Specific Questions

1. Does the Constitution or domestic laws of your country recognise the right to an effective remedy for violation of human rights? If yes, please provide details.

Article 17 of the Constitution states that no one can be kept from the competent court and thereby provides for access to justice, article 6 of the European Convention on Human Rights (ECHR) provides the right to a fair trial within a reasonable period. Furthermore, the ECHR (articles 13 and 47) stipulates that everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a national authority. In addition, article 47 of the Charter of Fundamental Rights of the European Union (CFREU) grants the right to an effective remedy and to a fair trial. The Dutch Constitution (articles. 93 and 94) provides that international treaties, such as the ECHR and the CFREU), have direct effect in the Dutch legal order, and that national laws that violate an international provision will not be applied. As a result, Dutch citizens are able to invoke the ECHR and other human rights instruments to which the Netherlands is party. Furthermore, the Dutch legal order allows for victims of corporate human rights abuses to seek remedy through civil proceedings and in some cases criminal proceedings may be instituted.

2. How would you rate on a scale of 1 to 5 (1 being not effective, and 5 being highly effective) the “effectiveness” of available remedies in your jurisdiction for business-related human rights abuses?

It is not for the government to rate the effectiveness of its own policies. The government commissioned a study into the legal duty of care binding Dutch companies in case of extraterritorial business-related human rights abuse, in order to establish how the legal regime measures up to the standards set by the Guiding Principles. Please see the English translation of the study’s executive summary, as well as the government’s response, attached to this submission.

3. Please provide information about the types of remedies (e.g., compensation, injunction, criminal prosecution, administrative fine, public apology) available under different domestic laws for business-related human rights abuses.

Judicial mechanisms

On the basis of Dutch civil law, the injured party of an unlawful act (“onrechtmatige daad”) can claim compensation in the civil law courts. Where an unlawful act has been committed, for instance by a company, the court may order the company not only to cease the abuse but also to compensate for the damage caused to the victim (article 6:162, Civil Code).

Dutch criminal law and criminal procedure law offer a range of possibilities to remedy violations of standards related to business and human rights, also where the violation has in whole or in part taken place abroad. There are many general and special penal clauses in place that protect human and environmental interests and that impose obligations on companies.

International developments are relevant as well. Amnesty International and the International Corporate Accountability Roundtable, for example, offer practical guidance to public prosecutors dealing with business-related human rights violations. The Office of the UN High Commissioner for Human Rights has identified best practices of states in this area in the framework of the Accountability and Remedy Project. Awareness on these instruments has been raised among Dutch public prosecutors.

Non-judicial mechanisms

In the Guiding Principles, Professor Ruggie points out that non-judicial mechanisms can contribute to faster, potentially more effective and more direct remedy for victims. They are therefore an important addition to judicial proceedings, which are often time-consuming and costly.

* The National Contact Point (NCP) supports companies in putting the OECD Guidelines for Multinational Enterprises into practice. The NCP can be regarded as an overarching external remedy mechanism, since it is accessible to all stakeholders and is based on impartial mediation. At the end of a procedure, the NCP issues a final statement in which it describes the process and the relationship between the solution and the OECD Guidelines. Parties may reach agreement that remedy – including compensation – should be offered by the company. The NCP procedure is non-judicial. Its final statement is not an administrative law decision and there is therefore no scope for appeal.
* Companies’ complaints mechanisms: when a company establishes that it is causing or contributing to a human rights abuse, it is expected to rectify the situation and/or provide compensation. Complaints procedures at company level can be an effective means to this end. The procedure should be in line with the Guiding Principles, and based on dialogue and commitment to seeking an acceptable solution. Complainants should still have access to other judicial or non-judicial complaint procedures, including the NCPs and the court system.

4. What steps have been taken (or are being planned for the future) to strengthen access to remedy for business-related human rights abuses subsequent to the endorsement of the UNGPs in June 2011 and the June 2016 report of the OHCHR on “improving accountability and access to remedy for victims of business-related human rights abuse” (A/HRC/32/19)?

The steps that have been taken or that are still being taken are listed on page 4 of the attached government response to the “duty of care study”. Most of these steps are still ongoing. Since the publication of the letter, the Dutch EU Presidency succeeded in getting EU Council Conclusions adopted on business and human rights in June 2016, largely focused on access to remedy. The Conclusions, among other things, requested the EU Fundamental Rights Agency to develop an opinion on ways to strengthen access to remedy in the EU. This opinion, which was published in April 2017, is meant to feed into new policies on Responsible Business Conduct (RBC) to be developed by the European Commission. Also since the publication of the letter, a number of sectoral Responsible Business Conduct (RBC) Agreements have been concluded by Dutch business sectors, the government, labour unions and civil society. The RBC agreements are based on the OECD Guidelines and the UNGPs, and the issue of access to remedy is integrated in these agreements. The agreement concluded by the Dutch banking sector focuses on human rights and a dedicated working group will elaborate the responsibility of the Dutch banks in the field of access to remedy, and will advise the Dutch banking sector on the appropriate steps to take to integrate the findings of this working group.

5. If a business enterprise incorporated or domiciled in your jurisdiction caused, contributed to, or was directly linked to human rights abuses overseas, please indicate whether access to remedy mechanisms are available in your jurisdiction to redress such extraterritorial abuses?

The Dutch international private law rules determine whether a Dutch court has jurisdiction for handling civil liability disputes regarding human rights abuses overseas. A Dutch court is competent to deal with these cases if the defendant is a company which has their statutory seat in the Netherlands or if the central place of business is located in the Netherlands. Courts are not automatically competent to hear civil liability claims against non-EU based subsidiaries or non-EU based business partners of the Netherlands-based company. Competence may exist for these claims if the claim is connected to a claim against the Netherlands-based company and it would be more efficient to deal with the claims jointly, so as to avoid contradictory judgments, or if the claimant does not have access to a fair trial in the country where the alleged abuse took place.

6. Are rights-holders consulted while establishing or reforming mechanisms aimed at providing remedy for business-related human rights abuses? If so, please provide information as to the processes adopted.

Yes. For instance, in the ongoing review of the civil law of evidence referenced in the attached letter, there have been a number of stakeholder consultations which included organisations representing rights-holders, such as Amnesty International.

7. Please share information whether the unique experiences and expectations of groups who may be particularly vulnerable to human rights abuses, such as children, women, people with disabilities, migrant workers, and indigenous peoples are taken into account in providing for access to effective remedy for business-related human rights abuses.

In general, specific vulnerabilities of affected rights-holders are weighed by the judge when ruling on remedies. A judge can play a more active role when it considers vulnerable groups in a civil law procedure, or if procedural fairness is at stake, the judge can relieve the burden of proof or shift the burden of proof in a case when the specific circumstances call for such a measure.

8. Are civil society organisations and human rights defenders assigned any specific role in your jurisdiction for facilitating access to effective remedy in cases related to business-related human rights abuses? If yes, please provide information.

Yes, civil society organisations are allowed to represent/assist claimants in tort cases, for example in the case of several Nigerian claimants, represented/assisted by Friends of the Earth Netherlands in their case against Royal Dutch Shell concerning oil spills in the Niger Delta.

Other Comments and Suggestions

9. Please provide any additional comments, suggestions or information which you think may be relevant for the Working Group’s forthcoming report on access to effective remedy for business-related human rights abuses, or for strengthening access to remedy generally.