



## DIRECTORATE-GENERAL FOR EXTERNAL POLICIES OF THE UNION

### DIRECTORATE B

#### POLICY DEPARTMENT

#### STUDY

# THE ROLE OF NON-EU NATIONAL HUMAN RIGHTS INSTITUTIONS IN THE IMPLEMENTATION OF THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS, WITH A FOCUS ON EASTERN PARTNERSHIP COUNTRIES

#### Abstract

This study has been commissioned by the European Parliament as an input to the discussion on the role of the National Human Rights Institutions (NHRIs) in the implementation of the United Nations Guiding Principles on Business and Human Rights, in particular in Eastern Partnership countries. The study examines the scope of the national institutions' mandates under the Paris Principles to address human rights and business concerns and provides an overview of the best practices from around the world. The analysis of individual NHRIs' mandates is focused on NHRIs from non-EU Eastern Partnership countries and complemented with an overview of the role the EU has already played and could play in the future, in providing support to the NHRIs. Since the calls on Belarus so far have failed to result in the establishment of such an institution in this country, the study focuses only on Armenia, Azerbaijan, Georgia, Moldova and Ukraine. In this context, the study makes recommendations as to how the EU could support the NHRIs in their task to advance the understanding of and respect for human rights as they relate to business.

This study was requested by the European Parliament's Subcommittee on Human Rights.

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Any errors of analysis or factual interpretation are the author's sole responsibility.

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## EXECUTIVE SUMMARY

The understanding of the complexity of the issues at the interface of Human Rights and Business has progressed significantly since, in 1999, the then Secretary General Kofi Annan initiated the Global Compact in an attempt to address the imbalances associated with economic globalization and prevent negative impact of business enterprises activities on realization of human rights.

The most recent and important milestone in those developments are the Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework (UN Guiding Principles) (<sup>1</sup>). Endorsed by the United Nations (UN) Human Rights Council (HRC) in Resolution 17/4 in June 2011, they provide guidance on the state duty to protect, corporate responsibility to respect and access to remedy. They also highlight that a successful implementation of the UN Guiding Principles requires action not only by governments, but also by all actors within the society.

In this context the National Human Rights Institutions (NHRIs) have emerged as unique actors in the business and human rights field. NHRIs play a key role in advancing the capacity of the national institutions to monitor policy coherence, stimulating the implementation of the UN Guiding Principles, and supporting the individuals and communities seeking effective remedies and the development of dispute resolution capacities.

The NHRIs' mandate under the UN Paris Principles, which define the minimum standards expected of NHRIs to work and build their capacity to address human rights and business issues and contribute to the implementation of the UN Guiding Principles on Business and Human Rights, has been affirmed both by the aforementioned resolution and the UN Guiding Principles themselves. With the EU lending unanimous support to the work of the SRSG and endorsing the UN Guiding Principles in June 2011, it has implicitly approved of the special place foreseen for NHRIs by the UN Guiding Principles.

The Paris Principles do implicitly grant a mandate for NHRIs to deal with business-related human rights violations, across their core functions. They envisage that Paris Principles-compliant NHRIs seek to protect and promote all human rights and address violations irrespective of the perpetrator, and require they are granted a mandate broad enough to enable them to respond effectively to new challenges and ensure meaningful protection and promotion of human rights.

There are a number of ways in which NHRIs can address business and human rights related issues, under all three pillars of the UN Guiding Principles, *i.e.* by monitoring the state duty to protect human rights and helping it to align national law and regulations on business with human rights; supplying advice and guidance to business to respect human rights; and providing non judicial grievance mechanism to ensure improved access to remedies. They can also undertake education and awareness raising activities.

This study provides an overview of a selection of good practices from around the globe, showing how NHRIs have engaged with human rights as they relate to business. A number of good practices from Europe are also referred to, as the picture would be very imbalanced otherwise, given the role played by at least some of the European NHRIs, also with regards to building capacity of NHRIs around the world.

This is juxtaposed with the analysis of the mandates of the NHRIs from the non-EU Eastern Partnership (EaP) countries and their engagement in implementing the UN Guiding Principles on Business and Human Rights. The research indicates that although all of the NHRIs from EaP do address violations of those human rights that are of particular relevance to business and human rights agenda (e.g. freedom

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<sup>1</sup> Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework, A/HRC/17/31, 2011 (hereinafter 'UN Guiding Principles')

of association and assembly, economic and social rights, in particular labour rights, etc.), the human rights and business agenda as such is still new for the majority of them and the link with the traditional activity areas has often not found overall acknowledgment yet. Perhaps not surprisingly, given the political context, those are not always the NHRIs with the broadest mandate (Moldova) that are making the most efficient use of the potential of their mandates regarding engagement with human rights and business agenda. Therefore, capacity building and awareness raising efforts are required to fill the competency gaps.

The analysis is complemented by an overview of the cooperation of the NHRIs with local EU Delegations. In some countries (e.g. Armenia, Georgia), support provided by the EU to the NHRI played an important role in overall capacity building and strengthening of the institution's position as part of the national human rights architecture, thus contributing to achieving compliance with the Paris Principles. It is argued that the EU can and should follow the tested path and provide support, also of financial nature, for capacity building in the area of human rights and business.

However, the EU is also encouraged to go a step further and support NHRIs in their actions aimed at implementing the UN Guiding Principles, by making human rights and business agenda part of the EU own dialogue with EaP governments and civil society, and providing space for experience exchange. Simultaneously, in order to lead by example, the EU is recommended to undertake efforts to improve its own capacity with regards to human rights and business across all institutions and policy areas, and ensure coherence of its internal and external policies, while EU Member States, in which no Paris Principles-compliant NHRIs exist, are encouraged to consider undertaking steps towards establishing such an institution.

The study recommends as well that the EU should start making more effective use of the NHRIs and European Group of NHRIs expertise both at the EU and national level, and consider the establishment of an annual exchange of views with the NHRIs, e.g. at the European Parliament forum, and using the NHRIs' outreach potential to promote the EU-developed guidance for business.

Finally, it is recommended that NHRIs explore potential for entering into strategic partnerships with the Global Compact (GC) Local Networks and/or UNDP offices present in all countries in the region, in order to reach out with a human rights message to business enterprises and other non-state actors.

## 1. THE PURPOSE AND SCOPE OF THE STUDY

This study has been commissioned by the European Parliament with a dual purpose of providing an input to the discussion on the role of the National Human Rights Institutions (NHRIs) in implementation of the United Nations Guiding Principles on Business and Human Rights, in particular in Eastern Partnership countries, and to assist Parliament's Subcommittee's on Human Rights rapporteur in drafting the opinion on the Employment and Social Affairs Committee (EMPL) and Legal Affairs (JURI) report on "A renewed EU Strategy 2011-2014 for Corporate Social Responsibility".

NHRIs are singled out in the UN Guiding Principles on Business and Human Rights as crucial in helping States identify whether relevant laws are aligned with their human rights obligations under ratified international treaties and are being effectively enforced, and in providing guidance to business enterprises and other non-State actors. The NHRIs gathered in Edinburgh in 2010 at the 10<sup>th</sup> Biannual Conference adopted the Edinburgh Declaration on "Business and Human Rights, the role of national human rights institutions", which confirmed the need to further explore this potential role.

The study is meant to provide an overview of the role of non-EU National Human Rights Institutions (NHRIs), with a particular emphasis on the Eastern Partnership (EaP) countries, in implementation of the UN Guiding Principles, including advising and monitoring businesses on respecting human rights. Although the study focuses on the Eastern Partnership, it does so at the backdrop of an overview of a number of cases of good practice from other non-EU countries. Finally, the paper examines ways in which the mandates of the NHRIs under examination can be used to further advance the implementation of the UN Guiding Principles; it also suggests how the EU could support this process.

The study is based on materials and information published or provided directly by the NHRIs, the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), in particular ICC Working Group on Business and Human Rights (<sup>2</sup>) and ICC Regional Networks and various actors, including the European Union (EU), the Office of the UN High Commissioner for Human Rights (OHCHR), the United Nations Development Programme (UNDP) offices in individual countries and Global Compact (GC) Local Networks. It also profits from available literature on the topic, in particular by Kucsko-Stadlmayer (<sup>3</sup>) and Brodie (<sup>4</sup>), and European Parliament Briefing Papers "Supporting Ombudsman Cooperation in the Eastern Partnership Countries" (<sup>5</sup>), and "Human Rights in Eastern Partnership Countries" (<sup>6</sup>). The research profited also from the author's participation in the regional meeting of the European Group of NHRIs held on 5-7 September 2012 in Berlin.

Since the calls on Belarus so far have failed to result in the establishment of such an institution in this country, the study focuses only on Armenia, Azerbaijan, Georgia, Moldova and Ukraine.

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<sup>2</sup> The ICC Working Group on Business and Human Rights website is the best place to start for anyone interested in the topic <http://nhri.ohchr.org/EN/Themes/BusinessHR/Pages/Home.aspx>

<sup>3</sup> Kucsko-Stadlmayer, G. (ed.), *European Ombudsman-Institutions. A comparative legal analysis regarding the multifaceted realisation of an idea*, Springer, 2008

<sup>4</sup> Brodie M., Pushing the Boundaries: The Role of National Human Rights Institutions in Operationalizing the 'Protect, Respect and Remedy' Framework, in R. Mares (ed.), *The UN Guiding Principles on Business and Human Rights. Foundations and Implementation*, Martinus Nijhoff Publishers, 2012, p. 245 -272

<sup>5</sup> Kędzia Z. and J. Jaraczewski, *Supporting Ombudsman Cooperation In The Eastern Partnership Countries*, Briefing Paper, Directorate-General for External Policies of the Union, December 2011, EXPO/B/DROI/2011/16

<sup>6</sup> Rihackova V., *Human Rights in Eastern Partnership Countries*, Briefing paper, Directorate-General for External Policies of the Union, July 2011, EXPO/B/DROI/2011/07

## **2. PROTECT, RESPECT AND REMEDY FRAMEWORK AND UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS**

The global economic crisis that continues to impact adversely the enjoyment of human rights around the world has exposed the governance gaps, also between the power, scope and impact of economic actors, and the societies' and governments' ability to successfully prevent, mitigate and manage their negative consequences, and ability to ensure effective access to remedy in case of wrongful acts by business enterprises.

When in 2005, against the backdrop of a longstanding <sup>(7)</sup> and polarized debate on the human rights responsibilities of business, including in the context of attempts to develop UN Norms <sup>(8)</sup> on the issue, the Commission on Human Rights requested the Secretary-General to appoint a Special Representative on the issue of human rights and transnational corporations and other business enterprises (SRSG), with a mandate to identify and clarify standards of responsibility and accountability for business as it related to human rights, and to elaborate on the role of States in effectively regulating and adjudicating business conduct in this regard <sup>(9)</sup>, few believed that his work would result in concrete, tangible and practical outcomes.

Yet, after just three years of active engagement with all interested stakeholders, in 2008, the SRSG not only succeeded in transforming the battle led from entrenched positions into a difficult, yet already a dialogue. He also came up with the multilayered and comprehensive UN "Protect, Respect and Remedy" Framework for Business and Human Rights <sup>(10)</sup>, which sets out:

1. the State duty to protect human rights against adverse impacts by non-State actors, including business;
2. the corporate responsibility to respect human rights; and
3. the need for greater access to remedy for victims of business-related human rights abuse.

When consequently, in June 2011, the Human Rights Council (HRC) unanimously endorsed the Guiding Principles on Business and Human Rights for implementing the UN "Protect, Respect and Remedy" Framework, a set of 31 recommendations containing foundational and operational principles developed by the SRSG in the course of research and stakeholder consultations, it effectively established the Guiding Principles as the first authoritative global standard for preventing and addressing the adverse impacts on human rights linked to business activity, that enjoyed the broad support from all stakeholders <sup>(11)</sup>.

Expecting that the effective implementation of the UN Guiding Principles will face many challenges and require development of more operational guidance and detailed standards, and concerted awareness-

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<sup>7</sup> For a brief overview of earlier attempts at regulating the human rights impacts of business enterprises, see e.g. Feeney, P., *Business and Human Rights: The Struggle for Accountability in the UN and the future direction of the advocacy agenda*, *SUR – International Journal on Human Rights*, v. 6, n. 11, Dec. 2009, p. 161-175

<sup>8</sup> Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights 2003, UN Doc. E/CN.4/Sub.2/2003/12/Rev.2

<sup>9</sup> Commission on Human Rights, Human rights and transnational corporations and other business enterprises, Resolution 2005/69, 2005

<sup>10</sup> Protect, Respect and Remedy: a Framework for Business and Human Rights, A/HRC/8/5, 2008

<sup>11</sup> The report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, 21 March 2011, A/HRC/17/31, Annex; Endorsed by the Human Rights Council, Human rights and transnational corporations and other business enterprises, A/HRC/17/4, 2011

raising efforts, the Human Rights Council, on the basis of its Resolution 17/4 (2011) (<sup>12</sup>), undertook to support this process by establishing a follow-up to the SRSG mandate:

- the UN Working Group on the issue of human rights and transnational corporations and other business enterprises (<sup>13</sup>), made of five experts and tasked to *inter alia* disseminate and promote implementation of the UN Guiding Principles, best practice identification, capacity-building, country visits, recommendations on access to remedy and dialogue and cooperation with relevant actors, and
- a multi-stakeholder, annual Forum on Business and Human Rights.

A year after the UN Guiding Principles adoption, within and beyond the UN including in the European Union, we can observe an unprecedented level of alignment of key standards and initiatives, with global, regional and national reach, covering all geographic regions and business sectors, taking place around the UN Guiding Principles (<sup>14</sup>).

Importantly, in its Resolution 17/4 the Human Rights Council recognized that, to be effective, the implementation of the UN Guiding Principles will need the support of all actors and organs of the society, and in that context affirmed the mandate and role of the NHRIs under the UN Paris Principles to work and build their capacity to address human rights and business issues. This HRC position is representative of the governments' recognition of the fact highlighted already in the UN Guiding Principles that NHRIs have both mandate and role in supporting the implementation of all three pillars of the UN 'Protect, Respect, Remedy' Framework, through engagement with states, business and victims of human rights abuses by business enterprises.

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<sup>12</sup> *Ibid.*

<sup>13</sup> <http://www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherrbusiness.aspx>

<sup>14</sup> E.g. the UN Global Compact's First Principle content is clarified as to be read in line with the UN Guiding Principles; 2011 update of the OECD Guidelines for Multinational Enterprises brought a new human rights chapter and due diligence recommendations; 2011 update of the IFC Performance Standards on Environmental and Social Sustainability; the ISO 26000 social responsibility standard (human rights chapter). At the EU level, e.g. the European Commission is developing Sectoral Guidance and Guidance for Small & Medium Enterprises, which are to be aligned with the UN Guiding Principles.

### **3. NATIONAL HUMAN RIGHTS INSTITUTIONS: INTERNATIONAL STANDARDS AND CO-OPERATION**

The National Human Rights Institutions (NHRIs) are institutions with a constitutional and/or legislative mandate to protect and promote human rights within the state's jurisdiction (<sup>15</sup>). Although they are a part of the State apparatus and are funded by the State, they operate and function independently from governments. They are unique in that they exist in a dynamic position between States, civil society and other actors, and thus are able to offer a neutral and objective space in which to interact, develop human rights laws and policy, and exchange ideas. In the context of the UN Guiding Principles implementation, this makes them uniquely positioned to act as a convener and mediator, able to bring to the table parties representing differing positions, seek solutions and ways of remediating the human rights violations.

Although NHRIs have traditionally focused on state-individual relations, increasingly, they are mobilizing their human rights expertise and mandate to address situations of human rights violations by business enterprises, which is acknowledged also by various non-state actors (<sup>16</sup>). Such an evolution fits into the long history of the changing nature of the NHRIs and expectations of what they can and should accomplish.

NHRIs belong also to the major partners in international dialogue, and serve as an important source of information, and in some cases also partner, for the UN Human Rights Council, its special procedures, as well as for the human rights treaty bodies. The existence of synergies between their mandates and the role of the NHRIs is increasingly recognized especially by special mechanisms. For example, currently, the Special Rapporteur to the Human Rights Council on the situation of human rights defenders (HRD) reached out to NHRIs in an attempt to assess their role in promoting and protecting the rights of human rights defenders, and to examine the challenges faced by NHRIs in carrying out their work, in order to identify measures that could be taken to ensure an enabling working environment for NHRIs' staff.

The HRC has explicitly recognized this fact and growing recognition of NHRIs potential, when it unanimously adopted resolution A/HRC/20/L.15, calling for the Paris Principles-compliant NHRIs to be able to participate also in other UN meetings and forums, including the UN General Assembly (UNGA) (<sup>17</sup>).

#### **3.1 NHRIs: typology, international standards and accreditation**

The International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), *i.e.* the international association of NHRIs established with the aim to coordinate the activities of the NHRI network, which promotes and strengthens NHRIs role, encourages NHRIs statutory legislations' reforms, provides leadership in the promotion and protection of human rights, technical assistance, such as education and training opportunities, and encourages cooperation and information sharing among NHRIs, identifies six models of NHRIs, *i.e.*: human rights commissions, ombudsman institutions, hybrid institutions, consultative and advisory bodies, institutes and centres, and multiple institutions. Literature provides also other typologies, yet inevitably due to many diverging contextual features, differing structures and mandates, any comparison among NHRIs is bound to be problematic and involve simplification.

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<sup>15</sup> Detailed information available at the OHCHR website: <http://www.ohchr.org/en/countries/nhri/pages/nhrimain.aspx>

<sup>16</sup> Final Statement of the NGO Forum to the Biannual Conference "Building a strategic partnership between NGOs and NHRIs on business and human rights", Edinburgh, Scotland, 7 October 2010

<sup>17</sup> HRC Resolution A/HRC/20/L.15 on National institutions for the promotion and protection of human rights, [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A.HRC.20.L.15\\_en.doc](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A.HRC.20.L.15_en.doc)

Nevertheless, the accepted minimum standard required for NHRIs, against which the effectiveness of fulfilment of their role and their independence are measured, are the ‘Principles relating to the Status and Functioning of the National Institutions for the Protection and Promotion of Human Rights’ (The Paris Principles) (<sup>18</sup>). Developed at the backdrop of several milestones starting from the 1946 United Nations Economic and Social Council resolution 2/9 (<sup>19</sup>) that invited Member States to consider establishment of national ‘information groups or local human rights committees’, through 1960 ECOSOC Resolution 772B (XXX)<sup>(20)</sup> which highlighted their advisory role, to endorsement in 1978 by the UNGA Resolution 33/46 of the first set of international guidelines for the structure (pluralism) and functioning of the NHRIs<sup>(21)</sup>, the Paris Principles were eventually formulated in 1991, promoted by the 1993 Vienna World Conference on Human Rights (<sup>22</sup>) and endorsed by the UNGA in 1993<sup>(23)</sup> which reaffirmed the important and constructive role played by NHRIs.

The Paris Principles reaffirm the important and constructive role played by NHRIs, in particular in their advisory capacity to the competent authorities, their role in remedying human rights violations and in the dissemination of human rights information and education. They include, as interpreted further by the SCA in the General Observations of June 2009 (revised in May 2011):

- requirement of a broad-based mandate to promote and protect human rights, based on universal human rights norms and standards,
- autonomy from government,
- independence guaranteed by statute or Constitution,
- pluralism of members and staff,
- having adequate powers of investigation, and
- adequate infrastructure and resources to fulfil their institutional mandate.

Those criteria serve as a point of reference for a system of NHRIs certification administered by the ICC through its Sub Committee on Accreditation (SCA), supported by the OHCHR, a permanent observer on the SCA. Depending on their level of the observance of the Paris Principle, the NHRIs can be awarded one of the three status levels (reviewed every five years):

- “A” (**Voting member**), if they are fully compliant with the Paris Principles,
- “B” (**Observer member**), if they are not in full compliance, and
- “C” (**Non-member**), in case of complete lack of compliance with the Principles.

The status level is very important as it provides indication if the given institution is able to act independently of State and from this position provide expert advice to governments and other actors. Out of over one hundred NHRIs, 69 NHRIs are accredited by the ICC with status “A” (as of May 2012). In view of the accreditation assessment, the compliance by the NHRI with the Paris Principles is fully satisfactory in 4 out of 6 of the Eastern Partnership (EaP) countries.

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<sup>18</sup> UN Principles Relating to the Status of National Institutions (Paris Principles), Annex to the GA Resolution 48/134 of 20 December 1993

<sup>19</sup> UN Economic and Social Council, ECOSOC Resolution 2/9, 21 June 1946, Section 5. Cited in Office of the High Commissioner for Human Rights, *NHRIs – A Handbook for Strengthening National Institutions for the Promotion and Protection of Human Rights*, Professional Training Series No 4 (UN Publication: New York and Geneva, 1995).

<sup>20</sup> ECOSOC resolution 772 B (XXX) of 25 July 1960.

<sup>21</sup> National institutions for the protection and promotion of human rights, UN General Assembly, A/Res/33/46, 14 December 1978.

<sup>22</sup> The Vienna Declaration and Programme of Action, Part I, para 36, adopted by the World Conference on Human Rights, Vienna, 25 June 1993, A/CONF/157/24 (Part I), chap III

<sup>23</sup> National institutions for the promotion and protection of human rights UNGA Resolution 48/134, Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N94/116/24/PDF/N9411624.pdf?OpenElement>

Developments similar to those at the UN level, took also place in other international fora. The Council of Europe, which already since 1975 supported the role of the NHRIs, in 1997 recommended to all member states to establish a national human rights institution (<sup>24</sup>), and consequently in 2003, adopted a list of ombudsman's characteristics. Other IGOs, such as the OSCE also recognize NHRIs as key actors in protecting and promoting human rights and the rule of law. Of recently, thanks to the proactive approach of the ICC that led to the development of the relevant Memorandum of Understanding, this 'group' includes also the OECD. Also in the context of the EU, which has recognized the importance of the NHRIs in several policy decisions, instruments and project documents, strengthening of the national human rights protection architecture became a central focus of numerous assistance programmes, including the Eastern Partnership, the European Neighbourhood and Partnership Instrument (ENPI) and European Instrument for Democracy and Human Rights (EIDHR). The Strategy Paper 2007-2010 of the latter has even identified the creation of ombudsman institutions as one of its desirable outcomes (<sup>25</sup>).

### **3.2 Coordination and cooperation**

The NHRIs belonging to the ICC are grouped in **four geographic regions** coordinated by Regional Coordination Committees:

- Africa: the Network of the African NHRIs (NANHRI),
- Americas: the Network of NHRIs of the Americas (Red de Instituciones Nacionales Para la Promocion y Protection de los Derechos Humanos en le Continente Americano),
- Asia-Pacific: Asia-Pacific Forum of NHRIs (APF),
- Europe: European Group of NHRIs.

Those in turn can create **sub-regional groupings**, such as e.g. South East Asia NHRI Forum or Arab Network for NHRIs (<sup>26</sup>), that at times 'cut across' two different regional groups, thus providing further cross-fertilization of expertise and good practices. The (sub-)regional groupings are perfectly positioned to contribute to the development of a regional human rights dialogue, networks and practical programmes of support, and to foster knowledge and information exchange between individual members. They are also particularly well suited to deliver necessary training, tailored to their members and developed in consultation with them (<sup>27</sup>) and at the same time ensuring that it reaches all relevant NHRIs in a realistic timeframe (<sup>28</sup>). Through their member NHRIs they are also well positioned to directly influence the development of human rights law and practice in individual regions.

Given that many of the NHRIs around the globe require capacity building in the area of human rights and business, using the (sub-)regional approach has potential of reaching out to all NHRIs in a realistic timeframe, while significantly reducing the number of training sessions, and thus costs, as compared to one for each institution. This is not to be overstated taking into account the limited resources available to the NHRIs and ICC. The added advantage of the limited geographic coverage of such training and capacity building activities rests in that it allows for some recognition of (sub-)regional commonalities

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<sup>24</sup> Recommendation No. R (97) 14 of the Committee of Ministers of the Council of Europe to members states on the establishment of independent national institutions for the promotion and protection of human rights, adopted on 30 September 1997 together with an Explanatory Memorandum and alongside Resolution (97) 11 on co-operation between member states' national institutions for the promotion and protection of human rights, and between them and the Council of Europe

<sup>25</sup> European Instrument for Democracy and Human Rights (EIDHR) Strategy Paper 2007-2010; DG RELEX/B/1/ JVK 70618, para. 76.IV

<sup>26</sup> Founded in 2011 in Nouakchott (statute adopted in Doha in May 2012), it counts among its members NHRIs from Egypt, Morocco, Mauritania, Sudan, Libya, Palestine, Jordan, Qatar, Bahrain, Oman and Algeria.

<sup>27</sup> See for example APF website <http://www.asiapacificforum.net/support/training>

<sup>28</sup> Pasha, S., The Evolution of the Asia Pacific Forum of National Human Rights Institution's Regional Training Program, <http://www.hurights.or.jp/archives/asia-pacific/section1/5%20Suraina%20Pasha.pdf>

while facilitating (sub-)regional linkages, exchange of information and the building of supportive networks between NHRIs. Furthermore, the Regional Coordinating Committees being direct service providers and not-for-profit member organisations, ensure that all funds go to the relevant projects. As pointed out by one of the interviewees, such a sub-regional approach may also assist in the addressing sub-regional particularities and language issues <sup>(29)</sup>. The success of the Project of Co-operation between Ombudsmen from Eastern Partnership Countries seems to confirm this. It is thus worth considering, if a similar approach should not be developed to provide training on human rights and business to NHRIs from the EaP, to ensure that it is adjusted to the political and economic context in which they operate.

Several interviewees highlighted the important role played by the **permanent secretariats** of the regional groups in ensuring coordination and consistence of actions across the region, suggesting that the fact that the APF region is more active with regards to Human Rights and Business agenda is partially an effect of having a small but active Permanent Secretariat. Importance of such coordinating centres was implicitly recognized also by some of the EU Member States, e.g. permanent secretariat of NANHRI was established with the support coming *inter alia* from the Swedish International Development Cooperation Agency (SIDA) as part of the project implemented by the Raoul Wallenberg Institute (RWI). Indeed, looking at the Action Plans of the NANHRI and APF, the central role of the Permanent Secretariats is clearly visible. It is therefore a very positive development that also the European Group of NHRIs, in case of which the secretariat support was until now provided on rotating basis by the NHRI chairing the Group at the given time, chose to establish its own permanent secretariat in the end of 2012.

NHRIs cooperate also in the framework provided by Intergovernmental Organizations. UN OHCHR has a unit dedicated to the cooperation with NHRIs and has even developed together with the UNDP a Toolkit for collaboration with National Human Rights Institutions. OSCE with a standing agenda item on NHRI at the annual OSCE/ODIHR Human Dimension Implementation Meetings (HDIM) and a Focal Point for Human Rights Defenders and National Human Rights Institutions established in 2007, as well as Council of Europe provide additional fora for contacts and exchange between those institutions. Some of the NHRIs' representatives from the EaP Countries pointed also to the usefulness of the European Ombudsman Institute and the International Ombudsman Institute. With Fundamental Rights Agency not covering countries outside of the EU, NHRIs from EaP countries are not covered by its information exchange and research.

The NHRIs from the non-EU Eastern Partnership countries do belong to the European Group of NHRIs, and it is within this forum that they are exposed to the human rights and business agenda. However, due to different political and social context in which they operate, as well as different human rights challenges, the exchange provided within the framework of the Cooperation of the Eastern Partnership Ombudsmen project seems to resonate somewhat better.

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<sup>29</sup> Interview and e-mail communication with Greg Heesom, APF, on file with the author

## 4. NHRIS AND BUSINESS & HUMAN RIGHTS AGENDA

The Paris Principles do not only require the NHRIs to have a broad mandate in terms of issues to be addressed and effective tools, but also a ‘360 degrees’ one to engage with all stakeholders. The broadness of the mandate is directly linked to the indivisibility and interdependence of human rights, highlighted in the Vienna Declaration on Human Rights of 1993, and the fact that it is virtually impossible to ensure full protection of one right without ensuring such protection to all human rights. Unlike the mandates of individual NHRIs under domestic legislations, the Paris Principles do not limit the mandate of the NHRIs to the protection of human rights only in the context of vertical relations between individuals and state actors/public authorities. Rather, as will be explained in detail further in this chapter, they provide sufficient space for NHRIs to play a unique and critical role in preventing and responding to human rights violations committed by corporations.

A number of NHRIs undertook relevant efforts early, approaching their mandates in a proactive way. One of the first NHRIs to engage with the human rights and business agenda was the Danish Institute for Human Rights (DIHR), which well before the UN Guiding Principles were adopted, developed a comprehensive Human Rights Compliance Assessment Tool aimed at assisting business in identifying human rights risks in company operations and covering all internationally recognized human rights and companies human rights impact on all stakeholders, including employees, local communities, customers and host governments. The tool, incorporating a database of almost 200 questions and hundreds of indicators, allows measuring the implementation of human rights in company policies and procedures, and is constantly updated in line with newest developments in international human rights law<sup>(30)</sup>. Other examples of the early activities addressing directly the human rights and business nexus include the 2008 report by the French National Consultative Commission of Human Rights (*Commission nationale consultative des droits de l'homme*) on the responsibilities of the business enterprises with regards to human rights “La responsabilité des entreprises en matière de droits de l'homme” that provided specific recommendations<sup>(31)</sup>, and the 2008 report by the Asia Pacific Forum (APF) Advisory Council of Jurists “ACJ Reference on Human Rights, Corporate Accountability and Government Responsibility”<sup>(32)</sup> that provided basis for the development of the APF strategic approach to human rights and business issues.

To clarify how NHRIs can use their mandates and collective resources to play a role within business and human rights at domestic and international levels, a roundtable of NHRIs on the issue of business and human rights was held in Copenhagen in 2008 by the DIHR in collaboration with the ICC and support from the Swiss Federal Foreign Ministry. With time, and proportionally to their growing capacity, NHRIs started to consider even more concordently their potential contribution and to share what they were already doing to address business-related violations, as well as develop new, innovative approaches to dealing with human rights in the business context.

Those early actions, but foremost the active lobbying especially by the ICC Working Group on Business and Human Rights (see sub-chapter 4.2), led in 2009 the SRSG for Business and Human Rights to note in his Message of 28 January 2009 to the NHRIs Worldwide that he had ‘taken an interest in the vital role of

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<sup>30</sup> Danish Institute for Human Rights, <http://www.humanrightsbusiness.org/compliance+assessment>

<sup>31</sup> Commission nationale consultative des droits de l'homme, “La responsabilité des entreprises en matière de droits de l'homme”, 2008,

[http://www.cncdh.fr/IMG/pdf/Etude\\_Responsabilite\\_des\\_entreprises.pdf](http://www.cncdh.fr/IMG/pdf/Etude_Responsabilite_des_entreprises.pdf)

[http://www.cncdh.fr/IMG/pdf/\\_CNCDH\\_Responsabilite\\_des\\_entreprises\\_VI.pdf](http://www.cncdh.fr/IMG/pdf/_CNCDH_Responsabilite_des_entreprises_VI.pdf)

<sup>32</sup> <http://www.asiapacificforum.net/support/issues/business/acj/references/corporate-accountability>

NHRIs in advancing human rights in practice', and consequently mention their role under all three pillars of the UN Guiding Principles.

As already mentioned, the role of NHRIs was also recognized by the UN Human Rights Council in its resolution 17/4 of June 2011 that endorsed the UN Guiding Principles. The Human Rights Council welcomed the important role of NHRIs established in accordance with the Paris Principles in relation to business and human rights and encouraged them to further develop their capacity to fulfil that role effectively, including with the support of the OHCHR and in addressing all relevant actors.

Also the recent report of the UN Secretary General to HRC (A/HRC/21/21) concerning contribution of the United Nations system as a whole to the advancement of the human rights and business agenda, which highlighted the importance of the strategic embedding of the business and human rights agenda and the UN Guiding Principles at the macro-level of the UN system 'to achieve the further integration of the Principles into existing structures, programmes and activities, at both the global and national levels', pointed out to the key role of NHRIs. It also highlighted that ICC of NHRIs together with UN country teams, OHCHR, and UNDP, are well placed to work together to advance the business and human rights agenda, including supporting the capacity of the national institutions to monitor policy coherence, the implementation of the UN Guiding Principles and the individuals and communities seeking effective remedies, undertaking research relating to due diligence, and supporting the development of dispute resolution capacities.

UN Working Group on Business and Human Rights, having first referred to a number of activities undertaken by NHRIs, also recommends in its recent report to the UN General Assembly (A/67/285) that NHRIs should continue and enhance their current efforts to support the dissemination and implementation of the Guiding Principles, including through capacity-building of relevant national actors, promoting multi-stakeholder dialogue and initiatives at the national level, and monitoring the implementation of the Guiding Principles at the national level, and in so doing, help to identify gaps and challenges in this regard.

#### **4.1     Reading the Paris Principles through the human rights and business lens**

The Paris Principles do implicitly grant a mandate for NHRIs to deal with business-related human rights violations, across their core functions of complaints handling, human rights education and making recommendations on law reform, in that they clearly envisage that NHRIs will seek to protect and promote all human rights and address violations irrespective of the perpetrator. As argued by Brodie<sup>(33)</sup>, while they do not explicitly require that the NHRIs engage directly with non-state violations, they encourage NHRIs action, aimed at protecting and promoting human rights as they relate to business, in four specific ways:

1. by requiring that the NHRIs are 'vested with competence to promote and protect human rights'<sup>(34)</sup> and 'given as broad a mandate as possible'<sup>(35)</sup>, they aim to ensure that the NHRIs are in position to deal with 'any situation of violation of human rights'<sup>(36)</sup>, provided that a NHRIs' establishing legislation does not seek to provide it with more limited scope of competence;
2. by contemplating under 'methods of operation' that NHRIs need to be empowered to and shall engage with both state and non-state actors, including business, and be in a position to 'freely consider any questions falling within its competence'<sup>(37)</sup> and 'hear any person and obtain any

<sup>33</sup> Brodie, M., *op.cit.*, p. 250-251

<sup>34</sup> Paris Principles, *supra* footnote 18, Competence and responsibilities, Article 1

<sup>35</sup> *Ibid.*, Competence and responsibilities, Article 2

<sup>36</sup> *Ibid.*, Competence and responsibilities, Article 3 (a)(ii)

<sup>37</sup> *Ibid.*, Methods of operation, Article (a)

information and any documents necessary for assessing situations falling within its competence' <sup>(38)</sup>. The Paris Principles also do foresee that NHRIs will need to seek, and at times also compel, the production of information from various actors. Providing the NHRIs with such powers is crucial to the capacity of the NHRIs to seek, and obtain information, particularly in situations of alleged human rights violations;

3. by requiring NHRIs to 'maintain consultation with other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular ombudsmen, mediators and similar institutions' <sup>(39)</sup> and thus recognizing that NHRIs operate in a complex system of other mechanisms and should ensure that they enhance each others action ability instead of duplicating efforts. The Paris Principles allow also for interaction with other mechanisms, including with OECD National Contact Points (OECD NCPs), UN Global Compact local networks, other state and non-state based mechanisms that are also recognized for their contribution to the implementation of the UN Guiding Principles;
4. by implicitly providing for business engagement in the process of determining the composition of a NHRI, by including them amongst the groups that may contribute i.e. 'professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists' <sup>(40)</sup>, in that consultation with various representative groups is viewed as an important part of legitimizing NHRIs leadership and helping to ensure both the plurality of its representation and its independence from any one actor. As Brodie suggests, 'an extended interpretation [...] could include peak business or representative corporate social responsibility umbrella organizations. If involved in this way, business may regard itself and be regarded as a stakeholder', what in turn may encourage private sector acceptance of the NHRIs authority <sup>(41)</sup>.

Looking through the business and human rights lens at the Paris Principles makes it clear that there is nothing in there that would prevent NHRIs from engaging with business related aspects of human rights agenda. Quite opposite, the requirement for the NHRIs to have broad mandates, and at that construed in such a way, as to enable them to respond effectively to new challenges and ensure meaningful protection and promotion of human rights, should be understood as requiring Paris Principles-compliant NHRIs to be able to engage with human rights as they relate to private actors, including business. As compliance with the Paris Principles is assessed by the ICC, it should be considered if perhaps the ICC SCA could advise that legislative restrictions on a NHRIs' competence to deal with business are potentially in violation of the Paris Principles requirement for a broad human rights mandate. In the meantime, the forthcoming factsheet on NHRIs and Human Rights and Business might provide some clarification and guidance in this respect (see sub-chapter 4.3). The contents of the regional groups action plans (see sub-chapter 4.3) certainly leave no doubt as to the wide range of activities that NHRIs should be able to undertake.

So, what can NHRIs specifically do while acting within their core functions to advance the human rights and business agenda and assist in implementation of the UN Guiding Principles? There is no doubt that in situations where their establishing legislation restricts the scope of the rights or actors that they can consider, NHRIs must be proactive in how they interpret and use the full range of their functions and power in addressing actual and potential corporate violations, but also in how they communicate their message. For example, while an academic-style seminar on the right to health might be deemed as not particularly useful for business audience, an interactive workshop translating how the right to health

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<sup>38</sup> *Ibid.*, Methods of operation, Article (b)

<sup>39</sup> *Ibid.*, Methods of Operation, Article (f)

<sup>40</sup> *Ibid.*, Composition, Article 1(a)

<sup>41</sup> Brodie, M., *op.cit.*, p. 250 -251

relates to everyday business operations and how monitoring of its observance can be integrated into the business strategy, will certainly have much better resonance within this group. SRSG no doubt seemed to believe that engagement with human rights and business agenda is often a decision to change institutional priorities and approach the way things are done in an innovative way, when in his Report of 2009 he pointed that, while the mandates might preclude some NHRIs from engaging with human rights and business agenda, more often it is a 'choice, tradition or capacity'. Indeed, most of the NHRIs have in the past engaged indirectly with what is now described as human rights and business agenda, by e.g. reviewing national legislation in the area of labour law. What is now needed is often just some effort to see how the Human Rights and business issues feature already in the NHRIs work under familiar headings of e.g. labour law, administrative law. The adoption of the Edinburgh Declaration by the NHRIs, which affirmed NHRIs collective commitment to develop their capacity to engage with business and human rights issues and to take strategic action to address human rights abuses committed by private actors, as well as work undertaken by many NHRIs, examples of which are provided in the sub-chapter 4.4 and Annex I, leaves no doubt as to the NHRIs position and understanding of their role.

In the knowledge economy, the NHRIs, whose strength comes from their expertise, impartiality and independence, are perfectly fitted to create space for dialogue and to provide the deep human rights expertise, including awareness not only of their content, national and international perspectives, or implementation intricacies, but also their limits and how they balance against other policy/national frameworks. Additionally, NHRIs, in particular those with "A" status, offer credibility so sought for by business actors, trying to regain some of the society's trust lost in the course of the economic crises. If a business enterprise is trying to learn how to identify human rights risks and mitigate impact, it wants to be certain that it gets good quality advice, but also wants to be able to prove that its attempts to ensure respect for human rights, even if not always fully successful, were not a window dressing exercise on their side – NHRI as a partner certainly lends more credibility than a consultancy firm.

#### **4.2 ICC Working Group on Business and Human Rights**

In March 2009, the ICC Working Group on Business and Human Rights (ICC WG) (<sup>42</sup>) was established as the first formal thematic working group of the ICC of the NHRIs, with secretariat services being provided by the NHRI chairing the Group at the time. The ICC WG, chaired during the first two years of its operation by the Danish Institute for Human Rights supported by funding from the Danish International Development Agency (DANIDA), was instrumental in making significant advances towards building the capacity and profile of NHRIs in this area. Its actions included advocacy efforts to increase understanding and raise awareness of NHRIs' role and mandate in addressing business and human rights issues, strategic collaboration and advocacy, and contributing to the development of key international frameworks addressing human rights and business nexus, including UN Guiding Principles on Business and Human Rights, UN Global Compact, OECD Guidelines for Multinational Enterprises and OECD Common Approaches for Export Credit Guarantee Agencies (<sup>43</sup>).

As NHRIs are becoming one of the central actors in the field of human rights and business, the ICC WG is likely to play an increasingly important role in providing adequate support to NHRI collaboration and efforts in this field, including through Memoranda of Understanding with e.g. OECD and dialogue and involvement in other fora, like e.g. the Multi-stakeholder Forum on Business and Human Rights in Geneva or EU.

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<sup>42</sup> <http://nhri.ohchr.org/EN/Themes/BusinessHR/Pages/International%20Policy%20Development.aspx>

<sup>43</sup> For ICC WG submissions to various international organizations and processes, see e.g.: <http://nhri.ohchr.org/EN/Themes/BusinessHR/Pages/International%20Policy%20Development.aspx>

Activities of the Working Group include promotion of integration of human rights and business issues into NHRIs' strategies and programmes, building capacity of NHRIs on business and human rights, incl. through skills development and sharing of tools and best practices, facilitating NHRIs' participation in development of relevant legal and policy frameworks; and supporting NHRIs' outreach to business and human rights stakeholders. At this stage, awareness raising and capacity building role of the ICC WG is of utmost importance and is recognized by member NHRIs. Even the Business and Human Rights section of the ICC website (<sup>44</sup>), developed thanks to DANIDA funding by DIHR, was pointed to by the interviewed representatives of various NHRIs almost in all cases as a key point of reference with regards to the Human rights and Business issues, ahead of websites of the Regional groupings, Business and Human Rights Resource Centre (<sup>45</sup>), BASESWiki (<sup>46</sup>), and Raoul Wallenberg Institute (RWI) NHRI Database (<sup>47</sup>). The latter is better known in Asia-Pacific and African regions than in Europe, not least as it was developed in cooperation with both the APF and the NANHRI, but also because of the capacity building and awareness raising work done in those regions by the RWI in cooperation with Regional Coordinating Committees and individual NHRIs.

As pointed out by some of the interviewees, also the rotating membership of the ICC WG, which is comprised of representatives of two member institutions from each of the ICC's four geographic regions, the ICC Chair and former Working Group Chair provides in itself a good way for the NHRIs to raise their awareness of the Paris Principles mandate in human rights and business field and improve their expertise in this area.

#### **4.3 The Edinburgh Declaration and its follow up**

In 2010, the NHRIs gathered in Edinburgh at the 10<sup>th</sup> Biannual Conference of the ICC devoted to the topic of Business and Human Rights and hosted by the Scottish Human Rights Commission (SHRC) in cooperation with the OHCHR and the ICC, and with support from ICC WG, adopted The Edinburgh Declaration. The Declaration which recognized the key role of NHRIs in implementing human rights protection in the corporate sphere and affirmed the commitment of NHRIs worldwide to integrate business and human rights issues into their strategies and activities, at international, regional and national level. It also highlighted the NHRIs willingness to consider how their mandates under the Paris Principles can be applied, and strengthened, in order to promote and protect human rights as they relate to business, as well as to broaden their activities and enhance efforts to work collaboratively with NGOs and civil society. It also affirmed their intention to share knowledge and expertise, institutionalise their exchange and interaction (e.g. follow-up workshops on human rights and business for ICC Regional Networks, establishment of Focal points), and encouraged all NHRIs to consider practical functions they can fulfil in promoting enhanced protection against corporate-related human rights abuse, greater accountability and respect for human rights by business actors, access to justice for victims and establishing multi-stakeholder approaches.

To support the NHRIs in their efforts, capacity building initiatives to enable them to engage more effectively with business and human rights issues were an area that has been identified as requiring immediate attention by a survey undertaken by the ICC WG of NHRIs on Business and Human Rights. As a follow up to the Edinburgh Conference the ICC WG has been supporting, on its own or in cooperation with individual NHRIs and the OHCHR, a number of initiatives aimed to assist the NHRIs in carrying out their Paris-Principle mandates in relation to business and human rights in meaningful ways, including:

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<sup>44</sup> <http://nhri.ohchr.org/EN/Themes/BusinessHR/Pages/Home.aspx>

<sup>45</sup> <http://www.business-humanrights.org/Home>

<sup>46</sup> [http://baseswiki.org/en/Main\\_Page](http://baseswiki.org/en/Main_Page)

<sup>47</sup> <http://www.nhridb.org/>

- Conducting an informal **NHRI Baseline Survey**, aimed to identify NHRI's interests, capacities and current levels of engagement with business and human rights issues;
- Developing the **NHRI Training Tools** comprised of the ICC training course for NHRI's on business and human rights based on the blended learning formula, and accompanying manual, to be complemented in due course with regional supplements developed by regional committees. There are plans to roll-it-out across ICC Regions from 2012, subject to availability of funding (<sup>48</sup>).
- Developing the **NHRI Fact Sheets**:
  - UN Global Compact Local Networks - NHRI's
  - a foundational fact sheet on NHRI's and Business and Human Rights,
  - on Business and Human Rights in the 2<sup>nd</sup> Cycle of the Universal Periodic Review (UPR) – in support of NHRI's engaging in the second cycle of the UPR,
  - on Business and Human Rights relating to food, water and the environment,
  - on the "Food and Agricultural Organization's Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the context of National Food Security",
  - on Business and Women's and Children's Rights, and
  - on NHRI's and OECD National Contact Points (NCP), in furtherance of the draft ICC-OECD Memorandum of Understanding currently underway, with an aim to clarify the roles and relationship between NHRI's in relation to OECD National Contact Points.

Additionally, in line with commitment expressed in the Edinburgh Declaration, follow up **NHRI's Regional Workshops** on human rights and business were organized by regional groups in cooperation with the ICC and OHCHR, providing a perfect forum to share ideas and information regarding the contributions and impacts of NHRI's in specific regions, identify priority areas and potential for cross-border cooperation initiatives on issues of relevance to several countries. The presence of the members of the ICC WG allowed for additional cross-feeding of relevant information across the regions. In 2011, workshops were held by the Network of African NHRI's (<sup>49</sup>), Asia Pacific Forum of NHRI's (<sup>50</sup>) and the Network of NHRI's of the Americas (<sup>51</sup>) and in 2012 by the European Group of NHRI's (<sup>52</sup>). Each workshop has resulted in a Regional Action Plan on human rights and business, identifying key priority areas and concrete actions to be taken by NHRI's, individually and collectively.

The capacity building role of the ICC WG is difficult to be overestimated, as even two years after the Edinburgh conference, the awareness of human rights and business agenda remains relatively low, particularly among the NHRI's staff on the ground. Research suggests that this is caused by a number of factors, including the lack of internal expertise, relatively limited access to relevant materials and literature, which apart from those freely available on the Internet, are often hidden behind the database

<sup>48</sup> The core tool and draft manual are being developed by DIHR with funding from DANIDA, which supported also development of the training pilot course in 2011

<sup>49</sup> NANHRI Recommendations on the Plan of Action on Business and Human Rights, Yaounde, Cameroon, 29 September-1 October 2011, <http://nhri.ohchr.org/EN/Themes/BusinessHR/Pages/Capacity%20Building.aspx>

<sup>50</sup> Asia Pacific Regional Conference on Business and Human Rights Outcome Statement, Seoul, Korea , 11-13 October 2011, available at <http://nhri.ohchr.org/EN/Themes/BusinessHR/Pages/Capacity%20Building.aspx>

<sup>51</sup> Americas Business and Human Rights Regional Declaration and Action Plan, Antigua, Guatemala, 9-10 November 2011, available at <http://nhri.ohchr.org/EN/Themes/BusinessHR/Pages/Capacity%20Building.aspx>

<sup>52</sup> European Group of National Human Rights Institutions, Berlin Action Plan on Business and Human Rights, Berlin, Germany, 5-7 September 2012, <http://nhri.ohchr.org/EN/Themes/BusinessHR/Pages/Capacity%20Building.aspx>

pay walls out of reach for insufficiently financed NHRIs, but also, in some regions, high turnover of staff, which when leaving leaves behind the expertise gap.

While providing NHRIs with relevant materials, publications and links to other sources of expertise on business and human rights can be organized rather easily by further developing the ICC website, by making greater use of open online resources and databases or, as done e.g. during the workshop organized by APF and RWI in August 2012, by giving all participants memory sticks uploaded with a wide array of relevant documents and materials, other challenges require a more systemic approach aimed at strengthening the overall NHRIs operational and expertise capacity through adequate funding and training opportunities.

Taking into account the relatively limited engagement of the NHRIs from Eastern Partnership countries in the work of the ICC WG so far, and given that not all willing NHRIs can participate in thematic events organized on *ad hoc* basis due to financial constraints, consideration could be given to organizing relevant training/workshop on human rights and business in the margins of the annual meeting of the NHRIs from one area, or in the margins of the OSCE/ODIHR HDIM, which, as the African group experience suggests, tends to secure presence of NHRIs from the region. Additionally, better use should be made of other opportunities that bring together representatives of NHRIs (like e.g. EaP Ombudsman Summit), to conduct initial awareness-raising work that would facilitate better understanding of the human rights and business agenda and stimulate further engagement.

The research seems also to suggest that the information flow and coordination within the wider European Group of NHRIs on human rights and business issues could be improved, e.g. by pressing for establishment of the Human Rights and Business Focal Points. Efficiency of the internal information flow could also profit from review in some cases. The research seems to suggest that not always – particularly in a situation when the human rights and business agenda is deemed irrelevant in view of the traditional reading of the mandate – information about the regional or international capacity building events makes its way to the units in charge of e.g. labour law issues, equality or non-discrimination, that might find it relevant to their activities and be willing to participate and explore it more in depth.

#### **4.4 Overview of NHRIs engagement with human rights and business agenda**

As was signalled earlier in this chapter, there are a number of ways in which NHRIs can address business and human rights related issues under each of the three pillars. Some are being mentioned by the UN Guiding Principles on Business and Human Rights themselves.

In the context of Pillar I, they highlight that the Paris Principles-compliant NHRIs “have an important role to play in helping States identify what relevant laws are aligned with their human rights obligations and are being effectively enforced, and in providing guidance on human rights also to business enterprises and other non-State actors”<sup>(53)</sup>. Under Pillar II, the NHRIs are mentioned among the credible actors to be consulted by companies seeking advice on how to address best human rights risks and challenges<sup>(54)</sup>. Yet, it is the NHRIs’ contribution as a state-based non-judicial grievance mechanism, providing effective and accessible remedies for business-related harm that seemed to be envisaged by the SRSG as “particularly important”<sup>(55)</sup>. While the contribution of the NHRIs under Pillar III might be somewhat overstated, insofar as relatively few of the NHRIs have the power to issue enforceable orders, and in

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<sup>53</sup> See UN Guiding Principles, *supra* note 1, para. 3, Commentary

<sup>54</sup> *Ibid.*, para. 23, Commentary

<sup>55</sup> *Ibid.*, para. 25 and 27, Commentary

other cases the effectiveness of such mechanisms depends on the support of the executive<sup>(56)</sup>, there is no doubt that even without the mandate to take themselves decisions binding on parties in cases brought to their attention, NHRIs play an important role.

It would seem that identifying potential areas for action should not be an issue given such guidance. And indeed, workshops in Africa showed that every NHRIs represented was satisfied that they could clearly identify where they derived their mandate to address business and human rights related issues from. Increasingly, the NHRIs have started to approach the issue of business and human rights more strategically and embed it into the wider context of the agenda of their operations, e.g. the Philippines Commission on Human rights aims to include it as a thematic concern in the Updated Strategic Plan, and ensure that it also features on the agenda of the annual work planning and programming.

Yet, this is not necessarily always the case. In particular, those NHRIs that are used to work within the framework set out by a mandate defining their monitoring powers only vis-à-vis state actors, might find helpful assistance in identifying the entry points and relevance of their powers to advancement of human rights and business agenda. An important role in this context is played by the exchange of information and best practices, the development of case studies, as well as the strengthening of the individual and regional capacity in the area of human rights and business through training, and the provision of guidance and tools. While the development of universal training and tools in Business and Human Rights is currently underway, led by the Danish Institute for Human Rights on behalf of the ICC Working Group and by the Francophone Association of NHRIs, information about the best practices is rather dispersed. Therefore, Annex I to this study provides a broad selection of good practices (grouped under several headings) undertaken by NHRIs mainly in non-EU states, in order to illustrate the range of activities that NHRIs are undertaking within the context of human rights and business agenda and in order to support the implementation of the UN Guiding Principles. A number of examples from the EU region are also mentioned, as the picture of the NHRIs' activities and their potential would be incomplete without reference to at least some of them. It has to be noted however, that it is not the aim of this study to provide a full list of all relevant activities undertaken by all non-EU and EU NHRIs. Here only a brief overview of the range of NHRIs' functions on human rights and business under each of three pillars will be provided.

#### 4.4.1 State duty to protect

To support the realization of the **state duty to protect**, the NHRIs can help States and Intergovernmental Organizations identify whether relevant laws and processes (e.g. measures to regulate business, or to promote access to justice for victims of business-related abuse), are aligned with human rights standards and are being effectively enforced (e.g. Canada, Australia, Malawi, Uganda, Korea). They can also advance proposals for legal reform to promote the implementation of the Guiding Principles at a national level (e.g. Qatar, Malaysia), and support the State by providing guidance on how to respect human rights throughout their operations to not only the government, but also the public sector more broadly (e.g. Canada), business enterprises and other non-State actors (e.g. Denmark, Malaysia, Qatar, Kenya). NHRIs can monitor the consistency with the UN Guiding Principles of positions taken by governments across the domestic and international arena (e.g. public procurement, export credit supports, trade negotiations) and integrate human rights and business issues when interacting with international and regional human rights bodies and mechanisms (e.g. the Canadian Human Rights Commission, following such submissions by the Danish Institute for Human Rights and the Scottish Human Rights Commission, is planning to include relevant recommendations in its submission to the

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<sup>56</sup> Kalinde, S., Case study: Concerned Villagers around Kazilira Dambo Vs Dwangwa Cane Growers Limited, presented at the European Group of NHRIs Workshop on Business and Human Rights, Berlin, 5-7 September 2012

second round of the UPR). Furthermore, some NHRIs utilize a national inquiry process to make orders and recommendations to remedy the harm experienced as a result of human rights violations by companies and simultaneously put forward suggestions as to necessary law amendments (e.g. Kenya, India, Cambodia).

The NHRIs can also go a step further and develop the national strategy on business and human rights proposals to present to governments for consideration (e.g. Malaysia; there are also signals that French government is considering designating the French NHRI as a coordinator of the National Action Plan development process). As is the case with the European Group of NHRIs, they can also develop recommendations with regards to the process and the minimum content of the national action plans implementing the UN Guiding Principles by EU Member States.<sup>57</sup> NHRIs can also conduct research to provide ground for evidence-based recommendations (e.g. Australia examined issues of ageism and age discrimination in the workplace, Qatar focused on the conditions of labourers in the construction sector, while South Korea aims to analyse the human rights compliance of the whole business sector in Korea), or they can approach the issue of the UN Guiding Principles in all its complexity, and, undertake, just like DIHR, to conduct a national baseline study on Human Rights and Business based on the UN Guiding Principles.

#### 4.4.2 Corporate responsibility to respect

The UN Guiding Principles highlight NHRIs, among a few other actors, as providers of an independent and credible expertise, to whom business enterprises could turn for advice regarding human rights. Indeed, NHRIs can support business enterprises towards their attainment of the corporate responsibility to respect by helping them to understand their human rights responsibilities through educational, training and awareness raising activities and projects (e.g. Kenya, Australia, Qatar). Some NHRIs (e.g. Australia, Denmark, Canada) have experience in translating human rights standards into language familiar to businesses, but also of developing user-friendly guidance and tools for businesses aimed at assisting them in integrating respect for human rights into business operations. NHRIs can often investigate and report on the impact of businesses operating in, or from, the jurisdiction on the realization of human rights of communities, individuals, civil society, trade unions and other stakeholders. Some NHRIs (e.g. Malaysia), chose to encourage the better behaviour of business by establishing relevant rewards, while others chose the development of a sectoral code of conduct as way of promoting a values-driven behaviour (e.g. India).

#### 4.4.3 Access to remedy

As far as access to remedy is concerned, some NHRIs can handle complaints directed against private actors, and provide grievance mechanisms for human rights abuses relating to business conduct, or certain categories of abuses (e.g. employment discrimination or labour disputes). Where their legal mandate allows, they can act as a mediator or conciliator (e.g. Malawi, Ghana, Moldova), or represent the public interest in litigation (e.g. Canada). However, they can play an equally important role by providing information and support to alleged victims, who are seeking a remedy for human rights abuses, and facilitating access to judicial mechanisms for resolution (e.g. Bolivia, Kenya, Ukraine). For example, they can promote the awareness of avenues for redress, including judicial and non-judicial mechanisms, provide advice to the victims of human rights violations as to the legal measures they can take (without crossing the line of providing legal advice), provide processes, whether adjudicative or mediation-based, that are culturally appropriate, accessible, and expeditious, forward the petition to

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<sup>57</sup> <http://www.humanrightsbusiness.org/files/About%20us/file/EU%20NHRIs%20Paper%20on%20National%20Implementation%20Plans%20for%20UNGPs%202010612%20SHORT.pdf>

the relevant authorities or initiate the proceedings. As highlighted by SRSG, through an increased interchange of information, they could also act as lynchpins within the wider system of grievance mechanisms, linking local, national and international levels across countries and regions. Through the diligent monitoring of the incoming complaints they can also observe trends and where relevant bring them to the attention of state authorities and Parliament in their annual report (e.g. Ukraine, Armenia) or, by using the power of direct or indirect legislative initiative, suggest the introduction of relevant law amendments (e.g. Ukraine, Kenya).

NHRIs can also identify obstacles to the access to justice for the victims of human rights abuses by businesses operating in, or registered in, the national jurisdiction e.g. through public enquiries and research (e.g. India, Qatar).

Additionally, as pluralist institutions by definition, NHRIs are also well positioned to stimulate multi-stakeholder engagement on human rights and business and create platforms for dialogue (e.g. Kenya, Korea). They can also cooperate with other organizations and networks, like Global Compact local networks or UNDP, in order to improve their outreach to business audience (e.g. Australia, Germany, Denmark).

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The overview of the range of the NHRIs' functions on business and human rights presented above, as well as the cases of good practice provided in Annex I, show only a small section of the actions that NHRIs can undertake as part of their engagement with business and human rights agenda. Yet, it is enough to realize that NHRIs can help the private sector both to understand and implement human rights standards in their workplaces, business practices and supply chains, while continuing to monitor their performance and, when required, call them to account. They can also assist states and IGOs in ensuring that the legislation, policies, and enforcement mechanisms guarantee and promote a businesses' responsibility to respect for human rights.

Over the last years, many NHRIs have read anew their mandates and linked their awareness raising activities to the work already done, e.g. in the area of labour law, equal treatment or non-discrimination, while in some cases they have successfully lobbied for a broadening of their mandate or making their powers more explicit (e.g. Kenya). Currently, work is underway in Germany. In the Eastern Partnership countries, some of the NHRIs, such as the Public Defender of Georgia, are also considering undertaking efforts to have their mandates gradually extended, as e.g. the Georgia Public Defender, who would wish to see the mandate initially expanded in order to give him power to consider complaints against non-state actors at least in matters concerning equal treatment and non-discrimination<sup>58</sup>. States should be however reminded that any expansion of the NHRIs' mandates should be matched by adequate additional funding in order to allow the NHRIs to fulfil it and build the competency in the new area, without affecting its work ability in other areas.

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<sup>58</sup> Private exchange, 6 September 2012, notes on file with the author

## 5. NHRIS IN NON-EU EASTERN PARTNERSHIP COUNTRIES

Although Europe, and especially the EU pride itself as an area of respect for human rights and fundamental rights and freedoms, barely 10 out of 27 EU Member States have "A" status NHRI, and altogether only 22 NHRIs (based in 18 countries) out of 46 belonging to the European Group of NHRI pride themselves of this status (<sup>59</sup>).

Furthermore, according to the early results of the ICC Baseline Report, while respondents' NHRIs undertake a range of activities in relation to alleged human rights abuses by business, however, across identified activities, the NHRIs of fewer respondents from Europe than other regions undertake each of these activities, most likely due to more restricted mandates that those enjoyed by NHRIs in other parts of the world. Similarly, while more than half of respondents' NHRIs have direct engagement with business; this percentage is lower in case of Europe than in other regions. At the same time, European respondents reported a wide range of relevant concerns, including labour rights violations, the activities of privatised banking operations, environmental pollution and degradation, aggressive promotion of harmful products including tobacco and genetically modified products, monopolisation of commodities pricing (including medicines), seizure and depletion of natural resources, deprivation of traditional livelihoods and restricted access to information regarding business activities; and a generally high proportion of respondents from the European region reported concerns in most sectors. Additionally, four respondents from Europe indicated that the concerns related to the activities of companies locally incorporated which operate abroad, in particular in case of companies associated with the extractive and energy, and pharmaceutical and chemical sectors.

As for the Eastern Partnership countries, Armenia, Azerbaijan, Georgia and Ukraine all have status "A" NHRIs, Belarus does not have an active NHRI at all, while Moldova, despite a broad mandate, remains accredited with status "B", due to problems particularly in the context of its independency. At the same time, the political, economic and social context in which they operate makes them important actors in addressing human rights violations at home.

Table 1: NHRIs in the Non-EU Eastern Partnership Countries

Country	Name of NHRI	ICC Accreditation	National Preventive Mechanism under OP CAT	Presence of the GC Local Network (contact established)
Armenia	<u>Human Rights Defender of the Republic of Armenia</u>	A	Yes	✓ (No)
Azerbaijan	<u>Commissioner for Human Rights</u>	A	Yes	✓ (No)
Belarus	No known NHRI	-	-	✓ (-)
Georgia	<u>Office of Public Defender of Georgia</u>	A	Yes	✓ (No)
Republic of Moldova	<u>The Centre for Human Rights of Moldova (Parliamentary Advocates)</u>	B	Yes (together with the Consultative Council)	✓ (?)
Ukraine	<u>Ukrainian Parliament Commissioner for Human Rights</u>	A	No	✓ (No)

<sup>59</sup> Based on the Chart of the Status of National Institutions accredited by the ICC of National Institutions for the Promotion and Protection of Human Rights, Accreditation status as of May 2012, [http://nhri.ohchr.org/EN/Documents/Chart%20of%20the%20Status%20of%20NIs%20\(30%20May%202012\).pdf](http://nhri.ohchr.org/EN/Documents/Chart%20of%20the%20Status%20of%20NIs%20(30%20May%202012).pdf)

In terms of ratification of the key international human rights treaties, while majority of European states has ratified the International Covenant on Civil and Political, International Covenant on Economic, Social and Cultural Rights or International Convention on the Rights of the Child, more recent treaties, in particular International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, attracted hardly any ratification. This has direct impact on the national legal and institutional environment at the domestic level in the context of which NHRIs operate. The table in Annex II presents the ratification status of the key human rights treaties by Eastern Partnership states.

Despite the large amount of work to be done in the European region, it seems that some of the EU-based NHRIs find it easier to secure funding for the capacity building and awareness raising work in the developing countries, thanks to the development aid agencies' funds, while organization of similar activities in the EU or in the wider European region, seems to encounter significant difficulties in securing adequate funding, which in turn has negative impact on the internal capacity building and awareness raising activities within the European Group of NHRIs to which the NHRIs from non-EU Eastern Partnership countries belong, and their ability to participate in those scarce events that are organized. For example, representatives of only two NHRIs from non-EU Eastern Partnership countries, i.e. Ukraine and Georgia, took part in the European Group workshop on business and human rights. Financial constraints prevented at least one other institution from sending its representative, while at least one other chose not to attend most likely due to its conviction that human rights and business agenda falls outside the institution's mandate.

The human rights and business agenda in its 'modern' shape, as well as the UN Guiding Principles and their implementation, is still a rather new topic for most of the NHRIs in the region. None of the countries from the region co-sponsored the HRC Resolution 17/4 endorsing the UN Guiding Principles, and the research conducted suggests that the text of the UN Guiding Principles is not available in any of the national languages, which certainly is not conducive to serious discussion concerning their implementation. The following sub-chapters provide information on how the NHRIs can use their mandates to engage with human rights and business and how they have done it so far, provide suggestions (where relevant) on how their mandates and activity could be strengthened, and provide overview of existing cooperation between the NHRIs and the EU to provide background for discussion on how the EU can support the NHRIs in engaging with human rights and business agenda, and thus contribute to the implementation of the UN Guiding Principles in those countries. There is no intention to provide a thorough analysis of the full scope of mandate of individual NHRIs both due to space constraints, but also because this was already successfully done in the study by Kędzia and Jaraczewski<sup>(60)</sup>.

## **5.1 Armenia**

The mandate of the Human Rights Defender of the Republic of Armenia (HRD) is rooted in the Constitution (Article 38) and in the Law of the Human Rights Defender of the Republic of Armenia of 2003. The office of the HRD (HRDO) is familiar with the UN Guiding Principles, yet no Armenian translation is available and no 'direct' activities aimed at the implementation of the UN Guiding Principles were undertaken. Although HRDO was not represented in Edinburgh in 2010, or Berlin 2012, due to competing priorities and necessity to select the priority areas to be addressed within the available resources, there is an interest in participating in relevant training and capacity building programme in the area of human rights and business, as well as in engaging in exchange of experience with other NHRIs.

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<sup>60</sup> Kędzia Z. and J. Jaraczewski, *op. cit.*

HRDO does not work specifically with business actors; rather limited mandate allows for consideration of only those individual petitions lodged by physical, and – under certain conditions – legal persons, which state that a state body or agency has breached or violated person's human rights. Given the size of the public sector, some of the cases inevitably do concern also human rights and business issues and labour rights. HRDO makes also a very effective use of the existing powers, particularly in the sphere of labour and economic rights, using dual approach. On the one hand he considers individual petitions of citizens in admissible cases acting on complaints or *ex officio*, and on the other, he undertakes a number of initiatives in the field of labour and economic rights, e.g. survey on discrimination in the workplace, roundtables with minority representatives on this topic, systemic cooperates with different labour unions for protection and promotion of workers' rights etc., thus fulfilling his monitoring and awareness raising parts of the mandate.

Even though HRD cannot consider complaints directed against a company, he nevertheless may provide relief to the complainant by clarifying situation or informing him or her about the most appropriate body to turn to. He also has the authority to make public statements on gross human rights violations of any body in the country, including private businesses. Some of the around 30 statements delivered in 2011, concerned also the issues of relevance for Human Rights and Business agenda, e.g. statement concerning the deficiencies of the tender system of the Ministry of Education and Science. HRD very actively intervened with relevant state authorities, to ensure that their actions are not contrary to the state duty to protect human rights, e.g. he highlighted with the Ministry of Energy and Natural Resources shortcomings of the process of providing a licence for exploration and extraction of the lithosphere, including lack of social consultations, and pointed to the lack of a proper control over maintenance of requirements<sup>(61)</sup>. Overall HRD is also well placed to monitor legislation and present legislative proposals, initiate inspections, review laws, attend and speak at the Government session and the National Assembly session. He can provide advisory clarifications and recommendations to the bodies and the officials subject to his control, and can undertake proactive measures, such as advocacy and outreach campaigns. The Armenia's Constitution requires also that any legislative draft is sent to the Human Rights Defender for comments and recommendations. Additionally, in urgent and special cases the HRD can issue unscheduled public reports.

HRD is cooperating with various IGOs and with other NHRIs, however, the degree of activity in this area is affected by limited funding. He also signed a Memorandum of Understanding with around 80 NGOs, which resulted in the implementation of around 20 project-events with many of them. This is not to be understated, as the NGO community in Armenia is quite divided, and such initiatives play an important role in strengthening and consolidating civil society, and equipping it with relevant legal knowledge.

### 5.1.1 Potential for strengthening the mandate

Given the overall political, social and economic context of the country, that includes an oligarchic economy and polarised civil society scene, the HRD, as an independent and impartial body, plays a very important role in the society. While consideration could certainly be given to a potential extension of the mandate to allow for consideration of complaints also vis-à-vis non-state actors, the idea to which the HRDO is positively inclined impacts of such a decision on current position and capacity of HRD would need to be assessed carefully.

Already within the current mandate the HRD can stimulate the state to lead by example in aligning its own practices, also as an employer, with the UN Guiding Principles. HRD can also reach out to business, by engaging with the Global Compact Local Network in Armenia and UNDP on human rights and

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<sup>61</sup> Human Rights Defender of Armenia, Annual Report 2011, p. 131-132

business issues. While both are rather passive in this field at present (<sup>62</sup>), and it seems that there is not enough interest in the business and human rights dimension of the CSR on the side of GC member companies, nevertheless such a contact could serve in itself as part of the awareness raising, and hopefully lead to some joint, if small, projects.

### 5.1.2 Cooperation with the EU

Cooperation of EU Delegation in Armenia (EUD) with the HRD office started in 2008 when EUD committed itself to assist the HRD in setting up the national preventive mechanism on OP CAT. The HRD participates in the EU-Armenia Human rights dialogue, whose agenda covers also issues relevant from human rights and business perspective such as e.g. freedom of assembly and association, freedom of expression and information and rights of vulnerable groups. The institution also profits from financial assistance. The initial funding in 2008 was made available under the EIDHR Country Based Support Scheme (CBSS), i.e. the project "Effective protection of human rights through the Human Rights Defender's Institute as a National Preventive Mechanism in accordance with the Optional Protocol of the Convention against Torture", and since 2009 continued through Twinning contract under ENPI, aimed at contributing to the protection and promotion of human rights and the rule of law in the Republic of Armenia. Thus, by supporting the technical and organizational capacity of the HDR, EU has assisted the HRDO to develop as an independent NHRI in full accordance with the Paris Principles. From 2009, the HRDO benefits additionally from the services of a high level EU Advisory Group.

The EU and Armenia have agreed on specific objectives in an ENP Action Plan (2006), which serves as the basis for the selection of the key sectors for other programming documents for the EU assistance in Armenia. Whilst no specific funds are reserved in it for the HRDO support, it has played a central role in EU interventions in the area of democracy and human rights pinpointed in the programming documents among the priorities. And so, within the EU assistance to Armenia in 2012 and 2013, the HRDO was given an opportunity for further capacity building and development as well as for extending its presence beyond the capital of Armenia. The project "Support to 2 election cycles in Armenia", which started early 2012, is implemented by the OSCE office in Armenia with the EU funding under the ENPI (<sup>63</sup>).

Funding from the EU Member States and the creation of practice exchange opportunities can also make a difference, such as funding from the Ministry for Development Cooperation of the Netherlands, which allowed developing a training manual on "Human rights, Good Governance and the Rule of Law – Role and Relevance of the Human Rights Defender of Armenia".

## 5.2 Azerbaijan

The Constitutional Law of the Commissioner for Human Rights (The Commissioner; Article 1.1.) of the Republic of Azerbaijan defines that the office of the Commissioner "is set up to restore the human rights and freedoms enshrined in the Constitution of the Republic of Azerbaijan and in the international treaties to which the Republic of Azerbaijan is a party as well as violated by governmental and municipal bodies and officials of the Republic of Azerbaijan and to prevent violation of human rights in cases envisaged by the given Constitutional Law". Even though in the past a need was recognized for the Commissioner to be entitled to receive complaints also from those people whose rights were violated by private business sector entities, nothing seemed to have changed in this respect (<sup>64</sup>).

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<sup>62</sup> Email communication with UNDP Armenia, 8 August 2012, on file with the author

<sup>63</sup> Note: information referred to in the sub-sections devoted to cooperation with the EU was provided by the EU delegations in the Eastern Partnership countries

<sup>64</sup> Kofler, B., Azerbaijan, in: Kucsko-Stadlmayer, G. (ed.), *op. cit.*, 101-105, p. 105

Nevertheless, although the office of the Commissioner is concentrating its efforts only on government and municipal bodies, and officials of Azerbaijan (with major exceptions) (<sup>65</sup>), even under current mandate, a number of complaints considered regard the violation of such human rights of relevance to business as labour rights (in 2010, 936 complaints), or complaints concerning cases of corruption (in 2010, 1041 complaints) with regards to the services envisaged by law in various spheres of socio-economic life (e.g. provision of the documents in illegal constructions areas, registration and notary offices; seizure of different documents from housing communal facilities which no longer justify their existence as communal facilities). As a result, the citizens were provided with numerous legal advice as well as explanations of forms, ways and methods of protection of human rights and freedoms, including the application to appropriate state bodies on those issues. *The Commissioner* can also appeal to the Inspectorate in the Ministry of Labour and Social Protection to investigate labour-related cases and monitors the climate around labour issues. Thus, the Commissioner's annual reports that are submitted to the President of the Republic of Azerbaijan and presented to the Parliament reflect business and human rights concerns, such as labour law abuses or land/property rights abuses caused by commercial investments. S/he can also *inform the mass media of the results of the investigation conducted in respect of human rights violations* (Art.13 p.2).

The Commissioner can also submit motions with regard to the adoption or review of laws (although according to p.1 Article 96 of Constitution of the Azerbaijan Republic: "Right of legislative initiative", s/he cannot propose changes and amendments to national legislation) and plays an important role in recommending the ratification of international human rights treaties to the government, e.g. in 2010 the Commissioner recommended to join selected articles of the European Social Charter and to ratify the ILO Convention No.156 "Concerning Equal Opportunities and Equal Treatment for Male and Female Workers: Workers with Family Responsibilities" and "Maternity Protection Convention" No.183.

*The Commissioner's Office* also offers legal education to the public on human rights, including to company representatives, and organizes campaigns and individual events aimed to raise awareness of specific human rights issues, e.g. in 2010 awareness-raising activities on combating corruption and bribery were conducted, as well as a month-long campaign dedicated to the "Human Rights Day" and the "Year of Ecology", concluded by the VIII Baku International Conference of Ombudsmen on "Human Rights and Environment: Legal and Ethical Aspects of the Climate Change" and adoption of the Baku Declaration (<sup>66</sup>).

### 5.2.1 Potential for strengthening the mandate

Although the Commissioner's mandate, as mentioned above, could profit from some broadening, there is a question whether such additional powers would be matched by adequate funding. Given that despite being nominated as the Preventative Mechanism under OP CAT, the Commissioner was not automatically allocated adequate funds that would make carrying out its NPM mandate feasible. Thus at present one should rather emphasize the importance of the State providing adequate funding to support the Commissioner's ability to carry out the existing mandate.

Taking into account that awareness raising is this part of the mandate, which already now provides possibility to reach out to business, the Commissioner should be encouraged to seek cooperation with other actors, such as civil society organizations or the Global Compact Network Azerbaijan, launched in

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<sup>65</sup> Email communication with the Chief of Apparat, Office of the Commissioner for Human Rights of the Republic of Azerbaijan, 25 July 2012, on file with the author

<sup>66</sup> Annual Report on Provision and Protection of Human Rights and Freedoms in the Republic of Azerbaijan 2010, [http://www.ombudsman.gov.az/upload/file/Annual%20Report\\_final.doc](http://www.ombudsman.gov.az/upload/file/Annual%20Report_final.doc)

November 2011, as well as UNDP offices. Such cooperation would provide ground for developing local expertise in the human rights and business realm.

### **5.2.2 Cooperation with the EU**

Issues featuring on the business and human rights agenda are among the priorities of the Human Rights Country Strategy, with containment of informal monopolies and control of corruption being mentioned as a long-term objective. Short-term objective includes review of Competition Code and relevant business legislation – which provides further opportunity for the Commissioner to engage and ensure that revised legislation is aligned with the UN Guiding Principles. The EU Delegation also holds regular meetings with Human Rights Defenders, which provide forum in which issue of human rights and business, or more specifically implementation of the UN Guiding Principles could be raised.

The EU Delegation is in regular contact with the Commissioner, whom it supports in a number of ways, including under the Twinning Light project "Support to the enhancement of the capacity of the Ombudsman administration and to the development of awareness on Human Rights and Discrimination", which included also an anti-discrimination component. In October 2011, the seminar "Strengthening the capacities of Ombudsman regional offices", financed via TAIEX, was held in Azerbaijan. The Commissioner's Office is also a beneficiary of the Comprehensive Institution Building (CIB) programme, and thus likely to receive support from the EU in 2013 or 2014, although the exact focus of this funding is still to be defined.

The Commissioner has also built collaborative relations with various international organizations in the country and abroad, including UN and its agencies, Council of Europe, OSCE, European Union and others, to get acquainted with the work of other NHRIs, apply this knowledge in their own work and to share their experience, although it does not seem that human rights and business ever featured on their respective agendas.

### **5.3 Belarus**

There is no established NHRI in Belarus, and given the political context it is not likely that anything will change in the near future. However, there are established links between the higher education institutions and academic institutions in the EU countries that could create a base for awareness raising activities. Also the Global Compact Local Network Belarus, despite being rather passive, might offer some starting point to raise human rights as part of the Corporate Social Responsibility agenda.

Business and human rights do not figure as such in the Belarus Human Rights Strategy, nevertheless the Strategy does mention the restrictive conditions under which Trade Unions are operating in Belarus and the need to promote trade union freedom and freedom of association in Belarus. The ILO has been monitoring the situation, but no progress could be observed so far.

### **5.4 Georgia**

The institution of the Public Defender of Georgia was established in 1996, under the Organic Law on the Public Defender (the OL). The office of the Public Defender is familiar with the UN Guiding Principles and the Deputy Public Defender participated in Edinburgh Conference in 2010. Although no specific actions have been undertaken so far to support implementation of the UN Guiding Principles in Georgia, mainly due to limited staff and more burning issues such as fight against torture, the participation of the Public Defender in recent workshop in Berlin in 2012, seems to suggest a growing interest in the human rights and business agenda.

While the scope of Public Defender's control extends not only to the activities of state bodies, local administrations and officials but also to legal entities (Art. 3 (2) of the OL), when it comes to receiving

complaints and applications concerning alleged violations of any rights and freedoms guaranteed by the Georgian Constitution and by law, as well as by the ratified international treaties and agreements, in accordance with Art. 13 of the OL, the Public Defender does not have jurisdiction on companies and private entities, and can investigate only those applications and complaints that may have resulted as a consequence of the actions or acts of State or local self-government bodies, public entities and officials. However, such a complaint may come not only from individuals but also legal entities of private law, and since the state is also an employer in the country the Public Defender's mandate it also covers issues of employment, albeit only in the public sector. Furthermore, according to the Article 21 of the OL, proceeding from the findings of the examination, the Public Defender is authorized *inter alia* to submit proposals, comments or recommendations on Georgian legislation or draft laws to the Parliament or any other relevant body with the aim of ensuring observance of human rights and freedoms, and he is making use of this power on regular basis. He can submit to the relevant authorities' proposals on disciplinary or administrative measures against employees responsible for the violation of human rights and freedoms, and in particular cases exercise the *Amicus Curiae* function in Common Courts and the Constitutional Court of Georgia, although all within the limit provided by the correlated provisions. A further task of the Public Defender, in accordance with Article 3(3) of the OL, is also mandated to lead information and education of the population in the field of human rights, and indeed, he carries out a number of human rights awareness raising campaigns, participates in round tables, conferences, delivers speeches etc. However, none of the educational campaigns has been directed towards the private sector, or was related to human rights and business.

Nevertheless, although no activities so far took place under the human rights and business heading, the Annual Reports of the Public Defender leave no doubt that issues falling within the scope of this agenda, do feature in his work, e.g. rights of peoples with disabilities, rights of the consumers – Food Safety, or, the compliance with human rights, and in particular prohibition of discrimination of the regulations concerning a new system of private health insurance.

#### 5.4.1 Potential for strengthening the mandate

Given Georgia's neo-libertarian policy and legislation aimed to attract Foreign Direct Investment the question of the adherence of the business sector to human rights is of special importance. Reminding the business sector of the overall obligations to adhere to international human rights standard (esp. in labour legislation and regulations and environmental legislation) might be thus short-sightedly perceived by the state authorities as not conducive for such a policy. The bigger therefore importance of ensuring that the companies headquartered/incorporated in the EU but investing abroad, do respect human rights and are bound to ensure human rights due diligence.<sup>67</sup>

Given the current limited mandate with regards to handling complaints against non-state actors, there is an interest and willingness on the side of the Public Defender to recommend broadening of his mandate so as to handle complaints against the companies, even if at the beginning only with regards to narrow set of rights, relating to equal treatment and non-discrimination<sup>(68)</sup>. There is also recognized need for capacity building in the area of human rights and business, acknowledged by the Public Defender, and matched by an interest and willingness to participate in a dedicated training for NHRIs on Business and Human Rights, should such be available.

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<sup>67</sup> See e.g. The University of Edinburgh, "Study of the Legal Framework on Human Rights and the Environment Applicable to European Enterprises Operating Outside the European Union", 2010, which seeks to clarify the existing legal framework for human rights and environmental issues applicable to European enterprises operating outside the EU.

<sup>68</sup> Private exchange, 6 September 2012, notes on file with the author

Given existing powers, apart from continuing Public Defender's current work, whilst highlighting the business related aspects of it, consideration could also be given to cooperation with UNDP and GC Network Georgia, with the latter undertaking efforts to promote the CSR concept in Georgia through targeted events (<sup>69</sup>), to reach out with human rights and business awareness raising and educational activities to other stakeholders.

#### 5.4.2 Cooperation with the EU

There is a regular Human Rights Dialogue with civil society preceding the official EU – Georgia Human Rights Dialogue. While human rights and business nexus was not raised in this context, the issues falling within its ambit were discussed, e.g. in 2009, the freedom of media and IDP rights, and Georgia's compliance and implementation of international labour standards set by ILO. Similarly, social and economic rights, and, in particular the compliance of the Georgian Labour Code with ILO core conventions, feature among priorities in the EU Georgia Human Rights Country Strategy. The preferential trade treatment to Georgia under GSP+ also requires compliance with core ILO conventions, and the EU is ready to provide further technical assistance to Georgia to comply with those conventions in the future. EU grants are also complementing the European Bank for Reconstruction and Development (EBRD)-funded energy and infrastructure projects and also cover environmental and social impact assessments. The EU Delegation to Georgia also has an EU liaison officer and a Human Rights Focal point in its Operation section that is following on individual cases of human rights violations, cooperation with whom might support Public Defender's own work.

The EU supported the Public Defender's office also financially. This took the form of the project "Support to NHRI: Public Defender Office" carried between 2008 and 2011, which provided significant funds for Technical Assistance and Supplies (vehicles, refurbishment, office equipment) to strengthen monitoring capacities of Public Defender's Office with improved annual PDO reports, to improve institutional capacity and to raise public awareness on Rule of Law and Human Rights in Georgia. This support is to be continued in the future under the Comprehensive Institution Building programme, where currently a package of support of approx. €1.2 million is being prepared, for institutional strengthening of the Public Defender Office. Support is also given, via EIDHR, to strengthening of other non-state actors. Under the "Non-State Actors" local programme a project "Promoting Social Dialogue in Georgia" implemented by the German Friedrich Ebert Foundation was funded (completed in January 2012) and targeted at trade unions and employer associations organized in the Georgian Trade Unions Confederation (GTUC) and the Georgian Employer Association (GEA). Some of the training opportunities and other activities focused additionally on selected companies, their employers and their organized employees for setting up mechanisms of Social Dialogue on the enterprise level. Final beneficiaries are the approx. 600.000 hired employees working in private companies or public agencies as well as their employers. Ensuring Public Defender's participation in similar projects in the future should be encouraged and provided for.

### 5.5 Moldova

In line with the Law No 1349-XII on Parliamentary Advocates, promulgated by Presidential Decree No. 381-II-28/11/1997 ('the Law', with further amendments), the three Parliamentary Advocates established by the Law are equally responsible for guaranteeing the respect of constitutional human rights and freedoms by local and national administrative bodies, institutions, organisations and public enterprises, as well as public associations and officials at all levels. They run a Centre

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<sup>69</sup> Email communication with the GC Network Georgia's Focal Point, 8 August 2012, on file with the author

for Human Rights in Moldova (CHRM), which is responsible, among other things, for publishing an annual report on the activities of the Advocates.

The mandate of the Advocates is very broad, and, as mentioned, extends also to actions by organizations and enterprises irrespective of the type of ownership or public associations. Only the laws and decisions approved by Parliament, decrees of the President, decisions and orders of the government, and complaints to be considered by the courts are excluded from the control of the Advocates. To compensate it, the Advocates have the authority to petition Constitutional court asking to examine the constitutionality of the complete laws or their parts that according to them violate certain rights of the citizens guaranteed by the national Constitution. Due to the fact that only limited number of state agencies was vested with this right, the Advocates have a unique opportunity to get unconstitutional law that violate constitutional rights cancelled or amended.

The broad scope of control is matched by the broad powers also vis-à-vis business enterprises. The Advocates have, *inter alia*:

- right to freely visit all bodies and institutions subject to their control (annual reports provide examples of such visits to the enterprises),
- right to obtain any data, documents or any other material necessary for the examination of the complaint including explanations from officials,
- to be provided with full support by all authorities, which allows them to delegate the performing of special investigations and of preparing final reports as they deem necessary. Even courts are subject to a general duty to assist the Advocates in verifying a case,
- ‘priority’ right to be received by any state or non-state institution, organization or enterprise.

The Advocates can receive complaints from any individuals whose rights have been infringed in Moldova, also against companies. After their consideration they can choose to inform the complainant what mechanisms and procedures are available, refer the complaint to respective institution for examination or simply reject it. The Annual Reports provide a number of examples of the Advocates making use of those powers. They can also act on their own initiative, and in special cases, recommend that the Parliament creates investigatory committee to investigate cases of gross or widespread human rights violations. A special free hotline giving legal assistance to those who call operates since 2004.

The Advocates can also serve as a mediator, and work towards reconciliation of parties by seeking a mutually acceptable solution. Such a process can result in the signing of a respective agreement. Otherwise, the investigation ends with a statement/report as to whether violation of a right took place, which can include recommendations as to immediate actions to be undertaken to provide redress. The Advocates are to be informed in writing within one month about actions undertaken in response to their statement/report. They can also make recommendations concerning addressing unwelcomed trends identified in the course of their activity (e.g. not timely payment of salaries), and are mandated to organize public education initiatives and provide information to the public in the field of protection of human rights.

### 5.5.1 Potential for strengthening the mandate

The Advocates did not participate in the Berlin Workshop in 2012 and nothing in the reports suggests that they have undertaken any actions aimed at supporting the implementation of the UN Guiding Principles. However, with annual reports devoting much of the attention to economic and social rights, this might suggest that for the Advocates, human rights and business agenda should be easy to relate to.

The functions and significant possibilities that are granted to the Advocates, one of the two widest mandates, next to Ukraine, of all NHRIs from EaP countries, which could make the institution extremely potential and efficient, also with regards to human rights and business agenda, seem to be underused. As the analysis of the annual reports suggests, and ICC accreditation status confirms, there are still certain objective and subjective obstacles that do not ensure institution's independence. This affects the Advocates ability to perform their functions efficiently and to improve overall respect for human rights in the country. Therefore, as a priority, steps should be undertaken to enshrine the status of the Advocates institution in the Constitution in order to reinforce its independence, and increase both its overall and human rights and business capacity. Ensuring adequate means and resources needed to carry out the Advocates' various tasks is also of utmost importance.

At the initial stage attention should be also paid to engaging in awareness raising activities with regard to human rights and business and targeted at business enterprises. Cooperation potential with the GC local network, unfortunately rather dormant, could be explored.

### 5.5.2 Cooperation with the EU

Cooperation with the EU has taken place since 2009, at first in the form of an ad-hoc project implemented with the Council of Europe to strengthen the Ombudsman and the NPM. Consequently, it took the form of a structured Human Rights dialogue with the Moldovan government, to which these institutions contribute. The EEAS and the Moldovan Government organise once a year a conference in Moldova on human rights issues, which in 2011 focused on the fight against discrimination and in 2012 on the fight against impunity. Given that business and human rights related issues feature among priorities of the Human Rights Country Strategies for the Republic of Moldova, consideration could be given to devoting one of the future conferences to those issues.

So far, two projects have been implemented with EU support, one on strengthening the capacity of the Institute of Parliamentary Advocates (Ombudsman) of Moldova and assisting with the review of the legal framework of the institution under the Instrument for Stability, and one on Support to Strengthening the National Preventive Mechanism as per OPCAT provisions under the EIDHR Country Based Support Scheme (CBSS). The EU has earmarked €68 million under the ENPI to help Moldova reform its justice and law enforcement systems, and support to the Ombudsman will feature in that context. In addition, the ombudsman institution has been included in the list of institutions to benefit from the CIB Programme for the Republic of Moldova under the Eastern Partnership in 2010-2013.

## 5.6 Ukraine

Ukrainian Parliament Commissioner for Human Rights (The Commissioner) is the Ukraine's NHRM with a general mandate. The Commissioner's activities are governed by the 1996 Constitution and the Law of Ukraine on the Ukrainian Parliament Commissioner for Human Rights of 1997 (the Law).

At the first look, in line with Article 2 of the Law, which provides that the scope of its application extends to relations emerging from the implementation of human and citizens' rights and freedoms exclusively between an individual and bodies of state power and local self-government, their officials and officers, one has to state that the mandate of the Commissioner does not apply to relationships that arise between citizens and non-governmental (private) actors (<sup>70</sup>). However, even if the Commissioner is not authorized to take binding decisions in case of complaints lodged directly against private companies, this is not to say that s/he does not engage with business related human rights abuses. The

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<sup>70</sup> Written communication from Representative of the Commissioner, Head of the Department for Rights in the Sphere of Constitutional and Administrative Law, No. 11/9 – N2005-12-25, 10 September 2012, on file with the author

Commissioner receives the petitions (from citizens, foreigners, stateless persons) containing reports of human rights violations committed by enterprises and other non-governmental institutions. In 2010, 378 petitions were received, in 2011, 434, and in 2012 (as of 3 September 2012) 367 petitions, thus we can observe an upward trend, which indicates a growing recognition of the mechanism. Following thorough consideration of such petitions, and ensuring that they are not beyond the Commissioner's competence, the Commissioner either provides petitioners with advice on measures to be taken in order to protect and restore their rights, or submits their complaints directly to the relevant authority competent to consider the case. In some instances the Commissioner takes the decision to initiate proceeding itself. In the course of consideration of the complaint but also acting on its own initiative, the Commissioner has power to conduct investigations, also with regards to enterprises. In line with the Article 13, 14 and 15 of the Law, the Commissioner can exercise numerous rights vis-à-vis associations of citizens, enterprises, institutions and organizations, irrespective of their forms of ownership. According to Article 13, the Commissioner has the right to visit them without hindrance, and be present at their sessions (Art. 13.4). S/he can read documents, including classified (secret) ones and obtain their copies, including with respect to cases which have been filed in court (Art. 13.5). S/he can demand facilitation in conducting acts of inspection regarding their activity and ensuring that experts participate in acts of inspection, providing their expertise and respective conclusions (Art. 13.6). The Commissioner has also certain rights towards the judiciary, for example, to appeal to the court about protecting human and citizens' rights and freedoms of persons, who cannot do this on their own due to reasons of health or any other appropriate reason. S/he can also attend judicial proceedings personally or through a delegate in accordance with the instances and procedure established by law (Art. 13.10). Since 2008, the Commissioner exercises also control over the ensuring of equal rights and opportunities for women and men. (Law No.274-VI of 15 April 2008). In line with Article 15 the acts concerning the response of the Commissioner to acts of violation against regulations of national law and international human rights standards, are 'acts of submission' and can be issued also to associations of citizens, enterprises, institutions and organizations, irrespective of their forms of ownership, and their officials and officers. Any refusal to cooperate or the deliberate concealment of information or provision of false information shall incur liability, and the Commissioner can himself impose a fine in line with the Code of Administrative Infringements (Art. 188/19)<sup>(71)</sup>. Additionally, if the Commissioner confirms that violation of human rights took place, s/he can address the enterprises formally in writing for the purpose of assuming, within the period of one month, respective measures aimed at the elimination of uncovered acts of violation against human and citizens' rights and freedoms.

Analysing the petitions allows the Commissioner also to identify specific trends, as was the case e.g. with regards to significant violations of the right to work because of the illegal dismissal of citizens. To facilitate further examination of the compliance of the employers with labour legislation, the Commissioner entered into cooperation on the basis of relevant Agreement with the Federation of Trade Unions of Ukraine. That resulted in cooperation and joint research with member-organizations of the Federation, findings of which identified the most typical violations of the labour law provisions, such as, unlawful dismissal or transfer of employees, insufficient or untimely wages payment, breach of working time and rest regime, failure to pay benefits and compensations provided by law, unlawful employment of women and minors, etc. The research confirmed also the imperfection of pre-trial mechanisms of resolving individual labour disputes. Additionally, in order to assist the employees in situations of human rights violations, the Commissioner cooperates with the prosecution authorities and the State Inspection of Ukraine on Labour Issues.

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<sup>71</sup> Kucsko-Stadlmayer, G. (ed.), *op. cit.*, p. 429

The Commissioner, who in line with the Article 18 of the Law has the duty to provide the Parliament of Ukraine with an Annual Report on the situation with the observance and protection of human and citizen's rights and freedoms, can also use this opportunity to bring the attention to negative trends occurring both in the public and private sectors. In the report, particular attention is paid to the protection of social and economic rights, especially the labour rights, the right to land title, the right to a safe and healthy environment, all of which feature high also on the human rights and business agenda. The monitoring conducted by the Commissioner has shown a high problem with observance of the aforementioned rights in both public and private sectors.

Furthermore, the Commissioner can attend parliamentary sessions at any time and suggest the amendment and enactment of laws. S/he also has the duty to encourage legal knowledge among the population, and to improve and further develop international cooperation, to prevent any forms of discrimination with regard to the implementation of human rights. The Commissioner participates also in the preparations of reports to the UN treaty bodies.

In July 2012, in conformity with Article 10 of the Law, the Advisory Council to the Ukrainian Parliament Commissioner for Human Rights was established with the purpose of rendering advisory support to the Commissioner, conducting scientific researches, and also consideration of suggestions concerning the improvement of the state of protection of human rights and fundamental freedoms by means of an effective use of the civil society institutions potential (<sup>72</sup>). The Council comprises the Commissioner him/herself, representatives of international, nongovernmental and trade-union organizations, mass media, civic activists and specialists, which have an experience in the field of defence of human rights and freedoms. Given its composition, it seems particularly well suited to provide advice to the Commissioner also on issues concerning the human rights and business.

### 5.6.1 Potential for strengthening the mandate

Given the already broad mandate of the Commissioner, and taking account of the wider context, including the relatively low level of legal awareness, people's distrust to the judiciary, limited ability of the relevant state authorities, such as the Inspection on Labour Issues, to carry out effective control over observance of relevant legislation because of the lack of staff, and at times actions undertaken by the employers to hinder adequate inspections, it seems that there is no need to adjust the mandate of the Commissioner. Additionally, the fact that despite the ratification of the OP CAT in 2006 there is still no NPM established, while in the region such a mandate is usually assigned to the NHRIs, suggests that the administration is not too prone to expanding the scope of the Commissioners mandate. Therefore, provision of a financial and capacity building support to the Commissioner institution, to enhance its overall capacity and make most efficient use of the current mandate seems to be of primary importance. Special attention should be also given to making full use of the Advisory Council's potential to explore in detail how implementation of the UN Guiding Principles could be advanced in Ukraine.

At the same time, the Commissioner institution should be provided with opportunities to build its own capacity in the area of human rights and business. It could be also encouraged to explore cooperation possibility not only with intergovernmental institutions and structures, but also the locally based offices of the UNDP or EU Delegation, and the local UN Global Compact Network. So far, no cooperation between the Commissioner's office and the UN Global Compact Network Ukraine (coordinator support provided by the UN Office in Ukraine) took place. Yet, given that the GC Network in Ukraine has been undertaking activities to raise awareness of the private sector in the area of human rights (ca. 2008 a training was conducted with the DIHR on the self assessment tool for companies and consequently a

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<sup>72</sup> <http://www.theioi.org/news/ukraine-advisory-council-to-the-parliament-commissioner-for-human-rights-was-created>

'Declaration of support for human rights' was published in one of the major newspapers in Ukraine), there is a potential for such interaction. In particular that, subject to available funding, the GC Network is planning to organize another related (3R) training this year (<sup>73</sup>). Certainly activity of this type would easily fall under the educational mandate of the Commissioner.

While there are no clear signs that either state administration or the Commissioner engage actively with the UN Guiding Principles, the participation of the representative of the Commissioner office in the European Group of NHRIs workshop in Berlin, suggests that this institution considers possibility of engaging more consciously with Human rights and business agenda.

### 5.6.2 Cooperation with the EU

The Commissioner is a participant in the EU-Ukraine Justice and Home Affairs Subcommittee, which dedicates a full day to Human Rights and Democracy issues and in 2011 provided an opportunity to discuss the general framework for the protection of human rights in the EU and Ukraine. The EU indicated readiness to continue to closely cooperate with Ukraine in addressing issues related to economic and social rights, both through its various assistance projects and the exchange of best practices in fighting poverty and curbing inequality. The EU Delegation is in close contact with the Commissioner's Office and ensures follow-up in between the meetings of the Subcommittee or dialogue with the Office pending developments. At present business and human rights do not feature among the priorities identified in the Ukraine Human Rights Strategy, and no specific projects with NHRIs in this area were undertaken. There was also no specific programme for capacity building of the Commissioners office. Nevertheless, some activities related to the implementation of the law on data protection have taken place under a joint project with Council of Europe (Promotion of European Standards in the Ukrainian Media Environment), including a study visit, which provided one of the first capacity-building type activities for a recently appointed Special Representative of the Commissioner on Information and Data Protection issues.

### 5.7 Conclusions

Although the mandates of all of the NHRIs in EaP countries do provide space for active engagement with human rights and business agenda, a lack of capacity in this area, in terms of expertise, staffing and funding, has been identified as a key challenge to ensuring the NHRIs involvement and support with regards to the implementation of the UN Guiding Principles. This reflects the wider situation, highlighted both in the SRSG's 'Recommendations on Follow Up to the Mandate' (<sup>74</sup>) and the UN Secretary General report A/HRC/21/21, which stressed the 'lack of capacity among States, business enterprises, national human rights institutions and other actors in the area of business and human rights [...]is] a key challenge to ensuring the implementation of the Guiding Principles in practice.'

Mandates of individual NHRIs in the region vary significantly as far as the 'access to remedy' is concerned. Some NHRIs have no power to adjudicate complaints against companies and has to limit their activity to providing advise to complainants as to what they can do themselves, while others are in position to consider such complaints and undertake concrete actions. In some cases broadening of the mandate is an area in which EU could try to support local NHRIs, in others such a move is neither expected nor welcomed, for reasons specific to that country. On the other hand in most states there exists an institution of labour inspectorate that is supposed to monitor the situation in the private sector and act on complaints. Although their effectiveness vary, this is not a legitimate reason to transfer its

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<sup>73</sup> Email communication with the UN Global Compact Network Ukraine Coordinator, 27 August 2012, on file with author

<sup>74</sup> See SRSG, Recommendations on the Follow-up to the Mandate, 11 February 2011, <http://www.business-humanrights.org/media/documents/ruggie/ruggie-special-mandate-follow-up-11-feb-2011.pdf>

tasks to NHRIs, particularly, that as seen in case of Azerbaijan – adding new competencies/broadening of the mandate is not always automatically accompanied by the provision of adequate financial resources. As a result, new competencies can be underused, while earlier areas of activity are affected by more constrained resources. Furthermore, the EU lobbying for broadening of the mandates of the non-EU NHRIs to ensure that they can handle complaints against all types of corporations and against all types of human rights abuses, would not be supported by many examples from the EU area, as barely 10 countries have Paris Principles-compliant NHRIs, and hardly any of them have such powers.

Instead, more pressure should be exerted on the authorities of the relevant states and support provided to NHRIs to ensure their compliance with Paris Principles where it is lacking (Moldova), enhance their capacity and expertise and strengthen their position in the national human rights protection architecture. This can be done, as already tested, through e.g. provision of adequate funding or projects like the Cooperation of the Eastern Partnership Ombudsman coordinated by the Polish Ombudsman and French Mediator. The latter seems to be broadly appreciated in the region for creating the opportunity for knowledge and good practice exchange, which in turn inspire transplantation of the successful and tested solutions and practices to other countries. Case of Armenia and Georgia show how EU funding aimed at the NHRIs can bring significant results, not only in terms of strengthening of a single NHRI but also strengthening of the whole human rights architecture in the country, including the civil society.

Cooperation between NHRIs and EU Delegations should be continued, or, where relevant intensified. Particular attention should be given to incorporating human rights and business agenda into its framework, particularly where human rights and business issues feature among priority areas in the Country Human Rights Strategy. Human rights and business aspects should be also incorporated by the EU into the human rights dialogues and seminars with civil society but also into the formal political and human rights dialogue with the governments in those countries. This would create space for such a discourse among all stakeholders and sectors, making the issue of human rights and UN Guiding Principles implementation a legitimate topic for discussion. By strategically involving the NHRIs in such dialogues and other discussion fora, the EU would help to support their role as a knowledgeable partner and enhance their recognition by state and civil society actors.

Given that both UNDP and GC Local Networks are present in all countries of the region, NHRIs could also explore potential for cooperation with them on business and human rights issues, particularly that, as pointed by the UN Secretary General in his report A/HRC/21/21 (para. 47), ‘the UNDP programmes focused on governance of the private sector, sustainable business and legal empowerment for the poor provide entry points for building the capacity of stakeholders to implement the UN Guiding Principles.’

## 6. ROLE OF THE EU IN SUPPORTING THE NHRIS

The EU, in line with the Treaty of the European Union and the *EU Strategic Framework on Human Rights and Democracy*, is founded on a shared determination to promote peace and stability and to build a world founded on respect for human rights, democracy and the rule of law, and these principles underpin all aspects of the internal and external policies of the European Union<sup>(75)</sup>. To achieve those goals, the EU undertakes actions on its own, and provides support to the international and regional mechanisms of human rights protection, but where possible also aims to contribute to strengthening the national systems of human rights protection in the third countries, including through supporting the development and operation of the national human rights protection architecture<sup>(76)</sup> with special attention being paid to countries covered by the European Neighbourhood Policy (ENP).

The EU supported the endorsement of the Guiding Principles in June 2011, and consequently undertook a number of steps aimed at advancing the business and human rights agenda, having come to realise that results of their implementation will contribute to EU objectives regarding human rights issues and core labour standards, but also will advance its general foreign policy objectives. The 2011 European Commission Communication on Corporate Social Responsibility (CSR)<sup>(77)</sup> was followed by the Joint Communication of the European Commission and EU High Representative for Foreign Affairs and Security Policy 'Human Rights and democracy at the heart of EU external action – Towards a more effective approach'. Consequently, in the EU Strategic Framework and Action Plan on Human Rights and Democracy, adopted in June 2012, the Foreign Affairs Council of the European Union pointed out to human rights and business as one of the strategic areas, in which it aims to undertake actions aimed at improving human rights observance worldwide<sup>(78)</sup>. The Action Plan enjoined the EU Member States to develop in 2013 national plans for the implementation of the UN Guiding Principles, and compelled the European Commission to ensure implementation of the Commission Communication on CSR, particularly by developing and disseminating human rights guidance for three business sectors (ICT; oil and gas; employment and recruitment agencies), and for small and medium-sized enterprises, and to publish a report on EU priorities for the effective implementation of the UN Guiding Principles by end of 2012. Those actions were further complemented by the creation of the EU Special Representative on Human Rights, whose mandate allows for cooperation also with business actors<sup>(79)</sup>.

Of those documents, it is the EC Communication on CSR and the commitment by Member States to develop National Action Plans that seem to carry the biggest weight and potential. The former because the new definition of CSR, aligned with the UN Guiding Principles, redefines the understanding of the CSR in Europe and distinguishes between CSR as a management strategy ('how') and human rights and values that provide the content ('what') that such strategy should implement. But also because of undertaking a number of concrete actions that will support the implementation of the UN Guiding Principles not only in the EU but also more globally (e.g. the sectoral guidance projects) and considering introduction of the new regulation to stimulate more strategic and core-activity-related business approach to respect for human rights (e.g. public procurement, non-financial reporting). The

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<sup>75</sup> Article 21 of the Treaty of the European Union (TEU); Council of the European Union, EU Strategic Framework and Action Plan on Human Rights and Democracy, Luxembourg, 25 June 2012, 11855/12

<sup>76</sup> E.g. EIDHR Strategy Paper 2007-2010 identified creation of ombudsman, as one of its desirable outcomes. European Instrument for Democracy and Human Rights (EIDHR) Strategy Paper 2007-2010; DG RELEX/B/1/ JVK 70618, para. 76.IV

<sup>77</sup> European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A renewed strategy 2011-2014 for Corporate Social Responsibility, COM(2011) 681 final, Brussels, 25 October 2011

<sup>78</sup> *Ibid.*

<sup>79</sup> Council Decision 2012/440/CFSP of 25 July 2012 appointing the EU Special Representative for Human Rights

commitment of the Member States is important in that it looks at the implementation of the UN Guiding Principles directly at the national level.

Other documents such as e.g. Joint Communication "A New Response to a Changing Neighbourhood, A Review of the European Neighbourhood Policy" (COM(2011) 303, 25 May 2011), which foresees *inter alia* strengthening of the Eastern Partnership, and the EC Communication "Increasing the impact of EU Development Policy: an Agenda for Change" (COM(2011) 637, 13 October 2011), have also provided links between human rights and support available.

The European Parliament deserves credit for consistently raising CSR and Human Rights and Business concerns in its deliberations and resolutions, continued efforts to make EU support and cooperation, including in the framework of e.g. trade policy, conditional on respect for human rights, and reminding the high officials of the EU, such as EUSR on Human Rights to place human rights issues high on their agenda and engage in the promotion of the UN Guiding Principles on Business and Human Rights. It is in order to provide a base for further relevant policy discussions and recommendations, that the European Parliament, mindful of the fact that implementation of the UN Guiding Principles to be successful does require involvement of all actors, including NHRIs, has decided to commission an analysis aimed to facilitate this process within the Parliament.

While leading by example and undertaking concrete steps internally at the national and EU level, the EU is also in a position to actively support the implementation of the UN Guiding Principles in the third countries, not least through providing support aimed to strengthen and increase merit capacity of the NHRIs. It can do so by raising the business and human rights agenda at the political level, but also by providing financial support to the NHRIs, directly or indirectly, simultaneously enhancing the linkages between the NHRIs and e.g. CSOs/NGOs.

## **6.1 Supporting the NHRIs in increasing their capacity in the area of human rights and business**

### **6.1.1 Capacity Building-oriented cooperation and funding**

In terms of capacity building in the area of Human Rights and business, special focus should be given to **supporting training of the NHRIs** in the EaP region, as the absence of the adequate Human rights and business training means that their engagement is at times limited.

The ICC WG on HR&B seems to be best suited partner in this context to ensure a coherent approach across the globe, thus avoiding the risk stemming from incoherence and fragmentation in interpretation and divergence of understanding to which the implementation of the UN Guiding Principles can easily fall prey, despite guidance efforts of the UN Working Group. Regional specifics could be addressed by acting in cooperation with the European Group of NHRIs. However its effectiveness depends on the availability of adequate funding.

Bearing in mind that any implementation efforts regarding international documents like UN Guiding Principles have to start from translating it into the national language to make it accessible to wider society and facilitate the discussion, attention could be given to ensuring the **translation** of the 35-pages-long text of **the UN Guiding Principles** on Business and Human Rights into all EU official languages, and additionally those of the Eastern Partnership countries. This would allow not only the NHRIs but also all stakeholders and general public to familiarize itself with the document, that due to language barrier and despite many discussions at the EU and other international fora, remains until now inaccessible to many. It would provide also the NHRIs from the region with very tangible tool that would assist them in raising awareness and helping to implement the UN Guiding Principles at the national level.

## **Eastern Partnership**

The Eastern Partnership (EaP), launched in May 2009 with the goal of tightening the relationship between the EU and the Eastern partners by deepening their political co-operation and economic integration<sup>(80)</sup>, provides the framework for cooperation with NHRIs from Eastern Partnership Countries. Support to the EaP NHRIs institutions is provided in the framework of the multilateral track of the “**Eastern Partnership Roadmap**”<sup>(81)</sup>. Although the EaP works in the framework of the European Neighbourhood Policy (ENP), it goes beyond the original ENP package as it deepens bilateral co-operation, and introduces new mechanisms for regional co-operation, fostering co-operation not only between the EU and all the partner states, but also between the partner states themselves. While the bilateral track of the EaP provides framework for Association Agreements and Deep and Comprehensive Free Trade Areas and introduces Comprehensive Institution Building Programmes, which are intended to enhance the capabilities of the partner states' public institutions, the multilateral track aims to advance partner countries' legislative and regulatory approximation to the EU *acqui* through exchanges of information, experiences and best practices. In parallel to governments' cooperation, the Eastern Partnership engages also with other stakeholders, and to that end has established the EaP Civil Society Forum, The EURONEST Parliamentary Assembly and the Conference of Regional and Local Authorities of the Eastern Partnership.

## **Council of Europe Eastern Partnership Facility**

Activities aimed to strengthen the NHRIs have been also undertaken in the framework of the EU-funded and implemented by the Council of Europe, Council of Europe Eastern Partnership Facility, launched in May 2011. Facility's Platform on Democracy, Good Governance and Stability and related Panels, are aimed at enhancing support to foster human rights and democratic values in the region by helping partners to improve their compliance with European standards in the field of elections, judicial reform and the fight against corruption as well as enhancing capacities for tackling cyber-crime.

## **Twinning and TAIEX programmes**

NHRIs can benefit from EU technical assistance programmes such as TAIEX or Twinning under the ENPI. Twinning and TAIEX projects aim at improving capabilities of public administrations in the Partner countries. Since the launch of the Eastern Partnership the funds for improving administrative capacities in Partner states have been increased to €175m over the period 2010-2013 (the ‘Comprehensive Institution Building’ programmes). Since the administrations of EU member states are key players in implementing the projects, there will be high demand for the participation of EU Member States’ institutions in these kind of projects, which might provide for greater possibility of involvement of the NHRIs.

## **European Instrument for Democracy and Human Rights**

In general, funding is available for NHRIs in the framework of bilateral cooperation, under the ENPI, and additionally under the European Instrument for Democracy and Human Rights (EIDHR).

Although the EIDHR, the financial instrument complementary in nature to geographical and thematic EU programmes offering assistance, aims to provide support for the promotion of democracy and human rights in non-EU countries and is oriented predominantly at supporting the civil society

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<sup>80</sup> For detailed information consult: <http://www.easternpartnership.org/>

<sup>81</sup> Joint Communication of the European Commission and High Representative of the European Union for Foreign Affairs and Security Policy to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Eastern Partnership: A Roadmap to the autumn 2013 Summit, Brussels, 15.5.2012, JOIN(2012) 13 final

organizations, the NHRIs are eligible as applicant under the EIDHR country-based support schemes (EIDHR-CBSS) guidelines published. EIDHR-CBSS are managed at country level by the EU Delegations. For example, a capacity building programme was implemented in Armenia since 2008 under the EIDHR CBSS funding (EIDHR Contract nr 163496) <sup>(82)</sup>. NHRIs can also profit from funds allocated under the EIDHR centrally run global calls for proposals. Even though individual NHRIs are not directly targeted, they may potentially benefit from such funding either via the ICC (thanks to its status as an association of NHRIs, governed by a statute of incorporation under Swiss law) or through other CSOs, e.g. in 2012 a project was selected to fight torture in Africa where the applicant, a NGO, has as a formal partner, and therefore directly managing the project also, the network of NHRIs in Africa. Additionally,

Although human rights and business is relatively new area of work for DG DEVCO, it already administers a few projects in this area, of which the 'Clean Clothes Campaign' for workers rights in garment-producing countries in Asia, is the best known.

### 6.1.2 Fostering Dialogue and Exchange

The formal cooperation is further supported by less formal undertakings, like the project of **Co-operation between Ombudsmen from Eastern Partnership**, which has been designed as one of the undertakings implemented by the Polish side as a part of the EU policy on EaP, carried out by the Commissioner for Civil Rights Protection of the Republic of Poland and the Defender of Rights of the French Republic. The Project gained approval of the President of the Republic of Poland, the Minister of Foreign Affairs of the Republic of Poland, which provided core funding, and the Committee for European Integration. It aims to reinforce the powers of Ombudsman Offices from the EaP countries through joint trainings and workshops of the office workers from all cooperating parties, and exchanging experience in internal organization and mode of functioning of ombudsman offices. While human rights and business as separate agenda point has not featured on the agendas of the seminars, some of the relevant issues e.g. protection of the rights of elderly persons and persons with disabilities in labour law, were discussed at length, at seminars attended by representatives of NHRIs from all non-EU EaP countries (apart from Belarus). However, as shown in the course of this study, the UN Guiding Principles do remain largely unknown in this circle of NHRIs, one could consider making the issue of the UN Guiding Principles relevance and implementation, a subject of one of the forthcoming seminars.

Additionally, the Eastern Ombudsman Cooperation initiative was complemented by a separate initiative, namely the **Eastern Partnership Ombudsman Summit**. Taking place for the first time in the European Parliament in Brussels in the autumn of 2011, at the invitation in the context of a Subcommittee on Human Rights (DROI) hearing, and complemented by additional meetings and sessions, it provided opportunity for discussion of issues of mutual concern for the NHRIs and DROI, and resulted in better understanding of the role that European Parliament can play in supporting the work done by the NHRIs.

With a view to the initial plans to hold the Second Summit of the EaP Ombudsman at the invitation of DROI, perhaps consideration could be given to devoting its agenda to Human rights and business issues, and integrating into its programme a workshop session to use the opportunity to build the capacity of the Ombudsmen institutions in this area. DROI could also consider having the UN Guiding Principles translated into national languages of the EU and Eastern Partnership countries as a background documentation that would facilitate the discussion.

The process of the implementation of the UN Guiding Principles is less likely to take meaningful form if it is not conducted in cooperation and consultation with the relevant stakeholders. One of the first

<sup>82</sup> EIDHR Compendium 2007-2010, p. 32

barriers is not only the lack of human rights expertise and awareness of how they translate into the national law rules governing every aspect of people's lives, but also the lack of the availability of the UN Guiding Principles in the national languages understandable to local populations, so with such a move the European Parliament would make a lasting contribution to advancing implementation of the UN Guiding Principles.

### 6.1.3 Engaging directly with European NHRIs

NHRIs are ideally placed to provide support to the implementation of the national action plans for the implementation of the UN Guiding Principles as well as, within limits of their mandates, providing protection and remedy for victims of business-related abuse, both judicial and non-judicial.

Therefore the EU institutions, in particular the European Parliament and the EU Member States should make a greater use of the expertise present in the European Group of the National Human Rights Institutions and individual NHRIs. In the course of the work on new legislative proposals and national action plans for the implementation of the UN Guiding Principles, careful consideration should be given to advice provided by the European Group of NHRIs, such as, the 'European Group submission to the EC on human rights and procurement' and the European Group Submission on national implementation plans for EU Member States.

It should be noted that the Permanent Secretariat for the European Group of National Human Rights Institutions will be established in Brussels in the end of 2012 in order to contribute to progressive developments at European level, including with respect to business and human rights issues.

## 6.2 Raising the awareness of the Human Rights and Business agenda and generating conducive climate for NHRIs' work.

It was noted above that NHRIs play a 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. However, while the NHRIs play a key role in advancing the human rights and business agenda, they are not able to achieve meaningful progress in this area acting alone.

Effectiveness of their actions depends to a large extent on the level of awareness of other actors at the domestic and international level. This includes not only business enterprises, but also state authorities, CSOs, NGOs, trade unions, Human Rights Defenders, and other organs of the society. Therefore, while ensuring strengthening of the NHRIs in this respect is of utmost importance, the EU should undertake efforts to support raising awareness and capacity building activities also vis-à-vis other actors, both externally and internally.

This can be done by raising human rights and business issues and implementation of the UN Guiding Principles as part of the formal Political Dialogue or Human Rights Dialogues, to sensitize the authorities of a third country to those issues, and make it a legitimate topic for discussion. Similarly, human rights and business issues and CSR should feature on the agenda of CSO seminars, as was already the case in Bangladesh where the workshop was devoted to human rights in the context of decent work, and in Chile, where the whole seminar was organized under the title "CSR, Human Rights and Social Dialogue" in cooperation with the University Diego Portales and the Office of the ILO in Santiago<sup>(83)</sup>. Events of this

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<sup>83</sup> Schönsteiner J., Human Rights Days. An Encounter between Europe and Chile. International Seminar: CSR, Human Rights and Social Dialogue. Final Report, 12-13 October 2011, Universidad Diego Portales, Santiago, Chile

type, that allow for exchange of information and juxtaposition of European and third countries experiences of human rights, social dialogue and corporate social responsibility (CSR), assist in raising awareness of those issues but also allow for cross-fertilization and sharing of best practices.

Simultaneously, efforts should be undertaken to ensure NHRIs participation in both formal dialogues and in the Civil Society seminars and dialogues that accompany the formal sessions. Important role to play in this respect have the EU delegations to third countries.

However, discussion about the relevance of human rights in the context of business should not be restricted only to political sphere. It should be a standing point in any negotiations concerning trade relations with third countries, particularly in view of the ongoing negotiations on the Deep and Comprehensive Free Trade Agreements (DCFTAs). CSR and UN Guiding Principles on Business and Human Rights, and in particular human rights due diligence, and human rights impact assessment that constitutes its element, should feature among the legitimate issues for further dialogue once the agreement is concluded. Additionally, any support sought from the EU or EIB for an investment project, should be conditional on conducting the human rights impact assessment and implementing its recommendations, and require incorporation of the **human rights due diligence** process into the management strategy of the company seeking such support, be it exports credit guarantees, credit, etc.

### **6.3 Leading by example**

EU should not underestimate the power of leading by example and should undertake efforts to remain a leader in international fora on the issue of business and human rights. However, despite the topic increasingly gaining on importance, the training on human rights, not to mention training specifically on human rights and business, is still not obligatory for all EU staff in a way that the financial training is. It is usually not the human rights staff that needs convincing about the potential role of business in ensuring the respect for human rights. Rather the lack of understanding for human rights and business agenda comes from administrators working on regulation for business (e.g. trade issues, corporate governance, internal market, public procurement), who are rarely familiar with human rights and could profit from human rights training, particularly if such training covered also issues of relevance to current Human rights and business agenda.

So, although increasing awareness of the importance of human rights and business agenda is a positive development (and European Parliament should ensure that this trend is sustained by regularly raising this issue in contact with other institutions), only once the internal capacity in the area is improved, it will be realistic to think about ensuring that any new legislation is assessed for its compliance with human rights; and that human rights based approach is streamlined in management processes across all institutions.

The EU Member States should also ensure that they meet their commitment to develop national action plans in 2013, and that they involve the national NHRIs, and where relevant the European Group of NHRIs, in the process. Only if such efforts are genuine, the EU will be in position to call on other states, also in the Eastern Partnership to undertake efforts to implement the UN Guiding Principles on Business and Human Rights.

Full use should be also made of new developments and mandates, such as recently nominated the EU Special Representative on Human Rights, whose mandate does allow for interacting and cooperating with business and other actors, or the creation of Multi-stakeholder platforms supported by the EC, which should ensure that NHRIs are among their participants. Consideration could be also given to opening up such platforms for participation to actors from the Eastern Partnership Countries.

## 7. RECOMMENDATIONS

1. EU Parliament should ensure that human rights standards and principles, as described by UN Guiding Principles on Business and Human rights, are explicitly incorporated in its future documents concerning CSR, Human rights and Business but also feature in documents relating to Trade, Development Aid and other relevant areas.
2. EU should remain committed to the business and human rights and implementation of the UN Guiding Principles in international fora, and in particular provide support to the UN Working Group on HR and Business.
3. European Parliament should ensure that it continues to stimulate the discussion within the EU on the issue of human rights and business and implementation of the UN Guiding Principles by organizing hearings devoted to those issues on regular basis, and to ensure that its recommendations for other institutions and Member States are consistent with the guidance provided in this respect by the UN Working Group on Business and Human Rights.
4. European Parliament should continue to express consistently its expectation that EU institutions and high ranking officials, including the recently established EU Special Representative on Human Rights, undertake efforts to advance human rights and business agenda in the EU external relations and actions, and that in doing so they recognize NHRIs as a key partner in advancing human rights; but also that they undertake efforts to ensure consistency of the EU external and internal policies in this regard.
5. EU should develop a comprehensive and consistent strategic approach to providing support to the establishment, strengthening and capacity-building of the NHRIs in the Eastern Partnership Countries and beyond, that would follow the double track concept combining assistance offered to individual NHRIs with the support for networking among the NHRIs both from EU and Non-EU countries, with a view to addressing significant capacity gaps with regards to human rights and business in the Eastern Partnership Countries.
6. The EU in its dialogues with third states should, where relevant, support such changes to the NHRIs mandates and operational basis that would make them fully Paris Principles compliant, and where relevant raise the issue of broadening of the NHRIs' mandates, to include ability to consider complaints also against business enterprises. The EU member states that have no Paris Principles compliant NHRI also should undertake steps to remedy this situation. The European Parliament, European Commission and Fundamental Rights Agency should encourage and support states to undertake steps to this effect.
7. The EU, in particular the European Commission, should undertake efforts to ensure that financial instruments of the EU, including the EIDHR, see the Paris Principles-compliant NHRIs as key partners in achieving their objectives aimed at promotion and defence of all human rights and human rights defenders, and support them in making efficient use of their unique position and human rights expertise to create space for dialogue between various stakeholders, including state authorities, civil society and business, and to that effect, *inter alia*:
  - Ensure that human rights and business and support to the implementation of the UN Guiding Principles on Business and Human Rights features among the priority areas of individual financial instruments under the new Multiannual Financial Framework (MFF) perspective for the period 2014-2020;

- Consider development of specific support under EIDHR with an aim to support training and overall capacity-building in the area of human rights and business of civil society organizations, NHRIs, Human Rights Defenders, trade unions, and other human rights organizations.
8. European Parliament might wish to consider continuing its support to Eastern Partnership Ombudsman Summit and further exchange within this group by providing space for its organization in the framework of the DROI hearing, as was the case in 2011, and encouraging participation of both non-EU Eastern Partnership NHRIs and EU-based NHRIs; and in that context:
- To devote the Summit or part thereof to discussion concerning implementation of the UN Guiding Principles in individual countries and its challenges;
  - To ensure that maximum use is made of the presence of all Ombudsman, consideration could be given to complementing the DROI hearing by a targeted workshop on human rights and business, to support capacity building in this field;
  - To support the NHRIs in their role related to the implementation of the UN Guiding Principles, by having translated for the purpose of the Ombudsman meeting – the UN Guiding Principles into national languages of all EU and non-EU Eastern Partnership countries.
9. Make greater use of the human rights and business expertise present in the European Group of NHRIs in the process of new legislation development at the EU level or, in case of the European Parliament, by inviting its representatives to relevant hearings, and consider establishing a regular annual exchange of views with NHRIs in the framework of DROI and/or other Committee e.g. Civil Liberties, Justice and Home Affairs Committee (LIBE).
10. In the course of work on new legislative proposals and national action plans, careful consideration should be given to advice provided by the European Group of NHRIs such as, respectively, the 'European Group submission to the EC on human rights and procurement' and the European Group Submission on national implementation plans for EU Member States.
11. Given that the Sectoral Guidance in respect of Oil&Gas Sector, ICT and Employment and Recruitment Agencies, whilst developed with EU area primarily in mind, are envisaged to be developed in such a way as to allow for their global applicability, consideration could be given to engaging with NHRIs to seek their support in promoting the sectoral guidance also beyond the EU border as one of the tools aimed to help business understand human rights.
12. To support sharing of the best practices and coordination of the NHRIs activities and efforts, including in the EaP countries, attention should be given to providing support to the European Group of NHRIs Permanent Secretariat, including in terms of financial support e.g. on similar basis as the funding provided to the political foundations at European level.
13. Consider stimulating further discussion in the EU and wider European region by having a thorough 'Baseline Study for Corporate Social Responsibility and Human Rights' conducted in cooperation with individual NHRIs and the European Group of NHRIs, to assist the EU institutions and individual states in undertaking informed approach to implementation of the UN Guiding Principles.
14. Address the internal capacity gaps and needs within the EU by integrating human rights, including significant human rights and business component into capacity-building for the EU staff across all institutions, with priority being given to staff working in the areas of human rights,

trade, internal market, competition, development aid, employment and social security, and external affairs. Training materials should be developed in full alignment with the Guiding Principles and in order to ensure their coherence consulted with the UN Working Group, OHCHR and ICC. Human rights training should be also integrated into learning and capacity programmes for staff members and senior management, including those run by the EEAS. Consideration could be given to making use of the NHRIs' expertise in delivering the training.

15. To lead by example the EU should align with the UN Guiding Principles its internal and external policies and procedures, and ground them on the responsibility to avoid causing or contributing to human rights abuses or being associated with such an abuse through relations with business entities. This implies putting in place due diligence processes to identify and address potential and actual adverse human rights impact linked to EU operations and activities, incl. procurement, partnerships with business sector, choice of Private Military and Security Companies to provide security to the EU Delegations, providing investment support via EIB, etc.
16. Integrate human rights and business issues and implementation of the UN Guiding Principles into agenda of formal Political Dialogues and Human Rights Dialogues to sensitize the authorities of the third countries to those issues, and make it a legitimate topic for discussion.
17. EU institutions should ensure that CSR and human rights and business, and in particular human rights due diligence, including human rights impact assessment, do feature among the legitimate issues for further dialogue listed in any future Free Trade Agreements and Deep and Comprehensive Free Trade Agreements.
18. Integrate human rights issues as they relate to business into the programme of CSOs seminars and CSOs human rights dialogues to allow for exchange of information and juxtaposition of European and third countries experiences of human rights, social dialogue and corporate social responsibility (CSR), assist in raising awareness of those issues, and ensure the NHRIs participation in such events.

## ANNEX I – OVERVIEW OF GOOD PRACTICES

### 1. Conducting research

Given the growing importance of the human rights and business agenda, as early as 2008 the **APF's** Advisory Council of Jurists prepared a major report on 'Human Rights, Corporate Accountability and Government Responsibility' <sup>(84)</sup>, that, apart from assessing the situation in the region, recommended that NHRIs should use their core functions of monitoring, education, advocacy and complaint handling to promote corporate respect for human rights.

A number of NHRIs have conducted specific studies into issues firmly falling under the business and human rights agenda, and consequently developed recommendations for states, also of legislative nature. For example, **Qatar** <sup>(85)</sup> has developed a study on the conditions of unskilled labourers in the construction sector, while in **Australia**, following the 2010 report examining the issues of ageism and unlawful age discrimination within the workplace <sup>(86)</sup>, the Australian Human Rights Commission is currently undertaking research and consultation in collaboration with the business sector in order to reduce the barriers to employment for mature age workers. **South Korea** is launching an ambitious project to investigate and analyse the human rights compliance of the business sector in Korea, also with an aim to publish a special national report to be submitted to the National Assembly and the Government with relevant recommendations, while **APF NHRIs** members agreed to engage with the Association of Southeast Asian Nations (**ASEAN**) **Intergovernmental Commission for Human Rights** (AICHR), which undertook to develop the regional thematic 'Baseline Study for Corporate Social Responsibility and Human Rights in ASEAN'. The Danish Institute for Human Rights (DIHR) is the first NHRIs to be undertaking a national baseline study on Human Rights and Business based on the UN Guiding Principles, but also planning to use this methodology with other NHRIs outside of EU.

Given availability of funding, NHRIs are also conducting research to ensure that their own development and capacity building is coherent and eliminates potential gaps, e.g. in 2010 the APF and Raoul Wallenberg Institute (RWI) conducted a thorough assessment of the training needs of APF NHRIs that identified the level of training need/priority across 23 training areas and issues, including human rights and business, in order to inform the development of training programs. This resulted in 2012 in the research workshop on the role of NHRIs in Business and Human Rights in South East Asia, aimed for sub-regional NHRIs and academics interested in conducting research on the current role and potential of NHRIs with respect to business and human rights, in order to support national research teams of NHRIs and academics to carry out collaborative research during 2012, with a view to disseminating results in early 2013. Apart from strengthening the capacity of the NHRIs such an approach creates environment for further cross-fertilisation between NHRIs and academia in the future.

However, not all research has to be focused directly on business, in order to result, just as **Malawi** Baseline Survey on the Phenomenon of Child-Headed Households and the Study on the Violence against Children working or living in the Streets in Malawi, in findings that are of relevance for discussion concerning wider business and human rights context.

<sup>84</sup> ‘Human Rights, Corporate Accountability and Government Responsibility’ <http://www.asiapacificforum.net/support/issues/business/acj/references/corporate-accountability>

<sup>85</sup> APF News, Qatar: Study finds construction workers' wages insufficient, 7 August 2011, available at <http://www.asiapacificforum.net/news/qatar-study-finds-construction-workers-wages-insufficient>

<sup>86</sup> Age Discrimination – exposing the hidden barrier for mature age workers, Australian Human Rights Commission, 2010, <http://www.humanrights.gov.au/age/hiddenbarrier/index.html>

## 2. Undertaking education, promotion and awareness raising activities

NHRIs undertake a wide variety of awareness raising and educational activities, including development of relevant tools, to assist business enterprises in understanding their human rights obligations, as well as provide support to other relevant actors, and build their own capacity.

**Australian Human Rights Commission** (AHRC), initially faced with business reluctance to engage with human rights, undertook to ‘translate’ the language of international human rights treaties into the one familiar and accessible to the corporate stakeholders. Apart from developing a very comprehensive “*Good Practice, Good Business*” website <sup>(87)</sup>, designed as a main hub for employers that includes information on employer responsibilities, best practice guidelines, and complaints procedures, it has also developed a number of resources based on the UN Framework to support businesses to integrate a human rights approach into their policies and practices. Those include factsheets of both general (“*Integrating human rights into Australian business practice*”) and sector specific nature (factsheets for finance sector, mining and resource sector and manufacturing and retail sectors, that focus on human rights issues and practical tools relevant to specific sectors) <sup>(88)</sup>, and a number of guidelines to help employers prevent and address discrimination and harassment in the workplace (“*Access to Buildings and Services Guidelines*” to assist businesses in ensuring non-discriminatory access to their buildings and services; “*Guidelines for developing mental health strategies*” in the workplace). Through its online register, it provides also access to over 500 examples of disability action plans, which are of help for other companies in developing and implementing their own disability action plans to prevent and address discrimination against people with a disability in employment and in the provision of goods and services. Additionally, in its annual Native Title reports, the Commission has also provided guidance to businesses, including those participating in the exploration and extraction of natural resources, on how to undertake effective consultations with Aboriginal and Torres Strait Islander peoples, where proposed measures or activities could impact their rights. It has also developed a range of “*CSR guidelines for resource development and mining*” on Aboriginal land, including “*Development and Indigenous Land: A Human Rights Approach*”; “*Human Rights Based Approach to Mining on Aboriginal Land*” and “*Frameworks for Negotiation of Mining Agreements*”.

Australian Human Rights Commission has been also actively contributing to the promotion of the importance of women’s representation in decision-making roles, by bringing together some of Australia’s most influential and diverse male CEOs and Chairpersons in the Male Champions of Change group, which is using its influence to ensure the issue of women’s representation in leadership is elevated on the national business agenda, and by working closely with the ASX Corporate Governance Council towards 40% representation of each gender on the boards of publicly listed companies in Australia.

Actions of similar nature were undertaken by **Canadian Human Rights Commission**, which apart from developing a Business and Human Rights section on its website, and fact sheets targeted to Canadian audiences, also develops special programs, products and services intended for the use of federally regulated employers and service providers.

Some NHRIs provide support to business by developing subject-specific tools; the already mentioned Human Rights Impact Assessment Tool developed by the **Danish Institute for Human Rights** (DIHR) being the one probably the best known example. However DIHR’s work on human rights and business issues is much more multidimensional. Throughout the years of its activity in this field, it has developed

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<sup>87</sup> ACHR Business & Human Rights portal, [www.humanrights.gov.au/education/business\\_and\\_human\\_rights/index.html](http://www.humanrights.gov.au/education/business_and_human_rights/index.html)

<sup>88</sup> [http://www.hreoc.gov.au/education/business\\_and\\_human\\_rights/index.html](http://www.hreoc.gov.au/education/business_and_human_rights/index.html)

a number of tools to help companies wishing to improve their human rights performance to identify, assess and address the risk of human rights abuses throughout their operations. DIHR works both directly with companies providing them with services such as Company Risk Mapping, Country Risk Mapping and Policy Analysis, but also provides guidance for businesses to identify risk and prevent human rights violations in their operations, e.g. "The Arc of Human Rights Priorities", "Defining the Scope of Responsibility for Human Rights Abroad", "Values Added: The Challenge of Integrating Human Rights Into the Financial Sector", "Doing Business in High-Risk Human Rights Environments" <sup>(89)</sup>.

Yet also NHRIs with less extensive expertise undertake similar efforts. In February 2012, the **Canadian Human Right Commission** officially launched a new human rights impact assessment and management tool, the Human Rights Maturity Model, designed to help employers create a self-sustaining human rights culture in the workplace. Developed in collaboration with a steering committee and working group composed of representatives from the public sector, the private sector, and labour unions, and consequently pilot tested and refined in collaboration with several organizations from government and federally regulated businesses, it attracted 38 organizations from the public and private sectors have registered online to use it. The Maturity Model provides concrete and measurable steps for organizations to not only identify and respect human rights, but also to foster and sustain a respectful human rights culture. It helps organizations to align human rights objectives with business objectives in relation to five key elements: (1) Accountability and leadership, (2) Capacity building and resources, (3) Alignment of policies and processes, (4) Communications and consultation, and (5) Evaluation - for continuous improvement.

Importantly, the Commission also leads by example, and having subjected itself to a rigorous assessment process in testing the Maturity Model, it now undertakes efforts to further improve its own human rights culture and practices <sup>(90)</sup>.

In the **UK** the Equal and Human Rights Commission is currently working on the development of the Generic risk assessment tool, aimed at Small and Medium Enterprises (SMEs) with case studies, checklists and explanation of business case.

**Human Rights Commission of Malaysia** (SUHAKAM) confident that positive promotion can help drive change, has established an award to recognise the positive efforts of business.

In **India**, the National Human Rights Commission initiated work leading to the development of the Code of Ethics for Indian Industries, which is to be developed by drawing from international norms, in cooperation with all relevant stakeholder groups and institutions. In the course of the project the company's employee's policies and procedure manual including gender policy, purchase policy, employment compensation and benefit and promotion policy, environment policy, community policy, international relationship policy etc., will be reviewed, and data will be collected from ten sectors, including steel, energy, mines, paper, sugar, banking, textile and pharmacology.

Some NHRIs are providing training and advice directly to companies, e.g. **Kenya National Human Rights Commission** (KNHRC) has conducted human rights training for senior management in Unilever Tea Kenya Limited corporation; while the last of the seminars and workshops held by the **National Human Rights Committee of Qatar** to highlight the Human Rights and the responsibilities of all sectors, companies, media, and the society, held in Ras Lafan, the biggest Gas and Oil company in Qatar,

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<sup>89</sup> DIHR, Risk Frameworks for Business, DIHR <http://www.humanrights.dk/focus+areas/human+rights+and+business/tools+and+methods/risk+frameworks+for+businesses>

<sup>90</sup> Presentation by David Langtry, Acting Chief Commissioner, Canadian Human Rights Commission, Chair of the ICC Working Group on Business and Human Rights, at the 2012 European Regional Workshop on Business and Human Rights of the European Group of NHRIs, Panel Presentation on "Business and Human Rights - NHRI Experiences", 6 September 2012

has also addressed issues such as the environment, labour rights, human trafficking and conditions of safety and health care.

Other NHRIs prefer a more collaborative approach in raising awareness of the business sector. For example, in 2012 the **Australian Human Rights Commission** developed a series of fee-based workshops together with the United Nations Global Compact Network Australia (UNGCNA) and the United Nations Association of Australia (UNAA), devoted to human rights impact assessments, addressing adverse human rights impacts through managing human rights related complaints, disputes and grievances and significance of the Declaration on the Rights of Indigenous Peoples for businesses.

Some NHRIs, like the **National Human Rights Committee of Qatar** (QNHRC), alongside their work with business, devote a lot of attention to raising legal awareness of the workers. Convinced that empowering people is the most effective way to prevent human rights abuses in the workplace, it has produced a booklet on "Workers' Rights in Qatar" based on the Labour Law and other relevant legislation in Qatar (<sup>91</sup>). The booklet, written in Arabic, was translated into English, Farsi, Hindi, Indonesian, Tagalog, Nepalese, languages of the largest migrant workers groups, to make it available and useful to their members. Together with the American Center for International Labour Solidarity, the QNHRC carried out also a series of Training of Trainers seminars, to prepare the leaders and activists from the different community groups to explain, based on the booklet of Workers' Rights, to their compatriots, in their own language, their rights and obligations in Qatar. According to the QNHRC, so far about 80 trainers from different countries have been trained, who on their behalf have trained more than 2000 people.

Recognizing that in many cases the problems of the migrant workers in Qatar start already during the recruitment process in their home countries, the QNHRC undertook efforts to build relationships with human rights and trade union organizations in the countries of origin of migrant workers to distribute the booklet. Furthermore, in 2011, its representatives together with representatives of the respective community groups in Qatar, have visited India, Sri Lanka, Philippines and Nepal, where they met representatives of the trade unions, human rights and migrant workers organizations, and governmental institutions related to labour. The booklet, several thousands copies of which were distributed, served as a gateway to frank and animated discussions, also with former migrant workers in Qatar, who spoke of their problems there, thus improving the QNHRC understanding of the problem and increasing its ability to address the problem more effectively. This experience laid foundations for a further exchange, with representatives of Nepal, Sri Lanka and Philippines visiting Qatar in 2012 to continue discussion on the ways and means to prevent migrant workers rights violations, especially those, which are result of lack of knowledge of the rights and obligation of the workers. A pre-departure training should be a substantial part of the education, awareness rising and prevention of problems. Given that also NHRIs from other countries, **Malaysia especially** are very active in the area of migrant rights, the scope for cooperation is significant.

Recognizing that abuse of migrant workers rights is a major problem across the Asia-Pacific region, **APF** runs a regional capacity building program on an annual basis, "*Human Rights and Migrant Workers – A Training Program for Advocates*", that brings together representatives from national human rights institutions, NGOs and trade unions to ensure that they are well prepared to support migrant workers and to encourage and support participants to work together to develop practical strategies to promote and protect the rights of migrant workers at a national and regional level (<sup>92</sup>). To further enhance

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<sup>91</sup> Email communication with Hala al Ali, QNHRC, on file with the author

<sup>92</sup> <http://www.asiapacificforum.net/support/training/rights-of-migrant-workers>

regional NHRIs expertise and ability to undertake relevant and effective actions, the **APF**, with active participation of “focal point” officers on migrant workers from a number of regions’ NHRIs (Qatar, India, Malaysia, Jordan, Maldives), has developed also a *“Manual on Promoting and Protecting the Rights of Migrant Workers: The Role of National Human Rights Institutions”* (<sup>93</sup>). The manual, envisaged to provide NHRIs with concise and practical information to support them in their work, outlines the key international laws, standards and mechanisms, and illustrates concrete steps that NHRIs can undertake depending on whether they operate in countries of origin, transit, or destination of migrant workers.

A very promising project, i.e. ‘Pillars in Practice’ Programme, to be implemented by a consortium of international and local organisations, including the **Danish Institute for Human Rights** (DIHR), will also shortly be underway in Bangladesh, Nicaragua and Zimbabwe thanks to the U.S. State Grant. The programme is meant to build the capacity of civil society organizations (CSOs) in the three aforementioned countries to engage with and train on the UN Guiding Principles on Business and Human Rights. The main goal of the programme is to activate a strategic alliance by establishing the training capacity of CSO partners in each of the three countries to sustainably promote and assist in the implementation of the UN Guiding Principles by local and multi-national companies, government agencies and other local CSOs (<sup>94</sup>).

Another way to increase one’s competence in a specific area is through targeted training. **DIHR**, thanks to funding from DANIDA, conducted capacity building pilot on human rights and business for NHRIs from Sierra Leone and Algeria. The capacity building workshop for NHRIs from East Africa and Ghana and Malawi (<sup>95</sup>), organized by the **Uganda Human Rights Commission** (UHRC) in cooperation with the OHCHR and the Institute for Human Rights and Business (IHRB), was pointed as a good practice, because of its content but also because, despite the workshop’s regional focus, the Malawi and Ghana representatives were invited, to ensure that incumbent members of the ICC WG profit from the training and thus enter into their role well prepared, with a good overview of the activities in the region. At a sub-regional level, the **South East Asia NHRI Forum** (SEANF), Philippines Commission on Human Rights and Komas Ham (Indonesia) are leading the joint project on Business and Human Rights activities – Komas Ham partnered with the Peoples Forest Programme for its Regional Workshops focusing on Agriculture held in Indonesia in 2011, and 2012 – the Workshop on Human Rights and Agribusiness in Southeast Asia. Further, SEANF has decided that its other thematic projects such as migration and migrant workers, torture and detention, Indigenous Peoples and ESCR/Right to Development, will be pursued along the umbrella theme of Business and Human Rights, thus ensuring their coherence.

### **3. Cooperating with other actors and building space for dialogue**

The ability to act as a ‘convenor’ is probably among the most important roles of the NHRIs. In the discussion so prone to polarization of views as the one concerning business responsibility and accountability for its human rights related negative impact, it is impossible to overstate the role played by an independent and impartial institution, rooted in constitution or other legislative acts. Ability to bring different actors to the table to discuss the constructive way forward is of utmost importance as in the majority of cases this is the first step towards finding an optimal approach, process and solution to jointly identified problems; even though more often than not the beginnings might be very challenging. For example, in **Kenya**, efforts to organize multi-stakeholders roundtables initially met with

<sup>93</sup> <http://nhri.ohchr.org/EN/IHRS/Documents/APF%20publication%20-%20promoting%20and%20protecting%20the%20rights%20of%20migrant%20workers.pdf>

<sup>94</sup> DIHR awarded U.S. State Grant awarded to ‘Pillars in Practice’ Programme, DIHR News, <http://www.humanrights.dk/news/news?doc=21842>

<sup>95</sup> Capacity Building for NHRIs from East Africa, Malawi and Ghana. Summary Report, Kampala, 25-26 January 2012

certain distrust of business sector (due to the fact that KNHRC also has a broad mandate to investigate complaints and act upon complaints), which the Commission managed to overcome, by having an external actor, recognized globally for its expertise – the Institute for Human Rights and Business, to act as a host of one of such events. As the KNHRC managed to strengthen its position of trusted and independent partner also vis-à-vis business, it not only increased its ability to act as a convener but also was able to provide, as mentioned earlier, in-house training for business<sup>(96)</sup>. One of the recent consultative processes initiated by the KNCHR was a two day convention with National CSO's, Community-Based Organizations (CBO's) as well as representatives of regional human rights institutions to analyze the challenges, threats and opportunities presented by the extractive industry in Kenya as well as the legal, policy and advocacy mechanism available for engagement. Having identified the need to confront and mitigate the potential harm that extractive practices can have on persons, communities and the country in general, the KNCHR hopes to obtain in the course of the consultations an accurate understanding of the threats posed by the extraction of oil and other geological resources to the host communities living in the respective areas and to the country's political and economic well being<sup>(97)</sup>.

Unfortunately, at a regional level, the NANHRI is lacking capacity to support creation / organization of similar roundtables on a regional basis, to support the creation of an African equivalent of the sector-based platforms for enterprises and stakeholders envisaged in the EC Communication on CSR, or stimulate the business actors and other stakeholders to create the equivalent of the European Multi-Stakeholder Forum on CSR<sup>98</sup>, although this potentially could be raised within the African Union (AU) or ACHPR, and supported by the EU in the context of the AU-EU cooperation<sup>(99)</sup>, also by raising CSR and implementation of the UN Guiding Principles issues as part of the AU-EU Human Rights Dialogue.

In **Korea**, the National Human Rights Commission began the process of engaging with business and human rights issues, developing strategic plans and policies for its own action and convening multiple business stakeholders. To that effect, in 2009 it started to develop a self-test tool for companies, and in 2010 initiated the "Forum on business and human rights", a monthly gathering of about 30 representatives from companies, government agencies, civic groups and academia, whose function is to identify model practices where the self-test tool is properly applied and the human rights-based approach is taken in business management.

In the **United Kingdom**, the Equality and Human Rights Commission has formed a Working Group on Business and Human Rights with representatives from business, civil society, government and academia, to ensure that when working on human rights in the business context it draws on their expertise and experience to ensure the outcome of its work is useful for the target group and gives it a feeling of ownership vis-à-vis the solution<sup>(100)</sup>.

Other NHRIs in search for partners in reaching out to business enterprises, undertake cooperation with the Global Compact (GC) local networks, that provide a platform for direct engagement with business enterprises, to raise awareness, develop tools and guidance materials, and exchange knowledge and best practices on how to integrate human rights into business operations.

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<sup>96</sup> Interview with Kimathi Wambui, 28 August 2012, on file with the author

<sup>97</sup> KNHRC, Naivasha Report: Civil Society Organizations Convening On Business And Human Rights: The Extractive Industry In Kenya, 19-20 June 2012, <http://www.business-humanrights.org/media/documents/knchr-extractive-sector-meeting-report-20-june-2012.doc>

<sup>98</sup> [http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/multi-stakeholder-forum/index\\_en.htm](http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/multi-stakeholder-forum/index_en.htm)

<sup>99</sup> For details see <http://www.africa-eu-partnership.org/>

<sup>100</sup> Equality and Human Rights Commission, <http://www.equalityhumanrights.com/news/2009/december/commission-response-to-any-of-our-business-human-rights-and-the-uk-private-sector/>

While cooperation between the ICC and UN GC is yet to take a more structured form, there are some early examples of successful cooperation between the NHRIs and GC Local Networks, like in the case of **Australia**, where as mentioned above, the AHRC together with Global Compact Network Australia organized several events for business. Another good example comes from **Denmark**, where cooperation between the DIHR, Danish Industry, the Nordic UN Global Compact and other actors, resulted in creation of the “UN Global Compact Self Assessment Tool”, that enables companies to scope issues and undertake self-assessment of their implementation of the ten UNGC Principles across the four ‘areas’ of the UNGC principles: environment, labour, corruption and human rights, and which was road-tested by the UN GC Local Networks in Bangladesh, Vietnam and Kenya, what allowed for further improvement of tool’s its utility for businesses, and better incorporation of local and regional contextual issues (<sup>101</sup>).

In **Germany**, the engagement of the GC Network Germany (GCNG) with the German Institute for Human Rights not only contributed to the organization of the European Group regional workshop, but has also started to take on a more strategic dimension, with cooperation focused on pillars two and three of the UN Guiding Principles and aimed to result in better understanding of human rights issues by business and help them identify human rights risks and develop solutions on how to avoid them. It seems also that the key strengths of both partners wisely merge, in that the expertise of the German Institute in the area of human rights is complemented by the GCNG organizational ability that has potential to result in meaningful roundtables exploring the challenges of corporate responsibility to respect human rights. Additionally, GCNG can also be supportive in promoting the NHRIs activities and expertise among its many members and other stakeholders. One of the first tangible results of this cooperation is envisaged to take a shape of a publication aimed to help business enterprises understand how their activities relate to human rights, how specific human rights translate into practice and what standards are in place.

#### 4. Monitoring (incl. national inquiries) and supporting civil society in this work

Monitoring, including conducting national inquiries and documenting violations by corporations, as well as supporting civil society in this work, belongs to one of the NHRIs core functions, and is often used to develop recommendations, but also to prevent potential violations.

The **Kenyan National Commission on Human Rights** utilized a national inquiry process to make orders and recommendations to remedy harm experienced by coastal communities as a result of human rights violations committed by salt companies in collusion with public institutions (<sup>102</sup>). The **Uganda** Commission is investigating child labour, while **Malaysia** is conducting a public inquiry on land issues.

In **India**, the National Human Rights Commission following the national inquiry into silicosis (an incurable lung disease caused by inhaling of dust containing free crystalline silica) (<sup>103</sup>), and engaging with a number of state institutions to stop and remediate the violations of human rights, has developed a Special Report to Parliament (<sup>104</sup>) in an effort to draw the attention of the parliamentarians towards the inhuman conditions faced by all those ailing from silicosis, and put forward a set of recommendations (<sup>105</sup>) on preventive, remedial, rehabilitative and compensation aspect with regards to Silicosis, including

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<sup>101</sup> DIHR, The UN Global Compact Self Assessment Tool <<http://www.globalcompactselfassessment.org/>>

<sup>102</sup> Simbri-Jaoko, F., ‘The Experience of Kenya National Commission on Business and Human Rights’, Presentation to the Side Event on Business on Human Rights, 31 May 2010; Report of a Public Inquiry into Allegations of Human Rights Violations in Magurina, Malindi, 2006;

<sup>103</sup> <http://nhrc.nic.in/silicosis.htm>

<sup>104</sup> <http://nhrc.nic.in/documents/Reports/Special%20Report%20To%20Parliament%20of%20India%20On%20Silicosis.pdf>

<sup>105</sup> India – Silicosis Recommendations, [http://nhrc.nic.in/documents/recomm\\_silicosis.pdf](http://nhrc.nic.in/documents/recomm_silicosis.pdf)

that all State Government should complete a detailed survey of the industries within 6 months, Silica detection equipment should be provided to factory inspectorate to identify industries producing silica, call for closure of the hazardous factories, and initiation of criminal proceedings against the factories where the labourers have contracted silicosis.

Furthermore, NHRIs are often mandated to act as a national preventive mechanism (NPM), established under Article 19 of the Optional Protocol to the International Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OP CAT). In line with OP CAT, such mechanisms shall be at least granted the power to regularly examine the treatment of the persons deprived of their liberty, make recommendations to the relevant authorities, and submit proposals and observations concerning existing or draft legislation. As according to Article 4.2 of the OPCAT, the deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or **private** custodial setting (including the privatized places of detention) (<sup>106</sup>), which that person is not permitted to leave at will by order of any judicial, administrative or other authority, it makes the fulfilment of the NPM role of direct relevance in the context of discussion on human rights and business. Given that only two of the NHRIs from non-EU EaP Countries have mandates that allow them to address complaints against companies directly in all situations and visit the business facilities in the course of investigation, while four out of five of them are designated to act as NPM, this part of their mandate can provide a potential point of entry for monitoring non-state actors. Under OP CAT, NHRIs in their role as a NPM can examine the places of detention, even if those are operated by private actors.

## 5. Providing advice to government and other actors

Even if providing advice to non-state actors is new for many NHRIs, the majority of the NHRIs not only have the mandate but also years of experience in assisting the Government in ensuring the compliance of State legislation with international human rights treaties, including through conducting review of domestic legislation review, commenting on new legislative proposals and recommending policy changes.

This is certainly the case of **Malawi** Human Rights Commission, whose broad and strong mandate includes also powers to carry out or initiate review of laws, bills, administrative provisions and practices, and which ensured the review of inter alia The Draft Tenancy Labour Act, The Malawi Disability Act and was represented in the special law commission on the development of human trafficking legislation (<sup>107</sup>). **Canada** and **Australia** have delivered considerable advice and guidance to States in the field of non-discrimination, with e.g. The Sex Discrimination Commissioner of the Australian Human Rights Commission having played an instrumental role in the development of the Paid Parental Leave scheme and is continuing to lobby for further improvements. In **Qatar**, the National Human Rights Committee participated in the preparation of the draft law for combating human trafficking, which covers also the phenomenon of the trafficking for labour. On the European ground, the **Scottish Human Rights Commission** has contributed with its opinion on human rights in social care commissioning (<sup>108</sup>) to development of the Scottish Government guidance on social care commissioning and procurement (<sup>109</sup>).

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<sup>106</sup> See Report of the UN Working Group to draft an Optional Protocol to the UN Convention against Torture, UN.Doc. E/CN.4/1993/28 § 39

<sup>107</sup> Malera, G.T. An Overview of the Role of the MHRC: Governance; Performance and Accountability; Focusing on Successes and Challenges, Presentation on file with the author

<sup>108</sup> <http://www.scottishhumanrights.com/ourwork/publications/article/submissionsocialcare>

<sup>109</sup> <http://www.jitscotland.org.uk/action-areas/commissioning/procurement/>

The **Uganda Human Rights Commission**, apart from reviewing bills tabled before Parliament for compliance with international, regional and national human rights standards (as part of which it pays attention to the direct or indirect implication of proposed legislation on business and human rights), which is of particular importance in the case of such legislation as the Equal Opportunities Bill; the Anti-Corruption Bill; the Mortgage Bill; and the Land Amendment Bill (<sup>110</sup>), additionally follows up such a review with presentation of position papers to relevant committees of Parliament to articulate any human rights concerns for consideration before the bills are passed into law. It has also reviewed, with success, some existing government policies, including the Equal Opportunities Policy, for their human rights implications.

Many NHRIs are using their Annual Reports to turn the attention of the Government and the Parliament to areas in need of amendment. For example, the **Uganda** Human Rights Commission through its Annual Reports to Parliament, has been appealing to the Government to enact a law on minimum wage, both in the public and private sector.

Others undertake even more challenging tasks, as e.g. **Human Rights Commission of Malaysia** (SUHAKAM) that in 2010 convened a series of roundtable meetings with business, government and civil society groups, with the goal of drafting a roadmap to bolster respect for human rights in the private sector. The result of these discussions was a two-part draft national policy on human rights and business: the first part setting out the broad principles and objectives and the second addressing specific areas of concern; submitted to the Government for consideration as SUHAKAM advice and recommendation (<sup>111</sup>). When it comes to the national plans, there are also signals, that French government is considering designating the French NHRI as a coordinator of the National Action Plan development process.

In the **Philippines**, the development of the Commission on Human rights and UNDP partnership and advocacy efforts around the Human Rights Based Approach (HRBA) has been instrumental in Philippine government actually adopting HRBA in the formulation of the Philippine Development Plan for 2011-2015. The principles of Participation, Accountability, Non-discrimination, Transparency, Equality, rule of law, and Human dignity – linkage to human rights, the normative content of the rights as expounded in the Guidelines and treaty monitoring body reports and documents, are reflected in the 5-Year Development Plan of the present administration, specially in the social sector chapters. Even though the chapters concerning infrastructure and industries leave much space for improvement, nevertheless this provides already a very strong starting point for embedding human rights approach into business related issues and development of more enhanced tools that are directed to the private sector.

## **6. Providing and/or facilitating access to judicial and/or non-judicial remedies**

There are many ways in which NHRIs depending on their national mandates, which vary widely among each other, can support the realization of the access to remedy. While some NHRIs have complaints handling mechanisms and powers to both investigate and issue enforceable orders, others have only limited or no powers at all to order binding remedies, or even deal with grievances. Yet, this does not mean they are toothless. Their support might thus take as different forms as informing persons who filed petitions with NHRIs of their rights and remedies available, intervening in courts as amicus curiae, nationally and in regional human rights mechanisms, handling complaints themselves or referring them to relevant authorities.

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<sup>110</sup> Kaggwa, M.S.K, Uganda Human Rights Commission, Access to remedy for corporate human rights abuses, Presentation at the 10<sup>th</sup> International Conference of NHRIs, Human Rights and Business: The Role for NHRIs, Edinburgh, Scotland, 8-10 October 2010

<sup>111</sup> <http://www.asiapacificforum.net/news/james-nayagam-human-rights-commission-of-malaysia>

According to the research carried out under the SRSG and presented in his report A/HRC/8/5, almost half of the recognized NHRIs, although fewer from Europe, are able to handle grievances related to the human rights performance of companies, although a number of these can receive complaints only in respect of certain categories of rights, often discrimination, or only against abuses alleged against State-owned enterprises or private companies providing public services. NHRIs that can admit grievances against all companies with regard to any human rights issue are located mainly in Africa (<sup>112</sup>).

The **Canadian Human Rights Commission** undertakes an active role in dispute resolution, by screening, mediating, or investigating complaints by individuals who believe they have been subject to discrimination by a federally regulated organization. It can also represent the public interest in litigation.

The **Australian Human Rights Commission** (AHRC), as well, belongs to the NHRIs that can investigate only certain human rights complaints relevant to business. It has a statutory obligation under the AHRC Act 1986 to investigate complaints under federal human rights and anti-discrimination legislation, including the Sex Discrimination Act (SDA) 1984 regarding discrimination in the workplace or in the provision of goods or services, and where appropriate, to attempt resolution of those complaints by conciliation. AHRC does not have a determinative function in relation to complaints of unlawful discrimination and therefore does not make findings of facts in complaints of sex discrimination and sexual harassment nor does it determine whether the SDA has been breached. Assessment undertaken by the AHRC as well as feedback from its participants suggests that conciliation is a very successful way of resolving complaints. Most people find the process fair, informal and easy to understand, and supportive in helping them to better understand the issues and come up with solutions that are appropriate to their circumstances. In addition to this service, the Commission considers applications made by companies for specific exemptions under anti-discrimination laws; and intervenes in court proceedings involving human rights complaints lodged against companies.

A similar opinion about the effectiveness of conciliation efforts came from **Malawi** and **Ghana**, where the Commission despite having a much stronger range of tools, found the conciliation approach to be much more effective, less time and resource consuming, and providing better ground for further relations between the parties.

The **Uganda** Human Rights Commission, depending on the circumstances of the case, either refers complaints to other bodies such as the Labour Office for better management, or, more often uses mediation to resolve the labour complaints it receives. The mediation process normally results in the signing of a 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 reinstatement to work in case of wrongful or unfair dismissal. In both types of cases, the Commission makes follow ups to find out if what was agreed on in the memoranda of understanding is being implemented and check on the progress of complaints referred to other bodies for better management (<sup>113</sup>).

In **Cameroon**, actions undertaken by the National Commission on Human Rights and Freedoms on complaints against violations by corporations (in 2009, 55 complaints involving hundreds of victims) may entail field verification conducted on its own or in cooperation with members of civil society organizations and of the judiciary, mediation and conciliation efforts, addressing the corporation authorities concerned or the supervisory authorities of the corporations with request to undertake

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<sup>112</sup> "Business and Human Rights: A Survey of NHRI Practices", <<http://www.business-humanrights.org/Gettingstarted/UNSpecialRepresentative>>

<sup>113</sup> Kaggwa,M.S.K, *op.cit.*

appropriate steps to provide adequate redress or end simply with providing oral or written advice to the complainants on available measures (<sup>114</sup>).

**Malawi** Human Rights Commission (MHRC) is an example of an NHRI that is mandated by the country's constitution and Human Rights Commission Act to promote and protect human rights in the broadest sense possible and to investigate violations of human rights on its own volition or upon complaints received from any person, also against private entities. The MHRC's approach to handling issues of businesses and human rights is twofold, i.e. by way of investigations, incl. field visits, and alternative dispute resolution (ADR) or by way of human rights monitoring. In this regard, the MHRC's is guided by a Rights-based Approach, in that its engagement with the business enterprise in question is sought to ensure that its activities are in line with the basic elements of a rights based approach, i.e. meaningful participation of affected communities (empowerment), express linkage to rights, non-discrimination, accountability of all actors, attention to marginalised groups and a focus on both processes and outcomes. It is in line with the statutory powers of investigations that MHRC conducted the investigations and other strategic engagement in 2009-2010, through Alternative Dispute Resolution Mechanisms with a local mining company, Terrastone Limited, whose activities whilst operating a quarry at Njuli led to a number of human rights violations and environmental impact (Njuli Quarry Pollution case). Villagers from the communities surrounding the quarry lodged a complaint against the company, because the health, safety and livelihood of the people in the area surrounding the quarry were affected by the environmental pollution and degradation caused by company activities. The investigation and subsequent mediation led by the MHRC's resulted in the quarry authorities responding positively to the interventions by MHRC, and led to the successful resolution of the complaint (<sup>115</sup>).

In **Kenya**, the new Constitution of 2010 has significantly broadened the mandate of the Commission, explicitly vesting it with power to consider alleged violations of human rights also by business enterprises, although even before those changes the Kenya National Commission on Human Rights was interpreting its mandate broadly to encompass also work targeted at business enterprises (<sup>116</sup>). Now the Commission can accept both individual and collective complaints against business enterprises and consider them by undertaking: public inquiries and questioning/investigations, and mediation / conciliation or arbitration processes. This has two sides, on the one hand allowing the Commission to help victims access the remedy, and on the other drawing conclusions on the basis of the observed trends or identified systemic issues, that are consequently communicated to the government as recommendations concerning necessary changes in the legislation or its enforcement. The expansion of the mandate resulted, however, also in new challenges, as the increased number of complaints led to overloading the Commission, whose broader mandate was not matched by provision of adequate funding.

In the **Philippines**, the Commission was also active in handling complaints involving business. One of the recent cases, against the Oceana Gold Philippines, Inc. (OGIP), a foreign company engaged in the exploration, development and utilization of minerals within about 37,000 hectares of land in Nueva Vizcaya and Quirino Provinces under a Financial and Technical Agreement (FTAA) granted in 1994,

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<sup>114</sup> Banda, Ch. D., Chairperson of the National Commission on Human Rights and Freedoms, Cameroon, Presentation to the 10<sup>th</sup> International Conference of NRHIs, Human Rights and Business: The Role for NRHIs, Edinburgh, Scotland, 8-10 October 2010

<sup>115</sup> Kalinde, S., Malawi Case Studies: In the Matter of Environmental Pollution at Njuli Rock Aggregate Quarry and the Case of Concerned Villagers around Kazilira Dambo Vs Dwangwa Cane Growers Limited, Presentation to the European Group of NRHIs Workshop on Business and Human Rights, Berlin, 5-7 September 2012.

<sup>116</sup> Kimathi W., *op. cit.*; Menge, J. et al, 'Alles was recht ist. Menschen-Staaten-Unternehmen', Konferenz-dokumentation, INEF, Berlin 21-22 November 2011, p. 19

concerned illegal displacement of residents of Didipio, Kasibu, Nueva Vizcaya, violation of personal integrity, beating, demolition of houses, deprivation of social and economic activities. In addressing the case, the Commission undertook a series of field investigations and public inquiries which confirmed that human rights violations were committed; it also recommended a number of actions to be undertaken by the government (e.g. to consider the withdrawal of the Financial and Technical Assistance Agreement (FTAA) granted to OGPI), other concerned government agencies (to submit reports to the Commission regarding concrete actions they have taken to respect, protect and fulfil the rights of the affected community within 30 days upon receipt of the CHR Resolution and to continue monitoring the human rights situation in the said area), and OGPI to conduct a policy orientation on the conduct of mining operation; finally, it directed its regional office to actively advocate for the human rights of the affected community (<sup>117</sup>).

In **Korea**, the National Human Rights Commission (NHRCK) can make non-compulsory interventions in cases of discrimination in the form of an investigation in the complaint case. During the investigation process, the NHRCK may proceed with conciliation or make a remedial recommendation; however, it cannot compel the parties to take a remedial action. Yet, in case of discrimination on the ground of disability (under the Disability Discrimination Act) and age (under the Age Discrimination Act), a dual system is in place: the NHRCK shall first make an investigation into a case of alleged discrimination and make a remedial recommendation and then, if no remedial action is taken, the competent authorities (respectively, Ministry of Justice and Ministry of Employment and Labour) can exercise the compelling power (remedial administrative order) (<sup>118</sup>).

In **Bolivia**, the Defensor de Pueblo and civil society joined forces to present a complaint before the Inter-American Court of Human Rights with regards to the contamination of the Pilcomayo river basin by a series of mines, including a company owned by the President (<sup>119</sup>). Also other NHRIs, including **New Zealand** and **Venezuela**, are intervening as independent observers, mediators or investigators in potential and real conflict situations.

Additionally, consideration should be also given to exploring the opportunities to support victims of human rights violations in making use of a system of collective complaints provided for by the Additional Protocol to the European Social Charter (<sup>120</sup>) and making effective use of the OECD National Contact Points (NCP), whose tasks include handling grievances. If a company that has links with OECD country (e.g. its seat) commits human rights violations in a third country, the NHRRI based in that country can bring this matter to the attention of the NCP in the relevant OECD country for consideration (<sup>121</sup>). NCPs represent potentially an important vehicle for providing remedy, particularly that as some initial cases in Norway show, ignoring negative NCP reports may lead to drop in stock exchange ratings and withdrawal of the potential investor (<sup>122</sup>).

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<sup>117</sup> Navarro-Piamonte, N., Business And Human Rights: The Work of the Commission on Human Rights of the Philippines, Presentation to the European Group of NHRIs Workshop on Business and Human Rights, Berlin, 5-7 September 2012

<sup>118</sup> "The National Human Rights Commission of Korea: New Challenges and New Chances for NHRIs: Introduction of NHRCK's Activities in the Area of Business and Human Rights and the Prospects of Future Initiative"

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

<sup>119</sup> Presentation to Working Group on Business, Environment and Human Rights, 10<sup>th</sup> International Conference of NHRIs, Human Rights and Business: The Role for NHRIs, Edinburgh, Scotland, 8-10 October 2010

<sup>120</sup> [http://www.coe.int/t/dghl/monitoring/socialcharter/OrganisationsEntitled/OrgEntitled\\_en.asp](http://www.coe.int/t/dghl/monitoring/socialcharter/OrganisationsEntitled/OrgEntitled_en.asp)

<sup>121</sup> ICC submissions to the OECD Guidelines Review are available on the ICC WG website: <http://nhri.ohchr.org/EN/Themes/BusinessHR/Pages/International%20Policy%20Development.aspx>. Cooperation between the ICC and OECD has been also formalized by conclusion of the ICC-OECD Memorandum of Understanding.

<sup>122</sup> Røttingen, H, OECD NCP Norway, Presentation to the European Group of NHRIs Regional Workshop on Business and Human Rights, Berlin, 5-7 September 2012

## **7. Integrating human rights and business issues when interacting with international and regional human rights bodies and mechanisms**

NHRIs are regularly contributing to the discussions at the international, regional and national levels. ICC WG, building on the positive experience of cooperation between the ICC, NHRIs and OHCHR with regards to capacity building, awareness raising activities and advocacy, has also concluded a Memorandum of Understanding with OECD. In an attempt to seek further synergies and potential for cooperation between NHRIs and UN, EU, OSCE, OECD and its National Contact Points, Council of Europe, ILO and other regional organizations, representatives of those organizations were invited to participate and speak at the NHRIs regional conferences, including the most recent one organized by the European Group of NHRIs in Berlin.

African NHRIs find support in searching for avenues through which a redress and popularization of the agenda of business and human rights could be advanced, in the African Commission on Human and Peoples Rights (ACHPR). Of recently also its two specific Special Mechanisms have expressed interest in working with NHRIs, namely the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa Working Group (WGIE) and the Working Group on Indigenous Populations/Communities in Africa. EU can play a supportive role in this context by raising the human rights and business issues as part of the Africa-EU Partnership on Democratic Governance and Human Rights (the work of both aforementioned groups featured on the agenda of the Partnership meeting in 2011), that provides for a comprehensive continent-to-continent dialogue and cooperation, on aspects and concepts such as local capacity strengthening, the protection of human rights and fundamental freedoms for all, the rule of law and equitable access to legal systems, management of natural resources, the fight against corruption and fraud, all of which are of relevance for the human rights and business agenda; with EU support provided for agreed actions and projects (<sup>123</sup>).

NHRIs are also increasingly starting to incorporate business and human rights recommendations into their submissions to the Universal Periodic Review (UPR) or treaty bodies, e.g. Danish Institute of Human Rights included relevant recommendations into its submission under the new optional reporting procedure (LOIPR procedure) for the International Covenant on Civil and Political Rights (ICCPR) and in its UPR submission. Also Scottish Human Rights Commission has introduced relevant recommendations in its submission to the second round of the UPR, and a similar attempt is being currently undertaken by the Canadian Human Rights Commission with regards to Canada's UPR.

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<sup>123</sup> [http://www.africa-eu-partnership.org/sites/default/files/doc\\_jaes\\_action\\_plan\\_2011\\_13\\_en.pdf#page=2](http://www.africa-eu-partnership.org/sites/default/files/doc_jaes_action_plan_2011_13_en.pdf#page=2)

## **ANNEX II - RATIFICATION STATUS OF THE CORE HUMAN RIGHTS CONVENTIONS BY THE EASTERN PARTNERSHIP STATES**

	Armenia	Azerbaijan	Belarus	Georgia	Moldova	Ukraine
International Covenant on Civil and Political	Y	Y	Y	Y	Y	Y
1 <sup>st</sup> Optional Protocol to ICCPR	Y	Y	Y	Y	Y	Y
2 <sup>nd</sup> Optional Protocol to ICCPR	-	Y	-	Y	Y	Y
International Covenant on Economic, Social and Cultural Rights	Y	Y	Y	Y	Y	Y
Optional Protocol to ICESCR	-	-	-	-	-	-
International Convention on the Elimination of All Forms of Racial Discrimination	Y	Y	Y	Y	Y	Y
International Convention on the Elimination of All Forms of Discrimination against Women	Y	Y	Y	Y	Y	Y
Optional Protocol to CEDAW	Y	Y	Y	Y	Y	Y
International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.	Y	Y	Y	Y	Y	Y
Optional Protocol to CAT	Y	Y	-	Y	Y	Y
International Convention on the Rights of the Child	Y	Y	Y	Y	Y	Y
1 <sup>st</sup> Optional Protocol to CRC	Y	Y	Y	Y	Y	Y
2 <sup>nd</sup> Optional Protocol to CRC	Y	Y	Y	Y	Y	Y
International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families	-	Y	-	-	-	-
International Convention on the Rights of Persons with Disabilities	Y	Y	-	-	Y	Y
Optional Protocol to CRPD	-	Y	-	-	-	Y
International Convention on the Protection of All Persons from Enforced Disappearance	Y	-	-	-	-	-

Legend: Y- State ratified indicated treaty