

## **Submission by the Institute for Human Rights and Business (IHRB) to the UN Office of the High Commissioner for Human Rights (OHCHR)**

### **Concerning the feasibility of a dedicated fund to enhance the capacity of stakeholders to implement the UN Guiding Principles on Business and Human Rights**

**January 2014**

#### **Context**

IHRB appreciates the opportunity to comment on the potential for building the capacity of stakeholders to implement the UN Guiding Principles on Business and Human Rights (Guiding Principles) through a dedicated global fund. This is a potential development that IHRB has long supported, as we have suggested in previous submissions to the UN Special Representative and the UN Working Group on Business and Human Rights. Given the scale of implementation related challenges and the multiple issues and actors involved, the establishment of a new independent fund in this area is one potentially important vehicle for supporting efforts aimed both at protecting people from rights abuses by or involving business and at building the capacities of a range of actors in how the UN Protect, Respect and Remedy Framework and Guiding Principles can be implemented in a diversity of geographic, thematic and industry specific contexts around the world.

The questions raised by OHCHR as part of the preparation of the feasibility study called for by the UN Human Rights Council are useful in advancing multi-stakeholder dialogue aimed at exploring the possible mandate for such a fund, how it might be established and governed, and how it could most effectively contribute to significantly expanding capacity building resources to address business and human rights challenges around the world. IHRB's responses are provided after each consultation question in the section below.

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- 1. What is the desirable mandate for a fund in this area? In terms of actors eligible for funding, should equal priority be given to supporting projects at local and national level that would increase the capacity of a broader range of stakeholders including governments, national human rights institutions, small and medium size enterprises, trade unions, civil society and others seeking to advance implementation of the Guiding Principles? Are there issue specific challenges that should be prioritized? Should the aim of mainstreaming the Guiding Principles throughout the UN system be seen as a part of the mandate for such a fund?**

A new business and human rights fund could provide a mechanism for supporting a wide range of projects developed at local, national and international levels that would increase the capacity of all relevant stakeholders to implement the Guiding Principles. It could assist governments with limited capacities to fulfill their state duty to protect as set out in the UN Framework and Guiding Principles as well as strengthen efforts by National Human Rights Institutions, business groups, trade unions, civil society organizations, human rights defenders and others seeking to encourage implementation individually and through joint activities.

In terms of priorities, IHRB is of the view that in the early stages of such a fund, some experimentation will be necessary both in terms of the actors to be supported as well as in the substantive issues to be addressed through projects at all levels. For example, a pilot phase for a new fund could perhaps identify a limited number of substantive issues to address in order to gain experience and study initial results.

IHRB would recommend that one general principle concerning the mandate of such a fund would be to ensure a clear emphasis on supporting projects that contribute to the development of good practice as defined by OHCHR, the UN Working Group on Business and Human Rights and other recognised experts in the field. It would also be desirable to support projects that are replicable and could be scaled up in the future. IHRB would also recommend that project proposals be required to demonstrate that all relevant stakeholders were involved in their design and planned implementation and that appropriate ownership and accountability mechanisms are ensured.

With respect to the aim of mainstreaming the Guiding Principles throughout the UN system, IHRB believes that OHCHR and other UN agencies and programmes would be critical partners in the effective design and implementation of any dedicated fund on business and human rights. However, we would not recommend as part of the mandate for a new fund to prioritize projects aimed specifically at building UN capacities in this area. To achieve this objective, IHRB would instead encourage greater efforts to integrate the Guiding Principles through ongoing activities including UN human rights mainstreaming initiatives and UN policy coordination mechanisms, as well as through strengthened advocacy to increase regular budgetary resources to enhance UN capacities to advance the business and human rights agenda.

- 2. Should a fund in this area focus only on awarding grants or should it have as part of its mandate the broader aim of developing good practice in this field? One possible model would limit the fund's activities to disbursing funds via UN agencies at national level to worthy projects implemented by selected grantees. Evaluation of projects could also be the responsibility of UN agencies at national level. A broader mandate might see a portion of available resources dedicated to evaluating the effectiveness of all projects over time, developing a system for disseminating good practices and serving as a clearinghouse for information and expertise in this area.**

In addition to administering financial contributions and ensuring effective reporting and accountability for project results, IHRB recommends that further consideration be given to a broader mandate for a new fund on business and human rights as suggested in this question. For example, a new fund's secretariat could be mandated to coordinate efforts aimed at drawing lessons from projects undertaken, developing a database of good practices in this field and over time potentially providing policy and advisory service functions as has been the case with global funds in other issue domains. OHCHR would clearly need to have a central role in any such function.

If properly constituted and resourced, a new fund could also serve as an important source of information and expertise, which would complement existing activities relating to business and human rights both within and outside the UN system. For example, the strategic links between the fund and the UN Annual Forum on Business and Human Rights should be explored, as well as the potential for the fund to inform the work of the UN Global Compact, UN partnership initiatives and existing multi-stakeholder efforts, all of which seek to advance corporate responsibility in the area of human rights.

- 3. How should a fund in this area be governed? Trust funds managed by OHCHR operate according to UN rules and regulations and limits the scope of multi-stakeholder governance. Given the emphasis of the Human Rights Council on securing multi-stakeholder engagement for a potential new fund on business and human rights, should the governance models of existing funds in areas such as public health - which are linked to the UN system but have independent and multistakeholder governance arrangements - be explored further? What governance models would best guarantee the perspectives of rights-holders and local communities?**

OHCHR has significant experience in administering UN voluntary trust funds, which support civil society actors as well as governments in need of technical assistance in implementing their human rights obligations. Such trust funds are the responsibility of the UN Secretary-General under UN Rules and Regulations and are managed by OHCHR with the advice of individual experts who serve on Boards of Trustees.

While the established governance arrangements of UN human rights trust funds are entirely appropriate in many areas, IHRB believes that a new fund dedicated to capacity building on business and human rights and implementation of the UN

Guiding Principles would require a fully multi-stakeholder governance model. Such a model would need to include governing authority for all relevant stakeholders. This view is based both on the Human Rights Council's emphasis on the importance of securing multi-stakeholder engagement for such an initiative as well as the importance of fully engaging a significant number of businesses as financial contributors to the fund to ensure its long-term impact.

It should be noted in this context that in early 2011, prior to the Human Rights Council's decision to endorse the Guiding Principles and establish a new independent expert working group and annual forum on business and human rights, the proposal of the Secretary-General's Special Representative on business and human rights concerning a new voluntary fund for business and human rights recommended that its activities should be overseen by a multi-stakeholder Steering Committee appointed by the High Commissioner (or Secretary-General), in consultation with the Human Rights Council. IHRB recommends that as discussions move forward, a range of existing fund governance models, both within and linked to the UN system, are studied further to determine which may be most suitable. Such a review should also include the potential for creating a separate non-profit organization to manage a new fund, as well as arrangements through which existing organizations could be mandated to carry out administrative and other governance responsibilities for a fund in this area.

**4. What issues should be considered with respect to sources of funding? Any new fund on business and human rights would need to subsist entirely on voluntary contributions from governments, companies, foundations and other interested parties. How could significant additional funds be secured in a way that does not undermine existing funding for ongoing diverse human rights related efforts locally, nationally or globally? Should limits on the percentage of overall funding from any individual donor be set to help safeguard the fund's independence?**

Further dialogue with all potential supporters is needed to determine the extent to which significant new financial resources could be generated to support the establishment and effective implementation of a dedicated fund to support capacity building relating to the business and human rights agenda. As discussions move forward in the Human Rights Council, it must be stressed that any new fund in this area should provide for additional resources and in no way divert existing available funds from ongoing human rights related activities carried out by civil society actors, the UN system or others. A fund should contribute new resources to priority issues that are not already adequately supported, perhaps reflecting the outcomes of sessions of the Annual Forum on Business and Human Rights where particularly pressing human rights concerns could be identified through multi-stakeholder dialogue.

Finally, with respect to sources of funding, IHRB believes strongly that broad based financial support from a diverse range of contributors is critical to the success of such an initiative. While it may be necessary to launch a new fund with a limited

number of initial contributors, the long term impact and legitimacy of a fund to advance the business and human rights agenda will be best guaranteed by ensuring financial and operational support from a wide range of governments, major businesses, foundations and other actors.

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