Silk Road Report

EU and Business & Human Rights

February 2017

Justice For Iran
عدالت برای ایران

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About The Silk Road Project

The Silk Road was an ancient network of trade routes that were for centuries central to cultural interaction through regions of the Asian continent connecting the East and West, from China to the Mediterranean Sea. Trade on the Silk Road played a significant role in the development of the civilizations of China, the Subcontinent, Persia, Europe, the Horn of Africa and Arabia, opening long-distance political and economic relations between the civilizations.

The Silk Road project aims to promote accountability and protect human rights in the context of Iran's rapid return to the world markets after the 2015 Nuclear Deal.[1] Through publishing reports on business and human rights in Iran, this project intends to increase awareness among advocates of human rights, particularly lawyers and civil society activists, and accountability in business and corporate relations. It also aims to hold accountable corporates which are involved or complicit in human right violations, using legal and other available mechanisms.

[1] The Joint Comprehensive Plan of Action (JCPOA) known commonly as the Iran deal or Iran nuclear deal, is an international agreement on the nuclear program of Iran reached in Vienna on 14 July 2015 between Iran, the P5+1 (the five permanent members of the United Nations Security Council—China, France, Russia, United Kingdom, United States—plus Germany), and the European Union. Under the agreement, Iran will receive relief from U.S., European Union, and United Nations Security Council nuclear-related economic sanctions.

About the Report

This is the third report from the Silk Road Report series which aim to shed light on the underlying concepts and instruments as well as mechanisms that can be applied to specific cases of recent contracts and agreements between multinational corporations and Iranian companies, some of which are some of which are closely linked to or partially owned by human rights violators. In this report, we will briefly explore the legal and policy framework of the EU with regard to business and human rights.

I. Business and Human Rights within Internal Legal and Policy Framework of the EU

The EU has adopted significant policy documents and pieces of legislation with specific impacts on business and human rights. The main **internal** EU policy framework addressing implementation of the UNGPs is the 2011 Communication on "A renewed EU strategy 2011-14 for Corporate Social Responsibility".[2] This was the first policy document on Corporate Social Responsibility (CSR) from the European Commission since 2006 which sets out the European Strategy on CSR. In its communication, the EU Commission puts forward a new definition of CSR as the "responsibility of enterprises for their impacts on society". It states that respect for applicable legislation, and for collective agreements between social partners, is a prerequisite for meeting that responsibility.

The Commission also emphasises that in order to fully meet their corporate social responsibility, 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, with the aim of:

- Maximising the creation of shared value for their owners/shareholders and for other stakeholders and society at large;
- Identifying, preventing and mitigating their possible adverse impacts.[3]

[2] European Commission, Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions: A renewed EU strategy 2011-14 for Corporate Social Responsibility, Brussels, 25.10.2011, COM (2011) 681, available at: http://www.europarl.europa.eu/meetdocs/2009_2014/documents/com/com_com(2011)0681_/com_com(2011)0681_en.pdf.

[3] Ibid, s 3.1.

The Commission acknowledges the degrees of complexity of that process and clarifies that it will depend on factors such as the size of the enterprise and the nature of its operations. For most small and medium-sized enterprises, especially micro- enterprises, the CSR process is likely to remain informal and intuitive.

Furthermore, while stressing that the development of CSR should be led by enterprises themselves, the Commission proposes that "public authorities should play a supporting role through a smart mix of voluntary policy measures and, where necessary, complementary regulation."[4]

II. Business and Human Rights within the External Legal and Policy Framework of the EU

The main **external** policy framework in the area of human rights is the EU "Strategic Framework on Human Rights and Democracy" and its "Action Plan" (first adopted in June 2012 for the years 2012-2014). The current Action Plan on Human Rights and Democracy is adopted for the years 2015-2019.

a) The EU "Strategic Framework on Human Rights and Democracy"

In 2012, the European Council adopted a Strategic Framework on Human Rights and Democracy with an Action Plan for putting it into practice. The Framework sets out principles, objectives and priorities, all designed to improve the effectiveness and consistency of EU policy as a whole in the next ten years. They provide an agreed basis for a truly collective effort, involving EU Member States as well as EU Institutions.

[4] Ibid, s 3.4.

The EU "Strategic Framework on Human Rights and Democracy" places importance on the document, "Implementation of the UN Guiding Principles on Business and human rights". It is stipulated as the EU Commission's responsibility to "ensure implementation to the Commission Communication on Corporate Social Responsibility, in particular by developing and disseminating human rights guidance for three business sectors (ICT; oil and gas; employment and recruitment agencies), and for small and medium-sized enterprises." The EU Member States are also required to develop national plans on the implementation of the UN Guiding Principles. EU states have also been required by the OECD Common Approaches to implement the relevant adverse project-related human rights impacts.

b) The EU Action Plan on Human Rights and Democracy

The 2015 Action Plan on Human Rights and Democracy[5], comprises specific actions tailored to implement, streamline and promote human rights in all aspects of EU politics and policies, addressing EU institutions as well as Member States. With regard to Business and Human Rights, Action 18 has determined three distinct tasks

18. Advancing on Business and Human Rights	a. Develop capacity and knowledge on the implementation of Business and Human Rights guidelines, in particular as regards the UN Guiding Principles on Business and Human Rights (UNGPs) and other tools/ initiatives that contribute to the implementation of the UNGPs; strengthen the role and expertise of EU Delegations and Member State embassies in this context; raise awareness on the UNGPs and corporate social responsibility in external action and policy dialogue with partner governments and regional organisations; promote the adoption of National Action Plans (NAPs) by partner countries; proactively engage with business, civil society, National Human Rights Institutions, on issues related to business and human	By 2017

[5] The EU Action Plan on Human Rights and Democracy as adopted in 2015 for the years 2015-2019, available at: https://eeas.europa.eu/human_rights/docs/eu_action_plan_on_human_rights_and_democracy_en.pdf.

	rights.	
	b. Ensure a strong focus on business and human rights in the overall EU strategy on Corporate Social Responsibility including priorities for the effective implementation of the UN Guiding Principles.	By 2016
	c. Develop and implement National Action Plans (NAPs) on the implementation of the UN Guiding Principles or integrate the UN Guiding Principles in national CSR Strategies; share experience and best practices in the development of NAPs.	By 2017

Responsibility for carrying out the above-mentioned actions resides with (a) the High Representative/Vice President assisted by (b) the European External Action Service (EEAS), and with (c) the Commission, (d) the Council and (e) Member States. The EU Special Representative for Human Rights shall contribute to implementation of the Action Plan, in accordance with his mandate.

Among the EU Member States, Denmark, Finland, Lithuania, Netherlands, Norway, Sweden, and the UK have already published their NAPs. Italy, Spain and Switzerland[6] are yet to finalise their National Action Plans.[7] NAPs provide a stronger foundation for upholding the UN Guiding Principles on Businesses and Human Rights.

c) Other Documents

Among other important documents adopted by the EU in relation to business and human rights one can refer to the 2014 EU Public Procurement Directives[8], the main goal of which is to ensure that the procurement rules of EU Member States cover

[6] http://www.swisspeace.ch/fileadmin/user_upload/Media/Publications/Newsletter/2014/NL_125_EN.pdf

[7] https://business-humanrights.org/en/un-guiding-principles/implementation-tools-examples/implementation-by-governments/by-type-of-initiative/national-action-plans

[8] Directive 2014/24/EU on public procurement; Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors; and Directive 2014/23/EU on the award of concession contract. Read More: https://ec.europa.eu/growth/single-market/public-procurement/rules-implementation_en.

human rights-related matters in the procurement of public goods, works and services.

Additionally, the Committee of Ministers of the Council of Europe adopted Recommendation CM/Rec (2016) on human rights and business, which provides more specific guidance to assist Member States in preventing and remedying human rights violations by business enterprises and also insists on measures to persuade businesses to respect human rights.[9] The Recommendation elaborates on access to judicial remedy, drawing on the expertise of the Council of Europe and legal standards in the field (civil and criminal liability, reduction of judicial barriers, legal aid, collective claims etc). It puts special emphasis on the additional protection needs of workers, children, indigenous people and human rights defenders.

The EU has also adopted the Non-Financial Reporting Directive 2014[10] which applies to large public interest companies (including listed companies, banks and insurance companies) with over 500 employees. It requires the disclosure of information relating to human rights (among other issues) 'to the extent necessary for an understanding of the undertaking's development, performance, position and impact of its activity'. Such disclosure should include the company's policy and its outcomes, due diligence processes, principal risks, and (where relevant and proportionate) its business relationships, products or services that are likely to cause adverse impacts, along with information about how those risks are managed.

The UK is a good example of mandatory non-financial reporting under the EU

[9] Recommendation CM/Rec (2016) 3 of the Committee of Ministers to member States on human rights and business, Appendix 4 , Item 4.3, Adopted by the Committee of Ministers on 2 March 2016 at the 1249th meeting of the Ministers' Deputies, available at: https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CM/Rec(2016)3&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864&direct=true

[10] Directive 2014/95/EU of the European Parliament and of the Council 22 October 2014, amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups. http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0095

directive. The Companies Act 2006 requires that UK listed companies include non-financial information in a strategic report to 'the extent necessary for an understanding of the development, performance or position of [the company's] business'. The Act was revised in 2016 to incorporate provisions of the EU Non-Financial Reporting Directive of 2014. The UK's Modern Slavery Act also includes similar provisions on reporting requirements.

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