

GANHRI 2021 ANNUAL MEETING

NHRIs' ACTIONS FOR THE NEXT DECADE OF THE UNITED NATIONS GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

Online meeting on Zoom
30 June 2021 | 16:30-18:00 CEST

1. Remarks by Moderator, Elin Wrzoncki, Danish Institute for Human Rights

Recalled the NHRI journey during the last decade of the GPs:

- NHRIs adopted the Edinburgh Declaration in 2010 where we pointed to our monitoring actions and our role in researching Business and Human Rights.
- Since then, we have stepped up to live up to these ambitions, as there are plenty of examples of NHRIs succeeding.
- We had a workshop in March organized by GANHRI gathering more than 80 NHRIs, looking at what we had achieved so far and what are the challenges ahead.

2. Welcome remarks by Ali Al Marri, GANHRI Acting Chairperson

- Thanks our partners and co-sponsors of the event, thanks Ms. Anita Ramasastry and Prof. Surya Deva, Members of the UN Working Group on Business and Human Rights, thanks the UN Special Rapporteur on human rights and the environment, and the B-Tech Project who joined to share their expert views and all NHRIs participating.
- The UNGPs embed the “protect, respect and remedy” pillars, and carry a vision of “tangible results for affected individuals and communities, and thereby also contributing to a socially sustainable globalization.”
- In 2010, in the Edinburgh Declaration, NHRIs articulated their role and commitments in relation to advancing human rights in the context of business activities and emphasized the important role they can play in addressing corporate-related human rights challenges, both at the international, regional and national level.
- In March 2021, the GANHRI Working Group on Business and Human Rights, supported by the GANHRI Head Office and in coordination with the United Nations Working Group on Business and Human Rights hosted a “Virtual Workshop on NHRIs’ actions for the next decade of implementation of the UNGPs” with NHRIs from more than 80 countries participating, to discuss NHRI experiences and achievements and identify next steps.

- We now gather in the framework of the GANHRI Annual Meeting 2021, to discuss NHRIs' actions for the next decade of the UN Guiding Principles.

3. Presentation from Surya Deva, Vice-Chair, UN WG BHR

- Outlined the context, the diverse access to remedy pathways. critical focus areas, and the challenges and looking forward. There are growing expectations of the role of NHRIs. In relation to access to remedy, we articulate a three-part way approach. All NHRIs should contribute in a foundational way, raising awareness.
- Most NHRIs should be also able to provide legal assistance, and many can directly contribute by moderating and tackling complaints. The ideal situation is one where all NHRIs have a footprint in all three. But having two out of 3 is also good.
- We should consider NHRIs as part of a bigger mechanism. They should not see themselves as an external group, but more as part of a system in a country. The jurisdiction of many NHRIs is territorial but issues on business and human rights are extra-territorial.
- There are situations where HRDs come under attack. Defenders and NHRIs should support each other. We discovered that most NHRIs do not have an explicit mandate. We should give them broad jurisdiction. Most do not have adequate powers. They also have limited capacity.
- There should be more collaboration, and the government should provide more resources to NHRIs. Some NHRIs with A status are not independent in practice.
- We have made recommendations to governments and also to NHRIs.

4. Presentation from Anita Ramasastry, Member, UN WG BHR

- In a recent report, the WG highlighted the normative and practical implications for businesses to respect HRDs. States should consider NHRIs to protect defenders.
- The WG called for more information about HRDs. Businesses should include policies protecting HRDs. We have specific actions. States should let NHRIs be independent. Businesses should work with NHRIs respectively.
- Businesses should provide access to remedies for human rights abuses. Defend them against criminalization.
- We ask NHRIs to be responsive to different groups' demands. Remove barriers for HRDs. Engage with GANHRI. Deal sensitively with complaints brought by HRDs. We look forward to working closely with GANHRI to bring better policies for HRDs and businesses.

5. Panel 1: Technology and business and human rights

- **Isabel Ebert, UN Human Rights B-tech project:**
 - We have been collaborating with GANHRI in the past. In our opinion, the biggest challenge is breaking down the UNGPs. Articulate the three pillars in the tech industry. A key task for the upcoming 10 years is providing guidance for consultation on tech and human rights. Think about conduct and decision-making on finance, for example.
 - We have launched a community of practice. We need to identify best practices to implement human rights in complex situations. We need to ensure that state institutions are fit. Work on critical structures, such as data cities. Identify appropriate ways to provide a remedy before the issues escalate.
- **Ed Santow, Commissioner, Australian HR Commission - via video statement:**
 - We need more research and wide consultation. New technologies like AI can be underestimated. This new technology called capacity is something we cannot grasp yet.
 - Bad technology implementation closes the door to many impaired persons. AI can open the door to awful discrimination. Can we handle this new technology? We hear again and again that we want technology to be fair and accountable.
 - Our human rights and technology report sets a roadmap to achieve this goal. We have seen significant reform in Europe. Our report contains serious recommendations. We recommend the creation of a new AI Commissioner. This will provide new guidance for businesses. Encourage us to discuss these issues directly.
- **Teresa Anjinho, Deputy Ombudsperson, Provedor de Justiça Portugal:**
 - Particularly at the level of awareness, we are still at the beginning. The largest impact of software and digital transformation when it comes to governments and human rights.
 - The Internet has opened the door to data analytics, AI, and machine learning. Machines are seen by some people as more trustworthy than humans.
 - Digital technology has transformed the way humans are valued. Most of our legal frameworks are made questioning these challenges. The so-called digitalization of everything led to growing privatization of governance.
 - All this arises in an environment where there are huge gaps in access to the internet. We receive complaints in the digital transition. Age, electricity, and others are issues.

- We are building a new public space from a top-down strategy forgetting that this was what first led to inclusion. People should be participants in the construction of this new digital order.
- We already have the UNGPs to focus on the three pillars. We have to be the bridge between the States and businesses. As you may know, many initiatives are being taken.
- Disinformation and malware are becoming a business and also a powerful tool to undermine governments and businesses. More trust in the Internet is needed to develop better practices in developing nations. There is a difference between the right and smart things to do.

6. Panel 2: Environmental degradation, climate crisis & business and human rights

- **David Boyd, UN Special Rapporteur on the right to a healthy environment:**
 - We need accessible mechanisms and strong laws. The Norwegian NHRI intervened in a case before the Supreme Court, although the State did not take its advice.
 - Encourage states to move forward with a new treaty on transnational corporations and human rights. We have to move to legally binding requirements.
 - The biggest risk to human rights is that we do not achieve the green transition. We are not on track in achieving any of the SDGs. We need rapid and transformative changes.
 - We need to think outside the box. NHRIs have an absolutely critical role to play. It is critical for NHRIs to go beyond a reactive approach to human rights. They need to work preventively and break out of the box, work with other branches of government to ensure human rights are at the center of the action plan, and at the center of the plans against the climate crisis.
 - Achieving the green transition is our last goal. We are living in the midst of a climate emergency and a biodiversity crisis. The task before us is a monumental one and we must not underestimate it.
- **Mah Weng Kwai (Dato'), Commissioner, SUHAKAM:**
 - Most of the time we talk about climate change but UN SR has talked about it more clearly, framing it as a "climate crisis". We have in place a steering committee that has been set with the Ministry of Law.
 - The work that has been done is to have a national action plan on business and human rights. We came up with a blueprint in 2019. The major themes of the committee right now are labor environment and good governance. We have had round table discussions. Our work has been very restricted

because of the pandemic. Which in a way is good because of the lower business activity and its impact on the environment.

- Malaysia is a producer of rubber gloves and we are also interested in construction. Foreign workers are faced with discrimination. We also have problems with water pollution.
 - Before we would have people dumping waste into the rivers. We would call the authorities to have stronger laws but the problem was on enforcement and the lack of it. We have been in the back to ensure better enforcement. When it comes to air pollution, especially in the hot season (July-August), we always point our fingers at the issue of haze.
 - Another big problem is the import of plastic waste. This is fairly new, prior to 2019, China was a very large exporter of plastic waste. Then, China decided to stop and lots of imports came into Malaysia. We get the waste from Europe. If it is well managed you can promptly recycle it, but there are a lot of problems with illegality with improper import permits.
 - It all ends up in the so-called factories which are not even properly licensed. What you cannot recycle you just dump it.
 - The most immediate way to tackle this problem is through press statements. We are very regular with our press statements. And pursue strategic litigation.
- **Yuri Ramkisson, Senior Researcher, South Africa Human Rights Commission:**
 - From a broad perspective we identify environment and food security as the focus areas for the next 10 years. Business and human rights was identified as a cross-country issue.
 - The commission deals with issues related to business and human rights through individual complaints. We have convened with the UK Institute of Human Rights and Business. We have selected committees in mining and the environment. We hold various conferences and round tables. We participate in the regional WG on the development of a potential binding treaty on business and human rights.
 - One of our major complaints is the mining right. Mining is one of the biggest generators of CO2 emissions. The commission collects evidence from civil societies and responses from state departments. The process comes together in a report on the challenges of human rights violations in various sectors which are hurting minorities. Despite extensive regulations by mining companies to implement sustainable projects, current practices are characterized by concerning legislative gaps. Mining operations disproportionately favor mining companies and the state.

- Despite international principles of business and human rights, mining companies act with impunity. In relation to environmental rights, mining respects and licenses always take precedence. The commission is in a unique position to engage the state on the findings and recommendations. It has begun monitoring the response with a special committee. It has learned that a multi-prompt to dealing with systemic issues using its legislative mandate is an effective way to effect long-term change in the mining sector. The environmental safety of HRDs is key for our commission.

7. Conclusion by Deniz Utlü, GIHR. Chair of GANHRI WG BHR

- Today we focused on emergent themes, specifically technology and climate. We need new approaches to understand and respond to new issues of business and human rights. We need to understand how to strengthen what we already have. To strengthen what we have, we need to confer an adequate power mandate. The UNGPs build the fundamentals for NHRIs to respond to human rights issues. We can build bridges with civil society organizations. NHRIs should learn new methods, acquire new knowledge, and strengthen their mandates. This is only possible if financial and learning extensions are there.
- Actors need to be able to address new risks independently. NHRIs are both part of the national human rights protection system and the international sphere of NHRIs. We need policy, education, and training to tackle AI threads. Teresa emphasized how UNGPs are a good starting point. A main challenge as Mrs. Eber explained is to translate UNGPs into different sectors. Our future work needs to be a mix of the new understanding we have and the acquisition of new knowledge.
- The environmental part of the discussion emphasized we need to be careful with language. We need to speak about a climate crisis instead of just climate change. We need to move from guidance to legally binding requirements. NHRIs can strengthen the rule of law. There is an implementation problem and NHRIs can be more active in solving this issue and in prevention.
- The Malaysia NHRI mentioned the coming-up action plan. It gave important examples of the import of plastic into Malaysia, as it is not a "rubbish dump". We heard from South Africa examples of what NHRIs can do. Today's event showed us how we can cooperate and rise to the new challenges awaiting us. Each actor can contribute in a specific way. I hope

we get successful and orchestrate our work towards a world where our rights are protected and upheld.

Chat Information (copy and pasted accordingly):

Contribution from Surya Deva, UNWG on BHR: Hi all, here is the link to the UN Working Group on BHR's report on NHRIs: <https://undocs.org/A/HRC/47/39/Add.3>

Contribution from Daniel Morris:
https://ap.ohchr.org/Documents/dpage_e.aspx?si=A/HRC/47/39/Add.3

Contribution from Anita Ramasastry: UN WG Human Rights Defender Guidance - https://ap.ohchr.org/Documents/dpage_e.aspx?si=A/HRC/47/39/Add.2

Contribution from Dr. Isabel Ebert, OHCHR B-Tech: Hello everyone, thanks for the invitation to speak – please see here our B-Tech portal: <https://www.ohchr.org/EN/Issues/Business/Pages/B-TechProject.aspx> ; and here a post by GANHRI on the role of NHRIs in achieving policy coherence in tech <https://www.ohchr.org/Documents/Issues/Business/B-Tech/b-tech-blog-policy-coherence-nhris-tech.pdf>

- For any questions or comments or further information regarding the B-tech project, please contact B-techproject@ohchr.org. We check the inbox daily :)
- Everyone who wants to participate in the Access to Remedy Conference focussing on the tech sector from 23-24 September, please send your email address to me via private message

Contribution from Namit Agarwal - WBA, India: Recent assessment of top 100 tech companies shows that online child safety is not a concern of all tech companies. Only 16 out of 100 most influential cos. have made a high-level commitment to child online protection - <https://www.worldbenchmarkingalliance.org/publication/digital-inclusion/>

Contribution from EHRC, Nik WILLIAMS: I think it is this one <https://humanrights.gov.au/our-work/rights-and-freedoms/publications/human-rights-and-technology-final-report-2021>

Contribution from Elin Wrzoncki - DIHR: <https://tech.humanrights.gov.au/>

Contribution from David Boyd, UNSR, Canada: My thematic reports on human rights and the climate emergency, biodiversity crisis, air pollution, the water crisis and others can be found here:

<https://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/AnnualReports.aspx>

Contribution from Teresa Anjinho, Portuguese Ombudsp. Office: Lisbon Declaration: <https://www.lisbondeclaration.eu/>

Contribution from OHCHR / nathalie stadelmann: Dear all, just to mention that the B-Tech project, together with the OHCHR Accountability and Remedy project, will organize a two-day consultation on access to remedy in the tech sector. we would like to devote one session to the role and contribution of State-based non-judicial mechanisms to access to remedy in the tech sector, including NHRIs. Hence, i would like to invite you to get in touch with us if you would like to share work you are doing in that space. It could be anything your NHRI has been undertaking towards faciliating access to remedy. Please get in touch with us if you have an interest in presenting your work /partnering with us for that session. You can reach us at B-techproject@ohchr.org Many thanks !

- dates of the consultation : 23-24 september. We will make sure to disseminate the information about the consultation through the OHCHR NHRI section.

Contribution from NHRC, India, Bimbadhar Pradhan: 23-24 September OHCHR Consultation Process-NHRC India wishes to participate...Thank You

Contribution from Yuri Ramkisson - South Africa: Link to mining report: <https://www.sahrc.org.za/home/21/files/SAHRC%20Mining%20communities%20report%20FINAL.pdf>