Access to remedy for corporate human rights abuses

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1.0 Introduction:

NHRI’s are potentially important avenues at the national level for remedying cases of human rights allegations involving corporations. NHRI’s play a major role in monitoring and reporting of human rights abuses in the business sector, facilitating legal reforms, building capacity of government institutions as well as working with private sector enterprises in the promotion and protection of human rights.

NHRI’s can therefore help to address challenges facing the business corporations particularly at the national level where they can facilitate dialogue and collaboration among key stakeholders from business, government and civil society organizations.\(^1\) In addition, the broad mandate of NHRI’s in promotion and protection of human rights as well as monitoring allows them to play an important role in this context. Many institutions do have the quasi – judicial function implying that they could serve as a remedy in corporate related cases.

NHRIIs have mandates to deal with corporate related human rights concerns as complaint receiving mechanisms or more promotional activities such as human rights training or advisory function of companies on human rights. The role of NHRIIs should be considered at the global institute on business and human rights. This link is pertinent in ensuring that the institute speaks to the diverse needs of different countries. NHRIIs act as a link between international and national levels.

The 2008 report of the Special Representative of the Secretary General presented to the Human Rights Council lays out a strategic policy framework for better management of business and human rights challenges. The framework rests on three principles viz: the

state duty to protect against human rights abuses by businesses; the corporate responsibility to respect human rights; and the better access by victims to effective remedies. The three principles are of direct relevance to NHRIs working on business and human rights, subject to the scope of their special mandates.

1.1 Why remedies for corporate human rights abuses

Remedies are needed because violations occur. And the violations associated with corporate businesses derive from specific activities in particular contexts including relationships with state and non state actors. Not all business related violations are under control of businesses but they nonetheless pose a risk of association with businesses. Companies can have adverse effects on internationally recognized rights not only on labour standards or issues relating to communities, in the proximity of a business operation. For example when telephone and internet service providers cause problems to people by disclosing their identities to strangers in the outside world.²

The business responsibility to respect human rights is founded on the principle of ‘do no harm’ as elaborated by the UN SRSG in 2008. A remedy functions as a treatment for an injury or a means of legal reparation.³

Institutional remedies such as NHRI’s and courts can provide legal justice such as out of court conflict resolutions. In addition, non-judicial remedies can also serve protective, preventive or policy purposes such as ombudsmen or National Centres for Human Rights.⁴

1.2 The Role National Human Rights Institutions (NHRIs)

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² John Ruggie. 2008 “Next steps in business and Human Rights Remarks” Royal Institute of Human Rights Affairs, Chasam House London, 22nd May
³ Caroline Rees and Rachel Davis. 2009, " Non Judicial mechanisms for Addressing Desputes between Business and Society: Their roles and Inter relationships. Harvard Kennedy School. March
⁴ The often stated opposition between voluntary and mandatory regulation, usually put forward by either proponents of voluntary measures and those who advocate for strict measures.
National Human Rights Institutions are well placed to address the challenges raised under the framework developed by the SRSG and to facilitate dialogue and collaboration among key stakeholders from business, government and civil society. They can, among other things, engage directly with business enterprises to promote good human rights practices; build the capacity of government departments and civil society organizations on issues of business and human rights; convene and facilitate human rights dialogue between business, civil society and government; handle human rights complaints relating to businesses; monitor human rights practices of business enterprises; and provide information and advice to victims about available grievance resolution mechanisms.

1.3 The NHRI’s and International Human Rights Standards

Several states have ratified various international human rights Treaties and Covenants. These international human rights instruments which broadly cover enjoyment of Economic, Social and Cultural rights in addition to Civil and Political Rights and group rights require State parties to enact laws prohibiting discrimination and to ensure that persons are protected from human rights infringements by either private entities or governments. In addition, these international instruments confirm that all persons should, in the event of infringements on their rights, be entitled to effective protection and remedies by a competent, independent and impartial tribunal and other state institutions established by law.

For several years, the United Nations has been actively promoting independent and effective human rights institutions, recognising that this is the best way to ensure respect for human rights in the domestic sphere. The most important standards in this regard are the Paris Principles relating to the status of domestic human rights Commissions, which call for the establishment of independent Commissions with broad mandates to protect and promote human rights. These Commissions should be vested with broad mandates and competencies (including adequate resources and pluralist representation) to protect and promote human rights.
The functions and powers mentioned in the Paris Principles include the ability to monitor and hear any human rights matter, promote research and examine legislation, advise government, publicise findings, work with other organisations responsible for human rights and engage in human rights education. The Constitutional provisions establishing the NHRI’s as well as the way they operate does in large measure reflect these principles.

2.0 The NHRI’s Handling of Business Related Human Rights Issues

Recently, the argument has been made that NHRI’s are the most adequate institutions to deal with international corporate responsibility because ‘they are uniquely placed to address this challenge and facilitate dialogue.’ In the round table discussion that took place in Copenhagen in July 2008, the possibility was expressed that ‘NHRI’s become key vehicles for a more representative and diverse ownership of human rights and business agenda’. This can be done by contributing to improving government protection of human rights in the corporate sector, monitoring and reporting on the human rights situation in domestic business communities and specific industries and also by hearing and resolving individual grievances related to allegations of corporate human rights abuse.

As to the improvement of access to non judicial grievance/ dispute mechanism, it can be pointed out that the need to adopt a proactive approach, including raising awareness of workers, communities and companies on the complaint mechanisms by NHRI’s, systematically identifying and targeting repeated abuses and violations, and conducting systemic investigations of systemic complaints using litigation and legal aid. Among the possible interventions, training and awareness raising development and tailoring of tools to companies and sectors were identified as objectives to pursue.

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5 Danish Institute of Human Rights 2008, Report from the round table on Business institutions and human rights, In collaboration with the Swiss Federal Department of Foreign Affairs, Copenhagen, 1st to 2nd July.
6 Danish Institute for Human Rights, 2008.
7 The International Coordinating Committee of NHRI’s for the promotion and protection of human rights is considering establishing a working group on business and human rights to look into the potential of NHRI’s in providing and promoting effective remedies for business related grievances.
2.1 Receipt, Investigation and Resolution of Complaints

NHRI’s can receive complaints against a private company or public company from any individual, group or community alleging the violation of any human right. Anyone alleging violation of a fundamental right may bring a complaint to the Commission for redress. It need not be the alleged victim. It can be anyone concerned about the violation, an organization, an institution, a relative, a friend or anyone authorized by the alleged victim to lodge a complaint.

The role of NHRI’s in Receiving Cases of Human Rights Violations and assisting victims:
- Complaints-handling in a sequential nature; i.e. NHRI’s may handle complaints submitted to them by a complainant and by settling the case through conciliation and mediation, thereby relieving the existing case-load of courts;
- Ensuring victims of human rights violations receive compensation, including encouragement of the establishment of the fund for this purpose;
- Promoting equal access to justice and assisting victims seeking redress with information on the law and the legal system particularly in relation to marginalized or vulnerable groups as well as migrants.

Most of the complaints concerning businesses received by NHRI’s relate to labour rights such as failure to pay wages and terminal benefits, unfair and wrongful dismissals, and unsafe and unhealthy working conditions and environment. However, some of the complaints relate to discrimination on the basis of sex, disability and HIV/AIDS status.

The NHRI’s can take a number of measures to address labour rights complaints brought to it, including writing to the respondents asking them to give their side of the story; carrying out investigations which may involve field visits, calling for and examining documents related to the investigations, interviewing individuals and recording statements from witnesses.

For example, the Uganda Human Rights Commission mostly uses mediation to resolve the labour complaints it receives. The mediation process normally results in the signing of memorandum of understanding between the parties to the complaint stipulating the
remedy or redress to be given to the victim, including monetary compensation; apology; and re-instatement to work in case of wrongful or unfair dismissal. In some cases, however, the complaints are referred to other bodies such as the Labour Office for better management.

The Commission also makes follow ups to find out if what were agreed on in the memoranda of understanding are being implemented or not. It also follows up the progress of complaints referred to other bodies for better management.

2.2 Participation in International and Regional Consultative Meetings on Business and Human Rights

The NHRI’s can engage governments and the business sector in order to ensure that development of norms and practice reflect genuine international consensus. Among other things, that NHRIs are well placed to address are the challenges to facilitate dialogue and collaboration among key stakeholders from business, government, and civil society.

For example, the NHRI’s were represented at the Consultative Forum on Business and Human Rights held in Nairobi, Kenya, on 22nd and 23rd May, 2008. The forum was hosted by the Kenya National Commission on Human Rights and the Institute for Business & Human Rights. It was attended by, among others, representatives from the UN Office of the High Commissioner for Human Rights; Institute of Business and Human Rights; National Human Rights Institutions of Kenya, Malawi, South Africa, Uganda and Zambia; Kenya Government; Kenya business associations and firms; Consumer Information Network (Kenya); NGOs; and academicians.

The aim of the meeting was to obtain views from stakeholders on how best to constitute the Global Institute for Business and Human Rights; and to share views on how best to engage with the discourse of business and human rights. It was noted, among other things, that National Human Rights Institutions play a very crucial role in ensuring that business entities uphold human rights in terms of checking businesses to avert any
instances of violations and sharing information for learning and documentation of best practices. It was further noted that they have mandates to deal with corporate related human rights concerns through handling of complaints, human rights training and advising companies on human rights issues.

The NHRI’s were also represented at the Roundtable of National Human Rights Institutions on the Issue of Business and Human Rights in Copenhagen on 1st and 2nd July, 2008. It was hosted by the Danish Institute for Human Rights in collaboration and support of the International Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), and support of the Swiss Federal Department of Foreign Affairs. The objective of the Roundtable was to clarify how NHRI’s can use their mandates and collective resources to play a role within business and human rights at domestic and international levels; and to discuss the formation of a National Human Rights Institutions Working Group dedicated to this purpose.

2.3 NHRI’s Recommendations to strengthen legal system and judiciary

NHRI’s can make Proposals and contributions to legislative reforms to strengthen the judiciary (e.g. procedures related to the level and appointment of prosecutors and judges and qualifying lawyers; the independence of the judiciary and its capacity to adjudicate cases fast, fairly and competently);

For example, the UHRC is mandated to review bills tabled before Parliament for compliance with international, regional and national human rights standards. Some of the bills that have been reviewed by the Commission for compliance with human rights standards had direct or indirect implication on business and human rights. They include the Equal Opportunities Bill; the Anti-Corruption Bill; the Mortgage Bill; and the Land Amendment Bill.

After review of the bills, the UHRC followed up with the presentation of position papers to relevant committees of Parliament to articulate any human rights concerns for
consideration before the bills were passed into law. UHRC has also reviewed some government policies, including the Equal Opportunities Policy, for their human rights implications. A number of recommendations made by the Commission were accepted and incorporated in the laws passed by Parliament and in government policies.

2.4 Advocacy

NHRI's can also be involved in advocating for strengthening of laws to improve the judicial or criminal law system including enacting a law against torture where none exist; Strengthening the compliance of informal and traditional justice systems with international human rights standards by monitoring traditional justice mechanisms and addressing all forms of discrimination both in the composition of traditional justice tribunals, their procedures and in terms of substantive outcomes of cases.

For example, Uganda does not, as yet, have a law on a realistic minimum wage. As a result, casual labourers and other categories of unskilled workers earn very low wages which cannot enable them meet the most basic of needs. In other words, the absence of a legally enforceable law on minimum wage affects the enjoyment of other rights such as the right to food, health care, shelter and other rights.

The Uganda Human Rights Commission has, through its Annual Reports to Parliament, been appealing to the Government to enable salary earners have acceptable minimum standard of living for all workers, both in the public and private sector, by enacting a law on minimum wage.

2.5 Legal Education

NHRI's can also be involved in promoting adherence and compliance of the judiciary to international human rights norms including through amicus and legal education: Increasing awareness and knowledge by the judiciary of international human rights norms, standards and practices and related jurisprudence, including through training,
seminars, study tours, or articles in professional legal publications. Engaging with judicial educational bodies and professional legal training bodies; Assisting in the education of judges, lawyers, prosecutors and other judicial authorities (e.g. ensuring curricula reflect international human rights law); Providing support for the development of legal education facilities (e.g. library); informing persons who filed petitions with NHRI's of their rights and remedies available intervening in courts as amicus curiae, nationally and, if existing, in regional human rights mechanisms.

2.6 Research

NHRI's through their research and monitoring functions can examine the conditions of access to justice for all, with particular reference to indigent, vulnerable and marginalised groups, business corporations and the private sector.

3.0 Conclusion

The NHRI's have the mandate to handle the issue of business and human rights, which is a component of economic, social and cultural rights to which the Commission intends to pay more attention during the current corporate plan period. It is an emerging global human rights issue with which the NHRI's needs to keep abreast, as well as developing a strategy for handling it in collaboration with OHCHR and other organizations that can be contacted to offer training to the staff of NHRI's.