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Consejo de Derechos Humanos

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Tema 3 de la agenda

**Promoción y protección de todos los derechos humanos,
civiles, políticos, económicos, sociales y culturales,
incluido el derecho al desarrollo**

Información presentada por el Grupo de Trabajo sobre las actividades empresariales y los derechos humanos del Comité Internacional de Coordinación de las Instituciones Nacionales de Promoción y Protección de los Derechos Humanos

Nota de la Secretaría

La Secretaría del Consejo de Derechos Humanos transmite adjunta la comunicación presentada por el Grupo de Trabajo sobre las actividades empresariales y los derechos humanos del Comité Internacional de Coordinación de las Instituciones Nacionales de Promoción y Protección de los Derechos Humanos*, que se reproduce a continuación de conformidad con el artículo 7 b) del reglamento que figura en el anexo de la resolución 5/1 del Consejo, según el cual la participación de las instituciones nacionales de derechos humanos se basará en las disposiciones y prácticas convenidas por la Comisión de Derechos Humanos, incluida la resolución 2005/74, de 20 de abril de 2005.

* Se reproduce en el anexo como se recibió, en el idioma en que se presentó únicamente.

Anexo

Submission Working Group on Business and Human Rights of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC)¹

REPORT OF THE SPECIAL RAPPORTEUR ON THE RIGHT TO FOOD AGRIBUSINESS AND THE RIGHT TO FOOD

13th session of the Human Rights Council (Geneva, 1-26 March 2010)

National Human Rights Institutions and the ICC

1. National Human Rights Institutions (NHRIs) are organizations at national level which exist to support strengthening of respect for and enjoyment of human rights. Since 1992, their mandate to pursue this function has been affirmed by the Paris Principles.² The International Coordinating Committee of NHRIs for the Promotion and Protection of Human Rights (ICC) was established in 1993 to coordinate and develop the activities of the global network of NHRIs. The ICC seeks *inter alia* to enhance NHRI engagement with UN and regional human rights frameworks, build partnerships and engage with external stakeholders, foster knowledge-sharing and communications, and support the strengthening of regional organizations of NHRIs.³

Business, human rights and NHRIs

2. The potential impacts of corporations on the enjoyment of human rights have long been recognized within the UN human rights system. Consistently with this, business and human rights has recently been acknowledged as a key issue area by

¹ The Working Group is composed of the following A-status institutions: Jordan National Centre for Human Rights, Kenya National Commission on Human Rights, Togo National Commission for Human Rights, Canadian Human Rights Commission, Nicaragua Procuraduría para la Defensa de los Derechos Humanos, Venezuela Defensoría del Pueblo, Danish Institute for Human Rights National Human Rights Commission of the Republic of Korea. The following B status NHRIs are part of the Working Group: Scottish Human Rights Commission.

² Principles relating to the status of national institutions, Competence and responsibilities, composition and guarantees of independence and pluralism, methods of operation, etc. adopted by Human Rights Commission Resolution 1992/54, 1992 and General Assembly Resolution 48/134, 1993, <http://www.nhri.net/pdf/ParisPrinciples.english.pdf>, were adopted by Human Rights Commission Resolution 1992/54, 1992 and General Assembly Resolution 48/134, 1993. The Principles were defined at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights in Paris 7-9 October 1991, <http://www.nhri.net/pdf/ParisPrinciples.english.pdf>.

³ Documentation relating to the ICC may be found at www.nhri.net.

the UN Human Rights Council. In Resolution 8/7, adopted in June 2008,⁴ the Human Rights Council recognized the need to protect all human rights from abuses by, or involving, transnational corporations or other business enterprises and renewed the mandate of the United Nations Special Representative on the issue of human rights and transnational corporations and other business enterprises (UNSRSG).

3. NHRIs' responsibilities to promote human rights include protecting individuals and groups against human rights abuses by third parties, including private sector actors.⁵ This may include, for example, specific responsibilities to draw attention to or investigate situations where human rights are abused and to propose remedial action, to promote and ensure harmonization of national legislation, policy and practices with human rights standards, to receive and determine complaints of human rights abuses, and to publicize human rights, provide human rights education, and to make efforts to combat all forms of discrimination.
4. In addition, NHRIs are steadily beginning to engage with the need for new approaches to secure universal and effective human rights protection within the private sector, including transnational corporations. NHRIs are uniquely placed to act with legitimacy and credibility, in tandem with stakeholders from civil society, the public and private sectors, in encouraging the development of appropriate regulatory frameworks to achieve this goal. In relation to the UNSRSG's proposed "Protect, Respect, and Remedy Framework", NHRIs have a role to play in relation to all three pillars.⁶ Specific activities of individual NHRIs with respect to each of these will vary in line with the statutory mandate and resources available to the NHRI, and its priorities, according to the national context in which it operates. The UNSRSG has acknowledged the importance of NHRIs in securing respect for human rights in the corporate sphere.⁷
5. The ICC is committed to helping NHRIs expand their roles and capacities in the field of business and human rights. To this end, in March 2009, the ICC established a Working Group on Business and Human Rights (Working Group). The Working Group is mandated by the ICC to support NHRIs in developing their capacities and effectiveness in relation to the human rights and business field. In addition, the Working Group will aim to inform a broad understanding of the emerging role of

⁴ http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_8_7.pdf

⁵ For examples, see Survey on National Human Rights Institutions, Report on the findings and recommendations of a questionnaire addressed to NHRIs worldwide, July 2009, Geneva, Switzerland, <http://www.nhri.net/2009/Questionnaire%20-%20Complete%20Report%20FINAL-edited.pdf>.

⁶ Protect, Respect and Remedy: a Framework for Business and Human Rights, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, <http://www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf>

⁷ *Id.*, p. 6, paragraph No. 17.

NHRIs on the business and human rights agenda, and to contribute to future debate around issues canvassed by the UNSRSG.⁸

The human right to food and the Special Rapporteur on the Right to Food

6. The right to food is acknowledged and affirmed in a range of international human rights instruments, including the Universal Declaration of Human Rights,⁹ the International Covenant on Economic, Social and Cultural Rights,¹⁰ other international human rights treaties,¹¹ the Rome Declaration on World Food Security,¹² the Universal Declaration on the Eradication of Hunger and Malnutrition, and the United Nations Millennium Declaration.¹³ The World Food Summit Plan of Action and the Declaration of the World Food Summit¹⁴ affirmed that the problems of hunger and food insecurity have a global dimension, that there has been insufficient progress made on reducing hunger, which is likely to increase dramatically in certain regions unless urgent and concerted action is taken, given anticipated increase in the world population, related stress on natural resources and climate change. It also called on all States and private actors, as well as international organizations within their respective mandates, to take fully into account the need to promote the effective realization of the right to food for all.¹⁵ This process led to the adoption on 23 November 2004, by the 187 Member States of the General Council of the FAO, of the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.
7. According to the UN Committee on Economic, Social and Cultural Rights' General Comment on the Right to Adequate Food, while only States are parties to the International Covenant on Economic, Social and Cultural Rights and thus ultimately accountable for compliance with it, all members of society - individuals, families, local communities, non-governmental organizations, civil society organizations, as well as the private business sector - have responsibilities in the realization of the

⁸ For further information and materials regarding the ICC Working Group on Business and Human Rights, see, www.nhri.net.

⁹ Under UDHR art. 25 (1), everyone has the right to a standard of living adequate for her or his health and well-being, including food, <http://www.un.org/en/documents/udhr/index.shtml>

¹⁰ In which the fundamental right of every person to be free from hunger is recognized: the term 'Right to Adequate Food' is derived from the Right to an Adequate Standard of Living under the International Covenant on Economic, Social and Cultural Rights (ICESCR 1966, art. 11), <http://www2.ohchr.org/english/law/cescr.htm>

¹¹ Convention on the Rights of the Child (Art. 24(2)(c) and 27(3)), the Convention on the Elimination of All Forms of Discrimination against Women (Art. 12(2)), or the Convention on the Rights of Persons with Disabilities (Art. 25(f) and 28(1)).

¹² World Food Summit, Rome, 13 November 1996, by the invitation of the Food and Agriculture Organization of the United Nations, <http://www.fao.org/docrep/003/w3613e/w3613e00.HTM>

¹³ Adopted by General Assembly resolution 55/2 of 8 September 2000, <http://www2.ohchr.org/english/law/millennium.htm>

¹⁴ Adopted in Rome on 13 June 2002 <http://www.fao.org/DOCREP/MEETING/005/Y7106E/Y7106E09.htm>

¹⁵ Human Rights Council, Tenth Session, Resolution 10/12. The right to food, http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_10_12.pdf

right to adequate food. The State must thus provide an environment that facilitates implementation of the respective responsibilities of other actors: “The private business sector, both national and transnational, should pursue its activities within the framework of a code of conduct conducive to respect of the right to adequate food, agreed upon jointly with the Government and civil society.”¹⁶ Accordingly, the UN Economic and Social Rights Committee has defined the right to food as:

“...realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement. The right to adequate food shall therefore not be interpreted in a narrow or restrictive sense which equates it with a minimum package of calories, proteins and other specific nutrients...”

Further, in line with this definition, the Special Rapporteur on the Right to Food has defined this right, as

“...the right to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensure a physical and mental, individual and collective, fulfilling and dignified life free of fear.”

8. With respect to the responsibilities of business actors in relation to the right to food, the Special Rapporteur has indicated that the proposed policy framework of the UN Special Representative on Business and Human Rights, noted above, has potential to make an important contribution toward better protection of the right to food. According to the Special Rapporteur,¹⁷ the *state duty to protect*, in the context of the right to food, can encompass issues such as:
 - Public policies aimed at expanding the choices of smallholders to sell their products on local or global markets at a decent price
 - Measures to reinforce the bargaining power of smallholders and equalize their relationships with the agribusiness sector
 - Re-engaging in public regulation of global food chains
 - Addressing barriers to accountability, with greater emphasis on mechanisms for holding companies accountable for their negative impacts on human rights and on means of ensuring that appropriate sanctions are imposed. Such accountability may involve, as appropriate, criminal, civil, or administrative sanction.
 - Improving protection of agricultural workers
 - Monitoring compliance with labour legislation
 - Enhanced cooperation between states to secure the above goals

¹⁶ CESCR General Comment No. 12: The Right to Adequate Food (Art. 11) Adopted at the Twentieth Session of the Committee on Economic, Social and Cultural Rights, on 12 May 1999 (Contained in Document E/C.12/1999/5).

¹⁷ Report of the Special Rapporteur on the right to food, Olivier De Schutter, Agribusiness and the right to food, paragraph No. 52, pp 20 <http://www2.ohchr.org/english/issues/food/index.htm>

9. It has also been suggested that, in the context of the right to food, there are extraterritorial dimensions of the state duty to protect: the protection of human rights can be undermined where company structure and globalized company operations facilitate corporate evasion of state jurisdiction, for example.¹⁸
10. Further, according to the Report of the Special Rapporteur, Agribusiness and the right to food, *corporate responsibility to respect human rights*, in the context of the right to food, entails for corporations, *inter alia*:
 - Refraining from practices that constitute an undue exercise of buyer power, as identified by the States in which they operate
 - In their relationships with workers, using their influence on suppliers to ensure that wages and working conditions improve, rather than degrade, as a result of their suppliers joining global value chains
 - Involving smallholders in the elaboration of and compliance with food safety, labor or environmental standards and facilitate their access to global supply chains; at a minimum, ensuring that the imposition of private standards does not exclude smallholders from certified food chains; negotiating contract farming arrangements that respect the right to food of smallholders; promoting fair trade through increased shelf space and by running information campaigns highlighting the unique importance and contribution of fair trade.¹⁹
11. In addition, the need for independent monitoring and assurance of corporate due diligence measures has been underlined by civil society actors.²⁰
12. As regards *remedies* for abuses by corporate actors of human rights, according to the Special Rapporteur, both agribusiness corporations and States must be aware that, in the absence of appropriate grievance mechanisms, the above mentioned measures may remain ineffective or only partially effective in securing greater enjoyment for human rights. For example, since fears of delisting have sometimes led suppliers to withdraw from complaints, the establishment of an ombudsman to monitor the policies and practices of buyers may need to be considered by States. States should therefore be encouraged to allow consumers to challenge the compliance of companies with the codes of conduct they advertise, and global unions negotiating international framework agreements (IFAs) should ensure that monitoring will be

¹⁸ “Evasion of responsibility and accountability – whether deliberate or not – has been facilitated by corporate structure, issues of corporate form and/or dissolution of the company (e.g. the local entity is a shell company or the company no longer exists as a legal entity and therefore cannot be the subject of legal proceedings), merger or acquisition of the company and/or substantial parts of its assets and sub-contracting- Extraterritorial dimensions of the state duty to protect”, Amnesty International, Submission to the Special Representative of the Secretary-General on the issue of Human Rights and Transnational Corporations and other Business Enterprises, July 2008, pp2. <http://198.170.85.29/Amnesty-submission-to-Ruggie-Jul-2008.doc>

¹⁹ Draft Report of the Special Rapporteur on the right to food, Olivier De Schutter, Agribusiness and the right to food, <http://www2.ohchr.org/english/issues/food/index.htm>.

²⁰ For example, Amnesty International, Submission to the Special Representative of the Secretary-General on the issue of Human Rights and Transnational Corporations and other Business Enterprises, July 2008, pp4. <http://198.170.85.29/Amnesty-submission-to-Ruggie-Jul-2008.doc>.

effective.²¹ It has also been repeatedly highlighted that, as regards judicial remedies, there remain significant obstacles to seeking remedy outside the state where the harm occurred, and that law is only slowly evolving in this area.²²

NHRIs and promoting implementation and effectiveness of the right to food

13. In this context, NHRIs have an opportunity and responsibility to incorporate consideration of the human right to food across all their activities, in line with individual mandates. The ICC Working Group on Business and Human Rights will in the coming months endeavour to produce further guidance for NHRIs on mainstreaming consideration of the private sector's responsibilities to respect right to food, with specific reference to the various observations and recommendations made by the UN Special Rapporteur on the right to food in the course of performance of his mandate, and the elements of the NHRI mandate under the UN Paris Principles. The ICC Working Group on Business and Human Rights looks forward to cooperating further with the UN Special Rapporteur and OHCHR in this area.
14. The ICC Working Group further draws the attention of all actors, in this regard, to the affirmation, by the UN Human Rights Council, in Resolution 10/12, of the need to "*Strengthen the overall national human rights protection system with a view to contributing to the realization of the right to food*", and calls on the Special Rapporteur, going forward, to reflect on and publicise the important role NHRIs should play, individually and collectively, in supporting greater respect for and enjoyment of the right to food. As the Special Rapporteur has recognised, a human rights based approach to the right to food should, "...consider the full range of societal processes and systems that are necessary for protecting and fulfilling the right to food", in line with the holistic framework of the FAO Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food, which acknowledge as conditions of effectiveness of the right to food, the rule of law, transparency, accountability, public participation, legal framework, education, land reform, market systems, resources, food safety, nutrition etc.

Insights and experiences of individual NHRIs concerning respect for and realization of the right to food in relation to agribusiness

15. NHRIs may have important insights to bring to bear in achieving greater understanding of national level issues and systems pertaining to the right to food, and the ICC Working Group on Business and Human Rights will attempt to gather and share such experiences amongst NHRIs and more widely during coming months.²³

²¹ Draft Report of the Special Rapporteur on the right to food, Olivier De Schutter, Agribusiness and the right to food, pp. 19, Paragraph No.49, <http://www2.ohchr.org/english/issues/food/index.htm>.

²² Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development. Protect, Respect and Remedy: a Framework for Business and Human Rights, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, pp. 23, <http://www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf>

²³ Via the ICC Working Group on Business and Human Rights pages on NHRI.net, <http://nhri.net/default.asp?PID=625&DID=0>

16. To take one example, according to the Kenya National Commission on Human Rights, in Kenya what is notable is the absence of a discourse concerning the impacts, especially adverse ones, of agribusiness on the right to food, not just in the public domain but also within policy and human rights circles. In an Occasional Report by the Kenya National Commission on Human Rights, *The Right to Food: An assessment of Kenya's implementation of the relief food programme in 2006*, a review of key food-related policies showed an historical lack of recognition of the relationship between agribusiness and the right to food.²⁴ For example, Kenya's land surface area of approximately 582,646 sq. km comprises 97.8% land and 2.2% water, with only 20% of the land classifiable as medium to high potential agricultural land, the rest being arid or semi-arid. Yet, until 2009, when a Land Policy was adopted by Parliament,²⁵ little attention was paid to the effect of poor regulation of land utilization with particular attention to its effect on food security.
17. Following the participation of various groups, including human rights groups, in its development, the Kenyan Land Policy now includes protections informing definition of the human rights responsibilities that agribusiness may be called upon to respect. According to the Land Policy, "...approximately seventy five per cent (75%) of Kenya's population lives within the medium to high potential agricultural areas (20% of land mass) while the rest of the population live in the vast Arid and Semi-Arid Lands (ASALs). One consequence of this is that size and distribution of land varies quite widely, as does population density which ranges from as low as 2 persons per sq km in the ASALs, to a high of over 2000 in high potential areas". High agricultural potential areas are predominantly occupied by small farm holdings which are fragmented as families subdivide them for settlement.
18. In view of this situation, more robust public discussion of the interrelationships between agribusiness, on which the country is economically heavily reliant, and food security might have been expected. Commendably, according to KNHRC, the new policy framework established by the 2009 Land Policy now requires that subsequent laws "...ensure that land management in cooperative and company owned farms are regulated by law to secure the rights of affiliate members and safeguard against subdivisions into uneconomical land sizes and non-adherence to planning requirements."
19. Further, the Land Policy includes requirements to ensure that the grant of land rights to non-citizens does not unduly deny citizens access to land. Thus the Government is required to:
 - (a) Prohibit non-citizens from holding freehold interests in land;
 - (b) Allow non-citizens and foreign companies to acquire leasehold interests only; and

²⁴ Kenya National Commission on Human Rights (KNCHR), *The Right to food: an assessment of Kenya's implementation of the relief food programme in 2006*, (2006, Nairobi, Kenya National Commission on Human Rights), 15-16.

²⁵ Kenya's Land Policy, 2009.

(c) Ensure that the standard leasehold term for land leased to non-citizens shall not exceed 99 years.

It is to be hoped that this new policy framework will provide the impetus to greater public debate and discussion around issues of agribusiness and the right to food, and also to more effective regulation to protect enjoyment of the right to food that, as the Special Rapporteur has repeatedly observed, is urgently needed worldwide.
