



## UN FORUM ON BUSINESS AND HUMAN RIGHTS:

### PANEL DISCUSSION ON “DISCUSSING CASE STUDIES, TRIGGERING CHANGE”

1 DECEMBER 2014, 4.30-6.00 PM, ROOM XI, PALAIS DES NATIONS, GENEVA, SWITZERLAND

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In collaboration with the UN Working Group on Business and Human Rights, Friedrich-Ebert-Stiftung, Business and Human Rights Resource Centre, German Forum Human Rights (FMR), in cooperation with CounterCurrent and ESCR-Net, organized a panel discussion at the 2014 UN Forum on Business and Human Rights themed “*Discussing Case Studies, Triggering Change*”.

The leading question was the following: How can the UN Guiding Principles on Business and Human Rights (UNGPs) be applied in concrete cases to uphold human rights? All three pillars of the UNGPs were taken into account: the state obligation to protect, the business responsibility to respect and access to effective remedy.

#### I. Introduction

In this session, the panelists and over 150 participants discussed two case studies exploring the potential impacts of the UN Guiding Principles on Business and Human Rights (UNGPs). The said case studies were the Hidrosogamoso Dam project in Colombia and the Tampakan gold and copper mine in the Philippines. Speakers included NGO activists from the affected regions, a representative of the International Commission on Large Dams (ICOLD) as well as the Regional Human Rights Director of the Philippine Commission on Human Rights. Michael Addo, Chairperson of the UN

Working Group on Business & Human Rights was invited to speak as a commentator. The session was chaired by Richard Howitt, Member of the European Parliament, Chair of EP group on CSR and moderated by Phil Bloomer, Executive Director of the B&HR Resource Centre.

The panelists identified how the application of the UNGPs could contribute to a constructive debate and mitigation of conflict. Where damage has already been alleged, options for remedy under the third pillar of the UNGPs were explored to identify effective ways to redress negative consequences.

## II. First case study: The Hidrosogamoso Dam project

The construction of the 820 MW Hidrosogamoso dam situated on the Sogamoso river, Province of Santander, Northern Colombia, is largely complete. It will soon flood an area of approx. 70 km<sup>2</sup> hosting two national parks, and come with new bridges, streets, transmission lines and pipelines. This project is sponsored by the Colombian company Isagen S.A., with the Austrian company Andritz providing turbines and Italian Salini Impregilo contracted for construction work. The German government has already granted an export credit guarantee in December 2012 for the turbines produced/sent from the German branch of Andritz.

At the panel discussion, Claudia Ortiz and Juan Pablo Soler Villamizar, two activists from the movement *Movimiento Ríos Vivos* – an organization for the defense of the territories and communities affected by dam construction and mining projects in Colombia – reported on the various impacts on local communities caused by the dam project. These included:

- Loss of livelihoods from the flooding of the area including disappearance of various professional activities such as handicraft boat construction, fishing and stone extraction;
- Impacts on the local fauna and flora due to changes in micro climate;
- Disappearance of traditional boat transportation routes on the river; and

- Concerns about threats and harassment repeatedly faced by members of their movement.

According to the Environmental Impact Assessment (EIA), people affected by the project are: 2,200 families living in the reservoir area, and about 4,300 families downstream of the dam. Furthermore 2,600 persons are affected by construction of infrastructure, influx of workers, waste deposit etc.

Isagen S.A. stated that it intends to take care of expropriation and resettlement in a responsible manner; the German Export Credit Agency (ECA) has conducted a field trip to the region during their project appraisal. However, local people state that they experience severe unmitigated impacts. According to them, promises by the project sponsor have not been kept and the expected consultations between the local stakeholders, high level government officials and the company did not take place.

Reacting from the floor, the Presidential Advisor for Human Rights in Colombia, Mr. Guillermo Rivera, publicly took note of the complaints and expressed his willingness to convene dialogues towards settling the case, while paying attention to the UN Guiding Principles.

## III. International Commission on Large Dams (ICOLD):

In his presentation, Patrice Droz, technical director at Stucky S.A. and representative of the International Commission on Large Dams (ICOLD) focused on the role of dams in the world's energy production more generally,

rather than focusing on the Hidrosogamoso Dam project.

The ICOLD is an international organization tasked with providing a platform for stakeholders in dam engineering, construction, operation and maintenance. Whilst until the 1950's the objectives of the ICOLD were essentially of a technical nature, economic, financial, environmental and social aspects were later included. Furthermore, a code of Ethics was implemented. About 100 countries are members of the ICOLD through their National Committees representing individual members such as engineering companies, builders, scientists, governments and associations.

Patrice Droz stressed the positive aspects of dam projects and hydropower, saying that large water storages had to be developed to cope with 21<sup>st</sup> century challenges such as raising water and electricity consumption, replacing polluting energy and enhancing agricultural development.

In the following discussion the question of implementation and monitoring of the ICOLD's Code of Ethics was raised. Droz stated that the ICOLD established an internal committee on monitoring the implementation of the Code of Ethics but underlined that it was the responsibility of the various countries and stakeholders to consider and mitigate the social impacts of dams. He stressed that the ICOLD's role is to offer a platform for dialogue towards finding

solutions, not to substitute to the countries or other stakeholder's responsibilities.

#### **IV. Second case study: The Tampakan gold and copper mine in the Philippines**

The Tampakan gold and copper project is reportedly the 7<sup>th</sup> largest undeveloped copper mine in the world and, when operational, would be among the largest copper-gold mines in Southeast Asia. Owned by Glencore-Xstrata, with the Australian company Indophil holding a minority stake, the mine is operated by a local subsidiary, Sagittarius Mines, Inc. (SMI). The total mine area is estimated at around 10,000 hectares in four provinces (South Cotabato, Sarangani, Davao del Sur and Sultan Kudarat), mostly forested and including a substantial part in the ancestral territories of an indigenous people – the Bla'ans.

The company's Environmental Impact Assessment estimated that 5,000 people - indigenous for the most part - would be directly affected and would require re-settlement. An independent [Human Rights Impact Assessment \(HRIA\)](#) of the Tampakan copper-gold project<sup>1</sup> concludes that “the Tampakan Project has significant impacts on the human rights situation in the area” such as violation of indigenous rights and environmental impacts.

At the panel discussion Jesus Vicente Garganera, National Coordinator of Alyansa Tigil Mina (Alliance Against Mining, ATM) and

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<sup>1</sup> Conducted by the Institute for Development and Peace (INEF), commissioned by MISEREOR (German Catholic Bishops' Organization for Development Cooperation) and Fastenopfer (Swiss Catholic Lenten Fund), in collaboration with Bread for All.

Rene Pamplona, a representative of the Tampakan Forum<sup>2</sup> from the Philippines reported on the latest developments of the project. According to them, the mining project was currently under “temporary suspension” after years of resistance and mobilization of the local communities, especially the indigenous people with contribution of peasants, local governments and various NGOs. Glencore had approved a “downscaling plan” in 2013. Only after securing the free, prior and informed consent (FPIC) from the local communities, the exploration activities can be continued.

The National Coordinator of ATM stated that from a rights-based perspective the demand of the communities to the Philippine government is to cancel the mining contract of Glencore, based on the potential negative impacts including:

- Reduced water supply for domestic and irrigation use;
- Destruction of primary forests;
- Contamination of water bodies in the surrounding provinces;
- Dislocation and displacement of indigenous peoples;
- Escalation of violence in the area.

He doubted that the Business and Human Rights Framework and its Guiding Principles (UNGPs) could offer a way to move forward on the creation of a path for “responsible operation of mining” in the Philippines. This was in particular because of the voluntary nature of the Guiding Principles, including

the weak regulatory functions and capacities of states to enforce the UNGP and the lack of international bodies and mechanisms to receive and investigate complaints with the UNGP. Moreover States or governments themselves were directly involved or investors in extractive industries.

ATM’s proposal for the elaboration of a National Action Plan on Business and Human rights in conformity with the UNGP included the following:

- Respect for all national laws in compliance with international standards and multi-lateral environmental agreements;
- Inclusion of comprehensive impact assessments, comprising cultural and human rights impact assessments;
- Expanded cost-benefit analysis and full transparency of the value chain of the mining operation;
- Recognition of “No-Go Zones” for mining.

The National ATM Coordinator concluded his presentation by summarizing concrete recommendations to the UN Working Group on Business and Human Rights (UN WG):

- Adoption of an internationally legally-binding instrument to hold corporations accountable for their behavior;
- Establishment of an international tribunal / grievance mechanism;
- Creation of a Center on Transnational Corporations, to monitor practices of corporations and businesses;

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<sup>2</sup> An NGO network working on mining and particularly on the Tampakan Project; predominantly on a national level with two international associates.

- Establishment of links between human rights obligations and the contents of free trade agreements (FTAs);

Jeanne Ivy Abrina, the Regional Director of the national Commission on Human Rights of the Philippines (responsible for “Region 10” where the project is situated) hoped to gain insights from the panelists and forum attendees which could help strengthening the Commissions’ capacity to undertake human rights investigations and monitoring. With regard to the Tampakan mining case, she emphasized the duties of the state, involved business enterprises, as well as the Commission.

#### Duties of the State

She requested the government to ensure that Sagittarius Mines Inc. (SMI) stops violating the rights of the people. In this regard, she stated examples of killed, injured and threatened persons from the local communities, illustrating the failure of the State to protect civilians.

Furthermore, the State must ensure the free access of the people not only to judicial but also non-judicial remedies and close gaps in the domestic legal framework.

#### Duties of Businesses

As far as business enterprises are concerned, she stressed that they should not exercise coercive measures and other undue interference in the traditional exercise of collective decision-making by the indigenous people.

She claimed that a Human Rights Impact Assessment must be conducted by the enterprises prior to the government’s

issuance of mining permits and licenses. An environmental impact assessment alone is not seen as comprehensive enough for a holistic view taking into account social, cultural and environmental impacts possibly caused by such a project.

#### Duties of the Commission

The commission sees its role in actively intervening for the protection, promotion and fulfillment of human rights as an independent national human rights institution e.g. in organizing multi-stakeholders dialogues.

### **V. Comment by Michael Addo, Chairperson of the UN Working Group on Business and Human Rights**

In his comment Michael Addo, Chairperson of the UN Working Group on Business and Human Rights focused on the implementation of the UNGP and the role of National Actions Plans (NAPs) without directly responding to the presented case studies.

He underlined that the UNGP are not voluntary in nature as they are based on legally binding obligations contained in various treaties. He was convinced that if properly implemented the UNGP were a tool to prevent human rights violations and, where damage has already been alleged, to redress negative consequences. In this regard he stressed the importance of National Action Plans (NAPs) as an instrument for the dissemination and implementation of the UNGP and how monitoring of efforts made national level

could be supported by the Universal Periodic Review (UPR) and the UN Treaty Bodies. NAPs should be based on the inclusive and coordinated involvement of all relevant stakeholders, and include an analysis of existing practices and remaining gaps in laws, regulation, policy and action.

Michael Addo concluded by emphasizing the catalytic role of Civil Society Organizations in holding governments accountable and the importance of involving businesses and persuade them to engage with the UNGP.

**On the author**

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