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Presentation

to the Sub-Committee on Human Rights & Eastern Partnership Ombudsmen's Summit

*The role of the NHRIs in the implementation of the UN Guiding Principles on Business and Human Rights*

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Thank you.

I would like to thank this Sub-committee for the opportunity to expound the main findings of my study on the role of the National Human Rights Institutions, in the implementation of the UN Guiding Principles on Business and Human Rights, in the presence of its members but also their Excellencies, Ombudsmen from the Eastern Partnership and EU Countries.

Before I start let me thank this Committee for its continuous engagement with business and human rights agenda, and in particular to Mr. Grzyb and Mr. Howitt, for their personal engagement in promoting awareness of the HR&B, and UN Guiding Principles also outside of the EP environment, like during recent conference in Poland.

I was particularly pleased to see that some of the recommendations from the study won this Committee's approval and were reflected in the DROI opinion to the reports on CSR by JURI and EMPL committees, and in final EMPL report itself.

As Prof. Miller has addressed a number of issues, I will skip the first part of my presentation to avoid repetition, and will move straight to discussing what role NHRIs can play under each of the 3 pillars and subsequently, to providing an overview of how the NHRIs from Eastern Partnership countries do feature in this context. I will focus on the challenges they are facing to engage fully with the human rights and business agenda, and, how they can be addressed. Since the calls on Belarus so far have failed to result in the establishment of such an institution, my remarks will refer only to Armenia, Azerbaijan, Georgia, Moldova and Ukraine.

**NHRIs**

*National Human Rights Institutions are independent, expert bodies, with a constitutional and/or legislative mandate to protect and promote human rights within the state's jurisdiction<sup>(1)</sup>, and ideally in line with the Paris Principles endorsed in 1993 by the UN General Assembly. They can take different forms e.g. of an ombudsman or a national commission on human rights.*

*Although they are part of the State apparatus and are funded from the State budgets, they are autonomous and operate and function independently from governments. They also must have a*

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<sup>1</sup> Detailed information available at the OHCHR website: <<http://www.ohchr.org/en/countries/nhri/pages/nhrimain.aspx>>

*broad mandate to enable them to respond effectively to new challenges and ensure meaningful protection and promotion of human rights, also vis-à-vis business enterprises. They are unique in that they exist in a dynamic position between States, civil society and other actors, and thus are both complementary to them and in position to offer a neutral and objective space in which to interact, develop human rights laws and policy, and exchange ideas.*

*Their responsibilities cover i.a.*

- *Providing advise to government/competent bodies on promotion/protection of HR*
- *Promoting national harmonization with/ implementation of international HR standards*
- *National and international reporting*
- *Human rights education*
- *(+/-) Complaints handling*

*In the context of the UN Guiding Principles implementation, this makes them uniquely positioned to act as a convener and mediator, able to bring to the table parties representing differing positions, seek solutions and ways of remediating the human rights violations.*

*To guarantee their independence, pluralism, and effectiveness, NHRIs are subject to periodic peer review and accreditation.*

*While there are than 100 countries worldwide have established NHRIs, only 10 EU Member States have NHRIs accredited to A-status, meaning that they are fully compliant with the Paris Principles and thus meeting the highest standards of independence and impartiality. In the Eastern Partnership countries 4 NHRIs have status “A” (in Armenia, Azerbaijan, Georgia and Ukraine). Moldova is a status “B” NHRI. It is important, as the compliance with Paris Principles guarantees that the NHRIs do have a unique and dynamic position between States, civil society and other actors – which in turn makes them central to national human rights protection systems and an important element in the international human rights protection system.*

*Activity of the NHRIs worldwide, including interaction with international institutions, is coordinated by the International Coordinating Committee (ICC) of NHRIs, that draws its members from the ICC's four Regional Networks (Africa, Asia&Pacific, Americas and Europe) with Eastern European NHRIs belonging to the European Group of NHRIs together with the EU based ones.*

*In 2009, an ICC Working Group on Business and Human Rights was established to support strategic planning and capacity development of NHRIs in this–area, which supported the development of the ICC's 2010 Edinburgh Declaration on Business and Human Rights expressing a clear and practical commitment to deepening NHRIs ability and capacity in the field of Human rights and follow-up thematic regional workshops, which took place in the course of the last two years.*

### **NHRIs' role in implementation of the UN GPs.**

The NHRIs play an important role in supporting implementation of the UN Guiding Principles on Business and Human Rights, not least thanks to the fact that as Margaret Jungk, Member of the UN WG ON B&HR stated, they

*‘[NHRIs] ...have special capacity to understand what is going on. They are natural partners of governments and civil society. NHRIs arose from the very hub of international society. In terms of companies, they are more likely to be trusted than governments are’.*

The NHRIs network, coordinated by ICC spans the whole globe thus giving them a unique position to ensure coherence of the advice provided and thus contribute to coherent implementation of the UN GPs.

Both UN Human Rights Council in its Resolutions in 2011 and 2012 and the first UN Forum on Business and Human Rights affirmed the unique role of NHRIs as providers of independent expertise and a bridge among government, civil society and business enterprises in holding all concerned stakeholders to the highest level of accountability, and stressed that HR&B issues are part of the Paris Principles mandate of NHRIs.

The Guiding Principles themselves highlight the special role and functions of NHRIs under each of the 3 pillars of the **UN Protect, Respect and Remedy Framework**.

- I) Under the state duty to protect against corporate abuses, NHRIs can help align national law and regulations on B&HR, including by making use of the legislative initiative power or by organizing organization of conference/other events inspiring such changes.
  - monitor national governments' measures to regulate business, to promote access to justice for victims of corporate human rights abuses, and consistency with the Guiding Principles of positions taken by governments across domestic and international arena (e.g. export credit supports, trade negotiations)and advise states on fulfilment of their obligations under international human rights law,
  - Advance proposals for legal reform to promote implementation of the Guiding Principles at national level
  - Support government and the public sector more broadly (e.g. state enterprises, local government, and public authorities such as armed forces, health, education and housing sectors) on business and human rights
  - and where relevant initiative relevant roundtables (Ukraine) and/or legislative procedures and undertake awareness raising/educational efforts.
- II) Under 2<sup>nd</sup> pillar, NHRIs can assist business enterprise towards achievement of the corporate responsibility to respect, by providing expert, independent advice to Business enterprises on Business and Human Rights; through e.g.
  - providing them with user-friendly information and guidance materials,
  - 'translating' human rights standards into business-like language and operational standards that duty-bearers can understand.
  - Developing user-friendly guidance for businesses explaining the Guiding Principles and how to integrate respect for human rights into business operations
  - Investigating and reporting on impacts of businesses operating in or from the jurisdiction on the realization human rights of communities, individuals, human rights defenders and trade unions
  - Convening and facilitating dialogue and collaboration among key stakeholders in business, government and civil society, to promote awareness, understanding and operationalization of the Guiding Principles at national level, as well as trans-nationally on a bilateral and regional basis.

And finally,

- III) Under Pillar 3 covering access to remedy, NHRIs can facilitate mediation or conciliation about HR and B issues.

Here the mandates differ significantly, and range from ones' that allow NHRIs to handle complaints and grievances for HR abuses relating to corporate conducts (via conciliation, mediation, supporting individual cases, legal assistance) (like in Moldova and to lesser extent Ukraine), or certain categories of abuses (e.g. employment discrimination, labour disputes), to ones that allow 'Only' informing and supporting victims in seeking a remedy for human rights abuses.

NHRIs are also often mandated

- to promote awareness of avenues for redress, including judicial and non-judicial mechanisms, their own monitoring and receiving complaints of human rights violations by business entities,<sup>13</sup> and cooperating with the judiciary
- to identify obstacles to access to justice for victims of abuses by companies operating in or registered in the national jurisdiction e.g. through public enquiries and research.

Given their status as independent, pluralist institutions, NHRIs are also able to offer a neutral and objective space in which to interact, develop human rights laws and policy, and exchange ideas.

They also have an important role to play with regards to awareness raising and education on HR&B. Although there is no space for listing various examples, they can be easily found in the study itself.

### ***ICC and regional groups***

While the individual NHRIs engage with state administration and business enterprises in the implementation of their domestic human rights mandates, the activities of the ICC Working Group on Business and Human Rights are focused on supporting the strategic planning and capacity development of NHRIs on business and human rights.

Edinburgh Declaration and Berlin Action Plan are best proof that business and Human Rights feature significantly on NHRIs' agenda, and that the NHRIs are carrying out their mandates in relation to Business and Human rights in meaningful ways and that this area will continue to be a core facet of the dialogue they pursue with states, businesses, and rights holders.

### ***Regional overview – challenges and potential opportunities for the EaP NHRIs.***

Eastern Partnership NHRIs belong to that global network, and are member of the European Group of NHRIs. Armenia, Azerbaijan, Georgia and Ukraine all have status "A" NHRIs, Belarus does not have an active NHRI at all, while Moldova, despite a broad mandate, remains accredited with status "B", due to problems particularly in the context of its independency. At the same time, the political, economic and social context in which they operate makes them important actors in addressing human rights violations at home.

### ***General challenges***

When discussing the general environment in which the Ombudsmen in non-EU Eastern Partnership Countries operate, apart from political climate, one of the challenges that comes to the forefront is very low awareness of HR&B agenda among all the key stakeholders and public administration.

Lack of the availability of the UN Guiding Principles in local languages results in a very limited, if any, uptake by CSOs and other actors, which in turn results in HR&B issues not being addressed as part of the submissions to the UN treaty bodies /UPR.

Lack of the co-sponsoring of the HRC Resolution 17/4 by the EaP States reflects the fact that low awareness and capacity is also on the side of state administration.

Other challenges cover among others:

- Limited funding / other funding priorities

+/- Other human rights priorities.

On the positive side, there is the UNDP, UN Global Compact, OSCE, EU Missions presence in individual states – and NHRIs are encouraged to create long-term cooperation agreements with them.

### ***Current Situation | NHRI – Challenges and opportunities***

It has to be stressed that although in some cases like in Georgia, the mandates of the NHRIs could profit from broadening, overall the mandates of all of the NHRIs in Eastern Partnership countries do provide space for active engagement with issues of relevance to human rights and business agenda, in some cases allowing them to handle complaints against non-state actors (Moldova, Ukraine). Yet, although all of the NHRIs from those countries do address in one way or the other violations of those human rights that are of particular relevance to business (such as the freedom of association and assembly, labour rights), the human rights and business agenda as such is still new for the majority of them and the link with the traditional activity areas often has not been fully acknowledged yet.

This is largely due to the lack of capacity in this field, in terms of expertise, staffing and funding, but also competing priorities. Therefore, capacity building and awareness raising efforts required to fill the competency gaps, should be a priority.

Relevant activities could be undertaken in cooperation with the ICC Working Group on HR&B to ensure a coherent approach or in cooperation with the European Group of NHRIs to address regional specifics.

As mentioned before, lack of recognition of the human rights and business agenda as an issue of importance by other national and regional actors, is of key importance if the NHRIs are to act as 'multipliers'. The NHRIs won't be able to achieve much if they are the sole actor for change. The EU could support the awareness raising efforts undertaken not least by NHRIs themselves and - given the UNDP and Global Compact Local Networks presence in all countries of the region, in cooperation with them or with Civil society organizations.

So, what can the NHRIs do themselves to improve their ability and potential regarding implementation of the UN GPs?

NHRIs need to work on their own and in partnerships, with an aim to improve their capacity and expertise (talking to Business required ability to use the convincing language they know). They need to:

- Incorporate HR&B agenda into their strategic planning
- Establish HR&B Focal Points to enable sharing of knowledge
- Ensure that NHRIs' as employers meet the UN GPs
- Consider undertaking actions aimed at extending the mandate
- Participate in the UN Forum on B&HR and address HR&B in international reports.

In terms of what NHRIs can do to advance the UN GPs implementation in EaP countries, I would suggest that the place to start is with translation of the UN GPs into national languages and disseminating it;

- Reach out to various stakeholder groups, including business, to raise their awareness
- Initiate / support debate on HR&B, incl. hosting multi-stakeholder forums and workshops (e.g. with Academia)
- Initiate relevant legislative proposals
- Collaborate with relevant actors: UNDP, UN Global Compact Local Networks
- Undertake research and conduct educational/awareness raising activities

What EU Can do to support NHRIs in their task:

- Support NHRIs' capacity building efforts/activities
- Make greater use of the NHRIs potential and expertise, and strengthen working level cooperation (in Brussels and at the EU Missions level)
- Engage in periodic exchange of views with NHRIs but also engage with governments to strengthen the NHRI and support their compliance with Paris Principles.
- Include HR&B on the agenda of the HR dialogues in EaP and other countries to create conducive environment for NHRIs work.
- Improve its own internal capacity on HR&B (Brussels, EU Missions), i.a. by introducing obligatory training. If the EU is able to require obligatory financial training, it should be also in position to train people in issues considered to constitute the objectives of the EU.

Let me finish here, and thank you for your attention. I look forward to discussion and questions.

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