

Summary Note

i) Title of the session

Engaging Companies to Integrate Human Rights: Examples from Two Regions:

Africa: sub-Saharan Africa Case Study - Opportunities and Challenges of Integrating Human Rights in Development Agreements (Community Engagement Models, the tool for solution)

ii) Time and Room number

15:15 - 16:00, Room XI

iii) Names of the panellists and moderator

Mr. Jerry Nwigwe, Senior Programmes Manager, LITE-Africa

Ms. Sylvia Kithinji, Kenyan Human Rights Commission

Mr. Allan Lerberg Jorgensen, Department Director, Human Rights and Development, Danish Institute for Human Rights (DIHR)

Prof. Meg Roggensack, Senior Advisor, Business and Human Rights, International Corporate Accountability Roundtable (ICAR)

Ms Gine Zwart, Senior Advisor Corporate Accountability, Oxfam Novib, Hague, the Netherlands

Moderator: Ms Motoko Aizawa, Managing Director USA, Institute for Human Rights and Business

iv) Short summary of the main points relayed by the presenters (1x paragraph for each panellist)

Mr. Nwigwe was the first to speak who provided a case study using the Global Memorandum of Understanding (GMOU) being operated by Shell and Chevron and other Memorandum of Understanding (MoUs) being used by other oil companies in Nigeria. He explained that the GMOU model is a tripartite development agreement which allows communities to take more ownership in the decision making process on the development needs of their communities. Mr. Nwigwe pointed out that these development models bring stakeholders together to engage in dialogue, negotiate, and collaborate on ways to create mutual obligations between parties involved. Despite the successes recorded with this model, it has its own weaknesses. It focuses mostly on infrastructural development, leaving behind issues of environment, women's rights, security operations, labour rights etc. Mr. Nwigwe while quoting Mr. Michael H. Posner, Former Assistant Secretary of State for Democracy, Human Rights and Labor, United States of America on his 2012 inaugural goodwill message, said that companies should integrate human rights and should take note of the following five suggestions:

- Companies need to take stock of what constitutes their broader guiding principles on human rights and there should be senior-level commitment in order to make it work

- There should be adequate internal implementation systems to make the guiding principles real, which includes people and resources
- Companies should set internal benchmarks or matrices to enable them to measure progress and track how it's affecting their host communities
- Collaboration is key – Companies should work with external stakeholders such as NGOs and academics to share lessons

Mr. Nwigwe concluded by giving the following recommendations:

- Companies should at first gauge their human rights risks either through direct involvement or that of business relationships. Guiding Principle 18, states that the process of assessing adverse human rights impact should “draw on internal and/or independent external human rights experts.” Even if an enterprise has internal expertise, they will need to consult external sources and also embark on meaningful consultations with potential affected groups and other stakeholders. He continued that community agreements should recognise the basic right to dignity and freedom of the human race as contained in the Universal Declaration of Human Rights especially gender equality as women are marginalized. Equality and non-discrimination are fundamental standards within a human rights framework in the community contracting processes.
- Companies should integrate security and human rights initiative, such as the Voluntary Principles of Security and Human Rights (VPs) into community agreement as companies in Africa operate in complex environments where there are possibilities of armed conflicts.

Ms. Sylvia Kithinji of the Kenyan Human Rights Commission gave examples using coal mining, oil exploration and agriculture in Kenya. She said in Kenya, benefit sharing agreements are entered by the government with Chinese corporations and communities do not participate in the negotiation. This has led to local communities seeking redress from the court. She pointed out some of the elements of the agreement include resettlement plan to be consultative, all land needs to revert back to the community, and owners of private land would be paid 70% of land and 30% would purchase equity. Calculations would consider the market value of land and regards given to land, Small producers not able to realize their basic rights because the provisions of the social benefits are not tangible. On oil exploration, Ms Kithinji shared that British companies have been exploring oil in Kenya for some time. About a year ago, some host communities protested this on the basis that they were not aware of the benefits they would get from the oil exploration.

After Mr. Nwigwe and Ms. Kithinji's comments, Allan Lerberg Jorgensen of Danish Institute for Human Rights noted that the GMoUs are not a perfect model. He said in the Guiding Principles, there are assumptions for communities to engage the companies but the needed capacity to engage are not there, so capacity building element is very important for communities to engage. Mr. Jorgensen also pointed out that the relationship between respect and development are perhaps the greatest criticisms for the GMoUs because it's a model for strategic philanthropy. Imperfections of other processes are undermining the

GMoUs and the role of government is very important as well because there is a real risk that when the company gives in to engage in community development agreement, the government is going to retrieve it. He pointed out that it's perfectly okay in human rights analysis for the government to rely on private sector for contributions to development but accountability cannot be outsourced.

Prof. Meg Roggensack, Senior Advisor, Business and Human Rights, International Corporate Accountability Roundtable (ICAR), commented based on her experience while working on the VPs. She shared that several tools have been developed by companies such as the Code of Conduct for Private Security and Implementation Guidance Tools. Prof. Roggensack advised that companies should look at the available tools and work towards integrating them into their policies and systems. She said that Memoranda of Understanding (MoUs) between companies and communities are a critical tool to ensure that key expectations and decision-making processes and procedures can be established and agreed upon – in writing – before potentially dangerous outcomes could occur. MoUs form an integral part of the implementation guidance of the Voluntary Principles on Security & Human Rights (the VPs), the key international initiative that sets forth best security practice for companies in the oil and mining sectors.

Gine Zwart, Senior Advisor Corporate Accountability, Oxfam Novib, Hague, the Netherlands raised the issue around land grabbing by companies. She introduced her session by sharing a story of *Tabu*. Tabu had land she used in the River Valley, a fertile land. It was taken from her by a company. When Oxfam first went there to look into the situation the company denied anyone had lost any land. This was four years after the land acquisition by a big company. “A nice company, not a Chinese company. A company believing in community development, etc...”

When Oxfam went back 6 months later, several dozen families had been paid compensation for loss of land. Tabu was not one of them. She never raised a concern. She is upset, but kept quite. She did not feel she could do anything about it. The village leaders do not know the contracts, are not sure what money has been paid by the company, or being earned by the company, although they agreed to the deal. The future of Tabu and the village is unclear. Tabu is one of many. The beauty of the UN Guiding Principles is that they show ALL have obligations, including corporations; obligations to respect the rights of all the millions of Tabu's even, or **especially**, if they do not know their rights.

v) Key issues of discussion- record of ensuing discussion and interventions from the floor (comments and questions).

Due to time constraints we were not able to entertain many questions from the audience. The two questions we received were as follows:

Quest: Are there available model out there with provisions of the UN Guiding Principles being applied in the field?

Panellist feedback:

The topic for this session was designed to gather ideas and suggestions on how to develop a model which will have some aspect of the Guiding Principles in it. Most companies' Community Development Agreements were designed for philanthropy and not for the respect of rights. Also, most companies who operates the development agreements are seeking for social licence to operate but failed in addressing the most vital part which is "respect of rights."