



INTERNATIONAL
COMMISSION
OF JURISTS

UNITED NATIONS HUMAN RIGHTS COUNCIL
**Working Group on Human Rights and Transnational Corporations and Other Business
Enterprises**

**INTERNATIONAL COMMISSION OF JURISTS (ICJ) SUBMISSION IN RESPONSE
TO OPEN CALL**

Submitted December 2011

The International Commission of Jurists (ICJ) is a non-governmental organisation founded in 1952, in consultative status with the Economic and Social Council since 1957. The ICJ is dedicated to the primacy, coherence and implementation of international law and principles that advance human rights. It takes an impartial, objective and authoritative legal approach to the protection and promotion of human rights through the Rule of Law. It provides legal expertise at both the international and national levels to ensure that developments in international law adhere to human rights principles and that international standards are implemented at the national level.

ICJ submission to the Working Group on Human Rights and Transnational Corporations and Other Business Enterprises

1. The International Commission of Jurists (ICJ) welcomes the opportunity to contribute to the work of the UN Working Group on Human Rights and Transnational Corporations and Other Business Enterprises (the Working Group). This submission contains a few preliminary views about the work plan and priorities of the Working Group in response to its open invitation. This submission is without prejudice to other additional communication on the same or other subjects that the ICJ may provide at a later stage.
2. The Guiding Principles offers some helpful recommendations to implement the UN Framework “Protect, Respect, Remedy”, and its use at the national level and by various stakeholders may be beneficial to the promotion and protection of human rights in the context of business operations. It may need to be complemented by other tools and instruments in the future. The Working Group has been given the mandate “to promote the effective and comprehensive dissemination of the Guiding Principles on Business and Human Rights” (A/HRC/17/31, para. 6), and in connection to that to work on good practices, lessons learnt, assess, recommend, and promote capacity building. Beyond implementation of the Guiding Principles, the Working Group has the mandate to conduct country visits (para. 6(d)); to integrate a gender perspective in its work and pay special attention to persons living in vulnerable situations (para. 6(f); and, crucially, “to continue to explore options and make recommendations at the national, regional and international levels for enhancing access to effective remedies...” (para. 6(e)).
3. The ICJ trusts that the Working Group will interpret and implement its mandate in a manner that brings increasingly higher levels of protection to human rights and rights-holders, and that the rights of the most vulnerable and marginalized are particularly addressed. A broad progressive implementation of its mandate will allow the WG to add real value to various proposed and ongoing domestic and international mechanisms and processes. In doing so, the Working Group may have regard and draw lessons from the experience of other special procedures and align its work methods accordingly.
4. In its work generally and especially during its visits to countries, it would be essential that the Working Group assign priority to consultation and interaction with local communities affected by business enterprises, and in particular those groups such as children, indigenous peoples that are in a vulnerable situation and require a heightened level of protection from the State. First hand information from community-level groups would add depth and richness to the Working Group analyses and proposals. These groups were largely neglected in the work carried out within the Human Rights Council so far, and the WG has an opportunity to correct that omission
5. . In line with the methods of other Human Rights Council’s working groups, this Working Group should be able to gather information and assess the relevant laws, policies and practices of the countries to which it undertakes visits. It should also be able to entertain communications on specific instances of abuse.
6. The Working Group should also make use and promote the use of the UN Framework and the Guiding Principles in conjunction and in a manner that reinforces the effectiveness of existing human rights standards, including those contained in authoritative statements and interpretations by the expert Committees established under human rights treaties.
7. The Working Group has also been given the mandate to explore options and make recommendations on effective remedies at the national, regional and international levels. The ICJ believes that this is a vital function central to the mandate of the WG and one that deserves commensurate time and resources. The issue of legal remedies, in particular, has

often been highlighted as a particular challenge. The Guiding Principles, for example, identify the issue of dealing with grievances, but without sufficient elaboration of or guidance on the role of and need for judicial remedies. Judicial procedures must always be available to victims of human rights violations, even if as a last resort and complementary to other non-judicial mechanisms; and even if for no other reason than to undertake a judicial review of the propriety and effectiveness of alternative measures. The ICJ has expended considerable effort over the last few years in mapping and studying national legal and judicial systems with a view to understanding the challenges arising out the need to deal with increasingly frequent and complex instances of abuse involving business corporations, and with the objective of assisting the international community in finding solutions in the form of enhanced human rights standards and principles and concrete mechanisms and procedures. A global report on this subject will be released during 2012 and will constitute the basis of the ICJ's engagement with the Working Group in this area.

8. The Working Group should approach the issue of remedies in an integrated manner, drawing first-hand information from its country visits and consultations, identifying best practices and lessons learnt from various jurisdictions, acting as a protection mechanism, using the new Forum on Business and Human Rights as a platform to discuss practical options for the effective guaranteeing of remedies, and elaborating special reports with analysis and clear recommendations. Inherent to the delivery of effective remedies is the guarantee of access to justice and the holding to account of corporations and other business enterprises that are responsible for the impairment of human rights. The Guiding Principles have identified the challenges of investigation and prosecution in this context, including concerning the problem of extraterritoriality. This warrants further consideration and elaboration by the Working Group and the Forum. In this task, the WG would find it useful to consider proposals made by the former Special Representative of the Secretary-General, John Ruggie, as well as other proposals made by inter-governmental and non-governmental organisations and groups.