



University
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Remedy in business and
human rights



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This seminar considers **“access to remedy”**, including the: **role of the law and legal institutions** in cases where, **despite the preventive efforts** of the relevant actors (State and non-state), **business-related human rights harms** have occurred. In situations such as these, how can people defend their rights? What remedies may be available and how can these be obtained?

Seminar overview

1. Legal basis of right to remedy in BHR
2. Remedy mechanisms in BHR
3. Legal and practical challenges in accessing remedy in BHR



1. Legal basis

Public international law

The right to an effective remedy for a *violation* of human rights derives from the broader norm of redress of wrongs in international law, which has been recognised as a general principle of law and a customary rule of law accepted and applied in all legal systems

Bassiouni, “International Recognition of Victims’ Rights”, 6(2) *Human Rights Law Review* 2006: 206-207

International human rights instruments

Article 8, UDHR:

Everyone has the right to effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by the law.

International human rights instruments

ICCPR Article 2(3)

Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Regional human rights instruments

ECHR, Article 13: “In the determination of his civil rights and obligations... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law...”

International soft law standards

Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Part VIII (GA Res 60/147, 16 Dec 2005).

“A victim of a gross violation of international human rights law or of a serious violation of international humanitarian law shall have equal access to an effective judicial remedy as provided for under international law.

Other remedies available to the victim include access to administrative and other bodies, as well as mechanisms, modalities and proceedings conducted in accordance with domestic law.

Obligations arising under international law to secure the right to access justice and fair and impartial proceedings shall be reflected in domestic laws”

Dimensions of the right to remedy

- ▣ **Substantive:** adequate reparations, such as restitution, rehabilitation, compensation, satisfaction, public apologies, changes in relevant laws and practices, guarantees of non-repetition or the bringing of perpetrators to justice; and
- ▣ **Procedural:** right to an effective investigation; right to information; and right to legal and other assistance necessary to claim a remedy.

Further reading: D Shelton, *Remedies in International Human Rights Law* (3rd Ed, 2015, OUP)

Remedy and abuses by non-state actors

Human Rights Committee General Comment No.31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant” (2004)

- Bring to justice perpetrators of human rights abuses, and to provide appropriate reparation to victims
- investigations should be carried out promptly, thoroughly and effectively through independent and impartial bodies
- Failure by a state party to investigate allegations can give rise to a separate breach of the state’s human rights obligations. The mechanism for obtaining a remedy can take a variety of forms, as provided in Article 2(3)(b) ICCPR

How do norms on remedy link to States' positive duties and procedural obligations in business and human rights?

Foundational Principle, UNGP 25

“As part of their *duty to protect* against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.”

How do norms on remedy link to States' positive duties and procedural obligations?

- “Within their jurisdiction, member States have a duty to protect individuals against human rights abuses by third parties, including business enterprises. This includes their positive and procedural obligations under the European Convention on Human Rights, as applied and interpreted by the European Court of Human Rights.
- Such obligations consist of requirements to prevent human rights violations where the competent authorities had known or ought to have known of a real risk of such violations, to undertake an independent and impartial, adequate and prompt official investigation where such violations are alleged to have occurred; to undertake an effective prosecution, and to take all appropriate measures to establish accessible and effective mechanisms which require that the victims of such violations receive prompt and adequate reparation for any harm suffered.”

Council of Europe, [Recommendation CM/Rec\(2016\)3 of the Committee of Ministers to member States on human rights and business](#) , Annex, para 15.

What is an “effective” remedy?

- requires either **prevention** of an alleged violation or provision of **adequate redress for the victim**, including compensation ([*Kudla v. Poland*, 2000, paragraph 158](#))
- is **available** and **sufficient**, and **certain**, not only in law but also in practice ([*McFarlane v. Ireland*, 2010, paragraph 114](#); [*Riccardi Pizzati v. Italy*, 2006, paragraph 38](#))
- is **context-specific**, having regard to the **individual circumstances** of the case ([*El-Masri v. The former Yugoslav Republic of Macedonia*, 2012, paragraph 255](#); [*Kudla v. Poland*, 2000, paragraph 152](#))
- in assessing effectiveness, consideration must be given not only to any **formal remedies** available, but also to the **legal and political context** in which they operate, as well as the personal circumstances of the applicant ([*Dorđević v. Croatia*, 2012, paragraph 101](#); [*Van Oosterwijk v. Belgium*, 1980, paragraphs 36-40](#))

What is an “effective” remedy?

“In accordance with domestic law and international law, and taking account of individual circumstances, victims of gross violations of international human rights law and serious violations of international humanitarian law should, as appropriate and proportional to the gravity of the violation and the circumstances of each case, be provided with full and effective reparation ... , which include the following forms: **restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.**

Restitution should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred ...

[UN Basic Principles and Guidelines](#) on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, paragraphs 18-23.

Note on terminology: violation, abuse, grievance?

- ❑ **Grievance:** perceived injustice evoking an individual's or a group's sense of entitlement (UNGP 2, Commentary)
- ❑ Based on law, contract, explicit or implicit promises, customary practice, general notions of fairness of aggrieved communities
- Hence, grievance mechanism: “Any routinized, State-based or non-State-based, judicial or non-judicial process through which grievances concerning business-related human rights abuse can be raised and remedy be sought” (Commentary to UNGP 25)

What does access to an effective remedy mean in practice?

- There must be **institutions in place** to investigate, allocate and take decisions with respect to legal liability and appropriate remedies
- These institutions must be **independent**, i.e. they can decide questions of legal liability free from political or other interference
- The relevant processes should be capable of bringing about an “**effective remedy**”
- Rights-holders must have **access to these institutions** on a non-discriminatory basis
- The outcomes of the relevant processes must be able to be **enforced**.

Functions of remedy

- “Remedies for human rights abuses serve interrelated purposes under international human rights law, not least because such abuses involve harm to affected individuals and collective societal interests. Remedies should, of course, be able to **redress**, insofar as possible, the harm caused by some business activities. Nevertheless, remedies also have a key role to play in **pre-empting** future abuses. Lastly, remedies should be able to **discourage** not only a given actor, but also others, from committing the same or similar abuses in the future. **The idea of effective remedies should therefore combine preventive, redressive and deterrent elements.**”

Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises: "**Access to effective remedies under the Guiding Principles on Business and Human Rights: Implementing the United Nations Protect, Respect and Remedy Framework**", UN Doc. A/72/162

Context-specificity of remedy

- Across legal systems
- By specific human right
- According to victim characteristics – groups at risk of vulnerability, discrimination

Reflective exercise: breakout groups



Which of these might be an “effective remedy”? Why?



2. Remedy mechanisms in BHR

Access to Remedy



This section looks at the diverse institutions and initiatives that may facilitate remediation of business-related harms.

1. **Courts.** We will examine the ways in which courts contribute to effective remedies, through criminal law processes, civil law (or “private law” processes) and through other forms of legal challenge, such as judicial review.

2. **Alternatives to courts** within the state architecture, such as regulators and ombudsmen that may be relevant to remedy in this context.

3. ~~“Private” grievance mechanisms, such as complaints systems established by companies, and enforcement of standards by multi-stakeholder initiatives (e.g. administering a voluntary “code of conduct”).~~

Typology of remedy mechanisms under UN Framework and UNGPs

(I) State-based judicial mechanisms (UNGP 26)

- Courts and some tribunals
- Administered by and answerable to the judicial branch of government
- Cases are adjudicated by members of the judiciary
- Relatively formal procedures
- Responsible for enforcement of law (public and private)
- Powers to make binding legal determinations and to hand down criminal and quasi-criminal sanctions

Examples:

Constitutional courts
Administrative courts
Civil courts
Commercial Courts
Criminal courts
Regional courts

(II) State-based non-judicial mechanisms (UNGP 27)

- Mechanisms that are primarily connected to or administered by State authorities yet are not part of the judicial system. These can include administrative and legislative initiatives and entities such as regulators, licensing bodies, ombuds services and national human rights institutions
- Administered by and answerable to the executive (i.e. ministerial) branch of government.
- Established pursuant to a regulatory regime.
- (Possible) powers to determine legal compliance and hand down legal sanctions.
- May have powers of investigation.
- Decision-making panels can be designed to provide a mix of legal, technical, lay and specialist expertise
- May make use of alternative dispute resolution (“ADR”) methods such as conciliation or mediation.



Examples:
NHRIs
Ombudsmen
Labour mediation
OECD NCPs

(III) Non-state based non-judicial (UNGP 28, 30, 31)

- Designed, established, administered and overseen by private entities.
- Is largely (or entirely) self regulatory in nature, using self-regulatory standards (e.g. Codes of conduct and polies) as a key reference point;
- Decision-making panels can be designed to provide a mix of legal, technical, lay and specialist expertise.
- Relatively informal procedures.
- Makes use of alternative dispute resolution (“ADR”) methods such as conciliation or mediation.

Examples:

Financial Institutions
Export Credit Agencies

Sector and Multi-Stakeholder Mechanisms



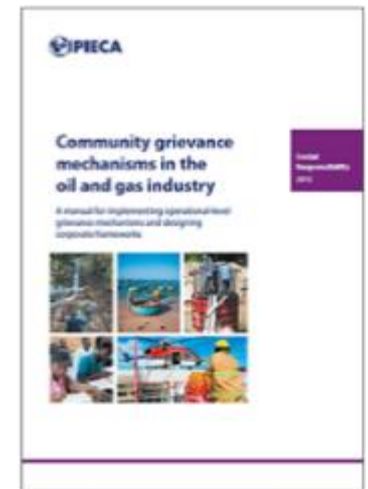
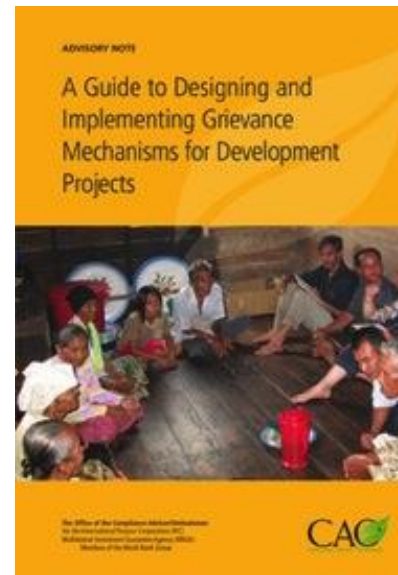
(III) Non-state based non-judicial – *Operational* (UNGP 29, 31)

- Designed, established, administered and overseen by private entities.
- Is largely (or entirely) self regulatory in nature, using self-regulatory standards (e.g. Codes of conduct and polices) as a key reference point;
- Relatively informal procedures.
- Makes use of alternative dispute resolution (“ADR”) methods such as conciliation or mediation.
- Established at level of specific business project, site or activity

Examples:

Financial Institutions
Export Credit Agencies

Sector and Multi-Stakeholder Mechanisms



Courts and remedy in BHR

The **UN Guiding Principles** declare “effective judicial mechanisms” [i.e. courts] to be
“**at the core of ensuring access to remedy**. Their ability to address business-related human rights abuses depends on their impartiality, integrity and ability to accord due process”.

[UN Guiding Principle 26](#), Commentary.

What areas of law are relevant to defending rights and remedying harm in cases of business-related human rights abuse? And what is the role of courts in enforcing these standards? In this part we will focus on:

- **Criminal law**
- **Private law claims**
- **Administrative remedies (“judicial review”)**



Criminal courts

Criminal courts and remedy in BHR

- May be **essential to** “effective remedy” where human rights impacts of business activity are **grave or severe**
- **2005 UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law** define “satisfaction” in cases of serious human rights violations as including ... “[e]ffective measures aimed at the cessation of continuing violations ... an official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim ... [and] ... [j]udicial and administrative sanctions against persons liable for the violations ...”
- Criminal prosecutions, brought against either corporations or their managers or personnel, may be required in order to realise victims’ right to an effective remedy e.g. under **Article 13 of the European Convention on Human Rights**.

Criminal courts and remedy in BHR

- Specific areas of criminal law may be relevant in BHR e.g. laws which criminalise the intentional or negligent infliction of injury, such as through laws on “assault”, may be applicable to individual managers or corporations.
- In addition, domestic legal standards in areas such as corporate governance, anti-corruption, protection of labour standards, health and safety, equal opportunities, environmental protection or consumer protection can contribute, in various ways, to promoting corporate respect for human rights and deterring abuses by businesses. These may be enforced with the use of “criminal” (or “quasi criminal”) sanctions.

Corporate criminal liability

- Some jurisdictions have introduced laws codifying the offence of “corporate homicide”
- In UK, a corporation can be guilty of the offence of “[corporate manslaughter](#)” if the way in which its activities are managed or organised (a) causes a person’s death, and (b) amounts to a gross breach of a relevant duty of care owed by the organisation to the deceased.
- Note, however, that not all jurisdictions recognise the concept of “corporate criminal liability”.
- “Most jurisdictions recognize the possibility of corporate legal liability for public law offences, although there are differences from jurisdiction to jurisdiction in the kinds of offences for which a company can be liable and the types of legal liability that a company can attract. In some jurisdictions, companies may attract criminal liability as well as administrative liability. However, in other jurisdictions, criminal liability may only attach to individuals as “natural persons”. In jurisdictions where corporate criminal liability is not possible, other kinds of public law regimes and sanctions (e.g. “regulatory”, “administrative” or “quasi-criminal”) play a vital role.

[OHCHR, Improving accountability and access to remedy for victims of business-related human rights abuse, Explanatory notes for guidance \(2016\), UN Doc. A/HRC/32/19/Add.1](#)

Criminal courts and remedy in BHR

To date it is still relatively uncommon for companies or personnel to be prosecuted for crimes connected to human rights abuses, though examples can be found of use of criminal processes to hold companies accountable for alleged perpetrations of, or complicity in, serious human rights abuses.

Switzerland	A gold refiner suspected of money laundering was prosecuted in connection with alleged war crimes in the Democratic Republic of Congo (DRC).
France	The sale of a surveillance system to the Gaddafi regime in Libya was subject to a judicial investigation. A prosecutor launched investigations into the conduct of three executives working for a Swiss-French cement company alleged to have provided financing to terrorists via payments made as part of security arrangements to protect a plant in Syria.
Germany	A complaint was initiated against a timber manufacturer's senior manager regarding abuses by its contracted security forces against a community in the DRC.
Netherlands	Government policy discourages Dutch companies from investing in settlements in the Israeli-occupied West Bank, viewed as illegal under international law, and the Dutch public prosecutor has confirmed that it considers such business activity to be a potential war crime
See further	<ul style="list-style-type: none">➤ OHCHR, 'Improving accountability and access to remedy for victims of business-related human rights abuse', Final report of the High Commissioner to the Human Rights Council at the conclusion of Phase 1 of the OHCHR Accountability and Remedy Project (and explanatory addendum)➤ Zerk, 'Corporate liability for gross human rights abuses: Towards a fairer and more effective system of domestic law remedies': A report prepared for the Office of the UN High Commissioner for Human Rights' February 2014➤ Ramasatry and Thompson, 'Commerce, Crime and Conflict: Legal Remedies for Private Sector Liability for Grave Breaches of International Law: A survey of sixteen countries', September 2006.



Private law courts

Private law courts and remedy in BHR

The elements required to prove corporate legal liability based on a private law cause of action will vary among regimes and among jurisdictions.

These elements may include “**corporate intent**” to commit a wrongful act and/or “negligence”.

Some domestic law regimes make use of concepts of “**strict liability**” or “**absolute liability**” The elements needed to demonstrate “**negligence**” vary among regimes and jurisdictions. However, a formulation common to many jurisdictions is: (a) the existence of a **duty of care** towards affected persons; and (b) the **breach** of the applicable standard of care, which (c) resulted in **harm or injury** (i.e. causation).

The existence of a duty of care, and the relevant standard of care, will often depend on whether the harm was, or should have been, foreseeable to the defendant. “Gross negligence” and “recklessness” are treated in law as more serious variants of negligence on the basis of the high levels of culpability involved.”

- [OHCHR, Improving accountability and access to remedy for victims of business-related human rights abuse, Explanatory notes for guidance \(2016\), UN Doc. A/HRC/32/19/Add.1](#)

Private law claims

- “refers to claims for legal remedy that are made, not by public authorities, but by private individuals and groups of individuals (referred to in the guidance as “claimants”).
- In this context, claimants may be persons directly affected by adverse human rights impacts of business activities or their families or other representatives or organizations, depending on the applicable rules on who has a right to bring a claim. Depending on the rules of the relevant legal system, private law claims may be made individually or joined with others as “collective redress actions”.

[OHCHR, Improving accountability and access to remedy for victims of business-related human rights abuse, Explanatory notes for guidance \(2016\), UN Doc. A/HRC/32/19/Add.1](#)

Case	
<p><u>Vedanta Resources: Zambia copper mine (UK)</u></p>	<p>In 2015, 1,826 villagers from the Chingola District of Zambia filed proceedings in the English courts against Konkola Copper Mines plc and its English parent company, Vedanta Resources PLC (Vedanta), alleging that their health and farming activities had been damaged by toxic water pollution caused by a copper mine operated by KCM. KCM and Vedanta challenged the jurisdiction of the English courts to hear this claim. However, in April 2019 the UK Supreme Court held that the case could indeed be heard in the UK courts.</p>
<p><u>Kiobel v Shell (Netherlands)</u></p>	<p>In June 2017, Esther Kiobel and three other women launched a civil case against Shell in the Netherlands. The plaintiffs claim the company was complicit in the 1995 killings of their husbands, who were members of the “Ogoni 9” group of activists who contested Shell's operations and the Nigerian Government over the effects of oil pollution.</p>
<p>Nippon Steel & Sumitomo Metal Corp (South Korea)</p>	<p>Nippon Steel & Sumitomo Metal Corp On 10 July 2013, a South Korean Court ruled that a Japanese steel making company, Nippon Steel & Sumitomo Corp, must pay compensation to four South Korean workers for the forced labour they were subjected to during Japan’s 1910-1945 colonisation of Korea. The company was ordered to pay Won100m (around \$88,000) to each worker. The ruling held that “Japan’s key military supplier, Japan Iron and Steel, committed inhumane and illegal activities, mobilising labourers for war invasions. Such acts were against international rule and the constitution of Korea and Japan”. (Japan Iron and Steel later became Nippon Steel, which later merged with another company to form the defendant). <u>IN 2021, a South Korean court ordered the sale of confiscated assets of Nippon Steel to compensate plaintiffs.</u></p>
<p><u>Jesner v Arab Bank (US)</u></p>	<p>This case was brought under the US Alien Tort Claims Statute (“ATS”) by US and non US nationals injured by or related to victims of terrorist attacks in Israel, the West Bank and Gaza, Petitioners argued that these acts were in part caused or facilitated by Arab Bank plc by maintaining accounts linked to terrorist organisations. However, on 24 April 2018, the US Supreme Court handed down a ruling in that case that foreign corporations cannot be sued in the US for complicity in human rights abuses abroad.</p>



Administrative
courts and judicial
review

Administrative remedies

In some cases, people whose human rights have been adversely affected by business activities may wish to challenge the executive decision-making by the government that has made a project possible, or which has permitted human rights harms to continue (or made them more likely), in addition to (or perhaps as an alternative to) legal action against the business enterprise itself.

This potential route to at least a partial remedy is referred to by lawyers as “**administrative remedies**” or “**judicial review**”. This form of legal action provides a possible means by which people can enforce the regulatory duties of States (Seminar 3).

Judicial review is a potentially important route to remedy in cases where affected people wish to challenge the grant of an operating licence, for instance, (perhaps on the basis of a lack of community consultation) or where a regulator has decided not to act on a complaint (perhaps on the basis that the correct procedures had not been followed prior to the decision).

Administrative remedies: examples

[UK: Export Finance and Child Labour](#)

In 2010, lawyers acting for The Corner House (a UK-based charity) and Indian group Samata requested a Judicial Review of the decision by the UK's Export Credits Guarantee Department (ECGD) effectively scrapping its absolute ban on providing financial support to projects overseas involving "harmful" child labour and forced labour. The application was rejected on the basis that it was "not arguable in law".

[Canada: Trans Mountain Pipeline Extension Project](#)

Coldwater First Nation v. Canada (Attorney General), 2020 FCA 34 was an application for judicial review which centred on the adequacy of consultation processes in relation to a planned pipeline extension project in Canada (the "Trans Mountain Pipeline Extension Project") running from Edmonton, Alberta to the a terminal and refinery in British Columbia. Six applicants were granted leave to judicially review a June 2019, Order-in-Council approving the Trans Mountain Pipeline Expansion on the question of whether the government had **adequately consulted indigenous peoples** affected by the proposed project between quashing the first official approval and then subsequently re-approving the project. The court held that consultation process was a reasonable one, and so the challenge to the project was dismissed.

[Pakistan: Climate change and human rights](#)

In the case of *Leghari v. Federation of Pakistan*, (2015) W.P. No. 25501/201, the applicant, Mr Ashgar Leghari, a Pakistani farmer, complained that the **government's failure to effectively implement its own policies and strategies on climate change amounted to a violation of his human rights**. On September 4, 2015 the court found for the applicant, determining that "the delay and lethargy of the State in implementing the Framework offend the fundamental rights of the citizens." The remedies ordered by the court included (i) the nomination of "a climate change focal person" for each ministry to help ensure the implementation of government strategy, and to present a list of action points by December 31, 2015; and (ii) the creation of a Climate Change Commission composed of representatives of key ministries, NGOs, and technical experts to monitor the government's progress.

[Uzbekistan cotton case](#)

In 2019 the Global Legal Action Network (GLAN) and the Uzbek-German Forum for Human Rights (UGF) announced their intention to seek judicial review in the English courts of EU policy which applies preferential tariffs to cotton originating from Uzbekistan, arguing that this policy effectively **promotes the importation of goods produced through the use of modern slavery**. According to GLAN "a core argument in our case is that the EU has never conducted an assessment of the impact which these preferential tariffs have on the human rights situation in the Uzbek cotton industry, something which it is required to do. We are also arguing that when customs authorities are presented with evidence that particular goods passing under their control are produced with forced labour, they must prevent their importation. This is because customs authorities are under an obligation to act in a way that respects human rights." See further



Human rights courts

European Court of Human Rights and BHR

There are a number of limitations to the ECHR's jurisdiction which are important to consider:

- Applicants must have “**exhausted their remedies**” in their home state (see ECHR, Article 35).
- There must be an arguable complaint within the scope of one or more **substantive rights** protected by the ECHR and its Protocols.
- The operation of the principle of subsidiarity may exclude cases arising from business-related harms that fall below the **threshold of serious violations**, for instance, in the areas of environmental damage, workplace rights, privacy, consumer rights, or discrimination.
- The European Court may not have jurisdiction in cases of abuses taking place **outside the territory** of state parties to the ECHR.
- The ability to invoke Article 6 of the ECHR in civil matters depends on the existence of a **substantive “dispute”** of a genuine and serious nature and the **dispute must relate** to “rights and obligations” which can arguably be said to be **recognised under domestic law**.

BHR remedy via human rights courts: Limits

- State responsibility for non-state actors
- Jurisdiction
- Arguability and admissibility requirements
- Ancillary character – exhaustion of domestic remedies
- “Inherent limitations”
- Margin of discretion

See further:

- Claire Methven O’Brien, [‘Business and Human Rights: A Handbook for Legal Professionals’](#), pp. 101-110
- Cases referred to in materials for Seminar 3 State Duty to Protect



State-based non-
judicial remedy
mechanisms

Reflective exercise: Do you know what is meant by the terms below? How could the below mechanisms contribute to remediation of business-related harms?

**OECD
National
Contact
Points**

**Licensing
bodies**

**Ombuds
services**

**National
Human Rights
Institutions**

**Specialist
human Rights
Institutions**

Inspectorates

**Specialist
tribunals**

**Complaints
bodies**

“State-based non-judicial mechanisms may take **many different forms**. In most jurisdictions, a range of mechanisms with a role to play in the handling of complaints and/or resolving disputes arising from business-related human rights abuses may be identified. Such mechanisms can be **found at all levels of government**: local, regional and national. While some have mandates relating to all human rights, many are **specialized bodies** that focus on specific human rights-related themes, such as labour rights, non-discrimination, consumer rights, the right to privacy, environmental rights, or the rights to water or to health. Common examples of relevant State-based non-judicial mechanisms include labour inspectorates; employment tribunals; consumer protection bodies (often tailored to different business sectors); environmental tribunals; privacy and data protection bodies; State ombudsman services; public health and safety bodies; professional standards bodies; and national human rights institutions. ...”

[Improving accountability and access to remedy for victims of business-related human rights abuse through State-based non-judicial mechanisms, UN Doc. A/HRC/38/20](#)

UN Guiding Principle 31: effectiveness criteria for (state-based and non-state-based) non-judicial grievance mechanisms

- (a) **Legitimate**: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;
- (b) **Accessible**: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;
- (c) **Predictable**: providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;
- (d) **Equitable**: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;
- (e) **Transparent**: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;
- (f) **Rights-compatible**: ensuring that outcomes and remedies accord with internationally recognized human rights;
- (g) **A source of continuous learning**: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms;
- Operational-level mechanisms should also be:
- (h) **Based on engagement and dialogue**: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.

Further resources on state-based non-judicial remedy mechanisms

National human rights institutions

UN Working Group on Business and Human Rights, 'Role of national human rights institutions in facilitating access to remedy for business-related human rights abuses – Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises', [UN Doc. A/HRC/47/39/Add.3](#)

[Danish Institute for Human Rights, NHRIs and access to remedy for business-related human rights abuses](#)

OECD National Contact Points

[OECD Watch – National Contact Points under the OECD Guidelines for Multinational Enterprises](#)

Access to justice: Barriers

- Legal barriers
 - *Lack of direct applicability of human rights law to businesses*
 - *Doctrine of separate corporate personality and corporate groups*
 - *Rules on limitation of actions*
 - *Rules of evidence*

- Practical and procedural barriers
 - *Poverty, social exclusion and discrimination*
 - *Costs*
 - *Lack of interested/qualified lawyers*
 - *Rules on class actions / other collective action procedures)*
 - *State capacity*
 - *Corruption and risks to human rights defenders*

See further: C Methven O'Brien, [Business and human rights: A Handbook for legal practitioners](#) (Council of Europe, 2019), Section 3.6, pp 132 et seq.

Group work

Village A is situated close to a mine in a remote area. The mine is a joint venture between the state mining company and a local subsidiary of a multinational enterprise based in an OECD country.

The mine provides some employment in low paid occupations for villagers (eg cooks, cleaners) but they are concerned by water pollution caused by the mine, noise and dust from transportation of minerals, and lack of access to higher paid skilled positions. Female villagers have reported incidents of sexual harassment and assault by security guards and posted workers. A tailings dam at a nearby mine collapsed and the resulting mudslide inundated a neighbouring town, causing loss of human life and extensive damage to property.

You are a law firm from the capital city, approached by the villagers for advice.

1. What potential human rights abuses are disclosed in this scenario?
2. What options do the villagers have in terms of seeking remediation?
3. Construct a table evaluating the strengths and weaknesses of different options.
4. Develop a presentation of your remedy strategy to deliver at the town hall meeting called by the head person of the village.

Questions?





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