

**Open-ended intergovernmental working group for the elaboration of an
International Legally Binding Instrument on Transnational Corporations and
other Business Enterprises with respect to human rights, Resolution
A/HRC/26/9, First session, 06 – 10 July 2015**

**Panel VII: Building National and international mechanisms for access to remedy,
including international judicial cooperation, with respect to human rights
violations by TNCs and other business enterprises**

**Statement by the Working Group on Business and Human Rights of the
International Coordinating Committee of National Institutions for the
Promotion and Protection of Human Rights (ICC WG)**

The Working Group on Business and Human Rights of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC WG) welcomes the opportunity to contribute further to the First Session of the Open-Ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights (IGWG), building on the video statement presented by the Philippines Human Rights Commission on behalf of the ICC during the opening session.

National human rights institutions (NHRIs) are independent public bodies established by national law or constitutions to promote and protect human rights, through *inter alia* monitoring, formal investigations, advice to government, reporting to international and regional human rights supervisory mechanisms, research and human rights education.

More than a hundred countries in the world have an NHRI. NHRIs are subject to periodic re-accreditation with reference to the [UN Paris Principles](#), to assure their independence and objectivity, amongst other criteria. NHRIs are organised at regional level according to four networks, in Africa, the Americas, Asia and Europe.

In these comments, the ICC WG will focus on the role and potential of NHRIs, individually, collectively, and in coordination with other judicial and non-judicial grievance mechanisms to contribute to remedy for business-related human rights abuses.

Access by victims to effective remedy is a fundamental principle of the rule of law and recognized by a range of international human rights instruments. Such instruments define an effective remedy broadly, so that it may be met, for example, by reparations, such as restitution, rehabilitation, compensation, satisfaction, public apologies, changes in relevant laws and practices, and guarantees of non-repetition.

The right to remedy also encompasses procedural rights, for example: the right to an effective investigation, the right to information, the right to legal and other assistance necessary to claim a remedy.

These aspects of the right to remedy are important to keep in mind when considering the potential role of NHRIs in securing remedy for victims of corporate human rights abuses.

This potential role was recognised by the UN Human Rights Council in Guiding Principle (UNGP) 25 which highlights NHRIs as one amongst the range of non-judicial grievance mechanisms under Pillar 3 of the UN Framework on business and human rights, besides NHRIs' role in monitoring and holding the state and businesses to account with regard to their respective duty to protect and responsibility to respect human rights under Pillars 1 and 2 of the UNGPs.

Likewise, NHRIs in the ICC's 2010 Edinburgh Declaration, and four subsequent NHRI regional action plans on business and human rights, have recognised that their Paris Principles mandate includes business and human rights in its scope.

Over recent years, NHRIs have steadily increased their efforts to put this human rights and business mandate into action, across all four world regions, in ways which may contribute towards the securing of a remedy for victims, in addition to measures to support implementation of the first two pillars of the UN Framework.¹

For example:

- In some countries, victims of abuses are increasingly seeking out NHRIs as a means of accessing remedy. Between 2007 and 2012, the Malaysian NHRI, SUHAKAM received 39 complaints against logging companies, plantations, security and finance companies for trespass and damage to native customary land as a result of logging activities, denial of rest days for employees, late payment of salary, unfair dismissal.
- Similarly, 1,009 of the 5,422 human rights cases handled by Komnas HAM, the Indonesian Human Rights Commission in the period January-November 2012 were complaints against businesses in areas such as land and labour disputes.
- Victims have in some instances also sought to file complaints with the NHRI of the State where a perpetrating company is based. For example, villagers from Cambodia and Thailand, along with their NGO representatives, delivered a complaint to SUHAKAM raising human rights and environmental concerns about the work of Malaysian company, Mega First, on the Don Sahong Dam project in Laos.²
- NHRIs, for example in Germany, France, Chile, Malaysia, Tanzania, Scotland and Denmark are also promoting measures to improve the right to effective remedy for business-related abuses through the conduct of national baseline studies, and other steps towards National Action Plans on Business and Human Rights.

¹ A summary of activities of NHRIs on business and human rights is available on the ICC website (<http://nhri.ohchr.org/EN/Themes/BusinessHR/Pages/Home.aspx>).

² S. Dhanarajan and C. Methven O'Brien, *Businesses and Human Rights, 14th Informal ASEM Seminar on Human Rights, Background Paper* (ASEM: 2014) citing <http://www.earthrights.org/media/no-fish-no-food-ngo-coalition-files-complaint-against-don-sahong-dam-developer>

- NHRIs have undertaken formal investigations into the effects of situations of human rights abuses resulting from the operations of businesses in their countries. For example, the Human Rights Commission of Sierra Leone investigated fatalities and injuries resulting from public unrest over the conduct of a mining company in Bumbuna; the South African Human Rights Commission has investigated the Anglo-Platinum mining company finding negative impacts on poor communities' access to adequate land, water and compensation in Limpopo, and the National Human Rights Commission of Mexico (NHRC) has made recommendations urging the Government to ensure the protection of the rights of indigenous peoples in the context of mining activities in Wirikuta.
- NHRIs have engaged as independent observers or mediators in cases of conflict between rights-holders and businesses. For example, the South Korean and Philippines NHRIs have collaborated to address serious health and safety abuses leading to injuries and fatalities in ship-building yards in Korea involving Philippine workers.
- In addition, the ICC Working Group have started to explore opportunities, in coordination with the OECD, for NHRIs to support facilitation of remedy via the OECD National Contact Points (NCP), and has developed guidance for NHRIs in this area.

In order to address the significant need, which we recognize, for NHRIs to improve their own capacity to fulfil their responsibilities and mandate on business and human rights, the ICC Working Group and NHRIs have also invested resources in:

- developing and implementing training courses on business and human rights specifically targeting NHRIs
- developed guidance for NHRIs, in a number of specific areas, including on indigenous peoples' rights, in conjunction with the UN Expert Mechanism on Indigenous Peoples' Rights
- convened regional and national multi-stakeholder workshops to raise the awareness and identify priority areas for cross-border cooperation;

The ICC Working Group is also embarked on work to explore new modalities and protocols for cross-border cooperation of NHRIs to secure remedy for abuses resulting from transnational business activities.

Since the adoption of the UN HRC Resolution 17/4, in July 2011, on human rights and transnational corporations and other business enterprises, which endorses the UNGPs, the ICC WG recognises that some important progress has been made.

Despite this, the ICC WG and NHRIs observe that the UNGPs have not yet begun to impact sufficiently on the daily life of individuals and communities throughout the world. Persisting tragedies caused by business enterprises or state failures of regulation or enforcement reveal that adequate prevention and control mechanisms, including judicial remedies, are still weak at national level.

Moreover, government responses to recommendations made by NHRIs, and attacks on the independence of NHRIs, recently recognised as human rights defenders within the UN system, and attempts to undermine their mandates and efforts to protect human rights, continue.

We see it thus as necessary to broaden the discussion in this Working Group to include not only transnational corporations but equally the broad range of business enterprises operating domestically, and to maintain a strong focus on the primary duty of states to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.

This obviously raises the question of to what extent and how a new binding international instrument could bring improvements in protection, and NHRIs seek actively to participate in the discussion of this important question, in this forum and others.

In conclusion, we reiterate that the value added and effectiveness of this instrument would depend on its ability to complement existing national, regional and international efforts, which have been boosted by the process of implementing the UNGPs.

Any such instrument should thus reinforce the role of state-based non-judicial mechanisms and non-state-based grievance mechanisms, described by Guiding Principle 27, alongside a comprehensive, efficient and appropriate judicial system.

The ICC urges, in that context, consideration by states and other stakeholders in development of proposals for any international instrument of the potential role of adequately capacitated and resourced independent NHRIs to contribute to remedy, as we have outlined in this statement.