

SUBMISSION TO THE UNITED NATIONS
OFFICE OF HIGH COMMISSIONER FOR HUMAN RIGHTS

CONCERNING INPUTS TO THE SECRETARY-GENERAL'S REPORT ON
BUSINESS AND HUMAN RIGHTS AND THE UN SYSTEM

MARCH 2012

Background

The Institute for Human Rights and Business (IHRB) appreciates the opportunity to provide input to the Office of High Commissioner for Human Rights (OHCHR) in response to United Nations (UN) Human Rights Council resolution A/HRC/RES/17/4 in which the Council unanimously endorsed the Guiding Principles for implementing the UN *Protect, Respect and Remedy* Framework on Business and Human Rights (UN Guiding Principles) and requested:

“...the Secretary-General to prepare a report on how the United Nations system as a whole, including programmes and funds and specialized agencies, can contribute to the advancement of the business and human rights agenda and the dissemination and implementation of the Guiding Principles, addressing in particular how capacity-building of all relevant actors to this end can best be addressed within the United Nations system...”¹

While recognizing the potential for the entire UN system to contribute significantly to this emerging agenda, for the purposes of this submission, IHRB wishes to highlight three areas where existing organizational structures should be strengthened and inter-agency cooperation and multi-stakeholder engagement enhanced in order to effectively disseminate and implement the UN Guiding Principles:

1. *Strengthening OHCHR capacity* - Build the capacity of OHCHR to become the focal point within the UN system for leadership and guidance to all stakeholders on implementing the UN Guiding Principles on business and human rights;

¹ UN Human Rights Council resolution A/HRC/RES/17/4, paragraph 11

2. *Advancing business and human rights in UN development activities* - Utilise existing inter-agency structures such as the UN Development Group's Human Rights Mainstreaming Mechanism to significantly strengthen UN cooperation and engagement with all relevant stakeholders on development policies and programmes of relevance to the business and human rights agenda at national level;

3. *Addressing business and human rights in UN peace-building strategies* – Enhance UN efforts to address state duties with respect to private sector involvement in abuses of human rights when operating in situations of violent conflict as well as in post-conflict and fragile governance environments.

1. Strengthening OHCHR capacity on business and human rights

In his 2010 report to the Human Rights Council, the UN Special Representative on Business and Human Rights, John Ruggie, stated that his mandate had become:

“...the de facto United Nations focal point for business and human rights. States, companies, United Nations organizations and other national and international entities regularly seek his advice regarding their own corporate-related human rights policies and practices ... However, even those limited efforts will come to a halt once his mandate ends unless an advisory and capacity-building function is anchored firmly within the United Nations. Logically, this should rest with OHCHR. But the Office would need to become equipped to provide the leadership and guidance that stakeholders require and expect.”²

The decision by the Human Rights Council in 2011 to establish a new mandate composed of a five person expert working group on business and human rights for a period of three years to promote the effective dissemination and implementation of the UN Guiding Principles on business and human rights, among other tasks, is a positive development. The early activities of the Working Group demonstrate the potential for this new mandate to build on the foundations put in place by the Special Representative and the Council's adoption of the UN Guiding Principles.

The OHCHR is responsible for providing secretariat support to the Working Group and has a critical role to play in helping ensure the effectiveness of this new mechanism. Equally important, however, OHCHR is a natural focal point for ongoing leadership and guidance both to implement the recommendations and initiatives of the expert Working Group and, over the longer term, to take its own initiatives and respond to specific requests from all stakeholders – inside and outside the UN – for guidance on business and human rights related challenges.

² UN Document A/HRC/14/27 paragraph 126

While acknowledging that assuming such a role is difficult for OHCHR at present given the complex and far reaching human rights challenges facing countries around the world, the increasing demands being placed on it by UN Member States, and the current zero budget growth policy which the Office is required to work under, there are nevertheless significant opportunities for OHCHR to do more with existing resources.

For example, recent field office reports highlight the fact that OHCHR faces a growing number of private sector related challenges requiring attention. The OHCHR office in Cambodia's 2011 report points out that:

“During the reporting period, OHCHR was called for assistance in 42 land disputes between affected villagers and companies, 18 of which related to ELCs, (including seven on indigenous land) while 24 disputes were related to other land transactions (two on indigenous land). OHCHR interventions took the form of assistance and legal advice to provincial and local authorities, as well as to affected communities and the NGOs supporting them. Upon request, OHCHR also mediated or facilitated discussions or negotiations among stakeholders to resolve disputes...”³

OHCHR should prioritise scaling up support to field presences to respond to specific disputes involving the private sector as a key part of its work to protect human rights around the world.

Similarly, OHCHR should strengthen support for capacity-building efforts at national level for other key stakeholders such as National Human Rights Institutions (NHRIs) who have increasingly addressed private sector related issues in recent years. IHRB's own recent activities and cooperation with OHCHR's office in Uganda and the Uganda National Human Rights Commission⁴, demonstrate strong interest amongst NHRIs from the region in building capacity to address government obligations with respect to corporate actors as well as their potential role in resolving disputes and serving as conveners and facilitators of multi-stakeholder dialogue within their countries. OHCHR should take steps to strengthen its engagement with NHRIs on the business and human rights agenda in cooperation with UN and other actors at national level.

OHCHR also has a critical role to play in supporting UN human rights mechanisms to address private sector related issues. This includes support to UN Treaty Bodies in the development of general comments and concluding observations concerning business impacts on human rights consistent with the UN Guiding Principles which can influence state practices as well as providing input to the Human Rights Council Universal Periodic Review process and the reports of the UN Special Procedures mechanisms. The current initiatives by the UN Committee on the Rights of the Child to develop a general comment concerning the role of

³ UN Document A/HRC/18/47, paragraph 39

⁴ See report of capacity-building workshop co-organized by IHRB, OHCHR-Uganda and Uganda Human Rights Commission, 25-26 January 2012, Kampala, available at: http://www.ihrb.org/pdf/Uganda-Workshop-Final_Summary_Report.pdf

business⁵ and by the UN Committee on Economic, Social and Cultural Rights to devote special attention to the obligations of States Parties with respect to the private sector⁶ indicate the growing attention to the business and human rights agenda which OHCHR has a key role in supporting.

UN Member States should recognize and act on the urgent need to significantly increase the overall budget provided to OHCHR to carry out its vital work, including on issues relating to the private sector and implementation of the UN Guiding Principles on business and human rights. Equally important, OHCHR should commit to a policy of main-streaming implementation of the UN Guiding Principles throughout its activities and those of the wider UN human rights system. This would include providing increased support both for field based capacity building and the work of UN Treaty Bodies and Special Procedures mechanisms as well as convening of multi-stakeholder dialogues and new initiatives on key issues, such as in the context of the UN Global Compact, and responding proactively to ongoing requests for advice and support in addressing specific disputes where private sector involvement may lead to negative impacts on respect for human rights.

2. Advancing the business and human rights agenda in UN development activities

As UN High Commissioner for Human Rights, Navi Pillay, noted recently:

“Over the last decade, there has been significant progress in mainstreaming human rights in the work of the UN system, and increasing demand from Member States. An increasing number of UN agencies are not only integrating human rights into their internal policies, but also actively advocating for human rights through their mandated work – on the rights of people affected by HIV, on the rights to food, education, health and shelter, and on the fundamental rights of workers. For UN country teams on the ground, human rights are no longer ‘add-ons’ to their long list of other priorities, but a foundation for more coherent and effective programming.”⁷

Greater attention to human rights across the UN system is encouraging. It offers an important opening for integration of the business and human rights agenda and Guiding Principles throughout the work of the organisation. A key development policy process currently underway where the UN Guiding Principles are of direct relevance concerns ongoing negotiations toward the post 2015 UN Development Agenda - the successor to the UN

⁵ http://www2.ohchr.org/english/bodies/crc/callsubmissionsCRC_BusinessSector.htm

⁶ UN Document E/C.12/2011/1, 20 May 2011

⁷ 28 February 2012 statement by High Commissioner Navi Pillay to a UN panel discussion on human rights mainstreaming: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11894&LangID=E>

Millennium Development Goals - and the upcoming Rio+20 Conference on Sustainable Development.

In January 2012, the UN Secretary-General established a UN System Task Team to support efforts to advance the post 2015 development agenda and to link system-wide planning to preparations for the Rio+20 Conference in June 2012. Concerted efforts should be made by all participants in this process to ensure that relevant provisions in the UN Guiding Principles are fully considered and integrated into these negotiations. Indeed, the UN Working Group on Business and Human Rights has stressed that the process leading up to Rio+20 take fully into account:

“...the need to align outcome documents with established international standards for business and human rights, especially the UN Guiding Principles on Business and Human Rights. To the extent that business has a key role to play in working towards a sustainable development, reference to business responsibility in the social dimensions of Rio+20 should integrate the responsibility of business to respect human rights.”⁸

Another area that should be highlighted as part of broader efforts to advance integration of the UN Guiding Principles into UN development initiatives concerns activities led by the UN Development Group (UNDG). UNDG is made up of 32 UN funds, programmes, agencies and offices involved in development activities. As a body focused on coordination, UNDG should be seen as a key mechanism for integration of the UN Guiding Principles throughout the system’s development work.

There are a number of avenues for fostering further integration. For example, as a follow up to the so-called “Action 2 Initiative”⁹, which called for joint UN efforts to strengthen protection of human rights at national level, the UNDG has developed a common learning package on human rights. Integrating a business and human rights component within this initiative would help ensure a basic level of familiarity on the issue for all UN staff undergoing the training.

A related initiative is the UNDG Human Rights Mainstreaming Mechanism¹⁰. Its 2011-2013 work plan sets out four priority focus areas for mainstreaming human rights across the UN system. Rather than suggesting a fifth priority, attention to the business and human rights agenda could be usefully integrated into the existing plan in a number of ways:

- As part of Component 3 on strengthening national human rights protection mechanisms, activities should include building government capacity to provide access to judicial and non-

⁸ <http://www.ohchr.org/Documents/Issues/Business/BNUNGuidingPrinciplesBusinessHR.pdf>

⁹ <http://www.un.org/events/action2/index.html>

¹⁰ <http://www.undg.org/docs/12173/UNDG-HRM%20OperationalPlan%20Nov%202011.pdf>

judicial remedies for corporate related abuses. The UN Guiding Principles emphasize the importance of access to justice for victims of corporate abuse and as the work of Special Representative John Ruggie identified, State regulations proscribing certain corporate conduct will have little impact without accompanying mechanisms to investigate, punish, and redress abuses. There are a number of parts of the UN family working on governance and justice issues – OHCHR, UNDP and the World Bank in particular. Leveraging broader governance and justice programmes to ensure adequate attention to access to remedies for victims of corporate abuse would be an important contribution.

- As part Component 4 on integrating human rights into overall UNDG advocacy initiatives, one approach could be based on selecting on a rolling basis specific rights that are of particular relevance to private sector involvement in development strategies around which a research and policy initiative could be initiated. This would result in several UN agencies working collaboratively to develop policy guidance for governments and for the private sector in line with the UN Guiding Principles that would address specific risks and opportunities. For example, the UN Special Rapporteur on the human right to safe drinking water and sanitation developed guidance in recent reports on private sector involvement in the water and sanitation sector.¹¹ This work could be further developed by UN agencies and result in targeted guidance for their own programmes and for government and private sector partners. Likewise, attention recently has turned to large-scale land acquisition where work is already underway around developing guidance for governments and the private sector. Further efforts are needed to clarify private sector responsibilities on a range of issues such as resettlement and urban development among other issues.

A final development policy priority area that should be noted involves the role of investment. The Commentary section to UN Guiding Principle 4 concerning the state-business nexus notes that:

“A range of agencies linked formally or informally to the State may provide support and services to business activities. These include export credit agencies, official investment insurance or guarantee agencies, development agencies and development finance institutions. Where these agencies do not explicitly consider the actual and potential adverse impacts on human rights of beneficiary enterprises, they put themselves at risk – in reputational, financial, political and potentially legal terms – for supporting any such harm, and they may add to the human rights challenges faced by the recipient State.”

Addressing investment related impacts brings into sharp focus links between development, human rights and the private sector that should be addressed by UN agencies and programmes as part of their own activities aimed at capacity-building and uptake of the UN Guiding Principles amongst relevant actors.

¹¹ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/148/31/PDF/G1014831.pdf?OpenElement>

In short, the UN system's key role in shaping international development policy and cooperation and its existing coordination mechanisms in this area should be seen as priority entry points for uptake of the UN Guiding Principles on business and human rights.

3. Addressing business and human rights issues within UN peace-building strategies

As part of his final report to the UN Human Rights Council, Special Representative John Ruggie dedicated a special addendum report to the issue of business involvement in conflict situations. In it he noted:

"The most egregious business-related human rights abuses take place in conflict affected areas and other situations of widespread violence. Human rights abuses may spark or intensify conflict, and conflict may in turn lead to further human rights abuses. The gravity of the human rights abuses demands a response, yet in conflict zones the international human rights regime cannot possibly be expected to function as intended. Such situations require that States take action as a matter of urgency, but there remains a lack of clarity among States with regard to what innovative, proactive and, above all, practical policies and tools have the greatest potential for preventing or mitigating business related abuses in situations of conflict."¹²

The Special Representative encouraged further steps aimed at strengthening the advisory role of States where businesses are involved in conflict-affected areas. This could include defining risks or activities by business that should prompt State responses and determining what responses would be appropriate and necessary. Indeed, UN Guiding Principle 7 states that:

7. Because the risk of gross human rights abuses is heightened in conflict-affected areas, States should help ensure that business enterprises operating in those contexts are not involved with such abuses, including by:

- (a) Engaging at the earliest stage possible with business enterprises to help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships;
- (b) Providing adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence;
- (c) Denying access to public support and services for a business enterprise that is involved with gross human rights abuses and refuses to cooperate in addressing the situation;
- (d) Ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses.

Given the key roles that a number of UN departments, agencies, programmes and funds play with respect to peace and security, the challenge of addressing business related abuses in

¹² UN Document A/HRC/17/32

conflict and areas of fragile governance, including post-conflict situations, and the importance of engaging States proactively in these efforts, should be given particular attention.

A number of important UN mechanisms could play a key role in advancing the business and human rights agenda in this area. For example, the UN Peacebuilding Support Office (PBSO), which services the work of the Peacebuilding Commission, administers the UN Peacebuilding Fund, and supports the Secretary-General's peace and security related initiatives, is a key focal point for integrating the UN Guiding Principles on business and human rights into UN peace and security activities.

In November 2011, the PBSO hosted a round table discussion with private sector representatives from the mining and minerals sector as well as post-conflict government representatives, non-governmental organisations and other experts on ways to support the use of natural resources for economic recovery in post-conflict countries. Such initiatives are to be welcomed and should make specific reference to the UN Guiding Principles on business and human rights.

Further steps to integrate the business and human rights agenda within the activities of and support provided by the UN Peacebuilding Fund should also be developed. A wide range of initiatives relating to the role of the private sector in conflict and post-conflict situations require attention. For example, more resources should be dedicated to providing support to law enforcement agencies policing natural resource exploitation and trade as well as building the capacity of States to govern in these areas, including capacity to negotiate natural resource concession contracts with international companies. Similarly, building civil society capacity to monitor the management of the revenues generated by these activities would be a significant contribution to advancing respect for human rights.¹³

The UN Peacebuilding Commission provides a useful forum for discussing policy questions raised by Special Representative Ruggie in his 2011 addendum report to the Human Rights Council on State responses to business and human rights in conflict-affected regions. As the Special Representative's report points out, States should seek to engage business enterprises proactively through a range of methods including¹⁴:

- establishing and communicating heightened due diligence standards in conflict situations, such as the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas;
- offering governmental or other conciliation or mediation services where

¹³ For more on this subject see, for example, "Lessons UNLearned: How the UN and Member States must do more to end natural resource-fuelled conflicts", Global Witness, January 2010, available at: http://www.globalwitness.org/sites/default/files/pdfs/lessonsunlearned_online_low.pdf

¹⁴ UN Document A/HRC/17/32, paragraph 16

local conflicts arise involving the business;

- working bilaterally with partner States to ensure effective cooperation among all relevant States with regard to the operation of business enterprises in a particular conflict situation.

A final point to be mentioned in this section concerns the role of the UN Security Council. The Council's experiences in addressing the conflict in the Democratic Republic of the Congo (DRC)¹⁵, in particular through the work of the Group of Experts¹⁶ mandated to develop guidelines for the exercise of due diligence by the importers, processing industries and consumers of mineral products involved in mineral products from the DRC, is of direct relevance to the UN Guiding Principles on business and human rights.

The Security Council has supported the Expert Group's guidelines, and has called on all States to take appropriate steps to raise awareness of the due diligence guidelines and to urge importers, processing industries and consumers of Congolese mineral products to exercise due diligence by applying the guidelines, or equivalent guidelines. Monitoring State and private sector application of the due diligence guidelines should remain a priority for the Security Council and the relevance of the UN Guiding Principles on business and human rights should be taken fully into account as part of this process.

Conclusions

Advancing the business and human rights agenda throughout the UN system is of key importance to strategies aimed at addressing a diverse range of ongoing governance challenges. Strengthening OHCHR capacities to serve as a catalyst for action along with steps to integrate the UN Guiding Principles on business and human rights into existing UN development and peace and security structures are key priorities which can contribute to progress on this critical subject.

Institute for Human Rights and Business (IHRB)

Web: www.ihrb.org

Email: info@ihrb.org

¹⁵ <http://www.un.org/sc/committees/1533/>

¹⁶ UN Document S/2010/596, 29 November 2010