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NGOs welcome adoption of new Council of Europe Recommendation on Human Rights and Business

The undersigned organisations welcome the adoption of the Recommendation of the Committee of Ministers to member States on human rights and business (the Recommendation) on 3 March 2016.¹ This is the Council of Europe's first inter-governmental instrument on business and human rights. Adopted by the organisation's highest decision-making body, the agreement by all 47 Council of Europe member States is a significant achievement. If adequately implemented, the Recommendation can contribute to an enhanced system of legal accountability of business enterprises involved in human rights abuses and access to effective remedy for those who suffer harm.

For the past two years, our organisations have contributed to the development of this non-binding instrument with the objective of strengthening international standards on business and human rights. The new document provides guidance to Council of Europe member States on the effective implementation of the UN Guiding Principles on Business and Human Rights. Crucially, it also fills existing gaps in this instrument by clarifying and/or elaborating some of its principles further, taking into consideration the full spectrum of member States' international human rights obligations.

The following highlights some of the most significant contributions of the Recommendation:

- 1) A clear and strong statement that member States should adopt measures to **require business enterprises to respect all human rights**, and that this should extend to global business operations in many circumstances.
- 2) The clear call on member States to encourage and where appropriate require **mandatory human rights due diligence** for business enterprises domiciled in their jurisdiction and those conducting substantial activities in their jurisdiction, including through human rights impact assessments.
- 3) **The explicit recognition of the State-business nexus and obligation to respect human rights:** from the activities of state-owned enterprises, the provision of financial support, the granting of export licences to privatising the delivery of services, competent authorities are asked to apply additional measures to ensure respect for human rights, human rights due diligence, and to ensure the decisions of these State authorities are subject to administrative or judicial review.

¹ http://www.coe.int/en/web/human-rights-rule-of-law/-/human-rights-and-busine-1?redirect=http://www.coe.int/en/web/human-rights-rule-of-law/home?p_p_id=101_INSTANCE_qBOoAEZ8jaby&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&p_p_col_id=column-1&p_p_col_count=4

- 4) The need for member States to **take into consideration possible human rights impacts when concluding trade and investment agreements** or other relevant conventions.
- 5) Some of the most significant contributions of the new instrument are in the area of **legal accountability of business enterprises and access to justice for victims of corporate human rights abuse**. These include:
- a clear recognition from member States of the need to address some of the most pressing barriers to justice in cases of corporate human rights abuses and to ensure equality of arms;
 - a commitment from member States to apply legislative measures to ensure domestic courts can hear civil claims for business-related human rights abuses against business enterprises domiciled in their jurisdiction and their subsidiaries, and against other business enterprises if no other effective forum guaranteeing a fair trial is available (*forum necessitatis*);
 - an acknowledgment of the need for, and commitment to take action to ensure criminal or quasi-criminal liability of corporations and their representatives for their involvement in a wide range of human rights related offenses.
- 6) Numerous recommendations aimed at **strengthening a range of State-based non-judicial mechanisms** such as labour inspectorates, consumer protection authorities and environmental agencies, NHRIs, ombudsperson institutions and national equality bodies, to make sure such bodies are effective and have the mandate and capacity to consider business-related human rights complaints, and afford reparation to victims.
- 7) A built in **review mechanism** that requires member States to demonstrate their progress in five years' time.

Despite these notable positive elements, the Recommendation falls short in a number of important respects. The language used regrettably reflects States' overall reluctance to adopt stronger commitments in certain critical areas. The Recommendation fails to address the question of the application of statutes of limitations to crimes under international law committed by corporations. Additionally, provision for assessment and review of the Recommendation's implementation over time is disappointingly weak. It is hoped that future reviews will reconsider these issues in the Recommendation.

Following the important agreement of 3 March 2016, we call on Council of Europe member States and the EU to move swiftly to effectively implement the Recommendation.

Amnesty International
European Coalition for Corporate Justice (ECCJ)
FIDH - The International Federation for Human Rights
The International Commission of Jurists (ICJ)