Overview
Business is critically impacting on the human rights of individuals and communities, positively and negatively, every day. Increasing globalisation, and demands on resources, climate change, and the effects of the worldwide economic recession mean that never before in history has there been a need for greater alignment between the international community, including national human rights institutions, and business. As the United National Special representative on Business, Professor John Ruggie, says “business and human rights is not an ephemeral issue to be considered at some future date. It is and must remain at the core of our common concerns today”.

In past decades, specific measures have been put in place to address business impacts on human rights at the international level, including ILO labour standards, the OECD Guidelines on Multinational Enterprises, and various environmental treaties. Human rights laws have also become steadily more widely interpreted to apply to non-state actors, including corporations. However, with the rise of transnational business activity under globalisation, neither international nor national regulations have been adequate to control corporate abuses of human rights and provide remedies to individual and communities affected. In the last decade, there have been continuing discussions in the UN, at regional and national levels, about the precise scope of business responsibilities concerning human rights, the best ways to promote corporate responsibility, and the best strategies and approaches to prevent and respond to human rights abuses by corporations where they occur.

Many NHRIs across the world are already actively addressing these issues on a regular basis: for example, through investigations, adjudication of individual complaints and education activities directed towards businesses. For other

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2 The Baseline Survey undertaken by the ICC Working Group on Business and Human Rights (available at http://www.nhri.net/default.asp?PID=625&DID=0) and a survey conducted by OHCHR (see http://www.reports-and-materials.org/OHCHR-National-Human-Rights-
NHRIs, business and human rights is still an emerging topic. The ICC’s 10th Biennial Conference will bring NHRIs together to share experiences and knowledge, to identify key challenges and solutions, and to develop frameworks to assist NHRIs, at global, regional and national levels to work effectively to fulfil their mandates in relation to the corporate sector.

This Concept Note provides material for Conference participants regarding:
- the role of NHRIs in human rights and business
- recent UN developments to address human rights and business
- the proposed objectives of the 10th Biennial Conference Human rights and business: the role of NHRIs.

Background material, including examples of human rights affected by business activities, relevant ICC policies and actions, and the Working Method for the Conference are included in Appendices.

1. **The role of NHRIs in human rights and business**

   In her address to ICC 23 in Geneva in March 2010, the UN High Commissioner for Human Rights, Navi Pillay, described business and human rights as,

   “…within the core functions of NHRIs that have a particularly prominent role in addressing the most critical human rights issues at the national level, including through promotion of the rule of law and ensuring accountability”.

   This statement reflects three essential points which have emerged from recent debates concerning the responsibilities of business to comply with international human rights standards. First, there is a consensus that business must act in compliance with human rights norms and be held accountable to human rights standards - including businesses that are non-state actors, state-owned or mixed public-private enterprises. The new way of thinking is reflected in the practice of UN treaty monitoring bodies, regional human rights bodies and national courts, as well as in the UN Human Rights Council’s creation of the mandate of UN Special Representative on Business and Human Rights (SRSG) and its consistently supportive responses to the reports of the SRSG. It is also expressed in the Principles of the United Nations Global Compact (see 2.3 below) and through the voluntary statements (for example, contained in codes of conduct) and other activities in support of human rights by various companies.

   Second, it is also now universally agreed that corporations’ activities can impact positively and negatively, on large numbers of people in ways that profoundly affect their fundamental human rights, dignity, equality and well-being. It is accepted, too, that business responsibilities for human rights extend across the full range of internationally-recognised human rights including civil and political and

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Institutions-practices-Apr-2008.doc) have identified a wide range of existing practices among National Human Rights Institutions in the field of human rights and business.
economic, social, and cultural rights. These rights apply to all individuals and groups, whether these are direct employees of a company, subcontracted or supply chain workers, members of neighbouring communities to company operations, or citizens at large.

Third, the High Commissioner recognises that NHRIs are uniquely placed to address the challenge of aligning business activities with international human rights standards. The broad mandate of NHRIs under the Paris Principles for promotion and protection of human rights allows them to engage with all relevant players, governments, businesses and civil society. Where the mandate of an NHRI extends to monitoring, investigation, adjudication and dispute resolution, these functions can also be applied to alleged human rights abuses by corporate actors and to supporting victims of corporate abuses to secure an effective remedy and reparation. As discussed later in the paper, this means NHRIs will be key players in the effective implementation of any future legal or other framework standards governing the human rights responsibilities of business developed by the UN, and other international and regional organisations.

2. Recent UN developments to address human rights and business

2.1 UN Special Representative on Business and Human Rights
In 2005, UN Secretary General Kofi Annan appointed Prof. John Ruggie as his Special Representative on the issue of human rights and transnational corporations and other business enterprises (SRSG).

In 2008, the SRSG proposed a “three pillars” framework to address business and human rights. The framework covers:

• the State’s duty in international law to protect citizens from the violation of human rights by transnational business;
• the corporate responsibility to respect human rights; and
• the need for access to effective remedies including through appropriate judicial or non-judicial mechanisms.

This framework was endorsed by the UN Human Rights Council, which requested that the SRSG’s next task be to recommend concrete measures to implement the three principles in practice. The mandates of NHRIs under the Paris Principles span these three principles.

3 The Asia-Pacific Forum’s report on Human Rights, Corporate accountability and Government responsibility (accessible at http://www.asiapacificforum.net/acj/references/corporate-accountability) highlights as functions relevant to monitoring and addressing human rights violations by transnational corporations and the business sector: conducting public inquiries and fact-finding missions; investigating individual and systemic human rights and discrimination complaints; dispute resolution; enforcement of outcomes; ongoing compliance monitoring; dissemination of findings with regard to individual and systemic violations; advocacy; and the provision of recommendations to respondents, governments and other stakeholders.
The 2010 report by the SRSG identified five priority areas to be addressed by states. These are:

- safeguarding the state’s ability to meet its human rights obligations;
- considering human rights when they engage with business;
- fostering corporate cultures respectful of human rights;
- devising innovative policies to guide companies operating in conflict-affected areas;

In 2010, the SRSG also announced work on a set of Guiding Principles for the implementation of the three-pillar framework. During September and October 2010, the SRSG is consulting states parties, business actors and civil society about the content of the Guiding Principles and options for follow-up mechanisms to the SRSG mandate.

The ICC 10th Biennial Conference comes at a critical time and could be used by NHRI as an opportunity to help formulate positions for submission to the SRSG on these topics as well as continuing to develop the ICC’s own strategy and actions around human rights and business.

2.2 OECD Guidelines for Multinational Enterprises

The OECD Guidelines are a set of recommendations by 42 adhering states to multinational enterprises regarding responsible business conduct, including on labour and human rights, environment and anti-corruption. The Guidelines permit stakeholders, including victims of corporate human rights abuses, to raise such issues directly, via “National Contact Points” (NCPs) established by each of the subscribing governments, to seek a resolution.

In 2010, the OECD launched an updating of the Guidelines. The Terms of Reference for this review include expanding the Guidelines’ section on human rights, “with the aim of helping multinational enterprises identify, prevent and remedy negative human rights impacts which may result from their operations”. Discussion of how the Guidelines should be strengthened regarding human rights will be a relevant issue for participants at the ICC Conference. NHRI also need to consider issues such as the linkages between NHRI and NCPs on specific alleged instances of abuse, and how NHRI roles under the SRSG Guiding Principles and OECD Guidelines align.

2.3 UN Global Compact

Established in 2000, the UN Global Compact now has 7700 participants across 130 countries, including over 5000 businesses, as well as business associations, NGOs, labour and public sector organisations.

The Global Compact is based on 10 Principles, which include two Human Rights principles - that businesses should respect human rights
and not be complicit in human rights abuses – as well as respect for ILO Core Labour Standards (freedom of association, elimination of all forms of forced labour, abolition of child labour, and non-discrimination in employment), environmental responsibility and anti-corruption.

The aim of the UN Global Compact is that participating organisations, including companies, respect the 10 Principles throughout their activities, and also promote UN objectives including the Millennium Development Goals. Participants must periodically report on their progress in implementing the 10 Principles. Global Compact Local Networks are multi-stakeholder initiatives at national level which promote Global Compact membership and activities and exist in approximately 80 countries worldwide. Local Networks may provide NHRI with a platform for engagement with Global Compact participants.

2.4 Future approaches to human rights and business: Issues for consideration by NHRI

In order to implement their mandates, which are grounded in international human rights law and the Paris Principles, NHRI could usefully consider how to address business and human rights by exploring the following issues:

- How can NHRI reference and take advantage of the recognised Ruggie Framework of three pillars of “protect, respect and remedy”, as follows:
  - States: What steps should NHRI take to ensure states are promoting respect for human rights by business and protecting individuals and communities against corporate abuses, e.g. through national laws, regulatory policies, state procurement, trade and investment agreements, and advice to companies?
  - Companies: how can NHRI work more effectively with the business sector to promote compliance with human rights, prevent abuses, and also to hold companies to account where abuses occur?
  - Affected individuals, communities and civil society: How can NHRI facilitate access to justice for victims and outreach to all stakeholders to build an environment where corporate human rights abuses are prevented?
- How can NHRI make more effective use of the existing UN human rights system – including treaty reports, special rapporteurs, etc. to highlight business and human rights issues?
- Can NHRI identify improvements needed in the international human rights framework, or other frameworks (e.g. trade and investment, climate, labour) in order that business takes up its share of human rights responsibilities?
- Capacity and skills: what skill sets and resources do NHRI need to act effectively in the human rights and business field?
- Priorities: what are the key at-risk groups from private sector abuses in our respective national contexts (e.g. children, persons...
with disabilities, indigenous peoples)? How can NHRIs integrate a gender perspective into their work on business and human rights? What are the best educational and promotional approaches available to enhance respect for human rights by businesses? How can NHRIs work alongside businesses to promote human rights compliance by corporations? What specific challenges are posed for NHRIs in addressing issues raised e.g. by privatisation of public services, climate change and environmental degradation?

- **Key partners:** which actors do NHRIs and the ICC need to work with for maximum leverage over human rights and business issues at national, regional and global levels? What are the respective roles of trade unions and other forms of worker organisation, and NHRIs, in addressing human rights in the workplace?

- **Related issues:** how can NHRIs relate their work in business and human rights to other strategic initiatives and challenges in international and regional forums e.g. Millennium Development Goals, combating climate change, anti-corruption, etc.?

### 3. Proposed objectives of 10th ICC Biennial Conference

It is proposed that the 10th ICC Biennial Conference have the following overall objectives:

- Through interaction among NHRIs, and with key stakeholders, to increase the general understanding of NHRIs of the strategic importance and of current global developments in the area of business and human rights

- To learn from the experiences and perspectives of other NHRIs across the regions, and

- To help progress the development of action plans at national, regional and global levels to enable NHRIs to become increasingly effective in addressing business and human rights.

In addition, the following specific objectives are proposed:

- To discuss and help develop our collective views as NHRIs regarding:
  - The proper roles of the ICC and NHRIs in the implementation of the SRSG’s three-pillar framework and Guiding Principles
  - Possible follow-up measures and/or mechanisms to the current SRSG mandate, at international and/or regional level, to ensure compliance by business with human rights standards on an ongoing basis
  - Other current policy developments relating to human rights and business, including the review of the OECD Guidelines for Multinational Enterprises

- To develop outline Regional Action Plans for each of the ICC Regions on Human Rights and Business, comprising prioritised practical actions to assist NHRIs to fulfil their mandates as regards business individually and collectively at regional level

- To share experiences, foster peer learning and identify key capacity building measures regarding the promotion of observance of human rights norms in the corporate sector by NHRIs
To support dialogue and cooperation between the ICC, NHRIs, OHCHR and relevant external stakeholders including governments, trade unions, businesses and business associations, civil society and others

To deliver a Conference Declaration that highlights key issues, and identifies priorities for the ICC and its member NHRIs relating to human rights and business.

4. Expected outcomes
Results of the Conference are expected to include the following:

- Enhanced awareness and knowledge by NHRIs concerning human rights and business issues, best practices and current developments
- Initial identification of key elements of ICC positions for submission to SRSG process and OECD Guidelines Review
- Outlines of four ICC Regional Action Plans on Human Rights and Business, to be further developed by ICC Regional Workshops during 2011
- Adoption of the Conference Declaration, to be transmitted, along with the General Report of the International Conference, to the High Commissioner for Human Rights, all NHRIs and observers
- Identification of further priorities and tasks to inform activities of ICC Working Group on Human Rights and Business.

5. Conclusion
The ICC 10th Biennial Conference allows NHRIs to contribute positively and proactively to progressing the business and human rights agenda. A commitment to strengthening the promotion and protection of human rights as they relate to business linked to the NHRI experience of what works best will create change where it matters most – in the daily lives of people.
### Appendix 1. Examples to illustrate potential human rights abuses by business actors

<table>
<thead>
<tr>
<th>Human right</th>
<th>Examples of potential corporate human rights abuses</th>
<th>Local communities</th>
<th>Citizens at large</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Non-discrimination</strong></td>
<td>Gender/race/religious or other unfair discrimination in hiring, promotion or conditions of employment (e.g. pregnancy testing, workplace harassment and bullying, unfair allocation of job benefits)</td>
<td>Mineral concession agreements fail to recognize property rights of indigenous peoples</td>
<td>Discriminatory practices in sale of services or products / marketing and advertising</td>
</tr>
<tr>
<td><strong>Just and favourable conditions of work</strong></td>
<td>Excessive overtime working, failure to pay minimum or living wages, inadequate health and safety systems</td>
<td>Company engages local contractors who require excessive working hours / fail to pay wages</td>
<td></td>
</tr>
<tr>
<td><strong>Forced labour</strong></td>
<td>Company takes control of employee’s passport or work visa. Trafficked or migrant workers forced to work to repay loans or transportation costs</td>
<td>Forced labour is exacted from local communities by company security personnel or government authorities to assist in company operations</td>
<td>Company benefits from operations in country where unlawful prison labour is used</td>
</tr>
<tr>
<td><strong>Life, liberty and security of person</strong></td>
<td>Workplace accidents due to inadequate health and safety standards and management cause loss of life. Improper detention of employees by firm’s security personnel</td>
<td>Accidents at plant or on nearby roads lead to loss of life in neighbouring communities</td>
<td>Actions of private security or military contractors lead to unlawful loss of life or improper detention</td>
</tr>
<tr>
<td><strong>Free association and assembly, freedom of expression</strong></td>
<td>Employer refuses to recognize or negotiate with employee associations</td>
<td>Company security personnel prevent local communities from peaceful demonstrations outside a company facility</td>
<td>Company is complicit with censorship by public authorities in breach of free expression</td>
</tr>
<tr>
<td><strong>Right to health</strong></td>
<td>Company fails to provide appropriate personal protection equipment to employers or to manage workplace health risks</td>
<td>Operations of a privatized public utility company deprive local communities of access to water. Company operations force relocation of local communities without adequate plans for re-settlement, breaching right to adequate housing and/or food</td>
<td>Company products are unsafe for human health</td>
</tr>
<tr>
<td><strong>Freedom of movement</strong></td>
<td>Company restricts employees freedom to leave workplace during shifts e.g. by locking doors</td>
<td>Company operations block community’s normal access routes to and from residential or communal areas</td>
<td>Company is complicit with public authorities which prevent citizens from entering or leaving a specific region or zone</td>
</tr>
<tr>
<td><strong>Respect for privacy, family and the home</strong></td>
<td>Improper use of video surveillance / body searches in the workplace; non-gender segregated changing or dormitory facilities</td>
<td>Pollution from production sites affects</td>
<td>Improper sharing of consumer data with third parties</td>
</tr>
<tr>
<td><strong>Property</strong></td>
<td>Failure to identify all title holders and offer compensation when company purchases or acquires land for new operating site</td>
<td></td>
<td>Failure to respect prior intellectual property rights of e.g. indigenous people or traditional owners</td>
</tr>
</tbody>
</table>
Appendix 2. Mandate of UN Special Representative on Business and Human rights.

The UN Human Rights Council has given the SRSG tasks including:

- Identifying and clarifying standards of corporate responsibility and accountability with regard to human rights
- Elaborating on the role of States in effectively regulating and adjudicating the role of business with regard to human rights, including through international cooperation
- Making practical recommendations to strengthen the fulfilment of the duty of the State to protect all human rights from abuses by or involving business actors, including through international cooperation
- Elaborating on the scope and content of the corporate responsibility to respect all human rights
- Making recommendations, at the national, regional and international level, for enhancing access to effective remedies available to those whose human rights are impacted by corporate activities
- Integrating a gender perspective and giving special attention to vulnerable groups, in particular children
- Consulting with all stakeholders, including States, national human rights institutions, international and regional organisations, transnational corporations and other business enterprises, and civil society, including academics, employers’ organisations, workers’ organisations, indigenous and other affected communities and non-governmental organisations.
Appendix 3. ICC policy and actions concerning human rights and business

The ICC is already engaged in actions addressing the human rights and business area as summarised below:

**ICC Strategic Plan 2010-13**
In March at ICC 23 in Geneva, the ICC adopted its first ever Strategic Plan, covering the period 2010-13. The Strategic Plan provides a framework to guide all ICC activities, including the ICC Conference, so that the ICC and its members can act in a focused and coordinated way to achieve common goals.

**ICC Strategic Objectives 2010-2013**
Under the 2010-13 Strategic Plan the ICC has the following strategic objectives that are relevant in the current context:
- To enhance engagement with the UN and regional human rights frameworks
- To build partnerships and engage external stakeholders
- To develop knowledge sharing and internal communications
- To support the strengthening of regional organisations of NHRIs.

**ICC Thematic Priorities 2010-2013**
The ICC’s Strategic Plan identifies a number of thematic priorities for the ICC during the 2010-13 period, and specifically includes Human Rights and Business. Other thematic priorities highlighted by the Plan which are also material to the human rights and business area include:
- Migration and the role of NHRIs
- Rights of persons with disabilities
- Racism, racial discrimination, ethnic cleansing and related intolerance
- Economic, social and cultural rights
- Indigenous peoples
- Human rights education and training
- NHRIs’ role in protecting women’s rights
- Human mobility
- Protection of human rights of national, ethnic and religious minorities
- NHRIs’ role in child rights protection

**ICC working group on Business and Human Rights**
At ICC 22 in March 2009, the ICC established a Working Group on Business and Human Rights (WGBHR), and gave it a mandate with the following three focus areas and tasks:

i) **Strategic Planning**
Facilitate the inclusion of business and human rights issues into baseline research and strategic planning of NHRIs, and provide a platform for regional and international collaboration on joint NHRI programmes
ii) **Capacity Building and Resource Sharing**
Facilitate skills development of NHRI staff in relation to business and human rights issues and provide a platform for NHRIIs for the exchange of expertise and best practices and for the joint development of tools and materials

iii) **Agenda Setting and Outreach**
Facilitate ICC and NHRI participation in key domestic, regional and international developments in the business and human rights field, including in relation to legislation, treaties, soft law mechanisms and institutional developments. Provide support for ICC and NHRI outreach to relevant domestic, regional and international stakeholders including governments, UN bodies and other multilateral institutions, business, communities and civil society.

The WG BHR has two NHRIIs from each ICC region and a representative from the ICC Chair as its members. Since WG BHR’s first meeting, in August 2009, it has embarked on activities to fulfil the three mandate areas above. These include: conducting a Baseline Survey of needs, priorities and activities of NHRIIs worldwide regarding business and human rights; developing training and information materials for NHRIIs; outreach to relevant actors (e.g. OECD; UN Global Compact) to promote awareness of NHRIIs’s role and functions relating to business and human rights; and developing proposals for ICC Regional Seminars and a new internet portal for NHRIIs on human rights and business in 2011.4

**ICC actions on human rights and business**
In addition to the current Conference, the ICC has made formal submissions in response to the SRSG’s 2009 and 2010 reports (available at [http://www.nhri.net/default.asp?PID=625&DID=0](http://www.nhri.net/default.asp?PID=625&DID=0)). ICC members have participated in various public events to publicise the role of NHRIIs relating to human rights and business.

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Appendix 4. ICC Biennial Conferences: General aims and Working Method

General aims
According to the Rules of Procedure, ICC Biennial Conferences have the aims to\(^5\):
- Develop and strengthen cooperation between NHRIs
- Promote ties of friendship and solidarity between participants
- Discuss items on NHRIs’ agendas and ensure their follow up at national level
- Develop a Final Declaration for adoption at the end of the Conference, and transmission to the High Commissioner for Human Rights, all NHRIs and observers after the Conference.

Accordingly these aims should be advanced by our discussions and activities at the 10\(^{th}\) ICC Biennial Conference.

ICC Principles
Under the ICC Statute, the ICC’s Principles include:
- To ensure flexibility, transparency and active participation in all processes
- To develop inclusive decision-making processes based, to the greatest extent possible, on consensus.\(^6\)

ICC Conference Preparatory Committee
The programme and arrangements for the 10\(^{th}\) Biennial International Conference have been prepared by a Committee comprising the host national institution, the Scottish Human Rights Commission, the ICC chair, the Office of the United Nations High Commissioner for Human Rights, and the Chair of the ICC Working Group on Business and Human Rights, in regular consultation and close cooperation with ICC Regional Chairs and the members of the WG BHR.

Procedure
In line with Art.11 of the Rules of Procedure, the Conference will be chaired by the host NHRI. In addition, at its opening, the Conference will appoint its General Committee, a Drafting Committee to prepare the final Conference Declaration, and a Rapporteur-General.

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\(^6\) Art.7 ICC Statute.
Appendix 5 - NGO Forum

An NGO Forum will be held at the City of Edinburgh Chambers on 7 October 2010. The NGO Forum will provide an opportunity for NGOs to share experiences regarding the topic of the Conference, including the role of NHRIs.

The Forum has been prepared with the involvement of national and international NGOs, together with the Conference preparatory committee.

During the Conference itself space has been allocated in the agenda for the results of the NGO Forum to be included in the debates. In addition, a number of NGO delegates will be invited to make interventions during both plenary and group sessions, with places set aside for NGOs for that purpose.