

Submission to the United Nations Human Rights Council

Universal Periodic Review Session 9: Liberia

April 2010

Context

In resolution 8/7¹ of 18 June 2008 extending the mandate of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises (SRSG), the UN Human Rights Council welcomed the SRSG's proposed policy framework for business and human rights based on three overarching principles of the State duty to protect all human rights from abuses by, or involving, transnational corporations and other business enterprises, the corporate responsibility to respect all human rights, and the need for access to effective remedies, including through appropriate judicial or non-judicial mechanisms.

In recognising the need to operationalise the framework, the Council resolution calls among other items, for the SRSG to develop concrete and practical recommendations on ways to “strengthen the fulfilment of the duty of the State to protect all human rights from abuses by or involving transnational corporations and other business enterprises, including through international cooperation”.

In that spirit, and as a means of encouraging constructive dialogue on private sector related issues in the Human Rights Council Universal Periodic Review process, this submission by the Institute for Human Rights and Business (IHRB) addresses aspects of the government of Liberia's record of protecting against human rights abuses committed by or involving business. The submission offers recommendations for consideration by the Liberian government and members of the Human Rights Council. IHRB welcomes feedback on this submission.

Summary of submission:

Part 1 addresses relevant Liberian regulatory provisions concerning human rights and business.

Part 2 describes select documented human rights abuses committed by or involving business related to labour laws, concession agreements and private security contractors.

Part 3 makes recommendations in particular areas of concern for follow up action.

Part I: Liberian Normative and Institutional framework – Ratification of UN Human Rights treaties

The government of Liberia has ratified the following UN human rights treaties: the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child, and the Convention on the Elimination

of All Forms of Discrimination against Women. It has also acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and its Optional Protocol. Also relevant is ILO Convention No. 182 concerning Prohibition and Immediate Action for Elimination of Worst Forms of Child Labour.

Liberia's Constitution provides that "the Republic shall direct its policy towards ensuring for all citizens, without discrimination, opportunities for employment and livelihood under just and humane conditions, and towards promoting safety, health and welfare facilities in employment.² It should be noted that Liberia's Labour law provides for workers to be subject to summary dismissal without cause and for discriminatory reasons. As a consequence, there is no legislative protection against the exploitation of the majority of persons labouring in any business, and in particular, on private rubber plantations, as has been noted in reports by UN agencies³ and civil society organisations⁴. This law appears to be inconsistent with Liberia's Constitution.

Liberia's Poverty Reduction Strategy (LPRS) 2008 describes the government's strategies for growth and human development over the period 2008-2011⁵. The LPRS states in relation to commercial forestry that concession revenues received by the Liberian Government will be used to promote public welfare by financing investments in roads, education, health, water, and other areas such as infrastructure and basic services. The LPRS states in relation to the mining sector that the major policy challenge is to develop a national framework that minimises negative social and environmental impacts of mining activities, to develop mining concession contracts that differ from those of the past by better balancing competitive investor returns with the need for robust revenues, and ensuring that local communities share in the benefits through direct and indirect employment.

The Guidelines to Organise and Operate Private Security Agencies⁶ refer to temporary arrest and immediate hand over of individuals to the nearest Liberian police authority. The Liberian Penal Code also provides that the unlawful detention of individuals amounts to false imprisonment.

The Public Procurement and Concessions Act 2005⁷ regulates all forms of public procurement and concessions. The supporting Implementation Manual is intended to provide guidance to facilitate compliance with that Act.

The pending Liberia Decent Work Bill is intended to protect workers and their organisations against anti-union discrimination at the time of recruitment and during employment, and give effect to its human rights and ILO obligations. It is also intended to address discrimination against women in working conditions.

Part II - Implementation and efficiency of framework

Labour laws

While recognising that Liberia's gradual law reform process follows on from a decade of civil war, Liberia's private employment sector continues to suffer from a number of shortfalls that in turn impact upon Liberia's human rights obligations under international law. These include:

1. Inadequate monitoring of safety standards in rubber plantations, including protection of workers from hazardous materials;
2. Use of child labour in the areas of rubber plantations, agriculture and the alluvial diamond industry;
3. Reliance on informal and casually employed work force, resulting in less favourable work and living conditions;

4. Lack of legislation guaranteeing workers adequate protection against anti-union discrimination at the time of recruitment and during employment, accompanied by effective and dissuasive sanctions; and
5. High proportion of employment of women in the informal sector without adequate safeguards to protect fundamental labour related rights.

A study published by the ILO in late 2009⁸ indicates that Liberia currently has fewer than 50 labour inspectors to promote compliance with the labour law in a workforce of more than one million people. Inspection is difficult because the workforce is dispersed and highly informalised. Although labour inspection is geared to standard, formal sector jobs, four-fifths of those employed work either in agricultural self-employment or in informal non-agricultural sectors.

Concession contracts

While foreign investment in Liberia creates employment, the government of Liberia's bargaining position with multinational companies is weak, and is open to exploitation by some companies pushing for more favourable terms in concession negotiations. Through stronger negotiation and enforcement, the terms of concession contracts could be more favourable to the Liberian government, which would be meaningful if in turn those benefits reached the Liberian population.

Foreign companies operating in Liberia under concession contracts have frequently been found to be in contravention of the terms specified in their contracts. For example, complying with Liberian laws on labour contracts, complying with concession terms such as providing housing or education for workers' families on plantations so that they are not deprived of basic rights, and contributing to national programmes on infrastructure development, are obligations agreed by foreign companies within concession contracts which reports⁹ indicate have not been faithfully implemented.

Private Security Contractors (PSCs)

Not all concession contracts negotiated by the Liberian Government that contain provision for PSCs appear to be consistent with Liberia's private security agency guidelines. For example, contrary to those guidelines, PSCs engaged by the management of rubber plantations have been reported as committing human rights abuses such as illegal detention in their own facilities after having made temporary arrest¹⁰.

Part III: Recommendations

The following recommendations are made to the government of Liberia in relation to the above concerns:

1. Consider the development of a national CSR strategy and/or Business and Human Rights Policy framework which would clearly set out government expectations regarding implementation of the UN endorsed Protect, Respect, Remedy framework as well as other basic expectations of companies operating domestically and internationally including information about local partners with whom business can collaborate to foster a human rights based environment. The newly established Liberia Corporate Responsibility Forum may be an appropriate platform for such discussions.¹¹

2. Ensure greater resources are directed towards the reform of, and monitoring compliance with, Liberia's Labour laws and repeal labour laws such as s 1508(3) of the Labour Law that do not correspond with Liberia's international legal obligations.
3. Prioritize addressing concerns raised by UN Human Rights Treaty Bodies¹² about the situation of women working in the private sector, as well as the high number of women in the informal sector, and the lack of rights and social benefits, including maternity protections, available to them.
4. Implement the pending Decent Work legislation that reflects the developing norm on labour markets that contribute to sustainable development.
5. All city ordinances and other relevant local legislation should be reviewed to ensure consistency with international legal obligations.
6. Future negotiations concerning concession contracts should prioritise economic development, poverty reduction and human rights based approaches including steps to ensure the implementation of human rights due diligence processes by companies awarded contracts.
7. Concession contracts that provide for private security contractors should be consistent with the private security agency guidelines and Liberia's obligations under international law, including relevant UN principles on the use of force, and be enforced accordingly.

END NOTES

¹ http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_8_7.pdf

² The right to liberty is also enshrined in Chapter III of the Constitution:
<http://www.unhcr.org/refworld/country...LEGISLATION.LBR.456d621e2.3ae6b6030.0.html>

³ Human rights in Liberia's Rubber Plantations: Tapping Into the Future (United Nations Mission in Liberia (UNMIL) May 2006, available at: http://www.unmil.org/documents/human_rights_liberiarubber.pdf

⁴ The Liberian NGO, Save My Future Foundation (SAMFU), conducted an inquiry into the Firestone Rubber Plantation Company's 69 years of operation, and the result is the report "Firestone: The Mark Of Slavery". The full report is available at: <http://www.samfu.org/firestone.html>

⁵ Available at: <http://www.emansion.gov.lr/content.php?sub=Final%20PRS&related=PRS>

⁶ Issued by the Ministry of Justice, Republic of Liberia, 2005.

⁷ Available at: <http://dlxs2.library.cornell.edu/cgi/t/text/text-idx?c=liberian;cc=liberian;idno=lib100;view=toc>

⁸ *A Rapid Impact Assessment of the Global Economic Crisis on Liberia*, ILO, November 2009:
http://www.ilo.org/emppolicy/what/pubs/lang--en/docName--WCMS_116721/index.htm

⁹ See for example *Mittal? A State within a State: The inequitable Mineral Development Agreement between the Government of Liberia and Mittal Steel Holdings NV*, Global Witness: London; Oct 2006.

¹⁰ See for example Joint Government of Liberia - United Nations Rubber Plantations Taskforce, 23 May 2006 report:
http://www.laborrights.org/files/Rubber_TF_Report.pdf.

¹¹ http://www.emansion.gov.lr/doc/Remarks_to_Corporate_Responsibility_Forum_2010.pdf

¹² Concluding observations of the Committee on the Elimination of Discrimination against Women, CEDAW/C/LBR/CO/6:
<http://www.universalhumanrightsindex.org/documents/826/1608/document/en/pdf/text.pdf>