



Improving effectiveness of non-judicial mechanisms

Parallel session

28 November

10:00-13:00

Part 1: State-based non-judicial mechanisms on corporate accountability and remedy: supporting actors or lead players?

10:00-11:30

Organized by OHCHR

Part 2: Reports from the field: the reality of remedy at national human rights institutions

11:30-13:00

Organized by the Global Alliance of National Human Rights Institutions and the German Institute for Human Rights

Part 1: State-based non-judicial mechanisms on corporate accountability and remedy: supporting actors or lead players?

Brief description: This session organized by OHCHR will consider the legal and policy implications of the findings put forward in the discussion paper on the Accountability and Remedy Project II, published at the end of October 2017. It will specifically look at how the findings can be translated into policy objectives and recommendations for States to strengthen the implementation of “Pillar III” (the “Access to Remedy” Pillar) of the UN Guiding Principles on Business and Human Rights with regards to State-based non-judicial mechanisms for access to remedy. The aim is to have a dynamic session with panellists and participants providing specific feedback on the findings in the paper, based on own experience and expertise.

Session objectives:

In June 2016, OHCHR submitted to the Human Rights Council its final report on Part I of the Accountability and Remedy Project, which related to the role and use of judicial mechanisms (i.e. domestic courts). OHCHR then received a follow-up request from the Human Rights Council in resolution 32/10 to “identify and analyse lessons learned, best practices, challenges and possibilities to improve the effectiveness of State-based non-judicial mechanisms that are relevant for the respect by business enterprises for human rights, including in a cross-border context” (emphasis added).

The [discussion paper](#) marks the conclusion of the information-gathering phase of Part II of the OHCHR’s “Accountability and Remedy Project” (“ARP II”), and was published at the end of October. It was prepared for the purposes of ongoing stakeholder consultation exercises relating to the use of State-based non-judicial mechanisms as a means of ensuring access to remedy in cases of business-related human rights abuses. The key issues and observations set out in this paper will be presented at this session.

The session will explore how different stakeholders – government bodies, national human rights institutions, and civil society – react to the findings in the report.

Key discussion questions:

1. What are the advantages and disadvantages of State-based NJM processes compared with judicial processes? How can they be complementary?
2. What are the best ways of ensuring trust by stakeholder groups in State-based NJM activities and processes?
3. What challenges arise when grievances may be subject to both judicial and non-judicial processes and how can these challenges be addressed?
4. To what extent is there a need for enhancement of the ability of different kinds of State-based NJMs to respond to cross-border cases? How could this be achieved in practice? What kinds of cooperative arrangements between States could be helpful?
5. How effectively are State-based NJMs presently responding to the needs of people at risk of vulnerability or marginalisation? Where are improvements needed and how can these be achieved?
6. How can State-based NJMs contribute to greater prevention of business-related human rights abuses?
7. What policy issues and challenges emerge from greater use of State-based NJMs as a means of improving access to remedy in cases of business-related human rights abuses? Are there cases in which only judicial mechanisms will suffice? Do (or should) State-based NJMs have a supporting role in such cases, and how could they do it effectively?

Speakers:¹

- **Ms. Lene Wendland**, Chief, Human Rights and Economic and Social Issues Section, OHCHR (Moderator)
- **Mr. Roberto Cadiz**, Commissioner, Commission on Human Rights of the Philippines
- **Mr. Michael Congiu**, Attorney and Shareholder, Littler Mendelson
- **Ms. Minawa Ebisui**, Labour Law Unit, ILO
- **Ms. Maylis Souque**, Secretary General of the French OECD National Contact Point, Ministry of Economy and Finance, France
- **Ms. Jennifer Zerk**, Legal Consultant, OHCHR Accountability and Remedy Project

Format of the session:

1. Chair: Introduction outlining the issues and introducing the key questions and objectives.
2. Short interventions (app. 7 minutes) from each panelist.
3. Feedback from the floor – Q&A
4. Conclusion: the chair concludes, bringing in the different perspectives

¹ Further information on speakers provided in Annex

Useful links:

- OHCHR Website for the Accountability and Remedy Project:
<http://www.ohchr.org/EN/Issues/Business/Pages/OHCHRaccountabilityandremedyproject.aspx>
- Discussion paper: “Supporting actors or lead players?: State-based non-judicial mechanisms for accountability and remedy for business-related human rights abuses”
http://www.ohchr.org/Documents/Issues/Business/DomesticLawRemedies/ARPII_%20DiscussionpaperonPhase2forUNForum_FINAL.pdf
- <https://business-humanrights.org/en/ohchr-accountability-and-remedy-project>
- Human Rights Council resolution:
http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/32/10

Part 2: Reports from the field: the reality of remedy at national human rights institutions

Brief description: As part of the parallel track on “improving effectiveness of non-judicial remedy mechanisms” on Day 2 of the Forum, the Global Alliance of National Human Rights Institutions, GANHRI, will present the second half of a joint session with OHCHR’s Accountability and Remedy Project. Following on from the more general survey of state-based mechanisms through OHCHR, the goal of the GANHRI session will be to present concrete case reports from different remedy functions that NHRIs exercise and support across the globe, to show where the strengths and weaknesses of remedy lie in practice.

Session objectives:

- Demonstrate how non-judicial remedy currently works in day-to-day practice in a variety of different jurisdictions
- Identify advantages in pursuing the non-judicial remedy route, especially for difficult or unusual cases
- Identify systematic difficulties faced by efforts to achieve non-judicial remedy
- Introduce practitioners to the wide variety of functions exercised by National Human Rights Institutions in the hope that these mechanisms are used more frequently going forward

Key discussion questions:

- What alternatives to judicial proceedings are already available to those seeking remedy in your jurisdiction?
- How can human rights be leveraged before a mechanism that may not have an explicitly human-rights-based mandate?
- What are the deciding factors that determine whether or not effective remedy is achieved with these mechanisms?

Speakers:

- **Daniela Ortega**, Coordinator, International Relations, INDH Chile
- **Roberto Cadiz**, Commissioner, Philippine Human Rights Commission (CHRP)
- **Khalid Ramli**, Head of External Relations and Cooperation, National Human Rights Commission of Morocco (CNDH)
- **David Rutherford**, Chief Commissioner, New Zealand Human Rights Commission
- **Marie-Claire Konkombo**, Regional Secretary, National Human Rights Commission of Cameroon.
- **Alvaro Amaya**, Deputy Defensor, Defensoría del Pueblo de Colombia

Format: The format will be one of 3 presentations of about 15 minutes each. The presentations will contain audiovisual materials and be given by an NHRI and a partner organization or mechanism. Following these presentations, there will be an opportunity for questions and discussion in the audience. Conclusions will emerge in a summary at the end of the session.

Background: These presentations are intended to compliment the global overview of non-judicial mechanisms in OHCHR's ARP II presentation beforehand with case studies and presentations directly from people involved in individual cases.

ANNEX. SPEAKERS SHORT BIOS.

PART 1.

Mr. Roberto Cadiz

Commissioner, Commission on Human Rights of the Philippines

Commissioner Eugenio Roberto T. Cadiz is the focal commissioner for Business and Human Rights; Environment; International Humanitarian Law; Peace; and Sustainable Development Goals, at the Commission on Human Rights (CHR) of the Republic of the Philippines.

Prior to his appointment, Commissioner Cadiz was a private law practitioner specializing in litigation while being the Executive Director of Libertas, a non-government organization working for an informed and empowered citizenry, adhering to the rule of law, and working within the framework of a functional democracy.

Currently, Commissioner Cadiz oversees the Commission's Center for Crisis, Conflict, and Humanitarian Rights, as well as the Human Rights Education and Promotion Office. He is also presently handling the Petition filed before the CHR on Climate Change and its Impact on Human Rights.

Mr. Michael Congiu

Attorney and Shareholder, Littler Mendelson

Mr. Congiu is a recognized expert regarding international labor and business and human rights issues, and is a frequent speaker and author on these topics. He regularly counsels multinational employers on international labor standards, brand protection, and business and human rights issues, including in connection with the following:

- The International Labour Organization and its Committee on Freedom of Association
- The Organisation for Economic Co-operation and Development
- The United Nations Global Compact
- The United Nations Guiding Principles on Business and Human Rights

Mr. Congiu is a graduate of the University of Wisconsin-Madison and the Chicago-Kent College of Law, where he served as notes and comments editor for the Chicago-Kent Law Review.

Ms. Minawa Ebisui

Labour Law Unit, International Labour Organisation

Ms. Minawa Ebisui is a labour law officer in the Labour Law and Reform Unit of the International Labour Office, Geneva, Switzerland. Her current primary role is to provide policy advice and support to the ILO member States on the design and operation of labour dispute prevention and resolution systems, based on comparative best practice and international labour standards. Since 2014, she has been engaged in the ILO global research on individual labour dispute prevention and resolution systems, assessing systems' performance in more than 50 countries across all regions. Research findings are used to address various challenges in different national contexts. A book covering OECD countries was

published: Ebisui, M., Cooney, S. and Fenwick, C., Resolving individual labour disputes—A comparative overview (ILO, 2016). Before joining the ILO, she was Deputy Chief Research Officer at the Japan Institute for Labour Policy and Training (JILPT), an independent administrative research institution under the Ministry of Health, Labour and Welfare, Japan, where she worked on a wide range of labour policy areas including labour law, labour relations and labour migration. She attained an LLM in labour law from Sophia University, Tokyo.

Ms. Maylis Souque

Secretary General of the French OECD National Contact Point, Ministry of Economy and Finance, France

Maylis Souque is the Secretary General of the French OECD NCP for Responsible Business Conduct (RBC) and Senior Advisor on Corporate Social Responsibility (CSR) at the Directorate General of the Treasury of the French Ministry for the Economy and Finance.

She organizes the work of the French NCP which is a tripartite body (Trade Unions, Business Organization, and Government) set up to promote the OECD Guidelines for Multinational Enterprises. Maylis Souque contributed to the French NCP Report on Due Diligence in Garment Global Supply Chain in 2013. Beside CSR/RBC, Maylis Souque is a civil-military crisis management specialist, and expert for situations of fragility in conflict and post-conflict countries with a strong focus on economic governance, development policies and multilateral development banks. She worked previously at the French Ministry of Foreign Affairs, at The European Commission and at the DG Treasury. Ms. Souque holds a Master's Degree in International Public Law from the Pierre Mendès France University of Grenoble, France.

Ms. Jennifer Zerk

Legal Consultant, OHCHR Accountability and Remedy Project

Dr Jennifer Zerk is a writer, researcher, teacher and analyst specialising in business and human rights. She has written extensively on international and domestic law issues related to the human rights impacts of business and her book "Multinationals and Corporate Social Responsibility" is widely regarded as a key text in the field. She has advised on a number of significant law reform and policy initiatives including, currently, as lead legal consultant on the Accountability and Remedy Project of the Office of the UN High Commissioner for Human Rights.