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CALL FOR INPUT BY THE WORKING GROUP ON BUSINESS AND HUMAN RIGHTS ON THE ROLE OF NATIONAL HUMAN RIGHTS INSTITUTIONS IN FACILITATING ACCESS TO EFFECTIVE REMEDY FOR BUSINESS-RELATED HUMAN RIGHTS ABUSES

The Danish Institute for Human Rights (DIHR) welcomes the call for input by the Working Group on Business and Human Rights on the role of National Human Rights Institutions (NHRIs) in facilitating access to effective remedy for business-related human rights abuses. Pursuant to the call, DIHR would like submit information to the questionnaire regarding its mandate and work.

I. The role and mandate of NHRIs in facilitating access to effective remedy for business-related human rights abuses

1. Does your NHRI have an explicit or implicit mandate to handle complaints concerning alleged business-related human rights abuses? If yes, what methods (e.g. mediation or conciliation) can be used to facilitate access to remedy for human rights abuses?

- DIHR does not have an explicit mandate to handle complaints concerning alleged business-related human rights abuses.¹

However, as Denmark's national equality body regarding gender, racial or ethnic origin as per the EU directives,² DIHR is tasked with conducting independent surveys concerning discrimination, as well as publishing independent reports and making recommendations on any issue relating to such discrimination, both inside and outside the labour market.³ Furthermore, DIHR provides independent assistance to victims of discrimination in lodging their complaints related to the alleged discrimination. This assistance is not limited to cases concerning gender, race and ethnic origin. Rather, DIHR provides assistance to all victims pursuing cases related to discrimination covered by the anti-discrimination legislation.

The below examples are illustrative of cases where DIHR has offered legal assistance:

(1) Complainant was fired because he was unable to work on Saturday, as his religion prevents him from doing so. Nevertheless, his workplace demanded that he work on a Saturday. The Complainant lodged a complaint to the Board of Equal Treatment. He then sought DIHR's advice regarding additional claims to bolster his complaint. DIHR assisted him by reading his complaint and providing inputs on legal arguments that would be appropriate for his case. The Complainant subsequently prevailed in his case.

(2) Complainant was rejected from a job because he is blind. Complainant asked DIHR for legal assistance. DIHR counselled Complainant on the law that governs this matter and about the possibility of lodging a complaint to the Board of Equal Treatment. Complainant gave DIHR Power of Attorney and DIHR lodged a complaint to the Board of Equal Treatment. The Board is currently evaluating the matter.

In 2003, the Complaints Committee for Ethnic Equal Treatment was established at the Institute. The Committee was tasked with handling individual complaints on the ground of race and ethnic origin only and issued decisions which were not legally binding, and would not result in compensation. On 1st January 2009 the Board of Equal Treatment (Ligebehandlingsnævnet) was established outside of DIHR, which closed the Committee. The Board of Equal Treatment handles complaints on a number of grounds of discrimination. Decisions of the Board are legally binding. In addition, it can grant compensation and thus provide better remedies for victims of discrimination.

Moreover, DIHR can refer principal cases or cases of general public interest to the Equal Treatment Board, cf. article 1 (8) of the consolidated act on the Equal Treatment Board.⁴

2. What types of remedies can your NHRI offer to individuals or communities affected by business-related human rights abuses? Do you consider those remedies to be effective?

- DIHR provides independent assistance to victims of discrimination to enable them to pursue their complaints in cases of alleged discrimination. In general, providing victims of discrimination with legal assistance is an effective remedy.

However, in practice only few victims make use of our expertise. In cases of discrimination within the labour market it is however, important to keep in mind that the trade unions are usually where people go to get assistance.

3. Does your NHRI have a mandate to investigate, conduct inquiry and adjudicate individual cases of alleged human rights abuses by businesses? If yes, please provide relevant statistics in relation to complaints received and adjudicated.

- N/A

4. Does your NHRI give any special attention to facilitate access to your complaint mechanisms by vulnerable or marginalised groups? If yes, what measures have been taken in this regard?

- As Denmark's National Equality Body, DIHR provides assistance to victims who feel discriminated against within the Danish labour market. To ensure that language is not a barrier to access assistance, DIHR has made information material on the right to not be discriminated against available in a number of languages. Moreover, our counselling is offered in a number of languages.⁵ Furthermore, DIHR has ongoing dialogues with citizen's advisers in different municipalities and with relevant Civil Society Organisations.

5. What gender-sensitive and gender-responsive measures your NHRI take in dealing with cases of alleged business-related human rights abuses?

- N/A

6. What other measures does your NHRI undertake to facilitate access to remedy indirectly for business-related human rights abuses (i.e. raising awareness about rights and remedial mechanisms, providing legal assistance, building capacity of communities or businesses, assessing effectiveness of other grievance mechanisms, and recommending reform of the national legal system to strengthen access to remedy)?

- The mandate of DIHR includes the promotion and protection of human rights in Denmark, cf. article 2 in the Act on the Danish Institute for Human Rights – Denmark's National Human Rights Institution.

In Denmark, DIHR has a mandate to advise government, parliament, ministries and public authorities on human rights, including on business and human rights. DIHR reports on Denmark's human rights obligations and to the Parliament.⁶

Internationally we work to protect and promote human rights. In the late 1990s, DIHR was one of the first human rights organisations to engage directly with companies on their efforts to identify, act on, track and communicate on their negative impacts on human rights. DIHR supports businesses in building internal awareness of and capacity on human rights in relevant company functions. DIHR works directly with businesses, governments and rights-holders to develop human rights tools and guidance to further improve respect for human rights within businesses⁷.

Key workstreams include:

Raising awareness and capacity building of businesses and other stakeholders on business and human rights standards including on Pillar III of the United Nations Guiding Principles on Business and Human Rights (UNGPs).

Providing advice to the government on legal and policy reforms in Denmark: DIHR provided input on the reform of the Danish National Contact Point under the OECD Guidelines in 2012, as well as to the development of a National Action Plan on Business and Human rights in 2014. In 2016, DIHR published an [analysis](#) of human rights and business in the Danish context including recommendations to the government on how to strengthen remedial mechanisms including through establishing a dedicated mechanism for the public sector's involvement in business activities (public procurement, financial support such as export credit and development finance etc.).

Development of tools to assess the status of the implementation of the UN Guiding Principles. DIHR has co-developed a [national baseline assessment tool](#) which includes key questions and indicators to assess the implementation of the third pillar of the UNGPs which relates to access to an effective remedy. The tool has been used to develop national baseline assessment in various states, including in [Tanzania](#), [Kenya](#), [Chile](#), [Germany](#) and [Ukraine](#). The www.globalnaps.org website provides an overview of the content of published NAPs including content speaking to judicial and non-judicial remedy mechanisms.

Support to other NHRIs: as part of its international work, DIHR has supported strengthening complaints-handling mechanisms within other NHRIs, (not specifically related to business and human rights). DIHR supports the capacity building of NHRI staff in other countries including those in charge of handling

complaints in the area. As an example, DIHR recently provided on business and human rights standards for the complaints-handling team of the Kenya National Commission on Human Rights in early 2019. DIHR also facilitates sharing of experiences amongst NHRIs on this topic.⁸

Advice to financial institutions and businesses: As part of its work advising financial institutions and businesses, DIHR provides training, analyses and recommendations for strengthening operational level grievance mechanisms at such actors.

7. How does your NHRI collaborate with other judicial or non-judicial remedial mechanisms (e.g. courts, labour tribunals, National Contact Points, and operational level grievance mechanisms) in dealing with complaints concerning business-related human rights abuses?

- In Denmark, there are several authorities including the Danish courts, the Labour Court, the Labour Injury Agency, The Equal Treatment Board and The Mediation and Complaints-Handling Institution for Responsible Business Conduct that are tasked with handling complaints concerning business-related human rights abuses. DIHR engages with these authorities directly and through third party interventions. While DIHR's Equal Treatment Counselling assists victims to bring a complaint to the Equal Treatment Board in relation to discrimination based on gender, racial or ethnic origin within the labour market, DIHR can also bring proceedings in its own name or intervene at a national level.

In accordance with DIHR's mandate to advise the government, DIHR has provided input to the Danish National Contact Point (NCP) under the OECD Guidelines for Multi-National Enterprises.⁹ The Danish NCP also has a mandate to bring cases on its own accord and subsequently conducted a consultation with several external organisations in 2015 to gather input. Further, DIHR has several projects with the NCP to develop guidance on sector specific human rights due diligence.

DIHR's Executive Director used to be a member (2012-2015) of the Danish National Contact Point under the OECD Guidelines.¹⁰

DIHR used to be the Chair of the GANHRI Working Group on Business and Human Rights and in that capacity supported the conclusion of a memorandum of understanding between GANHRI and the OECD¹¹ to foster the collaboration between the institutions, particularly focusing on the cooperation between NCPs and NHRIs.

8. Can your NHRI deal with alleged business-related human rights abuses with a transnational or cross-border dimension (e.g. through informal visits and exchange of information or a cooperation arrangement with counterparts in other States)?

- DIHR does not have a complaints-handling mandate. Through its international mandate, DIHR collaborates and supports NHRIs in other countries to address business related human rights abuses, including through memorandums of understanding and can also advise other stakeholders on available remedial mechanisms.

9. Is your NHRI involved in any initiatives to stimulate effective multi-stakeholder grievance mechanisms to strengthen access to remedy for business-related human rights abuses?

- DIHR has engaged with the International Commission of Jurists on its project to develop case studies and guidance on project level grievance mechanisms. DIHR has also conducted reviews of individual company's grievance procedures using the effectiveness criteria set forth in the UNGPs.

10. Where a National Action Plan on Business and Human Rights exists (or is under development), does it provide for a role for NHRIs in relation to access to remedy in case of business-related human rights abuses?

- The Danish National Action Plan does not provide a specific role for DIHR in relation to access to remedy in cases of business-related human rights abuses.

II. Challenges and limitations faced by NHRIs in facilitating access to effective remedy for business-related human rights abuses

1. What are the most critical challenges and limitations (e.g., legal, practical, or financial) that your NHRI has experienced in facilitating access to effective remedy in business-related human rights abuses? How could these challenges or limitations be overcome?

N/A

2. What additional challenges has your NHRI faced in dealing with complaints with a transnational dimension (e.g., exploitation of migrant workers, or cross-border environmental pollution)?

N/A

3. How has your NHRI dealt with complaints involving multiple victims?

N/A

4. What has been the experience of your NHRI in dealing with complaints concerning parent and subsidiary companies or the supply chain of a company?

N/A

III. Good practices, innovations and recommendations to strengthen the role of NHRIs in facilitating access to effective remedy for business-related human rights abuses

1. Can you share any good practice examples in which your NHRI was able to facilitate, directly or indirectly, effective remedies for business-related human rights abuses?

N/A

2. Are there good practice examples of your NHRI supporting the work of civil society and human rights defenders (including women human rights defenders) working to secure access to effective remedy for business-related human rights abuses?

- DIHR collaborated with the NHRIs of Kenya and Tanzania along with civil society organisations SOMO, Kenya Human Rights Commission and Human Rights and Business Tanzania to strengthen capacity of NHRIs and CSOs to address business and human rights issues including access to remedy in Kenya and Tanzania.¹²

4. What measures should be taken to strengthen the mandate, role and capacity of NHRIs in facilitating access to remedy for business-related human rights abuses?

- DIHR is preparing a submission to the UNWG which includes recommendations made on the basis of a research project on the above subject matter.

5. How could NHRIs collaborate with regional and international human rights monitoring mechanisms (including the Universal Periodic Review) to facilitate access to remedy for business-related human rights abuses?

- DIHR is preparing a submission to the UNWG which includes recommendations made on the basis of a research project on the above subject matter.

Yours sincerely,

Elin Wrzoncki

PROGRAMME MANAGER – BUSINESS AND ACCOUNTABILITY

¹ [Act no. 553/2012](#) on the Danish Institute for Human Rights – Denmark's National Human Rights Institution.

² Respectively set out in Article 12 of the [EU Council Directive 2004/113/EC](#) of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services and in Article 13 of the [EU Council Directive 2000/43/EC](#) on Equal Treatment Irrespective of Race and Ethnic Origin.

³ DIHR is also appointed as national monitoring mechanism to promote, protect and monitor implementation of the Convention on the Rights of Persons with Disabilities e.g. article 33 (2).

⁴ Consolidated act no. 1230 of 2. October 2016, available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=179851>

⁵ <https://menneskeret.dk/raadgivning>

⁶ The latest annual report to the Danish Parliament is available in Danish [here](#).

⁷ This includes e.g. the Guidance and Toolbox on Human Rights Impact Assessment: <https://www.humanrights.dk/business/tools/human-rights-impact-assessment-guidance-and-toolbox>

⁸ Case studies and workshop report - Remedy in Business and Human Rights Cases- The Role of National Human Rights Institutions: https://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/Publikationen/Weitere_Publikationen/Remedy_in_Business_and_Human_Rights_Cases_NHRI_case_studies_2019.pdf

⁹ See DIHR comments to the draft law on establishing the National Contact Point: https://menneskeret.dk/sites/menneskeret.dk/files/media/researchpublications/hoeringssvar/hoeringssvar_afgivet_i_2012/januar_2012/5_blov_om_maeglings_og_klageinstitution.pdf

¹⁰ To access the website of the Danish National Contact Point under the OECD Guidelines: <https://businessconduct.dk/>

¹¹ The Memorandum of Understanding between GANHRI and the OECD is available here: https://www.humanrights.dk/sites/humanrights.dk/files/ganhri_oecd_mou_2017.pdf

¹² Summary of the project can be found [here](#)