

CORPORATE HUMAN RIGHTS INFRINGEMENTS: ARE REMEDIES EFFECTIVE?

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Legal Briefings

Long described as the "forgotten pillar" of the [UN Guiding Principles on Business and Human Rights](#), the right to an effective remedy for all victims of human rights abuses received significant attention this week as over 2,000 businesses, government and civil society stakeholders came together in Geneva for the [6th annual UN Business and Human Rights Forum](#).

Opening with a plenary discussion led by an [all-female panel](#), the central theme of the 6th Forum was "[Realising Access to Effective Remedy](#)". Participants reflected on the progress made since the UNGPs were adopted in 2011 and the need for further action to ensure that remedies for human rights abuses are accessible and effective. In this post, we set out some of the key themes discussed at the Forum. These themes are likely to continue to form the foundations of conversations over the next 12 months and so provide a good indication as to what the next major developments might be.

THE SDGS SHOULD BE BETTER LINKED TO THE UNGPS

The [Sustainable Development Goals](#) (also referred to as Agenda 2030) were launched by the UN on 25 September 2015 to build on the work of the Millennium Development Goals. The SDGs are intended to end poverty, protect the planet and ensure prosperity for all. Although they are not expressly drafted in human rights language, human rights issues can be found throughout the SDGs. The Forum's opening plenary session suggested that there could therefore be no achievement of the SDGs without inclusive growth that was built on the protection and respect of human rights.

Although a business is under no direct obligation as a result of the SDGs, respect for human rights under Pillar II of the UNGPs involves more than mere compliance with human rights regulations with incidental philanthropy. A respect for human rights should be embedded in the very core of the business. We may start to see an increased connection by civil society between a business's respect for human rights and its contribution towards the achievement of the SDGs. Indeed, the [UN Working Group on Business and Human Rights](#) has already made such a connection. Should a company wish to further the SDGs, its best chance of doing so could be to drive the respect for human rights throughout its business.

THE TREND TOWARDS INCREASED HUMAN RIGHTS REPORTING WILL CONTINUE

There was much discussion around the increasing government regulation based on the UNGPs (including the [UK Modern Slavery Act](#), the [French Corporate Duty of Vigilance](#) and the potential [Australian Modern Slavery Act](#)). The trend appears set to continue. As more regulation is introduced around the world, a tension may emerge:

- On the one hand, certain sections of civil society want each new piece of legislation to surpass the last and re-raise the bar for corporate reporting and liability.
- More pragmatically though, new regulation in this area needs to be introduced as consistently as possible with existing regulation. Consistency would allow MNEs that are subject to more than one reporting requirement to report more efficiently such that resources would not be unnecessarily diverted away from the substantive due diligence and human rights respect issues and towards administrative reporting tasks.

On the whole, the existing human rights reporting laws do not set out remedies for victims of a human rights abuse. In relation to the effectiveness of the remedies under the French Corporate Duty of Vigilance, see [here](#). However, these laws build a platform for knowledge-building to allow a company to prevent harm and to engage in operational level remediation.

MULTI-NATIONAL ENTERPRISES SHOULD USE THEIR LEVERAGE MORE EFFECTIVELY

As part of the UNGPs, companies should use whatever leverage they have to try to bring about positive human rights impacts. In relation to leverage, it was noted that external stakeholders tend to overestimate the amount of leverage a company might have, whereas internal stakeholders tend to underestimate it.

First, therefore, companies have to identify the leverage that they have over third parties, including business partners, suppliers and even customers. Sometimes leverage might exist by way of an obvious power differential. At other times, a company might have the ability to influence the practices of a counterparty through the personal interactions that take place between key personnel. If it seems that a company is too small to have meaningful leverage, perhaps a collaborative or sector-wide approach might help.

There was a sense from participants that the use of leverage needed to go further and wider than simply negotiating appropriate contractual clauses. At times capacity building, training or increased transparency might be appropriate. This is an area where best practice could develop.

NON-JUDICIAL REMEDIES SHOULD BE STRENGTHENED

State-based non-judicial grievance mechanisms are one of the three mechanisms set out in UNGPs 26 to 28 by which remedies should be provided to victims of corporate human rights abuses. The most relevant state-based non-judicial mechanism (and the one which attracted the most conversation at the Forum) is the network of OECD National Contact Points ("**NCPs**").

The effectiveness NCPs has been criticised in the past, including in OECD Watch's [Remedy Remains Rare](#) report from June 2015. In June 2016, OECD Watch published its follow-up paper [Remedy is the Reason](#) and at the Forum, it launched a [campaign](#) to make NCPs more effective. Participants at the forum also discussed OECD Watch's [interim findings and recommendations](#) from the OECD NCP [peer review process](#) that is ongoing. The UN Working Group on Business and Human Rights also prepared a [discussion paper](#) for the Forum in relation to the strengthening of State-based non judicial mechanisms.

All these discussions fit in with the recommendations of the [UK Joint Committee on Human Rights](#) in April 2017 that the NCP mechanism should be strengthened. The UK NCP undergoes its peer review in the second half of next year. This could shed further light on the future of the UK NCP and the ways in which it might be strengthened. More generally, the role and effectiveness of the NCPs is something that should be monitored over the next few years.

OPERATIONAL LEVEL GRIEVANCE MECHANISMS SHOULD BE EFFECTIVE

At the Forum, participants (including leading business) concurred that, where there has been an adverse human rights impact, remediation is best delivered quickly. There was strong agreement across all types of stakeholders that a locally delivered and specifically tailored remedy could often resolve an issue for the benefit of the rights holder far more efficiently and far more effectively than long and expensive litigation in a foreign jurisdiction.

There were a number of sessions that focussed on how these mechanisms can be made most effective, with a focus on engagement with and empowerment of the rights holders from the outset and during the design of the grievance mechanism to ensure that it has credibility, is accessible and can best deliver the kind of remediation that will most benefit the rights holder.

COMMENT

The UN Forum on Business and Human Rights has no capacity or standing to make new rules or establish any new protocols. As such, nothing has immediately changed following the closing plenary. However, it is an important annual event for building consensus across a broad range of stakeholders in the Business and Human Rights field and can give an indication as to what developments can be anticipated during the year ahead.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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