

## **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 and human rights abuses**

### Answers

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

1. The Malawi Human Rights Commission (the Commission) has a broad mandate to handle complaints concerning alleged business –related human rights abuses. The Commission usually uses mediation / conciliation which are methods/mechanisms used to facilitate access to remedy for Human Rights abuses. For instance, in 2018 the Commission carried out investigations into spillage of oil and other waste matter from Oil Seed Company into the nearby villages. The Commission conducted a public hearing following the preliminary results of the investigation and sought to mediate between the company, the respondent, and the people of the villages who were the complainants. The company did not implement the recommendations that were made during the investigations and the public hearing. This resulted into the case being taken before a court of law. As we respond to this questionnaire, the company has been closed because of failure to adhere to the recommendations made.
2. The remedies that the Commission offers to individuals and communities extend from mere advice of human rights violated and remedies available; investigations, public hearings, public inquiries, referral of the case or complaint to ... court for public interest litigation or strategic litigation and alternative dispute resolution (ADR). These are mechanisms used to access available remedies. These remedies are; conciliation, mediation, advice, judicial and non-judicial remedies. Other remedies include persecution of perpetrators of alleged business and human rights related violations. The Commission considers these remedies to be effective as it from time to time receives feedback from complainants about their satisfaction after the commission handles and facilitates access to such remedies. An example of this would be the 2018 case where sewage waste matter contaminated safe portable and clean water supplied by Lilongwe Water board in area 18A. This case is currently in court following the recommendations made by the Commission during investigations and public hearing conducted on the same.
3. As stated above, the Commission has a mandate to investigate, conduct public inquiry and hearing and adjudicate individual cases of alleged human rights abuses by businesses. At the moment, there are two cases in court, these being the above two cited above.
4. Yes, the Commission does give special attention to facilitate access to complaint mechanisms by vulnerable or marginalized groups. For instance, there are at the moment three cases to this effect a) the landless case involving X farmers who were tenants abandoned by Press Agriculture in Kasungu. These vulnerable people were left destitute

after Press Agriculture stopped Tobacco farming (b) the case of people of Gongweya vs. the Oil Seed Company involving the spillage of oil from the factory into the village in Lilongwe City c) the area 18 sewage water contamination case. The Commission took these cases based on the vulnerability of the complainants.

5. In the case of area 18 sewage water contamination and the Oil Seed Company case, the Commission considered gender in its handling of the cases. In fact, most of the complainants that approached the Commission were women.
6. The Commission took an initiative to come up with the National Human Rights Plan of Action on business and Human Rights in consultation with stake holders. Beyond this, the Commission established a national forum for business and human rights where stakeholders led by the commission went through training of business and Human Rights and produced a national action plan on business and human rights. Beyond this, the Commission trained some Tobacco companies on how to handle complaints related to business and human rights violations.
7. The Commission intends to carry out a labour justice audit and organise a conference based on the findings of such in order to strengthen capacity of stakeholders in dealing with judicial or non-judicial remedial mechanisms related to complaints concerning business related human rights abuses.
8. The Commission can 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 corporation arrangement with counterparts e.g. national human rights institutions in other countries. However, this has not happened yet specifically for business related human rights abuses. This has however happened in cases of refugee human rights abuses. For instance, collaboration with the national human rights in Mozambique on the situation of refugees from Mozambique in Malawi.
9. Yes, the Commission is involved in initiative to stimulate effective multi stake holder grievance mechanisms to strengthen access to remedy for business related human rights abuses. Following a comprehensive training of business and human rights in Morocco of various human rights institutions in Africa under the auspices of Network of African National Human Rights Institutions (NANHRI), the Commission intends to hold a national conference of stakeholders to share and stimulate effective multi stakeholder grievances. To strengthen access to remedy for business related human rights abuses.
10. The National Action Plan on business and Human Rights exists and awaits approval of government. However, it does provide for a role of the Commission in relation to access to remedy in case 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?

The main critical challenges and limitations are: limited number of experts or officers that are competent in the area of human rights, Law and business; Businesses are secretive as such they are not open to the public; very few financial resources invested in the area of human rights.

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)?  
Not applicable.
3. How has your NHRI dealt with complaints involving multiple victims?

Complaints are dealt mostly as one public hearing or inquiry depending on the issues at hand.

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?  
Not applicable.

## **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?

Conducting public hearing – where the hearing was conducted in public in the following cases (i) water contamination by sewage wastes in Area 18 in Lilongwe City; (ii) oil substance discharges from an Oil Company Limited into some villages in Lilongwe; (iii); recommend prosecution for violators of human rights in the area of human rights and business in such cases as (i) Air pollution due to bursting of rock at Njuli Quarry in Chiradzulu;

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?

Establishment of a national forum for stakeholders including those working in the area of business and human rights. This set up facilitates fast and effective resolve of issues and complaints about violations of human rights; it also acts as an initiative for sharing best

practices among the stakeholders. Formation of a national human rights forum where stakeholders speak the same language and assist each other resolving including business and human rights conflicts and violations.

3. Can you identify any innovative steps taken by your NHRI in overcoming various challenges and limitations faced in dealing with complaints concerning business-related human rights abuses?

The national forum for dialogue specifically for business and human rights enhances civic education and awareness of issues in the area of business and human rights; training of stakeholders)

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?

Development of a National Action Plan on Business and Human Rights; sharing of best practices among NHRIs within the region and globally; strengthened Business and Human Rights training and exchange visits human rights officers from among NHRIs.

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?

Capacity strengthening of NHRIs in reporting competences of state party obligation more especially those that are business related.