, *The promotion, protection and enjoyment of human rights on the Internet*, UN Doc. A/HRC/20/2, 5 July 2012. Some commentators go as far as to state the Internet to be 'increasingly becoming indispensable for people to take part in cultural, social and political discourse and life'. See Mijatovic D., *Freedom of Expression on the Internet: A study of legal provisions and practices related to freedom of expression, the free flow of information and media pluralism on the Internet in OSCE participating States* (OSCE, 2010) 10.

⁶⁵ See, e.g., Knezevic D., 'Women's Voices against the War: the Internet in the Fight for Human Rights during the War in Former Yugoslavia' in Halpin E.F. et al. (eds), *Human Rights and the Internet* (London: Macmillan Press, 2000) 166-173, at 171.

⁶⁶ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, UN Doc. A/66/290, 10 August 2011, Para. 13.

The powerful position of the media can, however, also be misused to the effect of threatening the functioning of the democratic society and the realisation of human rights.⁶⁷ As one author notes, '[s]ome media outlets have been turned into propaganda megaphones for those in power, [o]thers have been used to incite xenophobic hatred and violence against minorities and other vulnerable groups'.⁶⁸ The functionality of the Internet, enabling propagating information behind the veil of anonymity, facilitates the radicalisation and escalation of some forms of individual and civil society activities as it unites, likeminded 'hatred bigots just as easily as it can locate lost school friends'.⁶⁹ Therefore, the Internet, especially the social media, has become 'an efficient and thereby dangerous tool' for organised production of hate speech and a channel for inciting hatred and violence against minorities and vulnerable groups.⁷⁰ Concerns have been expressed, as well, regarding the role of the Internet in inciting terrorism and genocide.⁷¹ As the Internet, in particular the *deep web*,⁷² provides platforms for illegal or harmful content, it may, also, facilitate sustaining and disseminating harmful practices such as child pornography.⁷³

While the newer forms of ICT may be empowering to those previously excluded or marginalised by increasing their access to information, it should be noted that the empowering and democratising effect of the Internet is not uniformly or universally dispersed globally and within societies because a large proportion of the world's population is still being left beyond the benefits of access to the Internet.⁷⁴ The

⁶⁷ Hammarberg T., 'Foreword' in Hammarberg, T. et al., *Human Rights and a Changing Media Landscape* (Strasbourg: Council of Europe, 2011) 7-20, at 7.

⁶⁸ *Ibid.*

⁶⁹ Rowland D., 'Virtual World, Real Rights? Human Rights and the Internet' in Odello M. and Cavandoli S. (eds), *Emerging Areas of Human Rights in the 21st Century: The Role of the Universal Declaration of Human Rights* (Oxon: Routledge, 2011) 7-23, at 16. For a discussion, see by von Behr I., Reding A., Edwards C. and Gribbon L., *Radicalisation in the digital era: The use of the internet in 15 cases of terrorism and extremism* (RAND Europe, 2013) available at <http://www.rand.org/content/dam/rand/pubs/research_reports/RR400/RR453/RAND_RR453.pdf> last accessed 14 April 2014; and Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, UN Doc. A/67/357, 7 September 2012. For an overview of approaches to Internet content regulation in the face of radicalisation, extremism and harmful content on the Internet, see, Mijatovic D., *Freedom of Expression on the Internet: A study of legal provisions and practices related to freedom of expression, the free flow of information and media pluralism on the Internet in OSCE participating States* (OSCE, 2010) 48-185.

⁷⁰ Mock K., 'Hate on the Internet' in Halpin E.F. et al. (eds), *Human Rights and the Internet* (London: Macmillan Press, 2000) 141-152, at 141; Hammarberg T., 'Foreword' in Hammarberg T. et al., *Human Rights and a Changing Media Landscape* (Strasbourg: Council of Europe, 2011) 7-20, at 7. For an account on the Internet and incitement to hatred, see, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, UN Doc. A/67/357, 7 September 2012.

⁷¹ See, e.g., UN Office on Drugs and Crime, *The Use of the Internet for Terrorist Purposes* (New York: UN, 2012); and Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, UN Doc. A/HRC/17/27, 16 May 2011, Paras. 25 and 34.

⁷² Digital Defenders of Children define the concept of deep web as follows: 'The term 'Deep Web,' refers to the 'deeper' parts of the web that are accessible, but are considered hard to find because they aren't indexed by regular search engines. Information on the Deep Web can be indexed, but only using complex search algorithms that have the ability to break down certain barriers'. See 'Deep Web vs. Dark Web: Defending Children Against Online Exploitation' (2014), THORN, available at <<http://www.wearethorn.org/deep-web-vs-dark-web-defending-children-against-online-exploitation/#sthash.eqsg4HTa.dpuf>> last accessed on 14 April 2014.

⁷³ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, UN Doc. A/66/290, 10 August 2011, Para. 20.

⁷⁴ Rowland D., 'Virtual World, Real Rights? Human Rights and the Internet' in Odello M. and Cavandoli S. (eds), *Emerging Areas of Human Rights in the 21st Century: The Role of the Universal Declaration of Human Rights* (Oxon:

digital divide, i.e. the gap in terms of access to or knowledge of ICT may, therefore, in fact sustain, or even perpetuate the unequal distribution of opportunities globally and within societies.⁷⁵ Some have even argued that economic priorities and historical reasons make the Internet a ‘predominantly white technology of power’.⁷⁶

Therefore, there are significant positive and negative impacts of both the ‘old’ and ‘new’ media for human rights. We will touch on this issue again when considering the role of HRDs in Chapter IX, many of whom are journalists and bloggers. Strategies for EU engagement with the media, in all its forms, will be of particular importance for forthcoming reports.

Routledge, 2011) 7-23, 8-11, 13-14; and Halpin E. F. and Hick S., ‘Information: an Essential Tool for Human Rights Work’ in Halpin E.F. et al. (eds), *Human Rights and the Internet* (London: Macmillan Press, 2000) 238-249, at 246 and 248.

⁷⁵ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, UN Doc. A/HRC/17/27, 16 May 2011, Para. 62; and Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, UN Doc. A/66/290, 10 August 2011, Para. 64.

⁷⁶ Roth L., ‘Reflection on the Colour of the Internet’ in Halpin E.F. et al. (eds), *Human Rights and the Internet* (London: Macmillan Press, 2000) 174-184, at 182.

V. Measuring the human rights impacts of non-state actors

As outlined in the methodology section of the Introduction, Chapter I.B, above, this Chapter is intended to provide a reference point for the mapping of the positive and negative human rights impacts of the four *vertical* groupings of NSA activity.

It is important to note at the outset that there are some significant obstacles to measuring the human rights impacts of NSAs. First, there is no universally accepted method of measuring human rights impacts, nor is there a generally accepted framework on how human rights impact assessment should be carried out. Second, most of the established mechanisms for measuring both qualitative and quantitative impacts on human rights assume that the reference point is the state as an actor.⁷⁷ Third, measuring the overall human rights impacts of selected NSAs is an even more complex issue given the potential for short, intermediate and long-term impacts of their activities.⁷⁸ This largely explains the growing demand for a toolbox to measure human rights impacts in a great variety of fields, which results in developing a number of Human Rights Impact Assessment (HRIA) tools.⁷⁹

In approaching the vertical groupings of NSAs for analysis, our task in this report is to assess both positive and negative human rights impacts. However, there is no one set of human rights indicators which would be universally applicable as they vary according to subjects and areas covered.⁸⁰ Nevertheless, the contextual framework for human rights assessment relating to state activities provides a useful reference point. This framework has been developed by the UN human rights treaty bodies and refers to the obligation of states to respect, protect and fulfil human rights.⁸¹ It differentiates between universally relevant indicators and specific indicators in the context of state activities. However, it gives emphasis not only to the adoption of international human rights principles and norms as indicators of human rights compliance, but also provides a useful tool for us to consider to what extent human rights impacts, both positive and negative, as intentional and unintentional outcomes of NSA activities could be measured.

⁷⁷ See further, Walker S., *The Future of Human Rights Impact Assessment on Trade Agreements* (Brussels: Intersentia Uitgevers N.V., 2009); Malhotra R. and Fasel N., 'Quantitative Human Rights Indicators - a survey of major initiatives' (2005) Background Paper for Expert Meeting on Human Rights Indicators, Abo Akedemi University, Turku, Finland, March 2005, available at <<http://gaportal.org/sites/default/files/Quantitative%20Human%20Rights%20Indicators.pdf>> last accessed on 6 May 2014.

⁷⁸ Harrison J., 'Human Rights Impact Assessments of Trade Agreements: Reflections on Practice and Principles for Future Assessments' (2010) A Background Paper for the Expert Seminar on Human Rights Impact Assessments of Trade and Investment Agreements, 23-24 June 2010, Geneva, available at <http://www2.warwick.ac.uk/fac/soc/law/chrp/projects/humanrightsimpactassessments/trade/hr_impact_background_paper.pdf> last accessed on 1 May 2014.

⁷⁹ Harrison J., 'Human Rights Measurement: Reflections on the Current Practice and Future Potential of Human Rights Impact Assessment' (2011) 3 *Journal of Human Rights Practice* 2, 162-187.

⁸⁰ Filmer-Wilson E., 'An Introduction into the Use of Human Rights Indicators for Development Programmes', June 2005, United Nations Development Group, 2, available at <http://www.undg.org/archive_docs/6135-An_Introduction_into_the_Use_of_Human_Rights_Indicators_for_Development_Programmes.doc> last accessed on 6 May 2014.

⁸¹ See the UN Report on Indicators for Promoting and Monitoring the Implementation of Human Rights prepared by the OHCHR, 6 June 2008, UN.Doc.HRI/MC/2008/3.

Such indicators are regarded as ‘specific information on the state of an event, activity or an outcome that can be related to human rights norms and standards; that address and reflect the human rights concerns and principles; and that are used to assess and monitor promotion and protection of human rights’.⁸²

Three types of indicators have been identified by the OHCHR.⁸³

First, *structural indicators* to be applied both on the ratification and adoption of international legal instruments and on the existence of basic institutional mechanisms deemed necessary for a realisation of human rights. Therefore, the primary objective is to focus foremost on the nature of domestic law as relevant to the concerned human right(s) and further on national policies, policy frameworks, strategies and action plans which aim to address issues under the specific human right in question. As such, structural indicators relate to the ‘respect’ dimension of states’ obligations.

Second, *process indicators*, based on national policies and strategies, refer to all such measures that a state is willing to take in order to give effect to its commitments to attain outcomes identified with the realisation of a given right. At the same time, these indicators contribute to direct monitoring of the progressive fulfilment of the specific right or the process of protecting the right and are therefore more sensitive to the real outcomes of national human rights policies. Process indicators, therefore, relate to the ‘protect’ dimension of states’ obligations.

Third, *outcome indicators* capture attainments, individual and collective, that reflect the status of realisation of human rights in a given context. But contrary to the structural and process indicators, this aspect reflects also the importance of the measure of enjoyment of human rights. Outcome indicators relate to the ‘fulfil’ obligation of states’ obligations.

Although these types of indicators are directed at states, it should be noted that the ‘respect’ and ‘protect’ dimensions, although formally owed by states, are recognised also as a ‘responsibility’ of business under the UN Human Rights Council’s ‘Protect, Respect and Remedy’ Framework discussed in Chapter VI below. Under this Framework, known now as the UN Guiding Principles on Business and Human Rights,⁸⁴ businesses are expected to assume corporate social responsibility (CSR) to respect human rights, which means that they should act with ‘due diligence’ to avoid infringing on the rights of others and to address adverse impacts including, in certain cases, providing an effective remedy. Under the implementation measures concerning the Guiding Principles and other voluntary initiatives, such as the UN Global Compact, the importance of indicators has been emphasised as a means of verifying whether adverse impacts are being addressed,⁸⁵ but agreeing on the indicators and establishing an evidence base for

⁸² UN Report on indicators for monitoring compliance with international human rights instruments, UN HRI/MC/2006/7, 7, available at <<http://daccess-ods.un.org/TMP/7068479.06112671.html>> last accessed on 6 May 2014.

⁸³ See the OHCHR web page on indicators, available at <<http://www.ohchr.org/EN/Issues/Indicators/Pages/framework.aspx>> last accessed on 29 July 2014.

⁸⁴ UN Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework (March 2011).

⁸⁵ *Ibid*, Para. 20.

measuring business and human rights has proved a difficult task.⁸⁶ The issue of implementation of CSR is considered in Chapter VI and a further report in WP7 on tracking responses to global CSR initiatives will delve deeper into this issue and seek to identify practical strategies.

Moreover, IFIs, such as the World Bank and the European Investment Bank, discussed in Chapter VIII, with their growing role in investment lending, are under increasing pressure to adopt human rights impacts assessments to measure ‘unintended adverse impacts’ of development activities they are financing.⁸⁷ The UN Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda, has noted that development projects can often have some negative impacts and therefore.⁸⁸

‘In order to avoid adverse impacts of development projects and maximize the benefits to the poorest and most marginalized, the World Bank should adopt a requirement to undertake human rights due diligence, including a human rights impact assessment, on all activities proposed for World Bank financing, particularly regarding the rights of the poorest and most vulnerable persons’.

The impact assessment process is also highly relevant for CSOs, NGOs and HRDs. The OHCHR envisages that these actors have an important role to play in developing human rights indicators, ensuring transparency and monitoring outcomes. The involvement of civil society is particularly important in areas such as discrimination against vulnerable and marginalised population groups.⁸⁹ The OHCHR notes that:⁹⁰

‘Human rights indicators allow States to assess their own progress in implementing human rights and compliance with the international treaties, and also provide tools for civil society to monitor progress and ensure accountability. They can assist national governments in implementing rights-based policy, bolster cases argued by human rights advocates and provide further access to information’.

Moreover, in many instances, such as evidence of incidence of torture, or cruel, inhuman and degrading treatment, the OHCHR has observed that the number of cases reported to independent bodies ‘depends

⁸⁶ See Addo M., ‘Key performance indicators and the Working Group on business and human rights’, LSE Measuring Business & Human Rights Blog, 14 March 2014, available at <<http://blogs.lse.ac.uk/businesshumanrights/2014/03/14/michael-addo-key-performance-indicators-and-the-working-group-on-business-and-human-rights/>> last accessed on 29 July 2014.

⁸⁷ See ‘UN experts urge World Bank to adopt human rights standards on the eve of key gathering in Washington’ (OHCHR press release, 28 April 2013), available at: <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13248&LangID=E>> last accessed on 29 July 2014.

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

on the awareness, access to information, motivation and perseverance of the alleged or potential victim, his or her family and friends, or civil society organisations in the country concerned'.⁹¹

All of this suggests that CSOs, NGOs and HRDs have a positive role to play in the 'protect' dimension of states' obligations and the measurement of 'process' indicators in respect of human rights. This is important for the context of the analysis in Chapters VII and IX.

Indicators as a means of measuring human rights impacts are therefore relevant to each of the selected vertical groupings of NSAs mapped in this report but they do not apply uniformly across the horizontal areas identified as examples, such as non-discrimination, labour rights and the rights of children. This is because, as the UN notes:⁹²

'... indicators that capture the cross-cutting human rights norms and principles cannot be exclusively identified with the realization of a specific human right, but are meant to capture the extent to which the process to implement and realize human rights is, for instance, participatory, inclusionary, empowering, non-discriminatory or accountable ... it is worth noting that there is no easy way to reflect these cross-cutting norms and principles explicitly in the selection of indicators'.

In conclusion, there is no straightforward conceptual framework for measuring the human rights impact of NSAs but the established methodologies for measuring the human rights impacts of state activities, which increasingly involve consultation with, and participation of, NGOs, CSOs, and HRDs, and the emerging framework for holding certain NSAs, such as businesses and IFIs, responsible for adverse human rights impacts, are relevant as a point of reference in the mapping chapters that follow.

⁹¹ See the UN Report on indicators for promoting and monitoring the implementation of human rights, prepared by the UN OHCHR, 6 June 2008, UN.Doc.HRI/MC/2008/3, p.42.

⁹² See the UN Report on indicators for monitoring compliance with international human rights instruments, UN HRI/MC/2006/7, 7, available at <<http://daccess-ods.un.org/TMP/7068479.06112671.html>> last accessed on 6 May 2014.

VI. Business, financial services and transnational corporations

A. General context

‘Globalisation has created more opportunities for enterprises to contribute to the fulfilment of human rights and also created heightened risks of business involvement in human rights harm.’

(Joint Communication on Human Rights and Democracy at the Heart of EU External Action, 12 December 2011, p.12)

The process of globalisation, which is characterised by economic liberalisation and deregulation, the growth of foreign direct investment and increased cross-border financial flows - as well as other global developments - has driven a ‘dramatic worldwide expansion’ of private businesses.⁹³ Regardless of the international or domestic nature of their activities, their legal form, and the nature of their ownership, businesses play an increasing role in the international order, but also at the regional, national and local levels, and not only in the economic sphere.⁹⁴

It is therefore necessary for us to identify and analyse the positive and negative impacts of businesses, including TNCs and SMEs, and financial services in this Chapter. As this is a hugely diverse area, with many varied and differing human rights impacts, both positive and negative, we have divided up the remainder of the Chapter into two parts. Sections B-C will address the EU’s engagement with business and the human rights impacts of businesses including TNCs. Section D concerns the impacts of financial services. For the purposes of this report, as outlined in the methodology section, Chapter I.B above, we have selected the most relevant horizontal areas for analysis in Sections C-D.

Turning first to TNCs, it is generally accepted that, if not a new phenomenon, the number of TNCs and the range and scope of their activities symbolise their role over recent decades in what some authors have called a ‘golden age’.⁹⁵ According to the UN, the term TNC refers to an ‘economic entity operating in more than one country or a cluster of economic entities operating in two or more countries - whatever their legal form, whether in their home country or country of activity, and whether taken individually or collectively’.⁹⁶ However, the diversity of arrangements of these global businesses has led to a variety of

⁹³ Rosemann N., ‘The UN Norms on Corporate Human Rights Responsibilities: An Innovating Instrument to Strengthen Business’ Human Rights Performance’ (2005) Dialogue on Globalization, Occasional Paper 20, 6, available at <<http://library.fes.de/pdf-files/iez/global/04669.pdf>> last accessed on 1 May 2014; UN Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework (March 2011), para.1.

⁹⁴ The UN Sub-Commission on the Promotion and Protection of Human Rights, UN Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights, 2003, para.21.

⁹⁵ Ruggie J., *Just Business: Multinational Companies and Human Rights* (New York: W. W. Norton & Company, 2013) XV.

⁹⁶ The UN Sub-Commission on the Promotion and Protection of Human Rights, UN Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights, 2003, para.20.

definitions.⁹⁷ Other terms such as multinational enterprise (MNE) or multinational corporation (MNC) have also been used interchangeably with the term TNC.

Whatever the precise definition, their weight in the economy demonstrates the importance that TNCs have acquired. The UN Conference on Trade and Development (UNCTAD) estimates that in 2010 the number of TNCs was more than 100,000, a majority of which are based in the EU, the US or Japan, with approximately 890,000 regional or local subdivisions.⁹⁸ Some private companies are now more significant economic entities than many states. According to some studies and their respective methodologies, between 29 and 51 TNCs are parts of the world's 100 largest economic entities.⁹⁹ It is clear that 'the trend is for corporations to grow much faster than states in terms of economic strength'.¹⁰⁰ States traditionally have the obligation to protect human rights within their jurisdictions and to implement international human rights standards, aimed at regulating their relations with individuals and groups. However, with the increased role of businesses, and their impacts on the daily life of millions of people, the question about the roles and responsibilities of the private sector with regard to human rights has been raised.

As underlined by P. Alston, 'along with greater power comes an enhanced potential to promote or undermine respect for human rights'.¹⁰¹ This is even more the case when the entire range of human rights can be affected by the activities of individual business operators. The issue of business and human rights has been permanently implanted on the global policy agenda since the 1990s. Since then a core set of internationally-recognised principles and guidelines has been adopted even though they are not taken up in a binding instrument. However, they may derive a degree of 'normative force through recognition of social expectations by states and other key actors'.¹⁰² They can also be part of a soft-law process that may lead towards the adoption of future binding rules, in order for corporate actors to be held accountable for the impact of their activities on human rights.

One early UN-based initiative in that direction is the so-called Global Compact. Launched in 2000 by the then UN Secretary-General, Kofi Annan, it is the leading global voluntary initiative for corporate social

⁹⁷ OECD, 'The OECD Guidelines for Multinational Enterprises' (2011), 17, available at <<http://dx.doi.org/10.1787/9789264115415-en>> last accessed on 6 May 2014. The OECD describes these global businesses as 'companies or other entities established in more than one country and so linked that they may coordinate their operations in various ways. While one or more of these entities may be able to exercise a significant influence over the activities of others, their degree of autonomy within the enterprise may vary widely from one multinational enterprise to another. Ownership may be private, State or mixed'.

⁹⁸ United Nations Conference on Trade and Development, World Investment Report 2011, Geneva (2011), Annex: table 34, available at <http://unctad.org/Sections/dite_dir/docs/WIR11_web%20tab%2034.pdf> last accessed on 6 May 2014.

⁹⁹ Anderson S. and Cavanagh J., 'Top 200: the rise of global corporate power' (2000) Institute for Policies Studies, available at <<http://www.corpwatch.org/article.php?id=377>> last accessed on 2 May 2014. The methodology used was to compare companies' sales with countries' GDPs.; UNCTAD, 'World Investment Report 2002: Transnational Corporations and Export Competitiveness' (17 September 2012), UN Doc UNCTAD/WIR/2002 90. The figures exclude financial corporations for conceptual reasons, and therefore probably understate the relative strength of large TNCs.

¹⁰⁰ McBeth A., *International Economic Actors and Human Rights* (Oxon: Routledge, 2010) 244.

¹⁰¹ Alston P. and Goodman R., 'Non-State Actors and Human Rights' in Alston P. and Goodman R., *International Human Rights* (Oxford: OUP, 2013) 1463.

¹⁰² UN Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Business and Human Rights: Mapping International Standards of Responsibility and Accountability for Corporate Acts, 2007, para. 45.

responsibility (CSR). It aims at getting business leaders to voluntarily promote and apply within their sphere of influence ten principles relating to human rights, labour standards, the environment and anti-corruption.¹⁰³ They are 'designed to assure that the fragile process of globalization is not derailed by the concentration of economic power, the degradation of the environment, or the perpetration of poverty and human rights abuses'.¹⁰⁴ At present, several thousand companies, many of them large TNCs from all continents, are involved in the Global Compact.¹⁰⁵ In 2012, the Global Compact, together with UNICEF and Save the Children, launched the Children's Rights and Business Principles to provide private companies with a comprehensive framework on how to respect and support children's rights through their business operations.

Another, earlier, UN initiative in the field of business and human rights was led by the Sub-Commission on the Promotion and Protection of Human Rights (an expert subsidiary body of what was then the Commission on Human Rights), when it approved the Norms on Transnational Corporations and Other Business Enterprises in 2003. Essentially, this sought to impose on companies, directly under international law, the same range of human rights duties that states have accepted for themselves under treaties they have ratified 'to promote, secure the fulfilment of, respect, ensure respect of and protect human rights'.¹⁰⁶ The Commission on Human Rights refused to endorse that document, which deeply divided businesses, governments and human rights organisations.¹⁰⁷

As a result of that controversy, instead, a Special Representative of the UN Secretary-General on the issue of human rights and transnational corporations and other business enterprises was appointed in 2005 to undertake a new process of reflection on the matter. The UN Human Rights Council approved in 2008 the 'Protect, Respect and Remedy' Framework, proposed by the Special Representative, Professor John G. Ruggie, which rests on three pillars.¹⁰⁸ The first is the state duty to protect against human rights abuses by third parties, including business enterprises, through appropriate policies, regulation, and adjudication. The second is the corporate responsibility to respect human rights, which means that business enterprises should act with due diligence to avoid infringing on the rights of others and to address adverse impacts with which they are involved. The third is the need for greater access by victims to an effective remedy, both judicial and non-judicial. The Guiding Principles on Business and Human Rights were endorsed three years later in order to implement the Framework, providing concrete and practical recommendations, which 'apply to all States and to all business enterprises, both transnational and others, regardless of their

¹⁰³ OHCHR website, 'Business and Human Rights', available at <<http://www.ohchr.org/EN/Issues/Business/Pages/BusinessIndex.aspx>> last accessed on 6 May 2014.

¹⁰⁴ Steinhardt R., 'Corporate Responsibility and the International Law of Human Rights: The New Lex Mercatoria' in Alston P. (ed), *Non-State Actors and Human Rights* (Oxford: OUP, 2005) 177-227, at 206.

¹⁰⁵ UN Global Compact Participants Searchable Database, available at <<http://www.unglobalcompact.org/ParticipantsAndStakeholders/index.html>> last accessed on 6 May 2014.

¹⁰⁶ UN Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework* (March 2011), para.2.

¹⁰⁷ Kinley D. and Tadaki J., 'From Talk to Walk: The Emerging Human Rights Responsibilities for Corporations at International Law' (2003-04) 44 *Virginia Journal of International Law* 4, 931-1024.

¹⁰⁸ UN Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework* (March 2011), para.6.

size, sector, location, ownership and structure'.¹⁰⁹ Also in 2011 a Working Group on the issue of human rights and transnational corporations and other business enterprises was established by the UN Human Rights Council to 'promote the effective and comprehensive dissemination and implementation of the Guiding Principles'. As part of its work, it organises an annual Forum on Business and Human Rights to discuss trends and challenges in the implementation of the Guiding Principles and promote dialogue and cooperation on issues linked to business and human rights, including challenges faced in particular sectors, operational environments or in relation to specific rights or groups, as well as identifying good practices.¹¹⁰

Other international non-binding instruments have also provided recognised guidance for businesses seeking to improve their CSR in the human rights field. The OECD Guidelines for Multinational Enterprises are recommendations made by governments to MNEs that operate in or from their territories.¹¹¹ They were updated in 2011, with a new chapter IV, to be consistent with the Guiding Principles, exhorting businesses to act consistently with the host state's international human rights obligations.¹¹² The OECD Guidelines provide for individual OECD members to establish National Contact Points to receive complaints concerning MNEs (or TNCs) and other business enterprises that have failed to respect human rights.

For its part, the ILO amended in 2006 its Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, endorsed not only by states but also global employers' and workers' organisations.¹¹³ It proclaims that all parties should respect the Universal Declaration of Human Rights and the corresponding two international Covenants adopted by the UN General Assembly in 1966.

Finally, the ISO 26000 Guidance Standard on Social Responsibility, launched in 2010, is aimed at all types of organisations regardless of their activity, size or location. It provides guidance rather than requiring compliance with an ISO standard. It is therefore not possible to certify corporate behaviour as being in conformity with it unlike some other well-known ISO standards such as ISO 9000 (quality management) or ISO 14000 (environmental management). Instead, ISO 26000 helps clarify what social responsibility is, and may be of assistance to businesses and organisations in translating the underlying principles, which include human rights (subject area 6.3), into effective actions and sharing best practices relating to social responsibility.¹¹⁴

Beyond the intergovernmental system, new multi-stakeholder forms of initiative have emerged. Most prominent among them are the Voluntary Principles on Security and Human Rights, promoting corporate

¹⁰⁹ *Ibid*, para.2.

¹¹⁰ The UN HRC, 'Human rights and transnational corporations and other business enterprises', Resolution A/HRC/RES/17/4, para. 12.

¹¹¹ OECD, 'The OECD Guidelines for Multinational Enterprises' (2011), 3, available at <<http://dx.doi.org/10.1787/9789264115415-en>> last accessed on 6 May 2014.

¹¹² Steinhardt R., 'Corporate Responsibility and the International Law of Human Rights : The New Lex Mercatoria' in Alston P. (ed), *Non-State Actors and Human Rights* (Oxford: OUP, 2005) 177-227, at 209.

¹¹³ ILO, 'ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy', available at <http://www.ilo.org/empent/Publications/WCMS_094386/lang--en/index.htm> last accessed on 6 May 2014, para. 8.

¹¹⁴ ISO 26000 – Social Responsibility, available at <<http://www.iso.org/iso/home/standards/iso26000.htm>> last accessed on 6 May 2014.

human rights risk assessments and the training of security providers in the extractive sector; the Kimberley Process Certification Scheme (Kimberley) to stem the flow of conflict diamonds; and the Extractive Industries Transparency Initiative (EITI), establishing a degree of revenue transparency in the taxes, royalties and fees that companies pay to host governments.¹¹⁵ In addition, some businesses have decided to produce their own policies in the human rights field on a voluntary basis, 'triggered by [their] assessment of human rights-related risks and opportunities, often under pressure from civil society and local communities'.¹¹⁶

As a result of the adoption of policies and voluntary initiatives over the last decade, there is a degree of pressure on companies to take the linkage between their activities and human rights issues seriously. In fact, businesses are only encouraged, but not obliged, to respect human rights. For some academics, voluntary initiatives are not a valid option because 'they generally lack meaningful forms of accountability and rely instead upon both public opinion and corporate altruism'.¹¹⁷ For others, the 'illusion of regulation' may be 'worse than no regulation at all'.¹¹⁸ For this reason, following the adoption of a resolution by the UN Human Rights Council in June 2014, international pressure is increasing for the adoption of a binding instrument on business and human rights.¹¹⁹

Separately, the issue concerning the extent to which human rights obligations attach to TNCs, as NSAs, for their conduct outside the territory of the state in which they are incorporated, the so-called 'extra-territorial reach' of TNCs, is an ongoing and still controversial topic.¹²⁰

B. EU engagement with businesses

In 2001 the EU introduced the notion of CSR in its policy agenda, when the European Commission presented the Green Paper 'Promoting a European Framework for Corporate Social Responsibility'. In that document, CSR is described 'as a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary

¹¹⁵ For more details, see Alston P. and Goodman R., 'Non-State Actors and Human Rights' in Alston P. and Goodman R., *International Human Rights* (Oxford: OUP, 2013) 1469.

¹¹⁶ UN Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, *Business and Human Rights: Mapping International Standards of Responsibility and Accountability for Corporate Acts*, 2007, available at <<http://www.business-humanrights.org/Documents/SRSG-report-Human-Rights-Council-19-Feb-2007.pdf>> last accessed on 2 May 2014, para 63.

¹¹⁷ Alston P. and Goodman R., 'Non-State Actors and Human Rights' in Alston P. and Goodman R., *International Human Rights* (Oxford: OUP, 2013) 1470.

¹¹⁸ Chesterman S., 'Lawyers, Guns, and Money: The Governance of Business Activities in Conflict Zones' (2010/2011) 11 *Chicago Journal of International Law* 321-342, 327.

¹¹⁹ UN HRC, 'Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights', Resolution A/HRC/26/L.22/Rev.1 (26 June 2014). The resolution was adopted by 14 votes to 10 with 13 abstentions. Details available at <<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Pages/ResDecStat.aspx>> last accessed on 29 July 2014.

¹²⁰ Ronen Y., 'Human Rights Obligations of Territorial Non-State Actors' (2013) 46 *Cornell International Law Journal* 1, 21-50, at 24-25.

basis'.¹²¹ The intention was to launch a debate about the CSR concept among companies and business enterprises within the EU.

One of the most recent initiatives is the publication in 2011 by the Commission of a renewed EU Strategy for CSR, eventually defined as 'the responsibility of enterprises for their impacts on society'. To achieve this proposal, enterprises should have in place a process to integrate social, environmental, ethical, human rights and consumer concerns into their business operations and core strategy in close collaboration with their stakeholders.¹²² The aim is both to enhance businesses' positive impacts – for example, through the innovation of new products and services that are beneficial to society and enterprises themselves – and to identify, prevent and mitigate their possible adverse impacts.¹²³

An Agenda for Action for the period 2011-2014, which proposed to put the Strategy into practice, includes a better alignment between the European and global approaches to CSR, in particular with the UN Guiding Principles on Business and Human Rights, the UN Global Compact, the OECD Guidelines for Multinational Enterprises, the ILO Tri-partite Declaration of Principles on Multinational Enterprises and Social Policy and the ISO 26000 Guidance Standard on Social Responsibility. As stated in the Strategy for CSR, improving the coherence of EU policies relevant to business and human rights is a critical challenge and will contribute to EU objectives regarding specific human rights issues and core labour standards, including child labour, forced prison labour, human trafficking, gender equality, non-discrimination, freedom of association and the right to collective bargaining.¹²⁴

The Commission has recently published a guide to human rights for small and medium-sized enterprises (SMEs),¹²⁵ as well as practical human rights guidance, consistent with the UN Guiding Principles, in three business sectors (employment and recruitment agencies, information and communication technology, and oil and gas).¹²⁶ These sectors were chosen according to objective and publicly available criteria, including the severity of their impact on human rights, as well as the availability of human rights guidance for each of those sectors.¹²⁷

All these actions are explicitly referred to in the unified EU Strategic Framework and Action Plan on Human Rights and Democracy, adopted by the Council of the EU in 2012. As part of that Strategic Framework, it is clearly mentioned that 'the EU will encourage and contribute to implementation of the UN Guiding

¹²¹ EU Commission, Green Paper Promoting a European framework for Corporate Social Responsibility, COM(2001) 366, para 8.

¹²² EU Commission, 'A renewed EU strategy 2011-14 for Corporate Social Responsibility', COM(2011) 681, 6.

¹²³ EU Commission, Corporate Social Responsibility, available at <http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/index_en.htm> last accessed 6 May 2014.

¹²⁴ Commission, 'A renewed EU strategy 2011-14 for Corporate Social Responsibility' (Communication), COM (2011) 681, 14.

¹²⁵ 'My business and human rights. A guide to human rights for small and medium-sized enterprises', available at <http://ec.europa.eu/enterprise/policies/sustainable-business/files/csr-sme/human-rights-sme-guide-final_en.pdf> last accessed on 6 May 2014.

¹²⁶ EU Commission, 'Human rights guides for enterprises in 3 business sectors', available at <http://ec.europa.eu/enterprise/policies/sustainable-business/documents/corporate-social-responsibility/index_en.htm> last accessed on 29 July 2014.

¹²⁷ Council of the EU, 'EU Annual Report on Human Rights and Democracy in the World in 2012' (Brussels, 2013) 104.

Principles on Business and Human Rights' as one of its priorities.¹²⁸ The Action Plan, implementing the Strategic Framework and covering the period until 31 December 2014, is in line with the Agenda for Action of the EU Strategy for CSR, developed by the Commission. EU member states are specifically encouraged to develop national plans on business and human rights in accordance with the Guiding Principles. By April 2014 most of the EU countries had confirmed that they were preparing such a plan or, in the case of Denmark, Italy, Netherlands and the UK, have subsequently done so.¹²⁹

One of the practical tools for the EU to implement the Action Plan is the European Instrument for Democracy and Human Rights (EIDHR), a financial instrument. Among others, the EIDHR supports projects led by CSOs 'on human rights and transnational corporations and other business enterprises, complementing other actions supported by the European Commission in the framework of its policy on CSR'.¹³⁰ The EU currently supports the Clean Clothes Campaign, an alliance of organisations from 15 European countries, implementing projects to increase respect for economic and social rights in the global supply chains of international garment companies in over 30 countries.

Three more projects funded under the EIDHR cover the question of business and human rights. A global project targeting 70 countries aims to reinforce the capacity of local land-rights' defenders to defend their rights over natural resources, to counter the lack of transparency regarding contracts between states and private companies, and to engage with governments and extractive industries in countries with conflicts over natural resource extraction. Similarly, a project on defenders of indigenous rights in South-East Asia provides for a study on CSR, human rights and indigenous peoples. Finally, the Latin American Mining Monitoring Programme supports rural indigenous women in promoting and defending their rights, as affected by the mining industry.¹³¹

The EU also addresses business and human rights in its bilateral relations, e.g. with the African Union, exchanging views on implementation of the UN Guiding Principles, and has been involved in a number of initiatives on that subject in third countries. For example, civil society seminars held in Bangladesh (2011) and Mexico (2014).

Further proof that the implementation of the UN Guiding Principles has recently received special attention is the organisation of a conference by the Danish Presidency in Copenhagen in May 2012, entitled 'From principles to practice: the European Union operationalising the UN Guiding Principles on Business and Human Rights'. One of the main challenges discussed during this conference was reaching policy coherence among the EU member states to 'exercise necessary leverage to adequately protect the human rights of potential victims through aligning public procurement, export credit and bilateral trade policies

¹²⁸ Council of the EU, 'EU Strategic Framework and Action Plan on Human Rights and Democracy' (Luxembourg 2012), 3.

¹²⁹ Council of the EU, 'EU Annual Report on Human Rights And Democracy in the World in 2012' (Brussels, 2013), 105. The list of the states that have produced a national action plan on business and human rights can be consulted on <www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx> last accessed on 6 May 2014.

¹³⁰ EU Commission, 'European Instrument for Democracy and Human Rights (EIDHR): Strategy Paper 2011 – 2013' (Brussels 2010), para 34.

¹³¹ The Commission has also funded projects fighting child labour under the 'Investing in People' programme.

with international human rights commitments, as with investments, development aid and in-country diplomatic assistance'.¹³²

C. Human rights impacts

1. Positive human rights impacts

The business activities of TNCs, SMEs and other business enterprises have a number of positive impacts upon society that arise from their duty to provide a means of employment necessary to ensure that 'everyone has the right to a standard of living adequate for the health and well-being of himself and of his family'.¹³³ Positive human rights impacts of business, TNCs, indigenous SMEs and third-party related business enterprises, such as suppliers, include the creation of employment opportunities, the use of equipment and facilities, the supply, manufacture and consumption of materials, the import and export of goods, the provision of services, investment and public procurement. Each of these areas of business activity impacts differently on society dependent upon the category of rights for which protection is sought.

a) *The right to life, including security of person*

Among the fundamental human rights that every state must guarantee its citizens is the right to life, which includes the right to security of the person, both in terms of physical and psychological integrity.¹³⁴ While abuses of this right are usually associated with very serious human rights abuses, including extrajudicial killings, the use of lethal or excess force, torture, and cruel, inhuman, or degrading treatment, there are other aspects of this right that may relate to ordinary business activities but involve coercion, fraud and extortion that affect the livelihoods of individuals, or may even be life-threatening.

TNCs, SMEs and other business enterprises may exert a positive influence on the right to security of the person, in terms of the physical and psychological integrity of their employees, suppliers, sub-contractors and third parties in their business relations. As part of their corporate governance and respect for the rule of law, they may have safeguards in place to protect persons who become 'whistle-blowers' and who, in the absence of timely remedial action or in the face of reasonable risk of negative repercussions for their employment or business activity, report forms of coercion and fraud, including bribe solicitation and extortion, to the competent public authorities.¹³⁵

¹³² Report of the conference 'From principles to practice: the European Union operationalising the United Nations Guiding Principles on Business and Human Rights' (2012), 3, Expert Conference hosted by the Danish EU Presidency in Copenhagen on 7-8 May 2012, available at <www.ihrb.org/pdf/2012-05-07-Danish-EU-Presidency-Conference-Report.pdf> last accessed on 6 May 2014.

¹³³ See Art. 25 UDHR, Art. 11 CESC, R.

¹³⁴ See Art. 3 UDHR, Art. 6 ICCPR and Art. 2 ECHR; Art. 9.1 ICCPR and Art. 5 ECHR.

¹³⁵ OECD Guidelines on Multinational Enterprises: Recommendations for Responsible Business Conduct in a Global Environment, May 2011, which form part of, and are annexed to, the 'Declaration on International Investment and Multinational Enterprises', adopted on 25 May 2011 by the OECD Members as well as Argentina, Brazil, Egypt, Latvia, Lithuania, Morocco, Peru and Romania, available at <<http://www.oecd.org/daf/inv/mne/48004323.pdf>> last accessed on 14 June 2014, p. 21.

Of particular note is the fact that the Non-financial Reporting Directive¹³⁶ will henceforth require certain large companies (≥ 500 employees), when disclosing information about themselves for auditing purposes, to also disclose information about their policies, risks and results that seeks *inter alia* to prevent human rights abuses and use the instruments that they have in place to fight corruption and bribery.¹³⁷ The Non-financial Reporting Directive calls for adequate information to be made available by such large companies as to the likely, or actual materialisation, of the principal risks of adverse human rights impacts stemming from their undertaking's own business activities, or activities that are linked to their operations, products, services and business relationships, including in their supply and sub-contracting chains.¹³⁸

On the external plane, and in line with UN Guiding Principle 9,¹³⁹ the EU is currently negotiating free trade agreements separately with a number of states. In the case of the proposed Canada-EU Comprehensive Economic and Trade Agreement (CETA), there will be an investment chapter. At the insistence of the EU it includes the host state obligation to provide protection, as part of the fair and equitable treatment standard, against the 'abusive treatment of investors, such as coercion, duress, and harassment'.¹⁴⁰

In the extractive industries, a number of TNCs are seeking ways of implementing their corporate responsibility to respect human rights under the Guiding Principles,¹⁴¹ which include conducting due diligence throughout their global supply chains of minerals and metals. Whereas the Voluntary Principles on Security and Human Rights only provide guidance to TNCs on how to promote corporate human rights risk assessments and to train security staff in the extractive sector, the industry has sought guidance on how to assimilate human rights into their business activities at every level of the supply chain.

Of assistance on the matter is the non-binding but influential 2010 OECD Due Diligence Guidance for responsible supply chains of minerals from conflict-affected and high-risk areas, with its supplements on Tin, Tantalum and Tungsten (3 'T's) and Gold.¹⁴² The OECD Due Diligence Guidance, which draws heavily on the Framework of 2008, and more latterly the Guiding Principles, is fast becoming the industry-based

¹³⁶ European Parliament legislative resolution of 15 April 2014 on the proposal for a directive of the European Parliament and of the Council amending Council Directives 78/660/EEC and 83/349/EEC as regards disclosure of non-financial and diversity information by certain large companies and groups, COM(2013)0207 – C7-0103/2013 – 2013/0110(COD).

¹³⁷ *Ibid*, draft para. 7.

¹³⁸ *Ibid*, draft para. 8.

¹³⁹ UN Guiding Principles on Business and Human Rights: Implementing the UNs 'Protect, Respect and Remedy' Framework, A/HRC/17/31 (March 2011). Guiding Principle 9 recommends that 'States should maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives with other States or business enterprises, for instance through investment treaties or contracts'.

¹⁴⁰ EU Commission, Trade B2 Investment, Note for the Attention of the Trade Policy Committee (Services and Investment) of the European Council, Brussels, 7 April 2014, Trade B2/CBA/cg/Ares1151153, concerning Canada-EU Comprehensive Economic and Trade Agreement (CETA); see draft Art. X.9: Treatment of Investors and of Covered Investments, para. 2e.

¹⁴¹ UN Guiding Principles on Business and Human Rights: Implementing the UNs 'Protect, Respect and Remedy' Framework, A/HRC/17/31 (March 2011), 2.

¹⁴² The original OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, 2010, was approved by the OECD Investment Committee, the OECD Development Assistance Committee, and was endorsed by the 11-Member strong International Conference on the Great Lakes Region in the Lusaka Declaration, 15 December 2010. The Supplement on Tin, Tantalum and Tungsten, is appended to the original OECD Due Diligence Guidance.

standard for conducting risk-based due diligence in the 3TG supply chain for many TNCs and artisanal and small-scale miners (ASM) operating in conflict-affected and high-risk areas. The latter includes areas where indigenous and local communities are exposed to violations of their fundamental human rights through internal displacement, environmental degradation and exploitation of locally-hired workers, including those engaged in ASM.

When combined in a ‘smart mix’ of binding UN Security Council resolutions and/or domestic legislation (mandatory measures), the government-backed non-binding OECD Due Diligence Guidance, and voluntary measures such as traceability/chain-of-custody schemes and certification schemes, are beginning to lay the groundwork for a normative framework to instil a culture of human rights responsibility in TNCs and other business enterprises and hold them, albeit indirectly, accountable for human rights violations.

Additionally, in some sectors of the European economy, such as agriculture, shellfish gathering, food and drink processing and the packaging industry, there has been resort to government control of the licensing of so-called ‘gang-masters’. The aim here is to protect vulnerable and exploited workers, and to deal with the worst forms of human trafficking in the EU that are found mostly in the agribusiness and related sectors.¹⁴³

b) Employment: labour rights

In its Declaration on Social Justice for a Fair Globalisation of 2008, the ILO identified the profound ways in which globalisation and, specifically, the internationalisation of business and business processes, and a rising level of capital flows, currency transactions, trade and investment is ‘reshaping the world of work’ and impacting on the employment relationship and the protections it can offer.¹⁴⁴ Globalisation, and in particular the exponential growth in the power and influence of TNCs, has undoubtedly had negative impacts on labour rights, which will be explored further in Chapter VI.C.2b below. The ILO notes, however, that globalisation can also be seen as having positive impacts in helping to foster higher growth rates, employment creation, the acquisition of new skills and the absorption of the rural poor into modern urban economies.¹⁴⁵

K. Klare has noted that globalisation poses grave dangers but also has ‘great emancipatory potential’ to transform people’s lives. New types of economic activity and employment relationships ‘can make work more fulfilling and democratic and, by increasing efficiency and reducing the employment-intensity of labour, can assist people to combine paid employment with other major activities and thereby to lead to more rewarding lives’.¹⁴⁶ The key question, therefore, is whether the positive dynamics of globalisation

¹⁴³ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, OJ L 101, 15.4.2011, 1.

¹⁴⁴ ILO Declaration on Social Justice for a Fair Globalisation, adopted by the International Labour Conference, Geneva, 10 June 2008. Available at <<http://www.ilo.org/public/english/bureau/leg/declarations.htm>> last accessed on 15 June 2014, preamble.

¹⁴⁵ *Ibid.*

¹⁴⁶ Klare K., ‘The Horizons of Transformative Labour and Employment Law’ in Conaghan J., Fischl R.M. and Klare K. (eds), *Labour Law in an Era of Globalization : Transformative Practices and Possibilities* (Oxford: OUP, 2002) 3-29 at 6.

can, in certain respects, enhance the realisation of labour rights, or at least mitigate the negative impacts, and be responsive to new governance techniques to ‘shape’ it based on common values and principles.¹⁴⁷

The status and exact scope of labour rights as ‘human rights’ is highly contested both at the level of international law¹⁴⁸ and within the EU.¹⁴⁹ Nevertheless, one of the ‘side effects’ of globalisation has been to accelerate the drive for recognition of certain labour rights as ‘fundamental’ and to increasingly shift the responsibility for respecting those rights and provide remedies from states to business enterprises.¹⁵⁰ The ILO and the EU have increasingly worked in tandem to promote this approach, involving businesses through processes of tripartitism, social dialogue and, with NGOs, multi-stakeholder forums.¹⁵¹

Businesses have, through employers’ representatives, been partners with trade unions and states in the setting of labour standards at the international level from 1919, when the tripartite ILO was established. The ILO has laid down 189 conventions, 5 protocols and 202 recommendations.¹⁵² This has provided an international corpus of labour standards but the responsibility for ratification and effective enforcement lies with the ILO’s 185 member states. The adoption of the ILO Declaration on Fundamental Principles and Rights at Work, 1998, marked a break with this tradition, if not a transformation,¹⁵³ by identifying an irreducible ‘core’ of four labour rights, sourced from conventions, that bind all ILO member states regardless of whether or not they have ratified them.¹⁵⁴ These core labour rights are: (1) freedom of association and the effective recognition of the right to collective bargaining; (2) the elimination of all forms of forced or compulsory labour; (3) the effective abolition of child labour; and (4) the elimination of discrimination in respect of employment and occupation.

As F. Maupain has argued, the major contribution of the 1998 Declaration was to focus on selected labour rights ‘whose character shared both an underlying nature as basic human rights and a functional role in the realisation of other rights’.¹⁵⁵ The effect is to mainstream these rights into international human rights

¹⁴⁷ See EU, European Council, *EU Declaration on Globalisation*, Presidency Conclusions, Annex, 14 December 2007.

¹⁴⁸ See Alston P., ‘Labour Rights as Human Rights: The Not So Happy State of the Art’ in Alston P. (ed), *Labour Rights as Human Rights* (Oxford: OUP, 2005) 1-24.

¹⁴⁹ See Kenner J., ‘Economic and Social Rights in the EU Legal Order: The Mirage of Indivisibility’ in Hervey T. and Kenner J. (eds), *Economic and Social Rights under the EU Charter of Fundamental Rights: A Legal Perspective* (Oxford: Hart Publishing, 2003) 1-25.

¹⁵⁰ See further, Deakin S., ‘Social Rights in a Globalized Economy’ in Alston P. (ed), *Labour Rights as Human Rights* (Oxford: OUP, 2005) 25-60.

¹⁵¹ Exchange of letters between the Commission of the European Communities and the International Labour Organization (OJ 2001/C 156/03); EU, Commission, *Promoting core labour standards and improving social governance in the context of globalization*, COM(2001) 416 final; EU, Commission, *The Social Dimension of Globalisation – the EU’s policy contribution on extending the benefits to all*, COM(2004) 383 final; EU, Commission Multi-stakeholder Forum on Corporate Social Responsibility, reports available at <http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/multi-stakeholder-forum/index_en.htm> last accessed on 15 June 2014.

¹⁵² ILO NORMLEX, available at <<http://www.ilo.org/dyn/normlex/en>> last accessed on 15 June 2014.

¹⁵³ For a radical critique, see Alston P., ‘Core Labour Standards’ and the Transformation of the International Labour Rights Regime’ (2004) 15 *European Journal of International Law* 457-521.

¹⁵⁴ The 1998 Declaration is available at <<http://www.ilo.org/public/english/bureau/leg/declarations.htm>> last accessed on 15 June 2014.

¹⁵⁵ See Maupain F., *The Future of the International Labour Organization in the Global Economy* (Oxford: Hart Publishing, 2013) 53.

norms through an ongoing process of high-level iteration, accelerating ratification of the relevant conventions by states and referencing by the UN, the EU and other international organisations.¹⁵⁶ Moreover, from the perspective of business, focusing on a core of labour rights can be regarded as promoting efficient outcomes in world markets.¹⁵⁷ For the supporters of this approach,¹⁵⁸ it provides a context in which labour rights can become more relevant on the global agenda by promoting them as part of an international consensus in favour of a ‘social dimension’ of globalisation.¹⁵⁹ This has been put into effect by making the ILO’s core labour rights the global yardstick for measuring the CSR of businesses and TNCs under self-regulatory codes or mechanisms such as the UNGC,¹⁶⁰ the UN Guiding Principles on Business and Human Rights,¹⁶¹ and the updated OECD Guidelines.¹⁶²

CSR also needs to take account of the labour dimension of the international consensus on sustainable development. In particular, the ILO’s Decent Work Agenda was launched as a corollary of the core labour rights in 1999. Decent Work equates to a basic aspiration to offer all men and women access to decent and productive work ‘in conditions of freedom, equality, security and human dignity’.¹⁶³ It therefore includes the low paid, the under-employed and the unemployed – all those unable to earn enough to lift themselves and their family members out of poverty. Decent Work offers pathways out of poverty through employment, decent remuneration – a living wage – gender equality, safe working conditions and social protection for families. From the perspective of the EU, it seeks to turn the globalisation of trade and investment into a positive opportunity for ‘supporting or boosting the endogenous development of labour standards resulting from the part played by trade in development’.¹⁶⁴ Decent work,

¹⁵⁶ See Kenner J., ‘Economic Partnership Agreements: Enhancing the Labour Dimension of Global Governance?’ in Van Vooren B., Blockmans S. and Wouters J. (eds), *The EU’s Role in Global Governance: The Legal Dimension* (Oxford: OUP, 2013) 306-321 at 309.

¹⁵⁷ See: *Trade, Employment and Labour Standards: A Study of Core Workers’ Rights and International Trade* (Paris: OECD, 1996).

¹⁵⁸ See, for example, Langille B., ‘Core Labour Rights – The True Story (Reply to Alston)’ (2005) 16 *European Journal of International Law* 409-437; and Maupain F., *The Future of the International Labour Organization in the Global Economy* (Oxford: Hart Publishing, 2013).

¹⁵⁹ See the ILO Declaration on Social Justice for a Fair Globalisation, adopted by the International Labour Conference, Geneva, 10 June 2008. Available at <<http://www.ilo.org/public/english/bureau/leg/declarations.htm>> last accessed on 15 June 2014.

¹⁶⁰ OHCHR website, ‘Business and Human Rights’, available at <<http://www.ohchr.org/EN/Issues/Business/Pages/BusinessIndex.aspx>> last accessed on 15 June 2014, Principles 3-6. See also Lukas K., *Labour Rights and Global Production* (Vienna: NWV, 2013).

¹⁶¹ UN Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, *Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework* (March 2011). Principle 12, containing the ‘Foundational Principles’ of the corporate responsibility to respect human rights states that: ‘The responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work’.

¹⁶² Updated in 2011, available at <<http://www.oecd.org/investment/mne/1922428.pdf>> last accessed on 15 June 2014, Part 1, Chap. IV on Employment and Industrial Relations.

¹⁶³ ILO, ‘Decent Work’ (1999), available at <<http://www.ilo.org/global/topics/decent-work/lang--en/index.htm>> last accessed on 16 June 2014.

¹⁶⁴ EU, Commission Staff Working Document, *The EU’s contribution to the promotion of decent work in the world*, COM(2008) 412 final, Exec Summary 7.

including a living wage and respecting the need for workers to have a work-life balance, is increasingly being instilled into CSR as a key component of responsible supply chain management by TNCs.¹⁶⁵

In seeking to identify positive impacts of CSR on corporate conduct in respecting core labour rights, Decent Work, and realising other human rights, our attention is drawn to the different types of self-regulatory methods that businesses may adopt, to ‘manage the risk of involvement in human rights abuses’ by acting with ‘due diligence to avoid infringing on the rights of others and address harm where it does occur’.¹⁶⁶ Under the UNGC and the UN General Principles, self-regulatory techniques are intended to prescribe practical ways of integrating human rights concerns within corporate risk-management systems.¹⁶⁷ Corporate culture should, the logic goes, embrace, at least a core of labour rights as part of its risk assessment without the need for imposing a regulatory model based on corporate liability for human rights violations.

Three types of self-regulatory CSR techniques can be regarded as having some positive impacts on labour rights.

The first technique is known as ‘responsive regulation’.¹⁶⁸ It is a theory based on the assumption that all regulated actors, such as TNCs, are well intentioned and seek to abide by the law. Responsive companies introduce their own improvements to comply with, at least, labour laws in the domestic legal order, observe health and safety rules and improve hiring practices, and, in return, they are rewarded for their responsible business conduct.¹⁶⁹ Such rewards may include publicity, such as the European award scheme for CSR partnerships between companies and other stakeholders, and enhanced opportunities for investment and public procurement.¹⁷⁰ Responsive regulation is not deregulation. It is intended to complement regulation and, if it fails to achieve its objectives, there is the prospect of stronger regulation down the road. The involvement of employees’ representatives, for example, in health and safety inspections, ensures that self-regulation is monitored.

Second, there is the technique known as ‘ratcheting labour standards’ (RLS).¹⁷¹ The working assumption behind RLS is that large brand-conscious TNCs have capacity to regulate their labour supply chains and, in response to pressure from consumers and the example set by their competitors, have created

¹⁶⁵ EU, Commission Study, *Responsible Supply Chain Management* (2011), available at <<http://ec.europa.eu/social/main.jsp?langId=en&catId=331&newsId=1014&furtherNews=yes>> last accessed on 16 June 2014.

¹⁶⁶ Ruggie J.G., ‘Global Governance and “New Governance Theory”: Lessons from Business and Human Rights’ (2014) 20 *Global Governance* 5-17 at 9.

¹⁶⁷ *Ibid*, at 14.

¹⁶⁸ See Ayres I. and Braithwaite J., *Responsive Regulation: Transcending the Deregulation Debate* (Oxford: OUP, 1992).

¹⁶⁹ See Estlund C., ‘Rebuilding the Law of the Workplace in an Era of Self-Regulation’ in Bercusson B. and Estlund C. (eds), *Regulating Labour in the Wake of Globalisation: New Challenges, New Institutions* (Oxford: Hart Publishing, 2008) 89-113 at 93-97.

¹⁷⁰ See EU, Commission, *A renewed EU strategy 2011-14 for Corporate Social Responsibility*, COM(2011) 681 final, 5 and 9.

¹⁷¹ Sabel C., Fung A. and O’Rourke D., ‘Ratcheting Labor Standards: Regulating for Continuous Improvement in the Global Workplace’ (John F Kennedy School of Governance, Harvard University, Faculty Research Working Paper Series, No. 00-010, 2 May 2000) available at <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=262178> last accessed on 16 June 2014.

mechanisms to effectively monitor the labour practices of their contractors and sub-contractors.¹⁷² Unlike ‘responsive regulation’ there is neither state coercion, nor tripartite oversight. As part of a risk-management strategy, large TNCs are driven to raise labour standards and to ‘self-regulate’ their own contractors and sub-contractors even in countries where regulation is minimal and monitoring by state authorities of, for example, forced labour, is almost non-existent. The central component of RLS is transparency. This is achieved by codes of conduct setting out the TNC’s commitment to fair labour practices. Verification agencies compete to win monitoring contracts. As C. Estlund observes, RLS has powerful virtues: ‘It seeks to harness the resources of the largest, most visible, and most competent corporate actors not so much as to regulate themselves as to regulate the less competent and less-visible entities through which they get most of the labour that goes into their products’.¹⁷³ At European level more than 700 TNCs have signed up to the Business Social Compliance Initiative, under which the signatories commit to improve working conditions in their supply chains.¹⁷⁴

Thirdly, there is the multi-stakeholder approach, under which TNCs engage directly with local stakeholders including, *inter alia*, trade unions, CSOs and representatives of indigenous peoples. Such engagement is absent from RLS. It is a means of achieving what J. Pauwelyn *et al*, describe as a ‘thick stakeholder consensus’ which can be more effective in securing compliance with labour rights than the state or conventional monitoring by agencies or international bodies.¹⁷⁵ The theory is that this type of polycentric governance acts as an effective constraint on TNCs to prevent human rights violations and develop effective remedies on the ground.¹⁷⁶

At EU level, a deep form of social dialogue, the Transnational Company Agreement (TCA) has emerged. It mirrors the drive by Global Union Federations for International Framework Agreements (IFAs).¹⁷⁷ The TCA is an *optional framework* for transnational collective bargaining to enable changes in work organisation, employment and working conditions to be agreed by the social partners. According to the European Commission, TCAs are ‘one of the tools available to cope, at the level of companies, with social and economic effects of restructuring in a socially responsible way’. It is possible, the Commission suggests, for TCAs to ‘contribute to a fair distribution of the costs of adjustment within multinational enterprises ...

¹⁷² See Estlund C., ‘Rebuilding the Law of the Workplace in an Era of Self-Regulation’ in Bercusson B. and Estlund C. (eds), *Regulating Labour in the Wake of Globalisation: New Challenges, New Institutions* (Oxford: Hart Publishing, 2008) 89-113 at 98-100.

¹⁷³ *Ibid*, at 99-100.

¹⁷⁴ See EU, Commission, *A renewed EU strategy 2011-14 for Corporate Social Responsibility*, COM(2011) 681 final, p.5.

¹⁷⁵ Pauwelyn J., Wessel R.A. and Wouters J., ‘When Structures become Shackles: Stagnation and Dynamics in International Law Making’, Leuven Centre for Global Governance Studies, 14 November 2013. Available at <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2271862> last accessed on 16 June 2014.

¹⁷⁶ See Ruggie J.G., ‘Global Governance and “New Governance Theory”’: Lessons from Business and Human Rights’ (2014) 20 *Global Governance* 5-17 at 10.

¹⁷⁷ The Global Union Federations (Global Unions) has published a full list of IFAs (also known as Global Framework Agreements), available at <<http://www.global-unions.org/framework-agreements.html>> last accessed on 16 June 2014.

in critical situations and thus help prevent, mitigate or shorten industrial conflict'.¹⁷⁸ The number of companies signing TCAs rose from 79 in 2006 to 140 in 2011.¹⁷⁹

Increasingly, collaboration and services are provided by NGOs such as the Fair Labour Association, Global Reporting Initiative, Ethical Trading Initiative and Social Accountability International. These NGOs engage and act as partners with TNCs to raise awareness of corporate responsibility issues, promote and design improved standards incorporating the core labour rights, improve reporting processes and carry out monitoring and auditing.¹⁸⁰

The advantage of these CSR techniques is that they may enhance trust through a combination of socially responsible business leadership, consumer pressure, independent monitoring and civil society vigilance. CSR measures, such as codes of conduct to be applied throughout the supply chain, are most effective, however, where they are implemented in partnership with trade unions and other CSOs or, even, where they act as a spur for the growth of independent, democratic trade unions.¹⁸¹ Some positive examples include:

- Nike and Reebok sourced goods from the Korean-owned KukDong sportswear factory in Mexico. Both companies had developed their own codes of conduct in response to consumer concern over sweatshop conditions in factories. In 2001, under pressure from compliance officials from the two companies and NGOs, the Korean company agreed to replace a management-controlled trade union with a democratic trade union. The NGOs included not only the US-based Fair Labor Association but also a Korean NGO and a local Worker Support Centre. The process was also aided by independent monitoring by the International Labor Rights Fund and Verité.¹⁸²
- TNCs such as Chiquita, Danone and IKEA have signed up to IFAs with Global Union Federations. The significance of IFAs is that they are negotiated with trade unions unlike unilateral corporate codes. Moreover, they are stronger than many codes of labour practices because, as a minimum, they include a commitment to ILO core labour rights including freedom of association and trade union rights.¹⁸³

¹⁷⁸ EU, Commission Staff Working Document, *Transnational company agreements: realising the potential of social dialogue*, SWD(2012) 264 final.

¹⁷⁹ See EU, Commission, *A renewed EU strategy 2011-14 for Corporate Social Responsibility*, COM(2011) 681 final, p.4.

¹⁸⁰ See Utting P., 'Corporate responsibility and the movement of business' (2005) 15 *Development in Practice* 375-388 at 378.

¹⁸¹ See further, Compa L., 'Corporate Social Responsibility and Workers' Rights' (2008) 30 *Comparative Labor Law and Policy Journal* 1-10.

¹⁸² *Ibid*, at 1-2.

¹⁸³ See Utting P., 'Corporate responsibility and the movement of business' (2005) 15 *Development in Practice* 375-388 at 379; Ewing K.D., 'International Regulation of the Global Economy – The Role of Trade Unions' in Bercusson B. and Estlund C. (eds), *Regulating Labour in the Wake of Globalisation: New Challenges, New Institutions* (Oxford: Hart Publishing, 2008) 205-226.

- TNCs, including BP, Nike and Novo Nordisk, have participated in multi-stakeholder initiatives which promote structured dialogue, standard-setting, learning of best practice, reporting, monitoring and certification.¹⁸⁴

Studies have found that where the labour practices provisions in codes of conduct are actively implemented the main improvements relate to health and safety, and to the provision of legal entitlements such as the minimum wage (but not necessarily a living wage), maximum working hours and deductions for employment benefits such as pensions.¹⁸⁵ Specific examples of positive human rights impacts can be found in case studies on the UNGC Human Rights and Business Dilemmas Forum.¹⁸⁶ These include:

- Tackling forced labour in Uzbekistan. The Responsible Cotton Network, a network of brands, retail associations, investors, and civil society has worked collaboratively to halt the use of forced child labour in Uzbek cotton production. Founded in 2008, the Network works with both US and European companies to combat forced child labour in their supply chains.¹⁸⁷
- Paying a living wage in Bangladesh and Cambodia. H&M has committed to paying a living wage to 850,000 workers in Bangladeshi and Cambodian factories. H&M initially pledged to help three factories in these countries adopt a fair living wage in 2014, to be extended to cover a further 750 textile factories by 2018. H&M has developed a Fair Wage Method, which is used to assess and identify the basic needs of workers in each country (i.e. instead of implementing a pre-established figure in all supplier countries). This will be reviewed after consultations with workers and employers at the pilot factories.¹⁸⁸

c) *The rights of the child*

As a corollary to the globalisation of economies and business operations, decentralisation, outsourcing and privatisation, children as rights-holders, and as relevant stakeholders in business operations as consumers and as present and future employees, are increasingly affected by the business sector.¹⁸⁹

On the positive side, by providing a stable income and sustainable working conditions for parents, businesses can counteract child poverty, and thereby contribute to the rights of children to, *inter alia*, education and an adequate standard of living. By supporting employees in their roles as parents and caregivers through, for example, flexibility in working hours, provisions for pregnant and breastfeeding

¹⁸⁴ See Utting P., 'Corporate responsibility and the movement of business' (2005) 15 *Development in Practice* 375-388 at 379.

¹⁸⁵ Studies conducted by the Ethical Trading Initiative discussed by Barrientos S. and Smith S., 'Do Workers Benefit from Ethical Trade? Assessing codes of labour practice in global production systems' (2007) 28 *Third World Quarterly* 713-729 at 720.

¹⁸⁶ Available at <<http://human-rights.unglobalcompact.org/>> last accessed on 16 June 2014.

¹⁸⁷ Available at <http://human-rights.unglobalcompact.org/case_studies/forced-labour/forced_labour/> last accessed on 16 June 2014.

¹⁸⁸ Available at <http://human-rights.unglobalcompact.org/case_studies/living-wage/> last accessed on 16 June 2014.

¹⁸⁹ UN Committee on the Rights of the Child, General Comment No. 16 on State obligations regarding the impact of the business sector on children's rights, CRC/C/GC/16, 17 April 2013, Paras. 1-2.

women, good quality healthcare and childcare for dependants, and positive policies vis-à-vis parental leaves, businesses can, furthermore, have an important role in supporting the family in its role as the basic unit of the society and the primary duty-bearer for the realisation of children's rights.¹⁹⁰ Child rights friendly employment policies may also counteract or mitigate negative impacts on children of parents migrating for work abroad, a phenomenon that is reported to negatively affect children's educational performance, and to have adverse physiological and psychological effects on children's wellbeing.¹⁹¹

Business enterprises may also have positive influence by providing work for young workers above the minimum age for work, provided such work opportunities are responsive to the vulnerability of young workers and fully respect the rights of children above the minimum age for work.¹⁹² By inclusive policies for age-appropriate social protection and health guidance and services, as well as for quality education, relevant vocational training and livelihood development programmes, businesses can counteract youth unemployment and marginalisation.¹⁹³

At the societal level, in general, businesses not only create jobs and thereby help to improve overall employment and reduce poverty, but also support and respect the rights of children in compliance with both national and international laws. Business activity can therefore promote the rule of law and can help to build strong, healthy and well-educated communities and durable economic structures. While economic growth does not automatically result in increased realisation of children's rights, businesses can act as catalysts for societies to develop in ways that are conducive to their realisation.¹⁹⁴ Businesses may, for example, undertake strategic social investment programmes for children or engage in social mobilisation or cooperation with governments, children and social partners, to promote public and civil society efforts for children's rights.¹⁹⁵ Potential for such impact is enhanced when it comes to

¹⁹⁰ See, e.g., Whiteford P. and Adema W., 'What Works Best in Reducing Child Poverty: A Benefit or Work Strategy?' (2007) OECD Social, Employment and Migration Working Papers, DELSA/ELSA/WD/SEM(2007)6, available at <<http://www.oecd.org/social/family/38227981.pdf>> last accessed on 6 May 2014; UNICEF, Save the Children and UN Global Compact, 'Children's Rights and Business Principles; and Committee on the Rights of the Child' (2012); General Comment No. 16 on State obligations regarding the impact of the business sector on children's rights, CRC/C/GC/16, 17 April 2013, Paras. 19-20 and 54.

¹⁹¹ Save the Children, 'Left Behind, Left out: The Impact on Children and Families of Mothers Migrating for Work Abroad. Research Findings and Policy Challenges' (2006) available at <http://www.crin.org/docs/save_sl_left_out.pdf> last accessed on 6 May 2014, 5-9.

¹⁹² See, e.g., UNICEF, Save the Children and UN Global Compact, 'Children's Rights and Business Principles' (2012). The global unemployment rate among 15 to 24-year-olds was estimated at 12.6% in 2013, with 73 million people jobless worldwide. See, ILO, 'Global Employment Trends for Youth 2013: A generation at risk' Geneva (2013), available at <http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_212423.pdf> last accessed on 6 May 2014.

¹⁹³ See, e.g., UNICEF, Save the Children and UN Global Compact, 'Children's Rights and Business Principles' (2012).

¹⁹⁴ Committee on the Rights of the Child, General Comment No. 16 on State obligations regarding the impact of the business sector on children's rights, CRC/C/GC/16, 17 April 2013, Para. 1.

¹⁹⁵ See, UNICEF, Save the Children and UN Global Compact, 'Children's Rights and Business Principles' (2012). Within the UNICEF Strategic Framework for Partnerships and Collaborative Relationships, public-private sector cooperation is seen as essential for realising children's rights and in addressing, for example, the Millennium Development Goals and the UNICEF Medium Term Strategic Plan targets. UNICEF will further explore the opportunities of and strengthen its strategic partnerships both with large corporations and with smaller and local business enterprises in order to pursue broader resource mobilisation partnerships and to increase non-financial business contributions to enhance children's rights. See UNICEF, 'UNICEF strategic framework for partnerships and collaborative relationships',

transnational corporations, which typically are in a strong economic bargaining position in relation to their host countries.¹⁹⁶ In terms of child work, business enterprises can, in cooperation with authorities, other companies, sectoral associations and employers' organisations, support broader international, regional, national and local efforts to eliminate child labour by, *inter alia*, creating industry-wide approaches to address children's work.¹⁹⁷ Where such policies are coupled with inclusive measures to address the root causes for children's work, such as the lack of employment for adults, they can effectively mitigate the prevalence of child labour.¹⁹⁸

At the micro-level, TNCs may act as promoters, serving as role models in creating 'a business culture that understands and fully respects children's rights', in adopting child rights principles that may be copied by other actors in the global and local economy.¹⁹⁹ A good reference point are the Children's Rights and Business Principles adopted by the UNGC, Save the Children and the UN Children's Fund (UNICEF), which aim to be the first comprehensive set of principles to guide companies on the full range of actions they can take at the workplace, marketplace and community to respect and support children's rights.²⁰⁰ The Committee on the Rights of the Child has acknowledged that voluntary actions of corporate responsibility by business enterprises, such as codes of conduct on children's rights, can be a means in advancing children's rights.²⁰¹ Adopting and implementing explicit child rights policies also sends a strong and tangible signal internally and externally about what the company stands for; as such it can be a proxy for good overall risk mitigation and corporate governance which can build confidence to attract investors, including from the growing socially responsible investment market, and thereby contribute to overall employment within a country.

E/ICEF/2009/10, 26 March 2009, available at <<http://www.unicef.org/about/execboard/files/N0928210.pdf>> last accessed on 6 May 2014, See, e.g., 13, Paras. 34-35; and 15-16, Para. 41.

¹⁹⁶ See, e.g., Joseph S., 'An Overview of the Human Rights Accountability of Multinational Enterprises' in Kamminga M. T. and Zia-Zarifi S. (eds), *Liability of Multinational Corporations under International Law* (The Hague: Kluwer Law International, 2000) 75-96, at 78. See, also, e.g., UN Report, 'Realization of Economic, Social and Cultural Rights: The Impact of the activities and working methods of transnational corporations on the full enjoyment of all human rights, in particular economic, social and cultural rights and the right to development, bearing in mind existing international guidelines, rules and standards relating to the subject matter' (1996), report of the Secretary-General, E/CN.4/Sub.2/1996/12, 2 July 1996, Paras. 5 and 10.

¹⁹⁷ UNICEF, Save the Children and UN Global Compact, 'Children's Rights and Business Principles' (2012).

¹⁹⁸ See, e.g., *Mehta v. State of Tamil Nadu*, in which the Supreme Court of India ruled that, as the abolition of hazardous work by children would not be possible without addressing its underlying cause, poverty, upon withdrawal of children from hazardous work, work should be ensured to an adult member of the family. Where this was not possible, the government was to provide a minimum income enabling the family to send the child to school. See Supreme Court of India, *M C Mehta v. State of Tamil Nadu* (1996) 6 SCC 756; AIR 1997 Supreme Court 699; (1997) 2 BHRC 258, Paras. 27-31. Also, a UNICEF-initiated programme in Mexico, which engaged the participation of local businesses in identifying all non-at-school children and the main reasons for them not being at school, shows promising results of business involvement in promoting children's rights. See UNICEF, *UNICEF strategic framework for partnerships and collaborative relationships*, E/ICEF/2009/10, 26 March 2009, 8, Para. 19.

¹⁹⁹ Committee on the Rights of the Child, General Comment No. 16 on State obligations regarding the impact of the business sector on children's rights, CRC/C/GC/16, 17 April 2013, Para. 73.

²⁰⁰ UNICEF, Save the Children and UN Global Compact (2012), *Children's Rights and Business Principles*, available at <http://www.unglobalcompact.org/issues/human_rights/childrens_principles.html> last accessed on 6 May 2014.

²⁰¹ Committee on the Rights of the Child, General Comment No. 16 on State obligations regarding the impact of the business sector on children's rights, CRC/C/GC/16, 17 April 2013, Para. 9.

Business can also contribute to the realisation of children's rights by taking a child rights friendly approach to the accessibility, affordability and availability of products and services essential to child survival and development, and by seeking opportunities to support children's rights through the development of products and services.²⁰² As reported by UNICEF, partnerships with business partners often lead to new products that can significantly contribute to children's survival and development opportunities.²⁰³ Business can also take a role in supporting authorities and humanitarian agencies in emergency response to children's needs by providing goods or services 'based on assessed need and within a framework of accountability to affected populations'.²⁰⁴

Through responsible marketing taking fully into account the vulnerability and rights of children, business enterprises may contribute to awareness-raising on issues relevant to children to promote children's rights, self-esteem and healthy lifestyles.²⁰⁵ Several initiatives have, for example, been undertaken in fields such as food and beverage and fashion marketing communication, to counteract child obesity and eating disorders.²⁰⁶ Likewise, tourism companies are increasingly integrating information on child rights concerns into their communications with travellers to act against child sex tourism.²⁰⁷ Company-initiated programmes on raising child awareness and agency may, as well, have positive effects both at the societal level and in terms of empowering the individual child.²⁰⁸ Provided such processes are inclusive, voluntary and fully respectful to children's rights, businesses may have a positive effect on the realisation of children's rights through, for example, involving them as stakeholders in assessing the effects a potential business project may have on a community.²⁰⁹

d) Non-discrimination

Business can influence the right to equality and non-discrimination as it concerns, among others, women, people with disabilities, people of culturally and linguistically diverse backgrounds, indigenous peoples,

²⁰² UNICEF, Save the Children and UN Global Compact, 'Children's Rights and Business Principles' (2012), available at <http://www.unglobalcompact.org/issues/human_rights/childrens_principles.html> last accessed on 6 May 2014.

²⁰³ UNICEF reports of a successful initiative carried out in cooperation with food producers to fight iodine and iron deficiencies allowing child nutrition needs to be met more effectively. See, e.g., UNICEF, 'UNICEF strategic framework for partnerships and collaborative relationships' (2009), E/ICEF/2009/10, 26 March 2009, 9, Para. 21.

²⁰⁴ UNICEF, Save the Children and UN Global Compact, 'Children's Rights and Business Principles' (2012), available at <http://www.unglobalcompact.org/issues/human_rights/childrens_principles.html> last accessed on 6 May 2014.

²⁰⁵ *Ibid.*

²⁰⁶ See, e.g., International Chamber of Commerce, 'Framework for Responsible Food and Beverage Marketing Communications 2012' (2012) ICC Document N° 240-46/675 – 23 August 2012, available at <http://www.codescentre.com/media/12665/675-food_bev_framework.pdf> last accessed on 6 May 2014.

²⁰⁷ See, e.g., 'The Code', The Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism, available at <<http://www.thecode.org/about/>> last accessed on 24 January 2014. The Code is described as 'an industry-driven, multi-stakeholder initiative with the mission to provide awareness, tools and support to the tourism industry'.

²⁰⁸ See, e.g., UNICEF, Save the Children and UN Global Compact, Children's Rights and Business Principles (2012), available at <http://www.unglobalcompact.org/issues/human_rights/childrens_principles.html> last accessed on 6 May 2014, for successful examples.

²⁰⁹ Committee on the Rights of the Child, General Comment No. 16 on State obligations regarding the impact of the business sector on children's rights, CRC/C/GC/16, 17 April 2013, Para. 23.

the elderly, and people of diverse sexuality.²¹⁰ On the positive side, such impact can be felt, for example, through inclusive and non-discriminatory employment and recruitment policies, non-discriminatory policies and practices at the workplace, and accessibility of goods and services to different groups of people on a non-discriminatory basis.

Through such positive impacts, businesses may contribute to counteracting structural inequality within societies. This may require adopting the concept of *substantive equality*, which aims at equality of results and the eradication of practices and structures that maintain disadvantages or indirect discrimination.²¹¹ The focus on the equality of results may, in the interest of facilitating inclusion and equality, require businesses to adopt active measures, such as reasonable accommodation in the case of disability, and special measures of a temporary or permanent nature in the case of women.²¹² Creating accessible workplaces and enabling employment by accommodating the different special needs of, for example, persons with disabilities, may have an important empowering effect at the level of an individual and contribute to awareness-raising at the societal level. This is important, as disability in many cultures is still a stigma that often marginalises a human being from all types of social activity.²¹³

As it concerns women, business can support substantive equality by measures facilitating the recruitment and continued employment of women through, for example, gender-sensitive and inclusive policies at the workplace, measures against sexual harassment, provisions for pregnant and nursing women, parental leave and by facilitating access to good quality childcare.²¹⁴ Incentives and opportunities for education and vocational training offered to female workers may also indirectly contribute to increased opportunities for children as reports indicate that increased educational attainment of mothers correlates positively with the realisation of the right of the child to development and survival.²¹⁵ Business can have an impact also through raising awareness among its employees on issues relevant to the health and

²¹⁰ Australian Human Rights Commission, 'Making a Difference on Human Rights in Business', available at <<https://www.humanrights.gov.au/business-and-human-rights>> last accessed on 24 January 2014.

²¹¹ See, e.g., Arnadóttir O. M., 'Non-Discrimination in International and European Law: Towards Substantive Models' (2000) 25 *Nordisk Tidskrift för Menneskerettigheter* 2, 140-157, at 143-144; Byrnes A., 'Article 1' in Freeman M. A., Chinkin C. and Rudolf B. (eds), *The UN Convention on the Elimination of All Forms of Discrimination Against Women: A Commentary* (Oxford: OUP, 2012) 55-56; Kumpuvuori J. and Scheinin M., 'Treating Different Differently – Observations on the Development of the Concept of Non-Discrimination' in Kumpuvuori J. and Scheinin M. (eds), *The United Nations Convention on the Rights of Persons with Disabilities: Multidisciplinary Perspectives* (Helsinki: Center for Human Rights of Persons with Disabilities VIKE, 2009) 56-58.

²¹² See, generally, ICCPR, Para. 31; and CRPD, Arts. 2 and 5.

²¹³ See, e.g., Katsui H., Ranta E. M., Yeshanew S., Godfrey, A., Musila, M., Mustaniemi-Laakso M. and Sarelin A., *Reducing Inequalities: Finnish development cooperation in Ethiopia and Kenya with special focus on gender and disability* (Åbo: Institute for Human Rights at the Åbo Akademi University, 2014). See, also, ILO, 'Managing Disability at the Workplace' (2002) Geneva: International Labour Office, available at <http://www.ilo.org/wcmsp5/groups/public/@ed_emp/documents/publication/wcms_103324.pdf> last accessed on 6 May 2014.

²¹⁴ UN Global Compact, 'Women's Empowerment Principles', available at <<http://www.weprinciples.org/>> last accessed on 6 May 2014. See, also, e.g., UNDP, *The MDGs: Everyone's Business. How inclusive business models contribute to development and who supports them* (New York: UNDP, 2010) 30-44.

²¹⁵ See, e.g., Institute for Health Metrics and Evaluation, 'Rising Education Levels Among Women Save Children's Lives Worldwide', available at <<http://www.healthmetricsandevaluation.org/news-events/news-release/rising-education-levels-among-women-save-childrens-lives-worldwide>> last accessed on 6 May 2014.

security of women, or by offering supported and tailored job opportunities as part of rehabilitation of female victims of, for example, domestic violence or sex trafficking.²¹⁶

At the societal level, businesses may also have an impact on inequality reduction through private-public cooperation, social mobilisation and awareness-raising among employees and within the society for reducing inequality and to open opportunities for disadvantaged groups.²¹⁷ Business-initiated partnerships for inclusive business are reported to have had positive effects on inequality reduction and in addressing structural inequality within societies.²¹⁸

e) Rights of persons to their culture, religious practices and language

Another important aspect of businesses' human rights impact is in the area of responsibilities in relation to the rights of persons to their culture, religious practices and language. Various guidelines identify that businesses need to take into consideration respect for minority groups, cultures and religions. Specifically, they should allow workers to speak their own language in the workplace when this does not interfere with their ability to fulfil their job responsibilities or adversely impact workplace health, safety or security.²¹⁹ By accommodating, and raising awareness on, different cultures, religious practices and languages in recruitment and employment policies, business may contribute to maintaining the collective and individual identities of minorities and persons belonging to minorities.

f) Indigenous peoples' rights

In particular, business can contribute to sustaining the identity and collective rights of indigenous peoples where it undertakes full disclosure regarding the impact of any project, operation or facility that may influence territory or resources occupied or used by indigenous peoples. Such a contribution facilitates free, prior and informed consultation and informed participation of the community on matters that affect them directly.²²⁰ In this way the impact of business may be positive or, at least, adverse affects of business activity are mitigated.

²¹⁶ See UNGC, 'Women's Empowerment Principles', Principle 3, Company examples. Available at <<http://weprinciples.org/Site/Principle3/>> last accessed on 6 May 2014.

²¹⁷ For example, a global advertising company partnered with a UN organisation in developing a public awareness campaign on television and the Internet to make the scope of violence against women more visible to an international public. See UNGC, 'Women's Empowerment Principles', Principle 5, Company examples, *ibid*.

²¹⁸ See, e.g., WBCSD-SNV Alliance, 'Measuring the impact of Nestlé's innovative distribution model for nutritional food in Peru', available at <<http://www.inclusivebusiness.org/2011/03/nestle-peru-measuring-impact-framework.html>> last accessed on 6 May 2014. For definition of inclusive business, see, Gradl C. and Nobloch C., *Inclusive Business Guide: How to Develop Business and Fight Poverty* (Berlin:Endeva, 2010).

²¹⁹ See, e.g., UNGC, OHCHR and BLIHR, 'Guide for Integrating Human Rights into Business Management', available at <<http://www.integrating-humanrights.org/>> last accessed on 6 May 2014. See also, e.g., U.S. Equal Employment Opportunity Commission, 'Best Practices for Eradicating Religious Discrimination in the Workplace', available at <http://www.eeoc.gov/policy/docs/best_practices_religion.html> last accessed on 1 May 2014.

²²⁰ See, e.g., UNGC, OHCHR and BLIHR Guide, *ibid*: 'In the case of indigenous children whose communities retain a traditional lifestyle, the use of traditional land is of significant importance to their development and enjoyment of culture'. See, also, Committee on the Rights of the Child, General Comment No. 11 on Indigenous children and their rights under the Convention, CRC/C/GC/11, 12 February 2009, Para. 35; and UNICEF Innocenti Digest No. 11, 'Ensuring the Rights of Indigenous Children' (2004) 8, available at <<http://www.unicef-irc.org/publications/pdf/digest11e.pdf>> last accessed on 1 May 2014.

Businesses can also conduct human rights impact assessments in close collaboration with indigenous peoples and independent experts in order to anticipate and mitigate any potential harm on the indigenous population. According to international human rights instruments, indigenous peoples should be consulted not only during human rights impact assessments, but at all stages of companies' activities that may affect them.²²¹ Through consultation conducted in good faith, businesses should seek free, prior and informed consent of indigenous peoples.²²² Compensation, restitution and mitigation measures in case of harm might be agreed, if necessary.

Consultation not only strengthens indigenous peoples' participation in the decision-making process, but also helps them to protect their identity when culturally appropriate solutions are agreed on as a result of that process (for instance, the existence and jurisdiction of indigenous internal grievance mechanisms acknowledged by businesses to solve certain disputes between the two parties). Through a just and fair compensation agreed between the parties during the consultation process, either a sum of money, the funding of programmes or both, the indigenous peoples could have the means for a sustainable development of their communities, improving their access to drinking water, health, and culturally-appropriate education, among other economic, social and cultural rights.

Apart from that, businesses can actively participate in the improvement of the living conditions of indigenous peoples. This can be done in various ways. Business can, for example, contribute significantly to the empowerment of indigenous peoples by providing decent and empowering work opportunities for them, including by promoting equal opportunities for advancement to higher positions, or by providing benefits and services (such as healthcare, pension, childcare and job training). Businesses can contribute to the empowerment of indigenous peoples as well through recognising and supporting their traditional occupations and ways of work through, for example, supporting and providing loans to local indigenous SMEs.²²³

Also support by business to culturally and linguistically appropriate educational opportunities for indigenous children and adults, as well as business-initiated targeted incentives for education, may enhance the employment and educational access of indigenous peoples.²²⁴ Companies can also incorporate indigenous knowledge in their corporate activities or support indigenous organisations involved in the preservation of indigenous heritage, therefore having a clear link to the right to cultural and educational rights.²²⁵ The company's respect and sensitivity towards indigenous peoples' decision-

²²¹ In particular the ILO Tribal and Indigenous Peoples Convention (n° 169, 1989) and the UN Declaration on the Rights of Indigenous Peoples (2007).

²²² UNGC, *A Business Reference Guide: United Nations Declaration on the Indigenous Peoples* (New York: UN Global Compact, 2013), available at <http://www.unglobalcompact.org/docs/issues_doc/human_rights/IndigenousPeoples/BusinessGuide.pdf> last accessed on 6 May 2014, 21; UN Report of the Special Rapporteur on the Rights of Indigenous Peoples to the Human Rights Council, 'Study on Extractive industries and indigenous peoples' (2013), A/HRC/24/41, paras. 26-30.

²²³ UNGC Guide, *ibid.* See, generally, also, Levy B., 'Obstacles to Developing Indigenous Small and Medium Enterprises: An Empirical Assessment' (1993) 7 *World Bank Economic Review* 1, 65-83; and UN Permanent Forum on Indigenous Issues, Report on the third session (10-21 May 2004), E/C.19/2004/23, Para. 58.

²²⁴ UNGC Guide, *ibid.*

²²⁵ *Ibid*, 49.

making processes, forms of government and traditions can increase the indigenous peoples' self-esteem and confidence to claim their rights.

Business may, moreover, take active steps to engage in public discussion to promote rights of indigenous peoples, as well as to undertake awareness training for employees on indigenous matters, or to fund or promote indigenous projects, institutional empowerment or traditional governance activities.²²⁶ By adopting and implementing a corporate policy, they can create a greater awareness of those rights among their employees and private/public partners, fighting cultural bias and discrimination.²²⁷ The media can play an important role in this regard by opening doors for indigenous peoples to engage in societies through existing media channels or to establish and control their own channels, which is seen as vital in sustaining the rights to self-determination and information of indigenous peoples.²²⁸

Some further concrete steps business can take to support indigenous peoples' rights include enhancing access for indigenous peoples to health services and products, which may mitigate the generally significantly low access to health services by, and the generally relatively poor health of, indigenous peoples. Pharmaceutical companies and businesses in the health industry are uniquely positioned to make this happen.²²⁹

2. Negative human rights impacts

There may be negative impacts for human rights arising from specific business activities involving the employment of personnel, the use of equipment and facilities, the supply, manufacture and consumption of materials, the provision of services, the import and export of goods, investment and public procurement. However, the negative impact of business activity on human rights may also arise through business ties with third parties, such as suppliers or sub-contractors in a supply chain, or through government police or security forces, and private military and security companies, who commit human rights abuses. While states still bear the primary obligation under international law to protect individuals and communities from human rights abuses committed by TNCs, SMEs and other business enterprises,²³⁰ the latter also have a responsibility to respect human rights. They should 'avoid infringing on the human rights of others' and 'address adverse human rights impacts with which they are involved'.²³¹

²²⁶ *Ibid*, 43.

²²⁷ *Ibid*, 12. See also, The International Business Leaders Forum (IBLF) and the International Finance Corporation (IFC), in association with the UN Global Compact, 'Guide to Human Rights Impact Assessment and Management (HRIAM)' (2010), available at <http://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/Guide+to+Human+Rights+Impact+Assessment+and+Management> last accessed on 6 May 2014.

²²⁸ International Law Association (ILA), 'Report of the Hague Conference (2010): Rights of Indigenous Peoples', see e.g. 27, available at <<http://www.ila-hq.org/en/committees/index.cfm/cid/1024>> last accessed on 6 May 2014.

²²⁹ UNGC, *A Business Reference Guide: United Nations Declaration on the Indigenous Peoples* (New York: UN Global Compact, 2013), 63, available at <http://www.unglobalcompact.org/docs/issues_doc/human_rights/IndigenousPeoples/BusinessGuide.pdf> last accessed on 6 May 2014.

²³⁰ UN Report of the Special Representative of the Secretary-General on the issue of human rights and transitional corporations and other business enterprises, Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework, A/HRC/17/31 (March 2011), Principle 1, at 6.

²³¹ *Ibid*, Principle 11, at 13.

Notwithstanding the recognition of human rights responsibilities for the business sector there are several areas where business activity has a negative impact on human rights.

a) The right to life, including security of person

One such area where business activity may have negative impacts is on the ‘right to life, liberty and security of person’, the latter of which is understood in the sense of both physical and psychological security.²³² Business activity may impact on human rights along a broad spectrum ranging at one end from serious human rights abuses that impact on the right to life and the physical security of the person. This may include practices like extrajudicial killings, the use of lethal or excess force, torture, and cruel, inhuman, or degrading treatment. At the other end of the spectrum there may be an abuse of the physical and/or psychological security of an employee, a trade unionist, a business partner, shareholder, agent, etc. through business activities and transactions that involve intimidation, coercion, and extortion, or economic crimes such as fraud and corruption that impact negatively on the livelihoods of individuals.

In terms of negative impacts on the right to life and security of the person, business involvement in human rights abuses arises in an alarmingly broad range of activities either directly, or indirectly, through business ties to third parties. Some examples of direct human rights abuses in a business context might include private business operators that exercise governmental authority on behalf of a state in the place of police or prison officers or the military. Abuses of the ‘right to security of person and protection by the state against violence or bodily harm, whether inflicted by government officials or by any individual group or institution’²³³ can occur when private contractors are given the task of running prison and detention centres and their personnel abuse a detainee’s or prisoner’s right to freedom from ill-treatment.²³⁴ Despite agreement by a group of private military and security companies for the establishment of an oversight mechanism for their activities,²³⁵ pursuant to the Montreux Document,²³⁶ private security providers and/or their employees have been responsible for human rights violations and, in some cases, alleged complicity in the commission of war crimes.²³⁷ Similarly, private security forces are often contracted by TNCs or other business enterprises in the extractive and heavy industries to guard mines,

²³² Art. 3 UDHR.

²³³ Art. 5(b) ICERD.

²³⁴ Human Rights Advocates, *The Human Rights Implications of Prison Privatization*, Report to the 16th Sess., Human Rights Council, March 2011, available at <http://www.humanrightsadvocates.org/wp-content/uploads/2010/05/Justin_White_-_The_Human_Rights_Implications_of_Prison_Privatization.pdf> last accessed on 14 June 2014.

²³⁵ ‘International Code of Conduct for Private Security Service Providers’ (9 November 2010) available at <<http://www.icoc-ppsp.org/>> last accessed on 14 June 2014.

²³⁶ ‘The Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies During Armed Conflict’, Montreux, 17 September 2008, available at <http://www.icrc.org/eng/assets/files/other/icrc_002_0996.pdf> last accessed on 14 June 2014. It should, however, be noted that the Montreux Document only applies to private military and security companies operating in conflict zones.

²³⁷ Report of the open-ended intergovernmental working group to consider the possibility of elaborating an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies in its second session, A/HRC/21/41, 24 December 2012, para. 57.

oil refineries and power plants. Some have been known to have used excessive force – occasionally with fatalities – against striking workers.²³⁸

Another area where business may have negative impacts for human rights is where they produce or trade in products that have a direct and adverse effect on a person's life or security. Examples include the production of anti-personnel landmines,²³⁹ or the production and sale of the key chemical ingredient for use in the administration of lethal injections in countries where capital punishment is carried out.²⁴⁰

A more indirect way in which business activity can have a negative impact on human rights is where TNCs, SMEs and other business enterprises fail to safeguard their ties with third party suppliers in their global value supply chains. The sectors of the economy most at risk from human trafficking and forced labour in global supply chains²⁴¹ include agriculture and horticulture, construction, the garment and textiles industry operating under sweat shop conditions, tourism and hospitality, the construction industry and food processing and packaging.²⁴² The EU has adopted what it describes as 'an integrated, holistic, and human rights approach to the fight against trafficking in human beings'.²⁴³ However, EU measures, while criminalising the trafficking of human beings, are directed more towards the movement of human beings, especially women and children, rather than applying an extraterritorial basis to global supply chains of EU-based TNCs or SMEs and other business enterprises.

b) Employment: labour rights

In Chapter VI.C.1b above, we noted that globalisation and the growing power and influence of TNCs has had some positive impacts for employment and labour rights, but much of the focus of the debate has been on the negative impacts, not least, as the ILO identified in its Declaration on Social Justice for a Fair Globalisation, 2008, 'income inequality, continuing high levels of unemployment and poverty, vulnerability of economies to external shocks, and the growth of both unprotected work and the informal economy'.²⁴⁴ The sheer speed of advances in the technologies of communications, information and transportation, coupled with the opening up of trade and foreign investment, has facilitated a huge shift

²³⁸ Human Rights Watch and Centre for Human Rights and Global Justice, NYU Law School, 'On the Margins of Profit: Rights at Risk in the Global Economy' (February 2008) 11-12.

²³⁹ *Paşa and Erkan Erol v. Turkey*, ECtHR, Application No. 51358/99, Grand Chamber, Judgment of 12 December 2006 (finalised 23/05/2007) paras. 31-32.

²⁴⁰ Buhmann K., 'Damned if you do, damned if you don't? The Lundbeck case of Pentobartital, the Guiding Principles on Business and Human Rights, and competing human rights responsibilities' (2012) 40 *Journal of Law, Medicine and Ethics* 2, 206-219.

²⁴¹ ILO, 'Combating forced labour: A handbook for employers and business' (2008) available at <http://www.ilo.org/wcmsp5/groups/public/---ed_norm/-/declaration/documents/publication/wcms_101171.pdf> last accessed on 14 June 2014.

²⁴² 'Human Trafficking and Global Supply Chains', a background paper prepared for the expert meeting convened by the UN Special Rapporteur on trafficking in persons, especially women and children, Ms. Joy Ngozi Ezeilo, Ankara, Turkey, 12-13 November 2012, 15-19.

²⁴³ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, OJ L 101/1 (15 April 2011), para. 7.

²⁴⁴ Adopted by the International Labour Conference, Geneva, 10 June 2008. Available at <<http://www.ilo.org/public/english/bureau/leg/declarations.htm>> last accessed on 15 June 2014, preamble.

in both manufacturing and services to regions with lower wages and poor working conditions.²⁴⁵ Studies have shown that TNCs have consciously chosen to invest in countries with low levels of unionisation and protective labour legislation.²⁴⁶

K.V.W. Stone²⁴⁷ has highlighted four negative impacts of the globalisation of business on labour rights: (1) globalisation diminishes labour's bargaining power. Unions, facing the threat of business relocation, have less bargaining power domestically; (2) globalisation makes it more difficult to improve domestic labour protective legislation because companies will threaten to move their businesses; (3) globalisation encourages regulatory competition between states, triggering a downward spiral of labour standards; and (4) globalisation pits labour organisations in one country against those in another, undermining prospects for international labour solidarity. Within the EU, the third and fourth impacts were brought to the fore in the *Viking Line*²⁴⁸ and *Laval*²⁴⁹ cases in which, in the context of EU enlargement post-2004, businesses were able to take advantage of internal market rules by relocating their operations to new member states, or subcontracting labour from those member states, in order to escape from collective agreements with domestic unions and benefit from having to comply with less protective labour legislation. Moreover, the right to strike in defence of collective agreements has been strictly curtailed by the imperatives of market integration.²⁵⁰

Globalisation has triggered flexibilisation, a process that has fundamentally altered the organisational hierarchy, hiring practices and work organisation of companies. It is closely linked to 'downsizing', outsourcing, and increasing use of temporary and agency staff. Such changes ultimately lead to the 'vertical disintegration' of companies.²⁵¹ It has brought about a huge, and almost certainly irreversible, shift in the labour market towards casual or intermittent employment, part-time working, 'zero-hours contracts',²⁵² contracting out and agency placements involving multiple employing entities. In turn,

²⁴⁵ See further, Klare K., 'The Horizons of Transformative Labour and Employment Law' in Conaghan J., Fischl R.M. and Klare K. (eds), *Labour Law in an Era of Globalization: Transformative Practices and Possibilities* (Oxford: OUP, 2002) 3-29 at 5-6.

²⁴⁶ See Stone K.V.W., 'Flexibilization, Globalization and Privatization: Three Challenges to Labour Rights in Our Time' in Bercusson B. and Estlund C. (eds), *Regulating Labour in the Wake of Globalization: New Challenges, New Institutions* (Oxford: Hart Publishing, 2008) 115-135 at 119. Stone cites a study by William Cooke on the investment decisions of TNCs, see Cooke W.N., 'The Influence of Industrial Relations Factors on US Foreign Direct Investment Abroad' (1997) 5 *Industrial and Labor Relations Review* 3.

²⁴⁷ See Stone, *ibid.*

²⁴⁸ ECJ, Case C-438/05 *International Transport Workers' Federation and Finnish Seamen's Union v. Viking Line* [2007] ECR I-10779.

²⁴⁹ ECJ, Case C-341/05 *Laval un Partneri v. Svenska Byggnadsarbetareförbundet* [2007] ECR I-11767. See also ECSR, *Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden*, Decision on Collective Complaint No. 85/2012.

²⁵⁰ These cases have spawned a huge outpouring of academic literature. For references, see the European Trade Union Institute catalogue, available at <<http://www.etui.org/Topics/Social-dialogue-collective-bargaining/Social-legislation/The-interpretation-by-the-European-Court-of-Justice/Reaction-to-the-judgements/Articles-in-academic-literature-on-the-judgements>> last accessed on 16 June 2014.

²⁵¹ See Collins H., 'Independent Contractors and the Challenge of Vertical Disintegration to Employment Protection Law' (1990) 10 *Oxford Journal of Legal Studies* 353-80.

²⁵² Under a zero-hours contract a worker has no certainty about when and where he/she will be working but may still be reliant on a single employer for work.

globalisation, flexibilisation, and privatisation of utilities and public services,²⁵³ has spawned the growth of insecure, informal and increasingly precarious work, a disproportionate amount of which is performed by women²⁵⁴ and migrant workers.²⁵⁵

In its 'World of Work Report' (2014), the ILO notes that the reduction in the incidence of working poverty in many countries in the developing world has been 'impressive'.²⁵⁶ However, 839 million workers in developing countries are unable to earn enough to lift themselves and their families above the US\$2 a day threshold. More than half of the developing world's workers (nearly 1.5 billion people) are in vulnerable employment, which means they are less likely to have formal work arrangements, be covered by social protection or have regular earnings.²⁵⁷ Despite this, unspent cash in the accounts of large enterprises had reached US\$5 trillion in advanced economies and US\$1.4 trillion in emerging and developing countries by 2013, exceeding pre-crisis levels.²⁵⁸

As discussed in Chapter VI.C.1b above, many large businesses have embraced CSR and signed up to the UNGC. From the perspective of a large TNC with an extended global supply chain it is a sound business proposition to be regarded as being committed to upholding human rights, including the ILO core labour rights, and to participate in multi-stakeholder initiatives. TNCs need to put into place institutional arrangements to control the activities of their contractors and sub-contractors in supply chains. CSR gives them leverage through codes of conduct, monitoring, auditing and labelling.²⁵⁹ However, as S. Barrientos and S. Smith have noted, there is an 'inherent tension' between the perspectives on CSR of TNCs and civil society. This is because: 'Corporate priority is on technical or outcome standards to achieve social compliance within existing global production systems. Civil society priority is on universal or process rights as a means for workers to struggle for changes in production systems necessary to ensure that they have access to decent work'.²⁶⁰

Beneath the veneer of CSR as a management technique embraced wholeheartedly by the global business community, the reality is that the majority of companies have not engaged seriously with 'stakeholders'.

²⁵³ See further, Stone K.V.W., 'Flexibilization, Globalization and Privatization: Three Challenges to Labour Rights in Our Time' in Bercusson B. and Estlund C. (eds), *Regulating Labour in the Wake of Globalisation: New Challenges, New Institutions* (Oxford: Hart Publishing, 2008) 115-135.

²⁵⁴ See generally, Fudge J. and Owens R. (eds), *Precarious Work, Women, and the New Economy: The Challenge to Legal Norms* (Oxford: Hart Publishing, 2006).

²⁵⁵ See further, Cholewinski R., 'International labour law and the protection of migrant workers: revitalizing the agenda in the era of globalization' in Craig J.D.R. and Link S.M. (eds), *Globalization and the Future of Labour Law* (Cambridge: CUP, 2006) 409-444. Recently, attention has focused on Qatar, where, in preparation for the 2022 World Cup, migrant workers are dying at a rate of more than one a day, according to official figures compiled by foreign embassies in Doha. See, *The Lancet*, Volume 383, Issue 9930, p.1709, 17 May 2014, available at <[http://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(14\)60818-7/fulltext](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(14)60818-7/fulltext)> last accessed on 17 June 2014.

²⁵⁶ ILO, *World of Work Report 2014: Developing with Jobs* (Geneva, 2014), Summary p. 4.

²⁵⁷ *Ibid.*

²⁵⁸ ILO, *World of Work Report 2013: Repairing the economic and social fabric* (Geneva, 2013), Summary p. 3.

²⁵⁹ See Utting P., 'Corporate responsibility and the movement of business' (2005) 15 *Development in Practice* 375-388 at 380.

²⁶⁰ Barrientos S. and Smith S., 'Do Workers Benefit from Ethical Trade? Assessing codes of labour practice in global production systems' (2007) 28 *Third World Quarterly* 713-729 at 714.

According to a KPMG survey in 2011,²⁶¹ 95% of the top global TNCs engage in CSR reporting but this does not necessarily mean that they have codes of conduct containing a commitment to fair labour practices, or are involved in effective monitoring and auditing of such a code, or have embraced multi-stakeholder initiatives. In the absence of coercive mechanisms for regulatory oversight, the effectiveness of self-regulatory techniques such as ‘ratcheting labour standards’, discussed in Chapter VI.C.1b above, is largely dependent on the goodwill of the business concerned.²⁶²

There are several serious limitations to CSR techniques as mechanisms to redress the negative labour rights impacts of business.

First, there is evidence of double-standards. Worsening labour standards and conditions in supply chains are often associated with outsourcing and pressure being brought by TNCs to deregulate labour markets in the countries where they operate.²⁶³ Even where TNCs co-operate with NGOs on issues such as promoting freedom of association, they may not be prepared to make demands on the management of their suppliers but will continue to source goods from them. For example, Adidas co-operated with Oxfam Australia and the Clean Clothes Campaign in investigations into alleged violations of freedom of association at a factory in Indonesia from where it sourced its sportswear. Ultimately, however, attempts to establish a democratic union failed and the local management dismissed workers seeking to have the union recognised. The Indonesian Human Rights Commission found that there was no legal basis for the dismissals and called for the workers to be reinstated. Adidas supported this demand and threatened to limit its orders. The workers concerned were paid a severance package but not reinstated. Adidas was not prepared to guarantee employment for the dismissed workers and was criticised by the NGOs concerned for not acting on their threat.²⁶⁴

Second, there is the problem of ‘institutional capture’. As P. Utting observes, institutions that have penetrated into the public policy processes through initiatives such as the UNGC and involvement in multi-stakeholder forums, use this influence to lobby within international institutions against labour regulation and initiatives to promote fairer taxation to fund social protection.²⁶⁵ Several of the TNCs on the UNGC Human Rights and Labour Group have been the subject of ‘naming and shaming’ reports by human rights organisations citing violations of labour or environmental rights.²⁶⁶

²⁶¹ Available at <<http://www.kpmg.com/PT/pt/IssuesAndInsights/Documents/corporate-responsibility2011.pdf>> last accessed on 16 June 2014.

²⁶² Estlund C., ‘Rebuilding the Law of the Workplace in an Era of Self-Regulation’ in Bercusson B. and Estlund C. (eds), *Regulating Labour in the Wake of Globalisation: New Challenges, New Institutions* (Oxford: Hart Publishing, 2008) 89-113 at 100.

²⁶³ See Utting P., ‘Corporate responsibility and the movement of business’ (2005) 15 *Development in Practice* 375-388 at 384.

²⁶⁴ Case study on the UNGC Business and Human Rights Dilemmas Forum, available at <http://human-rights.unglobalcompact.org/case_studies/freedom-of-association/> last accessed on 17 June 2014.

²⁶⁵ See Utting P., ‘Corporate responsibility and the movement of business’ (2005) 15 *Development in Practice* 375-388 at 384.

²⁶⁶ See, for example, The International Labor Rights Forum, ‘The 14 Worst Corporate Evildoers’ (2005). This report cites examples of alleged violations concerning Monsanto and Nestle: available at <<http://www.laborrights.org/in-the-news/14-worst-corporate-evildoers>> last accessed on 17 June 2014. Barrick Gold are cited in the Global

Third, reviews of corporate codes of labour practice have shown that, despite general commitments to the core labour rights, they are frequently weak in relation to freedom of association, collective bargaining and gender equality.²⁶⁷

Fourth, many of the groups established to promote fair labour practices now have TNCs as members and may no longer be regarded as sufficiently independent. Closer relations between NGOs and business have led to accusations of 'regulatory capture' and the 'commodification of activism'.²⁶⁸ For example, the US-based Fair Labor Association (FLA) has established a Third Party Complaint Procedure to serve as a channel through which any individual or organisation can confidentially report a serious labour violation with regard to the FLA Workplace Code of Conduct or Principles of Monitoring at any factory affiliated to the FLA. This includes breaches of the right of employees to freedom of association and collective bargaining. Members of the FLA include major clothing and footwear brands such as Nike, Umbro, H&M, and Adidas.²⁶⁹ Similar arguments are mounted against the independence of the UK-based Ethical Trading Initiative.²⁷⁰

Fifth, social auditing has become an industry. Increasingly auditors rely mainly on information from management for verification of compliance with codes. There is little active involvement of trade unions, where they exist. The focus of auditing tends to be on health and safety issues, to prevent risks, rather than on more deep seated problems such as discrimination. This narrow focus is a reflection of the asymmetric power relationship between workers and management.²⁷¹

The tragic factory collapse at the Rana Plaza in Bangladesh, on 24 April 2013, in which 1,129 garment workers died, has brought into focus the negative human rights consequences of poor regulation and weak enforcement in extended supply chains, or 'global value chains', and the limits of corporate self-regulation. Such incidents were hardly new events,²⁷² but the sheer scale of the disaster, and the blatant disregard for the most basic health and safety standards, has led to a fresh demand for a shift from corporate responsibility to corporate accountability through effective enforcement of codes and global regulation, at least in the most dangerous labour-intensive sectors. The negative human rights impacts of

Exchange 'Top 10 Corporate Criminal List' for alleged environmental violations: available at <<http://www.globalexchange.org/corporateHRviolators>> last accessed on 17 June 2014.

²⁶⁷ See Barrientos S. and Smith S., 'Do Workers Benefit from Ethical Trade? Assessing codes of labour practice in global production systems' (2007) 28 *Third World Quarterly* 713-729 at 715.

²⁶⁸ See Utting P., 'Corporate responsibility and the movement of business' (2005) 15 *Development in Practice* 375-388 at 382.

²⁶⁹ Case study on the UNGC Business and Human Rights Dilemmas Forum, available at <http://human-rights.unglobalcompact.org/case_studies/freedom-of-association/> last accessed on 17 June 2014.

²⁷⁰ For further information see <<http://www.ethicaltrade.org/>> last accessed on 29 July 2014.

²⁷¹ See Barrientos S. and Smith S., 'Do Workers Benefit from Ethical Trade? Assessing codes of labour practice in global production systems' (2007) 28 *Third World Quarterly* 713-729 at 716-717.

²⁷² Human Rights Watch has reported that 73 garment workers died in a factory collapse in Savar in 2003; 18 workers were killed in a factory collapse in Dhaka in 2006; 25 were killed in another factory collapse in Dhaka in 2010; and 100 died in a factory fire in Dhaka in 2012. See HRW statement, 25 April 2013, available at <<http://www.hrw.org/news/2013/04/25/bangladesh-tragedy-shows-urgency-worker-protections>> last accessed on 17 June 2014.

business will only be mitigated, it is argued, by making TNCs accountable to their stakeholders and subject to binding obligations.²⁷³

In the wake of the Rana Plaza disaster there has been some progress, not least the adoption of a ‘compact’ by the ILO and EU to improve labour rights and factory safety in the ready-made garment industry in Bangladesh. More than 80 leading clothing brands and retailers in the sector have signed an Accord on Fire and Building Safety in Bangladesh.²⁷⁴ Nevertheless, even after the adoption of new labour laws in Bangladesh, Human Rights Watch has reported, in early 2014, that garment workers who try to unionise factories continue to face threats and intimidation.²⁷⁵

c) *The rights of the child*

Due to their physical and psychological development, as well as due to their specific survival and development needs, children can be more vulnerable than adults to the impact of business on the realisation of their human rights.²⁷⁶ Such effects can also be more irreversible and result in more serious and long-lasting, or even trans-generational damage, than those on adults.²⁷⁷ The vulnerability of children is enhanced by the fact that children often lack or have insufficient access to remedies and to information relevant to them.²⁷⁸ Children adversely affected by business operations through, for example, working illicitly, are also often invisible and thereby out-of-reach of the existing social and labour protection networks.²⁷⁹

The most obvious impact businesses have on the realisation of children’s rights is through the use of child work and child labour, with an estimated 168 million children working globally, more than half of them, 85 million, in hazardous work.²⁸⁰ Most of the working children are found within the agricultural sector

²⁷³ See Utting P., ‘Corporate responsibility and the movement of business’ (2005) 15 *Development in Practice* 375-388 at 385.

²⁷⁴ ILO statement, 23 September 2013, available at <http://www.ilo.org/newyork/news/WCMS_222019/lang-en/index.htm> last accessed on 17 June 2014.

²⁷⁵ HRW statement, 6 February 2014, available at <<http://www.hrw.org/news/2014/02/06/bangladesh-protect-garment-workers-rights>> last accessed on 17 June 2014.

²⁷⁶ Committee on the Rights of the Child, General Comment No. 16 on State obligations regarding the impact of the business sector on children’s rights, CRC/C/GC/16, 17 April 2013, Para. 31; and UNICEF, Save the Children and UNGC, ‘Children’s Rights and Business Principles’ (2012), available at <http://www.unglobalcompact.org/issues/human_rights/childrens_principles.html> last accessed on 6 May 2014.

²⁷⁷ ‘Children’s Rights and Business Principles’, *ibid*; General Comment No. 16, Para. 31(a).

²⁷⁸ General Comment No. 16, *ibid*, Paras. 4(b-c) and 66.

²⁷⁹ UNICEF, Save the Children and UNGC, ‘Children’s Rights and Business Principles’ (2012). See, also, UNICEF, Save the Children and UNGC, ‘How Business Affects Us: Children and young people share their perspectives on how business impacts their lives and communities’ (2012).

²⁸⁰ The definition suggested by the Committee on the Rights of the Child is the most informative attempt to define exploitative child labour. Child work becomes exploitative, according to the Committee’s criteria, where a child is involved in activities dangerous or harmful to his or her harmonious physical, mental or spiritual development or likely to jeopardise the future education of the child. It should also be noted that the term ‘economic exploitation’ combines two distinct concepts: economic and exploitation. The first element implies the idea of a certain economic profit to a certain unit. ‘Exploitation’, for its part, refers to unjust advantage that another person derives from the situation. Economic exploitation of children implies, in other words, that someone, i.e. the employer, family or the community takes unjust economic advantage of the work of the child. See Report on the fifth session of the Committee on the Rights of the Child, adopted 28 January 1994, UN Doc. CRC/C/24, 8 March 1994, 42 and Report

(98 million, or 59%), but children work commonly also in services (54 million) and in industry (12 million), most prevalently so in the informal sector.²⁸¹ The work of children is also commonly used in small scale manufacturing enterprises, 'sweatshops', which often form the final link in a chain of subcontractors to larger businesses producing goods for sale in the West.²⁸² There are registered cases of violations of labour rights, national laws and international human rights standards, that provide evidence of the fact that TNCs registered in the northern hemisphere are abusing their dominant economic power in the developing nations, where TNCs are increasingly shifting their operations.²⁸³ TNCs are known, for instance, to have adopted, due to lenient monitoring and the desire of greater profits, policies that violate child labour standards and perpetuate poor working conditions.²⁸⁴

TNCs can also exert significant negative impact on, for example, the legal regulation of children's work. The so-called 'race to the bottom' may force developing countries to lower labour standards in order to retain their competitiveness on the world market and to attract foreign investment. Sometimes a threat alone to terminate business in a given country has been sufficient to resist regulation and domestic penalties by developing countries, which often ardently compete for foreign investment.²⁸⁵ Due to the need of developing countries to attract foreign investment, governments may even be inclined to weaken their labour standards in a more 'corporate friendly' direction.²⁸⁶

on the fourth session of the Committee on the Rights of the Child, adopted 8 October 1993, UN Doc. CRC/C/20, 25 October 1993, Annex V, 51; ILO, 'Marking Progress against Child Labour: Global Estimates and Trends 2010-2012' (2013) Geneva, International Programme on the Elimination of Child Labour, ILO, available at <http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipec/documents/publication/wcms_221513.pdf> last accessed on 6 May 2014.

²⁸¹ ILO, 'Marking Progress against Child Labour', *ibid.*

²⁸² See, e.g., IPEC/ILO, 'Child Labour and Responses: Overview Note South-Asia', available at <<http://www.ilo.org/legacy/english/regions/asro/newdelhi/ipecc/download/southasia.pdf>> last accessed on 25 January 2014.

²⁸³ See, e.g., Woodroffe J., 'Regulating Multinational Corporations in a World of Nation States' in Addo M. K. (ed), *Human Rights Standards and the Responsibility of Transnational Corporations* (The Hague: Kluwer Law International, 1999) 131-142, at 132; Joseph S., 'An Overview of the Human Rights Accountability of Multinational Enterprises' in Kamminga M.T. and Zia-Zarifi S. (eds), *Liability of Multinational Corporations under International Law* (The Hague: Kluwer Law International, 2000) 75-96, at 78.

²⁸⁴ Weissbrodt D., 'The Beginning of a Sessional Working Group on Transnational Corporations Within the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities' in Kamminga M. T. and Zia-Zarifi S. (eds), *Liability of Multinational Corporations under International Law* (The Hague: Kluwer Law International, 2000) 119-138, at 120.

²⁸⁵ Joseph S., 'An Overview of the Human Rights Accountability of Multinational Enterprises' in Kamminga M. T. and Zia-Zarifi S. (eds), *Liability of Multinational Corporations under International Law* (The Hague: Kluwer Law International, 2000) 75-96, at 78. See also, e.g., 'Realization of Economic, Social and Cultural Rights: The Impact of the activities and working methods of transnational corporations on the full enjoyment of all human rights, in particular economic, social and cultural rights and the right to development, bearing in mind existing international guidelines, rules and standards relating to the subject matter', report of the Secretary-General, E/CN.4/Sub.2/1996/12, 2 July 1996, Para. 11.

²⁸⁶ See, e.g., Weissbrodt D., 'The Beginning of a Sessional Working Group on Transnational Corporations Within the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities' in Kamminga M.T. and Zia-Zarifi S. (eds), *Liability of Multinational Corporations under International Law* (The Hague: Kluwer Law International, 2000) 119-138, at 120. See, also, Committee on the Rights of the Child, General Comment No. 16 on State obligations regarding the impact of the business sector on children's rights, CRC/C/GC/16, 17 April 2013, Para. 8: 'business

As far as the consequences of economic exploitation of children are concerned, it has been proved that exploitative child labour may impair the physical, emotional and psychological development of child workers, who are more vulnerable to occupational hazards than adults due to the fact that they are physically and mentally more fragile than adults.²⁸⁷ Exploitative labour is also time and energy consuming and may prevent, as such, child labourers from going to school, or, at the very least, impairs their schooling and intellectual development. The 'trade-off between school and labour', again, fuels adult illiteracy, which perpetuates socio-economic inequality and differentiation in job access and in education.²⁸⁸ On the societal side, child labour keeps wages low by providing cheap and easily exploited labour and contributes, by implication, to adult unemployment, which, in turn, contributes to poverty. The use of child labour is thus a part of a vicious circle common to developing countries where illiteracy and poverty lead to child labour and child labour again to poverty and illiteracy. Children working within the informal sector, which typically occupies a significant share of the economically active population in many countries, are particularly vulnerable to the impact of business activities; as such work is often out-of-reach of the regulative and protective legal and institutional frameworks.²⁸⁹

The unlawfulness of child labour, and the fact that children do not belong to trade unions, makes, furthermore, it simple for businesses to adapt to the fluctuations of demand or to other external demands on their operations.²⁹⁰ Where corporate policies are not supported by appropriate measures to address the root causes for children's work, lay-offs of child workers may have dramatic effects on children's rights. A case in point is the introduction of the so-called Harkin Bill, which was meant to ban the importation to the United States of all goods produced with child work.²⁹¹ The US legislative initiative, which was later dismissed, resulted in the immediate dismissal of over 20,000 child workers, whose situation, in the absence of viable options, worsened considerably as they faced unemployment or were dragged into illicit activities, such as prostitution.²⁹²

enterprises should not undermine the States' ability to meet their obligations towards children under the Convention and the Optional Protocols thereto'.

²⁸⁷ Although work in itself may have beneficial effects on the social and psychological development of a child, the exploitative nature of the work clearly outweighs its positive effects. See e.g. 'Promotion and Protection of the Rights of Children: Exploitation of Child Labour', Report of the Secretary-General, UN Doc. A/52/523, fifty-second session, Paras. 8-9.

²⁸⁸ Rodgers G. and Standing G., 'Preface' in Rodgers G. and Standing G. (eds), *Child Work, Poverty and Underdevelopment*, (Geneva: ILO, 1981) ix. See also Contemporary Forms of Slavery, Report of the Working Group on Contemporary Forms of Slavery on its twenty-second session, UN Doc. E/CN.4/Sbu.2/1997/13, 11 July 1997, Para. 48.

²⁸⁹ Committee on the Rights of the Child, General Comment No. 16 on State obligations regarding the impact of the business sector on children's rights, CRC/C/GC/16, 17 April 2013, Para. 35.

²⁹⁰ See, e.g., Rodgers G. and Standing G., 'Economic Roles of Children in Low-income Countries: A Framework for Analysis' (1979) World Employment Programme Research, Working Paper no. 81, WEP 2/21/WP.81, ILO, Geneva, 17.

²⁹¹ Child Labor Deterrence Act of 1995, S. 706, 104th Cong. (1995); see also McElduff Jr. T. P. and Veiga J., 'The Child Labour Deterrence Act of 1995: A Choice Between Hegemony and Hypocrisy' (1996) 11 *Journal of Civil Rights and Economic Development* 2, 582-614.

²⁹² See, e.g., Rahman M.M., Khanam R. and Absar N.U., 'Child Labor in Bangladesh: A Critical Appraisal of Harkin's Bill and the MOU-Type Schooling Program' in (1999) 33 *Journal of Economic issues* 4, 985-1003.

While attention in terms of negative impact of business on children often focuses on child labour, children's rights may be adversely affected by business in a variety of other ways, including environmental degradation, products and marketing harmful to the healthy development of the child, enforced migration, or by involvement in violations of children's rights by private security companies in areas affected by conflict.²⁹³ Children may also be negatively affected where business policies force parents and caregivers to work long hours preventing them from fully taking charge of their parental responsibilities.²⁹⁴

In terms of environmental degradation, businesses adversely impact on the wellbeing of children in many ways. Contamination of the local environment of children, including through releasing chemicals into the air and by sound pollution, can compromise the child's right to health, food security and access to safe drinking water and sanitation.²⁹⁵ Business operations reducing access to natural resources may also have negative effects on children's opportunities and their living areas.²⁹⁶ When acquiring or using land for business operations, business can directly or indirectly contribute to forcing people to migrate or to resettle, potentially depriving local populations of access to natural resources that are essential for their subsistence and de-rooting children from their cultural heritage, which may harm their educational opportunities and deprive them of schooling given in their native languages.²⁹⁷

As children generally lack or have insufficient capacity to assess the truthfulness and biasness of marketing and advertisements that are transmitted through the media, business, in particular the mass media industry, including advertising and marketing industries, can have negative impacts on children's rights by causing mental, moral or physical harm to children.²⁹⁸ Marketing can, for example, entice children to consume and use products that are harmful to their healthy development, or negatively influence children's self-image or their image of what is expected from them, by, for example, promoting unrealistic and unhealthy body images or harmful information, especially pornographic materials and materials depicting or reinforcing violence, discrimination or sexualised body images of stereotypes and children.²⁹⁹ Specific concerns in this regard are expressed in terms of the impact the digital media may, either directly be responsible for, or be complicit in, the harmful actions of other businesses on children, through facilitating phenomena such as cyber-bullying, cyber-grooming, child pornography, trafficking or sexual abuse and exploitation through the Internet.³⁰⁰

²⁹³ See, e.g., Committee on the Rights of the Child, General Comment No. 16 on State obligations regarding the impact of the business sector on children's rights, CRC/C/GC/16, 17 April 2013, Paras. 19-20; and UNICEF, Save the Children and UN Global Compact, 'Children's Rights and Business Principles' (2012).

²⁹⁴ General Comment No. 16, *ibid*, Paras. 19-20 and 35.

²⁹⁵ *Ibid*, Paras. 19-20.

²⁹⁶ UNICEF, Save the Children and UNGC, 'Children's Rights and Business Principles' (2012).

²⁹⁷ Committee on the Rights of the Child, General Comment No. 16 on State obligations regarding the impact of the business sector on children's rights, CRC/C/GC/16, 17 April 2013, Paras. 19-20.

²⁹⁸ *Ibid*, Para. 58-59.

²⁹⁹ See, e.g., *ibid*, Paras. 19-20, para. 59; Committee on the Rights of the Child, General comment No. 15 on the right of the child to the enjoyment of the highest attainable standard of health, 17 April 2013, CRC/C/GC/15, Para. 47.

³⁰⁰ General Comment No. 16, *ibid*, Para. 60. See, also, e.g., UNGC, 'Women's Empowerment Principles', Principle 5, Company examples. Available at <<http://weprinciples.org/Site/Principle5/>> last accessed on 24 January 2014.

d) *Non-discrimination and rights of persons to their culture, religious practices and language*

In terms of non-discrimination, businesses may discriminate on the basis of, among others, race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status such as ethnic origin, disability, age, health status, parental or marital status or sexual orientation.³⁰¹ Business may also, intentionally or unintentionally, sustain or perpetuate inequality through contributing to existing unequal power structures or to structural inequality within societies through policies in regard of access to employment, goods and services, such as accessibility of workplaces to persons with disabilities.³⁰² When it comes to the rights of persons to their culture, religious practices and language, business enterprises can have negative impacts on the realisation of human rights by, for example, tolerating, facilitating or operating discriminatory policies or practices against persons with different cultural, religious or linguistic backgrounds at the workplace, in recruitment or in terms of accessibility of goods and services.

e) *Indigenous peoples' rights*

Businesses, in particular those involved in resource extraction or infrastructure projects in indigenous territories, can impact negatively on indigenous peoples' rights, either through managing their own activities or being complicit of public/private partners' abuses that benefit them.³⁰³ Where effective measures of due diligence are not undertaken, and where business activities are not planned and implemented with full community involvement and do not take sufficient account of the local cultural and economic dynamics of the indigenous peoples, businesses may contribute to harmful effects on the realisation of indigenous peoples' rights, sometimes irreparably so.³⁰⁴ Such unfavourable impacts have in many instances seriously endangered the health and cultures of indigenous peoples, through, for example, threats to the enjoyment of their traditional way of life, loss of access to traditional indigenous

³⁰¹ UN Global Campaign, OHCHR and BLIHR, 'Guide for Integrating Human Rights into Business Management', available at <<http://www.integrating-humanrights.org/>> last accessed on 24 January 2014.

³⁰² See, e.g., Committee on the Rights of the Child, General Comment No. 16 on State obligations regarding the impact of the business sector on children's rights, CRC/C/GC/16, 17 April 2013, Para. 13.

³⁰³ A. Clapham proposes to divide the concept of corporate complicity in human rights abuses into three categories: direct, indirect and silent complicity. See Clapham A., 'On Complicity' in Henzelin M. and Roth R. (eds), *Le Droit pénal à l'épreuve de l'internationalisation* (Paris: Bruylant, 2000), 241-275, at 245. See also Wells C. and Elias J., 'Corporate Complicity in Rights Violations' in Alston P. (ed), *Non-State Actors and Human Rights* (Oxford: OUP, 2005) 162.

³⁰⁴ See, e.g., Comment on the Human Rights Council's Guiding Principles on Business and Human Rights as related to Indigenous Peoples and the Right to Participate in Decision-Making with a Focus on Extractive Industries, Human Rights Council Expert Mechanism on the Rights of Indigenous Peoples, Fifth session 9 – 13 July 2012, A/HRC/EMRIP/2012/CRP.1, 4 July 2012; Report of the Special Rapporteur on the Rights of Indigenous Peoples to the Human Rights Council, Study on Extractive industries and indigenous peoples, A/HRC/24/41, 1 July 2013, Paras. 74-77; and 'Advice No. 4 (2012): Indigenous peoples and the right to participate in decision-making, with a focus on extractive industries', follow-up report on indigenous peoples and the right to participate in decision-making, with a focus on extractive industries, Annex, A/HRC/21/55, 16 August 2012, Para. 2. On the concept of Free, Prior and Informed Consent, see, e.g., Doyle C. and Cariño J., 'Making Free Prior & Informed Consent a Reality. Indigenous Peoples and the Extractive Sector' (2013), available at <<http://jetztzeit.files.wordpress.com/2013/05/fpic-report-long.pdf>> last accessed on 14 June 2014. See, also, Human Rights Committee Communication No. 511/1992, *Länsman and others v. Finland*, views adopted on 26 October 1994, Para. 93; UNGC, *A Business Reference Guide: United Nations Declaration on the Indigenous Peoples* (New York: UN Global Compact, 2013), 4.

lands, involuntary displacement through forced or economic resettlement and associated serious abuses of civil and political rights, including threats and aggression towards, as well as killings of, indigenous peoples, their representatives and HRDs supporting their cause, damage to ecosystems essential to the collective cultural and economic survival of indigenous peoples and threats to their cultural identity.³⁰⁵

Indigenous peoples are particularly susceptible to such harm due to the typically economically and socially marginalised position of indigenous cultures within societies, widespread poverty among the indigenous communities, as well as the often-insufficient legal and other support indigenous communities and persons receive from society.³⁰⁶ For the same reasons, indigenous peoples are specifically vulnerable to cumulative and multiple forms of discrimination and vulnerabilities to business impact, based on, *inter alia*, ethnicity, landlessness, age, disability, gender, economic status and age, being, for example, more susceptible to forced child labour and to trafficking in human beings, including sex trafficking.³⁰⁷ This may be the case also during recruitment or when accessing goods and services, such as healthcare.³⁰⁸ The vulnerability of such individuals to negative impact by business operations is enhanced by the fact that they are often excluded from negotiations and consultations affecting their lives with businesses and other actors.³⁰⁹ Additionally, indigenous peoples when pertaining to other vulnerable socio-economic groups, such as peasants or the landless, can be doubly affected by business-related activities. Environmental contamination or destruction of their natural habitat can pose a direct threat for their means of subsistence, as well as an attack on their sacred places and on their culture.³¹⁰

Due to the intrinsic relationship between the indigenous lands and the physical and spiritual security of indigenous peoples, enforced physical displacement of indigenous peoples from their traditional lands as a corollary to, for example, agricultural programmes, forestry, and large-scale construction of development projects, such as hydroelectric plants and extraction industries, are, in particular, prone to hamper the indigenous cultural heritage.³¹¹ Reported acts of violence by public and private security forces

³⁰⁵ See, e.g., Report of the Special Rapporteur on the rights of indigenous peoples: Extractive industries operating within or near indigenous territories, A/HRC/18/35, Paras. 30-55; Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, (Advance Unedited Version), A/68/279, Sixty-eighth session, 3-6, Paras. 1-5; and UNGC, *A Business Reference Guide: United Nations Declaration on the Indigenous Peoples* (New York: UNGC, 2013), 63-69.

³⁰⁶ UNGC, *A Business Reference Guide: United Nations Declaration on the Indigenous Peoples* (New York: UNGC, 2013), 4 and 54. See, also, *Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises*, (Advance Unedited Version), A/68/279, Sixty-eighth session, 3-6, Paras. 1-5.

³⁰⁷ See, *Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises*, *ibid*, Paras. 1-5.

³⁰⁸ *Ibid*, Para.2.

³⁰⁹ *Ibid*, Paras. 1-5.

³¹⁰ Castan Centre for Human Rights Law, International Business Leaders Forum, Office of the UN High Commissioner for Human Rights, and UNGC Office, 'Human rights translated: a business reference guide' (2008) available at <http://www.unglobalcompact.org/docs/news_events/8.1/human_rights_translated.pdf> last accessed on 6 May 2014, 4.

³¹¹ See, e.g., UN Declaration on the Rights of Indigenous Peoples, GA Res. 61/295, 13 September 2007, Preamble and Paras. 26-27; Committee on Economic, Social and Cultural Rights, General Comment No. 7 on the right to adequate housing (Art.11.1): forced evictions, E/1998/22, 20 May 1997, Para. 10; UNICEF Innocenti Digest No. 11, *Ensuring the Rights of Indigenous Children*, 2004, 8; UNGC, *A Business Reference Guide: United Nations Declaration on the Indigenous Peoples* (New York: UNGC, 2013), 65; Report of the Special Rapporteur on the rights of indigenous

protecting company assets and property in extractive industries are, likewise, a threat to the integrity of indigenous peoples that has, in certain instances, amounted to business complicity in crimes against humanity.³¹² Businesses may also violate the intellectual property rights of indigenous peoples by accessing indigenous medicinal resources, or by patenting indigenous knowledge of traditional medicines, without consent.³¹³ Where no sufficient precautions are taken to prevent health risks, they may, in addition, risk contributing to the spread of diseases among indigenous populations with limited outside contact and susceptible to health risks by lack of immunity.³¹⁴

D. Financial services and human rights

Although financial services as businesses can be responsible for the range of positive and negative human rights impacts listed above, the very specific nature of the activities of financial services companies and global financial markets means that they can also have a whole range of distinctive human rights impacts.³¹⁵ As the events of the financial crisis of 2007-9 and the events of the Eurozone sovereign debt crisis have so clearly illustrated over recent years, the human rights impacts of financial services companies and financial markets can be distinguished from those of other business areas because the scope, scale and types of causality involved are quite different.³¹⁶ The central role of financial services in the global economy and their economic influence also means that they can play an important role in poverty alleviation and in facilitating human rights enjoyment. While the human rights impacts of many companies will be caused by their direct commercial activities, the complex network of interactions linking financial services firms mean that financial institutions come into contact with human rights enjoyment in much more multi-faceted and geographically far-reaching ways. Problems at one financial services

peoples: Extractive industries operating within or near indigenous territories, A/HRC/18/35, A/HRC/18/35; and Committee on the Rights of the Child, General Comment No. 16 on State obligations regarding the impact of the business sector on children's rights, CRC/C/GC/16, 17 April 2013, Paras. 19-20.

³¹² Promotion and Protection of Human Rights, Interim Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, E/CN.4/2006/97, 22 February 2006, Para. 25.

³¹³ UNGC, *A Business Reference Guide: United Nations Declaration on the Indigenous Peoples* (New York: UNGC, 2013), 63. Such sensitivities are seen as linked to the *ordre public* exception clause in the TRIPS Agreement, allowing exceptions to the patentability of inventions 'to protect *ordre public* or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment'. See, Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), adopted on April 15, 1994 at Marrakesh, entry into force on 1 January 1995, Art. 27(2). The TRIPS Agreement has been criticised for failing to include a direct reference to indigenous knowledge in Art. 27. For a discussion on indigenous knowledge, intellectual property rights and TRIPS, see, e.g., Chidi Oguamanam C., *International Law and Indigenous Knowledge: Intellectual Property, Plant Biodiversity, and Traditional Medicine* (London: University of Toronto Press, 2006).

³¹⁴ See, e.g., Report of the Special Rapporteur on the rights of indigenous peoples: Extractive industries operating within or near indigenous territories, A/HRC/18/35, A/HRC/18/35, Para. 33.

³¹⁵ Dowell-Jones M., 'Financial Institutions and Human Rights' (2013) 13 *Human Rights Law Review* 3, 423-468.

³¹⁶ For an overview of the broad-based poverty and human rights impacts of the financial crisis see IMF, 'Global Monitoring Report 2010: The MDGs After The Crisis' (Washington D.C.: IMF, 2010); UN Department of Economic and Social Affairs, 'Global Social Crisis: Report on the World Social Situation 2011' (New York: UN, 2011); European Parliament Committee on Foreign Affairs, 'Report on the impact of the financial and economic crisis on human rights' (2013), Doc. A7-0057/2013, 1 March 2013.

company can easily be magnified by other financial market participants and lead to market disruptions that have devastating consequences for human rights enjoyment. These impacts, which are particularly acute for economic and social rights, can be long lasting and very difficult for policymakers to address. Indeed, as the events of recent years have shown, the negative human rights impacts of financial market disruption can persist long after financial services firms have returned to profitability.

These developments raise very particular issues for the implementation of the UN Guiding Principles on Business and Human Rights and for EU Strategy for CSR and EU human rights policy broadly.³¹⁷ The specific human rights issues raised by financial services are largely a consequence of the financial market developments that have taken place over the last three decades, which can be roughly described as the ‘financialisation’ of the world economic space.³¹⁸ In the pre-war period, financial services played a more secondary role in economic activity through, for example, supporting commercial activity with loans and share issues. Financial markets were much smaller relative to the size of the economy, and the number and variety of financial institutions was much less. The steady liberalisation of financial activity from the 1970s onwards revolutionised the role of finance in the world economy. Financial markets have grown almost exponentially over the last thirty years and are now many multiples larger than the underlying world economy. Whereas world economic output is valued at roughly US\$70 trillion, even individual segments of world financial markets can be equivalent to or greater than this. World stock market capitalisation is roughly US\$60 trillion; global bond markets are worth roughly US\$100 billion; derivatives markets are estimated to be worth roughly US\$500 trillion.³¹⁹

Financial markets have also grown enormously in complexity such that there are now multi-trillion dollar markets for products that simply did not exist twenty years ago, some of which are very difficult to regulate properly, or indeed outside the scope of regulation.³²⁰ There has also been a rapid growth in the number and type of financial services companies, many of which, such as hedge funds and private equity, have barely begun to be scrutinised from a human rights point of view. Over the last twenty years there has also been an enormous growth in the use of complex financial products such as derivatives and different types of debt structures by corporations in other sectors. This forms a transmission mechanism for problems in financial markets into other corporate sectors which leaves them heavily exposed to the

³¹⁷ See Dowell-Jones M. and Kinley D., ‘The Monster under the Bed: Financial Services and the Ruggie Framework’ in Mares R. (ed), *The UN Guiding Principles on Business and Human Rights: Foundations and Implementation* (Leiden: Martinus Nijhoff, 2012) 193-216; Roca R., Manta F. and Baab M., *Values Added: The Challenge of Integrating Human Rights Into the Financial Sector* (Copenhagen: The Danish Institute for Human Rights, 2010), available at <http://www.humanrightsbusiness.org/files/Country%20Portal/values_added_report__dihhr.pdf> last accessed on 15 June 2014; McCormick R., ‘What Makes a Bank a ‘Sustainable Bank’?’ (2012) 1 *Law and Economics Yearly Review* 1, 77-103.

³¹⁸ van der Zwan N., ‘Making Sense of Financialization’ (2004) 12 *Socio-Economic Review* 1, 99-129; Epstein G., *Financialization and the World Economy* (London: Edward Elgar, 2005).

³¹⁹ Figures from the IMF, World Federation of Exchanges and Bank for International Settlements statistical databases, available at <<http://www.imf.org/external/data.htm>>, <<http://world-exchanges.org/statistics>> and <<http://www.bis.org/statistics/index.htm>> last accessed on 29 May 2014.

³²⁰ Schwarcz S., ‘Regulating Complexity in Financial Markets’ (2009) 87 *Washington University Law Review* 2, 211-268; Awrey D., ‘Complexity, Innovation and the Regulation of Modern Financial Markets’ (2012) 2 *Harvard Business Law Review* 2, 235-293.

vagaries of financial markets. This helps transmit financial market problems through to the world economy and to human rights.

These developments raise particular issues for human rights law because the very specific nature of financial markets and their capacity to influence economies and social conditions globally means that a generic model of applying human rights standards to businesses does not adequately capture the *sui generis* nature of financial services. This Chapter will therefore consider the types of positive and negative impacts of financial services on human rights, which can arise through either the direct or the indirect activity of financial services companies, as well as through the systemic aggregation of financial activity in a wide variety of ways.

1. Positive human rights impacts

a) *Facilitating access to banking services*

Access to banking services facilitates economic and social participation, and can be an important means of addressing poverty, economic inequality, exclusion and lack of opportunity, which underpin human rights denial. In many countries, access to banking services such as a bank account is essential for being able to function in a monetised economy, and it provides an important means of accessing the goods and services essential to realising fundamental human rights. It can be a critical issue in gaining access to formal employment, and in moving from the informal to the formal economy which can expand an individual's ability to benefit from social welfare services. It also provides the basis for access to other human rights such as the right to housing, and it can be a condition for receiving support from the welfare system. A bank account can provide a means of identification which can enable participation in social and democratic processes. Providing access to bank accounts for low income groups and marginalised communities is a positive tool for empowerment which enables them to access a whole range of human rights. It is estimated that around 2.5 billion people around the world do not have access to basic financial services.³²¹

b) *Fostering financial skills and capability*

Fostering financial skills and capability can be an important way in which financial services companies can support people in accessing their human rights. The ability to understand financial products and terminology enables people to manage their finances responsibly and to choose financial products that are suitable to their particular circumstances. This can help them live with dignity and with quality of life. Financial literacy is an essential skill in tackling poverty and exclusion, from teenage years right through to old age where the right choices in regard to pensions can help older people live with dignity and security. Banks, pension providers and asset managers have an important role to play in providing clear,

³²¹ Figures from the WB Global Financial Inclusion Database (Global Findex) available at <http://data.worldbank.org/data-catalog/financial_inclusion> last accessed on 20 April 2014; See also ATISG, 'Innovative Financial Inclusion: Principles and Report on Innovative Financial Inclusion from the Access Through Innovation Sub-Group of the G20 Financial Inclusion Experts Group' (2010) available at <http://www.microfinancegateway.org/gm/document-1.9.44743/Innovative_Financial_Inclusion.pdf> last accessed on 5 June 2014.

transparent information to customers to enable them to make the right choices, and in providing financial literacy training in schools, to support people's right to an adequate standard of living.³²²

c) Access to credit

Access to credit helps companies invest and expand, which in turn helps support job creation, the sustainability of employment and access to goods and services. The right to work and access to employment is a fundamental right that supports an individual's access to a broad range of other human rights: to housing, to food, to an adequate standard of living, to health, to education and to social security including pensions. Cash flow in any business can be uneven, so access to credit to smooth this out, and to invest in expansion, is an important way in which banks in a modern economy can positively support the right to work and access to other human rights. Providing access to mortgage finance or affordable housing finance is another important way in which banks can support access to the right to housing in markets where much of the housing stock is privately owned.³²³

d) Promoting gender equality and diversity within the workforce

Promoting gender equality and diversity within the workforce and upholding the human rights of employees such as supporting the right to belong to a trade union and to freely express their religious views is an important way that financial services companies can positively impact human rights. The financial sector employs millions of people globally; therefore by acting as responsible employers who respect the rights of their employees they not only positively impact the human rights of their employees but can send a strong signal of support for positive work practices and global human rights standards.³²⁴

e) Supporting human rights throughout their supply chain

Supporting human rights throughout supply chains positively promotes human rights. Financial services companies purchase large amounts of goods from IT equipment to food and services such as cleaning. Ensuring that the companies they source from uphold human rights across their operations can be a positive way of promoting human rights. An example would be making sure that the agencies who supply their cleaning staff are paying a living wage and providing decent working conditions.

f) Supporting social causes and civil society organisations

Supporting social causes and CSOs is another important way in which financial services companies can positively influence human rights enjoyment. Financial services companies have an important presence both globally and within their local communities, and they can use this to provide support to projects which aim to tackle exclusion, poverty and human rights denial. This support can take the form of financial

³²² For the work of the OECD and its International Network on Financial Education consult <<http://www.oecd.org/daf/fin/financial-education/>> last accessed on 5 June 2014; Classens S., Honohan P. and Rajas-Suarez S., 'Policy Principles for Expanding Financial Access: Report of the CGD Task Force on Access to Financial Services' (Washington D.C.: Center for Global Development, 2009), available at <http://www.cgdev.org/files/1422882_file_Financial_Access_Task_Force_Report_FINAL.pdf> last accessed on 5 June 2014.

³²³ Human Rights Council, 'Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context' (2009) UN Doc A/HRC/10/7.

³²⁴ See, for example, Gross J. A., *A Shameful Business: the Case for Human Rights in the American Workplace* (Ithaca: Cornell University Press, 2010).

support, the donation of technical advice and staff giving time to the projects directly, such as supporting literacy initiatives in schools.

g) Using their influence to support human rights initiatives

Using their influence to support human rights initiatives can foster human rights enjoyment through positive policy changes. The financial services industry has a strong presence globally and is critical to the health of any economy. This gives financial services' companies important political influence at the national level and within multilateral initiatives which can be used in support of human rights. The financial services industry has developed or supported numerous initiatives on human rights, sustainability and using financial products to tackle climate change which can impact human rights positively and also influence other sectors to follow suit.

h) Providing financing for development

Providing financing for development can enhance human rights enjoyment. Over the last decade, the flow of private finance into emerging markets has grown substantially and it now surpasses official development assistance. Flows exceeded roughly US\$1 trillion in 2012.³²⁵ This has enabled many developing countries to access greater funding for investment in development projects such as housing, sanitation, power generation and infrastructure which can enhance economic capacity and support growth, promote job creation and support poverty reduction initiatives. The growing ability of developing countries to tap private financial markets for funding has also led to banks working with them to develop new ways of attracting investors, such as foreign currency bonds. This can enhance the depth and stability of domestic financial markets, which again increases capacity for investment in development. Greater investor interest in emerging markets has also led to increased cash flows into private companies. This can increase their ability to attract funds to invest in growth, thereby supporting employment and reducing poverty, and can also help them with know-how such as accessing export markets. When such investment is done responsibly, it can substantially enhance a country's ability to realise poverty reduction objectives, it can support access to the right to work by boosting economic growth, and by increasing the tax base it can lead to growing state revenue for investment in health, education and social welfare initiatives.

i) Providing microfinance

Providing microfinance to marginalised communities in developing countries has proven to be a powerful tool in tackling poverty and empowering individuals. Microfinance broadly means providing small loans to people in developing countries to enable them to start a small business. This provides a means for them to establish a livelihood and to take charge of their financial fortunes which can have positive impacts on a range of rights: the right to work, the right to just and fair conditions of labour and the right to an

³²⁵ Institute of International Finance, *Capital Flows to Emerging Market Economies* (Washington DC, October 2012) IIF Research Note. See also Dutta N. and Osei-Yeboah K., 'A New Dimension to the Relationship Between Foreign Direct Investment and Human Capital: The Role of Political and Civil Rights' (2010) 25 *Journal of International Development* 2, 160-179.

adequate standard of living.³²⁶ By helping people to emerge from extreme poverty, it can help them in accessing other rights such as the right to food, the right to housing, the right to health and the right to education. The loans are often provided to women and/or marginalised indigenous communities, who may not be able to obtain credit from formal sources. It has therefore been shown to be a powerful tool for the empowerment of these groups and tackling discrimination and exclusion.

j) Supporting investments in sustainable development

Supporting investments in sustainable development can enhance human rights. It is increasingly recognised that climate change will have a strong impact on human rights enjoyment. Many of the world's poorest people live in regions which will be strongly affected by climate change, and extreme weather events will strongly impact their quality of life and ability to access food, water and basic goods needed for survival. Such extreme events can also increase the spread of tropical diseases which can disproportionately impact children and people suffering malnutrition. By undermining some of the world's poorest economies, it will also affect their government's abilities to fulfil their human rights obligations. Financial services companies have an important role to play in addressing this by financing investments in renewable energy, supporting companies that address their climate change impacts, reducing their own climate impacts, and mainstreaming environmental considerations into their procurement contracts.

k) Promoting respect for human rights in companies

Promoting respect for human rights in the companies that they invest in and/or have commercial relationships with is an important means by which financial services companies can positively influence human rights enjoyment. Banks and other financial services companies have a broad range of relationships with companies through direct investments, loans, and other services such as foreign exchange, cash management and derivatives transactions. This gives them the opportunity to exert significant influence on companies to respect human rights, or to improve their human rights performance where this has been raising concerns. Asset managers, in particular, have broadly committed to ethical investing initiatives like the UN Principles for Responsible Investment which promotes the active monitoring by fund managers of the human rights performance at companies they invest in.³²⁷ Where companies are failing in this regard, asset managers commit to engaging with management to address this. Stock markets have also promoted ethical/sustainable indices which incorporate human rights criteria, and this can provide another signal to companies and investors that they should take human rights seriously.

l) Divestment campaigns

Divestment campaigns can positively enhance human rights enjoyment by withdrawing financing from products which are condemned as contrary to international human rights law, such as cluster munitions, or by withdrawing financing from countries which have repressive human rights records. This may not

³²⁶ See, for example, the ILO Microfinance for Decent Work Research Programme, available at <http://www.ilo.org/employment/areas/social-finance/WCMS_168033/lang--en/index.htm> last accessed on 4 June 2014.

³²⁷ See the UN-supported Principles for Responsible Investment website, available at <<http://www.unpri.org>> last accessed on 2 June 2014.

immediately stop the abuses, but it can enhance the international visibility of human rights issues, bring pressure to bear on repressive states, and reduce the financing available for the regime.

m) Influencing states to improve their human rights

Influencing states to improve their human rights performance is another area where financial services companies can positively impact human rights. Financial services companies, in particular banks and asset managers produce large amounts of research, economic analysis and commentary on the performance and growth potential of states around the world. States can be sensitive to the picture painted of them by this type of commentary, particularly when it is produced by the highest profile financial services companies such as the major global banks as this can have a lot of international visibility and influence investor behaviour. This provides an opportunity for financial services companies to influence states to improve their human rights performance by highlighting issues and by engaging with states on areas of concern.

n) Promoting transparency

Promoting transparency in government and corporate accounts by tackling corruption can be another positive contribution to human rights. Financial services companies are the gatekeepers of the international financial system and by implementing effective safeguards against corruption they can help to ensure that state or corporate resources are not transferred out of a country or company illegally. This can support state budgets and make money available for investment in poverty reduction and welfare initiatives, as well as supporting standards of governance and democratic accountability, all of which underpin enjoyment of the whole range of international human rights.

2. Negative human rights impacts

a) Money laundering, facilitating tax avoidance and corruption

Money laundering, facilitating tax avoidance and corruption are among the most longstanding ways in which the financial sector can negatively impact human rights. The amount of money lost to developing countries each year due to corruption and tax evasion is difficult to estimate, but it is thought to exceed US\$1 trillion.³²⁸ Developed countries also lose significant amounts of tax revenue each year through tax evasion and avoidance that is facilitated by the financial sector. The impact of this lost revenue on human rights is widespread: it directly undermines a government's ability to realise human rights through reducing revenue available for providing social services, housing, basic sanitation and electricity; it can impact people's ability to access basic services such as healthcare, education and housing; and it undermines governance, democratic rights and the rule of law.³²⁹ Much of the money lost to corruption is channelled through the financial system, despite safeguards put in place such as 'know your customer' legislation. Financial services companies can assist this not only by providing financial services which are

³²⁸ Kar D., and LeBlanc B., 'Illicit Financial Flows from Developing Countries 2002-2011' (2013) Global Financial Integrity, available at <<http://iff.gfintegrity.org/iff2013/2013report.html>> last accessed on 6 May 2014.

³²⁹ International Council on Human Rights Policy, 'Corruption and Human Rights: Making the Connection' (Geneva, 2009), available at <http://www.ichrp.org/files/reports/40/131_web.pdf> last accessed on 3 June 2014. See also the resources page of the OHCHR on Human Rights and Anti-Corruption, available at <<http://www.ohchr.org/EN/Issues/Development/GoodGovernance/Pages/AntiCorruption.aspx>> last accessed on 2 June 2014.

used to move and hide corruptly-acquired funds, they also provide advice to TNCs on transfer pricing which can help them avoid paying tax. One study estimated that nearly a half of world trade appeared to pass through tax havens, even though these jurisdictions account for only 3% of world GDP.³³⁰ Another way in which banks facilitate money laundering, tax avoidance and corruption is through providing offshore banking, bank secrecy and private banking services to wealthy or well-connected individuals that enables them to avoid or minimise tax liabilities and hide illicitly obtained assets.

b) *Using complex legal structures to avoid paying their fair share of corporation and other taxes*

Using complex legal structures to avoid paying their fair share of corporation and other taxes is another way that financial services companies can negatively impact human rights. Financial products and regulations are enormously complex, and financial services companies are adept at structuring transactions and deals so as to minimise tax liabilities. This can involve the use of offshore vehicles or subsidiaries for transactions, and using products like derivatives to minimise tax liabilities in deals that are structured specifically for that purpose, rather than having a genuine economic justification.³³¹ Banks have also been found to help senior staff avoid paying the full income tax due on their bonuses through similar means.³³² Such tax avoidance/evasion impacts human rights through reducing the revenue available to a state to provide social services, and is particularly pertinent when financial institutions have benefited from taxpayer-funded bailouts and continue to enjoy implicit taxpayer support.

c) *Denying the human and labour rights of employees and workers in the supply chain*

Denying the human and labour rights of employees and workers in the supply chain directly impacts on human rights. Allegations of discrimination against women in financial services have been rife and financial services companies can also engage in discrimination against minorities which negates their fundamental rights.³³³ Financial services companies can also contribute to the denial of the labour rights

³³⁰ Sikka P. and Wilmott H., 'The Dark Side of Transfer Pricing: its Role in Tax Avoidance and Wealth Retentiveness' (2010) 21 *Critical Perspectives on Accounting* 4, 342-356.

³³¹ Herring R. and Carmassi J., 'The Corporate Structure of International Financial Conglomerates: Complexity and its Implications for Safety and Soundness' in Berger A., Molyneux P. and Wilson J., *The Oxford Handbook of Banking* (Oxford: OUP, 2012) 195-229. See Partnoy F., *Infectious Greed: How Deceit and Risk Corrupted the Financial Markets* (London: Profile Books, 2010) for an examination of the use of derivatives and complex legal vehicles by financial services firms to avoid legal and tax rules. See also Sikka P., 'The Role of Offshore Financial Centres in Globalization' (2003) 27 *Accounting Forum* 3, 365-399; Sikka P., 'The Tax Avoidance Industry' (2012) 107 *Radical Statistics* 15-30.

³³² 'Goldman Sachs Bonus Tax Avoidance Tactic is "Depressing" Says BOE Governor Mervyn King', *The Huffington Post* (London, 15 January 2013); *UBS AG and DB Group Services (UK) Limited v. HMRC* [2012] UKUT 320.

³³³ 'Financial Services Inquiry: Sex discrimination and gender pay gap report', UK Equality and Human Rights Commission (EHRC) (2009), available at <http://www.equalityhumanrights.com/sites/default/files/documents/financial_services_inquiry_report.pdf> last accessed on 14 June 2014; Financial Services Inquiry: Follow-up report, EHRC (2011), available at <http://www.equalityhumanrights.com/sites/default/files/publication_pdf/fsi_follow-up_report.pdf> last accessed on 14 June 2014.

of workers in their supply chains where they fail to insist on proper safeguards - for example, in failing to ensure that contract workers are paid a living wage and given protections for basic employment rights.³³⁴

d) Financing companies that have a poor human rights record

Financial services companies have a whole range of financing relationships with companies or individuals that abuse human rights,³³⁵ for example: providing basic banking services such as accounts, lines of credit and foreign exchange services; investment banking services such as share issues and bond issues; asset management investments in companies via equity holdings and bond holdings; and providing loans for major projects, such as project finance where banks provide loans for a specific project. All of these generate returns and fees for the financial services companies, and provide the financing necessary for the client company to continue its operations. If financing is readily available in all these forms, without any questions asked about a company's or individual's human rights record, the financial services company is indirectly benefitting from human rights violations, and by turning a blind eye, is complicit in their commission.³³⁶ An example would be a financial services company funding a major infrastructure or mining project in a developing country which is being operated without safeguards for the human rights of local communities. Financial services companies have also been linked to negative human rights impacts where they finance companies that produce products used to commit human rights violations, such as security companies selling goods to regimes known to engage in human rights violations, and also cluster munitions.³³⁷

Although there are now high profile industry initiatives in these areas, which aim to apply human rights screening criteria and protections to investments, these are issue-specific initiatives which can easily be circumvented. For example, the Equator Principles provide human rights safeguards for project finance

³³⁴ These issues form the bedrock of many financial institutions' corporate citizenship reports. See, for example, websites of Barclays Bank <<http://www.barclays.com/citizenship.html>>; Societe Generale <<http://www.societegenerale.com/en/measuring-our-performance/csr/csr-strategy-and-governance>> and Citi Group <http://www.citigroup.com/citi/about/global_citizenship.html> last accessed on 14 June 2014.

³³⁵ See the work of Banktrack on banks financing deals and companies that raise human rights concerns <<http://www.banktrack.org>> as well as that of the Berne Declaration <<http://www.evb.ch/en>> last accessed on 6 June 2014.

³³⁶ See Roca R. and Manta F., *Values Added: The Challenge of Integrating Human Rights into the Financial Sector* (Copenhagen: Danish Institute for Human Rights, 2010) 17: '[T]he human rights and financial worlds meet, to a great extent, in the zone of complicity, where the financial services supplier potentially enables other business activities that abuse human rights. ... if capital contributes to the establishment of company operations, business ventures or production processes in which the rights of communities and workers are abused ... then it is potentially complicit in those abuses'.

³³⁷ 'Investing the Rights Way: A Guide for Investors on Business and Human Rights' (2013) Institute for Human Rights and Business available at <http://www.equalityhumanrights.com/sites/default/files/publication_pdf/fsi_follow-up_report.pdf> last accessed on 14 June 2014; Boer R., Herder A., Oosterwijk S. and Riemersma M., *Worldwide Investments in Cluster Munitions: A Shared Responsibility* (IKV Pax Christi, 2013), available at <<http://www.paxvoorvrede.nl/media/files/worldwide-investments-in-clustermunitions-2013.pdf>> last accessed on 14 June 2014; Amnesty International, 'Cluster Bombs and Banks – a booming business' (16 August 2011), Press Release, available at <<http://www.amnesty.org.uk/blogs/press-release-me-let-me-go/cluster-bombs-and-banks-booming-business>> last accessed on 16 June 2014. See the BankTrack information page on Banks and Arms <http://www.banktrack.org/show/pages/banks_and_arms> last accessed on 16 June 2014. See also the Convention on Cluster Munitions, available at <<http://www.clusterconvention.org>> last accessed on 16 June 2014.

lending,³³⁸ and initiatives like the UN Principles for Responsible Investment apply screening methodology to stock selection in the asset management process.³³⁹ However, where there are large companies who are seeking general financing for their operations, rather than funding for a specific project which raises concerns, this can fall through the gap of current safeguards.³⁴⁰ There are also many financial products which have not yet been brought within the ambit of human rights safeguards. For example, bond launches for companies with problematic human rights records do not seem to be subject to effective scrutiny, nor do derivatives or foreign exchange transactions.

e) Trading in commodity derivatives (food)

Trading in commodity derivatives (food) by financial services companies has been linked to negative impacts on the right to food, the right to an adequate standard of living and the right to health.³⁴¹ In recent years, commodities including food staples like rice, wheat and soya have become investable assets thanks to the opening up of commodity derivatives to traders and investors. Hundreds of billions of dollars of investment funds have been channelled into these assets, and this has coincided with sharp rises in the price of basic foodstuffs around the world.³⁴² This has directly affected people's right to food and their ability to purchase enough nutritious food for themselves and their families, particularly for those living in extreme poverty. The rising cost of food has significantly affected their right to an adequate standard of living by consuming a greater share of household income. It has also affected the right to health as families have been forced to switch to cheaper, less nutritious foodstuffs. This can have a particular impact on maternal health and on children's health, with malnutrition being linked to the impairment of cognitive development and enhanced susceptibility to disease in children.³⁴³ The number of people going hungry

³³⁸ The Equator Principles is a 'risk management framework, adopted by financial institutions, for determining, assessing and managing environmental and social risk in projects and is primarily intended to provide a minimum standard for due diligence to support responsible risk decision-making'. Currently 79 financial institutions in 34 countries have officially adopted the Equator Principles, covering over 70% of international Project Finance debt in emerging markets. See Equator Principles website, available at <<http://equator-principles.com>> last accessed on 2 June 2014.

³³⁹ See the UN-supported Principles for Responsible Investment website, available at <<http://www.unpri.org>> last accessed on 2 June 2014.

³⁴⁰ See the discussion of the case of Vedanta Resources plc and the controversy over plans to mine bauxite in the Niyamgiri Hills of India in Dowell-Jones M., 'Financial Institutions and Human Rights' (2013) 13 *Human Rights Law Review* 3, 423-468, at 457-464.

³⁴¹ De Schutter O., 'Food Commodities Speculation and Food Price Crises: Regulation to Reduce the Risks of Price Volatility' (2010) United Nations Special Rapporteur on the Right to Food, Briefing Note no. 02, available at <http://www.srfood.org/images/stories/pdf/otherdocuments/20102309_briefing_note_02_en_ok.pdf> last accessed on 2 June 2014.

³⁴² Spratt S., 'Food Price Volatility and Financial Speculation' (2013) Future Agricultures Consortium, Working Paper 47, available at <<https://www.ids.ac.uk/publication/food-price-volatility-and-financial-speculation>> last accessed on 2 June 2014.

³⁴³ The World Bank commented in 2009 that: 'the decline in health status among children who suffer from reduced (or inferior) food consumption can be irreversible, retarding growth as well as cognitive and learning abilities. Estimates suggest that the food crisis has already caused the number of people suffering permanent damage from malnutrition to rise by 44 million'. They also estimated that food price rises between 2005 and 2008 pushed around 200 million more people into extreme poverty. World Bank, 'Global Monitoring Report 2009: A Development Emergency' (Washington D.C.: World Bank, 2009) pp.1 and 3.

globally was estimated to be above one billion for the first time in 2009, largely as a result of the global food crisis.³⁴⁴

f) Trading in other commodities like oil, including derivatives linked to oil

Trading in other commodities like oil, including derivatives linked to oil, has also had a significant negative impact on human rights.³⁴⁵ As emerging markets and commodities have boomed over the last decade, more and more investment assets have been channelled into stocks, indices and derivatives linked to oil. This has helped push the oil price up over tenfold in the decade 2002-2012, which has had significant negative impacts on human rights. Oil is a basic commodity in the global economy and its price influences the price of many staple goods like cooking oil, transport, the price of fertiliser for farmers and the price of food. It also affects the price of international shipping which in turn affects the cost of basic imports. These strongly affect inflation for import-dependent countries, particularly those like South Africa which are dependent on oil imports.³⁴⁶ Rises in the prices of basic and imported goods can trigger interest rate rises that compound the cost of living impacts of oil price rises. For those living in abject poverty, the fuel crisis, which was linked to financial trading in oil, had severe impacts on their right to food, right to housing, right to an adequate standard of living, right to water and right to health.

g) Finance and land rights

Finance and land rights are linked via the interface of investment flows from the financial sector. As global food prices have risen over the last decade and as economic growth in key emerging markets like China has led to increased demand for food, there has been a growing interest from the financial sector in investments in farmland. Investment funds including hedge funds have been set up to invest directly in farmland around the world, including in the least developed countries that suffer from chronic food insecurity and poverty.³⁴⁷ This has raised significant concerns over land rights, food security and the rights of the poor in developing countries.³⁴⁸ Farmland in regions such as sub-Saharan Africa and Latin America

³⁴⁴ UN Food and Agriculture Organisation, 'More people than ever are victims of hunger' (June 2009) Press Release available at <www.fao.org/fileadmin/user_upload/newsroom/docs/Press%20release%20june-en.pdf> last accessed on 6 May 2014.

³⁴⁵ Parsons J., 'Black Gold and Fool's Gold: Speculation in the Oil Futures Market' (2010) 10 *Economia* 2, 81-116; World Bank, 'Rising Food and Fuel Prices: Addressing the Risks to Future Generations', Washington D.C., 2008; Federal Reserve Bank of San Francisco, 'What are the possible causes and consequences of higher oil prices on the overall economy', November 2007, available at <<http://www.frbsf.org/education/publications/doctor-econ/2007/november/oil-prices-impact-economy>> last accessed on 5 June 2014.

³⁴⁶ Bacon R., 'The Impact of Higher Oil Prices on Low Income Countries and on the Poor' (Washington D.C.: World Bank, 2005).

³⁴⁷ Cotula L., Vermeulen S., Leonard R. and Keeley J., 'Land Grab or Development Opportunity? Agricultural Investment and International Land Deals in Africa' (2009) Food and Agriculture Organisation, International Fund for Agricultural Development and the International Institute for Environment and Development, available at <http://www.ifad.org/pub/land/land_grab.pdf> last accessed on 16 June 2014.

³⁴⁸ Center for Human Rights and Global Justice, 'Foreign Land Deals and Human Rights: Case Studies on Agricultural and Biofuel Investment' (New York, NYU School of Law, 2010), available at <<http://chrgj.org/wp-content/uploads/2012/07/landreport.pdf>> last accessed on 17 June 2014. See UNCTAD, 'The Principles for Responsible Agricultural Investment' and associated documentation, available at <<http://unctad.org/en/Pages/DIAE/G-20/PRAI.aspx>> last accessed on 2 June 2014.

has been a particular target of investors, with investors aiming to produce food for export. Concern over governance standards, corruption, poverty, malnutrition and a lack of protection for indigenous rights mean that these deals raise significant human rights questions.

h) Demand for sovereign debt by financial institutions

Demand for sovereign debt by financial services companies has profound and far-reaching impacts on human rights because state services underpin human rights enjoyment.³⁴⁹ Financial services companies such as banks, pension funds, hedge funds and asset managers are large buyers and sellers of sovereign debt, both the debt of developed and developing countries. In part, their demand is driven by financial regulation which requires them to hold sovereign debt with high credit ratings for solvency/capital adequacy purposes. It is also driven by demand for reasonably safe assets that pay a decent return. Globally, this creates a large demand for sovereign debt from financial services companies which can lead states into situations of excessive debt burdens because neither the market's pricing mechanism nor the credit rating agencies respond appropriately to increasing debt levels. This was clearly seen in cases like Greece and Ireland, where it was only once debt levels had become excessive and problems had begun to emerge that the credit rating agencies downgraded the country's credit rating, sparking a sell-off. This further destabilised the situation because financial regulation is tied to credit ratings and so changes in these ratings by the credit rating agencies can lead to sell-offs by financial services companies.³⁵⁰ There have been many cases of sovereign debt crises where states have been able to sell far more debt than they were credibly able to service, and this has inevitably led to eventual downgrades, financial crises and drastic impacts on human rights of ordinary citizens through a collapse in state services and an economic collapse.³⁵¹ The financial services companies who bought the debt are rarely held to account for the human rights impacts of their financing decisions.

Financial services companies also sell and trade in trillions of dollars worth of interest rate derivatives that are linked to the performance of sovereign bonds. These instruments are complex and opaque, and

³⁴⁹ More detailed information is available on the website of the UN Independent Expert on the effects of foreign debt and other related international financial obligations of states on the full enjoyment of all human rights, particularly economic, social and cultural rights, available at <<http://www.ohchr.org/EN/Issues/Development/IEDebt/Pages/IEDebtIndex.aspx>> last accessed on 4 June 2014.

³⁵⁰ Alessi C., Wolverson R. and Sergie M., 'The Credit Rating Controversy' (Washington D.C.: Council on Foreign Relations, 2013), available at <<http://www.cfr.org/financial-crises/credit-rating-controversy/p22328>> last accessed 20 June 2014; UK Parliament, Credit Rating Agencies and EU Sovereign Debt, House of Lords Select Committee Inquiry, 2011, submissions and transcript of Parliamentary debate available at <<http://www.parliament.uk/business/committees/committees-a-z/lords-select/eu-economic-and-financial-affairs-and-international-trade-sub-committee-a/inquiries/credit-rating-agencies-and-eu-sovereign-debt>> last accessed on 20 June 2014.

³⁵¹ Bohoslavsky J. P. and Letnar J, *Making Sovereign Financing and Human Rights Work* (Oxford: Hart Publishing, 2014); Lumina C, 'Sovereign Debt and Human Rights' in *OHCHR: Realizing the Right to Development: Cooperation for the Right to Development* (Geneva: UN, 2013) 289-301; Reinhart C. and Rogoff K., 'Financial and Sovereign Debt Crises: Some Lessons Learned and Those Forgotten', IMF Working Paper WP/13/266 (Washington D.C.: IMF, 2013); Michalowski S., 'Sovereign Debt and Social Rights: Legal Reflections on a Difficult Relationship' (2008) 8 *Human Rights Law Review* 1, 35-68; De Paoli B., Hoggarth G. and V. Saporta, 'Costs of Sovereign Default', *Bank of England Quarterly Bulletin* (2006), available at <http://www.bankofengland.co.uk/research/Pages/economists/staff/glenn_hoggarth_publications.aspx> last accessed on 17 June 2014.

significantly complicate the task of managing the international financial system. Because there is little transparency attached to these instruments, they create a heightened risk of triggering financial disruption and can therefore contribute to the prioritisation of the claims of bondholders over those of rights holders. In the Greek situation, policymakers feared that any Greek default on its sovereign debt might trigger another financial crisis through (partly) the impact that a default would have on outstanding credit default swaps on Greek debt. Policymakers were deeply concerned that any 'default event' could trigger payouts on derivatives linked to Greek sovereign debt, which could in turn destabilise the financial markets and further weaken financial services companies, particularly banks.³⁵² This was a significant factor in the decision to use billions of Euros of bailout money to pay off bondholders, who were largely financial services companies like the major European banks.³⁵³ The Greek people suffered wide-ranging impacts on their basic rights through stringent austerity policies and economic collapse.

i) Financing repressive regimes

Financing repressive regimes is another way in which financial services companies can be directly implicated in human rights violations. Repressive regimes require financial services like any other, and will use financial services companies for loans, banking and investment services, and for bond launches. The financial services companies involved benefit financially from a regime that violates human rights, and also help enable the regime to retain power by providing the financing it needs. Sovereign debts organised by financial services companies and incurred by repressive regimes (odious debts) are a contentious issue.³⁵⁴ There are still question marks over the banks that provided funding and banking services to military regimes in Latin America during the 1980s, including providing them with foreign exchange which permitted them to buy military equipment used against their own citizens. Currently, banks/financial services companies have generally not been held accountable for providing support to these repressive regimes, which can often include financial services which enable corruption and the theft of state assets.

³⁵² Waibel M., 'Steering Sovereign Debt Restructuring Through the CDS Quicksand' (2012), University of Cambridge Faculty of Law Working Paper Series, available at <<http://ssrn.com/abstract=2017772>> last accessed on 17 June 2014; Coudert V. and Gex M., 'Why the Greek CDS Settlement Did Not Lead to the Feared Meltdown, Banque de France' (2013) *Financial Stability Review* 17, 135-150.

³⁵³ Zettelmeyer J., Trebesh C. and Gulati M., 'The Greek Debt Restructuring: An Autopsy' (2013) Peterson Institute for International Economics, Working Paper no. 2013-13-8; Blundell-Wignall A. and Slovik P., 'A Market Perspective on the European Sovereign Debt and Banking Crisis' (2010) *Financial Market Trends*, OECD, no.2, 1-28; Swedbank: 'The Euro Area Crisis: 99 Q&A', Stockholm, Swedbank, 2012, available at <<http://newsroom.swedbank.com/en/Publications/2012/The-Euro-Area-Crisis---99-Q--A>> last accessed on 20 June 2014.

³⁵⁴ UN Human Rights Council, 'Report of the independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights' (2009) UN Doc A/HRC/64/289; UNCTAD, 'The Concept of Odious Debt in Public International Law' (2013) Discussion Paper no. 185, Geneva, UNCTAD; Michalowski S., *Unconstitutional Regimes and the Validity of Sovereign Debt: A Legal Perspective* (Farnham: Ashgate, 2007); Ochoa C., 'From Odious Debt to Odious Finance: Avoiding the Externalities of a Functional Odious Debt Doctrine' (2008) 49 *Harvard International Law Journal* 1, 109-159.

j) Vulture funds pursuing distressed debts of heavily indebted countries

Vulture funds pursuing distressed debts of heavily indebted countries can indirectly impact the enjoyment of human rights, particularly the economic, social and cultural rights, in the country concerned. Vulture funds tend to be specialised hedge funds which purchase the sovereign bonds of heavily indebted countries at discounted prices on the secondary market, and then pursue the state through the courts for repayment in full of the bonds, including interest, legal costs and penalties. Funds have pursued legal action against countries such as Liberia that were involved in the Heavily Indebted Poor Countries Initiative, seeking repayment of outstanding bonds after debt forgiveness. In Liberia's case, two funds were awarded US\$20 million in 2009 by a British Court to repay bonds that dated to 1978.³⁵⁵ This sum represented a significant proportion of the budget Liberia had available to rebuild basic facilities after its protracted civil war. By diverting funds to foreign financial services companies, such actions undermine the capacity of the state to meet its human rights obligations, particularly in the area of economic, social and cultural rights.

k) Lobbying policymakers and lawmakers

Lobbying policymakers and lawmakers can have far reaching impacts on human rights by influencing the lawmaking and regulatory processes in financial services' favour. Financial services companies spend huge amounts of money on lobbying: one report found that in the decade leading up to the financial crisis, financial services companies in the United States spent US\$1.7 billion on campaign contributions and US\$3.4 billion on lobbyists.³⁵⁶ Financial services companies are also heavily involved in regulatory processes by providing commentaries on consultations and technical advice on new rules, and senior figures in financial circles are often well connected politically. They can use this access to political and legal processes to influence rules and policies in their favour, which can detrimentally impact a whole range of rights by resulting in regulation that is less than robust and undermining policies that are aimed at supporting human rights. EU proposals to introduce a financial transaction tax provide a clear illustration of this influence. The tax was intended to help stabilise markets and to generate extra revenue from financial services companies, which could be used to reduce fiscal deficits that had resulted from the financial crisis, and to lessen the impacts of austerity on the welfare rights of EU citizens. The proposal was the subject of intensive lobbying from financial services companies, including comments that heavily indebted Southern European countries could find it harder to sell their bonds should the proposal go ahead, and it has subsequently been substantially watered down.³⁵⁷

³⁵⁵ UN Human Rights Council, 'Report of the independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights' (2010) UN Doc A/HRC/14/21, paras. 15-17.

³⁵⁶ Consumer Education Foundation & Essential Information, 'Sold Out, How Wall Street and Washington Betrayed America' (March 2009) available at <www.wallstreetwatch.org/reports/sold_out.pdf> last accessed on 1 May 2014.

³⁵⁷ Letter from Sally Scutt, Managing Director of the International Banking Federation to Michael Noonan, President of the EU ECOFIN Council (23 April 2013) available at <www.ibfed.org/news/ibfed-comments-on-the-ecs-proposal-for-a-cd-implementing-enhanced-cooperati> last accessed on 6 May 2014.

I) Generating financial crises and managing risk irresponsibly

Generating financial crises and managing risk irresponsibly is obviously a very important way in which the financial sector negatively impacts a whole range of human rights, in particular economic, social and cultural rights such as the right to work, right to food, right to health, right to an adequate standard of living, and right to housing. Financial crises have been a regular feature of the globalised financial system over the last twenty years, with crises occurring at 5-7 year intervals.³⁵⁸ They have been growing in scale and are now truly global in scope, with financial problems transferring rapidly from one sector of the markets to another, across institutions, and across geographical boundaries. The precise causes of each financial crisis are different, but the conduct of financial services companies and their failure to effectively and prudently manage their risks is a general theme.³⁵⁹ The scale of the financial markets means that now few countries are able to isolate their economies from the fallout and the impact on rights is widespread. The most severe impacts are spread across the enjoyment of economic, social and cultural rights. Typical effects include the loss of work, increased poverty, reduced access to healthcare, withdrawal of children from schooling, reduced access to food, water and housing, the loss of remittances which can affect a family's standard of living, reductions in protection for labour rights, and cuts in state services. Civil and political rights can also be affected where, for example, economic stress results in increasing attacks on migrant workers, or where protests against rises in the cost of staple goods or against austerity policies are met with violent repression by the state.³⁶⁰ It has proven very difficult to find a way to hold financial services companies accountable for the human rights impacts of financial crises because the causal dynamics can be so multi-faceted and difficult to attribute specifically to wrongdoing at any particular company. Failures in financial regulation and supervision also frequently play a large part, as do other policies such as monetary policy.

³⁵⁸ See, for instance, the US Financial Crisis Inquiry Commission (FCIC), *The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States* (New York: Public Affairs, 2011); UK Financial Services Authority, *The Turner Review: A Regulatory Response to the Global Banking Crisis* (London: Financial Services Authority, 2009); Dowell-Jones M. and Kinley D., 'The Monster under the Bed: Financial Services and the Ruggie Framework' in Mares R. (ed), *The UN Guiding Principles on Business and Human Rights: Foundations and Implementation* (The Hague: Martinus Nijhoff, 2012) 193.

³⁵⁹ US Financial Crisis Inquiry Commission Report, *ibid*; The UK Turner Review, *ibid*; Kindleberger C. and Aliber R., *Manias, Panics and Crashes: A History of Financial Crises* (New York: Palgrave Macmillan, 2011, 6th ed). For an analysis of the subprime crisis and human rights law, see: Dowell-Jones and Kinley, *ibid*.

³⁶⁰ UN Human Rights Council, 10th Special Session, 'The Impact of the Global Economic and Financial Crises on the Universal Realization and Effective Enjoyment of Human Rights', statement of Ms. Navanethem Pillay, UN High Commissioner for Human Rights, 20 February 2009, available at <www.ochcr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=9057&LangID=E>; International Network for Economic, Social and Cultural Rights, 'ESCR-Net Statement on the Financial Crisis and Global Economic Recession: Towards a Human Rights Response' (2008), available at <www.escr-net.org/usr_doc/EconomicCrisisHRStatement_ESCR-Net_final_eng_withendorsements.pdf>; BankTrack, 'Bank to the Future: El Escorial Statement on Banks and the Financial Crisis' (2008), available at <www.banktrack.org/download/bank_to_the_future_el_escorial_statement/escorial_declaration_final.pdf>; Center for Economic and Social Rights, 'Human Rights and the Economic Crisis: A Transformative Moment?' (2009), available at <www.cesr.org/atricle.php?id=368>; Balakrishnan R., Heintz H. and Seguino S., 'A Human Rights Response to The Economic Crisis in the U.S.' (2009), Rutgers Center for Women's Global Leadership, available at <www.cwgl.rutgers.edu/globalcenter/whatsnew/RBhumanrightsresponse2009.pdf> all last accessed on 20 June 2014.

m) Abuses in the mortgage process and the right to housing

Abuses in the mortgage process and the right to housing have been shown by the 2007-2009 crisis to be inextricably linked. As mortgage finance is a key factor in enabling people to buy their own homes, abuses in the mortgage process can lead to infringements of people's housing rights. With the introduction of securitised credit products that repackaged mortgages into complex derivatives, growing demand for mortgages to securitise by financial services companies led to a vicious cycle of increasing flows of mortgage finance, rising property prices, and rising debt levels. Sales of mortgage products rose substantially, and abuses in the mortgage process became widespread, including: pushing people into more expensive, higher risk mortgages than those which they were eligible for; failing to properly explain the mechanics of the mortgages they were selling, which resulted in many people being unable to meet the repayments and losing their homes; misrepresenting people's incomes and failing to properly disclose terms and conditions of mortgages; and pushing distressed homeowners into foreclosure without proper due process. The property bubble and bust has left many families struggling to afford the cost of housing, threatened with the prospect of losing their home, or becoming homeless.³⁶¹

n) Export credit agencies

Export credit agencies are financial services companies which provide loans, guarantees, lines of credit and insurance for private companies to enable them to export their products. Such financing can be provided by banks (trade finance) or state-funded export credit agencies. Such financing is linked to human rights abuses through the corporate activity that it supports. Exporting companies supported by this financing have been found *inter alia*, to be involved in forced displacement, labour rights abuses, using security forces that engage in repression and intimidation of local communities, environmental damage that includes polluting water sources and soil, affecting people's livelihoods and right to food, and failure to engage in consultation with local communities over projects which will affect them.³⁶²

o) Mis-selling products and causing financial distress

Mis-selling products and causing financial distress by banks has been linked to human rights abuses. Customer trust is essential to financial services, and when providers abuse that trust, people can suffer severe financial hardships which affects their rights. Since the crisis, banks in particular have been accused of mis-selling various products, including insurance, mortgages, and interest rate derivatives. They are alleged to have failed to properly explain products to their customers, or to have sold them products that were worthless. People have suffered financial distress as a result, and in certain cases have suffered such severe hardship as a consequences of the actions of the bank that they have lost their businesses, livelihoods and homes. There are allegations that one UK bank deliberately pushed customers in financial

³⁶¹ UN Human Rights Council, 'Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context' (2009) UN Doc A/HRC/10/7.

³⁶² Keenan K., 'Export Credit Agencies and the International Law of Human Rights' (2008), Ottawa, Halifax Initiative Coalition, available at <http://www.halifaxinitiative.org/updir/ECA_and_HR_law.pdf> last accessed on 16 June 2014; ESCR-Net, 'Information on Export Credit Agencies and Human Rights' (no date) available at <http://www.halifaxinitiative.org/updir/ECA_and_HR_law.pdf> last accessed on 16 June 2014. See also, the resources on the ECA Watch website <<http://www.eca-watch.org>> last accessed on 16 June 2014; and the Export Credit Agencies Resources Page on the Business and Human Rights Resource Centre website <<http://www.business-humanrights.org/SpecialRepPortal/Home/Materialsbytopic/Exportcreditagencies>> last accessed on 16 June 2014.

distress into bankruptcy so it could seize their assets, which were then sold on at a profit by a subsidiary of the bank.³⁶³

p) Encouraging irresponsible borrowing by the poor

Encouraging irresponsible borrowing by the poor and imposing high fees and charges have been raising human rights concerns with the growth in ‘payday lenders’. The issue is also an important one in developing countries where banks can encourage irresponsible borrowing. People on low incomes can become dependent on credit to purchase basic goods, and can become locked into a cycle of credit through fees and charges on the loan. This can push them into financial hardship and threaten their right to housing and right to an adequate standard of living, particularly where loans have been secured on personal goods and on houses.³⁶⁴

q) Bank charges

Bank charges can have a substantial impact on human rights, although this is an issue that has not been highlighted in the human rights literature so far. Bank charges for basic banking services in developed countries are generally very low, but in certain developing countries, such as South Africa, bank charges are extremely high and opaque. South African banks charge high fees for every interaction with a bank: paying in a salary, making a deposit, checking a balance at an ATM, withdrawing money, making a payment. These fees can add up to a significant proportion of the monthly income of many people on low pay, and they are unavoidable as the major banks all have similar fee structures.³⁶⁵ They can therefore impact basic rights like the right to food, right to housing, and right to an adequate standard of living. They also have an impact on development and poverty reduction because they increase costs to business and so deter investment and job creation.

³⁶³ Tomlinson L., ‘Banks’ Lending Practices: Treatment of Businesses in Distress’ (2013) available at <www.tomlinsonreport.com/docs/tomlinsonReport.pdf> last accessed on 6 May 2014.

³⁶⁴ Ecumenical Council on Corporate Responsibility, ‘The Banks and Society: Rebuilding Trust’ (2011), Oxford, 32-37, available at <<http://www.eccr.org.uk/module-htmlpages-display-pid-86.html>> last accessed 18 June 2014; Montezemolo S., ‘Payday Lending Abuses and Predatory Practices: The State of Lending in America and its Impact on US Households’ (Washington D.C.: Center for Responsible Lending 2003).

³⁶⁵ South African Competition Commission, ‘Banking Enquiry: Report to the Competition Commissioner by the Enquiry Panel’ (2008), Pretoria, available at <<http://www.compcom.co.za/enquiry-in-to-banking>> last accessed on 18 June 2014; Solidarity Research Institute, ‘Bank Charges Report 2013’ (August 2013), Johannesburg, available at <[http://navorsing.co.za/wp-content/uploads/2013/08/Solidarity%20Bank%20Charges%20Report%202013%20\(Compressed\).pdf](http://navorsing.co.za/wp-content/uploads/2013/08/Solidarity%20Bank%20Charges%20Report%202013%20(Compressed).pdf)> last accessed on 18 June 2014; Watkins K. and Quattri M., ‘Lost in Intermediation: How Excessive Charges Undermine the Benefits of Remittances for Africa’ (London: Overseas Development Institute, 2014); Collins D. and McKay C., ‘Tailoring formal Financial Products for the Poor’ (October 2012), CGAP, available at <<http://www.cgap.org/blog/tailoring-formal-financial-products-poor>> last accessed on 18 June 2014.

VII. Civil society and non-governmental organisations

A. General context

Although there is no established legal or commonly accepted definition of the term, the concept of a civil society organisation (CSO) is generally understood as a broad and inclusive concept, which includes besides non-governmental organisations (NGOs) also charities, trusts, foundations, advocacy groups, and national and international non-state associations, which are all particular types of organisation within civil society.³⁶⁶ The European Commission explicitly includes labour market players within the definition of CSOs, i.e. trade unions and employers' federations; social and economic organisations, such as consumer organisations; community-based organisations; and religious communities.³⁶⁷ The EU definition of CSOs can, hence, be understood to comprise 'the principal structures of society outside of government and public administration'.³⁶⁸ Notably, the EU has adopted a particularly inclusive approach in its consultation procedures, not making a firm distinction between CSOs and other interest groups, by consulting all 'interested parties' wishing to participate in consultations.³⁶⁹

Despite the increasing importance of NGOs as a result of globalisation, which has been one of the main factors contributing to their proliferation, international law does not offer an authoritative definition of an NGO.³⁷⁰ As a result, this has led to confusion that NGOs are the same as the wider concept of CSOs, which, as described above, is too broad an understanding as NGOs represent only a narrow, even though significant, aspect of what is broadly understood as CSOs.

Lindblom A.-K. offers the following understanding of an NGO as an organisation which: (1) is 'non-governmental' in the sense that it has been established by private initiative, is independent from governmental influence and does not perform public functions; (2) has aims that are not-for-profit; if profits are made, they are not distributed to members or founders but used in the pursuit of the NGO's

³⁶⁶ See EU, Commission, 'Civil Society', available at <http://ec.europa.eu/transparency/civil_society/general_overview_en.htm#5> last accessed on 6 May 2014; Hutter M. and O'Mahony J., 'The Role of Civil Society Organisations in Regulating Business' (2004) ESRC Centre for Analysis of Risk and Regulation, discussion paper No. 26, available at <<http://www.lse.ac.uk/researchAndExpertise/units/CARR/pdf/DPs/Disspaper26.pdf>> last accessed on 6 May 2014.

³⁶⁷ EU, Commission, 'Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission' (Communication) COM(2002) 704 final, 11.12.2002, 6.

³⁶⁸ *Ibid.*

³⁶⁹ EU, Commission, 'Civil Society', available at <http://ec.europa.eu/transparency/civil_society/general_overview_en.htm#5> last accessed on 6 May 2014; and EU, Commission, 'Towards a reinforced culture of consultation and dialogue', *ibid.*, 5.

³⁷⁰ Kamminga M. T., 'The evolving status of NGOs under international law: a threat to the inter-state system?' in Alston P. (ed), *Non-State Actors and Human Rights* (Oxford: OUP, 2005) 93-113, at 95. See also Martens K., 'Mission Impossible? Defining Nongovernmental Organizations' (2002) 13 *Voluntas: International Journal of Voluntary and Nonprofit Organizations* 3, 271-285.

objective; (3) does not use or promote violence; and (4) has some sort of representative structure and usually (but not necessarily) a formal existence based on a statute.³⁷¹

The European Commission's interpretation of the term NGO was laid out in 2000 in a Commission discussion paper presenting the Commission's long-term principles and commitment towards the NGO sector.³⁷² Acknowledging the wide variety of legal norms pertaining to defining and regulating NGOs in the member states, the Commission identifies a series of common characteristics that NGOs tend to comply with. These are: 1) NGOs are not created for general personal profit; 2) NGOs are voluntary; 3) NGOs are distinguished from informal or *ad hoc* groups by having some degree of formal or institutional existence; 4) NGOs are independent, in particular of government and other public authorities and of political parties or commercial organisations; and 5) NGOs are not self-serving in aims and related values.³⁷³

For the purposes of this report we refer to CSOs except where the reference is specific to the narrower concept of NGOs.

B. EU engagement with civil society

CSOs are important actors both in terms of actively participating in the EU policy-making process and enhancing the quality and legitimacy of EU governance on the input side, but also as beneficiaries of the EU funding and in implementing EU projects on the output side.³⁷⁴ On the input side, there is a growing tendency to include CSOs in preparation of the Human Rights Dialogues and to consult them in various policy developments.

The significance of CSOs' contribution, particularly trade unions and employers' organisations, the 'social partners', in consultation processes, is emphasised, *inter alia*, in the White Paper on European Governance.³⁷⁵ The European social partners play an important role in terms of economic partnership with the EU and, more specifically, under the provisions in Articles 154-155 TFEU, in co-regulating the

³⁷¹ See Lindblom A.-K., 'Non-Governmental Organizations and Non-State Actors in International Law' in Reinalda B. (ed), *The Ashgate Research Companion to Non-State Actors* (Surrey: Ashgate, 2011) 147-160.

³⁷² Commission, 'The Commission and Non-Governmental Organisations: Building a Stronger Partnership', Commission Discussion Paper, presented by President Prodi and Vice-President Kinnock, Brussels, 2000, 3.

³⁷³ Commission, 'The Commission and Non-Governmental Organisations: Building a Stronger Partnership, Commission Discussion Paper', presented by President Prodi and Vice-President Kinnock, Brussels, 2000, 3. See, also, Ackermann R., Blomeyer R., Hammer M., Lloyd R. et al., 'Financing of Non-governmental Organisations (NGO) from the EU budget' (2000) Study for the DG for Internal Policies, available at <<http://bookshop.europa.eu/en/financing-of-non-governmental-organisations-ngo-from-the-eu-budget-pbBA3110925/>> last accessed on 2 May 2014.

³⁷⁴ Laforest R., 'Shifting scales of governance and civil society participation in Canada and the European Union' (2013) 56 *Canadian Public Administration* 2, 235-251; Millar H., 'Comparing accountability relationships between governments and non-state actors in Canadian and European international development policy' (2013) 56 *Canadian Public Administration* 2, 252-269; and Simmons J. M., 'The role of citizens in the "soft law" of select social policy areas in Canada and the European Union' (2013) 56 *Canadian Public Administration* 2, 270-286. See, also, Heidbreder E. G., 'Civil Society Participation in EU Governance' (2012) 7 *Living Review in European Governance* 2, 5-30.

³⁷⁵ Commission, 'European Governance White Paper', COM (2001) 428 final, 2001/C 287/01, 12.10.2001, 11-12.

European social policy.³⁷⁶ The so-called Social Dialogue takes two basic forms and occurs at two levels. Its form can be either *bipartite*, involving only the social partners, and/or *tripartite*, where the EU interacts with the social partners. The two levels can be either *cross-industry* or *sectoral*.³⁷⁷ Through the European platform against poverty and social exclusion initiative and the PROGRESS programme the Commission facilitates, as well, the increased involvement of EU level NGOs and European umbrella NGO networks in the fields of employment, social inclusion and protection, working conditions, anti-discrimination, and gender equality.³⁷⁸

The EU's engagement with CSOs in the process leading to the adoption of the UN Convention on the Rights of Persons with Disabilities (CRPD), 2006, has established an important precedent.³⁷⁹ The significance of the CRPD negotiation process was twofold. First, the EU not only took centre-stage in the negotiation, drafting and adoption of the CRPD, but also, it is the first global human rights treaty to which the EU is a party alongside the member states. Second, in an example of what C. Sabel and J. Zeitlin have coined as 'experimentalist governance',³⁸⁰ there was a high degree of participation in the drafting process by stakeholders, both individuals with disabilities and CSOs representing them, including those from developing countries, alongside established disability NGOs and national human rights institutions.³⁸¹ The result is a Convention that is based on the 'social model' conception of disability favoured by disability rights' activists instead of the narrower, and more traditional, 'medical model' of disability that is the norm in most states.³⁸² Moreover, one of the guiding principles of the Convention is full participation of people with disabilities in *inter alia*, the right to education, participation in political and public life and in monitoring the implementation of the CRPD.³⁸³

The EU ratified the CRPD in 2010.³⁸⁴ The effect of ratification was to enable CSO input into the CRPD at international level to spill over into EU law. Under Article 216(2) TFEU, the EU institutions are bound by

³⁷⁶ Marginson P. and Maarten K., 'European social dialogue as multi-level governance: Towards more autonomy and new dependencies' in Barbier J.-C. (ed), *EU Law, Governance and Social Policy* (2012) 16 *European Integration Online Papers* 1, Special Mini-Issue, Art. 4.

³⁷⁷ EU, Commission, 'Social Dialogue, Social Europe Guide' (2012) Vol. 2, available at <<http://ec.europa.eu/social/BlobServlet?docId=7384&langId=en>> last accessed on 14 April 2014.

³⁷⁸ EU, Commission, 'PROGRESS programme (2007-2013)', available at <<http://ec.europa.eu/social/main.jsp?langId=en&catId=987>> last accessed on 25 January 2014; and EU, Commission, 'European platform against poverty and social exclusion', available at <<http://ec.europa.eu/social/main.jsp?langId=en&catId=961>> last accessed on 25 January 2014.

³⁷⁹ UN General Assembly Resolution, A/RES/61/106, 13 December 2006. The CRPD entered into legal force on 3 May 2008 and is available at <<http://www.un.org/disabilities/convention/conventionfull.shtml>> last accessed on 20 June 2014.

³⁸⁰ Sabel C. and Zeitlin J., 'Learning from Difference: The New Architecture of Experimentalist Governance in the European Union' (2008) 14 *European Law Journal* 271. For discussion in the context of the CRPD, see de Búrca G., 'The European Union in the negotiation of the UN Disability Convention' (2010) 35 *European Law Review* 2, 174-196.

³⁸¹ de Búrca, *ibid*, 183-185.

³⁸² See de Búrca, *ibid*, 175-176, who notes that the 'social model' of disability 'views the disadvantages arising from disability as contingent and removable social barriers', whereas the 'medical model' of disability views the disadvantages of disability as 'intrinsic to the condition of the person'.

³⁸³ Arts. 24, 29 and 33 CRPD.

³⁸⁴ Council Decision 2010/48/EC of 26 November 2009 concerning the conclusion of the UN Convention (OJ 2010 L 23, p.35).

the CRPD and its provisions prevail over EU acts.³⁸⁵ It follows that the provisions of the CRPD are an integral part of the EU legal order.³⁸⁶ In 2013, the European Court of Justice ruled that, in the light of these obligations, the provisions in the EU Framework Equal Treatment Directive,³⁸⁷ concerning discrimination on the grounds of 'disability' must now be interpreted in conformity with the broad 'social model' definition of disability in the CRPD.³⁸⁸

The inclusion of CSOs has become a central component of the new approach to 'partnership' in EU human rights and development policy. In its Communication on 'Participation of Non-State Actors in Development Policy', the Commission defines the main contours of its future partnership with CSOs within development cooperation, which clearly goes beyond the role of NSAs in service delivery.³⁸⁹ The Communication is explicit on the participatory role of CSOs and recommends involving CSOs in key stages of the development process: preparation of a national development strategy and of the EU country response strategy; policy dialogue in sectors of intervention; and implementation and review. This was the first – and so far the only document - which addresses the role of NSAs in EU policies in a systematic way. In the 'European Consensus on Development', the EU further reiterates its political commitment to ensuring participation by CSOs as important promoters of democracy, social justice and human rights.³⁹⁰ Important also is the OECD's Paris Declaration on Aid Effectiveness, 2005, and its Accra Agenda for Action, 2008, which focus on the further rationalisation of the aid system in order to build capacity and fulfil the Millennium Development Goals (MDGs) by, *inter alia*, encouraging the participation of civil society.³⁹¹

On the output side, as consultees and beneficiaries of EU funding and in implementing EU projects for the promotion of democracy and human rights in third countries, CSOs continue to be the main recipient of the European Instrument for Democracy and Human Rights (EIDHR) through programmes designed to

³⁸⁵ ECJ, Cases C-335/11 and C-337/11 *Ring and Werge*, 11 April 2013, para. 28.

³⁸⁶ *Ibid*, para. 30.

³⁸⁷ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p.16).

³⁸⁸ ECJ, Cases C-335/11 and C-337/11 *Ring and Werge*, 11 April 2013, paras. 36-38.

³⁸⁹ EU, Commission, 'Participation of Non-State Actors in Development Policy', COM(2002) 598 final, 7 November 2002. NSAs, including the private sector, economic and social partners and civil society are included within the 'actors of cooperation' for the purposes of the Revised Cotonou Agreement, Art. 6(1)(c), (OJ 2010 L287/3).

³⁹⁰ Joint statement by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission on European Union Development Policy: 'The European Consensus', 2006/C 46/01, 24 February 2006.

³⁹¹ The Paris Declaration on Aid Effectiveness and the Accra Agenda for Action, available at <<http://www.oecd.org/dac/effectiveness/34428351.pdf>> last accessed on 15 June 2014. The identification of potential negative impact of the 2005 Paris Declaration centre upon the following points: (1) the recentralisation of development and aid resources in the hands of governments without the necessary countervailing powers and (downward) accountability checks; (2) the politicisation of aid delivered through the CSO channel by control-oriented governments hiding behind the seemingly technical agenda of harmonisation and alignment; (3) the 'instrumentalisation' of civil society as sub-contractors for service delivery; (4) reduced space for meaningful CSO involvement in policy dialogue processes; (5) a weakened capacity to act as a watchdog agency; (6) decreasing financial flows channelled through CSOs. See 'Engaging Non-State Actors in New Aid Modalities. For better development outcomes and governance' (2011) EuropeAid, available at <ec.europa.eu/europeaid/infopoint/publications/europeaid/254a_en.htm> last accessed on 6 May 2014.

achieve aid effectiveness.³⁹² One of the main aims of the EIDHR is ‘strengthening the role of civil society in promoting human rights and democratic reform, in supporting the peaceful conciliation of group interests and in consolidating political participation and representation’.³⁹³ Most recently, guidelines for more effective cooperation with CSOs in developing, neighbourhood and partner countries were set by the Commission in a Communication on Europe's engagement with civil society in external relations.³⁹⁴ Acknowledging the role of CSOs as a ‘crucial component of any democratic system’, the Communication outlines a more strategic and structured engagement by the EU with CSOs, mainstreamed in all sectors of cooperation and in all instruments and programmes. The main aims of the EU engagement with CSOs are set out to be: 1) to promote a favourable environment for CSOs in partner countries; 2) to contribute to meaningful and systematised CSO participation in domestic, EU and international processes; and 3) to contribute to local CSOs' capacity as independent development actors. The new policy guidelines are grounded on the outcomes of the global ‘Structured Dialogue on the Involvement of CSOs and Local Authorities in EU Development Cooperation’ initiative by the Commission carried out over 2010-2011 with the aim to reach a shared vision for more coherent and efficient EU partnership modalities.³⁹⁵ Also, in 2012, further improvement in engaging with CSOs in the EU's external human rights policy implementation was required in the Action Plan and Strategic Framework for Human Rights and Democracy.³⁹⁶

To live up to these commitments, the European External Action Service (EEAS) is increasingly systematising consultations with CSOs in the margins of Human Rights Dialogues/Consultations.³⁹⁷ Regular meetings with CSOs take place in Brussels before official Human Rights Dialogues/Consultations are held with third countries, where the human rights situation in the particular country is discussed and where

³⁹² Commission Regulation (EC) 1889/2006 of the European Parliament and of the Council of 20 December 2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide, 2006 OJ L386/1.

³⁹³ See EU, Commission, Development and Cooperation – EuropeAid, available at <http://ec.europa.eu/europeaid/how/finance/eidhr_en.htm> last accessed on 15 June 2014.

³⁹⁴ EU, Commission, ‘The roots of democracy and sustainable development: Europe's engagement with Civil Society in external relations’, COM(2012) 492 final, 12.9.2012.

³⁹⁵ EU, Commission, ‘Structured Dialogue’, available at <http://ec.europa.eu/europeaid/who/partners/civil-society/structured-dialogue_en.htm> last accessed 25 January 2014. See, also, EU, Structured Dialogue, Final Statement of the Structured Dialogue Budapest, 19 May 2011, available at <https://webgate.ec.europa.eu/fpfis/mwikis/aidco/images/f/fb/Joint_Final_Statement_May_2011.pdf> last accessed on 6 May 2014; and EU, Structured Dialogue, Concluding Paper, May 2011, available at <https://webgate.ec.europa.eu/fpfis/mwikis/aidco/images/e/ea/FINAL_CONCLUDING_PAPER.pdf> last accessed on 6 May 2014. In the field of development cooperation, the results of the Structured Dialogue were largely confirmed in an online consultation on the views of CSOs and other stakeholders on the forthcoming policy of the EU in regard of support to CSOs in partner countries. See, Sanz Corrella B. and Goey V., ‘Report on the key results of the on-line consultation on the issues paper “CSOs in Development Cooperation”’, EUROPEAID/129783/C/SER/multi - Lot 1: Studies and Technical assistance in all sectors, available at <http://ec.europa.eu/europeaid/who/partners/civil-society/documents/20121022-executive-summary_en.pdf> last accessed on 12 March 2014.

³⁹⁶ Council of the European Union, ‘Action Plan and Strategic Framework for Human Rights and Democracy’, 11855/12, 25 June 2012.

³⁹⁷ On Human Rights Consultations, see, ‘EU guidelines on human rights dialogues with third countries’, available at <http://eeas.europa.eu/human_rights/guidelines/dialogues/docs/16526_08_en.pdf> last accessed 25 January 2014).

CSOs provide inputs in the topics to be reflected in the Dialogues/Consultations. Subsequently, CSOs are regularly debriefed both in Brussels and in the third countries concerning the outcomes of the Human Rights Dialogues/Consultations.

In conformity with the EU Guidelines on Human Rights Dialogues, the European Commission also organises formal Civil Society Seminars associating European and international NGOs within the framework for Human Rights Dialogues with counterparts from the partner countries concerned.³⁹⁸ The aim of the seminars is to facilitate discussions between the EU and partner country CSOs on specific human rights issues, the conclusions of which are reported to the official human rights dialogue meeting.³⁹⁹ Civil society representatives have, also, been present in some official Human Rights Dialogues/Consultations, such as those conducted with the African Union and Moldova. This is, however, an exception as third countries rarely agree on the direct presence of CSOs at the Dialogues/Consultations.

In addition to the systematised and *ad hoc* consultations with CSOs prior to the Dialogues/Consultations, consultations with CSOs also take place on an on-going basis, in particular when priorities for the EIDHR funding periods are being set.⁴⁰⁰ In 2012, civil society was consulted on several policy developments including the elaboration of the human rights package adopted by the Foreign Affairs Council and subsequently endorsed by the European Council. Civil society's inputs have also been collected, for example, for the drafting of the EU guidelines on Freedom of Religion or Belief (FORB) and on Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) persons in 2013.⁴⁰¹

The EU-NGO Human Rights Forum, financed from the budget of EIDHR, brings together annually over 200 civil society participants from all parts of the world, representatives from international and regional human rights bodies and from EU institutions and member states.⁴⁰² EuropeAid offers, likewise, an important meeting point for European Institutions and CSOs through a variety of dialogue tools.⁴⁰³ Civil society representatives also regularly engage with the Council working group on human rights (COHOM) and are debriefed on its conclusions.

Alongside the Commission's and EEAS' engagement with CSOs, a new initiative for supporting human rights and democracy in the EU's neighbourhood was established in 2012. The European Endowment for Democracy (EED) was established as a private law foundation under Belgian law, governed by its own

³⁹⁸ *Ibid.*

³⁹⁹ EU, Commission, 'Civil Society', available at <http://eeas.europa.eu/human_rights/dialogues/civil_society> last accessed on 25 January 2014.

⁴⁰⁰ EU, Commission, 'The EU's work with NGOs', available at <http://eeas.europa.eu/human_rights/cooperation_with_ngo/index_en.htm> last accessed on 25 January 2014.

⁴⁰¹ EU, EEAS press release, 24 June 2013, available at <http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf> last accessed on 29 July 2014.

⁴⁰² The theme of the 2012 forum was: 'Promoting universality: the role of Regional Human Rights Mechanisms and their cooperation with civil society' and in 2013: 'Accountability for economic, social and cultural rights and transitional justice'.

⁴⁰³ See, generally, e.g., EU, Commission, 'Tools for Dialogue', available at <http://ec.europa.eu/europeaid/who/partners/civil-society/dialogue-tools_en.htm> last accessed on 25 January 2014.

statute and governing bodies, and is a result of a joint political project by the EU and member states.⁴⁰⁴ It includes civil society experts on both its Board of Governors and Executive Committee.⁴⁰⁵ The initial proposal for establishing the EED was led by Poland's Minister of Foreign Affairs, Radoslaw Sikorski, and became a flagship of the Polish Presidency of the Council of the EU. In terms of financing, the EED is autonomous from EU institutions and, besides the Commission's initial step to finance the administrative costs, its budget is based on voluntary contributions provided by member states.

The main aim of the EED is to support actors of change and emerging players in the area of human rights, democracy and civil society, who face obstacles in gaining access to EU funding. Such actors may include, *inter alia*, journalists, bloggers, non-registered NGOs and also political movements. As a result, the main aim is to balance the already existing administrative burden of parallel EU funding mechanisms (e.g. EIDHR) and to fill the gap with a rapid and flexible funding mechanism for beneficiaries who urgently need financial support for their activities.⁴⁰⁶

C. Human rights impacts

1. Positive human rights impacts

During the last couple of decades, CSOs have exerted an unprecedented influence on both national and international arenas.⁴⁰⁷ For example, the role of civil society in achieving development and aid effectiveness has been specifically acknowledged at several international summits and meetings.⁴⁰⁸ CSOs, mainly NGOs, also provide the EU with human rights education, training and raising awareness. As recognised by the Commission, involvement of civil society is intimately tied with the right of individuals to form associations and to participate in order to pursue a common purpose.⁴⁰⁹ Participation is a right as

⁴⁰⁴ See, *inter alia*, Fuksiewicz A., 'The European Endowment for Democracy After Lift-Off. Opinions and Expectations', Institute for Public Affairs (2013), available at <http://pasos.org/wp-content/uploads/2014/01/ipa_eed.pdf> last accessed on 6 May 2014.

⁴⁰⁵ See the EED website, available at <<https://www.democracyendowment.eu/about-eed/>> last accessed on 15 June 2014.

⁴⁰⁶ EU, Commission, Press Release, 12 November 2012, 'The European Endowment for Democracy – Support for the unsupported', available at <http://europa.eu/rapid/press-release_IP-12-1199_en.htm> last accessed on 13 March 2014. For more information on EED's performance, see e.g. Odone C., 'New Kid on the Block. Can the European Union prove a success at exporting democracy?' *Foreign Policy* (11 February 2014) available at <http://www.foreignpolicy.com/articles/2014/02/11/new_kid_on_the_block> last accessed on 6 May 2014.

⁴⁰⁷ Lehr-Lehnardt R., 'NGO Legitimacy: Reassessing Democracy, Accountability and Transparency' (2005) Cornell Law School Inter-University Graduate Student Conference Papers, Paper 6, at 1, available at <http://scholarship.law.cornell.edu/lps_clacp/6> last accessed on 15 April 2014.

⁴⁰⁸ For example, the World Summit on Sustainable Development in Johannesburg (1995); the Monterrey Consensus on Financing for Development (2002); the Paris Declaration on Aid Effectiveness (2005); the Accra Agenda for Action (2008); and the Earth Summit, Rio de Janeiro (2012).

⁴⁰⁹ Commission, 'Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission' (Communication) COM(2002) 704 final, 11.12.2002, 5.

such, but it also has instrumental value in empowering people to claim and realise their other human rights.⁴¹⁰ In this way participation engenders a broader change agenda.⁴¹¹

a) Service providers and experts

CSOs can provide critical added value to the development process as service providers, as experts in the field and in complementing local and national government service delivery. Due to the fact that CSOs often specialise in certain human rights issues, they often possess a high degree of expertise in their respective fields of operation.⁴¹² They can also operate as a link between business enterprises and local communities in carrying out fact-finding and consultations in terms of measures of due diligence undertaken to map potential effects of business activities.⁴¹³

When sufficiently funded, CSOs can in many cases be the main providers of public services, outperforming governments in service delivery, including in facilitating access for some parts of the population, such as marginalised communities.⁴¹⁴ Operating outside formal educational systems, schooling provided by CSOs may, for example, be more easily adaptable to the specific needs – in terms of curriculum and school hours and terms – of the pupils, which may be an important factor in enrolling and retaining children at school in developing societies where children’s contribution to the family livelihood may be vital.⁴¹⁵ In comparison to governments, CSOs may also be quicker to respond to fluctuating societal and local needs at times of accelerating change.⁴¹⁶

Where CSOs are involved in capacity-building of rights-holders, or the local, regional and national human rights duty-holders, they may also play an important role in raising the levels of capacity of the rights-holders and duty-holders to claim their rights and to meet their human rights obligations in line with the human rights-based approach to development (HRBAD).⁴¹⁷

b) Link with grassroots – participatory development

In general, engagement with CSOs provides a vital link with grassroots; they are usually well-positioned to articulate the needs, demands and interests of the local populations or group, strengthening, thereby,

⁴¹⁰ Rowlands J., ‘The Right to be Heard: An Overview’ in Rowlands J. (ed), *Speaking Out: Case Studies on How Poor People Influence Decision-Making* (Oxfam GB, 2009) 1-10, at 1.

⁴¹¹ Katsui H., Ranta E. M., Yeshanew A. S., Musila M., Mustaniemi-Laakso M. and Sarelin A., *Reducing Inequalities: Finnish development cooperation in Ethiopia and Kenya with special focus on gender and disability* (Åbo: Institute for Human Rights at the Åbo Akademi University, 2014).

⁴¹² Lehr-Lehnardt R., ‘NGO Legitimacy: Reassessing Democracy, Accountability and Transparency’ (2005) Cornell Law School Inter-University Graduate Student Conference Papers, Paper 6, available at <http://scholarship.law.cornell.edu/lps_clacp/6> last accessed on 15 April 2014; and Stanley Foundation, ‘The United Nations and Civil Society: The Role of NGOs—Report of the Thirtieth UN Issues Conference’ (Feb. 19-21, 1999), available at <<http://www.globalpolicy.org/ngos/ngo-un/gen/2000/1128.htm>> last accessed on 14 April 2014.

⁴¹³ See, e.g., Committee on the Rights of the Child, General Comment No. 16 on State obligations regarding the impact of the business sector on children’s rights, CRC/C/GC/16, 17 April 2013, para. 23.

⁴¹⁴ Mathews J. T., ‘Power Shift’ (1997) 76 *Foreign Affairs* 1, 50-66, at 63.

⁴¹⁵ See, e.g., UNICEF, *Children and Women in Tanzania* (Dar es Salaam: UNICEF, 2002), available at <http://www.unicef.org/tanzania/SITAN_Mainland_report.pdf> last accessed on 6 May 2014, 53.

⁴¹⁶ Mathews J. T., ‘Power Shift’ (1997) 76 *Foreign Affairs* 1, 50-66, at 63.

⁴¹⁷ See Council of the EU, ‘Action Plan and Strategic Framework for Human Rights and Democracy’, 11855/12, 25 June 2012: ‘In the area of development cooperation, a human rights based approach will be used to ensure that the EU strengthens its efforts to assist partner countries in implementing their international human rights obligations’.

individuals' voice, human rights accountability and participatory development.⁴¹⁸ In addition to their capacity to 'give voice to the voiceless', the ability of CSOs to identify and address neglected issues and human rights concerns, and mainstream services to populations that are socially excluded or out of reach is particularly important.⁴¹⁹ Close links to rights-holders may lead to innovative solutions to identified human rights problems.⁴²⁰ In this way CSOs can contribute to supporting existing development and human rights initiatives and to enhancing ownership by local communities over development projects. By localising the human rights discourse, they can also play an important role in preventing development cooperation from being perceived as imposing Western values on local cultures.

c) *Contribution to accountability*

CSOs are increasingly recognised not only as beneficiaries and implementers of development programmes but as having roles to play in the overall system of accountability at the country level through the pressure and scrutiny exercised over public policies by ordinary citizens, constituting a form of social accountability. By monitoring the effective implementation of laws and policies, as well as through facilitating access to information, CSOs may provide an important element for a functioning accountability system at the national and local levels.

Civil society can, moreover, play an important role in putting pressure on authorities to fully implement all the international commitments the state has undertaken under the international and regional human rights instruments it has acceded to or ratified, as well as the comments and recommendations the supervisory organs adhered to these instruments have given to the state.⁴²¹ CSOs also undertake awareness-raising exercises, or campaigns, to empower individuals, local communities and groups to participate in public policy to claim and advocate for their human rights.

d) *Shaping the policy-agenda and contributing to efficiency*

Through consultative and observer status at international bodies, as well as other national, international and regional fora, NGOs, in particular, have an important influence in shaping the national, regional and international agendas relevant to human rights. With *mobilisation of shame* as one of their foremost

⁴¹⁸ See, generally, Uvin P., 'Nongovernmental Organisations, the United Nations and Global Governance' (1995) 16 *Third World Quarterly* 3, 495-512.

⁴¹⁹ Lehr-Lehnardt R., 'NGO Legitimacy: Reassessing Democracy, Accountability and Transparency' (2005) Cornell Law School Inter-University Graduate Student Conference Papers, Paper 6, at 45, available at <http://scholarship.law.cornell.edu/lps_clacp/6> last accessed on 15 April 2014.

⁴²⁰ For example, a UNICEF partnership with an NGO working in Senegal and other African countries, resulted in the NGO developing a new and innovative way to address and end female genital mutilation, which has subsequently been adopted as a model by several UN Agencies. See UNICEF, Save the Children and UN Global Compact, 'Children's Rights and Business Principles' (2012) 9.

⁴²¹ For example, NGOs play an important role in many monitoring processes by, for example, submitting 'shadow reports' to treaty bodies and/or independent experts are often a major source of information for committee members or independent experts when assessing the human rights situation in a specific country. The UPR process explicitly foresees the involvement of civil society. See further, Amnesty International, 'The Role of Civil Society' (2014), available at <<http://www.amnesty.org/en/united-nations/universal-periodic-review/role-of-civil-society>> last accessed on 29 July 2014.

tools,⁴²² NGOs and other civil society actors can contribute to directing attention to pressing human rights issues and to keeping human rights and inequality reduction high on the local, national and international agendas through reporting, active lobbying, dissemination of information and media campaigns, supported by monitoring of state policies and fact-finding. Such action can ultimately lead governments to improve their human rights records.⁴²³ By facilitating cooperation with and between government authorities, organisations and other development actors, CSOs may contribute to increased coordination between, and efficiency of, different policies and policy areas.

Through mobilisation of media campaigns or through policies of *naming and shaming*, CSOs may also be able to influence large TNCs which often escape national regulation due to the need of states to attract investment and employment. TNCs may be forced to alter their practices in the face of risk of loss of profits when confronted with civil society campaigns for accountability for poor labour or environmental practices.⁴²⁴

e) *Promoting transparency, tolerance and freedom of information on and through the Internet and social media*

The Internet and social media have become increasingly important tools and platforms in the operations of CSOs, allowing them to operate and advocate their cause through different social networking sites, blogs and videos transmitted on the Internet.⁴²⁵ As described by W. Benedek and M. C. Kettermann, '[f]rom the Arab Spring to the Occupy movement, the role of freedom of expression on Internet in debating the questions that shape our future [has] never been greater'.⁴²⁶ Some CSOs have even made the Internet their *modus operandi*. One example of such an organisation is WikiLeaks, an international, journalistic, polemical, non-profit organisation publishing classified information online, which was hailed by human rights organisations as a catalyst to the revolutionary pro-democracy movements, known as the 'Arab Spring' that swept through the Arab world in the Middle East and North Africa from late 2010.⁴²⁷

The spread of access and increased use of the Internet for public services has also facilitated access to information, including to public documents, which aids and informs CSO activism and may thereby promote fairer and more equal treatment under the law, transparency, accountability, efficiency and

⁴²² See, e.g., Mertus J., 'From Legal Transplants to Transformative Justice: Human Rights and the Promise of Transnational Civil Society' (1999) 14 *American University International Law Review* 5, 1335-1389, at 1368-1369.

⁴²³ Uvin P., *Human Rights and Development* (Bloomfield: Kumarian Press, 2004) 168.

⁴²⁴ See, generally, Lehr-Lehnardt R., 'NGO Legitimacy: Reassessing Democracy, Accountability and Transparency' (2005) Cornell Law School Inter-University Graduate Student Conference Papers, Paper 6, at 44, available at <http://scholarship.law.cornell.edu/lps_clacp/6> last accessed on 15 April 2014.

⁴²⁵ See, e.g., Benedek W. and Kettermann M. C., *Freedom of expression and the Internet* (Council of Europe, 2013) 18. For an overview on the role of information and information technology in promoting human rights, see, Halpin E. F. and Hick S., 'Information: an Essential Tool for Human Rights Work' in Halpin E.F. et al. (eds), *Human Rights and the Internet* (London: Macmillan Press, 2000) 238-249. For a discussion on the rise of the Internet as a tool for social and political activism and on counter-measures taken by some states in this regard, see, e.g., Korff D. and Brown I., 'Social Media and Human Rights' in Hammarberg T. et al., *Human Rights and a Changing Media Landscape* (Strasbourg: Council of Europe, 2011) 175-206.

⁴²⁶ Benedek and Kettermann, *ibid*, 13.

⁴²⁷ See, e.g., Amnesty International, *Amnesty International Report 2011: The State of the World's Human Rights* (London: Amnesty International, 2011) xii-xiii.

democracy.⁴²⁸ As the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression notes, such an increase in information available is owed, beside technological advance and democratic transition, to civil society activism in demanding access to public information.⁴²⁹ NGOs have actively contributed to the introduction of new instruments protecting the right to information both nationally and internationally and play vital roles in ensuring that existing and new legal frameworks in the interest of the right to information are fully implemented.⁴³⁰

Some CSOs have, as well, taken on important functions as watchdogs for the realisation of freedom of expression online, monitoring and exposing state-imposed restrictions on freedom of expression on the Internet. In some cases this has led, directly or indirectly, to physical attacks, deprivation of liberty or abuse of surveillance techniques. States have also adopted laws or measures to prevent or hinder use of the Internet.⁴³¹ In some cases CSOs have, moreover, reacted against and flagged potential threats to human rights, such as the right to privacy and the right to information, in the operations of social media businesses by pursuing legal actions.⁴³²

Apart from that, CSOs may take on important roles in counteracting hate speech and incitement to racist and xenophobic violence through monitoring and gathering data on patterns of hate speech in the aid of policy formulation and through facilitating and empowering counter-speech by individuals and groups systematically targeted by hate speech on the Internet.⁴³³ Contributions by civil society to awareness-raising and education on tolerance may, in a similar vein, prove efficient.⁴³⁴ Successful CSO initiatives have,

⁴²⁸ For an account of open government as a prerequisite for a functioning democracy, see, Olsson A. R., 'Access to Official Documents' in Hammarberg, T. et al., *Human Rights and a Changing Media Landscape* (Strasbourg: Council of Europe, 2011) 77-100, at 94-96. For a discussion and examples on Internet-based initiatives to facilitate access to public documents, see, e.g., Halpin E. F. and Hick S., 'Information: an Essential Tool for Human Rights Work' in Halpin E.F. et al. (eds), *Human Rights and the Internet* (London: Macmillan Press, 2000) 238-249; and Axworthy L., 'The Mouse is Mightier than the Sword' in Halpin E.F. et al. (eds), *Human Rights and the Internet* (London: Macmillan Press, 2000) 16-20, at 18-20.

⁴²⁹ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, UN Doc. A/68/362, 4 September 2013, paras. 71, 89.

⁴³⁰ *Ibid*, paras. 4, 64 and 77.

⁴³¹ For a discussion, see, Benedek W. and Kettemann M. C., *Freedom of expression and the Internet* (Council of Europe, 2013) 13, 144-147 and 167.

⁴³² O'Brien K. J., 'Law Students in Austria Challenge Facebook Privacy Policy' *The New York Times* (4 December 2012): 'An Austrian student group said Tuesday that it planned to challenge Facebook's privacy policies in Irish court, alleging that the social networking giant had failed, despite repeated requests and formal complaints made by its members, to adapt to the restrictions of European data protection law.' See also, the recent Irish case concerning the data protection status of disclosures of US National Security Association documents by Edward Snowden. The case was referred to the ECJ by the Irish High Court on 18 June 2014, *Schrems v. Data Protection Commissioner* [2013 No.765JR], also known as 'PRISM/Facebook'. See further, [Europe-v-facebook.org](http://www.europe-v-facebook.org), available at <<http://www.europe-v-facebook.org/hcj.pdf>> last accessed on 29 July 2014.

⁴³³ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, UN Doc. A/67/357, 7 September 2012, paras. 86 and 88.

⁴³⁴ Mock K., 'Hate on the Internet' in Halpin E. F., et al (eds), *Human Rights and the Internet* (London: Macmillan, 2000) 141-153, at 151; Halpin E. F. and Hick S., 'Information: an Essential Tool for Human Rights Work' in Halpin E. F., et al (eds), *Human Rights and the Internet* (London: Macmillan Press, 2000) 238-250; and Hecht M. E. and Neufeld R., 'The Internet and International Children's Rights in Halpin E. F., et al (eds), *Human Rights and the Internet* (London: Macmillan, 2000) 153-165.

for example, been taken to combat and to raise awareness on threats to human rights of vulnerable individuals, such as children exploited for child pornography, on the Internet.⁴³⁵

f) Political neutrality

Due to their perceived political neutrality, CSOs can play an important role as deliverers of development or humanitarian aid in situations where state-to-state development cooperation or humanitarian aid is rendered difficult or impossible due to political sensitivities or sanctions imposed on the target state.⁴³⁶ For the same reason CSOs have a vital role in monitoring elections and democratic nation building.⁴³⁷ CSOs may also supplement the monitoring of and reporting on human rights issues in situations where intergovernmental bodies or states are reluctant or unable to intervene due to considerations of political sensitivities or alliances.⁴³⁸

2. Negative human rights impacts

While, as one author notes, the legitimacy of CSOs does not merely correlate with the levels of transparency, democracy or accountability of their operations,⁴³⁹ the shortcomings of CSOs in these three fields have led to their legitimacy as 'representatives of the masses' to be increasingly questioned.⁴⁴⁰ This criticism of CSO legitimacy has grown in volume with the steady expansion of the role of the CSOs as participants in multi-sectorial governance processes and in transnational debates on human rights.⁴⁴¹ Concerns have been expressed, similarly, on the sustainability and effectiveness of CSO operations with regard to human rights.

⁴³⁵ Mijatovic D., *Freedom of Expression on the Internet: A study of legal provisions and practices related to freedom of expression, the free flow of information and media pluralism on the Internet in OSCE participating States* (OSCE, 2010) 146. For a discussion, see, e.g., Hecht and Neufeld, *ibid*, 153-165, at 156 and 161-163.

⁴³⁶ See, e.g., Knezevic D., 'Women's Voices against the War: the Internet in the Fight for Human Rights during the War in Former Yugoslavia' in Halpin E. F., et al (eds), *Human Rights and the Internet* (London: Macmillan Press, 2000) 166-173, at 171.

⁴³⁷ Uvin P., *Human Rights and Development* (Bloomfield: Kumarian Press, 2004) 83.

⁴³⁸ Clark M., 'Non-Governmental Organizations and their Influence on International Society' (1995) 48 *Journal of International Affairs* 2, 507-522, at 516.

⁴³⁹ Lehr-Lehnardt R., 'NGO Legitimacy: Reassessing Democracy, Accountability and Transparency' (2005) Cornell Law School Inter-University Graduate Student Conference Papers. Paper 6, 47, available at <http://scholarship.law.cornell.edu/lps_clacp/6> last accessed on 15 April 2014. For further discussion, see, e.g., Slim H., 'By What Authority: The Legitimacy and Accountability of Non-governmental Organizations', paper presented by the International Council on Human Rights Policy at the 'International Meeting of Global Trends and Human Rights – Before and after September 11' (Geneva, 10-12 January, 2002) available at <<http://www.gdrc.org/ngo/accountability/by-what-authority.html>> last accessed on 14 April 2014.

⁴⁴⁰ For discussion, see, e.g., Collingwood V., 'Non-governmental organisations, power and legitimacy in international society' (2006) 32 *Review of International Studies* 3, 439-454; Slim, *ibid*.

⁴⁴¹ For discussion, see, e.g., See Brown L. D., 'Civil Society Legitimacy and Accountability: Issues and Challenges' (2006) Hauser Center for Nonprofit Organizations, John F. Kennedy School of Government, Harvard University, 6, available at <https://www.civicus.org/new/media/LTA_ScopingPaper.pdf> last accessed on 14 April 2014; Brown L.D., Khagram S., Moore M. H. and Frumkin H., 'Globalization, NGOs and Multisectoral Relations' in Nye J.S. and Donohue J.D. (eds), *Governance in a Globalizing World* (Washington, DC: Brookings Institution, 2000) 271-296; Clark M., 'Non-Governmental Organizations and their Influence on International Society' (1995) 48 *Journal of International Affairs* 2, 507-522; Collingwood, *ibid*; and Mathews J. T., 'Power Shift' (1997) 76 *Foreign Affairs* 1, 50.

a) 'Corrective force'

As the significance of the state in many countries in the developing world has diminished, the influence and role of CSOs has grown.⁴⁴² NGOs, or the civil society at large, are, consequently, sometimes seen as a 'corrective force' eliminating the state failure where the state and the public sector lack the capacity or the willingness to deliver development, or to ensure the realisation of human rights. CSOs replacing the state in service provision, so-called 'gap filling' is, however, not unproblematic.⁴⁴³

Some of the critical consequences of CSOs' increasing influence in relation to governments include, for example, the further marginalisation of state responsibilities and the fragmentation of the development agenda as a result of a lack of policy coordination due to the diversified and overlapping tasks and responsibilities of the different stakeholders involved.⁴⁴⁴ Such take-overs by CSOs of state functions may be counterproductive also in terms of failing capacity-building of the state and state officials. Another critical issue in terms of fragmentation of service-delivery is equality, as CSOs, while often focusing on the rights and specific needs of groups at risk of discrimination or marginalisation do not have the responsibility of a state in guaranteeing the realisation of human rights on an equal basis to all.

b) Lack of capacity

Despite good intentions, CSOs may lack capacity to perform the task of protecting or promoting the realisation of human rights. Such lack of capacity, coupled with limited monitoring of CSO activities, may prove counterproductive where, for example, a commissioned monitoring or fact-finding project of a human rights situation by an NGO is carried out in a fashion that downplays or neglects existing human rights problems to the detriment of individuals.⁴⁴⁵ NGO projects may also address human rights issues in a remedial or short-term fashion and lack long-term vision.⁴⁴⁶

In the same vein, due to limited resources, CSOs are often in a position to address merely the *effects* or consequences of the problems they have been designed to address, not their *causes*. Through alleviating the symptoms, CSOs may risk hiding the underlying structural problems, thereby sustaining human rights problems and structural inequality within societies.⁴⁴⁷ This may be equally true for the programme level implementation of CSO policies as for the global agenda setting in international and regional fora, where CSOs may advocate for narrow objectives at the expense of recognising the wider policy and political contexts of the human rights issues they promote.⁴⁴⁸

⁴⁴² Shamsul Haque M., 'The Changing Balance of Power between the Government and NGOs in Bangladesh' (2002) 23 *International Political Science Review* 4, 411-435, at 411.

⁴⁴³ See, generally, Whaites A., 'Let's get civil society straight: NGOs, the state, and political theory' (2006) 6 *Development in Practice* 3, 240-249.

⁴⁴⁴ See, e.g., Shamsul Haque M., 'The Changing Balance of Power between the Government and NGOs in Bangladesh' (2002) 23 *International Political Science Review* 4, 411-435, at 425-427.

⁴⁴⁵ For a discussion, see, Mertus J., 'From Legal Transplants to Transformative Justice: Human Rights and the Promise of Transnational Civil Society' (1999) 14 *American University International Law Review* 5, 1335-1389, at 1374-1375.

⁴⁴⁶ Uvin P., *Human Rights and Development* (Bloomfield: Kumarian Press, 2004) 103.

⁴⁴⁷ Zaidi S. A., 'NGO Failure and the Need to Bring Back the State' (1999) 11 *Journal of International Development* 2, 259-271, at 268.

⁴⁴⁸ For a discussion, see, e.g., Lehr-Lehnardt R., 'NGO Legitimacy: Reassessing Democracy, Accountability and Transparency' (2005) Cornell Law School Inter-University Graduate Student Conference Papers, Paper 6, 27, available at <http://scholarship.law.cornell.edu/lps_clacp/6> last accessed on 15 April 2014.

c) *Problematic behaviour and lack of due diligence*

Problematic behaviour or lack of due diligence in terms of respect for human rights and the rule of law on the part of some CSOs may raise questions about their legitimacy and accountability.⁴⁴⁹ CSOs may, for example, have agendas that are, or may prove to be, counterproductive in terms of human rights, or the realisation of human rights of certain individuals or groups of individuals. WikiLeaks, for example, has faced criticism by international human rights organisations for taking insufficient precautions to avoid putting individuals at risk due to the information it publishes.⁴⁵⁰

d) *Lack of transparency*

Due to the allegiances CSOs have to different actors or due to their internal structures and agendas, the operations and agenda-setting of CSOs may at times be markedly non-transparent, to the point of compromising, or putting into question, the legitimacy and democratic foundation of the civil society actors in such cases.⁴⁵¹ As CSOs may lack internal democratic foundations and processes, their agendas and affiliations may remain hidden or unknown not only to their beneficiaries, funders and partners, but also to their members.⁴⁵² As described by J. Mertus, 'problems include CSOs censoring their own members, attacking other CSOs viewed as competitors, and blocking all but a few privileged elites from participating in their operations'.⁴⁵³ Due to the sensitive nature of their operations, or for other reasons, CSOs may, moreover, not always be willing or able to reveal the sources of the information they provide, or a part of the *modus operandi* of their work.⁴⁵⁴

Many CSOs are 'donor-driven', i.e., fully dependent on funding by their often foreign funding agencies, which typically largely set the agendas for the activities they fund. The fact that most CSOs rely on their funders, private or public, may have counterproductive effects in terms of transparency of the priority setting and effectiveness of their operations in relation to their participants, members and beneficiaries.

⁴⁴⁹ For a discussion and for examples, see, e.g., Brown L. D., 'Civil Society Legitimacy and Accountability: Issues and Challenges' (2007) Hauser Center for Nonprofit Organizations, John F. Kennedy School of Government, Harvard University, 6, available at <https://www.civicus.org/new/media/LTA_ScopingPaper.pdf> last accessed on 14 April 2014.

⁴⁵⁰ See, e.g., Harrell E., 'WikiLeaks Comes Under Fire from Rights Groups' in *Time* (12 August 2010). See, also, Amnesty International, *Amnesty International Report 2011: The State of the World's Human Rights* (London: Amnesty International, 2011) xiv: 'The documents provided valuable corroboration of human rights violations documented by human rights activists and journalists - violations that the Afghan and NATO governments had denied. But human rights organizations were also alarmed when the Taleban announced that they were going through the documents on Wikileaks and would punish Afghans who had co-operated with the Afghan government or its international supporters. New technology, like all tools, presents risks as well as benefits; Wikileaks took steps to ensure that future document releases would incorporate the long-standing principle of "do no harm", a bedrock of Amnesty International's work over the past 50 years'.

⁴⁵¹ Mertus J., 'From Legal Transplants to Transformative Justice: Human Rights and the Promise of Transnational Civil Society' (1999) 14 *American University International Law Review* 5, 1335-1389, at 1372 and 1375.

⁴⁵² For a discussion, see, e.g., Uvin P., *Human Rights and Development* (Bloomfield: Kumarian Press, 2004) 100-101.

⁴⁵³ Mertus J., 'From Legal Transplants to Transformative Justice: Human Rights and the Promise of Transnational Civil Society' (1999) 14 *American University International Law Review* 5, 1335-1389, at 1375.

⁴⁵⁴ Slim H., 'By What Authority: The Legitimacy and Accountability of Non-governmental Organizations', paper presented by International Council on Human Rights Policy at the International Meeting of Global Trends and Human Rights - Before and after September 11 (Geneva, 10-12 January 2002), available at <<http://www.gdrc.org/ngo/accountability/by-what-authority.html>> last accessed on 14 April 2014.

In the face of the need to attract new or continued funding, CSOs may be prepared to compromise, in a non-transparent manner, their agendas, to tailor their programmes and priority areas in a manner that best meets funders' priorities,⁴⁵⁵ or, even, to present information in a light most beneficial to them, or to their cause.⁴⁵⁶ The high degree of dependency on external funding may also have as its consequence the concentration of attention on some human rights issues, at the expense of marginalisation of other, perhaps more pressing, matters.⁴⁵⁷ Unhealthy competition for funds between CSOs may, moreover, prevent efficient and transparent cooperation among CSOs for a common good.⁴⁵⁸

As CSOs are often guided in their operations by the 'results' to be demonstrated to the donor agency, there may be a risk that the priorities and perspectives of the local CSOs representing local rights-holders become over-shadowed by an approach selected by the funding agency.⁴⁵⁹ It is, therefore, often argued, that donor-driven dependency and short-term term programming in terms of securing funding may undermine CSOs legitimacy and accountability to its beneficiaries, leading CSOs to being less participatory and more top-down oriented. Participation may, in other words, clash with organisational interests. While participation implies collegial equality, predetermined and top-down development targets as well as hierarchy in organisations may hinder meaningful engagement, influence and ownership.⁴⁶⁰

Therefore, while CSOs may exercise substantial power in relation to their beneficiaries, the institutions and participants of such civil society groupings may, as noted by J. Mertus, 'run against the most basic rule of democracy, namely, to govern with the consent of the governed'.⁴⁶¹ As one author describes, '[i]n the name of women, though not having been elected by them, NGOs speak out against religion, patriarchy, and traditional forms of sex discrimination'.⁴⁶²

Where this happens, as is the case also with many other NSAs, there is an ideological challenge that NGOs, in particular, are perceived as paternalistic, only promoting Western values of universality of human

⁴⁵⁵ Uvin P., *Human Rights and Development* (Bloomfield: Kumarian Press, 2004) 103 and 161. For a discussion on NGOs as 'public service sub-contractors', see, Mertus J., 'From Legal Transplants to Transformative Justice: Human Rights and the Promise of Transnational Civil Society' (1999) 14 *American University International Law Review* 5, 1335-1389, at 1376-1377.

⁴⁵⁶ For a discussion and examples, see, e.g., Lehr-Lehnardt R., 'NGO Legitimacy: Reassessing Democracy, Accountability and Transparency' (2005) Cornell Law School Inter-University Graduate Student Conference Papers, Paper 6, at 28 and 34, available at <http://scholarship.law.cornell.edu/lps_clacp/6> last accessed on 15 April 2014.

⁴⁵⁷ Lehr-Lehnardt, *ibid*, 34.

⁴⁵⁸ Oesterle D. A., 'A Clear-Headed Look at NGOs' (2002) 13 *Colorado Journal of International Environmental Law and Policy* 1, 129-139, at 131; and Lehr-Lehnardt, *ibid*, 34.

⁴⁵⁹ Katsui H., Ranta E. M., Yeshanew A. S., Musila M., Mustaniemi-Laakso M. and Sarelin A., *Reducing Inequalities: Finnish development cooperation in Ethiopia and Kenya with special focus on gender and disability* (Åbo: Institute for Human Rights at the Åbo Akademi University, 2014).

⁴⁶⁰ Newman K., *Challenges and dilemmas in integrating human rights-based approaches and participatory approaches to development: an exploration of the experiences of ActionAid International* (University of London, 2011); and Katsui et al, *ibid*.

⁴⁶¹ Mertus J., 'From Legal Transplants to Transformative Justice: Human Rights and the Promise of Transnational Civil Society' (1999) 14 *American University International Law Review* 5, 1335-1389, at 1375.

⁴⁶² Lehr-Lehnardt R., 'NGO Legitimacy: Reassessing Democracy, Accountability and Transparency' (2005) Cornell Law School Inter-University Graduate Student Conference Papers, Paper 6, at 15, available at <http://scholarship.law.cornell.edu/lps_clacp/6> last accessed on 15 April 2014.

rights, instead of translating human rights into local realities and needs. In part, this may be due, *inter alia*, to the increased professionalism in CSO operations, which, while *per se* positive, may have as its consequence growing elitism and empirical alienation by CSOs from the issues that their programmes deal with.⁴⁶³

Such gaps in representativeness may also be explained by the North-South split of CSO operations, with large and well-funded mostly Northern NGOs dominating the global and local agendas and ideas of CSO operations for the South without true socio-political contextual understanding of the needs and interests of the intended beneficiaries. As J. Mertus describes this problem, '[q]uite simply, well-financed western NGOs are likely to have more power than their poorer and non-western counterparts, and the lack of transparency and accountability in transnational civil society is likely to keep this power unchecked. There is little incentive for powerful NGOs to recognise this imbalance, and less powerful groups can be so marginalised that their protests are not heard'.⁴⁶⁴

e) *Accountability, sustainability and effectiveness*

An overly strong reliance on CSOs in service delivery may lead to a significant human rights accountability gap in the realisation of economic, social and cultural rights.⁴⁶⁵ While governments are accountable to rights-holders within their jurisdictions, CSOs, as NSAs, are not bound by human rights treaties, being primarily accountable to their funding institutions, not to the individuals their operations target. As service delivery by CSOs is based on voluntarism and is often not fully transparent, individuals have, subsequently, and in the absence of proper monitoring and evaluation systems,⁴⁶⁶ little or no possibilities to hold such them to account. For example, in situations where the core content of their human rights is not being met, where CSO operations are impeding the realisation of their human rights or where their right to participation in matters affecting them is not realised.

In addition, when a significant share of service-delivery within a certain sector is vested in voluntary organisations dependent on external funding, issues of sustainability are likely to arise. In the absence of economic and institutional mechanisms to ensure continuity, largely project-based CSO activities may risk undermining stability within societies, communities and families. In terms of aid efficiency, it is essential that CSO activities are properly coordinated to prevent overlap and to enable synergies between different operations to avoid unproductive use of human and material resources, as well as to fill demand gaps.

⁴⁶³ For a discussion, see, e.g., Slim H., 'By What Authority: The Legitimacy and Accountability of Non-governmental Organizations', paper presented by International Council on Human Rights Policy at the International Meeting of Global Trends and Human Rights-Before and after September 11 (Geneva, 10-12 January 2002), available at <<http://www.gdrc.org/ngo/accountability/by-what-authority.html>> last accessed on 14 April 2014; and Lehr-Lehnardt, *ibid*, at 21.

⁴⁶⁴ Mertus J., 'From Legal Transplants to Transformative Justice: Human Rights and the Promise of Transnational Civil Society' (1999) 14 *American University International Law Review* 5, 1335-1389, at 1385.

⁴⁶⁵ See, e.g., Shamsul Haque M., 'The Changing Balance of Power between the Government and NGOs in Bangladesh' (2002) 23 *International Political Science Review* 4, 411-435, at 425-427.

⁴⁶⁶ See, e.g., Uvin P., *Human Rights and Development* (Bloomfield: Kumarian Press, 2004) 103.

VIII. International financial institutions

A. General context – the main international financial institutions

In the following sections we outline the status and functions of four of the most important international financial institutions (IFIs), the World Bank (WB), the International Monetary Fund (IMF), the European Investment Bank (EIB) and the European Bank for Reconstruction and Development (EBRD). The EU engages with IFIs, with the EIB as lead player, in joint meetings with the WB, the IMF, the EBRD and other multilateral financial institutions to support the UN's development agenda.⁴⁶⁷ Examples of EU engagement are referenced in this Chapter but will be explored in more depth in later reports. In this report we focus on the extent to which these most powerful of international institutional NSAs have duties or responsibilities to protect human rights and mitigate adverse impacts of their activities.

At the outset it is important to reaffirm that we have classified IFIs as NSAs in Chapter II.B. of the general part of the report above, because, although they have been established by states (in the case of the EIB by the EU itself), and states play, to varying degrees, a role in their governance, they have a considerable degree of independence and operate in the financial markets.⁴⁶⁸

One other common feature has been a degree of uncertainty over the obligations IFIs have under international human rights law (whether as international organisations or bodies acting independently of the states that created them).⁴⁶⁹ The result has been a vacuum in the external regulation of IFI activities even where they have adverse human rights impacts.

In recent times, NGOs in particular, have targeted their advocacy at IFIs.⁴⁷⁰ There have also been an increasing number of references to IFIs and their impacts (real or potential) on human rights in the General

⁴⁶⁷ See a recent press release on the Spring 2014 meeting available at <<http://www.eib.org/infocentre/events/all/imf-world-bank-spring-meetings.htm>> last accessed on 15 June 2014.

⁴⁶⁸ See the EIB website, available at <<http://www.eib.org/about/structure/index.htm>> last accessed on 29 July 2014.

⁴⁶⁹ See Clapham A., *Human Rights Obligations of Non-State Actors* (Oxford: OUP, 2006) 156.

⁴⁷⁰ See, e.g, Amnesty International and others, 'Joint Statement to the UN Human Rights Council: The World Bank and other International Financial Institutions Must Uphold Human Rights in all Activities They Support' (2013) available at <<http://globalinitiative-escr.org/the-world-bank-and-other-international-financial-institutions-must-uphold-human-rights-in-all-activities-they-support>> last accessed on 12 February 2014; the work of Human Rights Watch in relation to the World Bank, available at <www.hrw.org/topic/business/world-bank-imf> last accessed on 12 February 2014.

Comments of the UN treaty-monitoring bodies.⁴⁷¹ In addition, a number of Special Rapporteurs have carried out missions to the institutions.⁴⁷²

In the light of these developments, in the mapping part of the Chapter, we will then turn to the positive and negative human rights impacts of IFI activities which have been subject of heightened scrutiny from human rights monitoring bodies and NGOs.

1. The World Bank and the International Monetary Fund

The WB and the IMF (the 'Bretton Woods institutions') were established in the wake of World War II. The WB is the world's leading Multilateral Development Bank (MDB).⁴⁷³ It has an independent legal and operational status with a mandate to provide loans, advice, and other services to developing countries in order to promote their economic and social development. While the IMF was initially intended to be an overseer of the international monetary system, particularly the exchange rates fixed by states and the justification of those rates, thereby ensuring macroeconomic stability, it has evolved 'from a monetary organisation into a macro-economically oriented development financing institution'.⁴⁷⁴

Like other NSAs, the WB and IMF are not parties to international human rights treaties and hence have traditionally been understood (at least by themselves) not to be subject directly to binding obligations in those instruments.⁴⁷⁵ Until relatively recently, both the IMF and the WB have been resistant to recognising the links between human rights and their activities under their governing charters. This is largely attributable to concerns about the scope of their respective mandates, as well as a preoccupation with preserving their independence from the UN and other international organisations. The logic of such positions has meant that, where human rights obligations have been perceived as hindering economic development, as defined by the IFI in question, the latter may be privileged over the former on mandate-based grounds.⁴⁷⁶ As F. Gianviti notes, 'the Fund and the Bank saw themselves as purely technical and financial organisations, whose Articles of Agreement prevented them (explicitly in the case of the Bank,

⁴⁷¹ See, e.g., UN Committee on Economic, Social and Cultural Rights (UNCESCR), 'General Comment 12 on the Right to Adequate Food' (1999) UN Doc E/C.12/1999/5, para. 41; UNCESCR, 'General Comment 13 on the Right to Education' (1999) UN Doc E/C.12/1999/10, para. 60; UNCESCR, 'General Comment 14 on the Right to the Highest Attainable Standard of Health' (2000) UN Doc E/C.12/2000/4, paras. 39-64; UNCESCR, 'General Comment 15 on the Right to Water' (2002) UN Doc E/C.12/2002/11, para. 41; UN Committee on the Rights of the Child (UNCRC), 'General Comment 5 on General Measures of Implementation of the Convention on the Rights of the Child' (2003) UN Doc CRC/GC/2003/5 para 64; UNCRC, 'General Comment 16 on State Obligations on the Impact of Business on Children's Rights' (2013) UN Doc CRC/C/GC/16, para. 47.

⁴⁷² UN Human Rights Council (UNHRC), 'Report of the Special Rapporteur on Adequate Housing, Mission to the World Bank' (2013) UN Doc A/HRC/22/46/Add.3; UNHRC, 'Report of the Special Rapporteur on the Right to Health, Missions to the World Bank and the International Monetary Fund' (2008) UN Doc A/HRC/7/11/Add.2.

⁴⁷³ The other MDBs are independent regional development banks: the European Bank for Reconstruction and Development (EBRD); the African Development Bank; the Asian Development Bank; and the Inter-American Development Bank. Further details available at <<http://web.worldbank.org>> last accessed on 15 June 2014.

⁴⁷⁴ McBeth A., 'A Right by any Other Name: The Evasive Engagement of International Financial Institutions with Human Rights' (2009) 40 *George Washington International Law Review* 4, 1101-1156, at 1117.

⁴⁷⁵ For an overview of the arguments historically made against the World Bank and IFI's subjection to human rights standards, see Skogly S., *The Human Rights Obligations of the World Bank and International Monetary Fund* (London: Cavendish, 2001); Clapham A., *Human Rights Obligations of Non-State Actors* (Oxford: OUP, 2006) 142-152.

⁴⁷⁶ Clapham A., *Human Rights Obligations of Non-State Actors* (Oxford: OUP, 2006) 156.

implicitly in the case of the Fund) from taking political considerations into account in their decision'.⁴⁷⁷ While this view has been extensively challenged, and even these IFIs themselves have acknowledged that human rights are becoming an ever more central part of their work, the WB and IMF remain largely immune in terms of external accountability for human rights violations caused directly or indirectly by their activities.⁴⁷⁸

Moreover, despite a growing use of poverty and social impact indicators and analyses - reflecting a consciousness of the potential adverse impacts of their programmes on human rights and a determination to minimise any harm from the outset - it is notable that neither body has instituted an overarching operational policy on human rights.⁴⁷⁹ Both the WB and IMF have, however, established quasi-independent accountability mechanisms that can be used by complainants seeking to highlight, and to access redress for, negative human rights impacts of those bodies' activities.

Turning first to the WB, an Inspection Panel was established in 1993. The Panel's primary role is to promote compliance by staff and management with the binding terms of the WB's Operational Policies.⁴⁸⁰ The process begins when the Panel receives a 'Request for Inspection' from a party of two or more requesters, claiming that the WB has violated its policies and procedure.⁴⁸¹ A. McBeth has highlighted the key shortcoming of the Panel in terms of human rights:⁴⁸²

'... the Panel's mandate is strictly limited to the existing operational policies and procedures of the World Bank (...) The obvious limitation on the Inspection Panel as a defender and enforcer of human rights is the content of the policies, which (...) are inadequate in a number of areas and are far from comprehensive in terms of the scope of human rights covered'.

Critics have identified other problems with the Panel process including, *inter alia*: interference by the WB's management directed at impeding the process; obstructing the truth and discrediting the Panel's

⁴⁷⁷ Gianviti F., 'Economic, Social and Cultural Human Rights and the International Monetary Fund' in Alston P. (ed), *Human Rights and Non-State Actors* (Oxford: OUP, 2005) 113-140, 115.

⁴⁷⁸ See, e.g., Dañino R., 'The Legal Aspects of the World Bank's Work on Human Rights: Some Preliminary Thoughts' in Alston P. and Robinson. M. (eds), *Human Rights and Development: Towards Mutual Reinforcement* (Oxford: OUP, 2005) 509-534, at 511 and 519. Concern has been expressed, however, that the growing reference by IFIs to human rights are mere lip-service. In the context of the World Bank, Galit Sarfaty argues that 'human rights concerns are not systematically incorporated into the everyday decision making of the staff or consistently taken into consideration in lending; incorporation of human rights is ad hoc and at the discretion of employees. In addition, many employees consider it taboo to discuss human rights in everyday conversation and to include references to them in their project documents. The marginality of human rights stands in contrast to the Bank's rhetoric in official reports and public speeches by its leadership, which have supported human rights', in Sarfaty G., 'Why Culture Matters in International Institutions: the Marginality of Human Rights at the World Bank' (2009) 103 *American Journal of International Law* 4, 647-681, at 648.

⁴⁷⁹ McBeth A., 'A Right by Any Other Name: the Evasive Engagement of International Financial Institutions with Human Rights' (2009) 40 *George Washington International Law Review* 5, 1101-1156, at 1103. For more on this claim in the context of the World Bank, see Sarfaty, *ibid*, 647-648.

⁴⁸⁰ Darrow M., *Between Light and Shadow: The World Bank, the International Monetary Fund and International Human Rights Law* (Oxford: Hart Publishing, 2003) 66.

⁴⁸¹ The full request process can be consulted at <<http://ewebapps.worldbank.org/apps/ip/Pages/Processing-a-Request.aspx>> last accessed 13 February 2014.

⁴⁸² McBeth A., 'A Right by Any Other Name: the Evasive Engagement of International Financial Institutions with Human Rights' (2009) 40 *George Washington International Law Review* 4, 1101-1156, at 1147.

work; unequal access to Panel procedures and the lack of a role for petitioners in the process; structural obstacles to claim making, including the technical nature of the process and the loan-bound nature of the process; and exclusion of claims on procedural grounds.⁴⁸³ A final issue is the Panel's limited powers of relief. The Panel simply produces a report including its findings but it is the WB Board of Directors that is empowered to decide what (if any) remedial measures will be taken.⁴⁸⁴ Ultimately, while there are several human rights-related 'safeguard policies' with which projects have to comply, there is a lack of accountability for direct or indirect adverse human rights impacts resulting from the WB's activities.⁴⁸⁵

Next, turning to the IMF, an Independent Evaluation Office (IEO) was established in 2001. According to its terms of reference, the role of the IEO is to:⁴⁸⁶

'systematically conduct objective and independent evaluations on issues, and on the basis of criteria, of relevance to the mandate of the Fund. It is intended to serve as a means to enhance the learning culture within the Fund, strengthen the Fund's external credibility, and support the Executive Board's institutional governance and oversight responsibilities'.

Therefore, the IEO was not conceptualised as a human rights accountability mechanism that complainants might employ to challenge negative human rights impacts of IMF activities. Indeed, there are serious deficiencies in the IEO's capacity to regulate and address human rights violations resulting from such activities. Not only do the IEO's terms of reference not explicitly refer to human rights considerations, but also the IEO fails to provide access to those who consider themselves victims, although such victims may be consulted by the IEO when carrying out evaluations, providing them with the opportunity to raise human rights concerns.⁴⁸⁷ Another limitation relates to the independence of the IEO. The IEO's Director is appointed by the IMF Executive Board and reports to them. Ultimately the Director can be removed by that Board. Operationally the IEO is dependent on funding approved by the Board. Taken together, all of this means that there is clear scope for Board interference with the IEO's proclaimed 'independence'.⁴⁸⁸ Its powers are also extremely limited. The IEO can only make recommendations based on its evaluation

⁴⁸³ For more on these points, see Wahi N., 'Human Rights Accountability of the IMF and the World Bank: A Critique of Existing Mechanisms and Articulation of a Theory of Horizontal Accountability' (2006) 12 *University of California Davis Journal of International Law and Policy* 2, 331-405. For more on the shortcomings of the Inspection Panel process, see van Genugten W., 'Tilburg Guiding Principles on World Bank, IMF and Human Rights' in van Genugten W., Hunt P. and Mathews S. (eds) *World Bank, IMF and Human Rights* (Nijmegen: Wolf Legal Publishers, 2003) 249, at 250.

⁴⁸⁴ Lukas K., 'The World Bank Inspection Panel' in Linder B., Lukas K. and Steinkellner A., *The Right to Remedy* (Vienna: Ludwig Boltzmann Institute of Human Rights Publication Series, 2013), 26, at 39.

⁴⁸⁵ These policies are available at <<http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTSAFEPOL/0,,contentMDK:23277451~pagePK:64168445~piPK:64168309~theSitePK:584435,00.html>> last accessed on 14 February 2014.

⁴⁸⁶ Independent Evaluation Office, International Monetary fund, Terms of Reference, available at <www.ieo-imf.org/ieo/pages/TermsOfReference.aspx> last accessed 13 February 2014.

⁴⁸⁷ McBeth A., 'A Right by Any Other Name: the Evasive Engagement of International Financial Institutions with Human Rights' (2009) 40 *George Washington International Law Review* 4, 1101-1156, at 1153-1154.

⁴⁸⁸ Wahi N. 'Human Rights Accountability of the IMF and the World Bank: A Critique of Existing Mechanisms and Articulation of a Theory of Horizontal Accountability' (2006) 12 *University of California Davis Journal of International Law and Policy* 2, 331-405, at 361.

of IMF projects. It has no power to give binding decisions if it judges the IMF's actions to be *ultra vires* or improper.⁴⁸⁹

In sum, although there is growing reference to human rights by the WB and the IMF in their policies and public pronouncements, we are still far from seeing 'internalisation' of human rights in their processes. Furthermore, there is still only very limited scope for accountability and redress with regard to WB or IMF activities that have adverse human rights impacts.

2. The European Investment Bank

The European Investment Bank (EIB) describes itself as 'the EU bank'. It is an IFI but is not the regional equivalent of the WB because its ambit extends beyond development. The regional MDB is the European Bank for Reconstruction and Development (EBRD), discussed below. The EIB is capitalised by, and represents, the interests of EU member states who are its members.⁴⁹⁰ Its task is 'to contribute, by having recourse to the capital market and utilising its own resources, to the balanced and steady development of the internal market in the interest of the Union'.⁴⁹¹ It does so through the granting of loans and the giving of guarantees which facilitate the financing of projects both within and outside EU member states. In contrast to the founding instruments of the IMF and the WB, those of the EIB make a clear connection between its activities and human rights. In its Statement of Environmental and Social Principles and Standards, the EIB states that:⁴⁹²

'[t]he EIB restricts its financing to projects that respect human rights and comply with EIB social standards, based on the principles of the Charter of the Fundamental Rights of the European Union and international good practices. The Bank does not finance projects located in countries declared 'off-limits' by the European Council for EU financing, particularly due to violations of human rights'.

As a creature of the EU legal order, the EIB has legal personality, is bound by the EU treaties and the Charter of Fundamental Rights (CFREU).⁴⁹³ Overall, indeed, the EIB operates 'in order to ensure that its various activities support and implement EU policies', whether alone or in tandem with other sources of financing.⁴⁹⁴ The mandate of the EIB extends beyond the EU, in the framework of the Union's external relations policies, in particular development cooperation: 'this implies striving to fulfil the EU external relations objectives listed in Article 21 TEU, among which feature human rights, as well as the protection of the environment'.⁴⁹⁵

⁴⁸⁹ *Ibid*, at 361.

⁴⁹⁰ See, e.g., the EIB website available at <www.eib.org/about> last accessed on 15 June 2014.

⁴⁹¹ Art. 309 TFEU.

⁴⁹² EIB, 'The EIB Statement of Environmental and Social Principles and Standards' (2009), available at <http://www.eib.org/attachments/strategies/eib_statement_esps_en.pdf> last accessed on 6 May 2014, para 46.

⁴⁹³ Arts. 308-309 TFEU. The EIB's Statute is a Protocol attached to the EU treaties.

⁴⁹⁴ EIB, 'Complaints Mechanism: Principles, Terms of Reference and Rules of Procedure' (2012 version), 4, available at <http://www.eib.org/attachments/strategies/complaints_mechanism_policy_en.pdf> last accessed on 14 April 2014.

⁴⁹⁵ Hachez N. and Wouters J., 'A Responsible Lender? The European Investment Bank's Environmental, Social and Human Rights Accountability' (2012) 49 *Common Market Law Review* 1, 47-95, at 47 and 51.

N. Hachez and J. Wouters note, however, that it is unclear what influence EU human rights rules may have on the EIB's lending activities given its operational and financial autonomy and wide margin of appreciation in its operations, as well as the fact that the status of EU law is unclear when it operates under its external mandate.⁴⁹⁶ The EIB lacks a self-standing human rights policy but it has issued 'statements of principles' aiming to spell out the standards and practices which it commits to apply in the course of its lending operations and these are founded, amongst other things, on rights in the CFREU.⁴⁹⁷ The EIB has stated that it is committed to 'continuously improve its social and environmental performance standards in a manner that protects and promotes human well-being (...) The EIB's approach to human rights is focused on respect for environmental, social and economic rights in direct link with EIB-financed projects'.⁴⁹⁸ As part of this, it has sought to review its project social performance standards in light of the UN Guiding Principles on Business and Human Rights. Also, in its most recent Environmental and Social Handbook, the EIB outlines its intention to mitigate and remedy human rights violations. It does not, however, require that a stand-alone human rights assessment should be carried out in relation to all EIB activities.⁴⁹⁹

Despite being a creature of the EU legal order, the EIB largely escapes the jurisdiction of the Court of Justice.⁵⁰⁰ However, like the WB and IMF, the EIB has an institutional accountability mechanism that can be employed by those concerned about the implications of its activities for human rights. Under this procedure 'any person or group, including civil society organisations, who allege there may be a case of maladministration within the EIB Group, can lodge a complaint'.⁵⁰¹ This is a two-tier process, initially involving the (internal) EIB Complaints Mechanism Division (EIB-CM) and, if the EIB-CM fails to find a satisfactory answer, the (external) European Ombudsman.⁵⁰² From a human rights perspective, it is

⁴⁹⁶ *Ibid*, pp.47, 62, 63, 94. The EIB itself states that 'the EIB ensures that its activities respect EU policies and laws. In countries where these are not applicable, the EIB uses EU policies and laws as the best reference when carrying out its activities. In its day-to-day operations the EIB also takes into account standards and practices applied by the banking and financial community, particularly in areas not covered directly by EU law' in EIB, 'Complaints Mechanism: Principles, Terms of Reference and Rules of Procedure' (2012 version) 4.

⁴⁹⁷ Hachez and Wouters, *ibid*, 70.

⁴⁹⁸ EIB, 'The EIB approach to human rights' (25 May 2011), available at <www.eib.org/infocentre/press/news/all/business-and-human-rights.htm> last accessed on 14 February 2014.

⁴⁹⁹ EIB, 'Environmental and Social Handbook' (2013 version), available at <www.eib.org/attachments/strategies/environmental_and_social_practices_handbook_en.pdf> last accessed on 14 February 2014. The Handbook provides an operational translation of the policies and principles contained in the 2009 EIB Statement of Environmental and Social Principles and Standards and came into operation on 1 January 2014.

⁵⁰⁰ For more on this point, see Hachez N. and Wouters J., 'A Responsible Lender? The European Investment Bank's Environmental, Social and Human Rights Accountability' (2012) 49 *Common Market Law Review* 1, 47-95.

⁵⁰¹ EIB, 'Complaints Mechanism', available at <www.eib.org/about/accountability/complaints/index.htm> last accessed on 10 February 2014; EIB, 'Complaints Mechanism: Principles, Terms of Reference and Rules of Procedure' (2012 version), available at <http://www.eib.org/attachments/strategies/complaints_mechanism_policy_en.pdf> last accessed on 14 April 2014, 11.

⁵⁰² Details of the process are set out in EIB, 'Complaints Mechanism: Principles, Terms of Reference and Rules of Procedure', *ibid*. For a discussion of concerns about the weakness of the Ombudsman mechanism, including a discussion of how it may be inaccessible to non-EU citizens or residents, see Hachez N. and Wouters J., 'A Responsible Lender? The European Investment Bank's Environmental, Social and Human Rights Accountability' (2012) 49 *Common Market Law Review* 1, 47-95, at 87.

notable that ‘maladministration’ means poor or failed administration. This occurs when the EIB Group fails to act in accordance with the applicable legislation and/or established policies, standards and procedures, fails to respect the principles of good administration or violates human rights.⁵⁰³ Human rights are defined as ‘the principles of the Charter of Fundamental Rights of the European Union, and the UN Universal Declaration of Human Rights’.⁵⁰⁴ It is notable, however, that ‘decisions concerning the investment mandate of the EIB, its credit policy guidelines or its participation in financing operations’ fall outside the scope of the complaints mechanism, as do allegations of fraud and corruption that are dealt with by another mechanism.⁵⁰⁵

This is ultimately a weak accountability process. Although the EIB-CM prepares a final Conclusions Report and formulates recommendations and proposed corrective actions (if any), it is up to the Management Committee whether or not to apply them.⁵⁰⁶ Even if the European Ombudsman makes a finding that the EIB has committed maladministration the EIB can reject their recommendations.⁵⁰⁷ We can therefore concur with N. Hachez and J. Wouters, that, overall, ‘human rights considerations are (...) weakly embedded in the EIB’s appraisal and monitoring process’.⁵⁰⁸

3. The European Bank for Reconstruction and Development

Apart from the EIB, another player on the international financial field is the European Bank for Reconstruction and Development (EBRD). The EBRD was established in 1991 for the purpose of providing project financing for banks, industries and businesses in the post-Cold War era in Central and Eastern Europe. For over twenty years it has been providing loans and equity finance, guarantees, leasing facilities and trade finance through support programmes. The EBRD’s relationship with the EU is multi-faceted. The EU owns 3% of the capital of the EBRD and, apart from that, the EU, EIB and EU member states collectively own 62.8% of its capital.⁵⁰⁹ It operates as an independent regional development bank coordinating its activities with the other MDBs.

The EBRD’s preamble states that contracting parties are ‘committed to the fundamental principles of multiparty democracy, the rule of law, respect for human rights and market economies’. It further describes the EBRD’s mission as facilitating the transition of the states concerned to market economies.⁵¹⁰ However, as is the case with the EIB, the EBRD lacks a self-standing human rights policy and the emphasis on human rights in its mandate is rather narrow. According to the EBRD:⁵¹¹

⁵⁰³ EIB, ‘Complaints Mechanism: Principles, Terms of Reference and Rules of Procedure’, *ibid*, 5.

⁵⁰⁴ EIB, ‘The EIB Statement of Environmental and Social Principles and Standards’ (2009) para. 30.

⁵⁰⁵ EIB, ‘Complaints Mechanism: Principles, Terms of Reference and Rules of Procedure’ (2012 version) 6.

⁵⁰⁶ *Ibid*, 13.

⁵⁰⁷ *Ibid*, 18.

⁵⁰⁸ Hachez N. and Wouters J., ‘A Responsible Lender? The European Investment Bank’s Environmental, Social and Human Rights Accountability’ (2012) 49 *Common Market Law Review* 1, 47-95, at 70.

⁵⁰⁹ EBRD, ‘The European Union and EBRD’, 31 December 2012, available at <<http://www.ebrd.com/downloads/research/factsheets/EU.pdf>> last accessed on 4 June 2014.

⁵¹⁰ World Bank/OECD, ‘Integrating Human Rights into Development: Donor Approaches, Experiences, and Challenges’ (2nd ed), 2013, 13, available at <<http://elibrary.worldbank.org/doi/abs/10.1596/978-0-8213-9621-6>> last accessed on 4 June 2014.

⁵¹¹ EBRD, ‘Political Aspects of the Mandate of the European Bank for Reconstruction and Development’, available at <<http://www.ebrd.com/downloads/about/aspects.pdf>> last accessed on 4 June 2014. Further reference documents

‘References to human rights are in fact found in the Preamble, although not in the Agreement itself. This drafting choice was deliberate. It does not exclude human rights from the scope of the political aspects of the Bank’s mandate, but it indicates that only those rights which, in accordance with international standards, are essential elements of multiparty democracy, pluralism and market economics should be considered when evaluating a country’s progress’.

On 7 May 2014, the EBRD Board of Directors approved revisions to three major governance policies (the Environmental and Social Policy, Public Information Policy, and Project Complaint Mechanism Rules of Procedure),⁵¹² the drafts of which had received criticism from NGOs for departing from the EBRD’s previous human rights commitments.⁵¹³ The draft policies merely required the EBRD to follow ‘good international practice’ rather than specific international environmental and human rights law and standards. Under the revised policies, ‘the EBRD will not knowingly finance projects that would contravene country obligations under relevant international treaties and agreements related to environmental protection, human rights, and sustainable development’.⁵¹⁴

The EBRD Project Complaints Mechanism (PCM) has been established as a means of ensuring ‘accountability, integrity and anti-corruption’.⁵¹⁵ It has replaced the previous Independent Recourse Mechanism and is overseen by the EBRD’s Chief Compliance Officer. However, although the PCM is designed to improve accountability and good governance, its procedural rules do not explicitly refer to human rights.⁵¹⁶ Nevertheless, it does include a Stakeholder Forum with representatives from CSOs.⁵¹⁷

B. Human rights impacts

1. Positive human rights impacts

Each of the IFIs discussed above contribute positively to the realisation of human rights by providing financing for development projects. For example, the WB notes that while it is ‘not an enforcer of human rights’, it may play ‘a facilitative role in helping its members realize their human rights obligations’ by ‘contributing to the promotion of human rights in different areas, e.g., improving poor people’s access to health, education, food and water; promoting the participation of indigenous peoples in decision-making

in terms of human rights within EBRD’s policies are, notably: ‘Political Aspects of the European Bank for Reconstruction and Development Mandate in Relation to Ethnic Minorities’ (1993); ‘Environmental and Social Policy’ (2008); and ‘Gender Action Plan’ (2010).

⁵¹² Available at: <<http://www.ebrd.com/pages/about/integrity.shtml>> last accessed on 29 July 2014.

⁵¹³ See HRW, ‘European Bank for Reconstruction and Development: Draft Environment and Social Policy Retreats on Human Rights’, 5 March 2014, available at <<http://www.hrw.org/news/2014/03/05/european-bank-reconstruction-and-development-draft-environment-and-social-policy-ret>> last accessed on 4 June 2014. This document also provides a good overview of other issues related to the EBRD’s approach to human rights.

⁵¹⁴ *Ibid.*

⁵¹⁵ See the EBRD web pages, available at <<http://www.ebrd.com/pages/about/integrity.shtml>> last accessed on 29 July 2014.

⁵¹⁶ The EBRD PCM Rules of Procedure are available at <<http://www.ebrd.com/pages/project/pcm.shtml>> last accessed on 29 July 2014.

⁵¹⁷ Available at <<http://www.ebrd.com/pages/project/pcm.shtml>> last accessed on 29 July 2014.

and the accountability of governments to their citizens; supporting justice reforms, fighting corruption and increasing transparency of governments'.⁵¹⁸

The WB's move from 'hard lending' focused on bricks and mortar infrastructure to 'soft lending' centred on human development, institutional reform, and social development, as well as its lending vis-à-vis the MDGs, also marks a significant shift paralleled also by the EIB.⁵¹⁹

Similarly, the IMF declares that 'the Fund is indeed promoting human rights through a variety of channels', including its emphasis on poverty reduction, health and education spending, the enhancement of governance and empowerment of civil society.⁵²⁰

However, IFIs have been criticised for a rather simplistic 'development/poverty reduction equals advancement of human rights' approach.⁵²¹

A key feature of the poverty reduction activities of IFIs since 1999 has been the Poverty Reduction Strategy Paper (PRSP) process which was introduced as a condition of eligibility for debt relief amongst Heavily Indebted Countries 'but is now ubiquitous in the development context'.⁵²² The aim of the PRSPs is to increase national ownership of poverty strategies and to ensure participation (and hence empowerment) of the poor - national ownership and participation also being expected to increase the effectiveness of IFI strategies and policies.

M. Darrow, writing in 2003, employed a useful model in which WB and IMF impacts/interventions could be divided into three levels of activities: (1) 'direct or focused actions' on human rights; (2) 'indirect or inclusive actions' that seek to benefit broad population groups including poor people and that address human rights-related issues such as distributional equity and barriers to participation, and; (3) 'enabling

⁵¹⁸ WB, 'FAQs, Human Rights', available at <<http://web.worldbank.org/WBSITE/EXTERNAL/EXTSITETOOLS/0,,contentMDK:20749693~pagePK:98400~piPK:98424~theSitePK:95474,00.html>> last accessed 14 February 2014.

⁵¹⁹ See, e.g., Dañino R., 'The Bank's Work on Human Rights: Some Preliminary Thoughts' in Alston P. and Robinson M. (eds), *Human Rights and Development: Towards Mutual Reinforcement* (Oxford: OUP, 2005) 509-534, at 514.

⁵²⁰ Taplin G., 'Speaking Points: Globalisation and its Impact on the Full Enjoyment of Human Rights, Speech to Sub-Commission on the Promotion and Protection of Human Rights' (2001), cited in Clapham A., *Human Rights Obligations of Non-State Actors* (Oxford: OUP, 2006) 140. M. Taplin was Assistant Director at the IMF's Geneva Office.

⁵²¹ See, e.g., R. Dañino's statement that 'development is precisely what the World Bank works for and we believe that this work consistently contributes to the progressive realisation of human rights in our member countries' in Dañino R., 'The Legal Aspects of the World Bank's Work on Human Rights: some Preliminary Thoughts' in Alston P. and Robinson M. (eds), *Human Rights and Development: Towards Mutual Reinforcement* (Oxford: OUP, 2005) 509-534, at 509. See also the statement of World Bank employees, Nankani G., Page J. and Judge L. that 'poverty reduction objectives are, in our opinion, coterminous with the fulfilment of many, although arguably not all, human rights' in Nankani. G. et al., 'Human Rights and Poverty Reduction Strategies: Moving Towards Convergence?' in Alston P. and Robinson M. (eds), *Human Rights and Development: Towards Mutual Reinforcement* (Oxford: OUP, 2005) 475-497, at 483.

⁵²² Alston P. and Robinson M., 'The Challenges of Ensuring Mutuality of Human Rights and Development Endeavours' in Alston P. and Robinson M. (eds), *Human Rights and Development: Towards Mutual Reinforcement* (Oxford: OUP, 2005) 1-18, at 15.

actions' which are structural measures aimed at social, environmental or economic benefits for poor people.⁵²³

⁵²³ Darrow M, *Between Light and Shadow: the World Bank, the International Monetary Fund and International Human Rights Law* (Oxford: Hart Publishing, 2003) 62, citing the work of Stefan de Vylder.

Table 1: Outline of the key measures of the World Bank and IMF that contribute in terms of (2) and (3) to human rights impacts:

	World Bank	IMF
Indirect or inclusive actions	<p>Bank's efforts through lending and technical assistance activities to build effective legal institutions and accountable political institutions at the national level.⁵²⁴</p> <p>Protection afforded under the Bank's social safeguard policies that have human rights-related content.⁵²⁵</p> <p>Poverty reduction programming that ensures participation and empowerment of the poor.</p>	<p>Efficiencies generated by health and education sector reforms in fund-sponsored structural adjustment programmes.⁵²⁶</p> <p>Poverty reduction programming that ensures participation and empowerment of the poor.</p> <p>Rule of law or governance conditionality.⁵²⁷</p>
Enabling actions	<p>The 'human rights flow-on effects from the Bank's Economic and Sector Work ... and technical assistance in connection with structural issues such as trade and fiscal policy, and environmental policy.'⁵²⁸</p>	<p>Ensuring 'macroeconomic stability, market-friendly structural reforms, and good governance' which the Bank views as a pre-requisite to ensuring poverty reduction.⁵²⁹</p> <p>Providing the economic conditions that are a precondition of the achievement of the rights set out in international human rights law instruments.⁵³⁰</p>

Darrow emphasised that, despite a historic refusal to directly address human rights, both the IMF and the WB were capable of contributing in a positive sense on levels 2 and 3, while the WB had also undertaken

⁵²⁴ *Ibid*, 66.

⁵²⁵ *Ibid*.

⁵²⁶ *Ibid*.

⁵²⁷ *Ibid*, 64.

⁵²⁸ *Ibid*, 66.

⁵²⁹ *Ibid*, 63.

⁵³⁰ Gianviti F., 'Economic, Social and Cultural Human Rights and the International Monetary Fund' in Alston, P. (ed), *Human Rights and Non-State Actors* (Oxford: OUP, 2005) 113-140, 137. Gianviti made explicit reference to the ICESCR but this point is also correct in relation to other rights.

a number of level 1 activities.⁵³¹ This approach is useful also for measuring the human rights impacts of other IFIs such as the EIB and EBRD.

In contrast to the IMF, the WB and ERBD (as a regional MDB), our discussion of the EIB's mandate/activities above reveals that the EIB is concerned with level 1 'direct or focused actions' on human rights under Darrow's formulation. Furthermore, it adopts a much more rights-conscious approach in relation to its non-rights-centric 'indirect or inclusive actions' and 'enabling actions' than the WB, EBRD and IMF do. In its Environmental and Social Handbook,⁵³² the EIB focuses on its processes and mechanisms for the operation of a range of standards including those relating to involuntary resettlement, labour standards and vulnerable individuals and groups.

2. Negative human rights impacts

However, while it is clear that the objective of the IFIs include, in a general way, the realisation of human rights, their actions may also pose a serious risk to those rights.⁵³³ The Special Rapporteur on the Right to Health has noted that IMF and WB 'policies and programmes can reinforce societal divisions and exacerbate conflict if issues such as race, ethnicity and gender are not taken into consideration'.⁵³⁴ It has also been suggested that their policies have been responsible for the emergence or survival of authoritarian regimes and disruption of international peace and security.⁵³⁵ Furthermore, the disproportionate influence wielded by an IFI means that its shareholders may be in a position to weaken the policy sovereignty of governments in low-income countries in such a way as to undermine human rights.⁵³⁶

It has been argued that 'the IMF's capacity to affect human rights conditions is perhaps more modest than the [WB's] given its institutional concern with macroeconomic ... policies, instead of discrete development projects'.⁵³⁷ That said, there are a number of ways in which the IMF's actions can have severe adverse human rights impacts. Examples include the results of conditionality and structural adjustment policies (SAPs), for which both the IMF and the WB have been criticised.⁵³⁸ For example, where short-term SAPs

⁵³¹ Darrow M, *Between Light and Shadow: the World Bank, the International Monetary Fund and International Human Rights Law* (Oxford: Hart Publishing, 2003) 62, 63-66. Darrow refers, *inter alia*, to human rights conditionality and human rights components of the Bank's projects.

⁵³² EIB 'Environmental and Social Handbook' (2013 version) available at <www.eib.org/attachments/strategies/environmental_and_social_practices_handbook_en.pdf> last accessed on 14 February 2014.

⁵³³ Clapham A., *Human Rights Obligations of Non-State Actors* (Oxford: OUP, 2006) 138.

⁵³⁴ UNHRC, 'Report of the Special Rapporteur on the Right to Health: Missions to the World Bank and the International Monetary Fund' (2008) UN Doc A/HRC/7/11/Add.2 para 124.

⁵³⁵ See the discussion in Darrow M., *Between Light and Shadow: the World Bank, the International Monetary Fund and International Human Rights Law* (Oxford: Hart Publishing, 2003) 84 and 106-11.

⁵³⁶ Darrow, *ibid*, 78.

⁵³⁷ Steinhardt R., 'Corporate Responsibility and the International Law of Human Rights: the New Lex Mercatoria' in Alston P., (ed), *Non-State Actors and Human Rights* (Oxford: OUP, 2005) 177-227, at 209.

⁵³⁸ Conditionality is 'the explicit link between the approval or continuation of the Fund's financing and the implementation of certain specific aspects of the government's policy program' in IMF, 'Conditionality in Fund-Support Programs-Policy Issues' (2001) para. 10, cited in Gianviti F., 'Economic, Social and Cultural Human Rights and the International Monetary Fund' in Alston P. (ed), *Human Rights and Non-State Actors* (Oxford: OUP, 2005) note 52. See also UNCHR Sub-Commission for the Prevention of Discrimination and Protection Minorities, 'Report of

impact disproportionately upon funding and programming for key survival-related rights, such as health and social security, the ‘economic argument’ will not be a sufficient ground to justify state implementation of such SAPs under international human rights law.⁵³⁹

Conditionality in IFI programmes has been criticised from a human rights perspective because the conditions sought by IFIs have frequently tended to impact negatively on governments’ social spending, ‘such as demands to cut public-sector payrolls, reduce welfare outlays, and cease subsidizing services’.⁵⁴⁰ The relatively recent introduction of PRSPs does not appear to have resulted in a significant improvement in rendering macroeconomic policy and poverty reduction strategies more ‘poor friendly’, despite the opportunities they allegedly offer in terms of national ownership and participation of the poor. Indeed, F. Stewart and M. Wang have argued that PRSPs have had a low impact in terms of changing the major features of IFI programmes and that PRSP impact on the extent of realised empowerment and changing the rate of poverty reduction has been limited.⁵⁴¹ Thus, while those advancing PRSPs regard them as an ‘aid modality which is consistent with many human rights principles and that there is greater alignment between development strategies and human rights since [their] introduction’, this is certainly not a universally held view.⁵⁴²

Specific criticisms have been made of the adverse human rights impacts of WB projects on, *inter alia*, the right to life, the right to freedom from torture and inhuman and degrading treatment or punishment, the right to a fair trial, the right to freedom of expression, trade union rights, environmental rights, the right to food, water and housing. One area that has received particular attention has been the impact of such development projects on the right to adequate housing. In her 2013 report on her mission to the WB, the UN Special Rapporteur on the Right to Adequate Housing stated that ‘World Bank-supported projects continue to cause substantial numbers of forced evictions, displacements and involuntary resettlements’.⁵⁴³

Critics have challenged IFIs for espousing the ‘neoliberal’ approach of economic liberalisation, deregulation and privatisation associated with the ‘Washington Consensus’.⁵⁴⁴ Such policies lead to rights-

the Special Rapporteur on the Realisation of Economic, Social and Cultural Rights’ (1991) UN Doc E/CN.4/Sub.2/1991/17; UNCHR Sub-Commission for the Prevention of Discrimination and Protection Minorities, ‘Report of Special Rapporteur on the Realisation of Economic, Social and Cultural Rights’ (1992) UN Doc E/CN.4/Sub.2/1992/16.

⁵³⁹ For more on this point, see UN Committee on Economic, Social and Cultural Rights, ‘Letter to States Parties’ (16 May 2012) ref CESCR/48th/SP/MAB/SW.

⁵⁴⁰ McBeth A., ‘A Right by Any Other Name: the Evasive Engagement of International Financial Institutions with Human Rights’ (2009) 40 *George Washington International Law Review* 4, 1101-1156, at 1128.

⁵⁴¹ See Stewart F. and Wang M., ‘Poverty Reduction Strategy Papers within the Human Rights Perspective’ in Alston P. and Robinson M. (eds), *Human Rights and Development: Towards Mutual Reinforcement* (Oxford: OUP, 2005) 447-474, at 467.

⁵⁴² Nankani G. *et al*, ‘Human Rights and Poverty Reduction Strategies: Moving towards Convergence?’ in Alston P. and Robinson M. (eds), *Human Rights and Development: Towards Mutual Reinforcement* (Oxford: OUP, 2005) 475-497, 495.

⁵⁴³ UN Human Rights Council (UNHRC), ‘Report of the Special Rapporteur on Adequate Housing, Mission to the World Bank’ (2013) UN Doc A/HRC/22/46/Add.3 para 15.

⁵⁴⁴ Reinisch A., ‘The Changing International Legal Framework for Dealing with Non-state Actors’ in Alston P., (ed), *Human Rights and Non-State Actors* (Oxford: OUP, 2005) 37-92, at 77.

related resources such as housing and food being ‘financialised’ or ‘marketised’. Even prior to the global financial crisis, it was evident that the promotion of such principles by IFIs was contributing to a situation where human rights were increasingly threatened by state actors and the economic policies and models advanced by them were the subject of extensive criticism.⁵⁴⁵ The sheer scale of adverse human rights impacts of such IFI policies, and state responses to them, is becoming increasingly evident.⁵⁴⁶

The IMF has argued that, in times of economic crisis, ‘adjustment is often the best choice—sometimes the only available choice—but while the costs of adjustment are inevitable, they need not fall primarily on the poor, nor compromise human rights. The IMF encourages governments to do everything within their power to protect social expenditures’.⁵⁴⁷ But, as has been evidenced by the form and impacts of adjustments required by the IMF-European Commission-ECB troika of a range of Eurozone countries in the wake of the post-2007 crisis, the impact of adjustment measures will inevitably fall heavily upon the poor, who are most exposed to negative economic conditions.⁵⁴⁸

There is less information on the negative impacts of the EIB on human rights. This seems likely to be attributable, at least in part, to its mandate under the EU treaties and more extensive engagement with human rights. However, the EIB has received criticism from human rights advocates for its fossil fuel loans, as well as its provision of funding for projects based in countries where serious human rights abuses have occurred or where it supports projects that will only benefit elites.⁵⁴⁹

⁵⁴⁵ *Ibid*; see also UNCHR Sub-Commission for the Prevention of Discrimination and Protection Minorities, ‘Report of Special Rapporteur on the Realisation of Economic, Social and Cultural Rights’ (1992) UN Doc E/CN.4/Sub.2/1992/16.

⁵⁴⁶ For a useful overview of the impacts of the crises and state responses thereto on economic and social rights, see Sepúlveda M., ‘Alternatives to Austerity: a Human Rights Framework for Economic Recovery’ in Nolan A. (ed), *Economic and Social Rights after the Global Financial Crisis* (Cambridge: CUP, 2014).

⁵⁴⁷ Pereira Leite S., ‘Le Fonds monétaire international et les droits de l’homme’ *Le Monde* (Paris, 4 September 2001), available at <http://www.lemonde.fr/archives/article/2001/09/04/le-fonds-monetaire-international-et-les-droits-de-l-homme_4191860_1819218.html?xtmc=&xtcr=1> last accessed on 6 May 2014. The author was the then Assistant Director of the IMF Office in Europe.

⁵⁴⁸ For more, see Kilpatrick C. and De Witte B. (eds), ‘Social Rights in Crisis in the Eurozone: The Role of Fundamental Rights Challenges’ (2014) EUI Working Paper LAW 2014/05, available at <<http://cadmus.eui.eu/bitstream/handle/1814/31247/LAW%20WP%202014%2005%20Social%20Rights%20final%202242014.pdf?sequence=1>> last accessed on 6 May 2014.

⁵⁴⁹ See, e.g. Carrington D., ‘European Investment Bank criticised for “hypocrisy” of fossil fuel lending’ *The Guardian* (London, 8 December 2011), available at <<http://www.theguardian.com/environment/2011/dec/08/european-investment-bank-fossil-fuel>> last accessed on 6 May 2014. See also, International Rivers, ‘Going After Uganda’s Big, Bad Dam Investors’ (2 February 2010) available at <www.internationalrivers.org/blogs/229/going-after-uganda-s-big-bad-dam-investors> last accessed on 14 February 2014. For more, see the work of CEE Bankwatch, available at <<http://bankwatch.org>> last accessed on 14 February 2014.

IX. Individual human rights defenders

A. General context

The term ‘Human Rights Defender’ (HRD) has been used increasingly since the adoption of the UN Declaration on Human Rights Defenders in 1998,⁵⁵⁰ which served also as a basis for the EU’s understanding of HRDs and for the design of related policies and mechanisms in support of their activities. The UN Declaration is non-binding but it contains a set of principles and rights that are based on human rights standards enshrined in legally binding international instruments, such as the International Covenant on Civil and Political Rights.⁵⁵¹ Article 1 of the UN Declaration states that ‘everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels’. However, even though the UN Declaration is one of the core documents covering HRD activities, it provides neither a precise definition of a ‘human rights defender’ nor sets out a basic conceptualisation of who actually qualifies as a HRD.⁵⁵² It simply refers to ‘individuals, groups and organs of society’ in the title of the General Assembly Resolution.⁵⁵³ Rights under the Declaration extend to everyone individually and in association with others. In practice, this lack of precision of who qualifies as a HRD can be problematic for various reasons.

Firstly, the rather broad interpretation of HRDs can be used to refer to a number of different - even oppositional - actors. A.M. Nah et al. note that: ‘law enforcement agents, for example, can be considered HRDs by virtue of some of their actions. However, this can be disconcerting for human rights activists in the same socio-political milieu, who may also experience them as perpetrators of human rights abuses’.⁵⁵⁴ Secondly, using a broad and rather vague definition of HRDs also has consequences for international organisations and CSOs who engage in supporting the work of HRDs. They have to decide which HRDs deserve to be protected and receive support through the mechanisms at their disposal.

In this respect, the EU Guidelines on HRDs, adopted in 2004 and revised in 2008, are more exclusive, noting that: ‘The definition [of HRDs] does not include those individuals or groups who commit or propagate violence’.⁵⁵⁵

⁵⁵⁰ UN Commission on Human Rights Resolution, 3 March 1998, adopted as UN GA Resolution A/RES/53/144, 8 March 1999.

⁵⁵¹ See the UN Web page on the Declaration available at <<http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx>> last accessed on 15 June 2014.

⁵⁵² Nah, A.M., Bennett K., Ingleton D., and Savage J., ‘A Research Agenda for the Protection of Human Rights Defenders’ (2013) 5 *Journal of Human Rights Practice* 3, 401-420, at 403.

⁵⁵³ UN GA Resolution A/RES/53/144, 8 March 1999. The full title is: *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*.

⁵⁵⁴ Nah A.M., Bennett K., Ingleton D., and Savage J., ‘A Research Agenda for the Protection of Human Rights Defenders’ (2013) 5 *Journal of Human Rights Practice* 3, 401-420, at 403.

⁵⁵⁵ EU Guidelines on Human Rights Defenders, General Affairs Council of 8 December 2008, 2, available at <<http://www.consilium.europa.eu/uedocs/cmsUpload/GuidelinesDefenders.pdf>> last accessed on 6 May 2014, para. 3.

Although the UN Declaration avoids formulating a clear definition of the term HRD, the UN OHCHR has attempted to make certain clarifications and provided guidance on interpreting the term through its Fact Sheet No. 29. This document, published in 2004, outlines three minimum standards which are required from HRDs: (1) accepting the universality of human rights; (2) presenting valid arguments; and (3) conducting peaceful action.⁵⁵⁶

Despite this effort - and the apparent simplicity of these minimum standards - their applicability in a particular context remains complicated. Especially the first minimum requirement in the Fact Sheet, on acceptance of universal human rights, raises questions. For instance, what is considered as a denial of human rights? Does it have to be a vocalised denial of certain human rights or can silent acceptance of social norms and practices that violate certain rights be understood as a denial of these rights?⁵⁵⁷ The Fact Sheet states that a HRD 'cannot deny some human rights and yet claim to be a human rights defender because he or she is an advocate for others. For example, it would not be acceptable to defend the human rights of men but to deny that women have equal rights'.⁵⁵⁸ However, in a specific context - as observed in a case study by R. Jaraisy and T. Feldman - it is indeed complicated to assess a person's acceptance of the universality of human rights in countries, for instance, where discrimination against women is actually a deeply rooted cultural norm.⁵⁵⁹

The definition of HRDs is of particular importance because the UN Declaration places responsibilities on 'everyone'. It emphasises that 'everyone has duties towards and within the community and encourages us all to be human rights defenders'.⁵⁶⁰ Everyone has a positive responsibility to promote human rights, to safeguard democracy and its institutions and a negative obligation not to violate the human rights of others. Moreover, the Declaration makes a special reference to the responsibilities of persons exercising professions that can affect the human rights of others, such as police officers, lawyers, judges, etc.⁵⁶¹

Another important issue is to determine the relationship between HRDs and CSOs. Obviously, HRDs are most easily recognisable when working for CSOs - usually NGOs - with clearly defined goals in terms of human rights and democracy; therefore there is a certain overlap with CSOs in general. However, the term HRD encompasses a far greater and more diverse plethora of actors, including individuals working independently from NGOs and broader CSOs, such as government officials, civil servants or other political activists. Therefore, it is important to realise that working within a professional and employment context, such as under the umbrella of an NGO, is not seen as a precondition for being considered as a HRD. Also,

⁵⁵⁶ UNHCR, Fact Sheet 29 (April 2004) available at <<http://www.refworld.org/docid/479477470.html>> last accessed on 6 May 2014, 9-10.

⁵⁵⁷ Jaraisy R. and Feldman T., 'Protesting for Human Rights in the Occupied Palestine Territory: Assessing the Challenges and Revisiting the Human Rights Defender Framework' (2013) 5 *Journal of Human Rights Practice* 3, 421-434.

⁵⁵⁸ UNHCR, Fact Sheet 29(April 2004) available at <<http://www.refworld.org/docid/479477470.html>> last accessed on 6 May 2014, 9.

⁵⁵⁹ Jaraisy R. and Feldman T., 'Protesting for Human Rights in the Occupied Palestine Territory: Assessing the Challenges and Revisiting the Human Rights Defender Framework' (2013) 5 *Journal of Human Rights Practice* 3, 421-434.

⁵⁶⁰ See the UN Web page on the Declaration available at <<http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx>> last accessed on 15 June 2014.

⁵⁶¹ See UN GA Resolution A/RES/53/144, 8 March 1999, Arts. 10, 11 and 18.

as mentioned above, the UN Declaration on HRDs provides that ‘everyone’ is entitled to enjoy the rights of a HRD ‘individually and in association with others’ irrespective of their legal or formal status.

One further issue concerns the level at which HRDs operate. HRDs can operate, as in most cases, directly at the local or national level, where they aim to protect and promote human rights in their own communities and states. However, HRDs are also recognised as actors at the regional and international level where they, for instance, contribute to monitoring regional and global human rights situations and may submit information to regional and international human rights mechanisms, such as to UN Special Rapporteurs and/or to treaty bodies. HRDs are therefore actors having influence on the local, national, regional and also international level of human rights governance.

B. EU engagement with human rights defenders

In light of the UN Declaration on HRD, the EU understanding of these actors goes into more depth. The EU Guidelines define HRDs as:⁵⁶²

‘[t]hose individuals, groups, and organs of society that promote and protect universally recognised human rights and fundamental freedoms. HRDs seek the promotion and protection of civil and political rights as well as the promotion, protection and realisation of economic, social and cultural rights. Human rights defenders also promote and protect the rights of members of groups such as indigenous communities. The definition does not include those individuals or groups who commit or propagate violence’.

The EU Guidelines describe HRDs as individuals who act to promote and protect civil and political rights and economic and social rights, and the realisation thereof, on behalf of individuals or groups by, *inter alia*: documenting violations; seeking remedies for victims of violations; and combating cultures of impunity ‘which serve to cloak systematic and repeated breaches of human rights and fundamental freedoms’.⁵⁶³

When issuing the Guidelines, the EU stressed that support for HRDs was already a long established feature of its external human rights policy. The purpose of the Guidelines was to put forward practical suggestions, in the form of operational guidelines, for enhancing EU action to promote and protect the work of HRDs in third countries. These operational guidelines provide for: (1) facilitating the work of HRDs on the ground when they are carrying out monitoring, reporting and assessment; (2) guidance to EU Missions in supporting and protecting HRDs; (3) promotion of respect for HRDs in relations with third countries and in multilateral fora; (4) support for Special Procedures of the UN Commission on Human Rights, including the Special Representative on HRDs; (5) practical support for HRDs including through development policy; and (6) oversight by the Council Working Party on Human Rights (COHOM).⁵⁶⁴

⁵⁶² EU Guidelines on Human Rights Defenders, General Affairs Council of 8 December 2008, 2, available at <<http://www.consilium.europa.eu/uedocs/cmsUpload/GuidelinesDefenders.pdf>> last accessed on 6 May 2014, para. 3.

⁵⁶³ *Ibid*, paras. 3-4.

⁵⁶⁴ *Ibid*, paras. 8-14.

The HRD Guidelines also suggest that the human rights dialogues between the EU and third countries and regional organisations will, when relevant, include the situation of HRDs as a way to underline the EU's support for HRDs and their work.⁵⁶⁵ Individual cases of concern, whenever necessary, can be also addressed during those human rights dialogues.⁵⁶⁶

Apart from that, more specific actions are suggested to the EU Delegations on how in practice to promote and protect the rights of HRDs. For instance, the Guidelines emphasise the importance of: maintaining contact with HRDs; giving HRDs visible recognition through the use of appropriate publicity, visits or invitations; and observing trials of HRDs.⁵⁶⁷ The Guidelines underline, however, the necessity for the EU to consult HRDs in advance in relation to measures which might be implemented in their favour, taking into account that they could lead to threats or attacks against the HRDs, and subsequently could backfire.

In the revised Guidelines, EU diplomats have also been encouraged to develop a close relationship with HRDs in their country of assignment, in organising public meetings and enhancing the visibility of HRDs' activities, either in the capital or in the regions. Each EU mission in third countries is also invited to appoint a HRDs liaison officer in its political section to allow HRDs to have easy and direct access to the EU in their country.⁵⁶⁸

C. Human rights impacts

1. Positive human rights impacts

a) *Crucial role of HRDs in documenting human rights violations*

In general, the main positive impacts of HRDs are that they play a crucial role in monitoring, collecting and disseminating information on human rights violations. There are many sources through which HRDs can contribute to monitoring human rights violations and dissemination of information about their occurrences, e.g. via printed media, the Internet, social media, official reports, court records, statements and interviews of witnesses and victims, and individual allegations of human rights violations. Another common dissemination channel, for instance, is publishing a report through a human rights organisation documenting their findings or via newspaper articles, blogs etc. HRDs often use lobbying strategies to bring their reports to the attention of the public and political and judicial officials in order to apply pressure for adequate and timely investigation of human rights violations.

Protection of HRDs, to enable them to take any or all of these steps, is essential for the full realisation of their right to freedom of opinion and expression.⁵⁶⁹ The Council Working Party on Human Rights (COHOM)

⁵⁶⁵ *Ibid*, para. 11.

⁵⁶⁶ Cases involving HRDs were raised during 25 human rights dialogues held in 2012, as reported in Council of the EU, 'EU Annual Report on Human Rights And Democracy in the World in 2012' (Brussels, 2013) 78.

⁵⁶⁷ EU Guidelines on Human Rights Defenders, General Affairs Council of 8 December 2008, available at <<http://www.consilium.europa.eu/uedocs/cmsUpload/GuidelinesDefenders.pdf>> last accessed on 12 June 2014, para. 5.

⁵⁶⁸ By the end of 2012, 97 EU Liaison Officers on HRDs had been appointed, 92 of which were based in EU Delegations, as reported in Council of the EU, EU Annual Report on Human Rights And Democracy in the World in 2012 (Brussels, 2013), 78.

⁵⁶⁹ See, for instance, Amnesty International, 'Human Rights Defenders, FAQ', available at <<http://www.amnesty.org/en/human-rights-defenders/faq>> last accessed on 4 June 2014.

has issued fact sheets to EU Missions to address the situation of HRDs in their reporting, and noting in particular any threats or attacks against them.⁵⁷⁰

b) Support to victims of human rights violations

Much of the positive work of HRDs concerns support for victims of human rights violations. This can be done in various ways. For instance, by drawing attention to past, ongoing and foreseen human rights violations; assisting victims of human rights violations in front of national courts through legal advice; and by providing counselling and rehabilitation support to the victims in cases, for instance, of arrests, detention, torture, disappearances and similar situations. HRDs, such as *pro bono* lawyers, providing free legal advice and representation, often seek redress for human rights violations against others by pursuing cases through the legal system. In such cases, suitably qualified HRDs have a clear positive impact on the right to an effective remedy, which is protected under various international and regional instruments, as they help victims of human rights violations to gain access to justice through judicial, administrative and quasi-judicial mechanisms.⁵⁷¹

c) Combating a culture of impunity

In a broader sense - but not less important - through support to victims of human rights violations, HRDs contribute to combating a culture of impunity of systemic breaches of human rights. This is largely done by contributing to securing justice for victims of violations by providing information about cases to a wider audience and the general public. Some HRDs, through their human rights' organisations, focus on ending impunity for violations namely through providing human rights training and capacity-building for prosecutors, judges and police. By providing training on implementing human rights into laws and policies, as well as through facilitating information to the wider population on human rights-related issues, HRDs may contribute to better accountability and therefore to combating a culture of impunity both at the local and national levels.

d) HRDs' role in election observation and reporting

Further action of significance for HRDs is their role in observing and reporting on elections. HRDs, including journalists, may be able to shine a spotlight on election frauds through their reporting. In many cases, HRDs provide effective election monitoring at polling stations and at counting of votes to observe or prevent irregularities and therefore contribute to the transparency, inclusiveness and credibility of elections. After the elections, HRD reports, backed up by evidence, including interviews of witnesses, can help to apply pressure on governments to implement recommendations for improving the election

⁵⁷⁰ EU Guidelines on Human Rights Defenders, General Affairs Council of 8 December 2008, available at <<http://www.consilium.europa.eu/uedocs/cmsUpload/GuidelinesDefenders.pdf>> last accessed on 15 June 2014, para. 8.

⁵⁷¹ OHCHR Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (July 2011), 90, available at <<http://www.ohchr.org/Documents/Issues/Defenders/CommentarytoDeclarationondefendersJuly2011.pdf>> last accessed on 6 May 2014; See also Amnesty International, 'Human Rights Defenders, FAQ', available at <<http://www.amnesty.org/en/human-rights-defenders/faq>> last accessed on 4 June 2014.

process, safeguarding democratic participation and preventing electoral fraud, as contained in reports by international Election Observer Missions (e.g. OSCE Office for Democratic Institutions and Human Rights).

HRDs' role in observing elections is often wholly independent of CSOs and formal Election Observation Missions. The way in which HRDs, such as investigative journalists, are treated in the election period, and any threats or attacks on them, can send a signal to the international community on the credibility of the elections. In many cases, the nature of interventions in the work of HRDs, notably those who are planning to take part in independent election monitoring, significantly intensify in the periods immediately before the election. In these periods, HRDs may become victims of arbitrary arrests and detention as well as unreasonable searches and therefore serve as a 'litmus test' of the authorities' intentions in the conduct of elections.

e) Pressure on authorities to implement international commitments

HRDs also play an important role in putting pressure on states to sign, ratify and fully implement international human rights commitments (e.g. the UPR and other UN instruments and recommendations). During the international monitoring process HRDs provide vital information for independent experts and treaty bodies on the situation on the ground in a particular state.

f) Disseminating information on human rights standards

HRDs provide training and disseminate information on human rights standards to key public officials, lawyers, judges, police, armed forces etc, to promote a culture of human rights and encourage respect for international standards. The work of HRDs extends to schools and often reaches marginalised, poor and vulnerable communities, thereby contributing to raising awareness about human rights.⁵⁷²

g) Contributing to democratic transformation

Taking into account the positive impacts of HRDs mentioned above, another important aspect, even though it needs to be seen in a long-term perspective, is a contribution to democratic transition. HRDs contribute in various ways by: disseminating information about human rights; promoting equality; increasing people's participation in the decision-making process; and therefore helping to strengthen principles of good governance and the rule of law.⁵⁷³ Dissemination of human rights knowledge helps policy-makers, judges, local chiefs, and military, police and other office holders to gain a better understanding of human rights and the consequences of violations.⁵⁷⁴

⁵⁷² For an illustrative report, see Amnesty International, 'Human Rights Stories. Tales of Human Rights Defenders for Primary Schools' (2012) Amnesty International, available at <http://www.developmenteducation.ie/media/documents/HumanRightsStories_Amnesty.pdf> last accessed on 6 May 2014.

⁵⁷³ OHCHR, 'Who is a defender', available at <<http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx>> last accessed on 10 April 2014.

⁵⁷⁴ Inter-American Commission on Human Rights, 'Second Report on the Situation of Human Rights Defenders in the Americas' (31 December 2011) OEA/Ser.L/V/II, available at <http://www.ishr.ch/sites/default/files/article/files/defenders2011_0.pdf> last accessed on 14 June 2014.

2. Negative human rights impacts

a) *Obstacles to accuracy in monitoring and fact-finding*

While monitoring, fact-finding and reporting on human rights violations is one of the main weapons used by HRDs, it can also be a double-edged sword. On occasions HRDs may let their own biases, or closeness to individuals or groups in the civil society, hamper the accuracy of their work. This can arise for various reasons. HRDs may want to speed up their reporting due to urgency, for instance, and therefore do not spend enough time checking facts when assessing and evaluating the alleged human rights violations. In other cases, HRDs, perhaps driven by ideological commitment, arrive in a country with a fixed opinion about human rights violations, or possibly the lack thereof, and may, deliberately or otherwise, adjust the 'evidence' in support of that opinion, invent stories or even breach confidentiality.⁵⁷⁵ Besides, many HRDs may have a very narrowly defined area of human rights violations on which they focus, therefore their reporting does not necessarily reflect the full scope of violations. Inaccurate or misleading monitoring and reporting can have a negative impact not only on the credibility of HRDs, but also on victims and witnesses.

b) *A lack of impartiality*

The perception of HRDs is another problem. Some HRDs, for example those motivated by particular religious or ideological beliefs, may be seen as being against a specific culture or religion, or incapable of recognising the values of indigenous peoples. HRDs may be perceived as, *inter alia*, promoting Western values of universality of human rights vs. cultural relativism; or encouraging religious fundamentalism which undermines the universality of human rights.⁵⁷⁶ For these reasons, and similarly as in the case of other NSAs, such as NGOs, a lack of impartiality on the part of HRDs can lead to negative human rights impacts by playing into the hands of state authorities who are looking for opportunities to ostracise their work by labelling them as biased. It makes it easier for states to discredit their reporting and potentially endangers the position of individuals and vulnerable communities.

c) *Lack of gender sensitivity in monitoring and fact-finding*

Women's human rights have been widely neglected in many societies, communities and cultures. Many women and girls in these environments occupy a subordinate position and their human rights are not respected (e.g. as a result of laws and policies, beliefs in society, cultural practices, access to economic resources and legal systems or family relationships). HRDs, in many instances, may contribute to under-documenting human rights violations against women and girls. Gender discrimination, or a lack of gender sensitivity by HRDs monitoring and fact-finding - whether intentional or not - can lead to: (1) violation of women's and girl's rights being undocumented; (2) marginalisation of women activists; and (3) a lack of respect or sensitivity for women and girl victims of human rights abuses.⁵⁷⁷

⁵⁷⁵ Amnesty International and CODESRIA, 'Monitoring and Documenting Human Rights Violations in Africa', A Handbook (2000), available at <<http://www.hrea.org/erc/Library/Ukweli/ukweli-en.pdf>> last accessed on 14 April 2014.

⁵⁷⁶ For an illustrative example of how HRDs can be seen as 'Western neo-liberal prophets of democracy' see Mbanje B. and Mahuku D., 'Zimbabwe: Revolutionaries Are The Real Human Rights Defenders', *The Herald* (21 April 2014), available at <<http://allafrica.com/stories/201304120520.html?viewall=1>> last accessed on 15 June 2014.

⁵⁷⁷ Amnesty International and CODESRIA, 'Monitoring and Documenting Human Rights Violations in Africa', A Handbook (2000), available at <<http://www.hrea.org/erc/Library/Ukweli/ukweli-en.pdf>> last accessed on 14 April

2014, 42. See, for instance, a practice note on risks and violations women HRDs face in Egypt, Amir M. O., 'A Study of the Experience of Women Human Rights Defenders in Eleven Egyptian Governorates' (2013) 5 *Journal of Human Rights Practice* 3, 460-477; IM-Defensoras, 'A Feminist Alternative for the Protection, Self-Care, and Safety of Women Human Rights Defenders in Mesoamerica' (2013) 5 *Journal of Human Rights Practice* 3, 446-459; Barcia I., and Penchaszadeh A., 'Ten Insights to Strengthen Responses for Women Human Rights Defenders at Risk' (2012) Association for Women's Rights in Development (AWID) with the Women Human Rights Defenders International Coalition (WHRD-IC), available at <<http://www.awid.org/Media/Files/WHRD-Ten-Insights-ENG.pdf>> last accessed on 14 June 2014.

X. Conclusion

The main task of this report has been to identify the positive and negative impacts on human rights of the ever more diverse variety of NSAs who, directly or indirectly, play an important role in influencing the policies of states and international institutions and shaping global governance. Our approach to NSAs has been an inclusive one, recognising the emergent and dynamic role of CSOs and HRDs, and taking into account also the influence of actors created by states but operating with a significant degree of autonomy, such as IFIs. Understanding and evaluating both the positive and negative human rights impacts of these different types of NSAs is vital for informing and strengthening the EU's engagement with them and delivering a coherent and effective human rights policy. This report provides a rich seam of information and a broad foundation for the next stages of our research.

We have shown how each of the selected *vertical* groupings of NSAs has both positive and negative impacts when measured against the thematic *horizontal* human rights selected for analysis in the mapping chapters. For example, we have identified positive human rights impacts of businesses in creating opportunities for individuals to find employment, have a stable income and counteract child poverty. Financial services companies and IFIs can also have positive impacts when they help to provide resources for the establishment of small businesses in indigenous communities or fund projects which help secure the right to food. However, IFIs, including the WB, IMF and EBRD, and to a lesser extent the EIB, do not necessarily regard human rights as part of their core mandate. They have established complaints mechanisms that are lacking in independence and accountability and pursued policy agendas that may, directly or indirectly, lead to a weakening of human rights protection.

Conversely, while we have identified many positive impacts of CSOs and HRDs, including their vital role in policy inputs, monitoring and the dissemination of human rights, and representing the poor and indigenous peoples, we have also shown evidence of bias, lack of transparency, imposing their own agendas and selective advancement of some human rights at the expense of others. Our report has demonstrated that while some NSAs have more negative than positive impacts on human rights the overall picture is more complex and nuanced than it is often portrayed.

Businesses, and in particular TNCs and financial services companies, have been examined in depth in this report. Despite the various positive impacts that we have highlighted, businesses are responsible for myriad human rights violations. We have identified key sectors, such as mining, sports goods and ready-made garment production, as areas where, for example, labour rights and the rights of children are severely violated. We have shown how many TNCs have voluntarily accepted a degree of CSR at the global or regional level in line with UN and EU initiatives. Indeed CSR is increasingly regarded as important for TNCs' image and business model. Nevertheless, TNCs have often failed to prevent human rights violations either directly, or in their supply chains and, indeed, have exacerbated them by continuing to do business with those who have committed violations despite their professed commitment to CSR. Not surprisingly, therefore, the case for a binding treaty on business and human rights is firmly on the international agenda.

CSOs and HRDs have many similar cross-cutting positive impacts on human rights protection and promotion. CSOs, particularly NGOs, actively participate in policy-making within the EU and in human

rights dialogues and consultations with third countries. In development programmes they often act as service providers, sometimes taking the place of the authorities. CSOs and HRDs provide vital links with the grassroots, often working directly with indigenous communities, women's groups and others who are marginalised and not reached by conventional international bodies or state actors. Apart from that, both CSOs and HRDs are active in campaigning against injustice in local communities, supporting victims of human rights violations, monitoring elections and engaging in ever more effective methods of lobbying international institutions, the EU, other regional organisations and states. The input of CSOs in the negotiation, adoption and implementation of the CRPD is a case in point.

In the following reports we will seek to identify how, in the light of this mapping of human rights impacts, the EU can be more effective in strengthening its engagement with NSAs in meeting the challenges of protecting and promoting human rights in its external relations and internal policies. We will examine methods by which positive contributions of NSAs can be harnessed and rewarded, while adverse impacts are prevented or mitigated. In those cases where we have shown that NSAs are responsible for human rights violations we will identify more effective mechanisms through which these actors can be held accountable within a multilateral framework of human rights.

Bibliography

A. Literature

Ackermann, R., Blomeyer, R., Hammer, M., Lloyd, R, et al., 'Financing of Non-governmental Organisations from the EU budget', Study for the DG for Internal Policies, 2000, available at <<http://bookshop.europa.eu/en/financing-of-non-governmental-organisations-ngo-from-the-eu-budget-pbBA3110925/>> last accessed on 2 May 2014.

Addo M., 'Key performance indicators and the Working Group on business and human rights', LSE Measuring Business & Human Rights Blog, 14 March 2014, available at <<http://blogs.lse.ac.uk/businesshumanrights/2014/03/14/michael-addo-key-performance-indicators-and-the-working-group-on-business-and-human-rights/>> last accessed on 29 July 2014.

Amir M. O., 'A Study of the Experience of Women Human Rights Defenders in Eleven Egyptian Governorates' (2013) 5 *Journal of Human Rights Practice* 3, 446-459.

Anderson S. and Cavanagh J., 'Top 200: the rise of global corporate power' (2000) Institute for Policies Studies, available at <<http://www.corpwatch.org/article.php?id=377>> last accessed on 2 May 2014.

Alessi C., Wolverson R. and Sergie M., 'The Credit Rating Controversy' (2013) Washington D.C., Council on Foreign Relations, available at <<http://www.cfr.org/financial-crises/credit-rating-controversy/p22328>> last accessed 20 June 2014.

Alston P. 'The "Not-a-Cat" Syndrome: Can the International Human Rights Regime Accommodate Non-State Actors?' in Alston P. (ed), *Non-State Actors and Human Rights* (Oxford: OUP, 2005) 3-36.

Alston P. (ed), *Non-State Actors and Human Rights* (Oxford: OUP, 2005).

Alston P., 'Labour Rights as Human Rights: The Not So Happy State of the Art' in Alston P. (ed), *Labour Rights as Human Rights* (Oxford: OUP, 2005) 1-24.

Alston P. and Robinson M., 'The Challenges of Ensuring Mutuality of Human Rights and Development Endeavours' in Alston P. and Robinson M. (eds), *Human Rights and Development: Towards Mutual Reinforcement* (Oxford: OUP, 2005).

Alston P. and Goodman R., *International Human Rights* (Oxford: OUP, 2013).

Alston P., 'Core Labour Standards' and the Transformation of the International Labour Rights Regime' (2004) 15 *European Journal of International Law* 457-521.

Alston P. (ed), *Labour Rights as Human Rights* (Oxford: OUP, 2005).

Arnadóttir O. M., 'Non-Discrimination in International and European Law: Towards Substantive Models' (2000) 25 *Nordisk Tidskrift för Menneskerettigheter* 2, 140-157.

Arts B., 'Non-State Actors in Global Governance: Three Faces of Power' (2003) Max Planck Project Group on Common Goods, Bonn, Working Paper 2003/4, 5, available at <http://www.coll.mpg.de/pdf_dat/2003_04online.pdf> last accessed on 6 May 2014.

Awrey D., 'Complexity, Innovation and the Regulation of Modern Financial Markets' (2012) 2 *Harvard Business Law Review* 2, 235-293.

Axworthy L., 'The Mouse is Mightier than the Sword' in Halpin E.F. et al. (eds), *Human Rights and the Internet* (London: Macmillan Press, 2000) 16-20.

Ayres I. and Braithwaite J., *Responsive Regulation: Transcending the Deregulation Debate* (Oxford: OUP, 1992).

Bacon R., 'The Impact of Higher Oil Prices on Low Income Countries and on the Poor' (Washington D.C.: World Bank, 2005).

Balakrishnan R., Heintz H. and Seguino S., 'A Human Rights Response to The Economic Crisis in the U.S.' (2009), Rutgers Center for Women's Global Leadership, available at <www.cwgl.rutgers.edu/globalcenter/whatsnew/RBhumanrightsresponse2009.pdf> last accessed on 14 June 2014.

Barcia I., and Penchaszadeh A., 'Ten Insights to Strengthen Responses for Women Human Rights Defenders at Risk' (2012) Association for Women's Rights in Development (AWID) with the Women Human Rights Defenders International Coalition (WHRD-IC), available at <<http://www.awid.org/Media/Files/WHRD-Ten-Insights-ENG.pdf>> last accessed on 14 June 2014.

Barrientos S. and Smith S., 'Do Workers Benefit from Ethical Trade? Assessing codes of labour practice in global production systems' (2007) 28 *Third World Quarterly* 713-729 at 720.

Benedek W. and Kettemann M. C., *Freedom of expression and the Internet* (Council of Europe, 2013).

Bercusson B. and Estlund C. (eds), *Regulating Labour in the Wake of Globalisation: New Challenges, New Institutions* (Oxford: Hart Publishing, 2008).

Besson S., 'The Extraterritoriality of the European Convention on Human Rights: Why Human Rights Depend on Jurisdiction and What Jurisdiction Amounts to' (2012) 25 *Leiden Journal of International Law* 4, 857-884.

Blundell-Wignall A. and Slovik P., 'A Market Perspective on the European Sovereign Debt and Banking Crisis' (2010) *Financial Market Trends*, OECD, no.2.

Boer R., Herder A., Oosterwijk S. and Riemersma M. 'Worldwide Investments in Cluster Munitions: A Shared Responsibility', IKV Pax Christi, available at <<http://www.paxvoorvrede.nl/media/files/worldwide-investments-in-clustermunitions-2013.pdf>> last accessed on 14 June 2014.

Bohoslavsky J. P. and Letnar J., *Making Sovereign Financing and Human Rights Work* (Oxford: Hart Publishing, 2014).

Brown L. D., Khagram S., Moore M. H. and Frumkin H., 'Globalization, NGOs and Multisectoral Relations' in Nye J. S. and Donohue J. D. (ed), *Governance in a Globalizing World* (Washington, DC: Brookings Institution, 2000) 271-296.

- Brown L. D., 'Civil Society Legitimacy and Accountability: Issues and Challenges' (2006) Hauser Center for Nonprofit Organizations, John F. Kennedy School of Government, Harvard University, 6, available at <https://www.civicus.org/new/media/LTA_ScopingPaper.pdf> last accessed on 14 April 2014.
- Buhmann K., 'Damned if you do, damned if you don't? The Lundbeck case of Pentobartital, the Guiding Principles on Business and Human Rights, and competing human rights responsibilities' (2012) 40 *Journal of Law, Medicine & Ethics* 2, 206-219.
- Buhmann K., 'Corporate Social Responsibility and Business Responsibilities for Human Rights' (2007) 25 *Nordisk Tidsskrift for Menneskerettigheter* 4, 331-352.
- Byrnes A. 'Article 1' in Freeman M. A., Chinkin C. and Rudolf B. (eds), *The UN Convention on the Elimination of All Forms of Discrimination Against Women: A Commentary* (Oxford: OUP, 2012).
- Calame P., 'Non-State Actors and World Governance, Forum for a New World Governance Discussion Paper' (2008) Forum for a New World Governance, available at <<http://www.world-governance.org/spip.php?rubrique37>> last accessed on 6 May 2014.
- Carrington, D., 'European Investment Bank criticised for "hypocrisy" of fossil fuel lending', *The Guardian* (London, 8 December 2011).
- Chesterman S., 'Lawyers, Guns, and Money: The Governance of Business Activities in Conflict Zones' (2010/2011) 11 *Chicago Journal of International Law* 321-342.
- Chidi Oguamanam C., *International Law and Indigenous Knowledge: Intellectual Property, Plant Biodiversity, and Traditional Medicine* (London: University of Toronto Press, 2006).
- Chinkin C. and Rudolf B. (eds), *The UN Convention on the Elimination of All Forms of Discrimination Against Women: A Commentary* (Oxford: Oxford University Press, 2012).
- Clapham A., 'On Complicity' in Henzelin M. and Roth R. (eds), *Le Droit pénal à l'épreuve de l'internationalisation* (Paris : Bruylant, 2000) 241-275.
- Clapham A., *Human Rights Obligations of Non-State Actors* (Oxford: OUP, 2006).
- Clark M., 'Non-Governmental Organizations and their Influence on International Society' (1995) 48 *Journal of International Affairs* 2, 507-522.
- Classens S., Honohan P. and Rajas-Suarez S., 'Policy Principles for Expanding Financial Access: Report of the CGD Task Force on Access to Financial Services' (2009) Washington D.C., Center for Global Development, available at <http://www.cgdev.org/files/1422882_file_Financial_Access_Task_Force_Report_FINAL.pdf> last accessed 5 June 2014.
- Collingwood V., 'Non-governmental organisations, power and legitimacy in international society' (2006) 32 *Review of International Studies* 3, 439-454.
- Compa L., 'Corporate Social Responsibility and Workers' Rights' (2008) 30 *Comparative Labor Law and Policy Journal* 1-10.

Collins D. and McKay C., 'Tailoring formal Financial Products for the Poor' (October 2012), CGAP, available at <<http://www.cgap.org/blog/tailoring-formal-financial-products-poor>> last accessed 18 June 2014.

Conaghan J., Fischl R.M. and Klare K. (eds), *Labour Law in an Era of Globalization: Transformative Practices and Possibilities* (Oxford: OUP, 2002).

Cotula L., Vermeulen S., Leonard R. and Keeley J., 'Land Grab or Development Opportunity? Agricultural Investment and International Land Deals in Africa' (2009) Food and Agriculture Organisation, International Fund for Agricultural Development and the International Institute for Environment and Development, available at <http://www.ifad.org/pub/land/land_grab.pdf> last accessed on 16 June 2014.

Coudert V. and Gex M., 'Why the Greek CDS Settlement Did Not Lead to the Feared Meltdown, Banque de France' (2013) *Financial Stability Review* 17, 135-150.

Dañino, R., 'The Legal Aspects of the World Bank's Work on Human Rights: Some Preliminary Thoughts' in Alston P. and Robinson. M. (eds), *Human Rights and Development: Towards Mutual Reinforcement* (Oxford: OUP, 2005).

Darrow, M., *Between Light and Shadow: The World Bank, the International Monetary Fund and International Human Rights Law* (Oxford: Hart Publishing, 2003).

Deakin S., 'Social Rights in a Globalized Economy' in Alston P. (ed), *Labour Rights as Human Rights* (Oxford: OUP, 2005) 25-60.

de Brabandere E., 'Non-State Actors, State-Centrism and Human Rights Obligations' (2009) 22 *Leiden Journal of International Law* 1, 191-209.

de Búrca G., 'The European Union in the negotiation of the UN Disability Convention' (2010) 35 *European Law Review* 2, 174-196.

de Paoli B., Hoggarth G. and V. Saporta, 'Costs of Sovereign Default', *Bank of England Quarterly Bulletin* (2006).

de Schutter O., 'Food Commodities Speculation and Food Price Crises: Regulation to Reduce the Risks of Price Volatility' (2010) UN Special Rapporteur on the Right to Food, Briefing Note no. 02, available at <http://www.srfood.org/images/stories/pdf/otherdocuments/20102309_briefing_note_02_en_ok.pdf> last accessed on 2 June 2014.

de Schutter O. et al., 'Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights' (2012) 34 *Human Rights Quarterly* 4, 1084-1168.

Dowell-Jones M., 'Financial Institutions and Human Rights' (2013) 13 *Human Rights Law Review* 3, 423-468.

Dowell-Jones M. and Kinley D., 'The Monster under the Bed: Financial Services and the Ruggie Framework' in Mares R. (ed), *The UN Guiding Principles on Business and Human Rights: Foundations and Implementation* (The Hague: Martinus Nijhoff, 2012).

Doyle, C. and Cariño, J., 'Making Free Prior & Informed Consent a Reality. Indigenous Peoples and the Extractive Sector', available at <<http://jetzzeit.files.wordpress.com/2013/05/fpic-report-long.pdf>> last accessed 14 June 2014.

Dutta N. and Osei-Yeboah K., 'A New Dimension to the Relationship Between Foreign Direct Investment and Human Capital: The Role of Political and Civil Rights' (2010) 25 *Journal of International Development* 2, 160-179.

Epstein G., *Financialization and the World Economy* (London: Edward Elgar, 2005).

Estlund C., 'Rebuilding the Law of the Workplace in an Era of Self-Regulation' in Bercusson B. and Estlund C. (eds), *Regulating Labour in the Wake of Globalisation: New Challenges, New Institutions* (Oxford: Hart Publishing, 2008) 89-113.

Ewing K.D., 'International Regulation of the Global Economy – The Role of Trade Unions' in Bercusson B. and Estlund C. (eds), *Regulating Labour in the Wake of Globalisation: New Challenges, New Institutions* (Oxford: Hart Publishing, 2008) 205-226.

Filmer-Wilson E., 'An Introduction into the Use of Human Rights Indicators for Development Programmes', June 2005, United Nations Development Group, 2, available at <http://www.undg.org/archive_docs/6135-An_Introduction_into_the_Use_of_Human_Rights_Indicators_for_Development_Programmes.doc> last accessed on 6 May 2014.

Finke B., 'Civil society participation in EU governance' (2007) 2 *Living Reviews in European Governance* 2, 1-42, available at <<http://europeangovernance.livingreviews.org/Articles/lreg-2007-2/download/lreg-2007-2Color.pdf>> last accessed on 14 June 2014.

Fuksiewicz, A., 'The European Endowment for Democracy After Lift-Off. Opinions and Expectations' (2013) Institute for Public Affairs, Warsaw, available at http://pasos.org/wp-content/uploads/2014/01/ipa_eed.pdf> last accessed on 15 June 2014.

Gianviti F., 'Economic, Social and Cultural Human Rights and the International Monetary Fund' in Alston P. (ed), *Human Rights and Non-State Actors* (Oxford: OUP, 2005) 113-140.

Gragl C. and Nobloch C., *Inclusive Business Guide: How to Develop Business and Fight Poverty* (Berlin: Endeava, 2010).

Gragl P., 'Agreement on the Accession of the European Union to the European Convention on Human Rights' in Peers S., Hervey T., Kenner J. and Ward A. (eds), *The Charter of Fundamental Rights. A Commentary* (Oxford: Hart Publishing, 2014) 1727-1824.

Gross J. A., *A Shameful Business: The Case for Human Rights in the American Workplace* (Ithaca: Cornell University Press, 2010).

Guild E., Carrera S. den Hertog L. and Parkin J., 'Implementation of the EU Charter of Fundamental Rights and its Impact on EU Home Affairs Agencies', Centre for European Policy Studies, 25 October 2011, available at <<http://www.ceps.be/book/implementation-eu-charter-fundamental-rights-and-its-impact-eu-home-affairs-agencies>> last accessed on 6 May 2014.

- Hachez N. and Wouters J. 'A Responsible Lender? The European Investment Bank's Environmental, Social and Human Rights Accountability' (2012) 49 *Common Market Law Review* 1, 47-95.
- Halpin E. F. and Hick S., 'Information: an Essential Tool for Human Rights Work' in Halpin E.F. et al. (eds), *Human Rights and the Internet* (London: Macmillan Press, 2000) 238-249.
- Hammarberg T., 'Foreword' in Hammarberg T. et al., *Human Rights and a Changing Media Landscape* (Strasbourg: Council of Europe, 2011) 7-20.
- Harrison J., 'Human Rights Impact Assessments of Trade Agreements: Reflections on Practice and Principles for Future Assessments' (2010) A Background Paper for the Expert Seminar on Human Rights Impact Assessments of Trade and Investment Agreements, 23-24 June 2010, Geneva, available at <http://www2.warwick.ac.uk/fac/soc/law/chrp/projects/humanrightsimpactassessments/trade/hr_impact_background_paper.pdf> last accessed on 1 May 2014.
- Harrison J., 'Human Rights Measurement: Reflections on the Current Practice and Future Potential of Human Rights Impact Assessment' (2011) 3 *Journal of Human Rights Practice* 2, 162-187.
- Hecht M. E. and Neufeld R., 'The Internet and International Children's Rights' in Halpin E.F. et al. (eds), *Human Rights and the Internet* (London: Macmillan Press, 2000) 153-165.
- Heidbreder E. G., 'Civil Society Participation in EU Governance' (2012) 7 *Living Review in European Governance* 2, 1-42.
- Herring R. and Carmassi J., 'The Corporate Structure of International Financial Conglomerates: Complexity and its Implications for Safety and Soundness' in Berger A., Molyneux P. and Wilson J., *The Oxford Handbook of Banking* (Oxford: OUP, 2012) 195-229.
- Hervey T. and Kenner J. (eds), *Economic and Social Rights under the EU Charter of Fundamental Rights: A Legal Perspective* (Oxford: Hart Publishing, 2003).
- Higgins R., *Problems and Process: International Law and how we use it* (Oxford: Clarendon Press, 1995).
- Hutter M. and O'Mahony J., 'The Role of Civil Society Organisations in Regulating Business', ESRC Centre for Analysis of Risk and Regulation (2004) discussion paper No. 26, available at <<http://www.lse.ac.uk/researchAndExpertise/units/CARR/pdf/DPs/Disspaper26.pdf>> last accessed on 6 May 2014.
- Jaraisy R. and Feldman T., 'Protesting for Human Rights in the Occupied Palestine Territory: Assessing the Challenges and Revisiting the Human Rights Defender Framework' (2013) 5 *Journal of Human Rights Practice* 3, 421-434.
- Joseph S., 'An Overview of the Human Rights Accountability of Multinational Enterprises' in Kamminga M. T. and Zia-Zarifi S. (eds), *Liability of Multinational Corporations under International Law* (The Hague: Kluwer Law International, 2000) 75-96.
- Josselin D. and Wallace W., 'Non-state Actors in World Politics: A Framework' in Josselin D. and Wallace W. (eds), *Non-state Actors in World Politics* (New York: Palgrave, 2001).

Kamminga M. T., 'The evolving status of NGOs under international law: a threat to the inter-state system?' in Alston P. (ed), *Non-State Actors and Human Rights* (Oxford: OUP, 2005) 93-113.

Kar D., and LeBlanc B., 'Illicit Financial Flows from Developing Countries 2002-2011' (2013) Global Financial Integrity, available at <<http://iff.gfintegrity.org/iff2013/2013report.html>> last accessed on 6 May 2014.

Katsui H., Ranta E. M., Yeshanew S., Godfrey, A., Musila, M., Mustaniemi-Laakso M. and Sarelin A., *Reducing Inequalities: Finnish development cooperation in Ethiopia and Kenya with special focus on gender and disability* (Åbo: Institute for Human Rights at the Åbo Akademi University, 2014).

Keenan K., 'Export Credit Agencies and the International Law of Human Rights' (2008), Ottawa, Halifax Initiative Coalition, available at <http://www.halifaxinitiative.org/updir/ECAs_and_HR_law.pdf> last accessed 16 June 2014.

Kenner J., 'Economic Partnership Agreements: Enhancing the Labour Dimension of Global Governance?' in Van Vooren B., Blockmans S. and Wouters J. (eds), *The EU's Role in Global Governance: The Legal Dimension* (Oxford: OUP, 2013) 306-321.

Kenner J., 'Economic and Social Rights in the EU Legal Order: The Mirage of Indivisibility' in Hervey T. and Kenner J. (eds), *Economic and Social Rights under the EU Charter of Fundamental Rights: A Legal Perspective* (Oxford: Hart Publishing, 2003) 1-25.

Khalfan A., 'Division of Responsibility amongst States' in Langford M., Vandenhoe W., Scheinin M., van Genugten W. (eds), *Global justice, state duties: the extraterritorial scope of economic, social, and cultural rights in international law* (Cambridge: CUP, 2013) 299-332.

Kilpatrick, C. and De Witte, B. (eds), 'Social Rights in Crisis in the Eurozone: The Role of Fundamental Rights Challenges' (2014) EUI Working Paper, available at <<http://cadmus.eui.eu/bitstream/handle/1814/31247/LAW%20WP%202014%2005%20Social%20Rights%20final%202242014.pdf?sequence=1>> last accessed on 6 May 2014.

Kindleberger C. and Aliber R., *Manias, Panics and Crashes: A History of Financial Crises* (New York: Palgrave Macmillan, 2011).

Kinley D. and Chambers R., 'The UN Human Rights Norms for Corporations: The Private Implications of Public International Law' (2006) 6 *Human Rights Law Review* 3, 447-497.

Kinley D. and Tadaki J., 'From Talk to Walk: The Emerging Human Rights Responsibilities for Corporations at International Law' (2003-04) 44 *Virginia Journal of International Law* 4, 931-1024.

Klare K., 'The Horizons of Transformative Labour and Employment Law' in Conaghan J., Fischl R.M. and Klare K. (eds), *Labour Law in an Era of Globalization : Transformative Practices and Possibilities* (Oxford: OUP, 2002) 3-29.

Knezevic D., 'Women's Voices against the War: the Internet in the Fight for Human Rights during the War in Former Yugoslavia' in Halpin E.F. et al. (eds), *Human Rights and the Internet* (London: Macmillan Press, 2000) 166-173.

Kohler-Koch B. and Finke B., 'The Institutional Shaping of EU-Society Relations: A Contribution to Democracy via Participation' (2007) 3 *Journal of Civil Society* 3, 205-221.

Korff D. and Brown I., 'Social Media and Human Rights' in Hammarberg, T. et al., *Human Rights and a Changing Media Landscape* (Strasbourg: Council of Europe, 2011) 175-206.

Kumpuvuori J. and Scheinin M., 'Treating Different Differently – Observations on the Development of the Concept of Non-Discrimination' in Kumpuvuori J. and Scheinin M. (eds), *The United Nations Convention on the Rights of Persons with Disabilities: Multidisciplinary Perspectives* (Helsinki: Center for Human Rights of Persons with Disabilities VIKE, 2009) 56-58.

Laforest R., 'Shifting scales of governance and civil society participation in Canada and the European Union' (2013) 56 *Canadian Public Administration* 2, 235-251.

Langford M., Vandenhole W., Scheinin M. and van Genugten W. (eds), *Global justice, state duties: the extraterritorial scope of economic, social, and cultural rights in international law* (Cambridge: Cambridge University Press, 2013).

Langille B., 'Core Labour Rights – The True Story (Reply to Alston)' (2005) 16 *European Journal of International Law* 409-437.

Lehr-Lehnardt R., 'NGO Legitimacy: Reassessing Democracy, Accountability and Transparency' (2005) Cornell Law School Inter-University Graduate Student Conference Papers, Paper 6, at 1, available at <http://scholarship.law.cornell.edu/lps_clacp/6> last accessed on 15 April 2014.

Levy B., 'Obstacles to Developing Indigenous Small and Medium Enterprises: An Empirical Assessment' (1993) 7 *World Bank Economic Review* 1, 65-83.

Lindblom A.-K., 'Non-Governmental Organizations and Non-State Actors in International Law' in Reinalda B. (ed), *The Ashgate Research Companion to Non-State Actors* (Surrey: Ashgate, 2011) 147-160.

Lukas K., *Labour Rights and Global Production* (Vienna: NWV 2013).

Lukas K., 'The World Bank Inspection Panel' in Linder B., Lukas K. and Steinkellner A., *The Right to Remedy* (Vienna: Ludwig Boltzmann Institute of Human Rights Publication Series, 2013).

Lumina C., 'Sovereign Debt and Human Rights', in Office of the High Commissioner for Human Rights, *Realizing the Right to Development: Cooperation for the Right to Development* (Geneva: United Nations, 2013) 289-301.

Malhotra R. and Fasel N., 'Quantitative Human Rights Indicators - a survey of major initiatives' (2005) Background Paper for Expert Meeting on Human Rights Indicators, Abo Akedemi University, Turku, Finland, March 2005, available at <<http://gaportal.org/sites/default/files/Quantitative%20Human%20Rights%20Indicators.pdf>> last accessed on 6 May 2014.

Manta F. and Baab M., 'Values Added: The Challenge of Integrating Human Rights into the Financial Sector' (2010) Copenhagen, The Danish Institute for Human Rights, available at

<http://www.humanrightsbusiness.org/files/Country%20Portal/values_added_report__dih.pdf> last accessed on 15 June 2015.

Marginson P. and Maarten K., 'European social dialogue as multi-level governance: Towards more autonomy and new dependencies' in Barbier J.-C. (ed), *EU Law, Governance and Social Policy* (2012) 16 *European Integration online Papers* 1, Special Mini-Issue.

Martens K., 'Mission Impossible? Defining Nongovernmental Organizations' (2002) 13 *Volutas: International Journal of Voluntary and Nonprofit Organizations* 3, 271-285.

Mathews J. T., 'Power Shift' (1997) 76 *Foreign Affairs* 1, 50-66.

Maupain F., *The Future of the International Labour Organization in the Global Economy* (Oxford: Hart Publishing, 2013).

Mbanje B. and Mahuku D., 'Zimbabwe: Revolutionaries are the Real Human Rights Defenders', *The Herald* (21 April 2014), available at <<http://allafrica.com/stories/201304120520.html?viewall=1>> last accessed on 15 June 2014.

McBeth A., *International Economic Actors and Human Rights* (Oxon: Routledge, 2010).

McBeth A. 'A Right by any Other Name: The Evasive Engagement of International Financial Institutions with Human Rights' (2009) 40 *George Washington International Law Review* 4, 1101-1156.

McCormick R., 'What Makes a Bank a "Sustainable Bank"?' (2012) 1 *Law and Economics Yearly Review* 1, 77-103.

McElduff Jr. T. P. and Veiga J., 'The Child Labour Deterrence Act of 1995: A Choice Between Hegemony and Hypocrisy' (1996) 11 *Journal of Civil Rights and Economic Development* 2, 582-614.

McInerney-Lankford S. and Hans-Otto S., 'A Work Bank Study: Human Rights Indicators in Development' (2010), The International Bank for Reconstruction and Development/Work Bank, 21, available at <http://siteresources.worldbank.org/EXTLAWJUSTICE/Resources/HumanRightsWP10_Final.pdf?&resourceurlname=HumanRightsWP10_Final.pdf> last accessed on 1 June 2014.

Mertus J., 'From Legal Transplants to Transformative Justice: Human Rights and the Promise of Transnational Civil Society' (1999) 14 *American University International Law Review* 5, 1335-1389.

Michalowski S., 'Sovereign Debt and Social Rights: Legal Reflections on a Difficult Relationship' (2008) 8 *Human Rights Law Review* 1, 35-68.

Michalowski S., *Unconstitutional Regimes and the Validity of Sovereign Debt: A Legal Perspective* (Farnham: Ashgate, 2007).

Millar H. 'Comparing accountability relationships between governments and non-state actors in Canadian and European international development policy' (2013) 56 *Canadian Public Administration* 2, 252-269.

Mijatovic D., *Freedom of Expression on the Internet: A study of legal provisions and practices related to freedom of expression, the free flow of information and media pluralism on the Internet in OSCE participating States* (OSCE, 2010).

- Milanovic, M., *Extraterritorial Application of Human Rights Treaties* (Oxford: OUP, 2011).
- Mock K., 'Hate on the Internet' in Halpin E.F. et al. (eds), *Human Rights and the Internet* (London: Macmillan Press, 2000) 141-152.
- Moreno-Lax V. and Costello C., 'The Extraterritorial Application of the EU Charter of Fundamental Rights: From Territoriality to Facticity, the Effectiveness Model' in Peers S., Hervey T., Kenner J. and Ward A. (eds), *The Charter of Fundamental Rights. A Commentary* (Oxford: Hart Publishing, 2014) 1657-1684.
- Montezemolo S., 'Payday Lending Abuses and Predatory Practices: The State of Lending in America and its Impact on US Households' (2003) Washington D.C., Center for Responsible Lending.
- Nah A. M., Bennett K., Ingleton D. and Savage J, 'A Research Agenda for the Protection of Human Rights Defenders' (2013) 5 *Journal of Human Rights Practice* 3, 401-420.
- Nankani. G. et al., 'Human Rights and Poverty Reduction Strategies: Moving Towards Convergence?' in Alston P. and Robinson M. (eds), *Human Rights and Development: Towards Mutual Reinforcement* (Oxford: OUP, 2005) 475-497.
- Newman K., 'Challenges and dilemmas in integrating human rights-based approaches and participatory approaches to development: an exploration of the experiences of ActionAid International' (PhD Thesis, Goldsmiths College, University of London, 2011).
- Nolan A., 'Addressing Economic and Social Rights Violations by Non-State Actors through the Role of the State: A Comparison of Regional Approaches to the "Obligation to Protect"' (2009) 2 *Human Rights Law Review* 9, 225-255.
- O'Brien, K. J., 'Law Students in Austria Challenge Facebook Privacy Policy', *The New York Times* (4 December 2012).
- Ochoa C., 'From Odious Debt to Odious Finance: Avoiding the Externalities of a Functional Odious Debt Doctrine' (2008) 49 *Harvard International Law Journal* 1, 109-159.
- Odone C., 'New Kid on the Block. Can the European Union prove a success at exporting democracy?' *Foreign Policy* (11 February 2014) available at <http://www.foreignpolicy.com/articles/2014/02/11/new_kid_on_the_block> last accessed on 6 May 2014.
- Oesterle D. A., 'A Clear-Headed Look at NGOs' (2002) 13 *Colorado Journal of International Environmental Law and Policy* 1, 129-139.
- Olsson A. R., 'Access to Official Documents' in Hammarberg T. et al., *Human Rights and a Changing Media Landscape* (Strasbourg: Council of Europe, 2011) 77-100.
- Parsons J., 'Black Gold and Fool's Gold: Speculation in the Oil Futures Market' (2010) 10 *Economia* 2, 81-116.
- Partnoy F., *Infectious Greed: How Deceit and Risk Corrupted the Financial Markets* (London: Profile Books, 2010).

Pauwelyn J., Wessel R.A. and Wouters J., 'When Structures become Shackles: Stagnation and Dynamics in International Law Making', Leuven Centre for Global Governance Studies, 14 November 2013. Available at <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2271862> last accessed on 16 June 2014.

Peers S., Hervey T., Kenner J. and Ward A. (eds), *The Charter of Fundamental Rights. A Commentary* (Oxford: Hart Publishing, 2014).

Pereira M.E., Álvaro J. L., Garrido A. Machado D., Dantas G., Modesto J. G. N., Alves, M. V. C. and Canario-Gomes N., 'The expression of stereotypes of criminals and human rights defenders: A comparative study' (2013) 29 *Anales de Psicologia* 2, 565-572;

Pereira Leite, S., 'Le Fonds monétaire international et les droits de l'homme', *Le Monde* (Paris, 4 September 2001).

Peters A., Koechlin L. and Fenner Zinkernagel G., 'Non-state actors as standard-setters: framing the issue in an interdisciplinary fashion' in Peters A., Koechlin L., Förster T. and Fenner Zinkernagel G. (eds), *Non-State Actors as Standard-Setters* (Cambridge: CUP, 2009) 1-32.

Rahman M. M., Khanam R. and Absar N. U., 'Child Labor in Bangladesh: A Critical Appraisal of Harkin's Bill and the MOU-Type Schooling Program' (1999) 33 *Journal of Economic issues* 4, 985-1003.

Reinalda B., Arts B. and Noortmann M., 'Non-state Actors in International Relations: Do They Matter?' in Arts B., Noortmann M. and Reinald B. (eds), *Non-state Actors in International Relations* (Aldershot: Ashgate, 2001).

Reinisch A., 'The Changing International Legal Framework for Dealing with Non-State Actors' in Alston P. (ed), *Non-State Actors and Human Rights* (Oxford: OUP, 2005) 37-92.

Rodgers G. and Standing G., 'Preface' in Rodgers G. and Standing G. (eds), *Child Work, Poverty and Underdevelopment*, (Geneva: ILO, 1981).

Rodgers, G. and Standing, G., *Economic Roles of Children in Low-income Countries: A Framework for Analysis*, World Employment Programme Research, working paper no. 81, WEP 2/21/WP.81, ILO, Geneva.

Ronen Y., 'Human Rights Obligations of Territorial Non-State Actors' (2013) 46 *Cornell International Law Journal* 1, 21-50.

Rosemann N., 'The UN Norms on Corporate Human Rights Responsibilities: An Innovating Instrument to Strengthen Business' Human Rights Performance' (2005) Dialogue on Globalization, Occasional Paper 20, 6, available at <<http://library.fes.de/pdf-files/iez/global/04669.pdf>> last accessed on 1 May 2014.

Rossi I., *Legal Status of Non-Governmental Organizations in International Law* (Antwerp: Intersentia, 2010).

Roth L., 'Reflection on the Colour of the Internet' in Halpin E.F. et al. (eds), *Human Rights and the Internet* (London: Macmillan Press, 2000) 174-184.

Rowland D., 'Virtual World, Real Rights? Human Rights and the Internet' in Odello M. and Cavandoli S. (eds), *Emerging Areas of Human Rights in the 21st Century: The Role of the Universal Declaration of Human Rights* (Oxon: Routledge, 2011) 7-23.

Rowlands J., 'The Right to be Heard: An Overview' in Rowlands J. (ed), *Speaking Out: Case Studies on How Poor People Influence Decision-Making* (Oxfam GB, 2009) 1-10.

Ruggie J.G., *Just Business: Multinational Companies and Human Rights* (New York: W. W. Norton & Company, 2013).

Ruggie J.G., 'Global Governance and "New Governance Theory": Lessons from Business and Human Rights' (2014) 20 *Global Governance* 5-17.

Sabel C., Fung A. and O'Rourke D., 'Ratcheting Labor Standards: Regulating for Continuous Improvement in the Global Workplace' (John F Kennedy School of Governance, Harvard University, Faculty Research Working Paper Series, No. 00-010, 2 May 2000) available at <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=262178> last accessed on 16 June 2014.

Sabel C. and Zeitlin J., 'Learning from Difference: The New Architecture of Experimentalist Governance in the European Union' (2008) 14 *European Law Journal* 271.

Sagafi-nejad T. and Dunning J. H., *The UN and Transnational Corporations: From Code of Conduct to Global Compact* (Bloomington: Indiana University Press, 2008).

Sarfaty G. 'Why Culture Matters in International Institutions: the Marginality of Human Rights at the World Bank' (2009) 103 *American Journal of International Law* 4, 647-681.

Salomon M. E., Tostensen A. and Vandenhole W. (eds), *Casting the Net Wider: Human Rights, Development and New Duty-Bearers* (Antwerp-Oxford: Intersentia, 2007).

Sanz Corrella B. and Goey V., 'Report on the key results of the on-line consultation on the issues paper "CSOs in Development Cooperation"', EUROPEAID/129783/C/SER/multi - Lot 1: Studies and Technical assistance in all sectors, available at <http://ec.europa.eu/europeaid/who/partners/civil-society/documents/20121022-executive-summary_en.pdf> last accessed on 12 March 2014.

Schachter O., 'The Decline of the Nation-State and Its Implications for International Law' (1997) 37 *Columbia Journal of Transnational Law* 7, 7-23.

Schwarcz S., 'Regulating Complexity in Financial Markets' (2009) 87 *Washington University Law Review* 2, 211-268.

Sepúlveda M., 'Alternatives to Austerity: a Human Rights Framework for Economic Recovery' in Nolan A. (ed), *Economic and Social Rights after the Global Financial Crisis* (Cambridge: CUP, 2014).

Shamsul Haque M.' 'The Changing Balance of Power between the Government and NGOs in Bangladesh' (2002) 23 *International Political Science Review* 4, 411-435.

Sharma B., Foresti M. and Wild L., 'Engaging non state actors in new aid modalities' (2009) Overseas Development Institute, Reference Document No 12, available at <http://ec.europa.eu/europeaid/infopoint/publications/europeaid/254a_en.htm> last accessed on 6 May 2014.

- Sikka P. and Wilmott H., 'The Dark Side of Transfer Pricing: its Role in Tax Avoidance and Wealth Retentiveness' (2010) 21 *Critical Perspectives on Accounting* 4, 342-356.
- Sikka P., 'The Role of Offshore Financial Centres in Globalization' (2003) 27 *Accounting Forum* 3, 365-399.
- Sikka P., 'The Tax Avoidance Industry' (2012) 107 *Radical Statistics* 15-30.
- Simmons J. M., 'The role of citizens in the "soft law" of select social policy areas in Canada and the European Union' (2013) 56 *Canadian Public Administration* 2, 270-286.
- Skogly S. I. and Gibney M., 'Transnational Human Rights Obligations' (2002) 24 *Human Rights Quarterly* 3, 781-798.
- Skogly S. I., 'The Human Rights Obligations of the World Bank and the IMF' in van Genugten W. J. M., Flinterman C., Hunt P., and Mathews S. (eds), *World Bank, IMF and Human Rights* (Nijmegen: Wolf Legal Publishers, 2003) 45-78.
- Skogly S. I., *Beyond National Borders – States' Human Rights Obligations in International Cooperation* (Antwerp: Intersentia, 2006).
- Skogly S. I., *The Human Rights Obligations of the World Bank and the International Monetary Fund* (London: Cavendish Publishing Limited, 2001).
- Slim H., 'By What Authority: The Legitimacy and Accountability of Non-governmental Organizations', paper presented by International Council on Human Rights Policy at the International Meeting of Global Trends and Human Rights – Before and after September 11 (Geneva, January 10-12, 2002), available at <<http://www.gdrc.org/ngo/accountability/by-what-authority.html>> last accessed on 14 April 2014.
- Soohoo C. and Hortsch D., 'Who is a human rights defender? An essay on sexual and reproductive rights defenders' (2011) 65 *University of Miami Law Review* 3, 981-988.
- Spratt S., 'Food Price Volatility and Financial Speculation' (2013) Future Agricultures Consortium, Working Paper 47, available at <<https://www.ids.ac.uk/publication/food-price-volatility-and-financial-speculation>> last accessed on 2 June 2014.
- Steinhardt R., 'Corporate Responsibility and the International Law of Human Rights: The New Lex Mercatoria' in Alston P. (ed), *Non-State Actors and Human Rights* (Oxford: OUP, 2005) 177-227.
- Stewart F. and Wang M., 'Poverty Reduction Strategy Papers within the Human Rights Perspective' in Alston P. and Robinson M. (eds), *Human Rights and Development: Towards Mutual Reinforcement* (Oxford: OUP, 2005).
- Tomlinson L., 'Banks' Lending Practices: Treatment of Businesses in Distress' (2013) available at <www.tomlinsonreport.com/docs/tomlinsonReport.pdf> last accessed on 6 May 2014.
- Utting P., 'Corporate responsibility and the movement of business' (2005) 15 *Development in Practice* 375-388.
- Uvin P., 'Nongovernmental Organisations, the United Nations and Global Governance' (1995) 16 *Third World Quarterly* 3, 495-512.

- Uvin P., *Human Rights and Development* (Bloomfield: Kumarian Press, 2004).
- Vandenhole W. and Gibney M. (eds), *Litigating Transnational Human Rights Obligations: Alternative Judgments* (New York: Routledge, 2013).
- Vandenhole W., 'Emerging Normative Frameworks on Transnational Human Rights Obligations' (2012) Robert Schuman Centre for Advanced Studies, Global Governance Programme, EUI Working Paper RSCAS 2012/17, 2, available at <<http://cadmus.eui.eu/handle/1814/21874>> last accessed on 10 June 2014.
- Vandenhole W., 'Economic, Social and Cultural Rights in the CRC: Is There a Legal Obligation to Cooperate Internationally for Development?' (2007) 17 *International Journal of Children's Rights* 1, 23-63.
- Vandenhole W., 'Third State Obligations Under the ICESCR: A Case Study of EU Sugar Policy' (2007) 76 *Nordic Journal of International Law* 1, 71-98.
- Van Vooren B., Blockmans S. and Wouters J. (eds), *The EU's Role in Global Governance: The Legal Dimension* (Oxford: OUP, 2013).
- Voltolini B., 'The role of non-state actors in EU policies towards the Israeli-Palestinian conflict' (2012) European Union Institute for Security Studies, Occasional Paper 99, available at <http://www.iss.europa.eu/uploads/media/The_role_of_non-state_actors_in_EU_policies_towards_the_Israeli-Palestinian_conflict.pdf> last accessed on 1 May 2014.
- von Behr I., Reding A., Edwards C. and Gribbon L., 'Radicalisation in the digital era: The use of the internet in 15 cases of terrorism and extremism' (RAND Europe, 2013) available at <http://www.rand.org/content/dam/rand/pubs/research_reports/RR400/RR453/RAND_RR453.pdf> last accessed 14 April 2014.
- Wahi N., 'Human Rights Accountability of the IMF and the World Bank: A Critique of Existing Mechanisms and Articulation of a Theory of Horizontal Accountability' (2006) 12 *University of California Davis Journal of International Law and Policy* 2, 331-405.
- Waibel M., 'Steering Sovereign Debt Restructuring Through the CDS Quicksand' (2012), University of Cambridge Faculty of Law Working Paper Series, available at <<http://ssrn.com/abstract=2017772>> last accessed June 2014.
- Walker S., *The Future of Human Rights Impact Assessment on Trade Agreements* (Brussels: Intersentia Uitgevers N.V., 2009).
- Watkins K. and Quattri M., 'Lost in Intermediation: How Excessive Charges Undermine the Benefits of Remittances for Africa' (April 2014), London, Overseas Development Institute.
- Weissbrodt D. 'The Beginning of a Sessional Working Group on Transnational Corporations Within the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities' in Kamminga M. T. and Zia-Zarifi S. (eds), *Liability of Multinational Corporations under International Law* (The Hague: Kluwer Law International, 2000) 119-138.
- Wells C. and Elias J., 'Corporate Complicity in Rights Violations' in Alston P. (ed), *Non-State Actors and Human Rights* (Oxford: OUP, 2005).

Whaites A., 'Let's get civil society straight: NGOs, the state, and political theory' (2006) 6 *Development in Practice* 3, 240-249.

Whiteford P. and Adema W., 'What Works Best in Reducing Child Poverty: A Benefit or Work Strategy?' (2007) OECD Social, Employment and Migration Working Papers, DELSA/ELSA/WD/SEM(2007)6, available at <<http://www.oecd.org/social/family/38227981.pdf>> last accessed on 6 May 2014.

Woodroffe J., 'Regulating Multinational Corporations in a World of Nation States' in Addo M. K. (ed) *Human Rights Standards and the Responsibility of Transnational Corporations* (The Hague: Kluwer Law International, 1999) 131-142.

Wouters J., Brems E., Smis S. and Schmitt P. (eds), *Accountability for Human Rights Violations by International Organisations* (Antwerp: Intersentia, 2010).

Zaidi S. A., 'NGO Failure and the Need to Bring Back the State' (1999) 11 *Journal of International Development* 2, 259-271.

Zegveld L., *The Accountability of Armed Organised Groups in International Law* (Cambridge: CUP, 2002).

Zettelmeyer J., Trebesh C. and Gulati M., 'The Greek Debt Restructuring: An Autopsy' (2013) Peterson Institute for International Economics, Working Paper no. 2013-13-8.

B. Official publications

Australian Human Rights Commission, 'Making a Difference on Human Rights in Business', available at <<https://www.humanrights.gov.au/business-and-human-rights>> last accessed on 24 January 2014.

Council of Europe, Accountability of international organisations for human rights violations, Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe, Report, Doc. 13370, 17 December 2013.

Denmark, 'From principles to practice: the European Union operationalising the United Nations Guiding Principles on Business and Human Rights' (2012) 3. Expert Conference hosted by the Danish EU Presidency in Copenhagen on 7-8 May 2012, available at <www.ihrb.org/pdf/2012-05-07-Danish-EU-Presidency-Conference-Report.pdf> last accessed on 6 May 2014.

EBRD, 'Political Aspects of the Mandate of the European Bank for Reconstruction and Development', available at <<http://www.ebrd.com/downloads/about/aspects.pdf>> last accessed on 4 June 2014.

EBRD, The European Union and EBRD, 31 Decemeber 2012, available at <<http://www.ebrd.com/downloads/research/factsheets/EU.pdf>> last accessed on 4 June 2014.

EIB, 'Complaints Mechanism: Principles, Terms of Reference and Rules of Procedure' (2012 version), available at <http://www.eib.org/attachments/strategies/complaints_mechanism_policy_en.pdf> last accessed on 14 April 2014.

EIB, 'Environmental and Social Handbook' (2013 version), available at <www.eib.org/attachments/strategies/environmental_and_social_practices_handbook_en.pdf> last accessed 14 February 2014.

EIB, 'Political Aspects of the European Bank for Reconstruction and Development Mandate in Relation to Ethnic Minorities' (1993), available at <<http://www.ebrd.com/downloads/research/guides/aspects.pdf>> last accessed on 15 June 2014.

EIB, 'The EIB approach to human rights' (2011), available at <www.eib.org/infocentre/press/news/all/business-and-human-rights.htm> last accessed 14 February 2014.

EIB, 'The EIB Statement of Environmental and Social Principles and Standards' (2009) , available at <http://www.eib.org/attachments/strategies/eib_statement_esps_en.pdf> last accessed on 6 May 2014, para 46.

EU, Commission, 'A renewed EU strategy 2011-14 for Corporate Social Responsibility', COM(2011) 681.

EU, Commission, 'The Communication on the Increasing the impact of EU Development Policy: an Agenda for Change' COM (2011) 637.

EU, Commission, 'The roots of democracy and sustainable development: Europe's engagement with Civil Society in external relations', COM(2012) 492 final.

EU, Commission, 'Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission', COM(2002) 704 final.

EU, Commission, 'Participation of Non-State Actors in Development Policy', COM(2002) 598 final.

EU, Commission, 'Green Paper Promoting a European framework for Corporate Social Responsibility' COM(2001) 366.

EU, Commission, 'Promoting core labour standards and improving social governance in the context of globalization', COM(2001) 416 final.

EU, Commission, 'The Social Dimension of Globalisation – the EU's policy contribution on extending the benefits to all', COM(2004) 383 final.

EU, Commission, 'European Governance White Paper', COM (2001) 428 final.

EU, Commission, Staff Working Document, 'The EU's contribution to the promotion of decent work in the world', COM(2008) 412 final.

EU, Commission, Staff Working Document, 'Transnational company agreements: realising the potential of social dialogue', SWD(2012) 264 final.

EU, Commission, Multi-stakeholder Forum on Corporate Social Responsibility, reports available at <http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/multi-stakeholder-forum/index_en.htm> last accessed on 15 June 2014.

EU, Commission, Study, *Responsible Supply Chain Management* (2011), available at <<http://ec.europa.eu/social/main.jsp?langId=en&catId=331&newsId=1014&furtherNews=yes>> last accessed on 16 June 2014.

EU, Commission, 'Human rights guides for enterprises in 3 business sectors', available at <http://ec.europa.eu/enterprise/policies/sustainable-business/documents/corporate-social-responsibility/index_en.htm> last accessed on 29 July 2014.

EU, Commission, 'Civil Society', available at <http://ec.europa.eu/transparency/civil_society/general_overview_en.htm#5> last accessed on 6 May 2014.

EU, Commission, 'European Instrument for Democracy and Human Rights (EIDHR): Strategy Paper 2011 – 2013' (Brussels, 2010).

EU, Commission, 'European platform against poverty and social exclusion', available at <<http://ec.europa.eu/social/main.jsp?langId=en&catId=961>> last accessed on 25 January 2014.

EU, Commission, 'Participation of Non-State Actors in EC Development Policy', COM(2002) 598.

EU, Commission, 'PROGRESS programme (2007-2013)', available at <<http://ec.europa.eu/social/main.jsp?langId=en&catId=987>> last accessed on 25 January 2014.

EU, Commission, 'Structured Dialogue', available at <http://ec.europa.eu/europeaid/who/partners/civil-society/structured-dialogue_en.htm> last accessed 25 January 2014.

EU, Commission, 'The Commission and Non-Governmental Organisations: Building a Stronger Partnership', Commission Discussion Paper, presented by President Prodi and Vice-President Kinnock, Brussels, 2000.

EU, Commission, DG Employment, Social Affairs and Inclusion, 'Social Dialogue, Social Europe Guide' (2012) Vol. 2, available at <<http://ec.europa.eu/social/BlobServlet?docId=7384&langId=en>> last accessed on 14.4. 2014.

EU, Commission, DG Enterprise and Industry, Corporate Social Responsibility, available at <http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/index_en.htm> last accessed 6 May 2014.

EU, Commission, Press Release, 12 November 2012, 'The European Endowment for Democracy – Support for the unsupported', available at <http://europa.eu/rapid/press-release_IP-12-1199_en.htm> last accessed on 13 March 2014.

EU, Commission, Report from the Commission to the Council and the European Parliament, 'EU Anti-Corruption Report', Brussels, 3.2.2014, COM(2014) 38 Final.

EU, Commission, Structured Dialogue, Final Statement of the Structured Dialogue Budapest, 19 May 2011, available at <https://webgate.ec.europa.eu/fpfis/mwikis/aidco/images/f/fb/Joint_Final_Statement_May_2011.pdf> last accessed on 6 May 2014.

EU, Commission, Structured Dialogue. Available at <http://ec.europa.eu/europeaid/who/partners/civil-society/structured-dialogue_en.htm> last accessed 25 January 2014.

EU, Commission, exchange of letters between the Commission of the European Communities and the International Labour Organization (OJ 2001/C 156/03).

EU, Commission, 'The EU's work with NGOs', available at <http://eeas.europa.eu/human_rights/cooperation_with_ngo/index_en.htm> last accessed 25 January 2014.

EU, Commission, 'My business and human rights. A guide to human rights for small and medium-sized enterprises', available at <http://ec.europa.eu/enterprise/policies/sustainable-business/files/csr-sme/human-rights-sme-guide-final_en.pdf> last accessed on 6 May 2014.

EU, Commission, 'Tools for Dialogue', available at <http://ec.europa.eu/europeaid/who/partners/civil-society/dialogue-tools_en.htm> last accessed 25 January 2014.

EU, Commission, Trade B2 Investment. Note for the Attention of the Trade Policy Committee (Services and Investment) of the European Council, Brussels, 7 April 2014, Trade B2/CBA/cg/Ares1151153.

EU, Commission, EuropeAid, 'Engaging Non-State Actors in New Aid Modalities. For better development outcomes and governance' (2011) EuropeAid, available at <ec.europa.eu/europeaid/infopoint/publications/europeaid/254a_en.htm> last accessed on 6 May 2014.

EU, Council, Conclusions on Human Rights and Democracy, 3179th Foreign Affairs Council meeting, Luxembourg, 25 June 2012, available at <http://europa.eu/rapid/press-release_PRES-12-282_en.htm?locale=en> last accessed on 4 May 2014.

EU, Council, 'EU Annual Report on Human Rights and Democracy in the World in 2012' (Brussels, 2013).

EU, Council, EU Strategic Framework and Action Plan on Human Rights and Democracy (Luxembourg, 2012).

EU, Council, 'Guidelines on Human Rights Defenders', General Affairs Council of 8 December 2008, 2, available at <<http://www.consilium.europa.eu/uedocs/cmsUpload/GuidelinesDefenders.pdf>> last accessed on 6 May 2014.

EU, European Council, *EU Declaration on Globalisation*, Presidency Conclusions, Annex, 14 December 2007.

EU, European External Action Service, 'EU guidelines on human rights dialogues with third countries', available at <http://eeas.europa.eu/human_rights/guidelines/dialogues/docs/16526_08_en.pdf> last accessed 25 January 2014).

EU, European Parliament Committee on Foreign Affairs, 'Report on the impact of the financial and economic crisis on human rights' (2013) Doc. A7-0057/2013.

EU, Joint Communication by the High Representative for Foreign Affairs and Security Policy and the European Commission, 'Human rights and democracy at the heart of the EU external action – towards a more effective approach' COM(2011) 886 final, available at <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0886:FIN:EN:PDF>> last accessed on 6 May 2014.

EU, Joint statement by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission on European Union Development Policy: 'The European Consensus' (2006/C 46/01).

EU, Partnership agreement between the members of the African, Caribbean and Pacific Group of States on the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000, 2000/483/EC OJ L 317, 15.2.2000.

ILO, Declaration on Fundamental Rights and Principles at Work (1998), available at <<http://www.ilo.org/public/english/bureau/leg/declarations.htm>> last accessed on 15 June 2014.

ILO Declaration on Social Justice for a Fair Globalization, adopted by the International Labour Conference, Geneva, 10 June 2008. Available at <<http://www.ilo.org/public/english/bureau/leg/declarations.htm>> last accessed on 15 June 2014, preamble.

ILO, 'Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy', available at <http://www.ilo.org/empent/Publications/WCMS_094386/lang--en/index.htm> last accessed on 6 May 2014.

ILO, 'Decent Work' (1999), available at <<http://www.ilo.org/global/topics/decent-work/lang--en/index.htm>> last accessed on 16 June 2014.

ILO, 'Combating forced labour: A handbook for employers and business' (2008) available at <http://www.ilo.org/wcmsp5/groups/public/---ed_norm/-declaration/documents/publication/wcms_101171.pdf> last accessed on 14 June 2014.

ILO, 'Marking Progress against Child Labour: Global Estimates and Trends 2010-2012' (2013) Geneva, International Programme on the Elimination of Child Labour, ILO, available at <http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipecc/documents/publication/wcms_221513.pdf> last accessed on 6 May 2014.

ILO, 'Child Labour and Responses: Overview Note South-Asia', available at <<http://www.ilo.org/legacy/english/regions/asro/newdelhi/ipecc/download/southasia.pdf>> last accessed on 25 January 2014.

ILO, 'Global Employment Trends for Youth 2013: A generation at risk' Geneva (2013), available at <http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_212423.pdf> last accessed on 6 May 2014.

ILO, 'Managing Disability at the Workplace' (2002) Geneva: International Labour Office, available at <http://www.ilo.org/wcmsp5/groups/public/@ed_emp/documents/publication/wcms_103324.pdf> last accessed on 6 May 2014.

ILO, 'Microfinance for Decent Work Research Programme', available at <http://www.ilo.org/employment/areas/social-finance/WCMS_168033/lang--en/index.htm> last accessed on 4 June 2014.

IMF, Independent Evaluation Office, International Monetary fund, Terms of Reference, available at <www.ieo-imf.org/ieo/pages/TermsOfReference.aspx> last accessed 13 February 2014.

IMF, 'Global Monitoring Report 2010: The MDGs After The Crisis' (2010), Washington D.C.

ISO, ISO 26000 Guidance Standard on Social Responsibility, available at <<http://www.iso.org/iso/home/standards/iso26000.htm>> last accessed on 6 May 2014.

OECD, 'Guidelines for Multinational Enterprises', available at <http://www.oecd.org/document/33/0,3746,en_2649_34889_44086753_1_1_1_1,00.html> last accessed 30 July 2013.

OECD, 'The Paris Declaration on Aid Effectiveness and the Accra Agenda for Action', available at <<http://www.oecd.org/dac/effectiveness/34428351.pdf>> last accessed on 15 June 2014.

OECD, *Trade, Employment and Labour Standards: A Study of Core Workers' Rights and International Trade* (Paris: OECD, 1996).

South Africa, Competition Commission, 'Banking Enquiry: Report to the Competition Commissioner by the Enquiry Panel' (2008), Pretoria, available at <<http://www.compcom.co.za/enquiry-in-to-banking>> last accessed 18 June 2014.

UK, Equality and Human Rights Commission, Financial Services Inquiry, 'Sex discrimination and gender pay gap' (2009), available at <http://www.equalityhumanrights.com/sites/default/files/documents/financial_services_inquiry_report.pdf> last accessed on 14 June 2014

UK, Equality and Human Rights Commission, Financial Services Inquiry: Follow-up report (2011), available at <http://www.equalityhumanrights.com/sites/default/files/publication_pdf/fsi_follow-up_report.pdf> last accessed on 14 June 2014.

UK, Financial Services Authority, 'The Turner Review: A Regulatory Response to the Global Banking Crisis' (2009) FSA, London.

UK, Gangmasters Licensing Authority, available at <<http://gla.defra.gov.uk/>> last accessed on 6 May 2014.

UK, Parliament, 'Credit Rating Agencies and EU Sovereign Debt', House of Lords Select Committee Inquiry, 2011, submissions and transcript of Parliamentary debate available at <<http://www.parliament.uk/business/committees/committees-a-z/lords-select/eu-economic-and-financial-affairs-and-international-trade-sub-committee-a/inquiries/credit-rating-agencies-and-eu-sovereign-debt>> last accessed 20 June 2014.

UN, CESCR, 'Letter to States Parties' (16 May 2012) ref CESCR/48th/SP/MAB/SW.

UN, CESCR, 'Concluding Observations on Austria', UN Doc. E/C.12/AUT/CO/4, 13 December 2013.

UN CESCR, General Comment No. 7 on the right to adequate housing, E/1998/22, 20 May 1997.

UN, CESCR, General Comment 13 on the Right to Education (1999) UN Doc E/C.12/1999/10.

UN, CESCR, General Comment 14 on the Right to the Highest Attainable Standard of Health (2000) UN Doc E/C.12/2000/4.

UN, CESCR, General Comment 15 on the Right to Water (2002) UN Doc E/C.12/2002/11.

UN, CHR, Sub-Commission for the Prevention of Discrimination and Protection Minorities, 'Report of Special Rapporteur on the Realisation of Economic, Social and Cultural Rights' (1992) UN Doc E/CN.4/Sub.2/1992/16.

UN, CHR, Sub-Commission for the Prevention of Discrimination and Protection Minorities, 'Report of the Special Rapporteur on the Realisation of Economic, Social and Cultural Rights' (1991) UN Doc E/CN.4/Sub.2/1991/17.

UN, CRC, General Comment No. 5 on General Measures of Implementation of the Convention on the Rights of the Child (2003) UN Doc CRC/GC/2003/5.

UN, CRC, General Comment No. 11 on Indigenous children and their rights under the Convention, CRC/C/GC/11, 12 February 2009.

UN, CRC, General Comment No. 16 on State obligations regarding the impact of the business sector on children's rights, CRC/C/GC/16, 17 April 2013.

UN, Convention on the Rights of Persons with Disabilities, GA Res. 61/06, 24 January 2007.

UN, Declaration on the Rights of Indigenous Peoples, GA Res. 61/295, 13 September 2007.

UN, FAO, 'More people than ever are victims of hunger' (June 2009) Press Release available at <www.fao.org/fileadmin/user_upload/newsroom/docs/Press%20release%20june-en.pdf> last accessed on 6 May 2014.

UN, Global Campaign, OHCHR and BLIHR, 'Guide for Integrating Human Rights into Business Management', available at <<http://www.integrating-humanrights.org/>> last accessed on 6 May 2014.

UN, Global Compact Participants Searchable Database, available at <<http://www.unglobalcompact.org/ParticipantsAndStakeholders/index.html>> last accessed on 6 May 2014.

UN, Global Compact, 'Women's Empowerment Principles', available at <<http://www.weprinciples.org/>> last accessed on 6 May 2014.

UN, Global Compact, *A Business Reference Guide: United Nations Declaration on the Indigenous Peoples* (New York: UN Global Compact, 2013), available at <http://www.unglobalcompact.org/docs/issues_doc/human_rights/IndigenousPeoples/BusinessGuide.pdf> last accessed on 6 May 2014.

UN, HRC, Communication No. 511/1992, *Länsman and others v. Finland*, 26 October 1994.

UN, HRC, 'Report of the Special Rapporteur on Adequate Housing, Mission to the World Bank' (2013) UN Doc A/HRC/22/46/Add.3.

UN, HRC, 'Human rights and transnational corporations and other business enterprises', Resolution A/HRC/RES/17/4.

UN HRC, 'Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights', (2014) Resolution A/HRC/26/L.22/Rev.1.

UN, HRC, 'Report of the independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights' (2010) UN Doc A/HRC/14/21

UN, HRC, 'Report of the independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights' (2009) UN Doc A/HRC/64/289.

UN, HRC, 'Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context' (2009) UN Doc A/HRC/10/7.

UN, HRC, 'Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context' (2009) UN Doc A/HRC/10/7.

UN, HRC, 'Report of the Special Rapporteur on the Right to Health, Missions to the World Bank and the International Monetary Fund' (2008) UN Doc A/HRC/7/11/Add.2.

UN, HRC, 'The promotion, protection and enjoyment of human rights on the Internet', UN Doc. A/HRC/20/2, 5 July 2012.

UN, HRC, 10th Special Session, 'The Impact of the Global Economic and Financial Crises on the Universal Realization and Effective Enjoyment of Human Rights', Statement of Ms. Navanethem Pillay, UN High Commissioner for Human Rights, 20 February 2009, available at <www.ochcr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=9057&LangID=E> last accessed on 14 June 2014.

UN, HRC, Comment on the HRC's Guiding Principles on Business and Human Rights as related to Indigenous Peoples and the Right to Participate in Decision-Making with a Focus on Extractive Industries, Human Rights Council Expert Mechanism on the Rights of Indigenous Peoples Fifth session 9 – 13 July 2012, A/HRC/EMRIP/2012/CRP.1, 4 July 2012.

UN, HRC, Follow-up report on indigenous peoples and the right to participate in decision-making, with a focus on extractive industries, Annex, A/HRC/21/55, 16 August 2012.

UN, HRC, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, UN Doc A/HRC/10/7.

UN, ICESCR, General Comment No. 14 on the right to the highest attainable standard of health, UN Doc. E/C.12/2000/4 (2000).

UN, ICESCR, General Comment No. 15 on the right to water, UN Doc. E/C.12/2002/11 2002.

UN, OHCHR, Report on Indicators for Promoting and Monitoring the Implementation of Human Rights, 6 June 2008, UN.Doc.HRI/MC/2008/3.

UN, OHCHR, Declaration on Human Rights Defenders, available at <<http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx>> last accessed on 15 June 2014.

UN, OHCHR, 'Business and Human Rights', available at <<http://www.ohchr.org/EN/Issues/Business/Pages/BusinessIndex.aspx>> last accessed on 6 May 2014.

UN, OHCHR, 'Who is a defender', available at <<http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx>> last accessed on 10 April 2014.

UN, OHCHR, 'Human Rights and Anti-Corruption', available at <<http://www.ohchr.org/EN/Issues/Development/GoodGovernance/Pages/AntiCorruption.aspx>> last accessed 2 June 2014.

UN, OHCHR, Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, July 2011, available at <<http://www.ohchr.org/Documents/Issues/Defenders/CommentarytoDeclarationondefendersJuly2011.pdf>> last accessed on 6 May 2014.

UN, Principles for Responsible Investment, available at <<http://www.unpri.org>> last accessed on 2 June 2014.

UN, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, UN Doc. A/HRC/17/27, 16 May 2011.

UN, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, UN Doc. A/66/290, 10 August 2011.

UN, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, UN Doc. A/67/357, 7 September 2012.

UN, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, UN Doc. A/68/362, 4 September 2013.

UN, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Business and Human Rights: Mapping International Standards of Responsibility and Accountability for Corporate Acts, 2007, available at <<http://www.business-humanrights.org/Documents/SRSG-report-Human-Rights-Council-19-Feb-2007.pdf>> last accessed on 14 June 2014.

UN, Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework', UN Doc. A/HRC/17/31, 21 March 2011.

UN, Report of the open-ended intergovernmental working group to consider the possibility of elaborating an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies on its second session, A/HRC/21/41, 24 December 2012.

UN, Report on the third session of the Permanent Forum on Indigenous Issues, (10-21 May 2004), E/C.19/2004/23.

UN, Report of the Special Rapporteur on the Rights of Indigenous Peoples to the Human Rights Council, 'Study on Extractive industries and indigenous peoples', A/HRC/24/41 (2013).

UN, Report of the Special Rapporteur on the rights of indigenous peoples: Extractive industries operating within or near indigenous territories, A/HRC/18/35 11 July 2011.

UN, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Business and Human Rights: Mapping International Standards of Responsibility and Accountability for Corporate Acts, A/HRC/4/35/Add.4. 2007.

UN, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework, March 2011.

UN, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Business and Human Rights: Mapping International Standards of Responsibility and Accountability for Corporate Acts, 2007.

UN, Report on Contemporary Forms of Slavery, Report of the Working Group on Contemporary Forms of Slavery on its twenty-second session, UN Doc. E/CN.4/Sbu.2/1997/13, 11 July 1997.

UN, Report on indicators for monitoring compliance with international human rights instruments, UN HRI/MC/2006/7.

UN, Report on Indicators for Promoting and Monitoring the Implementation of Human Rights, UN HRI/MC/2008/3.

UN, Report on Realization of Economic, Social and Cultural Rights: The Impact of the activities and working methods of transnational corporations on the full enjoyment of all human rights, in particular economic, social and cultural rights and the right to development, bearing in mind existing international guidelines, rules and standards relating to the subject matter (1996), report of the Secretary-General, E/CN.4/Sub.2/1996/12, 2 July 1996.

UN, Report on the fifth session of the Committee on the Rights of the Child, adopted 28 January 1994, UN Doc. CRC/C/24, 8 March 1994.

UN, Report on the fourth session of the Committee on the Rights of the Child, adopted 8 October 1993, UN Doc. CRC/C/20, 25 October 1993.

UN, Report, 'Promotion and Protection of Human Rights', Interim report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, E/CN.4/2006/97, 22 February 2006.

UN, Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, (Advance Unedited Version), A/68/279, Sixty-eighth session.

UN, Report, 'Promotion and Protection of the Rights of Children: Exploitation of Child Labour', Report of the Secretary-General, UN Doc. A/52/523, fifty-second session.

UN, Report, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Representative of the Secretary-General on Human Rights of Internally Displaced Persons, and Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, Mission to Lebanon and Israel, Human Rights Council, para 19, UN Doc A/HRC/2/7, 2 October 2006.

UN, Report, 'Human Trafficking & Global Supply Chains: A Background Paper', prepared for the expert meeting convened by the UN Special Rapporteur on trafficking in persons, especially women and children, Ms. Joy Ngozi Ezeilo, Ankara, Turkey, 12-13 November 2012.

UN, Report, Sub-Commission on the Promotion and Protection of Human Rights, Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights, UN Doc. E/CN.4/Sub.2/2003/12/Rev.2, 26 August 2003.

UN, Report, Department of Economic and Social Affairs, 'Global Social Crisis: Report on the World Social Situation 2011' (2011), available at <<http://www.uncsd2012.org/index.php?page=view&type=400&nr=195&menu=45>> last accessed on 15 June 2014.

UN, Report, Independent Expert report on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, available at <<http://www.ohchr.org/EN/Issues/Development/IEDebt/Pages/IEDebtIndex.aspx>> last accessed on 4 June 2014

UNCTAD, 'World Investment Report 2002: Transnational Corporations and Export Competitiveness', UN Doc UNCTAD/WIR/2002 (17 September 2002).

UNCTAD, 'The Concept of Odious Debt in Public International Law' (2013) Discussion Paper no. 185, Geneva.

UNCTAD, 'The Principles for Responsible Agricultural Investment' and associated documentation, available at <<http://unctad.org/en/Pages/DIAE/G-20/PRAI.aspx>> last accessed 2 June 2014.

UNDP, *The MDGs: Everyone's Business. How inclusive business models contribute to development and who supports them* (New York: UNDP, 2010).

UNICEF, 'UNICEF strategic framework for partnerships and collaborative relationships', E/ICEF/2009/10, 26 March 2009, available at <<http://www.unicef.org/about/execboard/files/N0928210.pdf>> last accessed on 6 May 2014.

UNICEF, 'UNICEF strategic framework for partnerships and collaborative relationships' (2009), E/ICEF/2009/10, 26 March 2009, available at <<http://www.unicef.org/about/execboard/files/N0928210.pdf>> last accessed on 6 May 2014.

UNICEF, Children and Women in Tanzania (Dar es Salaam: UNICEF 2002), available at <http://www.unicef.org/tanzania/SITAN_Mainland_report.pdf> last accessed on 6 May 2014.

UNICEF, Innocenti Digest No. 11, 'Ensuring the Rights of Indigenous Children' (2004), available at <<http://www.unicef-irc.org/publications/pdf/digest11e.pdf>> last accessed on 1 May 2014.

UNICEF, Save the Children and UN Global Compact (2012), Children's Rights and Business Principles, available at <http://www.unglobalcompact.org/issues/human_rights/childrens_principles.html> last accessed on 6 May 2014.

UNICEF, Save the Children and UN Global Compact, 'Children's Rights and Business Principles; and Committee on the Rights of the Child', General Comment No. 16 on State obligations regarding the impact of the business sector on children's rights, CRC/C/GC/16, 17 April 2013.

UN, Office on Drugs and Crime, *The Use of the Internet for Terrorist Purposes* (New York: UN, 2012)

U.S., Equal Employment Opportunity Commission, 'Best Practices for Eradicating Religious Discrimination in the Workplace,' available at <http://www.eeoc.gov/policy/docs/best_practices_religion.html> last accessed on 1 May 2014.

U.S., Federal Reserve Bank of San Francisco, 'What are the possible causes and consequences of higher oil prices on the overall economy', November 2007, available at <<http://www.frbsf.org/education/publications/doctor-econ/2007/november/oil-prices-impact-economy>> last accessed on 5 June 2014.

WB, 'FAQs, Human Rights', available at <<http://web.worldbank.org/WBSITE/EXTERNAL/EXTSITETOOLS/0,,contentMDK:20749693~pagePK:98400~piPK:98424~theSitePK:95474,00.html>> last accessed 14 February 2014.

WB, Global Financial Inclusion Database (Global Findex) available at <http://data.worldbank.org/data-catalog/financial_inclusion> last accessed on 20 April 2014.

WB, 'Global Monitoring Report 2009: A Development Emergency', Washington D.C., 2009.

WB, 'Rising Food and Fuel Prices: Addressing the Risks to Future Generations', Washington D.C., 2008

WB/OECD, 'Integrating Human Rights into Development: Donor Approaches, Experiences, and Challenges', 2013, available at <<http://elibrary.worldbank.org/doi/abs/10.1596/978-0-8213-9621-6>> last accessed on 4 June 2014.

WTO, Agreement on Trade Related Aspects of Intellectual Property Rights, adopted on April 15, 1994 at Marrakesh, entry into force on January 1, 1995.

C. Case law

ECtHR, *Cyprus v. Turkey*, No. 25781/94, 10 May 2001.

ECtHR, *Drozd and Janousek v. France and Spain*, No. 12747/87, 26 June 1992.

ECtHR, *Loizidou v. Turkey*, No. 15318/89, 23 March 1995.

ECtHR, *Paşa and Erkan Erol v. Turkey*, Application No. 51358/99, Grand Chamber, Judgment of 12 December 2006 (finalized 23/05/2007).

ECJ, Case C-341/05 *Laval un Partneri v. Svenska Byggnadsarbetareförbundet* [2007] ECR I-11767.

ECJ, Case C-438/05 *International Transport Workers' Federation and Finnish Seamen's Union v. Viking Line* [2007] ECR I-10779.

ECJ, Cases C-335/11 and C-337/11 *Ring and Werge*, 11 April 2013.

ECSR, *Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden*, Decision on Collective Complaint No. 85/2012.

High Court of Ireland, 2013 Case No.765JR, *Schrems v. Data Protection Commissioner* ('PRISM/Facebook'), 18 June 2014.

HRC, *Lilian Celiberti de Casariego v. Uruguay*, Communication No. 56/1979, UN Doc. CCPR/C/13/D/56/1979 (1981).

HRC, *Sergio Ruben López Burgos v. Uruguay*, Communication No. 52/1979, UN Doc. CCPR/C/OP/1 (1981).

IACHR, *Coard v. United States*, Case 10.951, 109/99, 29 September 1999.

ICJ, *Case concerning the application of the Convention on the Prevention and Punishment of the Crime of Genocide, (Bosnia and Herzegovina v. Yugoslavia)*, 11 July 1996, ICJ Reports (1996).

Supreme Court of India, *M C Mehta v. State of Tamil Nadu*, Judgement of 10 December 1996 (1996) 6 SCC 756; AIR 1997 Supreme Court 699; (1997) 2 BHRC 258.

D. Legislation

Decision 2010/48/EC of 26 November 2009 of the Council concerning the conclusion of the UN Convention (OJ 2010 L 23, p.35).

Directive 2000/78/EC of 27 November 2000 of the Council establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p.16).

Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ 2004 L390 p.1).

Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (OJ 2011 L 101 p.1).

Regulation (EC) No 1905/2006 of the European Parliament and of the Council of 18 December 2006 establishing a financing instrument for development cooperation (OJ 2006 L 378 p.41).

E. Other reports and statements

Amnesty International, *Amnesty International Report 2011: The State of the World's Human Rights* (London: Amnesty International, 2011).

Amnesty International and CODESRIA, 'Monitoring and Documenting Human Rights Violations in Africa: A Handbook' (2000), available at <<http://www.hrea.org/erc/Library/Ukweli/ukweli-en.pdf>> last accessed on 14 April 2014.

Amnesty International, 'The Role of Civil Society' (2014), available at <<http://www.amnesty.org/en/united-nations/universal-periodic-review/role-of-civil-society>> last accessed on 29 July 2014.

Amnesty International and others, 'Joint Statement to the UN Human Rights Council: The World Bank and other International Financial Institutions Must Uphold Human Rights in all Activities They Support', available at <<http://globalinitiative-escr.org/the-world-bank-and-other-international-financial-institutions-must-uphold-human-rights-in-all-activities-they-support>> last accessed on 12 February 2014.

Amnesty International, 'Cluster Bombs and Banks – a booming business' (16 August 2011), Press Release, available at <<http://www.amnesty.org.uk/blogs/press-release-me-let-me-go/cluster-bombs-and-banks-booming-business>> last accessed 16th June 2014.

Amnesty International, 'Human Rights Defenders, FAQ', available at <<http://www.amnesty.org/en/human-rights-defenders/faq>> last accessed on 4 June 2014.

Amnesty International, 'Human Rights Stories. Tales of Human Rights Defenders for Primary Schools', available at <http://www.developmenteducation.ie/media/documents/HumanRightsStories_Amnesty.pdf> last accessed on 6 May 2014.

ATISG, 'Innovative Financial Inclusion: Principles and Report on Innovative Financial Inclusion from the Access Through Innovation Sub-Group of the G20 Financial Inclusion Experts Group' (2010) available at <http://www.microfinancegateway.org/gm/document-1.9.44743/Innovative_Financial_Inclusion.pdf> last accessed 5 June 2014.

BankTrack information page on Banks and Arms <http://www.banktrack.org/show/pages/banks_and_arms> last accessed 16 June 2014.

BankTrack, 'Bank to the Future: El Escorial Statement on Banks and the Financial Crisis' (2008), available at <www.banktrack.org/download/bank_to_the_future_el_escorial_statement/escorial_declaration_final.pdf> last accessed on 14 June 2014.

Business & Human Rights Resource Centre, Export Credit Agencies Resources, available at <<http://www.business-humanrights.org/SpecialRepPortal/Home/Materialsbytopic/Exportcreditagencies>> last accessed 16 June 2014.

Castan Centre for Human Rights Law, International Business Leaders Forum, Office of the UN High Commissioner for Human Rights, and UN Global Compact Office, 'Human rights translated: a business reference guide' (2008) available at <http://www.unglobalcompact.org/docs/news_events/8.1/human_rights_translated.pdf> last accessed on 6 May 2014.

Center for Economic and Social Rights, 'Human Rights and the Economic Crisis: A Transformative Moment?' (2009), available at <www.cesr.org/article.php?id=368> last accessed on 14 June 2014.

Center for Human Rights and Global Justice, 'Foreign Land Deals and Human Rights: Case Studies on Agricultural and Biofuel Investment' (2010) New York, NYU School of Law, available at <<http://chrgj.org/wp-content/uploads/2012/07/landreport.pdf>> last accessed on 17 June 2014.

Consumer Education Foundation and Essential Information, 'Sold Out, How Wall Street and Washington Betrayed America' (March 2009) available at <www.wallstreetwatch.org/reports/sold_out.pdf> last accessed on 1 May 2014.

Convention on Cluster Munitions, available at <<http://www.clusterconvention.org>> last accessed 16 June 2014.

ECA Watch website, available at <<http://www.eca-watch.org>> last accessed 16 June 2014

Ecumenical Council on Corporate Responsibility, 'The Banks and Society: Rebuilding Trust' (2011), Oxford, 32-37, available at <<http://www.eccr.org.uk/module-htmlpages-display-pid-86.html>> last accessed 18 June 2014.

Equator Principles website, available at <http://equator-principles.com> last accessed on 14 June 2014.

ESCR-Net, 'Information on Export Credit Agencies and Human Rights' (no date) available at <http://www.halifaxinitiative.org/updir/ECA_s_and_HR_law.pdf> last accessed 16 June 2014

Europe-v-facebook.org, 'PRISM/Facebook', available at <<http://www.europe-v-facebook.org/hcj.pdf>> last accessed on 29 July 2014.

Financial Crisis Inquiry Commission, 'The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States' (2011) *Public Affairs*, New York.

Global Policy Forum, 'Comparison of the World's 25 Largest Corporations with the GDP of Selected Countries' (2010), available at <http://www.globalpolicy.org/images/pdfs/Comparison_of_Corporations_with_GDP_of_Countries_table.pdf> last accessed on 9 June 2014.

Global Union Federations, list of International Framework Agreements, available at <<http://www.global-unions.org/framework-agreements.html>> last accessed on 16 June 2014.

Huffington Post, 'Goldman Sachs Bonus Tax Avoidance Tactic is "Depressing" Says BOE Governor Mervyn King', *The Huffington Post* (London, 15 January 2013).

Human Rights Advocates, *The Human Rights Implications of Prison Privatization*, Report to the 16th Sess., HRC, March 2011, available at <<http://www.humanrightsadvocates.org/wp>>

content/uploads/2010/05/Justin_White_-_The_Human_Rights_Implications_of_Prison_Privatization.pdf> last accessed on 14 June 2014.

HRW and Centre for Human Rights and Global Justice, NYU Law School, 'On the Margins of Profit: Rights at Risk in the Global Economy' (February 2008), 11-12.

HRW, 'European Bank for Reconstruction and Development: Draft Environment and Social Policy Retreats on Human Rights', 5 March 2014, available at <<http://www.hrw.org/news/2014/03/05/european-bank-reconstruction-and-development-draft-environment-and-social-policy-ret>> last accessed on 4 June 2014.

HRW, Human Rights Watch in relation to the World Bank, available at <www.hrw.org/topic/business/world-bank-imf> last accessed on 12 February 2014.

IM-Defensoras, 'A Feminist Alternative for the Protection, Self-Care, and Safety of Women Human Rights Defenders in Mesoamerica' (2013) 5 *Journal of Human Rights Practice* 3, 446-459.

Institute for Health Metrics and Evaluation, 'Rising Education Levels Among Women Save Children's Lives Worldwide', available at <<http://www.healthmetricsandevaluation.org/news-events/news-release/rising-education-levels-among-women-save-childrens-lives-worldwide>> last accessed on 6 May 2014.

Institute for Human Rights and Business, 'Investing the Rights Way: A Guide for Investors on Business and Human Rights' (2013), available at <http://www.equalityhumanrights.com/sites/default/files/publication_pdf/fsi_follow-up_report.pdf> last accessed on 14 June 2014.

International Banking Federation, Letter from Sally Scutt, Managing Director of the IBF to Michael Noonan, President of the ECOFIN Council (23 April 2013) available at <www.ibfed.org/news/ibfed-comments-on-the-ecs-proposal-for-a-cd-implementing-enhanced-cooperati> last accessed on 6 May 2014.

International Business Leaders Forum (IBLF) and the International Finance Corporation (IFC), in association with the UN Global Compact, 'Guide to Human Rights Impact Assessment and Management (HRIAM)' (2010), available at <http://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/Guide+to+Human+Rights+Impact+Assessment+and+Management> last accessed on 6 May 2014.

International Chamber of Commerce, 'Framework for Responsible Food and Beverage Marketing Communications 2012' ICC Document N° 240-46/675 – 23 August 2012, available at <http://www.codescentre.com/media/12665/675-food_bev_framework.pdf> last accessed on 6 May 2014.

International Code of Conduct for Private Security Service Providers (9 November 2010) available at <<http://www.icoc-psp.org/>> last accessed on 14 June 2014.

International Committee of the Red Cross, 'The Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies During Armed Conflict', Montreux, 17 September 2008, available at <http://www.icrc.org/eng/assets/files/other/icrc_002_0996.pdf> last accessed on 14 June 2014.

International Council on Human Rights Policy, 'Corruption and Human Rights: Making the Connection', Geneva, 2009, available at <http://www.ichrp.org/files/reports/40/131_web.pdf> last accessed on 3 June 2014.

International Law Association, 'Report of the Hague Conference (2010): Rights of Indigenous Peoples', available at <<http://www.ila-hq.org/en/committees/index.cfm/cid/1024>> last accessed on 6 May 2014.

International Law Association, First Report of the Committee on Non-State Actors in International Law, The Hague Conference, 'Non-State Actors in International Law: Aims, Approach and Scope of Project and Legal Issues' (2010) available at <<http://www.ila-hq.org/en/committees/index.cfm/cid/1023>> last accessed on 6 May 2014.

International Network for Economic, Social and Cultural Rights, 'ESCR-Net Statement on the Financial Crisis and Global Economic Recession: Towards a Human Rights Response' (2008), available at <www.escr-net.org/usr_doc/EconomicCrisisHRStatement_ESCR-Net_final_eng_withendorsements.pdf> last accessed on 14 June 2014.

International Rivers, 'Going After Uganda's Big, Bad Dam Investors' (2 February 2010) available at <www.internationalrivers.org/blogs/229/going-after-uganda-s-big-bad-dam-investors> last accessed on 14 February 2014.

Save the Children, 'Left Behind, Left out: The Impact on Children and Families of Mothers Migrating for Work Abroad. Research Findings and Policy Challenges' (2006) available at <http://www.crin.org/docs/save_sl_left_out.pdf> last accessed on 6 May 2014.

Solidarity Research Institute, 'Bank Charges Report 2013' (August 2013), Johannesburg, available at <[http://navorsing.co.za/wp-content/uploads/2013/08/Solidarity%20Bank%20Charges%20Report%202013%20\(Compressed\).pdf](http://navorsing.co.za/wp-content/uploads/2013/08/Solidarity%20Bank%20Charges%20Report%202013%20(Compressed).pdf)> last accessed 18 June 2014.

Stanley Foundation, 'The United Nations and Civil Society: The Role of NGOs—Report of the Thirtieth UN Issues Conference' (1999), available at <<http://www.globalpolicy.org/ngos/ngo-un/gen/2000/1128.htm>> last accessed on 14 April 2014

Swedbank: The Euro Area Crisis: 99 Q&A, Stockholm, Swedbank, 2012, available at <<http://newsroom.swedbank.com/en/Publications/2012/The-Euro-Area-Crisis---99-Q--A>> last accessed 20 June 2014.

The Code, 'The Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism', available at <<http://www.thecode.org/about/>> last accessed on 24 January 2014.

THORN, 'Deep Web vs. Dark Web: Defending Children Against Online Exploitation' (18 April 2014), THORN, available at <<http://www.wearethorn.org/deep-web-vs-dark-web-defending-children-against-online-exploitation/#sthash.eqsg4HTa.dpuf>> last accessed on 14 April 2014.

Time, 'WikiLeaks Comes Under Fire from Rights Groups' (12 August 2010), available at <<http://content.time.com/time/world/article/0,8599,2010309,00.html>> last accessed on 3 June 2014.

Transnational Institute, 'State of Power 2014: Exposing the Davos Class' (2014), available at <http://www.tni.org/sites/www.tni.org/files/download/state_of_power_hyperlinked_0.pdf> last accessed on 9 June 2014.

US Financial Crisis Inquiry Commission, *The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States* (New York: Public Affairs, 2011).

WBCSD-SNV Alliance, 'Measuring the impact of Nestlé's innovative distribution model for nutritional food in Peru', available at <<http://www.inclusivebusiness.org/2011/03/nestle-peru-measuring-impact-framework.html>> last accessed on 6 May 2014.