

Submission to the United Nations Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises

2013 Forum on Business and Human Rights

Introduction

The International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights' Working Group on Business and Human Rights (ICCWG)¹ is pleased to present this submission to the United Nations Working Group on the issue of human rights and transnational corporations and other business enterprises (UNWG) further to its request for input for the 2013 Annual Forum on Business and Human Rights (the Forum).

The contribution of national human rights institutions (NHRIs) to the business and human rights (BHR) arena has grown significantly since 2009, when the ICCWG was established as the ICC's first thematic working group. The 2010 *Edinburgh Declaration*² expressed a clear and practical commitment by NHRIs to deepening their ability and capacity on BHR in relation to their *Paris Principles* mandates. The 2011 UN Human Rights Council Resolution A/HRC/17/L.17/Rev.1 welcomed the important role of NHRIs established in accordance with the Paris Principles on BHR, and the 2011 UN *Guiding Principles* on BHR recognized NHRI mandates and roles across the three pillars of the UN *Protect, Respect, Remedy* Framework. Since then the role of NHRIs and need for NHRI capacity building in BHR has been recognized in subsequent UN Resolutions such as A/HRC/RES/21/5 and UN OHCHR and UNWG reports relating to BHR³.

The ICCWG is supportive of UNWG activities and was actively engaged in last year's inaugural Forum by providing input into its design, by organizing and participating in several of the substantive sessions, and with the attendance of roughly 45 representatives of NHRIs from all regions⁴.

This submission offers suggestions about the modalities for the 2013 Forum, in order to build upon the achievements and momentum of last year's Forum, to encourage greater participation from affected rights-holders, civil society, business, and government representatives, and to expand the reach of the UNWG through regional fora.

A proposal is made for a multi-stakeholder session on implementing indigenous peoples' rights through the operationalization of the UN Guiding Principles. The ICC WG proposes further thematic topics for inclusion in the programme.

¹ Please see the following website for further information on the ICC, the ICCWG and national human rights institutions: <http://nhri.ohchr.org/EN/Themes/BusinessHR/Pages/Home.aspx>

² <http://nhri.ohchr.org/EN/Themes/BusinessHR/Pages/10th%20%20Biennial%20Conference%20of%20the%20ICC.aspx>

³ See <http://www.ohchr.org/EN/Issues/Business/Pages/Reports.aspx>

⁴ The NHRI report of the 2012 UN Forum and NHRI side event is available at <http://nhri.ohchr.org/EN/Pages/default.aspx>

Modalities for the 2013 Forum

The ICC provided the following recommendations for the 2012 inaugural Forum:

- to share information, through presentations, kiosks, publications, etc;
- to address priority thematic issues and to encourage written commitments to act upon these issues;
- to maintain a tone of consensus-building and principled pragmatism that was initiated during the Special Representative's mandate; and
- to promote accessibility to all stakeholders through low/no cost for participation; webcasting the forum; providing support for NHRIs, civil society organizations and experts from developing countries.⁵

The ICCWG commends the UNWG for efforts to achieve these objectives and a successful, vibrant inaugural Forum. The ICCWG shares the UNWG's desire to build upon the momentum of the inaugural Forum, including through the organization of regional fora and by encouraging further participation at the 2013 Forum by representatives from affected rights-holders and their representatives, civil society, business enterprises and governments.

The key imperative for the UN Forum 2013 should be to focus on concrete outcomes and solutions. These could be embodied in a Forum Statement, multiple session statements, outcome documents, or concrete commitments by the UNWG. They could be achieved through action-orientated break-out groups, especially on second day, capitalizing on the presence of those on the inside track of BHR. In order to create space for this, stock-taking on challenges and trends could be confined to the first day at most.

The 2013 Forum could provide scope for greater consideration of specific human rights topics, vulnerable groups, and sectors, through conference streams, break-out sessions, or program streams. While a sampling of NHRI ideas is presented in the **annex** to this document, the ICCWG notes three for particular consideration:

- land issues and natural resource management, transparency and reporting;
- the 'core' business of Pillar 1 implementation: concrete discussions of good practice methodologies, approaches, and templates for National Action Plans and baseline studies, supported by case studies by individual States in each region; and
- human rights impact assessments: update on progress and methodologies.

Beyond this, consideration could be given to developing a concluding conference statement.

Main Proposal: Multi-Stakeholder Panel on Operationalizing Indigenous Peoples' Rights according to the UN Guiding Principles

Based on consultations with the ICC membership, we understand that indigenous peoples' rights issues are a priority in many country and operational contexts; and that failure to respect indigenous peoples' rights frequently gives rise to challenges and conflicts between governments, businesses, indigenous peoples and civil society organizations. At the same

⁵See <http://nhri.ohchr.org/EN/Themes/BusinessHR/Pages/Home.aspx>

time, a great deal of attention has been placed recently on critical issues such as 'free, prior and informed consent' (FPIC), as with progress in developing practical guidance for businesses to respect the rights contained in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and other international instruments.

The ICCWG therefore proposes a multi-stakeholder panel on operationalizing indigenous peoples' rights according to the UN Guiding Principles. The ICCWG has developed working relationships with a focus including indigenous rights with bodies such as the UN Expert Mechanism on the Rights of Indigenous Peoples (UNEMRIP), UN Global Compact (UNGC), International Labour Organization C169 Office (ILO C169) and the Organisation for Economic Co-operation and Development (OECD) Investment Committee and would be pleased to have a moderating/convening role in the panel.

It is suggested that a case study approach be used to orient the discussion and engage discussion around practical considerations. A possible panel could address the following:

- Moderator (Representative of NHRI with experience working on indigenous rights)
 - Introduction to the session and indigenous peoples' rights⁶
 - How are indigenous peoples' rights protected in domestic human rights laws and NHRI mandates? What are the regional commonalities and differences in how indigenous peoples' rights issues are understood and protected by NHRIs? What practical issues do NHRIs face in engaging on issues related to business and indigenous peoples' rights?
- Speaker:
 - Presentation of indigenous peoples' perspective on engagement with States and businesses. What are the challenges for indigenous peoples to engage on equal footing and in good faith? What are the opportunities to improve consultation and consent processes, to ensure negative impacts of business operations are fully addressed and to obtain sustainable benefits from development of natural resources?
 - Case study reflections.
- Speaker:
 - Overview of UNEMRIP Advice No. 4 on Participation Rights with Focus on Extractive Industry: What does good practice look like for States, business enterprises and indigenous communities? What are other issues that the Expert Mechanism would like to see further engagement with the business community?
 - Case study reflections.
- Speaker:
 - Presentation of new UNGC guidance on business and the UNDRIP: What are the emerging good practices for better due diligence on indigenous peoples' rights by

⁶ Reference could be made for instance to the ICC WG – UNEMRIP Factsheet on indigenous rights and NHRIs, Asia Pacific Forum of NHRIs' Guide for NHRIs on indigenous rights, and an analysis of the Voluntary Guidelines on responsible governance of land, forests and fisheries, unanimously adopted in the Committee on World Food Security in May 2012, which have detailed provisions with respect on indigenous communities and ties into another NHRI BHR fact sheet under development.

businesses? What are the opportunities for promoting and operationalizing the UNGC's new guidance?

- Case study reflections.
- Speaker:
 - Overview on ILO Convention No. 169 and how the UN Guiding Principles can contribute to better implementation of indigenous peoples' rights.
 - Presentation of lessons learned from a case study or studies on implementation of ILO Convention No. 169.

Preparations for 2013 Forum and Regional Fora

The ICCWG suggests the following to the UNWG in the months leading up to the Forum:

- Informing itself on the challenges experienced by NHRIs in fulfilling their Paris Principles mandates on business and human rights, highlighted by the UN Guiding Principles and Resolution 17/4, as well as the Edinburgh Declaration and four ICC regional action plans on business and human rights⁷.
- With the added support of several ICC regional coordinating committees, the ICCWG can promote participation and contribute to substantive dialogue in the regional fora that the UNWG may wish to organize this year. The regional fora may be tailored to priority human rights challenges and specific industries that operate at the regional level, and so effective in encouraging participation from a wider range of government and business representatives who may be unfamiliar or reticent about traveling to Geneva⁸.
- Building on NHRI engagement on business and human rights at the national level, to help identify business and government representatives to participate in the 2013 Forum and to collaborate on presenting case studies or best practices in panel events. In this context, leveraging NHRI engagement with UN Global Compact Local Networks and OECD National Contact Points (NCPs) to promote further participation in regional fora and the 2013 Forum, from relevant stakeholders.

⁷ See <http://nhri.ohchr.org/EN/Pages/default.aspx>

⁸ Ibid.

Annex: NHRI Suggestions of Topics for Consideration

Some of the current ideas received from NHRIs around different priorities for themes, vulnerable groups and sectors are presented (in no particular order):

- Human rights education and the UN Guiding Principles (UNGPs): case studies on approaches to disseminating and informing on the UNGPs across stakeholder groups
- FAO Voluntary Guidelines on responsible governance of land, forests and fisheries, adopted unanimously in the Committee on World Food Security in May 2012: How can they be used by different actors (NHRIs, business, civil society organizations (CSOs) to deal with conflicting claims of land and the situation of land grab? Case studies on approaches to addressing land grab, its causes and impacts at national level
- UNGPs national action plans and baseline studies: update on progress and methodologies
- The State-Business nexus under Pillar 1: focus on state-owned enterprises and public procurement
- Freedom of association and collective bargaining: case studies on using the UNGPs to address abuses of workers' rights
- International Financial Institutions: the World Bank, the International Finance Corporation, and regional development banks
- Climate change and human rights: What role for the UNGPs?
- The proposed inter-governmental process to establish an instrument on the international illegality of involvement of business enterprises in gross human rights violations.
- The proposed UN Global Fund supporting implementation of the Guiding Principles
- Metrics, benchmarks, and performance indicators of implementation by States and business enterprises
- Vulnerable groups: gender, migrants, trafficked and undocumented workers, landless people, children, the rural poor
- Women's rights in the workplace: focus on issues including maternity-related rights, discrimination, equal pay, harassment, promotion etc
- Vulnerability as such – perhaps with the aim that the UNWG should come out with a definition or statement on this.
- Water, energy, ecosystem services, collective impact, Business for Development (i.e. building on the UNWG / UN Development Programme (UNDP) Latin America and the Caribbean regional forum in June 2013).
- Pillar 2: sector-specific sessions for at least 5-6 key industry sectors (e.g. finance and banking, extractives, information and communications technology, textiles, or pharmaceutical industries) to make things more operational for business and increase the sense that there might be something at stake for businesses.
- Small and medium enterprises (SME)