

UN Working Group on Business and Human Rights – country visit to Liberia, 31 October to 11 November 2022 – end of mission statement

Monrovia, 11 November 2022

Introduction

In our capacity as members of the United Nations Working Group on Business and Human Rights, we have today ended our visit to the Republic of Liberia (31 October – 11 November). The Working Group's delegation comprised of Chairperson Ms. Fernanda Hopenhaym and Mr. Damilola Olawuyi. During the visit we held meetings and visits in the capital, Monrovia, and in Nimba County, Bong County and Bomi County. The purpose of our visit was to assess how the Government and the business sector discharge their respective duties and responsibilities under the [UN Guiding Principles on Business and Human Rights](#) (UNGPs) to prevent, mitigate and remedy human rights abuses and negative impacts linked to business activity.

We would like to extend our sincere appreciation to the Government, in particular the Ministry of Justice, for their cooperation in the organization of the visit. During our visit, we met with a number of high-level representatives from different parts of the Government. We met with the Minister of Labour, the Minister of Justice/Attorney General, and the Acting Minister of State/Chief of Office Staff to the President; and the Deputy Minister of Planning, Research and Development, Ministry of Mines and Energy, the Assistant Minister for Mines, Ministry of Mines and Energy, the Assistant Technical Ministerial Lead on Commercial Transactions/Economic Affairs at the Ministry of Justice and the Deputy Executive Director of the Environmental Protection Agency (ad interim), as well as with representatives of the following Government departments: Ministries of Labour; Commerce & Industry; Gender, Children & Social Protection; Public Works; and Justice; the National Bureau of Concessions; the National Investment Commission; and the Liberia Land Authority.

We met with representatives of the local authorities in Nimba County, Bong County and Bomi County. In addition, we held meetings with Senators from different Senate Committees including the Senate Committee on Concession and Investment, and the Senate Judiciary Committee, and well as a member of the House of Representatives. We also met with the Chairperson of the Independent National Commission on Human Rights and various directors, commissioners and county monitors; and with representatives of the Court Administration Section of the Judiciary Branch of Government and a Resident Circuit Judge. We met with the following companies: ArcelorMittal Liberia, MNG Gold Liberia, Liberia Agricultural Company, Bea Mountain Mining Corporation, Security Expert Guard Agency of Liberia (Segal) and Mano Palm Oil Industries.

We are grateful to all the individuals, communities, organizations and companies that made themselves available and travelled long distances to share their experiences with us and to engage in an open and frank dialogue on current initiatives, opportunities and challenges concerning the implementation of the UN Guiding Principles on Business and Human Rights (UNGPs). During our meetings held in the capital city of Monrovia, and in Nimba County, Bong County and Bomi County, we met with representatives of civil society organizations, local communities, workers and trade unions; as well as the Liberian Business Association and the Liberia Chamber of Commerce. We also met with members of the Liberia Labour Congress and academics at the Louis Arthur Grimes School of Law, University of Liberia.

The General Context of Business and Human Rights in Liberia

The Republic of Liberia is a low-income country, still recovering from a destructive civil war, that relies heavily on foreign assistance and the exploitation of natural resources. Levels of poverty are high and employment opportunities are scarce. Infrastructure remains largely undeveloped and only 45% of the population can access an all-season road within 5km. According to non-official figures, in urban areas 5.1% of households can access electricity, and only 0.8% in rural areas. For almost 80% of Liberians, the informal economy is the primary source of employment and income. This poses significant challenges for the regulation and taxation of business activity and attempts to grow the formal economy and support SMEs. Multinational corporations shape economic and social dynamics. The agricultural sector (including rubber, palm oil and timber), and the mining sector (mainly iron ore and gold mining) are critical to the economy.

The role of business in securing sustainable peace

The role of business in promoting sustainable peace is particularly important. In its 2030 Agenda for Transformation, the Government recognized that the management of concessions that did not benefit the majority of Liberians, land ownership issues, and the control of natural resources represented major causes of the civil war. The Government committed to develop a framework for concessions of natural resources exploitation that would contribute to sustainable development and public services, such as infrastructure, education, health and water, and community development projects. The Government has adopted a number of reforms that provide a strong legal and policy framework for the protection of human rights, including labour rights, and the environment, which apply in the context of businesses operating in concession areas. However, despite these positive developments, most of the exploitation of natural resources and agricultural land have not ensured inclusive and sustainable development and respect for human rights in the communities impacted by businesses operating in concession areas.

We are alarmed that the question of who benefits from business activities, and who suffers from the serious negative impacts of such activities, is fuelling social tensions and has the potential to challenge peace and even escalate to conflict. Advancing responsible business conduct, including by addressing the root causes of business-related human rights abuses, and promoting corporate accountability, should be seen as a precondition for inclusive development and sustainable peace.

We also observed the need to attract investment in order to diversify the range of sectors operating in the country and increase employment opportunities. As international investors are increasingly paying attention to how businesses are addressing human rights and environmental considerations in their operations, the Government needs to urgently create an enabling environment that is conducive to responsible business conduct in order to attract investment by responsible companies. We also note that actual or perceived corruption, and weak public institutions, fuel a lack of trust in State authorities and exacerbate social conflict which harms all stakeholders.

Education, capacity building and awareness raising

We observed the absence of awareness of the UNGPs and the business and human rights agenda. There is a need for significant capacity building and awareness raising in this regard. While the Freedom of Information Act was mentioned a number of times, people did not necessarily know how to find information about business activities and did not find that information about new or possible concessions was readily available. In a country with limited infrastructure and capacity for people to use the internet, it is important for the Government

to adopt all necessary measures to fully inform rights holders about the business-related issues that may impact on their rights. We also note that there are educational challenges across the country; a repeated refrain was that adults are better educated than children. A focus on education will enable young people to compete for jobs. Businesses need to be sensitive to their role in helping to build opportunities for the youth of Liberia.

Development of a National Action Plan on Business and Human Rights

We welcome the willingness of the Government to develop a National Action Plan on Business and Human Rights (NAP). However, most of the stakeholders we spoke to were unaware of the NAP process. While different parts of the Government have been involved in the prior discussions around the NAP process, there seems to be a lack of communication within and between Ministries which needs addressing.

The first step is to build trust as a precondition for multi-stakeholder engagement and to ensure that all relevant actors across all 15 counties, including trade unions, community representatives, and human rights defenders, as well as business associations and businesses meaningfully participate. Thus far these actors seem not to have been fully included. For a successful NAP process, it is important that every step is developed in a transparent and inclusive manner. We commend the Working Group's NAP guidance to the Government.¹

Policy coherence

We stress the importance of policy coherence because business and human rights is a cross-cutting topic and the harm caused by gaps and inconsistencies in the implementation and enforcement of relevant policy and legal frameworks include labour-related abuses, discrimination, environmental damage, forced evictions and land rights violations, and intimidation of human rights defenders. Regulatory gaps are often accompanied by the lack of operational guidance across State ministries and agencies that shape business practice or interface with business, as well as entities owned by the State. High-level political support, commitment, and leadership on implementing the UNGPs, together with meaningful participation of all government entities and key stakeholders in the development of relevant policy frameworks and the implementation of relevant laws will be essential. This will be especially important as the Government will need to present a strong and united front in the face of multiple and entrenched business practices that are not rights-respecting and have little incentive to do better.

Human rights defenders and meaningful participation

Participation of communities in decision-making processes, including provisions for Free, Prior and Informed Consent (FPIC), exist in different legal instruments in the country e.g. in the Community Rights Law of 2009 and the Land Rights Act of 2018. There are also provisions for participation in Environmental and Social Impact Assessments and in the negotiation of Mining Development Agreements.

We met with some of the companies operating in Nimba, Bong and Bomi counties, who reported that they conducted periodic meetings with communities to understand their concerns. They affirmed the importance of maintaining a good relationship with the neighbouring communities.

¹ https://www.ohchr.org/sites/default/files/Documents/Issues/Business/UNWG_NAPGuidance.pdf

Despite provisions in laws and regulations, and commitments made by companies, communities living in areas where mining and agribusiness concessions are operating, reported that they experienced no meaningful participation. According to communities in Nimba, Bong and Bomi counties, there have not been consultations about the projects operating on their land, nor clear mechanisms for participating in decisions pertaining to the development of their communities. We are concerned by the fact that communities have reported very limited action, both by government authorities and by companies, to ensure that consultations are conducted and the right to participation for communities is upheld.

Moreover, we received reports of repression, police brutality and arbitrary detention in the context of peaceful protests by community members. For example, in relation to the Arcelor Mittal concession in the district of Kokoya in 2018 and more recently in relation to the Mano Palm Oil Industries concession in Bomi county. Due to past experiences, community members reported fearing exercising the right to peacefully assemble or to putting forward their grievances. Some reported being threatened by national police officers pointing assault rifles at them.

We are concerned by the constraints on public participation and threats against defenders and communities. We call on the Government and companies to protect and respect fundamental freedoms, and the right to participation of communities.

We recommend the strengthening of the capacity of institutions responsible for implementing consultations with communities, including by providing the necessary funds for relevant public servants to discharge of their duty.

Consultation with communities is central to human rights due diligence as set out in the UNGPs: it enables the early identification of concerns and grievances so that actors can better understand the potential impacts of a project on local peoples and the environment. Human rights defenders and community representatives should be seen not as enemies but as constructive partners who have knowledge of local conditions and can provide businesses with information regarding the potential impacts of their activities and the local context.

Salient business and human rights issues in specific sectors

In meetings with stakeholders, we explored emblematic cases to better assess gaps, opportunities, and the way forward to ensure business respect for human rights and the environment. The overall human rights situation that we observed gave rise to extreme concern. There were widespread allegations of rape and sexual harassment in the workplace; delayed payment of salaries; inhumane working conditions; abuse and intimidation of labour union leaders; environmental pollution; and community dissatisfaction with businesses' operations among others, especially regarding companies operating in concession areas.

While Liberia has an extensive legislative framework in areas related to business and human rights, including labour rights, and the environment, the failure by the authorities to investigate and hold perpetrators to account continues to weaken the protection and realisation of fundamental social, economic, and cultural rights. The situation gives rise to significant adverse consequences for the rights to work, adequate housing, health, water and sanitation, physical integrity, the right to education and the right to a clean, healthy, and sustainable environment. We explored specific cases that illustrate social tensions around land tenure and land use. These have the potential to escalate into conflict and social unrest unless urgently addressed.

Human rights abuses in the agri-business and extractive industries

The failure of mining and agricultural concessionaires to comply with human rights standards is a major concern. Disputes over forced land grabs and displacement without adequate compensation is prevalent. Oversight by the Government is weak or non-existent. Concession agreements typically span several years (in some cases up to 99 years, such as in the case of Firestone Liberia LLC) and, given the loss of livelihood and land, often require licence holders to provide a number of services to local communities. This includes providing schools, health facilities, a safe working environment, employment and training opportunities for communities within the concession areas and building roads. According to existing laws, these agreements are to be reviewed every five years to ensure regulatory compliance by licence holders.

However, we heard that farmers in certain concession areas were displaced and deprived of their sole means of livelihood, without being offered a suitable and sustainable alternative. The dire living conditions of the communities in the concession areas we visited are aggravated by the lack of basic infrastructure and services, such as roads and electricity, which exacerbate the communities' physical isolation and lack of opportunities to find alternative livelihoods.

Environmental impacts

Despite the regulatory framework, a recurring challenge relates to the negative impact of the mining and agribusiness sectors on the environment. Under the current concession regime and related environmental protection requirements, any activities that may have adverse impacts on the environment are subject to mandatory environmental and social impact assessments prior to the commencement of development operations. The Environmental Protection Agency awards permits following environmental and social impact assessments and quarterly inspections.

However, we are deeply concerned that the level of implementation and oversight of concessions remains largely insufficient, resulting in serious human rights abuses. Serious environment-related grievances of communities in most instances have remained largely unaddressed by national authorities, with particularly acute consequences for the most vulnerable and impoverished populations.

We heard from affected communities in Bong County about the on-going adverse impacts on their health and wellbeing because of water contamination caused by the operations of MNG Gold Liberia. They were also concerned about air and soil pollution. We also heard allegations of damage to buildings from the vibrations caused by underground blasting in the mine.

The company highlighted its work on environmental protection and community engagement, including making "appreciation" payments to local communities. However, further efforts are required on the part of the company and the Government to ensure meaningful participation, transparency and effective oversight related to environmental impacts. This includes ensuring that independently verifiable data is available to address any legitimate concerns.

Land rights

Many small farmers engage in small scale and subsistence farming. Traditional communities often hold collective ancestral property rights to land, and disputes over land rights and land acquisition were one of the causes of the civil war. The Land Rights Act of 2018 recognises the customary land rights of rural communities, women's land rights, and requires that Free, Prior and Informed Consent (FPIC) be adhered to for activities occurring on community land. This law should apply to any new concession negotiation process since the law entered into force and at the renewal stage of previously existing concession agreements. It complements the Community Rights Law of 2009 which created a legal framework for communities to participate in sustainable forest management. Such a framework for customary land ownership and management was meant to safeguard communities from land grabs which we welcome as a positive development. However, we learned from the Liberian Land Authority that capacity and policies effectively implementing the new regime have yet to be developed. Additionally, land demarcation has not yet been conducted, meaning land may be granted to concessions without communities' consent.

We visited Bomi, Bong and Nimba counties where mining and agricultural concessionaires have deprived communities from accessing their lands, with allegations of land being granted by the Government without community involvement, or local leaders agreeing to long-term leases without consulting their communities, resulting in disputes about land tenure and land use. The Liberian Land Authority reported that an Alternative Dispute Mechanism exists to address land-related grievances. However, it seems that communities are not aware of this, nor of their rights under the current land rights regime. It may take years to register and adjudicate land but this is urgent, as an essential component for sustainable peace, to protect land inhabited or used by communities.

We recommend that capacity is built, and adequate resources are allocated to the relevant authorities, so that the implementation of the 2018 Land Rights Act is accelerated. We recommend the involvement of communities throughout the process.

To the concessionaires, we recommend maintaining culturally appropriate open channels of dialogue with the communities in their areas of influence. When re-location processes take place, these must have the full participation of local communities in all stages of the process and community members need to decide on priorities according to their needs. Plans for mitigating the impact of business activities need to be developed and shared with all relevant stakeholders.

Labour rights

Liberia has ratified a number of ILO Conventions, and in 2015 adopted the Decent Work Act to enhance protection of labour rights. Specific legislation on child labour is currently before the legislature. Other positive initiatives include the adoption of a national action plan to address the worst forms of child labour.

Nonetheless, the overall situation pertaining to the protection of a range of labour rights is bleak in key economic sectors, especially regarding mining and agribusiness operations in concession areas. The scarcity of decent employment is a country-wide problem. It exacerbates the power imbalance between employers and employees, placing the latter at risk of abuses, including labour exploitation. A Tripartite system was established to bring together representatives of employers, trade unions and the Government to promote the implementation of the Decent Work Act of 2015 and social dialogue. However, we heard many concerns about the ineffective functioning of the tripartite system for the resolution of labour-related disputes.

Occupational health and safety

The companies we met with underlined the importance of safety, including regular testing for alcohol use in the mining sector. However, workers reported excessive working hours with 12-hour shifts, no paid overtime work, unsafe working conditions in mines, and inadequate personal protective equipment (PPE) in plantations.

Wage payments

We heard repeated testimony concerning the routinely late payment of wages in the public and private sectors. We also heard that the minimum wage of 5.50USD per day was not adequate to cover the rising cost of living, or save much, if anything, at the end of the month. Steps were underway to re-assess the national minimum wage. We heard about one company in Bomi county which had taken over a concession and illegally reduced the wages paid to workers for doing the same tasks prior to the takeover of the company.

We also learned from workers of companies operating in concession areas did not respect the principle of equal pay for equal work, with expatriate workers being paid many times more than what Liberian workers for performing the same tasks.

Labour inspections

The extremely poor state of road infrastructure across the country exacerbates the challenges faced by labour institutions in effectively carrying out labour inspections. Workers reported the failure of labour inspectors to monitor and report on the many serious abuses in the workplace, which weakened their confidence in the ability of the inspectorate system to discharge its mandate effectively and impartially, and to hold businesses to account.

Freedom of assembly and association

Freedom of assembly and association and freedom of expression are protected in a number of laws. However, we heard allegations of targeting and intimidation of labour union leaders and threats to workers who protested against conditions or led strikes.

Groups at risk

We were concerned to observe that government buildings were inaccessible to persons with disabilities and therefore they would be unable to contemplate working there. As the public sector is a major employer in the country, the exclusion of workers with disabilities from this section of the labour market is problematic. Similarly, the lack of adequate sanitary facilities in public buildings poses challenges to those living with conditions that require access to clean water and those living with vulnerabilities to infection.

We heard repeated concerns about a lack of overall pension provision for older persons. While certain concessions said they tried to meet this gap by making some payments to older persons in the local communities, this had the effect of splitting community loyalties and privileging some, but not all, of the elders. Some companies referred to having comprehensive pension and severance packages, but this was not uniform in all companies we engaged with.

The use of child labour was a particular concern. Repeated testimony concerned the use of children in some palm oil and rubber plantations in different parts of the country. It was reported that parents had extremely high daily targets imposed by employers for the collection of produce and needed the support of their children not to lose their daily wages, which meant that the children were providing unpaid labour instead of going to school.

Gender aspects of business and human rights

We welcome the initiative by the Government to establish gender units in all ministries. The Ministry of Gender, Children and Social Protection is working to mainstream gender-related issues in government initiatives and is working with the National Investment Commission and the National Bureau of Concessions to ensure that companies have gender and social inclusion policies when applying for a concession.

However, gender-based violence and discrimination remain a serious problem, which is of great concern. We heard about zero-tolerance policies for sexual harassment in the workplace but very few cases being reported through grievance mechanisms. However, civil society, workers unions and communities consistently reported that sexual gender-based violence is systematic across the economy and society.

The private security company SEGAL is an emblematic case. Former female workers reported systematic harassment, including rape, by their supervisors during working hours, and use of threatening language. SEGAL representatives explained that sexual harassment is properly sanctioned. However, the company's grievance mechanism entails filing a complaint with the employee's direct supervisor and there are no specific protocols to address sexual gender-based violence in the workplace.

Access to remedy when abuses occur seems to be very challenging due to the lack of appropriate grievance mechanisms, fear of reprisals or dismissal, the lack of access to the judicial system – including because of high costs – and stigma.

Additionally, we learned that labour exploitation of women and of their children in palm oil and rubber plantations, for example in Sinoe county, are frequent. The repetition of challenging and arduous physical tasks over extended working hours in order to meet high production objectives exposed women to physical and mental distress.

Regarding land rights, we welcome the fact that the Land Rights Act of 2018 establishes that men, women and youth can own, inherit and manage land. Women are now legally required to participate in decisions related to land. Women also have the right to inherit land from husbands, parents, brothers and sisters. This formal recognition of women's rights in relation to land and natural resource management is commendable.

There are also differentiated impacts on women and girls, men and boys, when it comes to scarcity of clean water – including due to pollution in concession areas, lack of health care and limited access to education. Women carry an additional burden related to traditional gender roles as care takers and girls face numerous obstacles to access education, particularly when families prioritize the education of boys in contexts of extreme poverty. Girls

may face risks to their integrity in transit to schools, walking long distances on their own, without public transportation or adequate roads. We observed all these challenges when visiting concession areas.

Workers' unions and civil society reported that discrimination in access to the labour market and in the workplace is frequent for women and for sexual and gender minorities, the latter due to stigma and lack of protection in the law. The very few employment opportunities available in the country, particularly in remote areas, places women at great risk of sexual violence and in a situation of occupational blackmail which women are forced to suffer lest they lose their only source of livelihood.

Both Government authorities and businesses should increase their efforts to protect women's rights and integrity in the context of business operations, including in the workplace and in concession areas.

For the Government, we recommend the inclusion of strong gender-related provisions in the NAP, strengthening of gender units and increasing their resources, and the inclusion of gender dimensions in labour inspections.

We recommend that businesses ensure that they implement the requirement for the inclusion of gender dimensions in their environmental and social impact assessments, and that they guarantee the equal and meaningful participation of women during consultations with local communities. In the absence of gender quotas provided by the law in public and private sectors, we recommend the adoption of affirmative action to increase female representation in decision-making bodies, both on the board of directors and in executive positions within businesses. We strongly recommend the implementation of existing prevention measures on sexual gender-based violence, as well as the development of adequate protocols and grievance mechanisms that are safe, accessible and reliable for women.

Access to justice and effective remedies

We found that serious challenges exist in relation to access to justice and effective remedies. The lack of accountability and the on-going impunity for serious human rights abuses has led to an erosion of confidence in public bodies. Solid and well-resourced justice institutions, and transparent accountability processes, promote sound and sustainable economic growth.

State-based Judicial mechanisms

The country has a strong legal system with well-trained lawyers and judges. Public Defenders exist providing free legal services. However, we learned that the court system has a backlog of cases, that the number of public defenders is insufficient, and that access to justice is slow and can be prohibitively expensive, especially given the limited purchasing power of people. We were concerned to hear communities report that judgments of the Supreme Court were not adhered to. Likewise, it was regrettable to hear a company tell us that a Supreme Court ruling that went against it was very unfair, and that the case was contrived maliciously with the intention of destroying its industry.

State-based non-judicial grievance mechanisms

The Independent National Commission on Human Rights (INCHR) has a wide mandate, can receive complaints and institute measures to effect remedy, has a subpoena power, can conduct unannounced on-site visits to investigate complaints and has the right to engage with businesses. It has visited concession areas to investigate whether businesses have been involved in human rights abuses. It has a separate unit focusing on business and human rights and the topic is one of its key thematic areas. However, while the INCHR has knowledgeable staff, it is massively under resourced and is therefore unable to effectively fulfil its functions. There is only one monitor per county and those individuals cannot cover all of human rights issues. There need to be many more monitors per county. We consider that the good work of the INCHR could be significantly expanded if it were provided with appropriate funding to train stakeholders on business and human rights, upgrade its website, and hire additional monitors to perform its important functions.

Non-State-based grievance mechanisms

Non-State-based grievance mechanisms either do not exist, or if they exist, they are ineffective and inadequate. Companies reported instructing workers to complain to the supervisor if they had a problem which is completely inappropriate. Some good practices included having anonymous comment boxes in which people could deposit grievances. People reported being too frightened of reprisals (such as losing their job) to use grievance mechanisms to report wrongdoing in a company. Companies need to provide more effective grievance mechanisms for rights holders and communities, in accordance with the UNGPs (Principle 31).

Conclusion

There is much to be done to implement the UNGPs, starting with raising awareness of their existence, and the respective duties and responsibilities of the Government and the business sector. Liberia needs to take strong and timely steps to create an enabling environment for responsible business. It should set an expectation that businesses respect people and the environment, and that this is a precondition to doing business. There needs to be a genuine wish to improve corporate respect for human rights, and a vast amount of action, not least because respect for human rights is also good for business, and for attracting investment by responsible businesses that any country at any stage of development would want to host. The planned NAP provides an opportunity to engage widely and broadly with all stakeholders and this should be seized by all actors. We welcome the Government's willingness to both share its challenges and hear recommendations for how to improve. There is much to be done to implement the good laws that exist and to develop coherent public policy and well-resourced governmental institutions that can give effect to the best intentions expressed by some actors we met with. We once again thank the Government for its invitation to visit and to provide recommendations regarding how to improve business respect for human rights in Liberia.