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Jernej Letnar Čerňič & Taygeti Michalakea
(eds.)

Business and Human Rights in South East Europe

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Abstract

The field of business and human rights has attracted widespread attention during the last decades in academia and practice. Still, there has been relatively little attention to it by South East European states. Governments of the region lack a coherent engagement with the implications of corporate activities on human rights and the rule of law. This is demonstrated by the absence of National Action Plans on Business and Human Rights and specific regulations or policies on corporate accountability. At the same time, most countries in the region, ravaged by recent conflict and deep financial crises, compete to attract investment and trade, resulting in adopting lax laws in terms of social issues, environment, and labour. This paper aims to provide the first overview of developments and challenges related to business and human rights in Albania, Bosnia Herzegovina, Croatia, Greece, Montenegro, North Macedonia, Serbia, Slovenia, and Turkey.

Keywords: Business, human rights, rule of law, South East Europe, corporate accountability

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Business and Human Rights in South East Europe

Editors:

Jernej Letnar Čerňič

Taygeti Michalakea

Authors:

Dorina Ndreka Asllanaj

Mirela Arqimandriti

Mirela Geko

Jelena Aparac

Taygeti Michalakea

Sonja Tošković

Ana Dangova Hug

Nevena Kostic

Jernej Letnar Čerňič

Özlem Zingil

Siniša Milatović

Introduction

Jernej Letnar Čerňič¹ and Taygeti Michalakea²

The field of business and human rights has attracted widespread attention during the last decades in academia and practice. Still, there has been relatively little attention to it by South East European states. So far, no comprehensive study has been produced on Business and Human Rights in South East Europe. A workshop, organized in Athens at the end of 2021, was, to the best knowledge of the convenors, the first workshop on business and human rights in South East Europe.

In the wider Balkan region, governments lack a coherent engagement with the implications of corporate activities on human rights and the rule of law. This is demonstrated by the absence of National Action Plans on Business and Human Rights and specific regulations on corporate accountability. State authorities, with the exception of Slovenia, have not developed National Action Plans on Business and Human Rights, nor any other comprehensive policies on the subject matter. Most state institutions in the region have no policy on ensuring respect for human rights in business operations of state-owned enterprises. Domestic institutions, also, lack the mandate to address violations committed by corporations and international mechanisms are either absent or dysfunctional. Local civil society is relatively unfamiliar with the topic, whereas activists and journalists face increased judicialization, through various types of prosecutions. Moreover, the rule of law has been traditionally weak and deficient in the South East European states. Access to justice for business-related human rights abuses has been deficient due to a lack of specific judicial and quasi-judicial procedures and weak judicial institutions.

At the same time, most countries in the region, ravaged by recent conflict and deep financial crises, compete to attract investment and trade, resulting in adopting lax laws in terms of social issues, environment, and labour thereby provoking structural socio-economic challenges. Similarly, international organizations prioritize other challenges in the region, at the expense of business and human rights regulation.

Amidst this situation, a workshop was organized in Athens on 3 December 2021 to provide a forum for academics and practitioners working in the field of Business and

¹ Professor of Law, Faculty of Government and European Studies, Nova Univerza, Slovenia.

² Lecturer, European Law and Governance School, Athens, Greece. This conference presentation was given in the framework of the author's research, funded by Greece and the European Union (European Social Fund) through the Operational Program 'Human Resources Development, Education and Lifelong Learning', in the framework of the Act 'Postgraduate Researchers Support—Cycle B' (MIS 5033021) implemented by the Greek Foundation of State Scholarships.

Human Rights in South East Europe. The workshop was funded by the re:constitution programme and hosted by the European Law and Governance School in Athens. re:constitution is a joint programme by Forum Transregionale Studien and Democracy Reporting International, funded by Stiftung Mercator. It created a platform for regional reflection on the particular challenges that business activities pose to the protection, respect, and guarantee of human rights and more broadly, on the rule of law and democracy. In addition, it sought to foster dialogue on potential ways to achieve responsible business conduct, in relation to human rights, that will contribute to safeguarding the rule of law and democracy in the respective states. Participants from Albania, Bosnia Herzegovina, Bulgaria, Croatia, Montenegro, North Macedonia, Serbia, Slovenia, and Turkey presented and discussed the national legal and institutional frameworks, identified local challenges and potential avenues for remedies. The following contributions are based on the participants' presentations during the conference.

1. Business and Human Rights in Albania – General Overview

Dorina Ndreka Asllanaj³

The Constitution of Albania provides for the obligation to respect International Law. Regarding Business and Human Rights ('BHR'), Albania has not adopted a National Plan according to the UN Guiding Principles on Business and Human Rights ('UNGPs'),⁴ and is not working on one to be approved in the foreseeable future. This makes a comprehensive analysis, difficult to perform. Despite the existence of many national strategies on various issues, the country still lacks an in-depth one in this specific area.

Albania's Constitution enshrines a rich, directly applicable fundamental rights catalogue. International law has priority over national legal norms, making it easier for basic principles of the United Nations to be included in the national legal framework. The implementation of human rights is completed in accordance to international law standards, through the legislation in different areas. Human rights protections, relevant for business and human rights issues include the legal guarantees on discrimination and inequality, worker's rights, human trafficking, environmental protection, sustainable development, human rights due diligence, corporate liability, public procurement and judicial procedures. Despite the existence of relevant legal tools, aimed to guarantee the implementation of these norms, implementation still lags behind.

³ Lawyer, Lecturer, Aleksandër Moisiu University, Durrës, Albania.

⁴ UN Office of the High Commissioner for Human rights, Guiding Principles on Business and Human Rights, Implementing the United Nations "Protect, Respect and Remedy" Framework, 2011.

Albania's major challenges in the field of business and human rights are labour and environmental rights, and also the judicial system. Despite some major improvements, there is still a lot of work to be done. National and international reports point to a large number of unlawful employment (informal workers), which has a direct influence on the respect of employees' rights. Despite the existence of labour unions and the right to join them, the employers lack the trust and will, to actively participate in these organizations. The Labour Inspectorate controlling the implementation of labour laws is a very small organization lacking the necessary resources to fully exercise its power.

Albania has improved the legal framework regarding environmental protection, aligning its legislation with the *acquis* of the European Union, but the major development in this area has been the progress in strategic litigation. Local communities, with the assistance of NGOs, have filed several lawsuits against some of the most controversial projects in the country, like the ones concerning hydropower within protected areas, landfills, or incinerators. The latest courts' decisions have acknowledged not only the right of these communities to address environmental issues in court, but have also addressed the merits of the case, halting some of these projects. These positive outcomes are being hindered by the ongoing judicial reform, which is causing delays in court procedures.

As a result, it is evident that Albania has significant shortcomings in the area of Business and Human Rights. Despite a rather appropriate fair legal system, there is a lack of systematic regulation oriented in business and human rights. Apart from drafting the National Action Plan in accordance with UNGPs, the coherent interpretation and application of the relevant norms, bearing in mind human rights and business, would increase their overall effectiveness.

2. Gender and Businesses in Albania

Mirela Arqimandriti⁵

According to the Gender Alliance for Development Centre (GADC), women workers in the textile industry in Albania suffer from various abuses by corporate employers. Workers in the so called "fason" industry in Albania, comprising garment and footwear factories, are usually employed unlawfully, without receiving a contract or being informed on their rights and obligations. Women in the garment industry, representing 90 % of the workers in this field suffer from various violations, including discrimination based on gender, race and any disability they might have, unlawful

⁵ Executive Director, Gender Alliance for Development Centre, Albania.

dismissals, psychical abuse, practical barriers preventing them to enjoy their right to the freedom of association. This phenomenon also leads to Labour Code violations and reduced protection for female employees. Furthermore, it makes possible to offer unequal salaries for men and women, although men represent 5% mostly in managerial positions. However, there are no accurate data on wages in this particular sector. Usually, the minimum wage is applied, which, in Albania, is about €250 (34000 ALL) per month. It is also to be noted here that sexual harassment at the workplace is an undiscussed issue, in Albania.

During the second half of 2020, GADC conducted a rapid survey among female workers at textile factories to assess the impact of the lockdown during the COVID-19 pandemic, also taking into account the preventive measures adopted to prevent the spread of COVID-19. The survey showed that appropriate measures were not taken regarding occupational health and safety. Public transportation continued to operate at full capacity; social distancing was not kept at workplaces employees had to cover their treatment and recovery from Covid-19 on their own expenses. During the lock down period, they were removed from the payroll; female employees worked without proper conditions, not keeping the pandemic protocol. Some of them had to quit their jobs in order to take care of their children at home, while others were forced to work for reduced working hours for hourly calculated payment without prior notification.

Formally, Albania has a solid legal framework to protect workers from gender-based discrimination (GBD), namely the Law on Protection from Discrimination (LPD), the Labour Code (LC), the Law on Gender Equality (LGE) and the Criminal Code (CC). However, as these laws have been separately amended over time without considering each-other, there are different definitions of discrimination. As such, inconsistencies exist, which creates confusion.

In addition, Albania ratified several international covenants that are relevant in the field of the subject matter. The most important one is the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Albania in 1991. Among others, the ICESCR guarantees the right to social insurance (Article 9); adequate standard of living (Article 11), which includes the right to food and housing; the right to enjoyment of the highest attainable standard of physical and mental health (Article 12). As a conclusion, in relation to business and human rights, Albania needs to improve the implementation of the formal rules and strengthen institutional response to hold the concerned actors responsible, on the basis of the state obligations to protect workers' human rights.

3. Business and Human Rights in Bosnia Herzegovina

Mirela Geko⁶

Under its current legal framework, the state of Bosnia and Herzegovina (BiH) has a duty to protect human rights, including throughout business operations. Competent state institutions, whose mandate covers respect for human rights in business, are the Ministry of Human Rights and Refugees, the Ministry of Foreign Trade and Economic Relations and the Ministry of Civil Affairs. The rights of every individual are prescribed by the Constitution, international treaties or conventions ratified by BiH, as well as ordinary laws.

In Bosnia and Herzegovina, the United Nation's Guiding Principles on Business and Human Rights ('UNGPs') came into the spotlight, during the implementation of the project "Improving Human Rights in the Business Sector,"⁷ implemented by the 'Institute for Youth Development KULT.'

To improve the respect for human rights in the business sector, the Institute for Youth Development KULT, in cooperation with the Association of Employers, and the support of the European Union, organized public consultations with stakeholders in multiple cities. These consultations were used to develop the Questionnaire on Respect for Human Rights in Business.⁸

Extensive research, through questionnaires and surveys, informed the process of developing the Baseline Analysis of Human Rights in the BiH Business Sector,⁹ the Methodology for Developing the Charter of Business and Human Rights in BiH and the Charter on Business and Human Rights itself.¹⁰ The Charter comprises fifteen articles detailing the companies' commitment to prevent human rights violations, involving stakeholders and allowing them to voice their needs. Moreover, it enshrines equal rights for all, fosters a safe work environment, prohibits forced labour and human trafficking, and upholds the right to a confidential communication channel that employees can use to report any violations.

⁶ Lead Project Manager, Institute for Youth Development KULT, Bosnia and Herzegovina.

⁷ For more information on that project, see Institut za razvoj mladih KULT, Povoljsanje ljudskih prava u privrednom sektoru u Bosni i Hercegovini, <<https://www.mladi.org/en/projects/3/improving-human-rights>>, accessed 30 November 2022.

⁸ See Institut za razvoj mladih KULT, Analiza rezultata dobijenih instrazivanjem misljenja gradana o postovanju ljudskih prava u privrednom sektoru, May 2021, p. 25.

⁹ Institut za razvoj mladih KULT, Osnovna Analiza o Stanju Ljudskih Prava U Privrednom Sektoru U Bosni i Hercegovini, <<http://www.upfbih.ba/uimages/Analiza20o20stanju20ljudskih20prava20u20privrednom20sektoru20u20BiH.pdf>>, accessed 30 November 2022.

¹⁰ Institut za razvoj mladih KULT, Ljudska prava u poslovnom sektoru u bosni i hercegovini povelja o postivanju ljudskih prava u poslovanju, December 2019, Charter on Business and Human Rights, <<https://www.mladi.org/phocadownload/Methodologija%20za%20izradu%20Povelje.pdf>>, accessed 30 November 2022.

At the same time, the BiH Framework Guidelines for the Implementation of the UNGPs, which are similar to a National Action Plan, have been developed.¹¹ Various actors were involved in the process, including the Ministry of Human Rights and Refugees of BiH; the Delegation of the European Union; other institutions at federal and entity levels; the Association of Employers of BiH; the Association of Employers of Brčko District; the Alliance of Trade Unions of BiH and the Alliance of Employers of Republika Srpska.

The BiH Framework Guidelines for implementing the UNGPs 2021-2025 were finalized after a detailed preliminary process that included recommendations by a diverse set of stakeholders. The United Nations Guiding Principles on Business and Human Rights are an instrument comprising 31 principles for implementing the United Nations' Protect, Respect and Remedy Framework concerned with human rights issues in the business sector.¹² All the invested effort bore fruit when the BiH Framework Guidelines for the Implementation of the UNGP 2021-2025 were included in the BiH Ministry of Human Rights and Refugees work plan.

Annex 6 of the BiH Constitution refers to the Human Rights Agreement, which guarantees all persons in BiH the highest level of internationally recognized human rights and fundamental freedoms, including the rights and freedoms guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols and other international agreements specifically listed. Chapter II of the BiH Constitution is dedicated to protecting human rights through the Human Rights Commission, which consists of the Ombudsman and the members of the Human Rights Council. The Commission for Human Rights operates within the Constitutional Court of BiH.

BiH has ratified various international human rights instruments, under which there are reporting obligations, and cooperation with international institutions.

Although a lot has been done in other segments of human rights protection in BiH, within which human rights in business are sporadically mentioned, no documents have been adopted that concern this aspect. The document of the Framework Guidelines for implementing the UN Guiding Principles on Business and Human Rights is the first step toward intensifying activities in this area. However, BiH has a Law on Public Procurement that has not been amended in accordance with the UNGPs. The law defines the public procurement process for all state-owned companies and processes.

¹¹ Ibid.

¹² UN Human Rights Council, Protect, respect and remedy: a framework for business and human rights: report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie, 7 April 2008, A/HRC/8/5.

4. Business and Human Rights in Croatia

Jelena Aparac¹³

4.1 Introduction

Croatian businesses have had a difficult period in recent years, facing the economic burdens of destruction by war, loss of traditional markets, privatization and the transition to a market economy. At the same time, those companies, that have survived, face the economic and business challenges posed by the country's accession to the European Union (EU).

4.2 CSR developments in Croatia

During the negotiations for EU accession, Croatia was under strong pressure to bring itself in line with EU policies, including the Corporate Social Responsibility ('CSR') policy concept, which is rapidly growing in importance in the European markets. At the same time, Croatian companies, particularly small and medium-sized enterprises (SMEs), are under pressure to show customers and potential clients, within the EU and elsewhere in the OECD countries, that they are practicing CSR. To promote the concept of CSR in Croatia, the former UN Industrial Development Organization and Croatia's Minister for Economy, Labour, and Entrepreneurship signed an agreement on the Development of Corporate Social Responsibility in April 2004.

Through its Business Council for Sustainable Development – the business-led association that has participated in the UN Global Compact since 18 March 2007, Croatia is communicating its engagement in the field of CSR. So far, it has been briefed in 2016, 2018, and in July 2021.

4.3 Croatian National Contact Point

At its session held on 23 May 2019, the Government of the Republic of Croatia adopted the Decision to establish a National Contact Point (NCP)¹⁴ as a permanent mechanism for promoting and implementing the OECD Guidelines for Multinational Enterprises.¹⁵

Like other NCP's, the National Contact Point's task is to promote the Guidelines, report on their implementation and resolve disputes arising thereof, through good offices, conciliation and mediation. The National Contact Point Secretariat is responsible for

¹³ Independent Expert, Working Group on the use of mercenaries, United Nations.

¹⁴ Ministarstvo vanjskih i europskih poslova, Prijedlog odluke o osnivanju Nacionalne kontaktne točke kao trajnog mehanizma za promicanje i primjenu Smjernica za odgovorno poslovanje Organizacije za gospodarsku suradnju i razvoj (OECD), 23 Svibnja 2019, <<https://vlada.gov.hr/UserDocsImages/2016/Sjednice/2019/Svibanj/158%20sjednica%20VRH/158%20-%209.docx>>, accessed 30 November 2022.

¹⁵ Organisation for Economic Cooperation and Development (OECD), OECD (2011), OECD Guidelines for Multinational Enterprises, OECD Publishing.

coordinating all activities of the NCP, providing administrative support to the work of the External Body, drawing up an annual report on the NPC's actions to be submitted to the OECD Investment Committee. It also participates at the annual meetings of the OECD Working Party on Responsible Business Conduct. The National Contact Point's Secretariat consists of one official from the Ministry of Foreign and European Affairs and one official from the Ministry of Economic and Sustainable Development.

The NCP External Body is responsible for assisting parties in resolving issues related to the application of the Guidelines in specific instances and other activities regarding the promotion and implementation of the Guidelines in cooperation with the Secretariat. It consists of one representative from several institutions, namely the Ministry of Foreign and European Affairs; the Ministry of the Economy and Sustainable Development; the Ministry of Labour, Pension System, Family and Social Policy; the Croatian Chamber of Commerce; the Croatian Employers' Association; the Croatian Business Council for Sustainable Development; the Autonomous Trade Unions of Croatia; the Independent Union of Research and Higher Education Employees; a non-governmental organization dealing with human rights protection and a non-governmental organization dealing with environmental protection.

The Croatian National Contact Point is also tasked to raise awareness about the OECD Guidelines with companies, trade unions, and NGOs, and to contribute in resolving issues arising from alleged non-compliance with the Guidelines in specific instances. OECD's Investment Committee has oversight responsibility for the OECD Guidelines for Multinational Enterprises (OECD Guidelines), and the NCP is tasked to implement them. To this day, Croatia has no complaints.

4.4 Corporate Criminal Liability

Like many countries in Europe, Croatia supported the principle of *societas delinquere non potest* for a long time, despite the Council of Europe Recommendation No. R (88)¹⁸ concerning liability of enterprises for offences committed in the exercise of their activities¹⁶ influenced by the French and the Italian penal codes. According to the Croatian Law on Criminal Liability of Legal Entities,¹⁷ a legal entity shall be held liable for an act of its employee if, by that crime, a duty of the legal entity has been breached or if the legal entity realized illegal material gains by the commitment of such crime.

Therefore, a legal entity can be prosecuted only under the above detailed conditions, and, in principle, under the same procedure in which the responsible person is prosecuted. In these cases, the legal entity is to be represented by an official appointed on the basis of the mentioned law. Should a legal entity found liable for a crime, it might be punished by monetary fine, proportionate to the scale of possible

¹⁶ Council of Europe, Recommendation No. R (88) 18 of the Committee of Ministers to Member States Concerning Liability of Enterprises Having Legal Personality for Offences Committed in the Exercise of their Activities, 20 October 1988, <<https://rm.coe.int/16804c5d71>>, accessed 30 November 2022.

¹⁷ Zakon o odgovornosti pravnih osoba za kaznena djela, Official Gazette of the Republic of Croatia, N. 151/03, 110/07, 45/11, 143/12, <<https://www.nn.hr/>>, accessed 30 November 2022.

imprisonment of natural persons (for ex. if the maximum duration of imprisonment is more than 15 years, a company which is held liable for the same crime shall be punished by a monetary fine ranging from HRK 20.000,00 to HRK 5.000.000,00 which is approx. EUR 2.800,00 to EUR 685.000,00). Besides the monetary fine, a legal entity may be dissolved if it was established with the intention to commit crimes or its operation was predominantly involved in criminal activities. A legal entity may also receive a conditional sentence, i.e. a monetary fine could be suspended under a probation period during which the said legal entity shall refrain from any illegal activity. If the probation period passes without further misconduct, the fine will be dropped. However, this is only possible if the maximum duration of imprisonment of natural persons is not more than 3 years and provided that the monetary fine determined by the court is not higher than HRK 50.000,00 (approx. EUR 6.850,00).

Furthermore, various security measures may be imposed on a legal entity, including a prohibition: to perform certain activities or businesses; to receive necessary approvals, confirmations, concessions, incentives from the authorities; to conduct business with authorities; or confiscation of certain objects. Moreover, the assets that have been gained through criminal activities could be confiscated. However, the parent company cannot be prosecuted for offenses being committed within a subsidiary. The prosecution has discretion to prosecute if the legal entity has no property or if the property is insignificant and there is not enough means to cover procedure costs or if bankruptcy is initiated. The discretion exists only if the punishment set for the crime in question for the natural person is a monetary fine or imprisonment up to 3 years and public order does not require the initiation of criminal proceedings.

4.5 Whistle-blower Protection

The 2019 Act on the Protection of Whistle-blowers¹⁸ contains some important deficiencies. The Act does not offer free legal aid or any psychosocial support to whistle-blowers, which weakens the protection system and the overall possibility of their comprehensive security. The process of transposing the EU Whistleblowing Directive¹⁹ into Croatian legislation was not yet initiated in 2020 and most citizens remained unfamiliar with the possibility of reporting irregularities. As a result, they usually give up fearing consequences. According to the European Commission's Rule of Law Report for 2020, as many as 39% of Croatian citizens cite the lack of whistle-blower protection as the main reason for underreporting corruption.²⁰

¹⁸ Law on the Protection of Whistleblowers, N. 46/2022, Official Gazette of the Republic of Croatia, 572/15-04-2022, <https://narodne-novine.nn.hr/clanci/sluzbeni/2022_04_46_572.html>, accessed 30 November 2022.

¹⁹ EU Directive 2019/1937 on the Protection of Persons Who Report Breaches of Union Law (Directive 2019/1937) (2019) *Official Journal* L 305/17, <<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019L1937&from=en>>, accessed 30 November 2022.

²⁰ European Commission, The rule of law situation in the European Union 2020, COM(2020) 580, 30 September 2020, <<https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1602583951529&uri=CELEX%3A52020DC0580>>, accessed 30 November 2022.

4.6 Free Legal Aid

The system of direct and free legal aid is burdened by several problems stemming from insufficient and inadequate funding, including deficiencies in the design of the scheme, uncertainty in relation to providers of legal aid, limited availability of free legal aid in rural areas and citizens' unfamiliarity with the existence of this mechanism of human rights protection. The conduct of certain state administration bodies in approving requests for secondary free legal aid (assistance of attorneys in representation) remains a matter of concern.

4.7 Human Rights and The Environment

The Ministry of Environmental Protection and Energy has become part of the Ministry of Economy and Sustainable Development through the reorganization of institutions after the parliamentary elections in July 2020. This organizational structure has jeopardized the development of an integrated environmental policy, given that the development of the economy is the Government's priority and is traditionally prioritized over ecological issues. Also, the Croatian Agency for the Environment and Nature was an independent authority responsible for the protection of nature and natural resources in environmental procedures, especially in the process of assessing the acceptability for the ecological network. In 2019, its merger with the Ministry of Environmental Protection and Energy, significantly reduced its transparency and silenced dissenting voices.

Initiating proceedings concerning environmental matters before administrative courts remains problematic due to the fact that courts rely solely on the credibility of completed studies, while the refusal of expert reports and the absence of evidentiary proceedings have become a routine. In March 2019, the European Commission initiated infringement procedures against Croatia and called for proper implementation of environmental impact assessments.²¹

5. Business and Human Rights in Greece

Taygeti Michalakea

5.1 Introduction

The Greek business terrain includes diverse small and medium enterprises, as well as flourishing shipping, construction and energy sectors, with several Greek companies

²¹ European Commission, Infringement procedure INFR(2019)2022 on non-conformity of the Croatian Legislation with the EIA Directive 2011/92/EU as amended by Directive 2014/52/EU, Formal Notice Article 258 TFEU, 7 March 2019.

being active abroad as well. Still, the legal framework to tackle business and human rights abuses is embryonic. However, there are various cases that comprise business-induced violations. The most seminal amongst them, is the case of 'Skouries,' a gold-copper mine located in Chalkidiki, Northern Greece, which is currently under development by Eldorado Gold, a Canadian company.²²

The project was approved almost ten years ago but it is alleged that it would create great environmental and health hazards, due to the methods used for extraction. It would also violate EU directives, concerning the activities near areas belonging to the Natura 2000 network,²³ as well as town planning regulations. Moreover, the appropriate evaluation process was not followed, alternatives were not examined, and no compensatory measures were imposed as required by law. Due to increased environmental and health risks, citizens opposed to the investment. Their opposition met with harsh police repression, arrests, and house searches. The following government rejected the technical plan, but the current government restarted the investment.

5.2 Legal Framework

There is no concerted effort to tackle business and human rights issues in Greece, and a National Action Plan is lacking. The only human right principle that can be seen as an explicit obligation of the public and the private sector alike, is the right to equal treatment irrespective of gender, race, and religion.

Other than that, companies in Greece do not have human rights obligations. However, in case of abuse, they could be held liable through tort liability. Violations of human rights committed by business actors might be legally tackled on the basis of the right to personality, which is enshrined in the Greek Civil Code.²⁴ Most of the lawsuits seeking compensation for violation of the right to personality from companies stem from labour rights abuses, and very few from the right to a clean environment, as a specific aspect of the right to personality. Piercing the veil happens if (a) the legal person is considered an intermediary person (b) there is a prevailing shareholder and (c) there is abuse of the corporate veil leading to unfair results or other violation of the law by the shareholders.

Despite international pressure, corporate criminal liability does not exist in Greece and it seems dubious that it will be adopted, as it opposes the fundamentals of Greek criminal law, namely the culpability principle and the human action requirement for criminal liability. The Greek legislator has only opted in favour of criminal liability of

²² For a timeline of the case, see Business & Human Rights Resource Centre, 'Greece: Locals continue to protest over environmental & social impacts of Eldorado Gold's mine in Halkidiki – company response provided,' 15 October 2013, <<https://www.business-humanrights.org/en/latest-news/greece-locals-continue-to-protest-over-environmental-social-impacts-of-eldorado-golds-mine-in-halkidiki-company-response-provided/>>, accessed 30 November 2022.

²³ According to the Directive, the Ministry of Environment's authorization of the company's operations is void and illegal. See Article 6 (clause 3-4) of the 92/43/EEC directive.

²⁴ Greek Civil Code, Presidential Decree 456/1984, adopted on 24 October 1984.

individuals, which is foreseen for offences against the financial interests of the European Union (EU), corruption, and environmental pollution.

Instead, administrative responsibility is the most common response to corporate malfeasance and multiple laws foresee such responsibility, if the company benefited from a criminal offence and the offence can be attributed to the behaviour of an official of that entity. Administrative responsibility does not require the conviction of the natural person, but presupposes the commission of a criminal offence. The sanctions are imposed by administrative authorities, and they might include fines, warnings, written reprimands, confiscation, prohibition of operation, exclusion from public benefits or assistance, and ban from public tenders. The Minister of Development, the Stock Market Committee and the Bank of Greece can order temporary prohibition of operation of the enterprise, if the entity has violated consumers' legal interests and other respective laws.

It is also interesting to note that the criteria for participation in public procurement include the protection of the environment, but not human rights. There is only one reference to 'social provisions' in Law 4412/2016 transposing EU Directive 2014/24/EE.²⁵ More specifically, article 18 states that:

"In the performance of public contracts, economic operators shall comply with their obligations under the provisions of environmental, social security and labour law established by Union law, national law, collective agreements or international environmental, social and labour law provisions."

Moreover, the law stipulates that respect of social provisions does not amount to an exclusion criterion, but constitutes a way to gain extra points for good performance in the competition for the public contract award.

5.3 Access to Justice

Based on the legal framework above, victims of corporate abuse may access justice in civil courts, if they can prove that they suffered harm (in the form of abuse of their personality rights) and a causal link to the corporation's conduct. In case of labour abuses, they can access the Labour Inspectorate. Regarding non-judicial grievance mechanisms, Greek law does not oblige multinational companies to establish any dispute settlement procedures. Non judicial dispute settlement is only marginally available, by independent state authorities, in relation to electronic commerce.²⁶

²⁵ Law 4412, Official Gazette A' 147/08-08-2016, 'Public Contracts for Works, Supplies and Services (adaptation to Directives 2014/24/EU and 2014/25/EU).'

²⁶ See Joint Ministerial Decision No. 70330/2015, Official Gazette 1421/B/9-7-2015, Arrangements regarding the adaptation of Greek legislation, in compliance with Directive 2013/11/EU of the Council and of the Council of 21 May 2013 on the alternative resolution of consumer disputes and on the amendment of Regulation (EC) no. 2006/2004 and Directive 2009/22/EC (the EEC Directive) and the taking of additional national measures to implement Regulation 524/2013 of Article 21 and of the Council of 21 May 2013 for the electronic resolution of consumer disputes.

In terms of grievance mechanisms, it is worth noting that according to the OECD Guidelines for Multinational Enterprises,²⁷ the Greek National Contact Point (NCP) functioned for only a very brief period of time. As a part of the Ministry of Foreign Affairs, it started its operation in 2018 preparing rules of procedure and tried to gain visibility. It also provided feedback to the French NCP for a case against Teleperformance.²⁸ Unfortunately, it ceased to exist at the beginning of 2021. To the absence of a NCP, one should also add the absence of specific due diligence obligations, the lack of whistle-blower protection within companies,²⁹ and the option to avoid non-financial reporting if the information to be provided is sensitive or if there is any other justification for such non-disclosure.

5.4 Local challenges

The first challenge that can be identified is the ubiquitous rhetoric, across all parties of the political spectrum, concerning the never-ending need to attract investments, without countervailing regulatory efforts. This approach was boosted during the recent financial crisis. The discourse perceives the respect of human rights as something antithetical to the economic recovery of the country and economic actors as saviours of an otherwise doomed to fail economy. The typical response to any social justice vindication is that it will deter investments and economic development. In the name of development, a myriad of so-called structural reforms were carried out, that put the private sector in a quite privileged position and made labour regulations very flexible. Importantly, those reforms were dictated by the International Monetary Fund, the European Central Bank and the European Commission.

The second local challenge is the increasing use of Strategic Litigation against Public Participation (SLAPP). Recently, a Greek-American shipyard company in the Port of Syros Island filed 3 lawsuits against an environmental NGO for defamation amounting to 1 million euros for their efforts to find the causes for the pollution in the port of the island. The cause of the lawsuit was the initiative of the NGO to search within the framework of its legal responsibilities for the causes and those responsible for the visible pollution in the port of Ermoupolis, following the study of Aegean Rebreath, according to which at the bottom of the port heavy toxic metals in a concentration five times the acceptable limits.³⁰ Lastly, in October 2021, a 100.000 euros lawsuit was

²⁷ See n (15).

²⁸ The Greek NCP appears as a supporting NCP during the case against Teleperformance in France. Information available at <<https://mneguidelines.oecd.org/database/instances/fr0030.htm>>, accessed 30 November 2022.

²⁹ Whistle-blower protection exists in administrative law for the protection of civil servants against retaliation and in criminal law for the protection of ‘public interest witnesses’ in penal cases.

³⁰ Environmental Quality Observatory of Syros, Press Release, ‘Lawsuit, because we ask for a better environment’ (24 February 2021) <<https://syrosenvobservatory.gr/en/lawsuit-because-we-ask-for-a-better-environment/>>, accessed 19 September 2022.

filed by a business executive of a Canadian mining company against a journalist for alleged violation of privacy rights.³¹

6. Business and Human Rights in Montenegro

Sonja Tošković³²

6.1 Legal and institutional framework

Montenegro has ratified without reservations most of the human rights treaties.³³ It has also made significant commitments to achieve the UN Sustainable Development Goals,³⁴ and in 2015, the government of Montenegro adopted the 2030 National Strategy for Sustainable Development.³⁵ The Strategy encourages private sector development in accordance to international standards and good practice, including labour rights, gender equality, rights of children and persons with special needs. In the preamble to the Free Trade Agreement between the EFTA States and Montenegro,³⁶ the signatories reaffirmed the importance of good corporate governance and corporate social responsibility for sustainable development, and their goal to encourage companies to respect internationally recognised guidelines and principles,

³¹ International Press Institute, 'SLAPP lawsuit in Greece underscores need for swift EU directive' (16 November 2021) <<https://ipi.media/slapp-lawsuit-in-greece-underscores-need-for-swift-eu-directive-2/>>, accessed 19 September 2022.

³² Executive Director of Belgrade Centre for Human Rights.

³³ Montenegro has ratified without reservations most of the UN human rights treaties, as well as 76 ILO conventions, of which 62 are in force, including all 8 fundamental ILO conventions. As a member of the Council of Europe, Montenegro ratified the European Convention on Human Rights, the Revised Social Charter, and other numerous conventions on the protection of human rights relevant to human rights and business. In 2006 Montenegro signed the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. However, Montenegro still hasn't acceded to the Additional Protocol to the European Social Charter, which provides a system of collective complaints and the 2014 ILO Protocol on Forced Labour.

³⁴ UN General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, 21 October 2015, A/RES/70/1.

³⁵ National Strategy for Sustainable Development until 2030, which follows the UN Agenda 2030. Available at <<http://www.nssd2030.gov.me/>>, accessed 19 September 2022; The Government of Montenegro adopted the first National Strategy for Sustainable Development (NSSD) in April 2007, together with a corresponding Action Plan for the period of 2007–2012.

³⁶ Free Trade Agreement with Montenegro, available at: <<https://www.efta.int/media/documents/legal-texts/free-trade-relations/montenegro/montenegro-main-agreement.pdf>>, accessed 19 September 2022.

such as the OECD Guidelines for Multinational Enterprises,³⁷ OECD Principles for Corporate Governance³⁸ and the UN Global Compact.³⁹

According to the OECD Policy Outlook, Montenegro has made the improvements in terms of laws and regulations, which have significantly contributed to the overall competitiveness of the economy.⁴⁰ Supporting the International Finance Corporation (IFC) Environmental and Social Performance Standards⁴¹ would be a significant step into the area of sustainable investments.

National human rights legislation is aligned to international standards. However, from a business and human rights perspective, the Law on Accounting,⁴² the Companies Act,⁴³ and the Public Procurement Act⁴⁴ do not refer to human rights and therefore do not open space for addressing some of the potential human rights violations by companies.

6.2 Labour Act harmonisation and implementation

The new Labour Act,⁴⁵ adopted in 2020, introduced a range of reforms, including greater protection for workers and increased sanctions for undeclared work aiming to reduce informality in the labour market.⁴⁶ The Act has addressed unlawful termination of employment (the so-called 'blanco dismissals'), in cases where employees were asked to sign an agreed termination of a given contract, at the time of concluding the employment contract.⁴⁷ The new Act stipulates that termination of employment will come into effect only when certified before a competent body (notary, court or local government body). In Montenegro, significant number of long-term employment contracts are fixed term (in 2020, 30% of contracts were fixed term), or made through an employment agency that, then, leases the workers to employers.⁴⁸

³⁷ See n (15).

³⁸ OECD (2015), G20/OECD Principles of Corporate Governance, OECD Publishing, Paris.

³⁹ United Nations Global Compact, 'What is the UN Global Compact' <<http://www.unglobalcompact.org/>>, accessed 30 November 2022.

⁴⁰ OECD (2021), Competitiveness in South East Europe 2021: A Policy Outlook, Competitiveness and Private Sector Development, OECD Publishing, Paris.

⁴¹ International Finance Corporation, Performance Standards on Environmental and Social Sustainability, January 2012, <https://www.ifc.org/wps/wcm/connect/24e6bfc3-5de3-444d-be9b-226188c95454/PS_English_2012_Full-Documents.pdf?MOD=AJPERES&CVID=jkV-X6h>, accessed 30 November 2022.

⁴² Law on Accounting, Official Gazette of the Republic of Montenegro, no. 052/16.

⁴³ Companies Law, Official Gazette of the Republic of Montenegro, no. 065/20, 03 July 2020.

⁴⁴ Public Procurement Law Republic of Montenegro, Official Gazette of the Republic of Montenegro, No. 40/2001.

⁴⁵ New Labour Act, Official Gazette of the Republic of Montenegro, no. 74/19.

⁴⁶ European Commission, Montenegro 2020 Report, SWD(2020) 353 final, 6 October 2020, p. 98 <https://ec.europa.eu/neighbourhood-enlargement/sites/default/files/montenegro_report_2020.pdf>, accessed 19 September 2022.

⁴⁷ Art. 165, Labour Act, Official Gazette of the Republic of Montenegro, no. 4/2019 and 8/2021.

⁴⁸ Total Montenegro, Every third Montenegrin works on Fixed Term Contract, 31 May 2018, <www.total-montenegro-news.com/business/1262-every-third-montenegrin-works-on-a-fixed-time-contract>, accessed 19 September 2022.

The Labour Act regulates the time limit of employment contracts to be signed through employment agencies, as well as the duration of fixed-term employment. Further, the Act provides for the workers' rights to form and join independent trade unions, bargain collectively, and conduct legal strikes. According to the Association of Independent Trade Unions, workers in the trade sector were intimidated when establishing their union. Companies' management and local authorities often blocked attempts to organise strikes by declaring them illegal, citing a lack of legally required advance notice, ranging from two to 10 days, depending on the circumstances.⁴⁹ Both in the private and public sectors, reports from employees claim that the employers threatened or intimidated workers who engaged in union activities.⁵⁰ In some cases, private employers reduced the workers' salaries or dismissed them because of such conducts.

6.3 Discrimination at work and protection of whistle-blowers

The Act on the Prohibition of Labour Discrimination⁵¹ applies equally to the public and private sectors. The Ombudsperson is the central figure for protection against discrimination. The largest number of complaints filed before it, concerns labour and employment discrimination. In only few of those cases, the Ombudsperson found a violation, due to lack of information regarding the substance of the Act and the procedures that were followed. Furthermore, a victim of discrimination in the field of labour and social security can file a complaint to the Ministry of Labour, whose scope of work includes labour inspection.⁵²

In Montenegro, there are no residence or citizenship/nationality requirements for protection against discrimination. The Labour Act explicitly stipulates that its provisions apply to foreigners too. Montenegro has also fully implemented EU migration standards through the adoption of the Law on Foreigners⁵³ and the Law on International and Temporary Protection of Foreigners.⁵⁴

According to the 2019 Montenegro Gender Equality Index,⁵⁵ while the number of women workers has increased, their working conditions and the types of work they do, had not changed. Despite the existing legal protection against discrimination, motherhood remains one of the most critical obstacles for working women. According to a survey, women are usually asked during job interviews about their marital status

⁴⁹ US Department of State, 2020 Country Reports on Human Rights Practices: Montenegro.

⁵⁰ Montenegro Association of Independent Trade Unions, <<http://www.sindik.me/index.php/28-vijesti/278-pljevlja-plate-male-i-u-kasnjenju-od-cak-13-mjeseci>>, accessed 19 September 2022.

⁵¹ Act on the Prohibition of Labour Discrimination, Official Gazette of the Republic of Montenegro, no. 407/19, 27 July 2010.

⁵² Act on Labour Inspection, Official Gazette of the Republic of Montenegro, Nos. 79/08 and 40/11.

⁵³ Law on Foreigners, Official Gazette of the Republic of Montenegro, no 12/2018, 23 February 2018.

⁵⁴ Law on International and Temporary Protection of Foreigners, Official Gazette of the Republic of Montenegro, no. 01-1308/2, 30 December 2016.

⁵⁵ European Institute for Gender Equality, Gender Equality Index, 2019, <https://eurogender.eige.europa.eu/system/files/events-files/gender_equality_index_2019_report_final.pdf>, accessed 19 September 2022.

(64.1%), the number of children they had (45.5%) and even their plans to have children (35.6%).⁵⁶ The gender employment gap is significant and has been increasing.⁵⁷

The protection of whistle-blowers is regulated by the Law on Prevention of Corruption,⁵⁸ and it is only partially aligned with the *acquis*. The Act stipulates that whistle-blowers are entitled to protection at the time of the submission of the complaint, and particularly: if their contract is close to termination; if they are dismissed or moved to another job; if their working conditions are changed; or if a temporary or collaboration contract is terminated. However, their protection remains limited, with a continued decrease in requests for protection of individuals reporting threats to the public interest. In one of the cases, the whistle-blower faced disciplinary procedures and a salary decrease.⁵⁹

6.4 Occupational health and safety

The Act on Protection of Safety and Health at Work⁶⁰ obliges employers to issue a Risk Assessment for all posts within their organisation regulating the safety of all employees, covering all risks that can cause injuries, illness and health damage. Based on official data, out of 25,000 employers in Montenegro, only 4.8% have drafted a risk assessment.⁶¹

The Occupational Health and Safety Association of Montenegro has noted differences among employers in terms of health and safety standards, level of information and awareness of employees about safety at work and their rights, the need to use personal protective equipment and the respect for rules and regulations.⁶² In many cases, it has been demonstrated that investors and companies can potentially effect positive change in terms of suppliers' compliance. On the construction sites where the investor was the Montenegrin Electricity Distribution System, the suppliers complied with legal standards due to investor's influence.⁶³

In 2019, 24 labour accidents took place, with eight of them being fatal, and fifteen very serious. In 2020, during labour inspections, workers mainly reported improper working conditions, insufficient protection measures and inadequate remedies for

⁵⁶ Center for Women's Rights, Report on Gender based discrimination at work and employment, 2019.

⁵⁷ Montenegro 2020 Report, 2020 Communication on EU Enlargement Policy, p. 11, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/montenegro_2019-2021_erp.pdf>, accessed 19 September 2022.

⁵⁸ Law on Prevention of Corruption, Official Gazette of the Republic of Montenegro, nos 53/2014 and 42/2017, 9 December 2014.

⁵⁹ Dijalog.net, Montenegro: Whistleblower acquitted of responsibility, 27 July 2016, <<https://www.dijalog.net/crna-gora-uzbunjivac-oslobodjen-odgovornosti/>>, accessed 19 September 2022.

⁶⁰ Law on Safety and Health at Work, Official Gazette of the Republic of Montenegro, No. 34/14.

⁶¹ Information available at <<http://umhcg.com/novosti-me/prikaz-stanja-zastite-i-zdravlja-na-radu-u-svjetu-i-crnoj-gori/>>, accessed 19 September 2022.

⁶² Information available at <<https://uznr.me/novosti.html>>, accessed 19 September 2022.

⁶³ Information available at <<https://www.vijesti.me/vijesti/drustvo/537499/svaki-propust-korak-kanesreci>>, accessed 19 September 2022.

work injuries.⁶⁴ According to ILO, the weakest part of the health and safety system in Montenegro, is the collection and analysis of data on injuries at work and occupational diseases.

6.5 Rising accountability in value chains

At the moment, essential steps are being taken to introduce accountability into the value chains. The draft amendments to the Act on Accounting are aligned to the *acquis* and the Sustainable Development Goals requirements, including those on non-financial reporting.⁶⁵

Value chain assessment could also be significantly improved through responsible public procurement, given that in Montenegro, public procurement is estimated to represent around 12.4% of the GDP.⁶⁶ With public procurement extensively influencing the economy, proper procedures can be the tool to ensure that the winning bidder follows socially responsible practices, and to influence suppliers and subcontractors involved in the production of the final goods and services.⁶⁷ In Montenegro the Act on Public Procurement⁶⁸ still does not contain human rights related provisions, nor an option of using environmental and social considerations in all stages of the public procurement procedure.⁶⁹ According to the available data, the 'best-offered price' criterion is unquestionably dominant and in 2019, it was used in 66% of cases.⁷⁰ Socio-environmental standards are thus a secondary concern, if at all, in public procurement.

In line with the raising accountability in the value chain, the Group of Experts on Action against Trafficking in Human Beings (GRETA) of the Council of Europe, in its last report, urged the authorities to strengthen engagement with the private sector in line with the UN Guiding Principles on Business and Human Rights and CoE Committee of Ministers Recommendation CM/Rec(2016)3⁷¹ on human rights and business, adopt legislation integrating the prevention of trafficking and labour exploitation in public procurement policies and promote transparency in supply chains.⁷² Those measures, in turn, would raise awareness on the role and responsibility of businesses in facilitating victims' access to remedy.

⁶⁴ Information available at <<https://mina.news/crnagora/u-organizaciji-mor-a-predstavljjen-nacionalni-profil-zastite-i-zdravlja-na-radu-crne-gore/>>, accessed 19 September 2022.

⁶⁵ SDGs, sub-goal 12.6 specifies that states should encourage large and transnational companies to integrate sustainable practices into business and include sustainability information in their reporting.

⁶⁶ See n (46), European Commission, Montenegro 2020 Report, p. 76.

⁶⁷ More in Maria Anna Corvaglia, *Public Procurement and Labour Rights: Towards Coherence in International Instruments of Procurement Regulation* (Hart Publications, 2017).

⁶⁸ See n (43).

⁶⁹ Office for Public Procurement, Annual report 2019, p. 25, <<http://www.ujn.gov.rs/izvestaji/izvestaji-uprave-za-javne-nabavke/>>, accessed 19 September 2022.

⁷⁰ See n (46), European Commission, Montenegro 2020 Report, p. 77.

⁷¹ Council of Europe, Committee of Ministers, Recommendation CM/Rec(2016)3 to member States on Human rights and business, 2 March 2016.

⁷² Group of Experts on Action against Trafficking in Human Beings Evaluation Report Montenegro, June 2021.

6.6 Informal economy

Employment in informal economy,⁷³ amounts to 18.2% of total employment and negatively affects not just human and labour rights but also fair competition. According to the 2020 National Human Development Report,⁷⁴ one out of three jobs in Montenegro is to be found in the informal economy. Corruption, regulatory burden, weak enforcement capacity, weaknesses of the labour market and high tolerance for tax non-compliance are among the root causes of informality. Low level of awareness of the societal impacts of the informal economy and the willingness to engage in informal transactions add to the complexity of the picture. It is estimated that informal work in Montenegro is most often manifested in low-profit, labour-intensive sectors, such as trade, construction, hospitality industry, transport, agriculture and household services.⁷⁵ In 2018, the Government of Montenegro established a national commission to fight the informal economy, which is focused on inspections and control of employers.

6.7 Circumstances and practices that can lead to forced labour or other grave human rights violations

Tourism is the most important economic sector in Montenegro, amounting to 22% of the total GDP.⁷⁶ Montenegro has a comprehensive tourism strategy in place and its 2019-2024 Strategy for combating trafficking in human beings and relevant Action Plan mention the need to organize forced labour training within companies.⁷⁷

Seasonal work is not recognised as a specific type of employment in Montenegro and as such it is regulated by the Labour Act. Montenegro is the only jurisdiction in the Western Balkans which recognises the seasonal nature of the labour market in the 2016-2022 National Strategy for the employment and development of human resources. It places special emphasis on the lack of domestic seasonal workforce, predicting certain stimulations for such through seasonal engagements. Bearing in mind that the rights of foreign seasonal workers and migrants are especially at risk, their situation needs to be monitored as they are vulnerable to forced labour during the summer tourist season.

According to GRETA, by the end of 2019, the number of identified victims of human trafficking, mostly women, and children from Montenegro, was low. Since November

⁷³ Montenegrin Employers Federation (MEF), 2014, Report: Informal Economy in Montenegro – The Enabling Environment for Sustainable Enterprises in Montenegro.

⁷⁴ United Nations Development Programme, On the Verge of a Digital Future for All, Montenegro Human Development Report, 2020, <<https://hdr.undp.org/content/national-human-development-report-2020-montenegro>>, accessed 30 November 2022.

⁷⁵ Informal Employment in Montenegro – Estimates of Scale and Effects, Faculty of economics Podgorica, 2013, p. 6.

⁷⁶ Cerović Smolović, J.; Janketić, S.; Jaćimović, D.; Bučar, M.; Stare, M. Montenegro's Road to Sustainable Tourism Growth and Innovation. Sustainability 2018.

⁷⁷ Organization for Security and Cooperation in Europe, Government of Montenegro, Strategy for combating trafficking in human beings 2019-2024, <<https://www.osce.org/files/f/documents/8/d/424622.pdf>>, accessed 30 November 2022.

2019, following the detection of a large-scale case involving victims from Taiwan, the numbers has increased, reaching 52 by the end of 2020. There has also been a shift to more male victims and labour exploitation. Still, no cases with indicators of human trafficking have been detected by labour inspectors, so GRETA urged the authorities to take measures to improve the ability of the Labour Inspectorate to prevent and detect cases of trafficking for the purpose of labour exploitation. GRETA encouraged Montenegro to work closely with the private sector, in line with the Guiding Principles on Business and Human Rights.⁷⁸

In April 2020, the UN Special Rapporteur on trafficking in persons, especially women and children, published its report on human trafficking upon the 2019 visit to Montenegro.⁷⁹ In the Report, the concern was raised because trafficking in persons for sexual exploitation, labour exploitation, domestic servitude and begging is believed to be present in particular in the coastal part of the country, occurring during the summer season. According to the report, two cases of forced labour were recently identified: almost one hundred Taiwanese victims, who were held in captivity in three separate locations in Montenegro, were allegedly committing Internet fraud for the benefit of that criminal group, while also two Pakistani men were victims of human trafficking for labour exploitation within the context of the hospitality industry.

7. Business and Human Rights in North Macedonia

Ana Dangova Hug⁸⁰

The Macedonian Government has made an official commitment to develop a National Action Plan on Business and Human Rights in its Midterm Strategy on Corporate Responsibility in North Macedonia, with allotted time frame 2019-2023.⁸¹ However, at the moment of writing this piece, the drafting of the NAP has not even commenced. Also, there is no legislation (*lex specialis*) that regulates the topic on Business and Human Rights and there are no mandatory obligations for companies. Moreover, the human rights reporting regime in the private sector is non-existent. Companies are not required to report on non-financial information. However, companies that

⁷⁸ Group of Experts on Action against Trafficking in Human Beings, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Montenegro, GRETA(2016)19, p. 41.

⁷⁹ Special Rapporteur on trafficking in persons, especially women and children, Report to the UN Human Rights Council on her visit to Montenegro, 22 April 2020, A/HRC/44/45/Add.1.

⁸⁰ Co-founder, INTER PARTES Skopje, law firm in North Macedonia.

⁸¹ Government of North Macedonia, Midterm Strategy on Corporate Responsibility in North Macedonia, Skopje, October 2019, <<https://economy.gov.mk/mk-MK/news/strategii-2753.nsp>>, accessed 21 December 2022.

implement projects effecting the environment are obliged to conduct an environmental impact assessment ('EIA'). However, the EU notes that there are areas for improvement, especially regarding the quality of the EIA reports.⁸²

Victims may use various judicial and non-judicial mechanisms to vindicate their rights, though these mechanisms are not necessarily drafted with a human rights language. For example, in criminal law, a vicarious liability model is existent where a foreign company could be criminally liable because of complicity with the subsidiary. Under civil law, claimants can bring their demands based on general tort law principles.

Corporate human rights violations appear in various areas such as in the protection of the environment, labour rights, consumer rights and investments. In the Macedonian Model of the bilateral investment agreement, the human rights terminology is non-existent, neither is there an invocation of environmental or social impact norms.

In sum, it is quite questionable whether Macedonian companies, part of the supply chain of EU companies, are ready for the upcoming EU mandatory due diligence legislation. Political will is necessary to move things forward in this area and to work with companies to respect human rights by adopting a human rights policy, conducting human rights due diligence and adopting operational grievance mechanisms.

8. Business and Human Rights in Serbia

Nevena Kostic⁸³

8.1 Legal and institutional commitments relating to BHR

Serbia has ratified without reservations most of the UN human rights treaties, as well as 76 ILO conventions, of which 62 are in force, including all 8 fundamental ones. As a member of the Council of Europe, Serbia ratified the European Convention on Human Rights, the Revised Social Charter, and other treaties relevant to human rights and business. However, Serbia still hasn't acceded to the Additional Protocol to the European Social Charter, which provides a system of collective complaints. Although the legal framework is in place, the process of negotiations on Serbia's accession to the EU under key Chapter 19 - Social Policy and employment still has not started. In

⁸² European Commission, 'Commission staff working document- North Macedonia 2021 Report', SWD(2021) 294, 19.10.2021, p. 94.

⁸³ Legal Advisor on Business and Human Rights.

2020, the relevant Action Plan was adopted, which was precondition for initiating the negotiations.⁸⁴

Serbia has committed to achieve the UN Sustainable Development Goals ('SDGs'),⁸⁵ and although commitment to EU membership frames and sets the standards for the development of SDGs, a proper action plan is lacking. Sustainable development is recognised as important in the preamble to the Free Trade Agreement between the EFTA States and the Republic of Serbia,⁸⁶ in which the signatories reaffirm the importance of good corporate governance and corporate social responsibility for sustainable development, as well as their goal to encourage companies to respect internationally recognized guidelines and principles such as the OECD Guidelines for Multinational Enterprises⁸⁷ and the Principles for Corporate Governance⁸⁸, as well as the UN Global Compact.⁸⁹

Serbia is yet to implement the OECD Guidelines for Multinational Enterprises, and the 2014 ILO Protocol on Forced Labour.⁹⁰ Notably, Serbia has not signed or ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.⁹¹

The 2018 Universal Periodic Review report on Serbia pointed to improvements that are needed in relation to labour rights, anti-discrimination, and gender equality.⁹² Besides, it highlighted the importance of Government control over Serbian companies operating abroad, particularly on negative human rights impact of their activities, in conflict zones.

In 2021, the Law on Accounting⁹³ introduced non-financial corporate reporting, in line with the EU Non-Financial Reporting Directive,⁹⁴ obliging all companies with more than 500 employees to publish yearly non-financial reports. It is still early to assess whether non-financial reporting will have an impact in human rights protection in Serbia, in line with good comparative practices integrating the SGD objectives and the

⁸⁴ National Employment Action Plan for 2020, Government conclusion 05 No. 101-13100/2019-1, 26 December 2019, Official Gazette No. 94.

⁸⁵ See n (34).

⁸⁶ Free Trade Agreement between the EFTA States and the Republic of Serbia, signed on 20 May 2015 and entered into force on 1 February 2017, <<https://www.efta.int/sites/default/files/documents/legal-texts/free-trade-relations/serbia/EFTA-Serbia-Free-Trade-Agreement.pdf>>, accessed 30 November 2022.

⁸⁷ See n (15).

⁸⁸ See n (38).

⁸⁹ See n (39).

⁹⁰ ILO, Protocol of 2014 to the Forced Labour Convention, 1930.

⁹¹ UN General Assembly, International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 18 December 1990, A/RES/45/158.

⁹² UN General Assembly, Report of the Working Group on the Universal Periodic Review on Serbia, A/HRC/38/17, 18 April 2018.

⁹³ Law on Accounting, Official Herald of the Republic of Serbia, No. 73/2019.

⁹⁴ Directive 2014/95/EU, amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups, as amended by the Taxonomy Regulation, 22 October 2014.

United Nations Guiding Principles on Business and Human Rights into sustainability reporting.

One of the strategic goals of the newly adopted Programme for Development of Public Procurement (2019-2023)⁹⁵ is the promotion and encouragement of environmental and social aspects of public procurement, and the Public Procurement Law⁹⁶ contains human rights-related provisions, including an option of using environmental and social considerations in all stages of the public procurement procedure. In practice, only modest signs of progress can be noted as these criteria are rarely used.⁹⁷ According to the available data, the 'best-offered price' criterion is dominant, and in 2019, it was used in 90% of cases.

8.2 Key challenges and good practice examples

The main challenges regarding business and human rights, and its intersection with labour rights in Serbia are: the lack of incentives and regulation for companies to assess value chains; widespread informal work; insecure employment through employment agencies and excessive use of fixed-term contracts; insufficient implementation of health and safety standards especially in agriculture and construction.

8.3 Informal economy

Jobs in the informal economy amount to 18.7% of total employment in Serbia.⁹⁸ It is prevalent in agriculture (40,5%); domestic work (24,4%); construction (8%), retail sale (5,8,%) and manufacturing (5%). These are sectors in which risk for workers health and safety dramatically rises with the lack of regulations and monitoring. A comprehensive approach to business and human rights can contribute to the integration of informal jobs into formal sustainable labour structures and address the roots of the problem, related to education, poverty, investment, rule of law and the position of vulnerable groups including women, migrant workers and Roma people. As for today, measures for suppressing informal economy are mostly focusing on building capacity of labour inspectorate, and the Government is drafting a new National Program for Suppression of the Informal Economy to improve inspection supervision and create a fair business environment by reducing undeclared work, illegal trade and tax evasion. These efforts are mostly economic and do not take into consideration the workers' position.

⁹⁵ Programme for Development of Public Procurement (2019-2023), Official Gazette of the Republic of Serbia 82/2019, 13 November 2019.

⁹⁶ Law on Public Procurement, Official Gazette of the Republic of Serbia No. 91, 24 December 2019.

⁹⁷ Office for Public Procurement, Annual report 2019, p. 25, <<http://www.ujn.gov.rs/izvestaji/izvestaji-uprave-za-javne-nabavke/>>, accessed 19 September 2022.

⁹⁸ ILO, Overview of the Informal Economy in Serbia, May 2020, <<https://www.esap.online/docs/103/ilo-overview-of-the-informal-economy-in-serbia>>, accessed 19 September 2022.

8.4 Occupational health and safety

In the last decade, over 1,000 employees sustained serious injuries yearly, and approximately 2,000 employees light ones. In 2019, there were 54 injuries at work with a fatal outcome,⁹⁹ the highest number since 2006. In the construction industry, which employs 70,000 workers, accidents occurred more frequently than in other sectors. It has been estimated that nearly two-thirds of all cases remained unreported due to the complicated and outdated reporting system, which does not provide the right incentives to employers to report such cases. Although the criminal code prescribes a sentence of two to 12 years in prison for those who are responsible for workers' deaths, by failing to provide safety measures at work, in the last nine years only two prison sentences have been imposed.

Workers' health and safety is jeopardised not only by accidents, related to high-risk jobs, but also by companies' practices that are illegal, or are taking advantage of legal grey zones and state inefficiency. Reports of employees working in severe conditions that include high temperatures, noise, overtime and lack of breaks are very common. Companies exploit the situation in the labour market acting in the way that is against their internal codes of conduct.

However, some companies show increased awareness of the problem and organize open discussions on the topic in their premises, or implement the programmes that introduce system of safety management to ensure continuous improvement.¹⁰⁰

As specified in the EU Framework Directive on Safety and Health at Work,¹⁰¹ risk assessment is the cornerstone of the European approach to Occupational Safety and Health. The European Agency for Safety and Health at Work has noted that Serbia was one of the countries with the biggest increase in undertaking risk assessment.¹⁰²

8.4 Minimum wages

Due to the legislative loopholes and inefficiency of competent state bodies, the government regulations regarding remuneration and minimum wages is misused to the advantage of employers. Given that salaries are determined on the basis of working hours, employers discretion on deciding on workload can easily lead to lower wages, than the minimum. The number of persons receiving salary below the minimum is estimated to be around 20%, while only 50% receives salary higher than the average. It is worth noting that, sometimes, companies consider minimum salary

⁹⁹ EU Commission, Serbia Progress Report 2020, p. 95, <https://ec.europa.eu/neighbourhood-enlargement/sites/default/files/serbia_report_2020.pdf>, accessed 19 September 2022.

¹⁰⁰ See for example TITAN Company, <<http://www.titan.rs/home/page/13/Bezbednost-i-zdravlje-naradu>>, accessed 19 September 2022.

¹⁰¹ Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work.

¹⁰² European Agency for Safety and Health at Work, Third European Survey of Enterprises on New and Emerging Risks (ESENER 3), <<https://osha.europa.eu/en/publications/third-european-survey-enterprises-new-and-emerging-risks-esener-3>>, accessed 19 September 2022.

as legitimate remuneration, although the Labour Law¹⁰³ stipulates that minimum salary can be received if the employer has significant business or financial troubles.

This could be illustrated by two similar practices of a state-owned transport company and a private garment company. In the private garment company, workers received less than the minimum wage, because they did not meet the production expectations. Labour inspection did not report any irregularities in that case.¹⁰⁴ In the case of the state owned transport company, the source of the problem are collective bargaining restraints and irregularities.¹⁰⁵ In this case, the collective agreement provides for a wage which was lower than minimum and was agreed by trade unions, under pressure and time constraints.¹⁰⁶ The most vulnerable workers are the ones who are employed under fixed-term contracts, as well as seasonal employees. As the price of a working hour refers only to employees under an employment contract, other employees are exempted from the provisions of the minimum wage not receiving wages at all, but monetary compensation for their work.

9. Business and Human Rights in Slovenia

Jernej Letnar Čerňič

Slovenia has been one of the standard-setters in business and human rights in South East Europe.¹⁰⁷ Its economy has been small and export-oriented. On the other hand, state-owned corporations still represent a large percentage of the whole economy. Slovenia has so far been the only country in South-Eastern Europe that has adopted National Action Plan on Business and Human Rights.¹⁰⁸ The National Action Plan

¹⁰³ Employment Act, Official Herald of the Republic of Serbia, Nos. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017-Decision of the CC, 113/2017 and 95/2018.

¹⁰⁴ Lisca zaposlenima umanjila yakonom yagarantovan minimalac, Danas, 4 December 2020 <<https://www.danas.rs/ekonomija/lisca-zaposlenima-umanjila-zakonm-zagarantovan-minimalac/>>, accessed 19 September 2022.

¹⁰⁵ According to labour unions representatives at least 50% of employees have wages range from 16 to 26,000 dinars, which is lower than the legally prescribed minimum at the national level, which amounts to around 32,000 dinars.

¹⁰⁶ Zaposleni traze minimalnu cenu rada u skladu sa zakonom, Danas, 01 March 2021, <<https://www.danas.rs/ekonomija/zaposleni-traze-minimalnu-cenu-rada-u-skladu-sa-zakonom/>>, accessed 19 September 2022.

¹⁰⁷ Jernej Letnar Čerňič, "Business and Human Rights in Slovenia," Cambridge Core blog of the Business and Human Rights Journal, 17 April 2019, <<https://www.cambridge.org/core/blog/2019/04/16/business-and-human-rights-in-slovenia/>>, accessed 19 September 2022. See also Jernej Letnar Čerňič, Contours of National Action Plans on Business and Human Rights in Central and Eastern Europe: Контури національних планів дій щодо бізнесу та прав людини в Центральній та Східній Європі, Philosophy of Law and General Theory of Law, December 2021, pp. 174-186.

¹⁰⁸ National Action Plan of the Republic of Slovenia on Business and Human Rights, November

concentrates on the expectations and commitments of the Slovenian state as to the state's responsibility to protect under Pillar 1 and access to remedy under Pillar 3 of the UN Guiding Principles on Business and Human Rights ('UNGPs').¹⁰⁹ Since its adoption, the Slovenia Ministry of Foreign Affairs has attempted to supervise the implementation of the National Action Plan through the Intra-Ministerial Working Group. This Working Group also adopted the first Interim Report on the Implementation of the National Action Plan in three years since adoption.¹¹⁰ Nonetheless, state institutions have not developed guidance, tools, and training, and other initiatives to support business uptake of the UN Guiding Principles on Business and Human Rights. Therefore, much of the Slovenian state commitments remain on paper, whereas in practice, several opportunities for reform and internalization of business and human rights standards remain.

The Slovenian state still owns the telecom corporation and the Port of Koper corporation. It also maintains minority shares in several other large corporations. The Slovenian Sovereign Holding, which is under the control of the executive branch of government manages and supervises the capital investments into the economy. It has, in the last years, updated its codes of conduct to include social responsibility.¹¹¹ The state-owned enterprises have been subjected to political meddling for decades, often resulting in deficient compliance with business and human rights standards.

Much of privately owned corporations are part of the global supply chains of transnational corporations. Nonetheless, business and human rights, in the largest Slovenian corporations, remain under-developed and under-explored. It is often conflated with corporate social responsibility, donations, and charity. The largest Slovenian businesses are subjected to the EU Non-Financial Reporting Directive.¹¹² However, a recent study illustrated that the largest Slovenian corporations, listed on Ljubljana Stock exchange, only rhetorically refer to business and human rights.¹¹³ Only a few have measured compliance with business and human rights standards in the business operations and global supply chains.¹¹⁴ The Members of Management and Supervisory Boards of the largest corporations have not entirely internalized business and human rights in their business operations. There are not many of the members of the board that are familiar with the UNGPs and the OECD Guidelines for Multinational

2018, <https://www.ohchr.org/Documents/Issues/Business/NationalPlans/Slovenia_EN.pdf>, accessed 28 April 2022.

¹⁰⁹ See n (4).

¹¹⁰ For more information on the Slovenian Business and Human Rights National Action Plan process, see <<https://globalnaps.org/country/slovenia/>>, accessed 30 November 2022.

¹¹¹ See Slovenian Sovereign Holding, Press Release, Slovenian Sovereign Holding revises Corporate Governance Code for SOEs and introduces several new cases of good practice, 6 December 2019, <<https://www.sdh.si/en-gb/news/1782/slovenian-sovereign-holding-revises-corporate-governance-code-for-soes-and-introduces-several-new-cases-of-good-practice>>, accessed 30 November 2022.

¹¹² See n (96).

¹¹³ Jernej Letnar Čerňič, Gorazd Justinek, Christian Bukor, Spoštovanje človekovih pravic v družbah prve kotacije ljubljanske borze: raziskava letnih poročil, *Pravnik: revija za pravno teorijo in prakso* 75 (11/12) (2020), pp. 799–830.

¹¹⁴ *Ibid.*

Enterprises.¹¹⁵ As a result, only a few corporations refer in their annual reports to the UNGPs.

Slovenia as a member of the OECD reformed its National Contact Point several years ago. However, so far, it has been only partially functional. It has resolved (i.e. rejected) only one specific instance concerning the alleged violation of the OECD Guidelines.¹¹⁶ It seems that the state has not sufficiently promoted knowledge about the OECD guidelines, thereby the lack of awareness in corporate sectors cannot be surprising.

All in all, the situation of business and human rights in Slovenia has been stuck between theory and practice. On the normative level, Slovenian authorities have been a poster model for business and human rights in South East Europe. They have developed National Action Plan and committed to the OECD Guidelines for Multinational Enterprises. Nonetheless, those normative developments have not been translated into practice. The legislative reforms have yet to be brought about changes in corporate culture in practice. Most corporations have still conflated the field of business and human rights with corporate social responsibility. Even state-owned corporations have failed in the last years to internalize business and human rights standards.

10. Mega Infrastructure Investments and Human Rights in Turkey

Özlem Zingil¹¹⁷

The Center for Spatial Justice¹¹⁸ conducts research on five investment projects which have detrimental consequences on the environment, rural and urban livelihoods, and human rights.¹¹⁹ The initial results of the research indicated that business and human rights is invisible to the human rights situation in Turkey. It is not an item on the human rights agenda of the state and the businesses, but also not on the civil society's.

¹¹⁵ See n (15).

¹¹⁶ NCP Slovenia, Focus et al. vs. Ascent Resources plc, 12 November 2019.

¹¹⁷ Lawyer at the Truth Justice Memory Center, Co-founder Center for Spatial Justice.

¹¹⁸ Mekânda Adalet Derneği (Center for Spatial Justice) is an NGO based in Istanbul and works for fairer, ecological, and democratic cities, and rural spaces. It produces, collects, and shares innovative, qualified, and public knowledge through transdisciplinary studies. <<https://mekandaadalet.org/en/>>.

¹¹⁹ The research rests on two-folded assessment: (a) Mapping the adverse impacts on human rights and environment of the investment projects (In collaboration with the local civil society actors) and (b) Assessing the company disclosures on human rights (a desktop research through corporate websites). In this regard we have assessed 5 investment companies/Joint Ventures/Consortium, 14 business partners/parent companies thereof, and 3 financing banks. The result of the research will be published by the end of January 2022.

The state has not issued any formal statement of support for the UN Guiding Principles on Business and Human Rights (UNGPs),¹²⁰ or a national action plan on business and human rights. At the same time, there is strong support and commitment to the socio-environmentally destructive investment projects in the name of economic growth. Investment decisions lack public participation or prior consultation and the government enacts or amends legislation for the purpose of rapid realization of new investments. Overall, the state leads the way for businesses, by eliminating judicial obstacles, dispersing protests, intimidating, detaining, and imprisoning members of local communities and human rights defenders.

In terms of businesses, both multinationals and nationals, on the basis of the heavy-handed policies of the State, investment projects operate without a social license. On top of that, businesses benefit from relaxed legislation and preferential treatment by the state.

As per the Turkish Constitution, criminal responsibility is personal.¹²¹ Corporate liability under Turkish law arises for limited crimes, however, in such cases legal entities cannot be held criminally liable, but can be subjected to security measures, such as administrative fines and revocation of operating licenses. In addition, the existing OECD National Contact Point is dysfunctional.¹²²

In terms of civil society, problems mainly stem from the state duty to protect under Pillar 1 of the UNGPs – thus, in practice, civil society targets the state in their legal struggle and interventions. This being the case, the most prominent actors, namely businesses are excluded from the picture, and the conversation with the authorities takes place in a very conventional context. The state's duty to provide protection against human rights abuses by businesses through effective policies, legislation, regulation and adjudication is still not claimed.

Non-judicial grievance mechanisms are rarely used by civil society and there is no case before the NCP. Workers' unions use the European Bank's for Reconstruction and Development's complaint mechanisms. In Turkey, what is missing is also the civil society's uptake and use of the UNGPs and the OECD's Guidelines.

¹²⁰ See n (4).

¹²¹ Article 38, The Constitution of the Republic of Turkey.

¹²² See <<https://www.sanayi.gov.tr/anlasmalar/utn-ncp>> (information is bilingual), accessed 19 September 2022.

Conclusions

Siniša Milatović¹²³ and Jernej Letnar Čerňič

The overviews above, demonstrate that legislative frameworks of the countries of South East Europe are principally in alignment with critical international human rights treaties. The domestic frameworks of the selected countries have introduced a solid normative framework on non-discrimination and labour rights in recent years.

However, laws and policies generally are not yet oriented to tackle business-related abuses. Only a few countries have a normative Business and Human Rights ('BHR') framework in place. There is a lack of awareness of BHR in practice, whereas the capacity of civil society on BHR has been weak. Human rights and environmental defenders have not been sufficiently protected. Nonetheless, some sporadic protests against foreign investments with adverse human rights impacts, have been successful (the example of protest against potential Rio Tinto investment in Serbia).¹²⁴

Additionally, there is a lack of business practice concerning due diligence in the supply chains of locally-based companies. Also, there is increased interdependence between business and state actors in the region as politics often meddles in the operations of the state-owned enterprises. A concerted effort is required to change this, and governments need to kick-start processes of adopting national action plans on business and human rights. Those processes should be inclusive and participatory, developing a partnership with civil society, academia, trade unions, and companies.

A further problematic field in the region seems to be the access to remedies for business-related abuses, given that state institutions have often been captured and subjected to political and/or private interests. Aside from the broader issue of the lack of independence and efficiency of national judiciaries, a more specific BHR-related issue is that national human rights institutions (NHRI) in the region have inadequate mandates to cover this issue. They are generally only competent to handle complaints against public bodies, not against private bodies. NHRIs should advocate with legislators and governments to expand their mandates to provide effective remedies for business-related abuses and discharge their mandates effectively where they cover private-sector activity.

The jurisdictions in the region face several common challenges concerning business-related abuses of labour and environmental rights. The former are particularly impacted by the weakness and frequent co-opting of trade unions. At the same time, the latter can mobilize citizens and activists to demand more accountability by businesses and to further the BHR agenda. The informal sector and state-owned

¹²³ Business and Human Rights Specialist, United Nations Development Program.

¹²⁴ Jillian Ambrose, *The Guardian*, 21 January 2022, Serbia scraps plans for Rio Tinto lithium mine after protests, <<https://www.theguardian.com/world/2022/jan/20/serbia-scraps-plans-for-rio-tinto-lithium-mine-after-protests>>, accessed 30 November 2022.

enterprises are two sectors meriting particular attention. The former creates conditions for the exploitation of particularly vulnerable groups. At the same time, state-owned enterprises have the scale and possibility of preventing business-related abuses through public procurement processes' enforcement (and amendment). Also, states in the region should introduce the business and human rights standards through state-owned enterprises and lead by example in providing normative and practical reform. Further common business-related human rights challenges include human rights abuses in the extractive industry and labour rights violations in the textile industry; prosecution of human rights defenders; abuses of the right to health and life, and right to fair, independent, and impartial procedures.

Lastly, there is little awareness among businesses, governments, and citizens of the concept of business and human rights, particularly of its chief tenet regarding businesses' positive obligations to respect human rights that require them to take specific measures. To address this, stakeholders, including civil society, international organizations, governments, and businesses, might need to '*do our ABCs*,' starting with raising awareness of the UNGPs, the concept of business and human rights, and how it is to be distinguished from corporate social responsibility.

Forum Transregionale Studien e.V.
Wallotstraße 14
14193 Berlin
T: +49 (0) 30 89001-430
office@trafo-berlin.de
www.forum-transregionale-studien.de