

Network of African National Human Rights Institutions

**NANHRI
RINADH**

Réseau des Institutions
Nationales Africaines
des Droits de l'Homme

The Role of a Multi-Stakeholder Exchange Forum in
Addressing Business and Human Rights Impacts:

**A Case Study of the Commission
nationale des droits de l'Homme of
the Democratic Republic of Congo**

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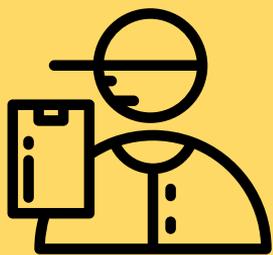
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...many businesses tend to have a limited understanding of existing business and human rights (BHR) frameworks.



Introduction

In March 2022, the Democratic Republic of the Congo's (DRC) Commission nationale des droits de l'Homme (CNDH) proposed to the CNDH's Plenary Assembly the development of a permanent multi-stakeholder exchange forum on business and human rights (BHR). The purpose of the forum would be to convene relevant stakeholders to exchange information, voice their concerns and discuss BHR issues in a set environment to then adopt recommendations, suggestions and solutions to potential conflicts between businesses and local communities.

The forum would be comprised of designated focal points from the

government, public and private businesses, media and civil society organisations (CSOs) to meet quarterly in Kinshasa and other provinces. Through the forum the CNDH plans to disseminate knowledge of BHR and contextualise the United Nations Guiding Principles on BHR (UNGPs)² with the objective of developing and adopting a National Action Plan on BHR (NAP) by the DRC.

The initiative would build on the CNDH's existing practice of organising formal exchanges among stakeholders. For example, the CNDH has established a monthly forum where human rights CSOs meet with the Commission to share information on emerging

2 Human Rights Council (2011), 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework', A/HRC/17/31.

and existing human rights issues, complaints and developments across the country. Previously, the Commission set up a similar forum focused on the topic of corruption which yielded increased willingness and engagement by human rights players to tackle this issue, thereby demonstrating the need for similar initiatives, hence the current proposal for the multi-stakeholder forum.

The DRC is a country rich in natural resources and attracts many transnational companies through public-private partnerships and domestic and international investment. However, interviewees indicated that business conduct is not effectively

monitored, giving rise to an increased number of environmental and human rights abuses, including child labour, labour rights violations, forced resettlement of communities, as well as water, soil and air pollution. As noted by one of the CNDH's representatives, while businesses reap immense profits from Congolese resources, they have not been implementing responsible business conduct initiatives. Additionally, even where businesses decide to undertake development projects, such as building schools and health centres, the CNDH has found that these initiatives do not address the needs of the community.



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The development of a multi-stakeholder forum on business and human rights



The permanent forum will allow for stakeholder meaningful participation

The need for a permanent multi-stakeholder exchange forum on BHR emerged from the various inquiries and investigations conducted by the CNDH and the complaints the Commission has handled over the last years, especially in relation to the extractive industries sector, where human rights abuses by businesses are rife.³ To address those cases, in the past, the CNDH has organised ad hoc dialogues and meetings, which have resulted in a challenge of maintaining institutional memory, which in turn has led to difficulties in establishing continuity and follow-up discussions, since different institutions would send different representatives to different meetings. The advantage of creating a permanent forum with designated focal points, would be to allow for meaningful participation and adequate preparation

by stakeholder groups' representatives to follow up on recurring issues, needs and recommendations. The CNDH also identified a need for disseminating knowledge and building capacity on BHR for businesses, state actors and civil society. In the absence of a NAP, the CNDH is leveraging its role and mandate to educate and accelerate the implementation of the UNGPs across the country, a process that is envisioned to contribute to the success of the permanent multi-stakeholder exchange forum.

The initiative has been tabled for consideration and adoption for the fourth quarter of 2022 with subsequent budget allocation from the Treasury.

3 Amnesty International (2019), 'DRC: Crisis in Mines Requires Sustainable Solutions', Public Statement AFR 62/0772/2019.

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Involvement of stakeholders in the development of the initiative

As a first step, the CNDH set out to identify relevant stakeholders to involve in this initiative, with the aim of establishing an initial team of core stakeholders that will join the multi-stakeholder exchange forums, but open to other interested and relevant actors and stakeholders participating in the long-term. The choice of actors and stakeholders is expected to reflect the BHR landscape in the DRC. For example, the Ministry of the Interior, Security and Customary Affairs could be involved if complaints about safety on mining sites were to be brought up during the dialogues.

Operating within the framework of the UNGPs' three pillars, the CNDH first identified state stakeholders, such

as different government ministries (including, inter alia, the Ministry of the Environment and Sustainable Development, the Ministry of Human Rights, the Ministry of Economy) and the Parliament, which has the duty to regulate the legal and the policy environment that would be key in integrating the UNGPs in the Congolese context.

The CNDH has also mapped out some key CSOs working on BHR issues. The Commission already has a relationship with these human rights organisations in the context of the civil consultation framework,⁴ which the CNDH's provincial offices work with. The CNDH considers the involvement of human rights CSOs to be essential because of



⁴ The civil consultation framework (Cadre de concertation nationale de la société civile) is a forum set up by MONUSCO in its disarmament and pacification initiatives in zones of conflict in the DRC.



Involvement of human rights CSOs is essential



their experience in working on human rights issues across the country and the existing relationship of the CSOs with the Commission in terms of knowledge and information sharing. Additionally, the CNDH has been deliberate on strategic media involvement in this forum to strengthen sensitisation and education of the general population on BHR.

Based on the UNGPs' Pillar II, the corporate responsibility to respect, the CNDH will also involve business leaders and CEOs whose businesses are part of the Fédération des entreprises du Congo (the Federation of enterprises of the Congo).

In line with the UNGPs' Pillar III, access to remedy was also considered by the CNDH in the design of the initiative. Public prosecutors and Courts' magistrates will thus also be involved and able to raise awareness about the available avenues for remedy and reparations for business-related human rights harms. In this sense, the forum will also take the form of an early warning mechanism, in cases of human rights abuses being raised in the forum. The aim is that complaints presented at the forum will be registered and addressed by the CNDH during the discussions and the Commission's human rights monitoring activities.

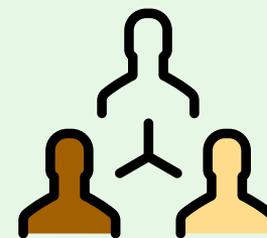


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Intended transformative impact of the forum

The CNDH has set several objectives for the forum. Raising awareness and conducting human rights education on BHR, especially with businesses, on the need to respect human rights as a fundamental requirement to ensure the sustainability of their activities, and to avoid conflicts between different parties. In addition, applying this practical approach to BHR by starting from the needs and potential complaints of local communities, is intended to contextualise the UNGPs and other BHR norms to the DRC. A clear goal that the CNDH wishes to attain is the adoption of a NAP by the government.



“...the need to respect human rights as a fundamental requirement to ensure the sustainability of their activities...”

5



Human rights-based approach and gender lens

Human rights were considered at every stage of the design of this initiative. The CNDH has given a fundamental role to effective and inclusive public participation as the foundation for this forum. Solving human rights-related issues and complaints through sensitisation, capacity building and advocacy will be the driving force of the initiative.

Gender considerations played an important part in the design of the permanent forum and are also envisioned to take a key role in its implementation. The CNDH has emphasised the need for gender considerations in the identification and selection of the focal points to ensure that women will be equally represented and meaningfully engaged in the process.

The stakeholders that were identified based on this consideration include the Ministry of Gender, Family and Children because the CNDH wants to make the economic exploitation of children and pregnant women a crucial issue to tackle during the dialogues. When conducting sensitisation activities and raising awareness, the CNDH plans to remain conscious of gender by ensuring participation and representation of women.

Child labour and women's socio-economic rights represent key areas that the Commission has spotted as being of great concern during its investigations in Kinshasa and other provinces. Gender-based discrimination, the lack of respect for women's rights and women's underrepresentation are not problems that just concern the extractive or the agribusiness



sectors: the CNDH's inquiries have made the same observations in banking institutions and state-owned enterprises. Through their inquiries, the CNDH has found that, in private sector management boards and administrative committees, only 10% of the staff are women, while they account for 19% in the public sector. ⁵ The interviewed CNDH representatives stated that the CNDH, therefore, intends to incorporate gender considerations in BHR strategies in the country.

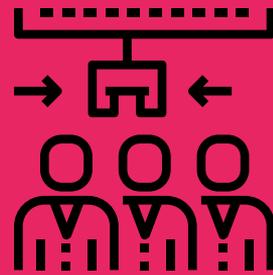
⁵ Commission nationale des droits de l'Homme CNDH-RDC (2017), 'Rapport d'enquête sur les violations des droits économiques et sociaux des femmes dans les entreprises publiques et privées dans la ville de Kinshasa', https://cndhrdc.cd/glis_c/a_cndh/SkE_a_cndh_2950191605femme.pdf.

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The resources used to develop the permanent forum were and will mostly include technical and financial and human resources. Regarding technical resources, the CNDH has expressed that in order to ensure the smooth functioning of the forum, the capacity of collaborators and colleagues on BHR would need to be reinforced. In this regard, the CNDH has requested the expertise and support of other NHRIs and organisations specialising on BHR. Financial resources are fundamental to be able to host the forum and hire BHR consultants. The CNDH also expressed that it would need logistical support to work on developing tools and approaches for locally relevant company-level grievance mechanisms.

Resources



“ *Financial resources are fundamental to host the forum* ”



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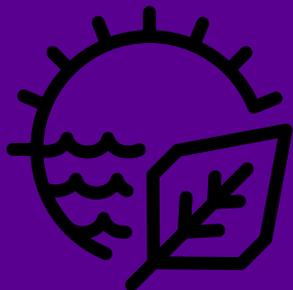
As part of embarking on the implementation of the initiative, the CNDH has identified potential obstacles the permanent forum could face, that would need to be addressed if they arise.

A first challenge could come from stakeholders being resistant towards participating in the BHR forum, not least because the CNDH has, in the past, identified some of the potentially involved actors in its reports for their disregard for human rights. As opposition to participate could pose a critical barrier to constructive exchanges, the CNDH has planned to conduct awareness-raising and advocacy activities as the first implementation phase. Sensitising

Potential obstacles

stakeholders to the importance and the merits of respecting human rights therefore represents an important part of the Commission's work in order for the permanent forum to have a lasting impact on the BHR landscape in the DRC. In that regard, the Commission plans to first hold consultations and awareness-raising activities with groups of stakeholders separately, before bringing them together to exchange ideas, experiences and suggestions. In order to further foster a sense of ownership of the process by stakeholders, the CNDH has designed the initiative in such a way that the stakeholders themselves will evaluate the recommendations at the end of each forum before adopting them.





...the CNDH has expressed the importance of timely adoption of an adequate budget by the Treasury to inform the effective implementation of the forum.

Another obstacle that was identified by the CNDH is the potential negative influence of local leaders and authorities who would attempt to obtain more benefits from agreements with businesses than the local communities. In the CNDH's experience, local authority figures have, in the past, agreed to certain projects with companies, going against the rest of the community's wishes. These diverging interests could engender tensions, which only supports the importance of holding the discussions in a permanent forum and the adoption of a NAP. The need for adequate financial resources to implement the forum was also identified by interviewees as a possible challenge. Practical elements, such as convening stakeholders in



a venue, have significant financial implications. Therefore, the CNDH has expressed the importance of timely adoption of an adequate budget by the Treasury to inform the effective implementation of the forum.



Lessons learnt and key takeaways for NHRIs in the region

While the first meetings of the forum have not taken place yet, the CNDH is already learning from the process and the exchanges it has had so far with BHR stakeholders. Per the law establishing the CNDH, the Commission will be issuing a report every time it meets in session and is working on new projects such as the permanent forum. The reports contain recommendations that will be tailored and transmitted to the DRC's main state institutions, including the President, the Prime Minister, the National Assembly, the Senate, Courts and prosecutors. These institutions will be able to learn from the CNDH's initiative and consider the dynamic BHR developments in the country.

Furthermore, the CNDH hopes that, by sharing its experiences on this

evolving initiative, it will be able to provide an example for other African NHRIs on one modality of how NHRIs can engage different stakeholders on BHR. According to the CNDH, it is clear that many African NHRIs are keen on developing their BHR portfolio and strengthening their mandate while being cognisant of the different contexts and needed approaches. Presently, there are several opportunities for peer-learning initiatives and sharing good practices among NHRIs and other stakeholders. The CNDH therefore intends to share lessons learnt from the forum's first sessions, as well as the process leading to the adoption of the initiative, with networks such as NANHRI and the Global Alliance of National Human Rights Institutions (GANHRI), as has already been the case with the CNDH's monthly forum held

with human rights CSOs.

The forum will aim to provide a mutually inclusive and beneficial avenue for all stakeholders involved. For the CNDH, NHRIs should aim to gain the trust of all stakeholders and constructively engaging with such stakeholders is a key opportunity to implement BHR frameworks across Africa.

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About this case study:



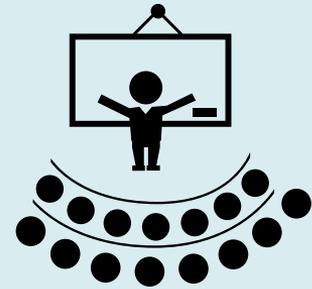
This case study focuses on an initiative of the national human rights institution (NHRI) of the Democratic Republic of the Congo to establish a permanent multi-stakeholder exchange forum on business and human rights. Proposed by the Commission nationale des droits de l'Homme (the NHRI), the initiative is an instructive example of how NHRIs can stimulate stakeholder dialogue on business and human rights in their countries.

This case study is part of a series of case studies focusing on engagement of national human rights institutions (NHRIs) in the African region on the topics of business and human rights and sustainable oceans. These short case studies have been conducted as a follow-up to the Network of African National Human Rights Institutions (NANHRI) member survey on Business and Human Rights & Sustainable Oceans, with the purpose of delving deeper into select NHRI activities, with a view to sharing learning among NANHRI members and stimulating dialogue among NHRIs on how they can apply their Paris Principles mandate in business and

human rights and sustainable oceans. The survey was conducted as part of a collaboration between NANHRI and the Danish Institute for Human Rights (DIHR), made possible thanks to the support from the Swedish International Development Cooperation Agency (Sida).

This case study is based on interviews with six staff members of the Democratic Republic of the Congo's *Commission nationale des droits de l'Homme*'s who participated in virtual interviews which took place in the month of March 2022. The interviews followed a standardised interview guide and included tailored follow-up questions. The content of this case

study therefore reflects assessments made by the interviewees and does not necessarily represent the views of NANHRI or DIHR. The case study has been developed by Mercy Obonyo from NANHRI and Mathilde Dicalou from DIHR, with support from staff members of both institutions, and review by colleagues from the *Commission nationale des droits de l'Homme*. We thank the interviewees for sharing their work and insights to develop this case study.



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