

Submission by the Canadian Human Rights Commission to the United Nations Working Group on Transnational Corporations and Other Business Enterprises

December 2011

1. Introduction

The enclosed submission presents the experience of the Canadian Human Rights Commission in relation to 'business and human rights', including a special focus on a unique tool for building human rights due diligence - the Human Rights Maturity Model (the 'Maturity Model'). The submission also presents recommendations to the United Nations (UN) Working Group on transnational corporations and other business enterprises regarding its mandate.

2. Background

The Canadian Human Rights Commission (the 'Commission') is Canada's national human rights institution. The Commission was established in 1977 and has been accredited with an "A" status by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC). This accreditation means that the Commission is compliant with the UN Paris Principles, guidelines that set the standards for the independence, conduct, and performance of national human rights institutions.

The Commission works with federally regulated employers and service providers to prevent and address issues relating to discrimination and equality. Its jurisdiction extends to federal government departments, agencies, and crown corporations; chartered banks, airlines; television and radio stations; interprovincial communications and telephone companies; buses and railways that travel between provinces; First Nations; and other federally regulated organizations in Canada.

3. Relevant Work by the Commission

3.1 Main areas of intervention

The Commission's main areas of intervention related to what it terms 'business and human rights' deal largely with discrimination and in particular the following:

- **Employment discrimination and discrimination in the provision of services** offered by businesses operating under federal jurisdiction.
- **Employment Equity** – increasing the workforce representation of persons in four designated groups: women, Aboriginal people, members of visible minorities, and people with disabilities.
- **Pay Equity** – ensuring that women and men receive equal pay for work of equal value.
- **Aboriginal Issues** – including Aboriginal representation in the workforce, and equal access to key services.
- **Prevention** activities – The Discrimination Prevention Branch houses the Commission’s focal point for ‘business and human rights’ (BHR). This focal point serves as the Commission’s lead for BHR-related matters, including the Commission’s role as Chair of the ICC Working Group on BHR, which runs until August 2013¹.

3.2 Roles and activities relating to the UN ‘Protect, Respect, Remedy’ Framework

Specific to the UN ‘Protect, Respect, Remedy’ Framework, the Commission engages in a variety of roles and activities. Illustrations are provided as follows:

Pillar I: The State duty to protect human rights

In relation to the State duty to protect, the Commission has the mandate to administer and handle complaints relating to the *Canadian Human Rights Act*. It also audits federally regulated organizations to ensure that they comply with their employment equity obligations under the *Employment Equity Act*.

The Commission has the mandate to provide independent human rights expertise to the State among other actors, including in relation to the State’s duty to protect human rights against breaches of these two statutes within federal jurisdiction.

The Commission monitors human rights issues and publishes reports in relation to these two statutes. It promotes and advises on legislative changes relating to human rights. Recently, for instance, it encouraged the Government to require all organizations involved with national security to produce human rights reports.

¹ Please refer to the ICC Submission for details on the ICC and ICC Working Group on Business and Human Rights and their activities relating to this subject.

The Commission assists federal departments and agencies not only to promote respect for human rights by Canadian businesses, but also to engage themselves in developing a self-sustaining culture of human rights for their workplaces and in their decision-making. It does so in particular through preventive activities such as presentations, training for trainers, policy advice and development, and tools – the Maturity Model being its most comprehensive one.

The Commission consults with Canada's provincial and territorial human rights commissions through the Canadian Association of Statutory Human Rights Agencies (CASHRA). CASHRA is the national association of Canada's statutory agencies charged with administering federal, provincial and territorial human rights legislation.

The Commission can be a key national actor in human rights and in the implementation of the Ruggie framework and could be a strong and credible contributor to a national network responsible for implementing the UN Framework in Canada, should one be created. At a minimum, the Commission may be consulted by the State as an independent expert resource on the Framework and its Guiding Principles.

Pillar II: The corporate responsibility to respect human rights

Just as it serves as an arms length resource for human rights expertise to the State and other actors, the Commission assists Canadian businesses in respecting human rights. The Commission provides preventive guidance and services, research and policy development, tools and training, audits, and dispute resolution.

Of particular interest to business, the Commission has shifted from Memoranda of Understanding (MOU) with Canadian public organizations and private businesses to the use of a more systemic tool for implementing human rights due diligence and a positive culture of human rights - the Maturity Model.

As outlined below, the Maturity Model provides concrete steps and results for organizations in respecting human rights in their workforce as with partners, clients and stakeholders. The majority of the Guiding Principles found within this pillar of the UN Framework are present in the Maturity Model.

The Commission also has an Employer Advisory Council, composed of public and private sector representatives, to exchange best practices relating to corporate respect for human rights.

Pillar III: Access to remedy

The *Canadian Human Rights Act* provides a mechanism for the protection of human rights. The mechanism to remedy includes early resolution, a complaint handling function, investigations, and remedy through settlement or tribunal orders.

The Commission may be consulted by organizations in establishing internal redress mechanisms, given its extensive experience in this regard having developed and implemented a number of MOU in part to improve complaint processes and to expedite early resolution. Of greater significance is that the Maturity Model, which the Commission now offers in place of MOUs, provides the necessary processes, tools and support that make for enduring and systemic resolution of issues and complaints.

4. Spotlight on the Human Rights Maturity Model

The Maturity Model may be of particular interest to the United Nations Working Group as a unique tool for potential adaptation and application by a wide range of organizations as they move to implement of the United Nations 'Protect, Respect, Remedy' Framework.

The Commission has developed this tool through extensive consultation with government, business, labour, and other relevant actors. It piloted the Model in 2011 and expects to release it publicly in 2012, making it available at no cost to users.

The Maturity Model provides public and private organizations with a roadmap for developing competency in human rights management. It provides a step-by-step process to improve an organization's capacity to prevent and address human rights-related issues through:

1. Leadership and accountability
2. Capacity building and resources
3. Alignment of policies and processes
4. Communication and consultation
5. Performance evaluation and continuous improvement

The Maturity Model organizes these five interrelated and complementary elements into manageable steps. The "steps" represent five levels of maturity. Outcomes and performance indicators have been developed for each step to enable self-assessment and action planning by the user.

The objective of the Maturity Model is for organizations to continually improve their competency within each of the five elements. Organizations may assess their current compliance and existing practices relating to human rights obligations. They can evolve

towards level five, which represents the achievement of an inclusive and sustainable human rights culture that is appropriately based on equality, dignity and respect. The Commission provides guidance to organizations as they progress through the model.

A visual depiction of the Model is enclosed at the end of this Submission for ease of reference. More information on the Model is available at http://www.chrc-ccdp.gc.ca/hrmm_mmdp/default-eng.aspx.

5. Observations and Recommendations regarding the Working Group’s Mandate

The Commission wishes to share the following observations and recommendations in relation to the mandate of the UN Working Group on Transnational Corporations and Other Business Enterprises:

UN Working Group Mandate Area	General Observations	Obstacles and Challenges	Opportunities and Recommendations
a. To promote the effective and comprehensive dissemination and implementation of the Guiding Principles	Please refer to the ‘Spotlight on the Human Rights Maturity Model’ (above)		<p>It may be useful to involve a national level multi-stakeholder network or contact point that is inclusive of the State given their responsibility to “protect” under Pillar I of the UN Framework.</p> <p>Seek to understand the local and national context and actors (federated states, for instance with multiple jurisdictions).</p> <p>Tying into regional networks will also be key to longer-term success and viability of change.</p>
b. To identify, exchange and promote good practices and lessons learned on the	Update the research and guidance on HRIA methodology that the Special	In Canada, there are many transnational corporations and	It may be useful to ask States to establish formal mechanisms or

<p>implementation of the Guiding Principles and to assess and make recommendations thereon and, in that context, to seek and receive information from all relevant sources, including Governments, transnational corporations and other business enterprises, national human rights institutions, civil society and rights-holders</p>	<p>Representative initiated in his report on "Key Methodological Questions" of 5 February 2007 (http://www.reports-and-materials.org/Ruggie-report-human-rights-impact-assessments-5-Feb-2007.pdf)</p>	<p>organisations representing civil society.</p>	<p>national focal points/ networks to engage with transnational corporations and members of civil society at the national level.</p>
<p>c. To provide support for efforts to promote capacity-building and the use of the Guiding Principles, as well as, upon request, to provide advice and recommendations regarding the development of domestic legislation and policies relating to business and human rights</p>	<p>This kind of support will be very useful to all stakeholders.</p> <p>It may be useful to ask States to establish formal mechanisms to interact with transnational corporations, members of civil society and others at the national level.</p>	<p>-</p>	<p>NHRIs are uniquely positioned to serve as intermediary and source of expertise to states and to businesses on business and human rights (BHR).</p> <p>The Commission already does so, for instance, through application of its Human Rights Maturity Model.</p>
<p>d. To conduct country visits and to respond promptly to invitations from States;</p>	<p>-</p>	<p>There may be a need to establish mechanisms by which States can request visits or respond to proposals for visits.</p>	<p>It may be useful to consult United Nations mandate holders on how to establish such mechanisms, since they have considerable experience in that area.</p>
<p>e. To continue to explore options and make recommendations at the national, regional and international levels for enhancing access to effective remedies</p>	<p>-</p>	<p>Many States do not have National Human Rights Institutions, and those that do may have given them a mandate that does</p>	<p>Work with States to ensure that they establish a National Human Rights Institution with a mandate broad enough to</p>

available to those whose human rights are affected by corporate activities, including those in conflict areas		not encompass the entire spectrum of the United Nations Framework and Guiding Principles on Business and Human Rights.	encompass the entire spectrum of the United Nations Framework and Guiding Principles on Business and Human Rights. Building from gap analyses of existing national remedies, seek to identify and address gaps in recourse.
f. To integrate a gender perspective throughout the work of the mandate and to give special attention to persons living in vulnerable situations, in particular children	We support this as a priority area of focus.	-	-
g. To work in close cooperation and coordination with other relevant special procedures of the Human Rights Council, relevant United Nations and other international bodies, the treaty bodies, and regional human rights organizations	This mandate is important to avoid duplication of efforts.	-	-
h. To develop a regular dialogue and discuss possible areas of cooperation with Governments and all relevant actors ...	See how to best optimize work during the short duration of this mandate by building upon existing resources and networks.	-	-
i. To guide the work of the Forum on Business and Human Rights	Setting a constructive tone and maintaining a multi-party dialogue will be critical to maintaining momentum and securing the	-	-

	success of implementation of the UN Framework & Guiding Principles.		
j. To report annually to the UN Human Rights Council and the General Assembly	-	-	-

6. Contact information

For more information on this submission or the Maturity Model, please contact:

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Encl: Canadian Human Rights Commission (CHRC) Human Rights Maturity Model

CHRC Human Rights Maturity Model

