Access to Remedies for Corporate Human Rights Impacts: Improving Non-Judicial Mechanisms

Report of a Multi-Stakeholder Workshop 20 - 21 November 2008

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Corporate Social Responsibility Initiative

The Corporate Social Responsibility Initiative at the Harvard Kennedy School of Government is a multi-disciplinary and multi-stakeholder program that seeks to study and enhance the public contributions of private enterprise. It explores the intersection of corporate responsibility, corporate governance and strategy, public policy, and the media. It bridges theory and practice, builds leadership skills, and supports constructive dialogue and collaboration among different sectors. It was founded in 2004 with the support of Walter H. Shorenstein, Chevron Corporation, The Coca-Cola Company, and General Motors.

The views expressed in this paper are those of the authors and do not imply endorsement by the Corporate Social Responsibility Initiative, the John F. Kennedy School of Government, or Harvard University.

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ACCESS TO REMEDIES FOR CORPORATE HUMAN RIGHTS IMPACTS: IMPROVING NON-JUDICIAL MECHANISMS

20 – 21 November, 2008

CONSULTATION REPORT

On 20-21 November 2008, the Corporate Social Responsibility Initiative at Harvard Kennedy School and Oxfam American jointly hosted a consultation entitled: 'Access to Remedies for Corporate Human Rights Impacts: Improving Non-judicial Mechanisms'. The consultation was a contribution to the work on access to remedy of the UN Secretary-General's Special Representative on Business and Human Rights, Professor John Ruggie and follows two previous consultations on non-judicial grievance mechanisms in 2007. (Work on access to remedy through judicial mechanisms is the subject of separate work under the mandate.)

The forty participants at the event included individuals from a broad range of backgrounds with some expertise in the issues under discussion. They came from academic institutions, international organisations, business, NGOs, government, ADR organisations and law firms. The list of participants is attached. Discussions were conducted under the Chatham House Rule requiring that comments not be attributed to specific speakers. The hosts are endebted to Foley Hoag for providing the venue and refreshments for the event in Boston and to the UK Government for funding NGO participation.

Introduction

The consultation comprised four sessions. The focal issues were selected based on stakeholders' feedback, directly and via an on-line discussion forum (srsg-consultation.pbwiki.com), as to the issues they saw as most in need of discussion and most likely to bring added value in the area of non-judicial grievance mechanisms.

The opening session provided a framing discussion of the roles and inter-relationship of judicial and non-judicial mechanisms. The second session focused on the National Contact Points (NCPs) of the 42 states that have adhered to the OECD Guidelines on Multinational Enterprises. It also brought in some discussion of other national ombuds systems that do, or could, provide a similar role. The third session debated the question of whether additional non-judicial mechanisms are needed at the international level, and if so what form they should take. The final session sought to build on the foregoing discussions by looking at the 'system' of non-judicial grievance mechanisms as a whole and how it should ideally operate across local, national, and international levels, using existing and/or new mechanisms, with adjudicative and/or mediation-based functions, and keeping in mind the judicial context.

The cumulative nature of the sessions and the fact that no one type or 'level' of mechanism operates in isolation from others inevitably meant that some issues recurred through the consultation. This report seeks to group these themes and ideas while still reflecting the three subject areas of 'Judicial and Non-Judicial mechanisms', 'National Contact Points' and 'New International Mechanisms'. The 'network' or 'system-related' issues discussed are integrated across these three sections. The final section reflects a number of generic themes that recurred across discussions and which were seen as relevant to the different thematic areas.

I. Judicial and Non-judicial Mechanisms – Their Roles and Relationships

Complementary or zero-sum?
There was general agreement that judicial and non-judicial mechanisms were not, and should not be considered, competing types of mechanism in a binary or zero-sum relationship. One speaker recalled that the 'truth versus justice' debate surrounding truth and reconciliation commissions had effectively shown that non-judicial processes are not to the detriment of judicial.

Instead, participants saw the two kinds of mechanism as complementary and part of a complex and dynamic relationship. Many suggested that the relevant distinctions were less between judicial and non-judicial mechanisms than between mediation-based and adjudicative processes, or between public and private processes, or alternatively those with or without the power to sanction non-compliance with outcomes. The main caveat, widely agreed, was that non-judicial processes should not preclude an aggrieved party from going to court.

One speaker proposed an evolutionary relationship between judicial and non-judicial mechanisms: the human rights system had been set up with strong standards and weak enforcement; civil society activism and private initiatives placed pressure on companies through codes, monitoring, campaigns and lawsuits. This led to increasing 'enforcement' of human rights standards in the broadest sense, with non-judicial approaches seen not as substitutes but as complements to judicial. Over time, these processes clarified standards that may then be incorporated into national and international law, forming the basis for increased judicial enforcement.

One participant suggested that the relationship between the two kinds of mechanism was nevertheless somewhat zero-sum in practice. The capacity of lawsuits to create profile around issues and to punish companies for abuses was important in terms of achieving systemic change that could avoid future abuses, as against just solving the instant case. Litigation could also raise awareness of issues and have educational benefit. NGOs that took up grievances on behalf of communities and other groups had limited resources and feared that pursuing non-judicial routes might be a diversion – perhaps a dead end rather than part of an evolution.

Another participant countered that NGOs should not be choosing judicial over non-judicial processes (or vice versa). Even with scarce resources, they should make choices with an eye to the immediate context. It was noted that an exclusive focus on judicial mechanisms presumed that all significant grievances were justiciable, or that if they weren't they didn't matter. In practice many issues started as small grievances that would never make it into court, and a failure to address them through non-judicial means often led to an escalation and to major abuses that then triggered lawsuits.

Combining 'user' focus with systemic change
Many supported the view that the focus must be on the interests and wishes of 'users' of these mechanisms. At the same time, it was felt that it should also be possible to get at systemic issues and change. The question was then one of design of mechanisms: experts noted that it was possible to create mediation-based processes that supported systemic change, just as it was to have judicial processes that produced good outcomes for a complainant at the local level. Neither outcome was owned by one type of mechanism.

This linked to a discussion about how to ensure that non-judicial mechanisms were designed to support precedent-building, cumulative learning, systemic change and the clarification of standards. One recurring point was the importance of transparent outcomes (without prejudice to the

confidentiality of mediation processes themselves). Some noted that individual mediations could reflect systemic issues in the solutions reached, and (non-binding) precedents and trends could be built from aggregated outcomes. Current examples of this dynamic from the US were cited: in the financial services sector ads well as through the use of 'consent decrees' – pre-trial settlements that are memorialised, approved by the court and then published, becoming a point of reference for companies in guiding their practices. In a related comment, one participant stressed the importance of designing non-judicial mechanisms for situations where they are most appropriate and not just for where judicial mechanisms are weak.

The idea of promoting legislated non-judicial grievance mechanisms recurred as one way to provide a framework that could integrate the functions of advocating prevention, addressing grievances (whether through mediation or adjudication), helping establish precedents and pushing for systemic change. Such mechanisms were also seen as a way to bring government into the equation, whether as an administrator or as a party, together with the company.

A relationship of leverage

A number of speakers also highlighted the frequent leverage-generating relationship between judicial and non-judicial grievance processes. Mediation-based dispute resolution frequently benefited from taking place 'in the shadow of the law': the pressure of a potential judicial process encouraged parties to talk and find mutually acceptable solutions.

One participant noted that the 'shadow of liability' may be enough without litigation. Directors of companies in the US and some other jurisdictions increasingly bore liability for ignoring information about the company's impacts. Others suggested that adjudication in non-judicial processes could also bring some leverage to mediated processes, even if outcomes were not enforceable. The potential for naming and shaming could bring parties to the table. And adjudicated outcomes – whether judicial or non-judicial also carried the benefit of helping clarify standards.

Others noted the need not just to focus on the 'sticks' that would encourage a company to mediate a dispute, but also the positive reasons, or 'carrots' for them to do so. A few speakers reflected their experience that seeing the results of mediation in practice had been highly influential in persuading both companies and complainants of its merits. A company representative noted the importance of being able to demonstrate such benefits internally if colleagues were to be persuaded to pursue alternatives to litigation. Benefits cited were improved company-stakeholder relations, reduced costs and staff time on litigation, protection of reputation and avoidance of disruption to operations.

II. National Contact Points for the OECD Guidelines on Multinational Enterprises

The problems

There was much discussion of the weaknesses currently typical of many NCPs:

- a perceived bias towards corporate interests stemming from the frequently dominant role of trade ministry staff, and a resulting reduction in legitimacy;
- a lack of accessibility due to patchy knowledge of NCPs' existence and uncertainty about how to engage the process;
- a lack of predictability about processes within and between NCPs;
- a predisposition of NCPs to avoid making clear judgements on breaches of the Guidelines, preferring often to make only forward-looking recommendations;
- a lack of financial resources for fact-finding;

- inadequate professional skills for mediation;
- a lack of transparency about the progression of processes and outcomes;
- a lack of political will or commitment on the part of governments;
- their limitation to countries adhering to the OECD Guidelines, resulting in difficulties dealing with transnational complaints in a non-adhering state.

Recent innovations

The Dutch and UK NCPs were seen as examples where innovations were overcoming some of the problems identified. The Dutch NCP - a four-member, multi-stakeholder group – was reported to have gained legitimacy through its independence from government, and credibility from its (financial) ability to undertake fact-finding visits and engage aggrieved parties on the ground.

The UK NCP's Steering Group, which includes multi-stakeholder representation, was welcomed as a new point of oversight and procedural appeal. A recent move towards using professional mediators was also seen as a positive development in terms of quality of process. And it was noted that recent robust statements from the UK NCP on companies formerly active in the DRC were being circulated within Eastern DRC – an indication of their impact.

Governments' role

More generally, the single greatest advantage of NCPs was seen as the fact that government held the role of convener. Participants noted that this provided confidence for the company to come to the table in a situation where they could not be forced to do so, since the Guidelines are voluntary. The government platform also held an authority that made it harder for companies not to engage. It was noted that the NCPs also had a role in promoting the Guidelines for Multinational Enterprises and could therefore play a preventive role through awareness-raising and advice.

Transparency

Many saw transparency of NCP outcomes as essential, and were concerned that they were too often kept confidential. Some felt that this was done to give undue cover to companies. It was noted that the act of putting issues on the public agenda itself had real merit – even absent enforcement capacities – and critical 'statements' from the NCP acted as a form of sanction. Such transparency was also seen as essential for the accountability of the NCPs themselves. And publicising outcomes might also help clarify the interpretation of standards and support learning.

Can they be 'fixed'?

While the Dutch and UK models demonstrated the considerable flexibility available for governments to improve NCPs through innovation, a prevailing concern was how few had done so. One line of discussion questioned whether it was worth trying to 'fix' NCPs or better to try to build something new and improved. Alternative models were discussed, including the Telecommunications Industry Ombudsman (TIO) in Australia, with its independence from government and industry and a funding model that draws fees from companies that do not resolve legitimate grievances before they get to the TIO. There was also discussion of two positive case studies from the Oxfam Australia Mining Ombudsman that had led to redress for communities and in one case measurable financial benefit to the company. In addition, an argument was made in the UK context for a new, legislated grievance mechanism that would be separate to the NCP and have powers to mediate and adjudicate as well as sanction, provide reparations and have its decisions enforced.

Without prejudice to the merits of new mechanisms, most participants thought it better to try to improve the NCPs than to abandon the model altogether. Many participants suggested a need for capacity-building: for NCPs in how to handle grievances effectively; for companies in how to understand human rights issues and the benefits of mediation and how best to cooperate with an NCP process; for NGOs in how to bring complaints effectively and assess their chances of success; and for aggrieved groups in their understanding of what the NCP did and how to get any advice and support necessary to engage it.

Geographical limitations

There was recurrent discussion of the geographical constraints on the system of NCPs due to their linkage to the OECD Guidelines. Although 12 non-OECD states have now adhered to the Guidelines and established NCPs, there were concerns that other states had no such system and were unlikely to join the Guidelines – particularly emerging market economies such as India, China and others in the G20. So the playing field was uneven, which might inhibit the political will required to develop existing NCPs into more effective mechanisms.

Ideas for improvement

Suggestions for improving the NCPs included:

- Greater clarity around the standards being applied, particularly with regard to human rights - the current language applies differing standards in different states, depending on treaty ratifications.
- Involving non-OECD states in a revision of the Guidelines to widen the chances of their wider adoption.
- Reviewing, clarifying and elaborating the OECD's procedural guidelines for NCPs to introduce greater rigour and consistency.
- More effective process management or 'triage' to agree the best process for handling each individual dispute.
- A process for checking whether the representation on both sides of a dispute brought to an NCP is credible and truly representative of each party.
- More involvement of government human rights experts alongside trade experts in handling complaints.
- More use of multi-stakeholder structures to ensure equitable processes.
- The creation of a central pool of mediators and other external resources on which NCPs could draw to professionalise the process.
- The ability to direct complaints to other national mechanisms, where appropriate.
- More resources for fact-finding by NCPs – and even a requirement on NCPs to do on-the-ground fact-finding.
- A requirement for transparency of outcomes.
- Improved oversight of NCPs – whether through a strengthened role for the OECD Investment Committee or a UN office reviewing quality and consistency of NCPs and other national-level mechanisms.
- Improved reporting requirements for NCPs, perhaps based on the Principles for effective non-judicial grievance mechanisms in the SRSG's 2008 UN report.
- Publicising of success stories to demonstrate the benefits of engagement with the NCP and the benefits of mediation through this forum.
- Naming and shaming of poor-performing NCPs to encourage improvement.
- Mandatory peer evaluation of NCPs (the Dutch NCP will be peer reviewed in 2009 – a process for which it has volunteered).

NCPs as part of the wider 'system'
When considering national mechanisms as part of a wider 'system' of non-judicial recourse and remedy, discussion focused on the difference between 'home' and 'host' states of multinational companies. One speaker stressed the differing powers that came with each role: a host state controlled the laws and the judicial system that could ensure due process; a home state may only hold some political leverage over the host state to encourage action. Conversely, some felt that a home state may have more influence over a company than the host state.

It was noted that, for now, 'home' states were typically OECD members with an NCP, which placed the government in the role of convenor between company and complainant. 'Host' states were typically not OECD members but often had a human rights institution (ombudsman or commission). Complaints to human rights institutions could raise alleged violations by the government while implicating business, or sometimes alleged violations by a company that carried implications for government.

This highlighted the fundamental different between the two models – in the one the government was intended as a neutral convener to handle a dispute between third parties; in the other it could itself be a party to a dispute. The two roles could not be combined due to the inherent conflict of interests. Some participants pointed to NCP cases where such a conflict had arguably already arisen, for example where the government had supported or provided export credit guarantees for a project under NCP scrutiny. It was noted that such conflicts were likely to increase as more and more host states become home states to multinationals as well.

One possible conclusion was a need for two distinct forms of national-level institution able to address corporate impacts, depending on whether the alleged events occurred at home or overseas. Alternatively, it was suggested that a single institution might do both if it was independent of government but able to command the engagement of companies through its statute. Others felt this very clash between 'home' and 'host' roles argued for some form of international adjudicative or oversight mechanism.

New International Non-judicial Mechanisms – do we need any, and if so, what?

Current experience
One speaker underlined the importance of mechanisms even at the international level being there first and foremost to serve the 'user'. This view drew wide support. Experience from the Compliance Advisor/Ombudsman (CAO) of the World Bank Group suggests that mechanisms that helped parties to find locally-appropriate solutions in line with local norms and using local mediators, were able to scale up far beyond what was possible if they ran processes centrally. It was important that any such mechanism's authority was clear, but in the CAO model that authority lay not in telling parties what the answer was, but in the power to act inclusively and help parties towards an informed decision on their options for addressing the dispute. CAO experience also suggested that where there was an alternative track of adjudication, this should be done by a distinct unit or body in order not to compromise the neutrality and credibility of those assisting negotiated solutions.

Multi-stakeholder initiatives such as the Fair Labor Association and the Voluntary Principles on Human Rights and Security were also raised as a form of international mechanism, given their ability to address grievances arising in different country contexts. Some pointed to examples where

they had achieved systemic change as part of a dispute resolution, whilst others pointed out the limited number of such examples and the constraints on the scale and scope of their action.

It was noted that the potential of voluntary standards initiatives would always be constrained if they lacked a mechanism to address issues of non-compliance, build good practice and learning and ratchet up implementation accordingly. It was also pointed out that there could be questions of legitimacy about a growing number of essentially privatised mechanisms that lacked accountability beyond their own membership, most notably where they operated without transparency. Accountability and transparency were therefore essential to their future viability.

Suggestions for new models

Breakout groups explored alternative ideas for a new international mechanism. One group proposed a mechanism that would actively promote the use of local and national mechanisms, while also being empowered to rate the performance of these mechanisms against effectiveness criteria. It would be able to handle grievances if they did not achieve resolution more locally – perhaps limiting itself to taking cases that would help define standards or set precedents. It would be able to mediate and adjudicate, but also have the option of recommending cases be referred to courts. Such a mechanism would be aimed at levelling the international playing field, providing greater enforcement, improving performance of lower-level mechanisms, raising awareness of local solutions and providing a trusted point of recourse.

Another group arrived at a similar view, starting from the perspective that the state duty to protect required a focus on strengthening the role of local mechanisms. A more remote, international body would therefore have the distinct role of reviewing and reporting on what was happening at the national and local levels and gathering good practice. In cases of need, it might also provide a convening role, bringing in a local mediator under its auspices. However, this group felt it should not adjudicate, in part due to the challenges for any international body of presiding over such a potential diversity and number of disputes. However, they suggested it might make recommendations or authoritative statements on major issues, somewhat like the UN Human Rights Treaty Bodies.

A third group opted to look at how a mechanism like the Compliance Advisor/Ombudsman of the World Bank Group might be scaled up beyond the current 'club' of those financed by the IFC. A mechanism on this model should have limited bureaucracy but apply a rigorous process. It should be able to address any grievance 'within hailing distance of the UDHR'. It would promote locally-based mediation, while encouraging the identification of systemic problems and building precedent. If mediation failed, it might automatically provide for some form of adjudication with the capacity to name and shame. But the adjudication function would need to be kept at arm's length from the mediation role. The outcomes would be public. And other bodies could be encouraged to refer to this mechanism in the event of disputes between their members or a member and a third party. One challenge of this model was identified as funding.

The fourth group focused on identifying 'functional needs' that a new mechanism might address. The first identified was that of a 'clearing house' to inform people about mechanisms that already exist and how they work. The second function was 'advisory', helping affected individuals, communities and their advocates understand what their options were. The challenge would be deciding who could benefit from the service to keep it manageable. The third function was 'matchmaking' between individuals and communities and the services and resources they needed to have their grievances addressed. And the fourth was 'crystallising' – aggregating and analysing

outcomes, and identifying emerging standards. This would need to be completely separate from the other three functions and avoid any corporate funding.

International mechanisms as part of the wider 'system'

One participant characterised the current situation regarding non-judicial grievance mechanisms as less one of 'gaps in a system' as one of 'islands in a sea' – the gaps were the predominant feature. Views varied as to the merits of 'letting a thousand flowers bloom', with some feeling this would help fill gaps and advance a Darwinian improvement of models, while others feared growing confusion and incompatible or duplicate processes. It was argued that trust in a mechanism mattered more than standardising processes across the board – in other words, 'if it ain't broke don't fix it'. One speaker noted the importance of shared 'ownership' of the design of non-judicial grievance mechanisms by those likely to use them. This improved the likelihood of their being seen as authoritative and of working in practice.

One proposal allowed that lots of different standards initiatives might be allowed to develop, while having a single, international mechanism to which complaints could be taken where a company adhering to any one set of standards was seen to breach them in practice. Others suggested that similar coherence could be brought through an international clearing house that could direct complaints to the appropriate existing mechanism.

The greatest divide in views was over the merits of an *adjudicative* function at the international level. While there was broad consensus on the benefits of promoting and assisting local solutions, some felt strongly the need for an adjudicative function as a 'fallback' at the international level, and a couple of speakers urged that it should be available also as a first option. A couple of speakers recognised it was unlikely that any adjudicated outcomes would be enforceable, but felt it could still have impact and value.

Others expressed scepticism that this could work in practice, raising questions about its potential legitimacy and funding, the political will to create it, political pressures to manipulate it and its ability to deal with diverse local situations. One speaker registered the need for clarity on what such a mechanism could add in practice given the political challenges, and questioned whether it could really be a driver for action if based in a body such as the UN. From this perspective, it was suggested the greatest value added would be a clearing house to enable better access to, and use of, existing mechanisms.

One suggestion was that an international adjudicative mechanism could be established outside the intergovernmental process as a private undertaking. As such it might have greater chance of building authority. Others queried how it would get parties to engage in a process, whether mediation-based or adjudicative. One participant questioned whether a publicly unaccountable private mechanism was the right vehicle for demanding more public accountability of private actors.

Some participants pressed the need for ambitious and creative thinking rather than falling into assumptions about what was possible or not possible based on experience to date. One idea would be for Global Compact members to be invited to become part of an elite group that would allow unresolved disputes in which they were involved to go to a particular adjudicative body. Another idea was to encourage companies investing in certain particularly risky environments, such as Sudan or Burma, to agree at the point of investment to be subject to an international or home country adjudicative mechanism. A further idea was that organisations that kept ratings or listings

of companies might require that a company ascribe to a certain credible mechanism in order to be listed.

Additional Cross-Cutting Themes

A number of issues were raised which recurred across discussions of both national and international mechanisms.

Standards

The question of standards recurred. Some felt a need for greater specification of standards against which compliance would be measured or within which mediation would take place. Others suggested that where a mechanism was not already attached to particular standards, the basis for assessment was clear enough – the International Bill of Rights and the core ILO conventions.

One participant noted that standards could help parties to a mediation agree what issues were on the table. It also helped them understand and assess what their alternatives to negotiation or mediation might be, by comparison with standards applied in other fora. Another speaker suggested that if a problem or dispute didn't need a standard for its resolution, then there was no need to identify one. Insisting that every grievance be tied back to specific standards could in some cases place an undue burden on a claimant to prove a breach. The key was to have clarity about the nature of the complaint. However it was also noted that with some mechanisms there would be no standing to bring a complaint if it did not represent a breach of certain standards.

NGO intermediary role

The role of NGOs as representatives of aggrieved groups and individuals was discussed. One participant noted that large NGOs were able to aggregate shared interests of various communities in advancing a grievance on their behalf. That said, they were often unaccountable for that representation. Another participant suggested that need not in itself be a problem. The difficulty only arose if a company engaged in a process in good faith and it then emerged that the NGO did not represent all those with a stake, with the result that the agreed outcome did not end the dispute. Various participants noted the importance of mapping the stakeholders to a dispute.

Filtering complaints

Another speaker noted that there had been cases where complaints had been brought to mechanisms – including NCPs – by an NGO with no legitimacy to do so. This raised the question of how to 'filter' claims. It was noted that in many western states libel laws acted as a constraint on unfounded claims. Another participant observed that lawyers essentially acted as filters against lawsuits with no basis through the act of advising clients and deciding whether to take cases. This begged the question of who could or would provide the equivalent role for non-judicial processes. It perhaps suggested a need for more professional advisory services in this area.

Empowerment

There was broad consensus on the need to empower those seeking remedy – the 'users' of grievance mechanisms. For most participants, this suggested a predisposition towards local processes rather than mechanisms more remote from the place where an alleged abuse occurred. The benefits of 'local' mechanisms were seen as including speed, low cost, cultural relevance and their flexibility to find appropriate solutions to the context. A couple of participants noted that jumping to more 'remote' mechanisms (regardless of their type) may 'take the oxygen' from the development of local mechanisms and dialogue-based processes.

However a note of caution was raised that local mechanisms may lack credibility with one of more of the parties – it could not be assumed they were the best forum for a fair process and remedy. And more remote mechanisms became essential where local mechanisms failed to provide a solution.

Options

Discussion returned repeatedly to the idea that the ultimate goal was to have an array of options for any aggrieved party to access remedy, from which they could choose according to their aims and predisposition regarding the handling of their grievance. This required that there be a variety of possibilities, judicial and non-judicial, adjudicative and mediation-based, available. It also required that the complainant be informed about the options and empowered to participate in deciding how to proceed. One metaphor used was that of a 'matrix' of mechanisms. Another was a 'decision tree', with a nexus between judicial and non-judicial mechanisms at certain decision points.

Another metaphor was that of a 'revolving door' into and out of a sequence of process-types. This reflected the idea that it should ideally be possible to move between options not just in linear fashion, but in a more flexible manner to get the best outcome, if any one mechanism did not achieve resolution. For instance a dispute might move from mediation back to negotiation, back to mediation, with a specific issue arbitrated, and then back again. Nor was it inherently impossible to have a non-judicial and judicial process proceeding in parallel, even if some mechanisms chose to preclude this.

Informed choice

The recurring theme was the need for claimants to get the necessary advice and support to make an informed choice about their options and engage effectively in any process. The question was raised as to who could provide this role of advisor and information provider in the context of non-judicial mechanisms, as lawyers could with regard to judicial. One participant noted that this role was particularly necessary where there was a 'repeat player' phenomenon, with one party (usually the company) going through multiple mediated processes and knowing well how it all worked, while the complainant was generally a one-time user and much less familiar. There was discussion in this context of the need for national and possibly international advisory services to assist aggrieved or disputing parties in being equipped both to choose the process that met their objectives and to engage effectively in it.

Conclusion

Discussions over the two days were rich and vibrant. As reflected in this report, various points of convergence emerged between different stakeholder groups, while some clear differences remained. However, even in the latter instance, some ideas were raised that provoked new reflection on all sides.

This report is offered to all readers as an account of the debate. As a contribution to the work of the SRSG on Business and Human Rights, John Ruggie, it will provide a basis for on-going discussions and reflection. The organisers are grateful to all participants for their time and active engagement.

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