

March 18, 2015

Concept Note: Enhancing East Africa NHRIs' capacity to promote Human Rights in the Extractives Sector

Background

The extractives sector in many economies often consists mainly of oil, gas and mining activities. This is a sector with great potential to enhance the economy.¹ Indeed, experience in some countries suggests that extraction can be effectively managed to contribute to sustainable economic growth. Experience in other parts of the world suggests that extractives if not well managed can be a curse leading to conflict and impaired economic performance.

Allegations of official corruption and the lack of accountability for revenues received have also contributed to poor governance in some resource rich countries. Moreover, the extractives sector has been associated with human rights violations, environmental damage and pollution as well as loss of livelihoods leading to poor socio-economic outcomes for affected communities. Thus the need for sustained independent oversight on both business and governments to expose the problems, hold institutions accountable and develop standards to mitigate these challenges.

As demonstrated by the Nairobi Process initiative² of which this research and action initiative forms part, the Institute for Human Rights and Business (IHRB)³ believes that multi-stakeholder dialogue is crucial for effective policy and practice on business and human rights accountability issues in the extractives sector, and that independent National Human Rights Institutions (NHRIs), where they exist, are potentially an important part of the oversight mechanisms required.

A National Human Rights Institution (NHRI) is a state body with a constitutional or legislative mandate to promote and protect human rights within the country through handling of complaints, conducting research, advocacy and educational programmes and making recommendations for law reform⁴. In promoting human rights in the extractive sector, NHRIs rely on the various

¹ Institute of Economic Affairs, (2014), "A Primer to the Emerging Extractive Sector in Kenya: Resource Bliss, Dilemma or Curse", Nairobi, Kenya, p.2

² <http://www.ihrb.org/our-work/nairobi-process.html>

³ <http://www.ihrb.org/about/mission.html>

⁴ <http://nhri.ohchr.org/EN/Pages/default.aspx>

United Nations human rights mechanisms, the UN Guiding Principles on Business and Human Rights, regional human rights mechanism and relevant national policies and legislations.

Problem Statement

For a long time, the East African region has been involved in the mining industry to varying degrees, but the exploration of oil and gas is relatively new which factor presents additional challenges to the NHRIs.

Firstly, the countries lack adequate laws and institutions governing the extractive sector and while review of legislation is ongoing, the sector is developing faster than the formulation of the necessary legal and institutional framework needed to regulate the sector. The current sectoral regulatory framework is weak on human rights issues and this creates a loophole whereby the government agencies or investor companies may fail to observe human rights to the detriment of the public. Many communities lack the capacity to negotiate and in this regard have frequently missed their claims and interests to the twin juggernaut of the investors and the government. In this respect, a cost-effective and impartial process that can monitor and address the impact of mining projects needs to be considered and effected.⁵

Secondly, the NHRIs lack personnel who possess expertise in the extractive industry⁶. As a watchdog institution, NHRIs need to have a broad understanding of the sector and the roles and obligations of every stakeholder concerned. There is an urgent need to strengthen the institutional capacity of NHRIs considering that other players in this arena look up to them as potential legitimate interlocutors on business and human rights issues⁷.

Thirdly, the extractives sector continues to be the dominant source of business and human rights related complaints⁸. A recent example is the injury and fatalities case brought against Africa Barrick Gold (now Acacia Mining) and its North Mara Gold Mine Limited by Tanzanian villagers that was settled out of court⁹. Therefore, as its economic significance grows there is increased need for preparedness by NHRIs to handle human rights issues that will emanate from the sector.

Justification

The extractive sector provides an opportunity to significantly contribute to poverty reduction and improve the well-being not only for the different countries, but also for the entire East Africa

⁵ Society of International Development, (2009), *"The Extractive Resource Industry in Tanzania: Status and Challenges of the Mining Sector"*, Nairobi, Kenya , p.73

⁶ From the 'Report of the NANHRI Mapping Survey on Business and Human Rights' NANHRI, 2013, p.13

⁷ The UN GPs make specific mention of the potential role of NHRIs and even the UN Human Rights Council has recognized this role, see

⁸ Morrison John, 'The Social License', Palgrave Macmillian, London, 2014, p.128

⁹ <http://business-humanrights.org/en/tanzania-african-barrick-gold-makes-out-of-court-settlement-for-claims-by-locals-at-its-north-mara-mine-for-injuries-fatalities>

region. This will only happen if there is good resource utilisation and management, equitable sharing, effective policy dialogue, appropriate legislation, strong oversight by institutions, and communities sharing in the benefits of the extractive sector.¹⁰

NHRIs have the primary obligation to inculcate a culture of human rights by advising the government and other stakeholders on the subject of human rights based on their national, regional as well as international human rights obligations. They act as watchdogs on the actions of State and non-State actors, calling out shortcomings that impede the enjoyment of human rights and proposing remedial actions. They promote public awareness on the human rights obligations of government and business vis-a-vis the extractive sector as well as other business sectors. Furthermore, public education can also lead to demands of government accountability as well as greater community and civil society involvement in decision making regarding the exploitation of their resources. Some NHRIs have quasi-judicial powers that enable them to receive, investigate and seek to resolve complaints of human rights violations thus the potential to become an important part of grievance mechanisms.

NHRIs can augment the above efforts by carrying out research on the human rights impacts of extractives sector, disseminate findings, and make recommendations to stakeholders. Civil society and community groups can also use a good evidence base as a tool to encourage and advocate for greater community involvement in monitoring the activities of the sector.

By supporting NHRIs to undertake an analysis of the state of human rights in the extractive sector in their respective countries, the project aims to improve the understanding of NHRIs on the extractives sector and how it intersects with human rights while building knowledge on the relevant international and regional frameworks.

The important role of NHRIs with regard to business and human rights was recognised by the UN Human Rights Council in its June 2011 resolution A/HRC/17/L.17/Rev.1, "*...the important role of national human rights institutions established in accordance with the Paris Principles in relation to business and human rights, and encourages national human rights institutions to further develop their capacity to fulfil that role effectively, including with the support of the Office of the High Commissioner and in addressing all relevant actors...*". Furthermore, the International Coordinating Committee of NHRIs long recognized the role of NHRIs on business and human rights. In 2009, it established a working group on Business and human rights, the first thematic group of the ICC to further the work of NHRIs on business and human rights to support the capacity of NHRIs to fulfill their mandate with regard to business and human rights.

On their part, African NHRIs through their regional organization, the Network of Africa National Human Rights Institutions (NANHRI) affirmed their collective commitment to strengthen their capacity on business and human rights issues with focus on labour, environment and land¹¹. Additionally, the October 2013 NANHRI biennial conference in Ghana focused on

¹⁰ Institute of Economic Affairs (2014), *op.cit.*, p.3

¹¹ *Ibid* (pg.15)

business and human rights. While NANHRI member institutions have displayed a high level of engagement on business and human rights capacity, resources, training and education gaps remain a challenge to their effectiveness.

Project Description

National Human Rights Institutions seek to be an authoritative voice on issues of human rights within their countries of operations. To do so effectively, NHRIs need to ensure that they have as current as possible information regarding human rights issues in their countries. Complaints can be a useful source of information, particularly in analysing trends but may not capture all sectors. Thus the need for focused research on underserved or less well-known sectors: one such sector is extractives and human rights.

The proposed project endeavours to document the human rights concerns in the oil and gas as well as the mining industry. In the process, the NHRIs undertaking the research will increase their own internal knowledge and stakeholder base as well as their understanding of the relevant international legal frameworks, the basis of which the assessment of extent of compliance shall be made. Moreover, based on their mandate to recommend legal reforms, the process shall include an analysis of the legal regime, some examples of best practice and recommendations, which then can be the basis of advocacy by NHRIs and CSOs alike.

Lastly, the research can be used to complement the body of existing knowledge on the extractives sector that is available for the region.

General Objective

Improved understanding and capacity of East African NHRIs on how to provide effective oversight of business (the extractives sector) and human rights issues, including relevant national, regional and international frameworks, as part of wider multi-stakeholder engagement on this issue.

Specific Objectives

- Deepen the understanding of the extractives sector and its impact on human rights by NHRIs;
- To encourage open dialogue between NHRIs and other stakeholders in the industry, such as government agencies, investor companies, communities, CSOs, the media, academia, etc;
- To promote NHRIs capacity to advance the interests of minority groups such as women, children, persons with disabilities, etc in relation to the sector;
- To expose NHRIs to best practices, challenges in investigating, redressing and reporting cases of human rights violations within the extractive sector;
- To enhance the capacity of NHRIs in monitoring, investigating and reporting cases of human rights violations in the extractive sector;

Methodology

The process will involve,:

- A desktop scoping review of the policy approaches and decision-making processes affecting, positively or negatively, the capacity and commitment of governments (host and home), business and civil society to uphold and promote compliance with human rights standards protecting communities in the extractives sector in each of the countries;
- Exploring in greater depth the issues raised through interviews and informal discussions with a selected range of key informants from across government, business and civil society stakeholder groups, including relevant ministries, public oversight bodies, licensing and regulatory authorities, companies and business associations, embassies, NHRIs, NGO networks and civil society and faith-based groups, as well as community-based organizations;
- Selecting representative case studies to undertake targeted field research in communities where oil and gas exploration and mining is taking place, with a view to highlighting the overall challenges and opportunities for government, business and civil society stakeholders – as well as NHRIs – to ensure greater human rights accountability protecting the rights of communities in the extractives sector.

As indicated in the section on the overall aim and objectives of the research, one of its key functions will be to serve as a catalyst for multi-stakeholder action, in particular the potential contribution of NHRIs. This means that the research, while producing informative evidence-based findings, should not be of an academic nature but oriented to helping guide follow-up action by NHRIs alongside key stakeholders in response to the key business and human rights issues in the extractives sector. Indeed, the results of the research will be used to inform the organisation of a series of multi-stakeholder dialogue events involving NHRIs later in 2015 aimed at developing individual and joint work plans (to be implemented with IHRB support and advice) to address business and human rights accountability issues affecting communities in the extractives sector.

Expected Outputs

The expected outputs of the initiative are:

- Inception report outlining research methodology, stakeholder analysis and research plan;
- Country reports on the state of human rights in the extractive sector for Kenya, and Tanzania that include among others:

- An overall assessment, in East African context, of the state of compliance with international, regional and national human rights standards in the extractives sector by governments and companies in the two countries;
- An overview of the priority human rights and human rights accountability issues in the sector;
- An analysis of the current legal, policy and regulatory frameworks and institutional structures and their sufficiency to lay a solid foundation for the protection against human rights abuses in the extractives sector, paying attention to issues of policy coherence, coordination and enforcement as well as stakeholder representation, participation and influence in decision-making;
- Examples of good policy and practice
- An analysis of the strengths and weaknesses of multi-stakeholder dialogue and interaction affecting the quality and effectiveness of policy and practice in upholding the rights of communities;
- An analysis of the gaps and opportunities for NHRIs to provide effective oversight of human rights standards in the extractive sector, including through engagement with other stakeholders;
- Analysis of the mandate and efficacy of NHRIs in the promotion of effectiveness of both judicial and non-judicial remedies for business related human rights abuses and how that can be improved to handle complaints from the extractives sector.

Expected Deliverables and responsibilities during the research process

- Lead the research, review and report process
- Mobilization and communication with relevant stakeholders
- Prepare an inception report outlining research methodology, stakeholder analysis and research plan for approval
- Carry out the research
- Prepare an outline of the first draft for IHRB review
- Prepare first draft report for feedback
- Incorporate feedback and prepare and fine-tune final draft
- Maintain regular communication with NHRI/IHRB at each stage

Competencies

Corporate competencies

- Identification with IHRB mission, vision and values, including its commitment to multi-stakeholder dialogue, impartiality and evidence-based approaches to business and human rights challenges
- Strong knowledge of business and human rights issues in the extractives sector and the governance and accountability issues involved
- Understanding of multi-stakeholder processes and dialogue

- Ability to mobilize and work sensitively and constructively with various stakeholders with different views, interests and approaches, as well as varying degrees of authority
- Commitment to action-oriented research
- Displays cultural, gender, religion, race, nationality and age sensitivity and adaptability
- The highest standards of integrity, and discretion are essential

Functional Competencies

- Excellent research and writing skills, including an ability to explore complex and often highly contested policy process issues in an accurate, fair and nuanced way, taking into account the different perspectives and positions involved in debates.
- The ability to meet deadlines and maintain high quality of output working under pressure
- Excellent communication/organizational skills
- Attention to detail

Required skills and experience

- Minimum 10 years of progressively responsible research management experience is required at the national or international level;
- The ability to use good judgement and experience working in multi-cultural setting is critical;
- Previous work experience in business and human rights, particularly in the extractives sector.

Language requirements

- Outstanding communication skills, verbal and written, English and Kiswahili

Application Process

Send a detailed CV and a covering letter explaining your interest in/suitability for the assignment, as well as a recent and relevant sample of your published research or writing, to job.ogonda@ihrb.org by 5th May 1015