

Open Letter to the Italian institutions on the issue of Business and Human Rights

The undersigned are lecturers, researchers and practitioners who, for many years, have dedicated their research, teaching and professional interests to the theme of "business and human rights" in various Italian and foreign universities, research bodies and organizations. With this Open Letter, we wish to express our appreciation as to the inclusion by the Italian Government in its work programme of the objective of achieving a "Green New Deal" (Para 7) aimed at rethinking the relationship between economic development, the environment and the human beings. However, we also deem it appropriate to provide the Italian institutions with some reflections on urgent issues that are increasingly at the heart of the public debate.

First of all, it is important to underline that the objective, stated in the Government's programme, to achieve "a radical change in the cultural paradigm" does not solely depend on the 'green change' and cannot be limited exclusively to the environmental sector. It also requires taking into account the impacts of business activities on the rights of individuals and communities. The stated objective of the Italian Government to promote "a more effective protection of human rights" with special attention to the most vulnerable categories (Para 6), also underlined by the use of the expression "new humanism", is certainly in line with this need. In this regard, it is important to underline that the 'Business and Human Rights' concern has been listed by Finland, in assuming the Presidency of the European Union, as one of the priority issues to be addressed by the Member States.

Secondly, with specific reference to the role that companies play in relation to the protection of the environment and of human rights, we believe that the inclusion in the Government's programme of the objective to adopt "measures to encourage socially responsible practices on the part of companies" (Para 7) is to be welcomed. It should be noted, however, that it is of primary importance that the government 'fills with substance' a formula (that of "corporate social responsibility" - CSR) that risks otherwise remaining vague and incomplete, and consequently, as testified by past experiences, of negligible impact. Already in 2002 the Italian Government included CSR in its action (with the launch of the "CSR-SC" project) and in 2003 it included it among the priorities of the Italian Presidency of the European Union with the aim of promoting "the spread of the CSR culture". Unfortunately, 15 years later, the direct or indirect involvement of Italian companies or industrial groups in the commission of human rights violations (e.g. the collapse of the Morandi Bridge, the serious impact on the environment and on health caused by the steel plant ex-Ilva in Taranto, the involvement of Italian companies in

Open Letter to the Italian institutions on the issue of Business and Human Rights

lawsuits related to alleged pollution in the Niger Delta, the purchase of clothes by Italian fashion brands from Bangladeshi suppliers responsible for serious workers' rights violations, etc.) suggests that the action, based exclusively on self-regulation by the private sector, was deficient in terms of effectiveness and impact. Unlike other European countries, in fact, CSR in our country is still far from being systematically practiced. We therefore believe that the Government's action in this area should be characterized by discontinuity with the past.

Thirdly, it should be noted that a framework already exists within which it is possible, and indeed necessary, to take action. Such framework derives from the international soft-law and hard-law instruments on human rights that our country is committed to observe. Among these instruments, of particular relevance are the UN Guiding Principles on Business and Human Rights (adopted in 2011 by the United Nations), based on which the Italian Government adopted in 2016 the National Action Plan on Business and Human Rights (NAP), subject to a process of updating and revision in 2018. With the NAP, Italy has started a complicated process of implementation of the standards set out in the three Pillars of the Guiding Principles, placing itself on the same route of major EU countries and of many other countries in the international community.

It is necessary to underline that the UN Guiding Principles, while being a soft law instrument, are normative in nature and are rooted in the international system of human rights, whose standards are binding upon the Italian State. From this point of view, the Guiding Principles clearly differ from the concept of CSR, which is a process decided and managed at company level. Precisely because of the normative nature of the Guiding Principles, it is nowadays necessary for the guidelines included in the Italian NAP to be transformed into concrete policies and rules, aimed at creating a coherent and harmonised internal regulatory framework on business and human rights.

It is also necessary, in order to keep up with the practice inaugurated by other EU countries, to pursue the objective, set out in the NAP, to implement the second Pillar of the Guiding Principles (the responsibility of companies to respect human rights), which requires, among other actions, the development of national legislation on corporate human rights due diligence. In this regard, a reflection is needed on whether to draft legislation with a general scope, or, on the contrary, circumscribed to certain companies or to specific issues (e.g. the fight against modern slavery, child labour, etc.).

*Open Letter to the Italian institutions
on the issue of Business and Human Rights*

Finally, in line with the third pillar of the Guiding Principles, it is necessary to regulate those factors which, in our internal judicial system, hinder access to justice and remedies for victims of human rights violations occurring in the context of the activities of Italian companies in Italy and abroad. Failure to bridge those gaps can result in sanctions by the international bodies monitoring the international treaties to which Italy is a party (among others, the judicial saga involving the ILVA of Taranto before the European Court of Human Rights in the *Cordella v. Italy* case is emblematic).

France pioneered the adoption of a law on the ‘duty of vigilance’ of companies aimed at implementing in the French legal system the second and third pillars of the Guiding Principles. Other European countries, such as Germany and Switzerland, are studying the adoption of legislation on human rights due diligence. The Netherlands has adopted a law on company due diligence in the area of child labour; in the UK, in addition to the existing Modern Slavery Act, a civil society-led study process is underway on the possible adoption of a more ambitious law.

The time is ripe for Italy to start a policy process towards the adoption of effective legislation on human rights due diligence, in line with its international obligations and with the positive example of other European countries. Alongside this priority action, Italy is required to consider a much wider range of measures, an Italian ‘roadmap’ on business and human rights, that entails being confronted with complex challenges. Such study could greatly benefit from the inputs of civil society and, in particular, of actors that have a long-standing experience in the analysis of policy, social and legal challenges pertaining to the link between business activities and human rights.

For all these reasons, as experts in the field of business and human rights, we offer our expertise to our country in order to support an effective implementation of this process, which we hope the Italian institutions will promote and lead without delay.

Rome, November 11th, 2019

*Open Letter to the Italian institutions
on the issue of Business and Human Rights*

Proponents and Scientific Co-Directors of the “Business and Human Rights” Summer School*

ANGELICA BONFANTI, Professoressa Associata di Diritto internazionale, Dipartimento di diritto pubblico italiano e sovranazionale, Università degli Studi di Milano

MARTA BORDIGNON, Presidente Human Rights International Corner (HRIC), Docente a contratto presso la Temple University, Rome Campus

MARCO FASCIGLIONE, Ricercatore di Diritto internazionale, Istituto di Ricerca su Innovazione e Servizi per lo Sviluppo – CNR

CHIARA MACCHI, Ricercatrice Marie Sklodowska-Curie, Wageningen University & Research.

Signatories

Pia Acconci, Professoressa Ordinaria di Diritto internazionale, Facoltà di Scienze della Comunicazione, Università degli Studi di Teramo

Antonella Angelini, Swiss National Science Foundation (SNSF), Postdoctoral Fellow at Columbia Law School

Elisa Bacciotti, Direttrice Campagne e Programmi in Italia, Oxfam Italia

Nadia Bernaz, Associate Professor of Law, Wageningen University and Research

Flaviano Bianchini, Founder and Director of Source International ONLUS

Leonardo Borlini, Assistant Professor of International Law, PhD, Università Bocconi, Milano

Nerina Boschiero, Professoressa Ordinaria di diritto internazionale, Dipartimento di diritto pubblico italiano e sovranazionale, Università degli Studi di Milano

Claire Bright, Assistant Professor Nova University in Lisbon, Research Fellow European University Institute

Martina Buscemi, Assegnista di Ricerca di Diritto internazionale, Dipartimento di diritto pubblico italiano e sovranazionale, Università degli Studi di Milano

Michele Carducci, Professore Ordinario di Diritto costituzionale comparato, CEDEUAM-Università del Salento Lecce

*The opinions expressed in the text belong solely to the proponents and signatories, and not necessarily to their employer and organization.

*Open Letter to the Italian institutions
on the issue of Business and Human Rights*

Giuseppe Cataldi, Professore Ordinario di Diritto internazionale, Università degli studi di Napoli "L'Orientale"

Francesco Cazzini, Dottorando di Ricerca di Diritto internazionale, Dipartimento di diritto pubblico italiano e sovranazionale, Università degli Studi di Milano

Jernej Letnar Černič, Associate Professor, Nova Univerza, Ljubljana

Raffaele Cesari, Avvocato civilista, difensore dei diritti umani

Michele Corleto, Ricercatore in Diritto Internazionale, Università telematica Pegaso

Ignazio Corrao, Eurodeputato

Luigi Crema, Ricercatore TD-B di Diritto internazionale, Dipartimento di diritto pubblico italiano e sovranazionale, Università degli Studi di Milano

Giacomo Maria Cremonesi, Co-fondatore Human Rights International Corner (HRIC) e avvocato presso Caiazza & Partners International Law Firm

Maria Francesca Cucchiara, Co-fondatrice Human Rights International Corner (HRIC) e avvocato

Davide Dal Maso, Partner, Avanzi sostenibilità per azioni

Daniilo De Biasio, Direttore del Festival dei Diritti Umani

Giosuè De Salvo, Responsabile advocacy, educazione e campagne, Mani Tese

Elisa Giuliani, Professoressa Ordinaria, Dipartimento di Economia e Management, Università di Pisa

Valentina Grado, Professoressa Associata di Diritto internazionale, Università degli studi di Napoli L'Orientale

Marirosa Iannelli, Presidente Water Grabbing Observatory

Franco Ippolito, Presidente Fondazione Lelio e Lisli Basso

Daniel Leader, Barrister and Partner, Leigh Day Law Firm (London)

Deborah Lucchetti, Fair, Coordinatrice Campagna Abiti Puliti

Nina Luzzatto Gardner, Adjunct Professor, Business & Human Rights Johns Hopkins SAIS

*Open Letter to the Italian institutions
on the issue of Business and Human Rights*

Maria Chiara Marullo, Profesora Ayudante Doctor de Derecho Internacional Privado, Universitat Jaume I de Castellón (Acreditada Contratado Doctor)

Axel Marx, Deputy Director Leuven Centre for Global Governance Studies, University of Leuven

Cristiano Maugeri, Programme Developer, Actionaid Italia

Francesca Novella, Policy Assistant, FOCSIV

Marianna Pace, Assegnista di ricerca in Diritto internazionale, Università degli studi di Napoli L'Orientale

Marco Piccolo, Presidente Fondazione Finanza Etica

Irene Pietropaoli, Business and Human Rights Research Fellow, British Institute of International and Comparative Law (BIICL)

Stefano Prato, Managing Director and Editor, *Development*, Society for International Development (SID)

Chiara Ragni, Professoressa Associata di Diritto internazionale, Dipartimento di diritto pubblico italiano e sovranazionale, Università degli Studi di Milano

Martina Rogato, Co-fondatrice Human Rights International Corner (HRIC) e Sustainability Expert

Margherita Romanelli, Coordinatrice Policy Internazionali per lo Sviluppo Sostenibile, WeWorld-GVC

Francesca Romanin Jacur, Ricercatrice di Diritto internazionale, Dipartimento di Giurisprudenza, Università degli Studi di Brescia

Valentina Rossi, Ricercatrice di Diritto internazionale, Istituto di Ricerca su Innovazione e Servizi per lo Sviluppo – CNR

Cedric Ryngaert, Professor of Public International Law, Utrecht University

Lorenzo Sacconi, Professore Ordinario di politica economica (economia etica e responsabilità sociale d'impresa), Dipartimento di diritto pubblico italiano e sovranazionale, Università degli Studi di Milano

Luca Saltalamacchia, Avvocato civilista, difensore dei diritti umani

Katia Saro, Lecturer of Business Ethics workshop, Università Cattolica del Sacro Cuore, Milano

Andrea Shemberg, Visiting Fellow London School of Economics and former Legal Advisor to the UN Secretary-General's Special Representative on Business and Human Rights

*Open Letter to the Italian institutions
on the issue of Business and Human Rights*

Andrea Stocchiero, Policy Officer, FOCSIV

Tara Van Ho, Lecturer, School of Law and Human Rights Centre, University of Essex

Anil Yilmaz Vastardis, Lecturer, School of Law and Human Rights Centre, University of Essex

Florian Wettstein, Professor of Business Ethics, Institute for Business Ethics, University of St. Gallen