



Capacity Building for NHRIs from East Africa, Malawi and Ghana

Kampala, January 25-26th, 2012

Summary Report

Background

The Institute for Human Rights and Business (IHRB) in cooperation with the United Nations Office of High Commissioner for Human Rights (OHCHR) and the Uganda Human Rights Commission (UHRC) organized on January 25th and 26th 2012 in Kampala a two-day workshop for National Human Rights Institutions (NHRIs) from East Africa, Malawi, Ghana and South Sudan to support the empowerment of NHRIs to deliver on their mandate on business and human rights. The workshop provided an opportunity for the NHRIs to reflect on lessons learned, share experiences and identify areas of potential future work in this area.

In the past few years, there have been a growing number of international, regional and national initiatives seeking to ensure that private sector actors carry out their appropriate responsibilities concerning human rights. The work of the UN Secretary General's Special Representative on Business and Human Rights (SRSG) has provided these engagements with a common frame of reference through the UN "Protect, Respect and Remedy" Framework and the Guiding Principles for its implementation which were unanimously endorsed by the UN Human Rights Council in June 2011.

NHRIs have increasingly engaged on issues of business and human rights in recent years. In October 2010, the Tenth International Conference of NHRIs in Edinburgh, Scotland produced the Edinburgh Declaration, which encourages all NHRIs to 'consider practical functions they can fulfil in promoting enhanced protection against corporate-related human rights abuse, greater accountability and respect for human rights by business actors, access to justice for victims and establishing multi-stakeholder approaches...' The Declaration also calls on NHRIs to establish partnerships, include in their institutional plans issues of relevance to business and human rights, create focal points within their respective organizations on business and human rights and report progress during future annual meetings.

To do this, one area that has been identified as requiring immediate attention by a survey undertaken by the International Coordinating Committee (ICC) Working Group of NHRIs on Business and Human Rights is supporting capacity building initiatives to enable NHRIs to engage more effectively with business and human rights issues. IHRB, OHCHR and UHRC organized the two-day workshop in Kampala as a contribution towards achieving this objective.

The workshop aimed to:

1. Familiarize participants with recent developments in the field of business and human rights, especially how NHRIs can work with the new UN Guiding Principles on Business and Human Rights;
2. Assist participating NHRIs in developing their own strategies for addressing business and human rights issues at the national level, including through reflection on priorities identified by the African Network of NHRIs.

To achieve these objectives, the workshop:

- Introduced participants to the business and human rights field, with a particular focus on the African NHRIs priority issues of Land, Working Conditions (labour issues) and Environment. While other standards/guidelines and tools were discussed, the focus of the workshop was anchored around how NHRIs can use the UN Guiding Principles and other UN related mechanisms as part of their mandates.
- Familiarised participants with application of the UN *Paris Principles* for NHRIs to the business and human rights agenda, and approaches and roles that NHRIs can adopt in this context.
- Undertook practical exercises on how to conduct a ‘context’ analysis in order to understand the business and human rights landscape at national and regional level to enable participants to identify and prioritise amongst opportunities to act on business and human rights issues within their national setting.
- Provided participants with a general framework for developing a strategy on business and human rights for their own NHRI.

1. Opening Presentations and Discussion

The meeting began with presentations and discussion concerning the main international framework governing the area of business and human rights: the UN Guiding Principles for implementing the “Protect, Respect and Remedy” Framework. Discussions also included how private sector related issues are addressed by other parts of the UN human rights system as well as by other international standards and bodies including those of the International Labor Organization, the UN Global Compact and the OECD, through its Guidelines for Multinational Enterprises. The Edinburgh Declaration adopted by NHRIs in 2010 and the 2011 Network of African National Human Rights Institutions (NANHRI) Plan of Action on business and human rights were also considered.

Two specific Special Mechanisms of the African Commission on Human and Peoples Rights (ACHPR) were also discussed as avenues through which redress and popularization of the agenda of business and human rights could be advanced, namely, the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa Working Group (WGIE) (which has recently begun its meetings and has expressed interest in working with NHRIs) and the Working Group on Indigenous Populations/Communities in Africa which provided great support to the ACHPR in making the trail blazing decision concerning the Endorois indigenous people of Kenya (www.minorityrights.org/download.php?id=748).

NHRI representatives shared experiences of their work to date on issues relating to the private sector. Examples included public inquiries on the impact of company activities arising out of complaints brought by citizens to NHRIs, investigations on the state of human rights protection

involving the mining sector, processing working conditions complaints/petitions and conducting human rights training for business. Every NHRI represented was satisfied that they could clearly identify where they derived their mandate to address business and human rights related issues.

2. Understanding Context and Identifying Priorities

This session focused on the importance of assessing entry points for possible actions by NHRIs to address business and human rights related challenges. A context analysis presentation and tool to assist in identification of all relevant stakeholders and possible methods of engagement were discussed, followed by small group working sessions designed to identify priorities and develop planning in this area. For example, in the case of land as an issue area where business activities potentially have clear impacts on protection of human rights, small group discussions considered:

Obligations of States as Duty-bearers

Understanding the obligations of states regarding land-related legislation and policies and the potential impacts on human rights protection as a result of business activity, and the state duty to ensure access for victims of land-related human rights abuses to effective remedies.

Company impacts and responsibilities

Recognizing the potential business policies and conduct which may lead to negative land-related human rights impacts and measures that can be taken by companies themselves to prevent and address human rights impacts associated with their activities, in line with the corporate responsibility to respect human rights, as well as steps business can take to support the realization and enjoyment of land-related human rights.

After this general mapping and context analysis was completed for a number of issue areas, participants discussed various options NHRIs could pursue, including seizing upon relevant opportunities and approaches to dialogue with impacted communities and other relevant stakeholders to address adverse human rights impacts involving company activities as well as developing initiatives aimed at maximizing positive contributions by business to human rights enjoyment; including by engaging with government, industry associations, civil society and other key actors.

Participants then worked in small groups to discuss how each NHRI participating in the workshop might advance its own activities in the area of business and human rights. This was carried out through a context analysis of private sector issues at national level that either had already been identified as being important or that should be prioritized for follow up action. Key areas identified by participants included:

1. Oil extraction and related issues of equitable sharing of oil revenue;
2. Environmental concerns where corporations are using water supplies;
3. Forced evictions to make way for foreign agricultural companies investing in the country;
4. Concerns relating to the rights to water and food in connection with oil prospecting;
5. Allocation of forest land to foreign agricultural companies and the effects on various land related rights;
6. General working conditions across various business sectors;
7. Capacity strengthening for NHRIs, business and relevant public sector institutions – especially regulatory ones to become more effective in their respective mandates of protecting, respecting and fulfilling human rights.

3. Existing and new tools to advance corporate respect for human rights

This session discussed a number of existing guides and other tools as well as new initiatives aimed at improving corporate respect for human rights. For example, participants learned about a new OHCHR publication titled “Guiding Principles on Business and Human Rights: Implementing the UN ‘Protect, Respect, Remedy’ Framework” and other documents prepared by the SRSG which can assist NHRIs in their own engagement with various stakeholders on business and human rights related issues.¹

Participants also heard presentations from IHRB about its project to develop guidelines for business on rights based approaches to land acquisition and use.² The guidelines are being developed as a practical tool for managers on the ground who have to take critical decisions concerning land use and acquisition, often in contexts where governments are unable or unwilling to offer human rights protection for a range of reasons, including conflict, resource constraints, differing priorities, or other concerns emerging from poor governance. In such contexts companies still have the responsibility to respect human rights, and the Institute has developed its framework from principles drawn from rights-based development and practical experience of companies. This lays emphasis on accountability, transparency, and participation of the people, and divides corporate

¹ Available at:

<http://www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx>

² Available at: http://www.ihrb.org/pdf/Guidelines_on_Business_Land_Acquisition_and_Land_Use-Draft_for_Consultation.pdf

responses into stages, from before land use or acquisition, to processes following the transaction, all the way up to eventual settlement.

Given the focus on land-related human rights identified by the NANHRI in their recently adopted plan of action on business and human rights, participants were interested in the IHRB initiatives and provided useful comments on the draft. These included the need to understand the role of the state better, including a clearer understanding of regional declarations with regard to sovereignty over land. Other NHRIs wanted to know the effect the guidance would have and greater clarity about the process that was followed to develop the guidelines. While the document is not a treaty, and not legally-binding, the Institute hopes it can guide businesses to act more responsibly. Others felt it was necessary for the state to assert its role as regulator, and human rights protection could not be left in the hands of non-state actors.

It was, however, emphasized that the Pillar II section of the Guiding Principles provided implementation approaches that NHRIs could use as they focused on the question of what it meant to require that business respects human rights. The concepts of 'do no harm' was discussed as was the process of due diligence³ as new ways of helping the private sector moves towards respecting human rights. Most participants noted the usefulness of the new tools pointing out that much of their work on business and human rights to date has not given due attention to the perspective of the corporate responsibility to respect human rights.

4. Developing NHRI Action Plans

The purpose of this session was to provide an opportunity for participants to reflect together and from the perspective of each individual NHRI participating in the workshop, on how business related issues could be incorporated within NHRI national action plans and, where they exist already, how these may be strengthened further.

Participants divided into small groups to discuss their plans and then presented their conclusions in plenary. An impressive range of ideas and commitments were made on next steps within each participating NHRI. Given this workshop was an initial opportunity for such discussion, the summary list below is intended only to provide a general sense of the types of initiatives and plans that were discussed and will be developed further in the time ahead.

Key areas of concentration for the participating NHRIs include:

1. Making business and human rights a focal area of concentration by setting up units to coordinate and lead this work;
2. Building internal capacity on business and human rights;
3. Identifying key businesses and industry sectors and planning training on the UN Guiding Principles as a way of popularizing the Principles amongst companies;

³ www.ihrb.org/pdf/The_State_of_Play_of_Human_Rights_Due_Diligence.pdf

4. Monitoring more systematically the impact of business activities on human rights such as labour, trade agreements, land acquisition, oil exploration, and environment;
5. Establishing stronger working relations with CSOs, Regulatory Authorities and other relevant government ministries domestically and with institutions such as IHRB, the Danish Institute for Human Rights and OHCHR internationally;
6. Engaging in the review of investment policies, land related Bills, regulations and existing laws and providing advisories with a view to integrating the UN Guiding Principles in domestic frameworks;
7. Ensuring that business and human rights issues are included in submissions such as NHRI Annual Reports, UN Treaty Reports, and the UN Human Rights Council Universal Periodic Review process.

5. Conclusions and Next Steps

The organizers concluded the workshop by thanking all the participants for their active participation and valuable contributions to the discussions. All participants agreed that the workshop had provided a valuable opportunity for reflection on the fast moving business and human rights agenda globally, regionally and nationally and had offered useful information and timely space for dialogue and planning for future work in this area by participating NHRIs.

OHCHR and IHRB committed to providing all participants with additional information and links to other sources of expertise on business and human rights. They also offered to engage in further dialogue with the group and with individual NHRIs who may wish to develop initiatives in this area. It was noted in this context that a number of NHRIs represented at the workshop had specific leadership roles concerning the business and human rights agenda at regional and international level in addition to their own national level mandates. OHCHR⁴ and IHRB would be pleased to provide further assistance wherever possible in furtherance to the action plans identified during the training.

⁴ Link to contact information for OHCHR Field presences including regional offices:
<http://www.ohchr.org/EN/Countries/Pages/RegionalOfficesIndex.aspx>