

2 May 2019

**Call for input by the Working Group on Business and Human Rights
on the role of national human rights institutions in facilitating access to effective
remedy for business-related human rights abuses**

Introduction

Access to effective remedy for individuals and communities affected by business-related human rights abuses constitutes one of the three pillars of the UN Guiding Principles on Business and Human Rights (UNGPs). The Working Group on Business and Human Rights (the Working Group) in its 2017 Report to the UN General Assembly ([A/72/172](#)) unpacked what an effective remedy means under the UNGPs.

The UNGPs envisage a role for three types of mechanisms to provide access to effective remedy in business-related human rights abuses: state-based judicial mechanisms, state-based non-judicial grievance mechanisms (NJMs), and non-state-based grievance mechanisms. The UNGPs explain that while judicial mechanisms are “at the core of ensuring access to remedy”, non-judicial mechanisms such as national human rights institutions (NHRIs) have “an essential role in complementing and supplementing judicial mechanisms”.

The [Edinburgh Declaration](#) adopted by the tenth international conference of the International Coordinating Committee of NHRIs also outlines the potential of NHRIs in improving access to effective remedy for business-related human rights abuses. NHRIs can facilitate access to remedy both directly (e.g., by handling complaints concerning human rights abuses by companies) and indirectly (e.g., by raising awareness, building capacity, assisting affected rights holders and recommending legal reforms).

In resolution [38/13](#) entitled “Business and human rights: improving accountability and access to remedy”, the UN Human Rights Council recognized “the important role of national human rights institutions in supporting activities to improve accountability and access to remedy for victims of business-related human rights abuse...”. Moreover, the Council requested the Working Group “*to analyze further the role of national human rights institutions in facilitating access to remedy for business-related human rights abuses, and to convene a two-day global consultation on these issues, open to all stakeholders, and to inform the Human Rights Council by its forty-fourth session as appropriate*”.

As per this request, the Working Group will convene a global consultation with NHRIs and other stakeholders in **Geneva on 10-11 October 2019 in room XXII, Palais des Nations**. In addition, the Working Group is seeking written input from NHRIs on the questions listed below.

Please email your response (maximum 3,000 words) to wg-business@ohchr.org by **15 June 2019**.

Unless indicated otherwise, the responses received will be posted on the Working Group’s website in the language in which they are received.

To all NHRI

Questions*

I. The role and mandate of NHRIs in facilitating access to effective remedy for business-related human rights abuses

1. Does your NHRI have an explicit or implicit mandate to handle complaints concerning alleged business-related human rights abuses? If yes, what methods (e.g. mediation or conciliation) can be used to facilitate access to remedy for human rights abuses?

The DIMR neither has neither an explicit nor an implicit mandate to handle complaints. Individual complainants who turn to the DIMR are referred to specialised lawyers or pro bono law clinics.

For its mandate and principal activities see § 2 of the Act on the Legal Status and Mandate of the German Institute for Human Rights (<https://www.institut-fuer-menschenrechte.de/en/about-us/mandate/statutes/>)

2. What types of remedies can your NHRI offer to individuals or communities affected by business-related human rights abuses? Do you consider those remedies to be effective?

Due to its mandate the DIMR cannot offer any remedies to individuals or communities affected by business-related human rights abuses.

3. Does your NHRI have a mandate to investigate, conduct inquiry and adjudicate individual cases of alleged human rights abuses by businesses? If yes, please provide relevant statistics in relation to complaints received and adjudicated.

See above under 1.

4. Does your NHRI give any special attention to facilitate access to your complaint mechanisms by vulnerable or marginalised groups? If yes, what measures have been taken in this regard?

See above under 1.

5. What gender-sensitive and gender-responsive measures your NHRI take in dealing with cases of alleged business-related human rights abuses?
The DIMR has no complaint handling mechanism.

See above under 1.

6. What other measures does your NHRI undertake to facilitate access to remedy indirectly for business-related human rights abuses (e.g. raising awareness about rights and remedial mechanisms, providing legal assistance, building capacity of communities or businesses, assessing effectiveness of other grievance mechanisms, and recommending reform of the national legal system to strengthen access to remedy)?

* These questions are designed to facilitate focused feedback. Please feel free to respond to all or selected questions as necessary.

The DIMR carries out interdisciplinary and application-oriented research on access to remedy for business-related human rights abuses. It advises political decision-makers, as well as the business sector on matters relating to effective remedy. As part of its advisory role vis-à-vis the German Government it has prepared a National Baseline Assessment for the German National Action Plan on Business and Human Rights which points to gaps in the legal protection system, especially in transnational cases. The DIMR continuously advocates for legal reform addressing substantive, procedural and practical barriers faced by rights-holders in third countries seeking access to remedy in Germany. Vis-à-vis German businesses it has issued recommendations how human rights due diligence procedures, including operational level-grievance mechanism, can be improved, inter alia by highlighting the importance of drawing on external human rights expertise including NHRIs, human rights defenders and others from civil society.

The upcoming annual DIMR report to the German Federal Parliament (Deutscher Bundestag) will contain a chapter on access to non-judicial remedy for business related human rights abuses. It will illustrate the avenues available to rights-holders from abroad seeking remedy for direct or indirect human rights violations by German companies. Part of the report is the question of what is and is not achieved through these mechanisms. Furthermore the DIMR has been commissioned by the European Union Agency for Fundamental Rights (FRA) to produce a country report for the project ‘Business and human rights – access to justice’.

7. How does your NHRI collaborate with other judicial or non-judicial remedial mechanisms (e.g. courts, labour tribunals, National Contact Points, and operational level grievance mechanisms) in dealing with complaints concerning business-related human rights abuses?

Within the framework of its protective function, DIMR activities extend to individual cases in the form of amicus curiae statements submitted to the courts. One example is the case [Kiobel v. Royal Dutch Petroleum Co.](#)

The DIMR has participated in the peer review of the German OECD NCP and identified opportunities for improvement. The DIMR has been accepted into the OECD Guidelines Working Group - a forum for exchange of the German OECD National Contact Point consisting of federal ministries, representatives of business associations, trade unions and non-governmental organisations. The forum serves to discuss current issues related to the OECD Guidelines and the work of the NCP. The working group meets twice a year. In addition, its members are informed by the NCP about current complaint procedures and other NCP activities. However, the DIMR will not be involved in the handling of specific instances.

8. Can your NHRI deal with alleged business-related human rights abuses with a transnational or cross-border dimension (e.g. through informal visits and exchange of information or a cooperation arrangement with counterparts in other States)?

The DIMR has cooperated closely with other NHRIs on the structural problems leading to community or individual complaints and published its findings widely (see below III, 3)

9. Is your NHRI involved in any initiatives to stimulate effective multi-stakeholder grievance mechanisms to strengthen access to remedy for business-related human rights abuses?

No.

10. Where a National Action Plan on Business and Human Rights exists (or is under development), does it provide for a role for NHRIs in relation to access to remedy in case of business-related human rights abuses?

The German NAP does not provide for a role of the DIMR in relation to access to remedy.

II. Challenges and limitations faced by NHRIs in facilitating access to effective remedy for business-related human rights abuses

1. What are the most critical challenges and limitations (e.g., legal, practical, or financial) that your NHRI has experienced in facilitating access to effective remedy in business-related human rights abuses? How could these challenges or limitations be overcome?

One critical limitation is the lack of a complaint handling mechanism. Another limitation is the lack of a mandate to conduct issue-based inquiries and investigations as a form of targeted research on human rights violations, in particular the lack of effective authority to gather information from businesses. However, even if this mandate was granted to the DIMR, it would need more financial resources to fulfil it.

With regard to the German OECD NCP the role and responsibilities of the DIMR need to be clearly defined and communicated, especially in relation to the handling of specific instances. Instead of merely being part of a general discussion twice a year, the human rights expertise of the DIMR should be incorporated into the handling of specific instances.

2. What additional challenges has your NHRI faced in dealing with complaints with a transnational dimension (e.g., exploitation of migrant workers, or cross-border environmental pollution)?

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3. How has your NHRI dealt with complaints involving multiple victims?

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4. What has been the experience of your NHRI in dealing with complaints concerning parent and subsidiary companies or the supply chain of a company?

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III. Good practices, innovations and recommendations to strengthen the role of NHRIs in facilitating access to effective remedy for business-related human rights abuses

1. Can you share any good practice examples in which your NHRI was able to facilitate, directly or indirectly, effective remedies for business-related human rights abuses?

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2. Are there good practice examples of your NHRI supporting the work of civil society and human rights defenders (including women human rights defenders) working to secure access to effective remedy for business-related human rights abuses?

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3. Can you identify any innovative steps taken by your NHRI in overcoming various challenges and limitations faced in dealing with complaints concerning business-related human rights abuses?

The Colombian Defensoría del Pueblo (Defensoría) and the DIMR have cooperated to address business-related human rights issues arising from coal mining in Colombia. Through strategic and coordinated efforts, the DIMR and the Defensoría both increased their institutional capacities and improved their work in the context of business and human rights. A summary of the achievements of the cooperation can be found [here](#).

4. What measures should be taken to strengthen the mandate, role and capacity of NHRIs in facilitating access to remedy for business-related human rights abuses?

NHRI cooperation: Jointly with the Danish Institute for Human Rights the DIMR has held a workshop on remedy in business and human rights cases and the role of National Human Rights Institution. It identified NHRI collaboration in individual cases and in concrete policy areas as a matter of particular importance: NHRIs should reach out to one another in their specific day-to-day work. Possibilities for cooperation include inter-NHRI inquiry panels; inquiries involving more than one NHRI; and coordination around individual cases, especially e.g. across home- and host-state borders, or among the various NHRIs whose countries are part of a single supply chain. Beyond individual cases, this can also include collaboration on research. The full workshop report is available [here](#).

Mandates: In general many NHRIs need more independence and adequate funding. Their mandates should be broad and include the authority to monitor the HRDD performance of business, as well as investigative and inspecting powers, such as suo moto inquiries (prioritized, urgent issues, sectors). The mandate must not be limited to civil and political rights, but include economic, social and cultural rights.

Pluralism within NHRIs: Women as well as ethnic and religious minorities need to be adequately represented at NHRIs to enhance the protection, prevention, accountability and access to remedies for vulnerable groups. NHRIs should be composed of interdisciplinary teams, not just representatives of the legal professions.

Establishing communication channels with companies: NHRIs should consider offering companies their expertise to improve HRDD processes.

NHRI strategy: NHRIs could make better use of their existing complaint mandates by ensuring follow-up and a systematic evaluation of their case work, so that findings from individual cases can flow into advocacy work and agenda setting and reports. NHRIs need to be adequately staffed and funded to do so.

Interplay with other mechanisms: Access to remedy can be facilitated by strengthening the relationship between NHRIs and other judicial or non-judicial remedial mechanisms (e.g. courts, labour tribunals, National Contact Points, and operational level grievance mechanisms), inter alia through

- Formalised NHRI relations with OECD NCP (e.g. through MoUs)
- NHRI referral of cases to courts
- NHRI amicus briefs
- NHRI representation of rights holders in court proceedings
- NHRI co-development of operational-level grievance mechanisms and benchmarking of existing ones with UNGP effectiveness criteria

5. How could NHRIs collaborate with regional and international human rights monitoring mechanisms (including the Universal Periodic Review) to facilitate access to remedy for business-related human rights abuses?

- **Country visits (UN Working Group on Business and Human Rights, special procedures mandate holders) should be invited and supported by NHRIs, with an effort made to focus attention on the issue of remedy in business-related cases**
- **Use parallel reports to treaty monitoring bodies**
- **Contribute to UPR list of issues to include access to remedy on the agenda of the review**
- **Engage with the business and human rights treaty process and the IGWG and reflect on NHRIs as National Implementation Mechanisms (NIMs).**
