



**Government Approach to Remedy for Workers  
What can Companies Learn?**

**A Discussion Paper**

**Ethical Trading Initiative**

**Workshop on Remedy for Workers in Supply Chains  
Geneva, 30 November 2017**

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## Executive Summary

Companies wish to know how to provide ‘effective’ remedy for workers in their supply chains and, as one way of ensuring remedy, how to design effective operational grievance mechanisms (OGMs). They want to know if what they are doing is enough, or if it works? And, if not, what they can do to change this and enhance their recognition as an ethical company? However, it is governments who have the primary obligation to prevent and protect workers’ labour and human rights abuses and to provide remedy. Governments have been trying to provide remedy for many years and, unfortunately, they often continue to fail. Whilst the track record of many governments’ in providing remedy is bad, companies can learn from government experience for two reasons:

- First, at a very practical level, a company’s remedy strategy does not exist in a vacuum. Given the state’s paramount role, it must exist within the overarching remedy system provided for by the state. It should therefore be designed taking that system into account. To do otherwise and provide, for example, a process effective for garment workers in Leicester to cobalt miners in DRC, where the state remedy safety-net will be different, is likely to be fundamentally challenging to the effectiveness of the OGM.
- Second, labour, rule of law (ROL) and security sector reform (SSR) specialists have been working with states for many years to try to improve their effectiveness at providing remedy/access to justice. Yet, still, many states fail. However, it is now possible as part of the overall justice framework to identify: (a) the components of a government remedy framework for workers, one element of which is its remedy mechanism (in a company context, its OGM), (b) principles, which if adhered to, will make the state’s remedy mechanisms more effective; and (c) an evaluation methodology to measure the effectiveness of the state’s remedy mechanisms. This information can provide helpful guidance for companies thinking about how to provide remedy for workers in their supply chains, because:
  - Identifying and mapping the components of the state remedy framework can help companies as part of their due diligence before designing their own remedy strategy.
  - Seeing the various mutually reinforcing components of the state system allows companies to reflect on whether their own remedy strategy should be multifaceted, establishing whether actions wider than an OGM are needed to provide effective remedy.
  - The principles used to improve the state system will also improve effectiveness of OGMs so can provide practical guidance for companies designing OGMs and as such flesh out the United Nations Guiding Principles on Business and Human Rights (UNGPs) Effectiveness Criteria for remedy mechanisms.
  - Companies have an opportunity to improve monitoring and evaluation of the effectiveness of their OGMs by adopting the best practice used by donors to measure the effectiveness of the state’s remedy system.

The key points made in this paper, on which companies may reflect are listed below. They are offered up as a basis for discussion at ETT’s Workshop on Remedy for Workers in Supply Chains, to better understand what companies can learn from governments when considering how to provide remedy for workers in their supply chains and how to make OGMs more effective. They are as follows:

1. **Scope of state provision of remedy:** The state is the paramount provider of remedy – it has an obligation to prevent and protect citizens from violations of labour/human rights and to provide remedy/justice in cases of grievance. Governments will address some of the same grievances that might come to a company’s OGM if the grievance holder elects instead to go to one of the state remedy mechanisms, or to both simultaneously. They might also address grievances if company OGMs have failed to resolve them. They should be the only provider of justice in instances of crime, e.g. sexual-harassment, forced labour, assault, etc.
  
2. **Scope of company provision of remedy:** Within the overall umbrella of state provision of remedy, the UNGPs state that companies should remediate harm where due diligence has found it to have caused or contributed to adverse impacts (remediation), or provide early stage recourse and resolution (remedy). This should be done through either its own OGM and/or participation in an industry, multi-stakeholder or another collaborative initiative. A red line in the UNGPs is that companies should not provide justice in criminal matters – this is the state’s job.
  
3. **Nexus between state and companies:** In practice, the nexus between the company and state in providing remedy is not neat and tidy, but can overlap and sometimes cause confusion depending on the capacity and willingness of both to engage. As noted above a victim can run a remedy process simultaneously through both systems, and companies should be careful not to prevent access to the state system. Tripartite remedy models like Acas, CCMA and the Cambodian AC, are good examples of where state and company roles can overlap. The Bangladesh Accord and Alliance, both company initiatives, show how it can be good, but can also be challenging when companies assume the roles of the state.
  
4. **How companies should engage with the State:** The state’s primary responsibility for providing remedy means it is responsible for under-pinning the entire system, and also acting as a watch-dog on companies. Where the rule of law is established, to strengthen it, a company should ideally ensure that its provision of remedy fits with, and complements, that of the state. Where the rule of law is weak and governments are failing to provide effective remedy, using commercial leverage to lobby for improvements to the state system can provide pressure to better serve workers’ needs. Where the rule of law does not exist at all, companies may have consider pulling out of a country to avoid becoming provider of remedy of last resort.
  
5. **State remedy framework:** Based on the history of states trying, with varying degrees of success, to provide remedy for violations of workers’ rights, it is now possible to identify a generic state framework for the provision of remedy. It is made up of six mutually reinforcing components:
  - (1) A legal framework: All the state’s laws, of which right to collective bargaining and access to freedom of association are critical.
  - (2) Legal empowerment: Ensuring people know the law, how to access remedy and are empowered enough to do so.
  - (3) A prevention and enforcement mechanism: Labour inspectors, police, prosecutors.
  - (4) A remedy mechanism system: Formal (civil, criminal and labour courts) and informal (employment tribunals, mediation/conciliation bodies) mechanisms.
  - (5) Collaboration: With other stakeholders, to deliver all components of the state framework.
  - (6) International engagement: Mutual legal assistance, UN processes, the OECD National Contact Points and other processes.

This framework can be identified in all countries where strong enough rule of law exists. It functions less or more effectively dependent on government intent and capacity, but case studies in this paper show it can fail workers even in contexts where the rule of law is strong. However, as case studies also show, when implemented well, the framework can provide effective remedy and so has its merit. Its description in this paper and the case studies provided in Annexes 1- 4 showing in more detail how to map and assess it, aim to provide companies with a blue print of what they should examine and evaluate to inform a context-specific design of their own remedy strategy.

6. **Do the components of the above state framework have merit as ideas for inclusion in a comprehensive corporate remedy strategy?** Given that the components of the state framework were developed to address the inherent vulnerabilities and barriers to justice that workers face in receiving remedy, which can be similar whether they are seeking remedy from a government or a company, companies might consider adopting a ‘corporate version’ of the state remedy framework as a strategy to ensure they provide more effective remedy. If so, this could see an overarching corporate remedy strategy emerging that does not just focus on an OGM, but includes the following six mutually reinforcing components:

- (1) Policies, procedures, contracts, including the requirement for workers right to collective bargaining and freedom of association – the corporate equivalent of the state’s legal framework
- (2) Awareness raising – the corporate equivalent of the state’s legal empowerment
- (3) Due diligence - as per ETI Guidance, not ‘old audit’, and the corporate equivalent of the state’s prevention and enforcement function
- (4) An OGM – the corporate equivalent of the state’s remedy mechanism**
- (5) Collaboration – in the same way as states may collaborate
- (6) Advocacy - a new component, recognizing the value of company leverage to lobby underperforming governments to provide better remedy.

By adopting this wider remedy strategy, companies could recognise that providing “effective remedy” is more complex than just having an OGM, which may not be accessible to a forced labourer, a worker without a contract, or a worker lacking empowerment through trade union support. This may also just be asking companies to ‘double-hat’ many of their existing activities, e.g. contracting, awareness raising, due diligence, etc., as a remedy. The emphasis on collaboration can encourage companies to see remedy as a ‘pre-competitive’ issue, because they benefit by sharing information and experience to collectively raise the bar, and because workers are more likely to trust joint initiatives.

7. **Improving OGMs:** An OGM will always be the key element of an overall remedy strategy because it is the mechanism through which most aggrieved workers will access redress. Companies could consider the following lessons learned from state experience to try and improve the efficacy of their OGM:

- (1) Key characteristics of the state remedy mechanism: At the state level, mediation is the preferred dispute resolution method used. States have also sought to improve trust in this mechanism by developing tripartite models to ensure that stakeholders feel they jointly own the mechanism. Consequently, companies might favour mediation as a form of conflict resolution for their OGMs (where the nature of grievances require it). They may also seek to foster trust in their OGM by ensuring that they are co-designed and co-managed with workers. They may also opt to be a part of an OGM through a collective process, e.g. a tripartite model

with the state and trade unions, a joint company model, or by using an industry organisation or membership led OGM process or an NGO-delivered mechanism.

(2) Key challenges of the state remedy mechanism: At every point of the remedy mechanism issues can arise that prevent remedy and its efficacy. The efficacy and access to justice principles below have been developed to counter this. However, two challenges of special significance are highlighted. First, state informal remedy mechanisms are becoming more expensive, taking longer to provide remedy, with remedy is becoming less fit for purpose. Second, the formal system is failing to provide sufficient victim support for workers going through the system. Company OGMs should be designed without the same weaknesses.

(3) General efficacy principles: The UNGPs provide efficacy principles for grievance mechanisms, including OGMs, and much work is now being done to flesh them out for practical application. The ROL and SSR efficacy principles that have been developed to improve the performance and accessibility of the entire justice system can be applied to the UNGP Efficacy Principles to help provide practical guidance for their application, in turn helping to provide some practical examples of how OGMs can be made more effective.

(4) Access to justice principles: ‘Access to justice’ is a key ROL and SSR principle used to improve access to the entire state justice system for poor, vulnerable and marginalised grievance holders. This paper provides an examination of how governments have sought to improve access to justice for women, forced labourers and migrants, both to the overarching judicial system, and also to its labour remedy mechanisms. This is to illustrate how companies trying to provide effective remedy for these vulnerable workers might do so more effectively. It also underscores that an OGM may not be the best method of ensuring redress for workers who do not feel sufficiently empowered to access the mechanism. For example, for a forced labourer, investigation and remediation may be their best chance of remedy.

(5) Evaluation methodology: Case studies are provided to show that less resourced states tend not to self-evaluate their remedy mechanisms. Thus, insight into their effectiveness can only be gleaned through interviews, analysis of actual incidents, hearsay, or through third party or donor reports. Well-resourced state grievance mechanisms in jurisdictions with strong rule of law will report on performance as part of their oversight and accountability requirements. It is suggested that although donors do not always evaluate their programmes well, donor best practice evaluation methodology can provide a model for how to measure effectiveness and can provide direction for companies in how to measure the effectiveness of their OGMs.

**Collaboration**: This paper suggests that best practice in the provision of remedy requires companies to address practical issues: mapping what the state is doing; carefully considering the key components of their strategy; designing an OGM that is effective; and giving special consideration to the needs of vulnerable workers. It also notes that states have learned that to increase trust in a mechanism co-ownership is best, which can be delivered through tripartite models. Seeing remedy as ‘pre-competitive’ and emphasising collaboration means that companies can spread the burden of due diligence and design, and even deliver co-owned mechanisms. This offers the opportunity to decrease the time and cost needed to do a good job, and improve the effectiveness of remedy provision so that no worker ‘is left behind’.

## Contents Page

<b>INTRODUCTION</b>	<b>1</b>
<b>SECTION 1</b>	
<b>Impact of the State on how Companies Provide Remedy</b>	<b>2</b>
<b>1.1 What Should be the Scope of an OGM be given the State’s Role?</b>	<b>2</b>
<i>Box 1 Suggested Scope of an OGM based on the International Normative Framework</i>	<i>3</i>
<b>1.2 What is the Nexus Point of the State and Company Remedy Roles?</b>	<b>3</b>
<i>Box 2 Nexus Issues: Identifying an OGM within State Remedy System</i>	<i>4</i>
<b>1.3 How then should Companies Engage with the State on Remedy Issues?</b>	<b>4</b>
<b>SECTION 2:</b>	
<b>The State Remedy Framework – Relevance for a Company Remedy Strategy?</b>	<b>4</b>
<b>2.1 Outlining the State Framework that Companies Should Map and Assess</b>	<b>4</b>
<i>Box 3 The Mutually Reinforcing State Framework for Remedy</i>	<i>5</i>
<b>2.2 Making Mapping Easier: An Explanation of the State Framework</b>	<b>5</b>
2.2.1 Remedy Component: Legal Framework	6
2.2.2 Remedy Component: Legal Empowerment	6
2.2.3 Remedy Component: Prevention and Enforcement Mechanisms	7
2.2.4 Remedy Component: Remedy Mechanisms (see more at Section 3)	7
2.2.5 Remedy Component: Collaboration	8
2.2.6 Remedy Component: International	8
<b>2.3 State Remedy Framework: Possible Ideas for a Company Remedy Strategy?</b>	<b>9</b>
<i>Box 4 A Corporate Remedy Strategy Based on Learning from the State Framework</i>	<i>10</i>

## SECTION 3

<b>Learning from the State to make OGMs more Effective</b>	<b>10</b>
<b>3.1 Attributes and Challenges of the State Remedy System – same for OGMS?</b>	<b>10</b>
3.1.1 The State System Focusses on Mediation	10
3.1.2 Best Practice is a Tripartite Model to Improve Trust in the Mechanism	11
3.1.3 Key Weaknesses of the State Remedy Mechanism	12
3.1.4 Watch out for the State Influencing Companies how to Provide Remedy	12
3.1.5 Are Possible Improvements to the State Remedy System Coming?	13
<b>3.2 Learning from some of the State’s ‘Efficacy’ Principles</b>	<b>13</b>
3.2.1 UNGP 31 (H) Engagement and Dialogue: Take a ‘Problem-Solving’ Approach	14
3.2.2 UNGP 31 (A) Legitimate: Independent Appointments	14
3.2.3 UNGP 31 (D) Equitable: Evidence	14
3.2.4 UNGP 31 (C) Predictable: Means of Monitoring Implementation - Enforcement	15
<b>3.3 Learning from the State’s ‘Access to Justice’ Principles</b>	<b>15</b>
3.3.1 What are ROL/SSR ‘Access to Justice’ Principles	15
3.3.2 Women’s Access to Justice – Lessons from State Experience	15
3.3.3 Forced Labourers’ Access to Justice – Lessons from State Experience	16
3.3.4 Migrant Workers Access to Justice – Lessons from State Experience	17
<b>3.3 Learning from how State Remedy Mechanisms are Evaluated</b>	<b>18</b>
3.3.1 How States Evaluate Performance – Lessons for Companies	18
3.3.2 Donor Best Practice in Evaluation – A Model to Evaluate OGMs	19
<i>Box 5 Suggested Evaluation Framework for Corporate OGMs</i>	<i>19</i>
<b>4 Conclusions: What can Companies Learn from the State – a Discussion</b>	<b>20</b>
<b>Annexes</b>	<b>22</b>
<b>Endnotes</b>	<b>32</b>

## **Government Approach to Remedy for Workers What Companies Can Learn to Better Provide Remedy and design OGMs**

### **INTRODUCTION**

States talk in terms of ‘access to justice’ or to ‘courts and the justice system’, while companies talk of ‘access to remedy’ and needing to provide this through ‘an operational grievance mechanism’ (OGM). In accordance with alternative dispute resolution (ADR) principles, this paper treats access to justice and access to remedy as interchangeable ideas, each requiring three things: that grievance holders have **access** to an effective **process** that leads to an **outcome that meets their needs**.<sup>3</sup> A “remedy strategy” might then be understood as the combination of the different actions a company undertakes to ensure workers in its supply chain receive remedy. This paper argues that an OGM is one of those actions within a wider ‘remedy strategy’ – sitting alongside other actions including contracting, remediation, and lobbying a state to provide better remedy.

To date most corporate provision of remedy has tended to come as a by-product of the processes of risk assessment, audit, remediation and verification. Another common response are the posters on factory walls advertising a buyer’s Complaints Hotline. Sometimes hotlines can provide effective remedy. At the same time, they will not always meet a worker’s needs. Examining such an approach in more detail, we may discover that, in circumstances where many buyers source from the same factory, workers may become uncertain which hotline to call (not knowing on which products they are working), or their grievance might simply be of a kind where a hotline will not meet their needs. Furthermore, assessing the efficacy of hotlines where many co-exist can be hard. A company may feel its factory has good working conditions because they receive no calls, meanwhile workers are just calling other, better, hotlines.

Companies want to know how to provide ‘effective’ remedy for workers in their supply chains. This poses many questions. What they should do and what they should leave for the state to do when it comes to remedy? Is what they are already doing is enough? Or, if not, what more should they do to ensure they are recognised as an ethical company that provides effective remedy for workers in their supply chain? However, it is governments who have the primary obligation to prevent and protect workers’ labour and human rights abuses and to provide remedy when abuses occur. Governments have been trying to provide remedy for many years and, unfortunately, they often continue to fail. As the track record of many governments in providing remedy is bad, it might seem counter-intuitive to suggest that companies can learn from government experience. However, they can for two reasons:

- First, at a very practical level, a company’s remedy strategy does not exist in a vacuum. Given the state’s paramount role, it must co-exist within the state’s system. It should therefore be designed taking the state framework into account. Companies are advised to map and evaluate the effectiveness of the state’s remedy framework as part of the due diligence they should undertake before designing their own remedy strategy.
- Second, although states struggle to provide effective remedy over many years, labour and rule of law (ROL) and security sector reform (SSR) experts have worked with states to develop: (1) a state **framework** to provide remedy; (2) efficacy and access to justice **principles** that if complied with can lead to that framework working well; and (3) an **evaluation** methodology



to test its effectiveness. These framework, principles and evaluation criteria all provide useful reflections for companies trying to provide more effective remedy and better OGMs.

Suggested lessons for companies based on the state experience are highlighted throughout the paper and it concludes with discussion points. The paper is presented in four sections as follows:

**Section 1 – Impact of the State on how Companies Provide Remedy:** Section 1 addresses the fact that companies need to know the scope of what they should do to provide remedy. They need to know what they can leave for the state to do, and how to engage with the state on remedy issues. While not providing legal advice, this section draws on the United Nations Guiding Principles (UNGPs) to explain the different roles envisaged at an international normative level for the state and companies in providing remedy for workers. It suggests what the scope of a company’s OGM might be, discusses the nexus with the state’s role, and how a company should engage with the state on remedy issues.

**Section 2 – The State Remedy Framework – Relevance for a Company Remedy Strategy:** Section 2 makes two points. First, it outlines the state framework for providing access to remedy for workers that it recommends companies map and evaluate to inform the design of their remedy strategy and OGM. Second, because the components of the state framework have been included to give workers their best chance of receiving remedy, it is suggested that companies might reflect on a corporate version as an effective corporate remedy strategy.

**Section 3 – Learning from the State to make OGMs more Effective:** Section 3 drills down to focus on the efficacy of a state’s remedy mechanisms for the provision of remedy for labour grievances to see what lessons can be learned for OGMs. It records three points that can have relevance for the design of OGMs. First, it discusses key characteristics and challenges of the state remedy mechanism. Second, it records some of the principles ROL and SSR advisers have developed to improve the state justice system that can be used to make OGMs more effective, highlighting ‘Access to Justice’ principles used to improve remedy for women, forced labourers and migrants. Third, it explains how the state framework is evaluated and suggests companies might want to adopt best practice donor methodology to better evaluate the impact of OGMs.

**Section 4 – Points for Discussion:** Section 4 summarises as ‘points for discussion’ key lessons companies might take away from the state’s experience of providing remedy for workers. Again, it recognizes that states do not always do a good job at providing remedy, but that because of their paramount obligation to provide remedy, and the length of time advisers have already spent with the state to try and improve its framework, fine-tune efficacy principles, and develop a rigorous evaluation methodology, that there may be some good lessons companies can draw on as they now consider how to now provide effective remedy for workers in their supply chains.

## **SECTION 1: Impact of the State on how Companies Provide Remedy<sup>4</sup>**

### **1.1 What should be the Scope of an OGM given the State’s Role?**

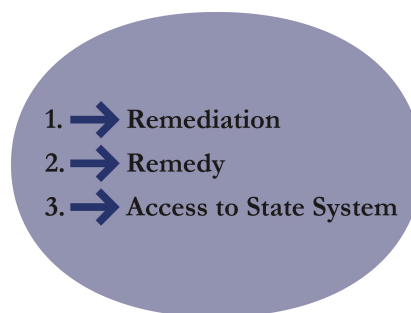
The UNGPs confirm that states have an obligation while companies have a responsibility to respect human rights<sup>5</sup> and that the state should provide the foundation of a wider system of remedy, including ensuring that companies are held accountable for respecting human rights. Within this companies are to provide a role in remediating harm where due diligence has found its actions to have caused or contributed to adverse impacts (remediation) and should provide early

stage recourse and resolution (remedy)<sup>6</sup> through either its own OGM and/or participation in an industry, multi-stakeholder or other collaborative initiative. Companies should be careful to ensure they facilitate access to the state system if workers want that.<sup>7</sup> The UNGPs also flag that where crimes are alleged, companies should cooperate with the state, thereby acknowledging that it is inappropriate for companies to deliver justice in lieu of the state.<sup>8</sup>

Based on the UNGP's the scope of a company's remedy strategy could be considered as (a) ensuring a remedy mechanism exists down its supply chain (provided by its suppliers, not necessarily by itself) to (i) remediate due diligence findings by "involving grievance holders" in the design of remediation plans and to (ii) resolve company/factory-level conflicts. Unresolvable grievances and crimes, e.g. forced labour, should be referred to the state, and workers must be enabled access to the state's system. Remedy can be provided for crimes, but the state's role in providing justice should not be usurped and companies should tread carefully to avoid criticism.

**Case study 1:** Between 2009 and 2011 incidences of gang rape and other brutalities by security guards employed by Porgera Gold Mine in **Bougainville** were discovered, which was 98% owned and solely operated by the Canadian company Barrick Gold. Barrick Gold was criticised first for not listening to human rights campaigners, but when they did finally react and provided remedy for victims raped by their security guards they were commended, but were also criticised for intervening on a criminal justice matter, preventing victims from presenting civil claims, and for not doing a good enough job at providing remedy.<sup>9</sup>

### **BOX 1: Suggested Scope of an OGM based on the International Normative Framework**



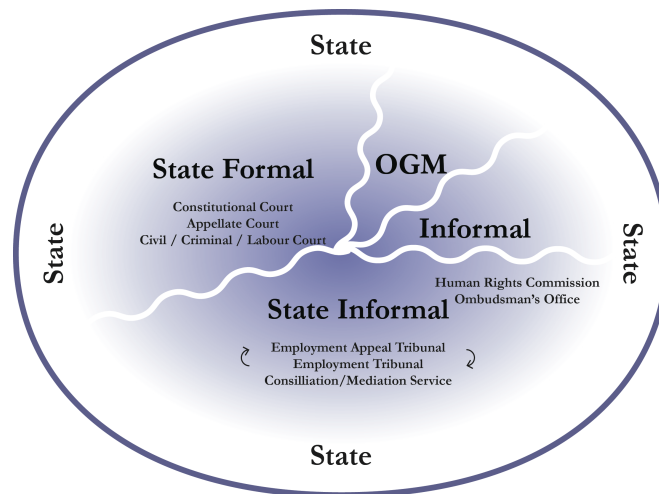
### **1.2 What is the Nexus Point of the State and Company Remedy Roles?**

In practice one can characterise the state as enabling an environment for the provision of remedy for workers in supply chains, in which remedy is provided through either the formal or informal state system, through an OGM, or through informal negotiation between worker and employer without going to an OGM. **Box 2** below provides a diagrammatic representation of the state system showing it existing alongside company OGMs and informal processes, all within the framework of the enabling environment provided for by the state. However, given how the normative framework shows the scope of state and company roles to overlap, there is no clear nexus point at which the company hands over responsibility for remedy to the state or vice versa. This is represented in the diagram by the wavy lines between the mechanisms.

Companies should be aware that there is no clear nexus where the state and company remedy roles meet, but that their roles overlap and may cause confusion depending on the **capacity** and **willingness** of both to engage in providing remedy and a grievance holder's desire to use either system, both simultaneously, or to just work issues out informally. Good communication between the state and companies can mitigate the downside of a blurred nexus point between the state and companies on remedy provision.

**Case Study 2:** Tripartite remedy models like the **U.K.’s** Advisory, Conciliation and Arbitration Service (Acas), **South Africa’s** CCMA and the **Cambodian** Arbitration Council (AC), are a good example of companies, trade unions and the state engaging jointly on remedy. The corporate led **Bangladesh** Accord and Alliance show that as well as being benefits, there can be challenges when companies assume the role of the state, here being investigation and remediation of safety standards.

**Box 2: Nexus Issues: Identifying an OGM within the State Remedy System**



**1.3 How then should Companies Engage with the State on Remedy Issues?**

As made clear by the UNGPs and illustrated in Box 2 the state’s paramount role is to provide the foundation of a wider system of remedy. For a company to engage with the state to improve the state system makes good business sense, because ultimately the better that system the better employer-worker relations will become, relieving pressure off OGMs. This has been evidenced by the success of the Cambodian AC, which has led to reduction of strike action and improved working conditions.<sup>10</sup> Companies should try and reinforce the state system for the benefit of workers. Where the state is hostile or just negligent this can be challenging. Examples of engagement includes advocacy to improve the state’s performance, perhaps appealing to donors to step in to build capacity.<sup>11</sup> Other examples include working jointly with the state through tripartite models, providing funding and technical expertise to improve state outreach programmes, and ensuring that a company’s own remedy processes are effective and transparent, so that the state can be assured workers have access to local level conflict resolution which will prevent encumbrance to the state system.

**SECTION 2: The State Remedy Framework–Relevance for a Company Remedy Strategy?**

**2.1 Outlining the State Framework that Companies should Map and Assess**

Because of its paramount responsibility to do so, the state has been trying to provide remedy for workers’ grievances for many years. It does not always do a good job, but it has benefitted from the advice of labour, ROL and SSR specialists such that a framework for the provision of remedy for workers can now be identified. Box 6 diagrammatically represents the state framework. While there are different ways of articulating it, one useful categorisation is to say that it is made up of 6 multi-layered components as follows:

- (1) a legal framework
- (2) a legal empowerment strategy
- (3) a prevention and enforcement function
- (4) a domestic remedy mechanism (equivalent of a company's OGM)
- (5) wherever possible promoting remedy through stakeholder collaboration
- (6) engagement at the international level on remedy processes

To be clear, governments do not always deliver these components well, but to a better or worse extent this framework is usually present in most countries. Therefore, because the state system impacts a company's ability to manoeuvre on remedy issues, a company should see these 6 components as "headlines" of what to map and assess during its due diligence phase before designing its own remedy strategy.

**Box 3: The Mutually Reinforcing State Framework for Remedy**



**2.2 Making Mapping Easier: An Explanation of the State Framework**

Mapping and evaluating the state system mitigates against rolling out (or requiring suppliers to roll out) an OGM a company thinks might work based on its own experience that may not work elsewhere. For example, what works in the U.K. where Acas provides detailed guidance on how to design of an OGM and where the justice system addressing labour issues is mature,<sup>12</sup> may be entirely unsuitable for Myanmar where the state model is in its first years and new law dictates companies form mediation committees,<sup>13</sup> or in China where only one trade union exists and care needs to be taken when engaging with NGOs for their own stake given the state's less favourable view of NGOs.<sup>14</sup> Of course in addition to mapping the state framework, design should also be based on political economy analysis and the 'actual views of end-users'.<sup>15</sup>

What follows is information and case studies explaining each component of the state's framework so companies can become more familiar with them. The Annexes highlighted in Case Study 3 provide more detailed information to show the sort of analysis needed for a thorough mapping. Companies could be encouraged to view 'mapping the state remedy mechanism' as pre-competitive and collaborate to cut cost and time involved by sharing information or jointly commissioning 3<sup>rd</sup> party reports.<sup>16</sup>

### 2.2.1 Remedy Component: Legal Framework

A country's legal framework enables the first part of the definition of 'remedy' i.e. "access". This is because without state guarantees of labour rights and access to remedy, especially in the case of poor employment contracts, workers cannot fall back on the law to point to the breach of 'something' to argue a grievance, nor will they have an accessible domestic process through which they can try to obtain remedy. **Right to collective bargaining and freedom of association are critical labour rights** companies should look for, because without them, workers can become disempowered. Their absence can signal state ill-intent and is a red flag.

Before designing their remedy strategy, a company should assess the domestic legal framework where that OGM will operate. Most countries have comprehensive enough legal frameworks guaranteeing rights and access to a remedy process. This is because laws are easy to promulgate and doing so makes states look good to the international community, even though they may have no intention of enforcing them. Political economy analysis can help companies assess the efficacy of a state's legal framework. If it exists but is weak, a company should respect internationally recognised human and labour rights, and provide appropriate remedy when it does wrong, but not usurp the state's role. It could consider withdrawing when the legal framework is so weak that it might be considered 'no rule of law exists' and a high risk exists that it could find itself assuming the state's role as remedy provider.

**Case study 3:** The **U.K.** legal framework is robust but there is still some confusion over terminology and the gender pay gap remains an issue. (Annex 1). The **DRC's** legal framework is surprisingly comprehensive, though it does not make forced labour illegal, and the shallowest political economy analysis shows that the framework is not enforced (Annex 2). In **China**, the labour and access to remedy laws are robust, but freedom of association is severely curtailed, which impacts efficacy of the entire system (Annex 3). **Cambodia's** AC has enabled access to justice, but its efficacy may be at risk due to the scope of legal reforms (currently dropped) and restrictive government (Annex 4).

### 2.2.2 Remedy Component: Legal-Empowerment

Having laws are not enough to enable remedy. Legal-empowerment is the next requirement within the state framework to effect remedy. Legal-empowerment is the process of making laws come alive and be useful to citizens, rather than dusty on a shelf in a statute book.<sup>17</sup> In summary, if someone is 'legally empowered' they will have knowledge of (a) the law (b) know what process to follow to obtain remedy, and (c) feel empowered enough to overcome their innate vulnerabilities (e.g. being a woman or a forced labourer) and societal barriers (e.g. low caste people should accept suffering) to be brave enough to access justice. Without legal-empowerment a worker will not access justice no matter how robust the legal framework.

**Case study 4:** The **U.K.'s** legal empowerment strategy is sophisticated with much advocacy work done by the Equality and Human Rights Commission, the Gangmasters Licencing and Labour Abuse Authority (GLAA), many NGOs, and Acas. The Independent Anti-Slavery Commissioner also plays a role to highlight labour rights issues. Universities, the Law Society and continuing professional legal development for lawyers also educate the protectors. Like ACAS, the CCMA in **South Africa** and the **Cambodian** Arbitration Council Foundation (ACF) [(Secretariat to the Arbitration Council (AC))] both prioritise legal empowerment as critical components of their strategic plans.<sup>18</sup> Legal empowerment should be gender sensitive, for example the ACF's weekly radio programme entitled "Good Employer. Good Worker" was developed with the Cambodian Women's Media Centre to target women workers.<sup>19</sup>

### 2.2.3 Remedy Component: A Prevention and Enforcement Mechanism

To meet its obligation to protect its citizens' human rights, states need to first try and prevent, but then stop and remediate any harm done to them. In the state's remedy framework police and prosecutors play a role alongside inspectors who monitor issues such as health and safety, low wages, and labour conditions, and can also licence, investigate and help prosecute labour standards in vulnerable sectors.

**Case study 5:** The **U.K.** has a strong prevention and enforcement mechanism, recently strengthened further through enhanced powers, funding, and staff for the renamed GLAA<sup>20</sup> and through the creation of a new coordination role to be undertaken by the Director of Labour Market Enforcement<sup>21</sup>, who also coordinates the GLAA, the HMRC's National Minimum Wage Unit and the Employment Agency Standards Inspectorate.<sup>22</sup> The Equality and Human Rights Commission investigates and other stakeholders are relevant.<sup>23</sup> // Prevention and investigation will be a major issue in most fragile or developing countries: In the **D.R.C** the state investigation and enforcement mechanism is well articulated in Law, but it does not work well with only 250 labour inspectors for 55 million workers across a distance of 2.345 million km<sup>2</sup> - a ratio of 1:226 337, when the ILO recommends 1:40 000.<sup>24</sup> In **Bangladesh** foreign brands set up the Accord and the Alliance Investigation schemes improve safety in factories because of failings of the state.<sup>25</sup> In **Thailand** the ILO "Ships to Shore" project is in part a response the government's inability to properly enforce labour standards in the Thai fishing and processing industries.<sup>26</sup>

### 2.2.4 Remedy Component: The State's Remedy Mechanism

As Box 2 above illustrated, the state's remedy mechanism for labour disputes is made up of state based formal (judicial) mechanisms and state based informal (non-judicial) mechanisms. Formal mechanisms are the civil, criminal, labour, appellate courts and, if it exists, a constitutional court. Informal mechanisms are the state's ADR mechanisms predominantly composed of conciliation/mediation services and its Labour Arbitration Tribunal. In some jurisdictions, a Human Rights Commission and Ombudsmen's Office will also address labour grievances.

In practice, the state remedy mechanism for labour disputes can be described as existing almost independent of the main justice system through its own specialist ADR mechanisms (conciliation/mediation and then arbitration) and then on appeal to the Labour Court. The system has evolved in this way because the state recognises that labour disputes are best suited to mediation and because of the specialist knowledge of labour law and practice that mediators and adjudicators need. When cases do enter the main judicial system, it is not unusual for judges to make use of 'labour advisors' to assist. At any time, however, a grievance holder can enter the main civil or criminal courts by bringing an action under a relevant civil or criminal law or on appeal from the employment tribunal. Also, the mediation and arbitration roles can blend, as the different institutions are often given power to do the other's role, e.g. In the U.K. Acas can arbitrate and the Employment Tribunal encourages mediation, while arbitrators in the Cambodian AC takes a conciliatory approach. In Box 2 diagram above the arrows between the mediation and arbitration mechanisms making up the state's informal remedy mechanism represent this fluidity.

The state's remedy mechanism is the most critical component of the state framework for providing remedy that companies should understand, because it is the state's equivalent of a company's OGM designed with the same grievance holders in mind, so lessons may exist for the design of OGMs in terms of structure, process, and efficacy principles. In addition, grievances companies cannot resolve through its OGM can end up in the state's remedy mechanism, and it needs to guide workers to this system if it cannot meet their needs or when grievances involve crime, so companies need to know what it is and how it works. Last, if a company wants to innovate or

participate in a tripartite remedy model, it must be designed to fit in with the state's remedy mechanism so companies should know how that system works.

Section 3 of this paper focusses on understanding the state remedy mechanism in more detail to extract lessons companies might draw for its OGM so no more detail is provided here.

### 2.2.5 Remedy Component: Collaboration

Collaboration imbues the state remedy framework. States collaborate with stakeholders to deliver tripartite remedy mechanisms. State enforcement mechanisms, like the GLAA, collaborate with business and NGOs to prevent and remediate labour abuses. States also collaborate with other governments to improve lesson learning and prosecution, e.g. mutual legal assistance to prosecute trafficking cases which may involve organised crime in different countries, and lessons learning through forums like the United Nations, the OECD, OSCE, and the EU.

**Case study 6:** The GLAA finds that working in partnership is the only way to tackle modern slavery, because the problem of forced labour is multi-pronged and insidious, making it impossible and unaffordable to tackle in silos alone.<sup>27</sup> The GLAA's Supermarkets and Suppliers Protocol is evidence of successful collaborative effort between supermarkets.<sup>28</sup> The GLAA works with various partner organisations to create resources to combat forced labour.<sup>29</sup>

### 2.2.6. Remedy Component: International

There are various developments at the international level that states are engaged in which companies might want to be aware of. These include: (A) Movement can be seen by the various Regional Associations to implement the UNGPs, for example the African Union is drafting such a policy.<sup>30</sup> This has relevance for companies as it indicates a strengthening of the international normative framework holding business accountable for human rights violations and could in turn lead to stronger domestic laws. (B) Though not strictly a state issue but operating internationally, the World Bank and other Development Banks require lenders to establish grievance mechanisms on receipt of development bank loans so companies should be cognisant of their requirements on grievance mechanisms.<sup>31</sup> (C) There is ongoing discussion about the formation of an International Human Rights and Business Arbitration Tribunal, which would enable aggrieved workers access.<sup>32</sup> (D) Of outlier interest discussion has been had as to whether the jurisdiction of the International Court of Justice (ICJ) could extend to slavery issues such as forced labour, but this seems tenuous at present. The ICJ's jurisdiction is limited to actions brought by states so a company might find itself named by a state bringing an action against another state in so far as its actions were alleged the responsibility of that other state.<sup>33</sup>

Arguably the most relevant international development for companies is the way in which members of the Organisation for Economic Cooperation and Development (OECD) engage on human rights and business. The OECD was the first organisation of member states to 'adopt' the UNGPs by incorporating a new chapter on human rights into OECD Guidelines for Multinational Business (Guidelines).<sup>34</sup> Today, outside of the extraterritorial reach of some laws allowing domestic courts to hear international cases, the OECD provides the only international remedy system to address human rights grievances caused by business, albeit non-binding and limited to its membership.<sup>35</sup>

OECD member governments must set up National Contact Points (NCPs) within a government body to hear disputes relating to the Guidelines.<sup>36</sup> Most cases coming to the OECD NCPs relate to employment and industrial relations (55%) and human rights issues (24%) which indicates that

workers in supply chains do access OECD NCPs.<sup>37</sup> A summary of the many evaluations of the NCPs concludes they vary in quality and that challenges include lack of accessibility (due to cost and complexity, high substantiation requirement and short statutes of limitations), transparency (do not make results publically available), and accountability (many NCPs do not report on their activities to a government agency).<sup>38</sup> Given the inaccessibility of OECD NCPs to local workers, its impact on an OGM is arguably negligible as most workers will not be able to access them. Instead NCPs usefully combat impunity as a company risks being taken to an NCP if they act badly, usually by an NGO or Trade Union funding and representing workers.

**Case study 7:** In 2015 a group of 168 former workers of Heineken’s subsidiary Bralima in the Democratic Republic of Congo submitted a complaint to the Dutch NCP about the company’s conduct during the civil war in that country (1999-2003). The complaint concerned allegations of Bralima unjustly dismissing its workers and co-operating with the rebel movement in RCD-Goma, and the negative consequences this had for the firm’s workers and their families. The Dutch NCP case resulted in local workers receiving remedy for their grievances. Even if after many years the initial grievance it shows the OECD NCP process providing remedy.<sup>39</sup>

### 2.3 State Remedy Framework: Possible Ideas for a Company Remedy Strategy?

Section 2.2 provided more information and cases studies to show the state framework working to provide remedy, and Section 3 will drill down into the state’s remedy mechanism further to learn lessons for OGMs. Given that the motivation for inclusion of the various components in the state framework is to ensure workers have more effective access to remedy, and that this is what companies are also trying to do, a corporate lens over the state framework might suggest elements for a useful corporate remedy strategy. **A corporate remedy strategy** based on learning from state experience would include some existing due diligence elements companies should be doing anyway (1-3 and 5 below), an OGM, collaboration with stakeholders (which would include activity at an international level) and advocacy, a new component recognising that company leverage can usefully pressure states to improve remedy. Box 3 is a diagrammatic representation of the suggested corporate remedy strategy based on learning from the state.

#### **Suggested Corporate Remedy Strategy Based on lessons from the State Framework**

- (1) Policies, procedures, contracts (the state’s legal framework);
- (2) Awareness raising, extrapolated down supply chains (the state’s legal empowerment);
- (3) ETI style due diligence, i.e. not old audit (the state’s prevention and enforcement);
- (4) An OGM (the state’s informal and formal remedy mechanisms);**
- (5) Collaboration with other stakeholders on remedy. Including internationally.
- (6) Advocacy (a new element recognizing company leverage can usefully influence states)



## Box 4: A Corporate Remedy Strategy based on learning from the State Framework



### SECTION 3: Learning from the State Remedy Mechanism to make OGMs more Effective

#### 3.1 Characteristics and Challenges of the State System – Reflections for OGMS?

##### 3.1.1 The State System Focusses on Mediation

As noted above at 2.2.4 the state’s remedy mechanism for labour disputes is made up of state based formal (judicial) mechanisms and state based informal (non-judicial) mechanisms. Most labour grievances that are not of a criminal nature tend to be dealt with by mediation or arbitration in the informal mechanism, with a preference for mediation. It can be said that in most state systems ‘all roads lead to mediation’.<sup>40</sup>

**Case study 8:** The conciliation, mediation and arbitration roles of the state mechanism can blur and states put a focus on mediation: In the **U.K** **Acas** mediates, conciliates, and can sit as arbitrator, and before you can lodge a tribunal case you must mediate through **Acas** (early conciliation) and then again once you lodge a tribunal case (Post-ETI conciliation). The **Cambodian** **AC** arbitrates collective disputes, but its method is conciliation focussed. In **China** a complex web of mediation services are accessible through a variety of entre-points, e.g. Legal Aid Office, Justice Bureau, Labour Inspectorate, or community mediation through village and residence committees.<sup>41</sup>

Non-criminal labour disputes have been found to be well suited to mediation, because mediation is more likely to provide workers with speedy, cheap, and more effective remedy that meets their underlying needs, enabling them to carry on working or find new employment quickly. As such mediation over adjudication or even arbitration is preferred by workers as it more effectively meets the ‘process’ and ‘outcome’ definitions of ‘access to remedy’. The state and companies also want to resolve disputes quickly through mediation to keep workers working and to avoid collective strike action. A challenge arising from the relative success of the state’s informal mechanism over its formal system in addressing labour grievances, is that in cases of a criminal nature victims can be recommended to ‘downgrade’ their grievance to a non-criminal issue, e.g. lost wages instead of forced labour, to at least enable them ‘some remedy’. This can foster a culture of impunity and does not necessarily address the victim’s need for ‘justice’. See later section 3.2.3 on forced labour.

**Case study 9:** Recent user surveys of the ACAS mediation service and the Employment Tribunal show that labour grievance holders marginally prefer mediation over arbitration. Regular U.K Ministry of Justice surveys of the civil courts show less satisfaction with that adversarial process.<sup>42</sup>

Given that users of the state remedy system for the resolution of labour grievances favour mediation over arbitration, and both these ADR techniques over the adversarial court system, it would seem to suggest companies should incorporate mediation as a preferred ADR method into the design of their OGM for disputes suited to mediation.

### 3.1.2 Best Practice is a Tripartite Model to Improve Trust in the Mechanism

Best practice in design of state labour ADR mechanisms are that they are overseen and managed by a tripartite mixture of representatives from the state, trade unions and companies, and that the conflict resolution process is delivered by persons nominated by those stakeholders. The reason for the evolution of the tripartite ADR model is that the approach of co-ownership increases trust in the mechanism and thus its credibility in the eyes of all stakeholders.

**Case study 10:** In the U.K. Acas's tripartite Council (government, trade union, company) is appointed by government and sets its strategic direction, policies and priorities, but mediators and arbitrators are members of the public who have applied for their position.<sup>43</sup> By comparison, in **South Africa** due to the imperative to build trust after the apartheid regime, tripartism imbues the entire labour regime:<sup>44</sup> The National Economic Development and Labour Council (NEDLAC) is an advisory group made up of four constituencies - business, trade unions, civil society, and government to provide advice into Parliament on labour issues.<sup>45</sup> The Millennium Labour Council is a business and trade union social dialogue body providing advice to government.<sup>46</sup> The CCMA is the primary mechanism for resolution of labour grievances, governed by an executive tripartite governing body that nominates mediators/arbitrators, but who cannot come from any sector to reinforce the impression of the system's impartiality and strengthen confidence in the system. Then, joint trade union and company Bargaining Councils exist to resolve disputes following CCMA's approach but in different sectors.<sup>47</sup>

**Reflection for a company OGM:** The tripartite model appears to be a critical learning for companies from the state remedy system, because it has developed in response to 'lack of trust' users have of the state delivering remedy 'alone'. Users of an OGM will similarly need to trust that it is not just 'the company making decisions it wants to' because in the end it's just the company's mechanism thrust upon workers. Given the state experience to try and improve trust by sanctioning and engaging in 'tripartite models', the following key learnings might exist for companies considering the design of OGMs:

1. All key stakeholders should be involved in their design. Of note the Corporate Human Rights Benchmark (CHRB) which, among other indicators, ranked companies' performance on grievance mechanisms for the first time in 2017 found that very few companies involved end users in the design of grievance mechanisms.<sup>48</sup>
2. Where appropriate companies could seek to become involved in or support tripartite models and encourage their suppliers to do the same.
3. Variations on the traditional tripartite model that would also increase trust might include:
  - Engaging in collective models with other companies through industry or membership bodies, e.g. The Fair Labour Association provides a model companies could consider.<sup>49</sup>
  - Engaging through NGOs, for example The Issara Institute in Thailand acts as an intermediary between companies and workers to facilitate remedy.<sup>50</sup>

### 3.1.3 Key Weaknesses of the State Remedy Mechanism

Weaknesses exist at all points of the state remedy mechanism, which is why ROL and SSR advisers have developed Efficacy and Access to Justice Principles to try and better enable poor, vulnerable and marginalised people, of which workers are one typology, access the state justice system. These are discussed in the next sections (3.2 and 3.3) as they also hold guidance for how to improve the efficacy of OGMs. Here, two key weaknesses are highlighted that inhibit workers from accessing state remedy that companies may wish to be mindful of, and seek not to replicate in their OGMs.

- First, the state's ADR mechanisms can be as expensive, complicated and slow as the formal justice system which inhibits access to justice for workers. This might mean that the company run OGM will be a workers' best chance of remedy. OGMs should be designed to provide free, speedy, predictable remedy.

**Case study 11:** When the U.K Employment Tribunal introduced fees in 2013 less people used it.<sup>51</sup> Fees were deemed to be a barrier to justice by the Supreme Court and scrapped in the summer of 2017.<sup>52</sup> Indications are that levels of tribunal cases are on the rise again.<sup>53</sup> However, the situation is still not ideal. The recent U.K. Employment Tribunal case of Dr Kevin Beatt that went on appeal to the Court of Appeal illustrates challenges the Tribunal is having to ensure it delivers predictable, inexpensive, and speedy remedy. On what counsel judged a simple case in Dr Beatt's favour, he lost in the Tribunal, but won in the Court of Appeal, also showing lack of predictability of decision making. He was represented on a pro bono basis, but his legal fees were estimated at £2 million, while the NHS Trust spent some £5000 per week. The case took 6 years to resolve.<sup>54</sup>

- Second, the formal system is accused of failing to properly support victims and of not having enough capacity to properly address worst labour grievances – modern slavery and trafficking. When referring victims of forced labour to the state system, companies will want to do their best to also support the victim. A company should take care that their OGM process does not re-victimise the grievance holder.

**Case study 12:** Lack of Victim support: **European Union** analysis of members' performance in addressing forced labour has found that states emphasise prosecution, but do not do enough to protect victims through the process.<sup>55</sup> By example, the U.K National Referral mechanism has come under criticism for not doing enough to protect victims and is currently being reviewed.<sup>56</sup> A Modern Slavery (Victim Support) Private Members Bill currently before the House of Lords which seeks to improve support to victims.<sup>57</sup>

### 3.1.4 Watch out for the State Influencing Companies how to Provide Remedy

Companies should be alert to the fact that states can suggest how companies should address grievances in their organisations. Examples include U.K.'s Acas and South Africa's CCMA encouraging employers and workers to achieve the resolution of their disputes informally through negotiation and without recourse to either OGMs or the formal justice system and by providing conflict prevention training.<sup>58</sup> In addition, either through legislation or codes of practice states can influence the design of an OGM as case study below 13 illustrates. When mapping and evaluating the state remedy model companies should watch out for signs of the state influencing how companies should address conflict and design OGMs. It would be good if as part of their overall remedy strategy companies encouraged their managers and suppliers to learn better how to head off grievances by learning conflict prevention, negotiation and conciliation techniques.

**Case study 13:** In the **U.K.** Acas produces the industry standard “Code of Practice on Disciplinary and Grievance Procedures” providing companies guidance on how to establish an OGM.<sup>59</sup> Acas’s codes are not mandatory, but the Employment Tribunal will adjust an award of compensation upwards by up to 25% if they find an employer’s ‘unreasonable failure to follow the code’.<sup>60</sup> // In **Myanmar**, the 2012 Settlement of Labour Dispute Law outlines a multi-level process for resolving disputes, the first stage of which is that companies of over 30 employees must establish a Workplace Coordinating Committee with two company representatives and two Union/worker representatives. If this worked in practice it would be a good example of the state directing innovation of OGMs, however no process is set down in law to govern membership, so they tend to be company appointed or exist ‘on paper’ but not in practice.<sup>61</sup>

### 3.1.5 Are Possible Improvements to the State Remedy System Coming?

In 2014 in response to the UNGPs and the United Nations Human Rights Council (UNHRC) Mandates, the Office of the High Commissioner for Human Rights (OHCHR) launched its Accountability and Remedy Project (ARP). Though this project it has provided guidance for states on how to improve its formal system (ARP I) and is working on guidance to improve the state’s informal mechanisms (ARP II) so that the state can better respond to human rights abuses caused by companies.<sup>62</sup> If donors support implementation of this new U.N. guidance, we could in part hope for more donor funds being allocated to improve state remedy mechanisms for labour grievances in developing countries. This would also meet some governments’ political commitment to combat modern slavery through an improved criminal justice system. In trying to improve efficacy of the state remedy system for addressing workers’ grievances donors could look to leverage ROL<sup>63</sup> and SSR<sup>64</sup> programmes, as to date these policy communities work to improve the entire justice system has tended to neglect a focus on workers with grievances as a typology of victim.<sup>65</sup> These developments by OHCHR are positive for companies, because any improvement to the state remedy system will benefit companies, as it should contribute to improved worker-company relations, better working conditions, less strikes and ultimately less pressure on OGMs.

### 3.2 Learning from some of the State’s Rule of Law ‘Efficacy’ Principles

In considering how to make OGMs effective companies are referred in the first instance to UNGP Principle 31 A – H, which require remedy mechanisms to be legitimate, accessible, predictable, equitable, transparent, rights-compatible, provide a source of continuous learning, and that an OGM’s design and performance should be based on engagement and dialogue.<sup>66</sup> Much effort is now underway to flesh out these Efficacy Principles to help facilitate their practical application.

In parallel, but for many more years, donors have been trying to improve the effectiveness of the entire state justice system, not under a ‘business/human rights banner’, but simply to meet the needs of poor vulnerable and marginalised citizens through ROL and SSR programming. The efficacy principles these policy communities have developed overlap with the UNGP efficacy principles. Because ROL/SSR advisers have had more years of experience in applying them, it is suggested their experience might help flesh out the UNGP Efficacy Principles, and that they might provide companies with practical examples to make OGMs more effective.<sup>67</sup>

In this section, some of the **UNGP efficacy principles are fleshed out** by reference to the experience of ROL/SSR practitioners in trying to improve the state justice system. More detail provided on how companies can better comply with UNGP 31 (b) ‘accessibility principle’ by focussing on lessons learned from the application of the ROL/SSR “access to justice” principle to show how states try to make their systems accessible to women, forced labourers and migrants as it is considered companies will have a heightened concern to address these workers’ needs. Finally, it is suggested that UNGP 31 (G) ‘continuous learning’ could be met by applying donor

evaluation methodology, which can help companies better measure the effectiveness of their OGMs.

### 3.2.1 UNGP 31 (H) Engagement and Dialogue: Take a ‘Problem-Solving’ Approach

A key ROL/SSR principle is that the design of any intervention to improve the justice system should be informed through a “problem-solving” approach with special attention paid to political economy analysis, and especially the needs of the user and gaps in justice provision. This should be done through engagement with (i.e. actually talking to) citizens, and other stakeholder, e.g. NGOs, other donors, the government, experts. In the ROL/SSR context this means that an analysis of the general political economic landscape of the country within which citizens exist, as well as their specific human rights needs should form the basis of donor support to the justice sector. **The corporate equivalent** might be that before designing an OGM, a company should understand (a) the political and economic context of the country they are seeking to implement an OGM, (b) the needs, vulnerabilities, and barriers to justice that workers in their supply chains face, and (c) what remedy options are already available to them and how well they work. They should obtain this information in a ‘bottom up’ not ‘top down’ way by talking to users and other stakeholders, not just reading reports, talking to factory owners, or other elites.

### 3.2.2 UNGP 31 (A) Legitimate: Independent Appointments

Various ROL/SSR independence principles exist to ensure the legitimacy of the state judiciary. One is that the independence of judges and court staff is critical to enable the system to be perceived as one that provides non-biased decisions. Most states use independent commissions with mixed membership to appoint and oversee the performance of judges. Similar appointment and performance bodies exist for court staff. **In a corporate context**, when an OGM is a mediation service, mediators should be independent individuals selected jointly by the company and its workers. Having company representatives mediate worker grievances could undermine the credibility of an OGM. In addition, company staff should not just double hat as OGM administrative staff otherwise workers will feel the system is biased in favour of the company even if mediators are independent.

**Case study 14:** In both the **South African** CCMA and the **Cambodian** AC, trade union, corporate and government representatives select mediators and arbitrators who must not come from those groups to prevent gaming, but must be credible individuals of good standing in society.

### 3.2.3 UNGP 31 (D) Equitable: Evidence

Part of how disputants feel a decision is fair is if it was based on ‘all the evidence’. Tripartite ADR labour grievance mechanisms find it hard to know if all the evidence presented before them accurately reflects what is happening, because they have limited investigative capacity and normal judicial evidential rules (e.g. to prevent hearsay) are relaxed to ensure informality of the system.<sup>68</sup> This can mean that the quality of evidence may be mixed. Also, because of an imbalance of power usually in favour of the company, workers can feel their case has not been properly heard. Issues around evidence are challenging for ADR processes – the flip side to the benefit brought about by their informality. **In a corporate context** helping workers present their cases by ensuring the OGM process gives them more time, the assistance of an expert, and easy access to company documents, are practical approaches that will help ensure the process feels ‘equitable’. Building in an investigative function into the process and ensuring the mediation methodology employed enables mediators to ask searching questions to draw out relevant evidence from the parties will

also help. Also, ensuring the worker knows they need not be bound by the decision and can always take their case to the formal justice system will help.

**Case study 15:** The **Cambodian** AC addresses the challenge of ‘evidence’ by not tighten evidential rules as this would risk compromising the informality of the process, which enables quicker, cheaper, less expensive justice. Instead, it encourages arbitrators to investigate and ask searching questions, however the constrained 15-day time limit for decisions can impact effectiveness. Issues around evidence is part of the reason why the Cambodian AC’s decisions were made non-binding and subject to appeal into the formal court process. This can also be unsatisfactory as it can lead users to feel decisions will not be enforced.<sup>69</sup>

### 3.2.4 UNGP 31 (C) Predictable: Means of monitoring implementation - Enforcement

For states and ROL/SSR practitioners without enforceability the credibility of the justice system is threatened. When the labour grievance is criminal, e.g. forced labour, enforcement will be by the police arresting the accused. In civil court cases, enforcement might be by a court appointed bailiff. In the state’s ADR mechanisms, affecting enforcement is a challenge because they are usually voluntary processes or will relate to lower value claims where claimants themselves will not have the financial means to pursue enforcement through the court. **In a corporate context** companies need to consider enforceability issues for their OGM to be perceived as credible. Remedy should be provided and then users – if still available – followed up with to ensure that remedy was provided as agreed and the grievance holder is satisfied. How to ensure enforceability should be considered carefully when the decision on remedy is made and steps put in place to make enforceability as likely as possible.

**Case study 16:** In 2013 the **U.K.** Department for Business Innovation and Skills (BIS) found that 1/3 of Employment Tribunal awards went unpaid.<sup>70</sup> As a result the U.K government decided to enable unpaid claimants to request it to intervene on its behalf to encourage enforcement. For all unpaid Employment Arbitration Awards after 6 April 2016 a claimant can now apply to the (now called) Department for Business, Energy & Industrial Strategy (BEIS) for an Employment Tribunal Penalty Enforcement Notice. BEIS will issue this on the respondent and if they do not pay they will be fined £1000.<sup>71</sup> Whether this innovation has encouraged enforcement appears not yet to have been assessed. // Monitoring of **Cambodian** AC Awards is done by calling disputants 60-90 days after the Awards is issued to check implementation. Implementation tends to be high (around 75%) with higher rates if the parties agreed to decisions being binding. Annex 5 provides detail from an Arbitration Council report on implementation rates.

## 3.3 Learning from the State’s Rule of Law ‘Access to Justice’ Principles

### 3.3.1 What are ROL/SSR ‘Access to Justice’ Principles

ROL/SSR access to justice principles encompass a wide range of techniques to make the justice system more accessible. These include having a robust legal framework, legal empowerment including legal aid, ensuring courts are geographically accessible, that different languages are catered for, and many more factors.<sup>72</sup> An examination of the issues the state finds in providing access to justice for women, forced labourers and migrants is provided here and lessons suggested for companies trying to do the same. As such they help to flesh out UNGP 31 Effectiveness Principle (B) Accessible.

### 3.3.2 Women’s Access to Justice – Lessons from State Experience

Women work throughout supply chains often in the worst jobs with least protections so are more vulnerable.<sup>73</sup> They are also more vulnerable to bad contracting, e.g. may not have childcare to

cope with ‘just in time’ contracting.<sup>74</sup> Much work has been done by ROL/SSR experts to try and understand gender-based vulnerabilities and barriers to accessing justice. Companies could take note of these when trying to make their OGM’s gender sensitive. Women’s inherent vulnerabilities include the fact that they often have lower literacy levels than men and are less likely to know their rights or the process to follow to get remedy if their rights are abused. They also have less money or time as mothers to participate in a remedy process. They fear repercussion. They can feel isolated or intimidated by the mechanisms providing remedy, because they usually have less or no women working in them. Women’s barriers to justice include the fact that laws, society, culture, religion all tend to discriminate against women.<sup>75</sup>

SSR/ROL donor programmes focus on improving women’s access to justice particularly in the criminal justice sector, but reforms are relevant to improve access for women to state labour justice mechanisms or OGMs. For example, in Nepal there are women police investigators and women prosecutors. There are in-camera court proceedings and separate rooms in court houses for women who feel vulnerable. Other gender sensitive interventions include radio programmes to teach women their rights, legal aid specifically for women with grievances, women paralegals and mobile courts.<sup>76</sup> **In a corporate context**, access to justice initiatives for women could translate into gender-sensitive contracting, non-literacy based training on worker rights, women employed to answer hotlines, women interviewing grievance holders, women to represent women claimants, women mediators, mediation processes designed to better protect women, e.g. enabling shuttle mediation so they do not need to meet the person they have a grievance against. Financial or just-in-kind support targeted at women will also help, e.g. changing shift schedules to enable access to the OGM, and enabling them to bring a support person or their children if they have no childcare.

**Case study 17:** As part of an ILO funded legal support programme to migrant workers in **South East Asia** it was found that the centres that had greatest success in providing access to remedy for women in Thailand, Cambodia and Malaysia were implemented by NGOs who provided gender-responsive services.<sup>77</sup>

Importantly, properly addressing women’s issues through grievance mechanisms not only helps individual women, but can lead to systemic shifts in their working conditions. When the CCMA in **South Africa** first opened, 30% of its cases were from women domestic workers over insufficient pay and dismissal. Now they make up a constant 10% of cases.<sup>78</sup> Partly because of the spotlight CCMA brought to these women workers’ grievances, the state took notice and improved their working conditions through the minimum wage determination which has since been raised again.<sup>79</sup>

The **Cambodian** AC has analysed how women are benefitting from and how they are engaged in the work of the AC. In 2013 it found that 90% of cases were brought by women. Most issues brought involved issues of key importance to women [wage, allowance and entitlement disputes (45%); unfair dismissal and reinstatement (11%); general working conditions (11%); occupational health and safety (7%); and union discrimination (5%)], but although women made up 65% of the ACF staff, there were no female arbitrators. The Council runs a programme of gender mainstreaming and tracking, awareness raising, and capacity building and training to improve access for women.<sup>80</sup>

### 3.2.3 Forced Labourers’ Access to Justice – Lessons from state experience

Forced labourers are incredibly vulnerable and often have no contract contracts, are located off-site, hidden from view, with their movement constrained, feeling owned. They are less likely to pick up a phone and call a hotline, though some do, let alone walk in and seek help from an OGM that is a mediation service.<sup>81</sup> Their grievances may often be more suited to investigation and then remedy through the formal justice system, which also helps to combat impunity. However, as the *Flex Report on Access to Compensation for Victims of Labour Trafficking in the U.K.* makes clear, and as will most likely be the case in jurisdictions with less developed rule of law than in the U.K, the U.K.’s formal justice system does not appear to protect victims through the process. For example, the National Referral Mechanism only provides 45 days care and little rehabilitation, and struggles to provide victim-centred remedy because compensation claims are often unenforceable against

slave masters with no monetary reserves and because companies who may have deeper pockets are effectively excluded from prosecution.<sup>82</sup> Advocates for forced labourers in the UK used to use the Employment Tribunal to pursue remedy, but legal aid is now harder to access and back-pay is capped at 2 years, which is paltry when a slave may have earned only 50 p a day.<sup>83</sup>

All these failings of the state justice system create a dilemma for companies as, if slavery is found in their supply chain, they are required to refer the case to the formal justice system which may result in the victim being re-victimised, especially in states with weak rule of law. **In a corporate context**, some way to finding a solution might be to ensure a company has a wide remedy strategy that makes use of effective due diligence through audit, remediation, and verification as well as an OGM, to better discover these cases and go some way to providing remedy through remediation. But company remedy should not replace that of the state, so in parallel companies should help victims access state justice. To prevent a company being criticised for how they provide remediation/remedy for forced labourers they should ensure their actions are based on consultation with victims themselves and with stakeholder like Unions and NGOs. They can also work jointly with other companies, donors, the ILO, NGOs and Trade Unions to improve victim support and, also, use their combined leverage to lobby governments to do better.

#### Case study 18:

... That Forced Labour cases do not go through state ADR mechanisms: Author's interviews with U.K.'s ACAS South Africa's CCMA staff, and Cambodian AC experts confirmed that their case profiles rarely include forced labourers, whose grievances tend come to light through police or labour inspector investigations and are dealt with through the civil and criminal courts, often using non-slavery offences which are easier to prove to secure convictions (e.g. rape, GBV, health and safety breaches).<sup>84</sup>

... That Forced labour cases come to light through investigation: The GLAA in the U.K. provides an important 'remedy' function for forced labourers, because where it finds evidence of bad labour practice through intelligence-led investigations the GLAA has the power to issue Enforcement Undertakings to ensure companies 'remediate' grievances. This can lead to instant remedy for workers, e.g. back pay paid. The GLAA can use court orders to enforce Undertakings, and not renew licences in cases of non-compliance. They will feed more grievous cases the Crown Prosecution Service for criminal prosecution. The 2016-2017 U.K. Labour Market Enforcement Strategy envisages an improved system to track risks of forced labour in the U.K. as well as better coordination between enforcement agencies through the Labour Market Enforcement Strategic Coordination Group to monitor compliance and repeat offenders.<sup>85</sup> GLAA also implicitly monitors compliance in the sectors where licences are required by denying licences in case of non-compliance.

... that companies can have success by lobbying governments to better address forced labour. In D.R.C on 30-31 August 2017, the DRC Minister of State for Employment, Labour and Social Welfare launched a new national strategy to remove children working in artisanal mining by 2025.<sup>86</sup> It is commonly thought that pressure to do this came from media and NGOs, especially Amnesty International's report on child labour in the cobalt mines, and lobbying from international business whose imports of cobalt for use in the electronics industry is critical to D.R.C.'s economy.<sup>87</sup> Due to failings in prevention and enforcement, in March 2017 Apple stopped buying cobalt from artisanal mines until it could confirm no child labour in its supply chain.<sup>88</sup>

### 3.2.4 Migrant Workers Access to Justice – Lessons from state experience

Migrant worker vulnerabilities and barriers to justice include lack of written evidence, high cost of legal assistance, slow legal process, fear of retaliation, discriminatory attitudes, unclear statutory responsibility, language barriers, irregular legal status, employer-tied visas and work permits, restriction of movement, lack of coverage by labour law, non-functional complaint mechanisms and lack of information about rights.<sup>89</sup> The ILO recommends that to address cases of migrant worker disputes, states create a process through which disputes are first resolved between migrant



workers and their employer and recruitment agency, then mediated through a state provided service, and then appealed to the court system if no resolution is found through mediation.<sup>90</sup>

Two recent separate reports on migrants' access to justice in Nepal by Amnesty International<sup>91</sup> and the Open Society Foundations<sup>92</sup> highlight common challenges with the way in which access to state remedy is provided for migrants of which companies should be cognisant. Using Nepal as an example, problems include no enforcement of legal frameworks, migrant workers losing their jobs and accommodation in their destination country if they make an allegation so they are scared to make a claim, receiving little or no help from Embassies, the process of suing in the destination country on return to their home country being too expensive and hard to pursue so migrants give up, and recruitment agents being politically connected and powerful so they intimidate migrants not to take action or can ensure they evade justice through corruption.

**In a corporate context**, all aspects of the corporate remedy strategy suggested earlier in this paper at paragraph 2.3 can address the needs of migrants: (1) Procurement contracts should be worded in such a way as to combat payment of recruitment fees. (2) Awareness raising should be done to alert migrant workers to their rights. (3) Due diligence should be undertaken to discover and remediate cases where migrant labourers have been abused. (4) OGMs should cater for migrants' vulnerabilities, e.g. assuring them of employment and accommodation through the process. (5) Companies should collaborate with each other, NGOs, trade unions and the international community to ensure better protection and remedy for migrants is provided. (6) Companies should use their leverage to lobby states and other companies to improve treatment of migrants and could join advocacy initiatives aimed at stopping recruitment fees.<sup>93</sup>

**Case study 19:** In Nepal returning migrant workers with grievances against their labour recruiter are encouraged to seek justice through the Department of International Foreign Employment's mediation mechanism of which there is only one mediation panel (with no mediation training) that sits in Kathmandu making access difficult, especially for woman, and where the same official who may have granted the recruitment licence could also sit as a mediator.<sup>94</sup> // A review of migrant dispute cases from 2011 – 2015 mediated through ILO funded state/NGO managed mediation centres in **South East Asia** (Cambodia, Lao Peoples Democratic Republic, Malaysia, Thailand and Vietnam) found that when done well migrants were provided support to enable them to access justice, they received remedy, but that their vulnerabilities and barriers to justice were still great inhibitors.<sup>95</sup>

### 3.3 Learning from how State Remedy Mechanisms are Evaluated

#### 3.3.1 How States Evaluate Performance – Lessons for Companies

Less resourced state remedy mechanisms tend not to self-evaluate so companies can only gain insight into their effectiveness through interviews, analysis of actual incidents, or through donor or other third reports. Better resourced mechanisms conduct reviews as part of normal annual accountability reporting cycles and to test satisfaction levels with new services.

**Case study 20:** Myanmar has not yet undertaken a review of its nascent dispute resolution system for workers. However, in 2017 Business for Social Responsibility's (BSR) conducted a useful third party evaluation of Myanmar's labour dispute resolution system which provides insight on its functioning based on experts visiting the country, conducting interviews with key interlocutors and collecting and examining relevant documentation.<sup>96</sup> // **South Africa's** CCMA collect quantitative data on the effectiveness of their mechanisms, i.e. how many cases heard, in what timeframe, success rates, but little qualitative data, due limited resources.<sup>97</sup> // The **Cambodian** ACF indicate they regularly conduct reviews on the efficacy of the Council, driven especially by the need to report on donor programming.<sup>98</sup> // **U.K.'s** Acas regularly commissions independent reviews of its services based on qualitative and quantitative data to show how it is meeting its strategic plan, and on key issues, like the effectiveness of its new conciliation mediation service.<sup>99</sup>

### 3.3.2 Donor Best practice in evaluation – A model to evaluate OGMs:

Donors may not always evaluate their programmes well and donor agencies are often criticised for wasting taxpayers' money. That said, best practice donor evaluation methodology can accurately evaluate performance when applied properly. As such it is submitted that donor evaluation methodology can help flesh out UNGP Principle 31 (G) 'continuous learning' and that companies can apply this approach to better assess the effectiveness of their OGMs as follows:

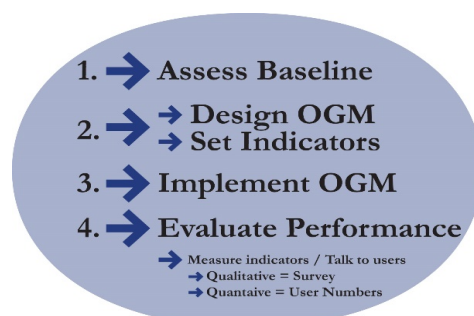
**Step 1:** A donors records the baseline to understand the status quo so they know the situation they want the programme they are about to design to 'change'. **A company** should determine this baseline when it is undertaking its due diligence before design of its OGM to better understand the needs, vulnerabilities, and barriers to justice that workers in their supply chains face, and their existing remedy options (see above section 3.2.1: problem solving approach). Baseline facts might include no OGM, inaccessible state system, regular conflicts and strikes impacting productivity.

**Step 2:** A donor designs its programme and set indicators (or KPIs) at that early stage against which it will measure progress later. Setting indicators at the outset is critical because it ensures the programme is designed in such a way as to enable it to be measured. Indicators should be SMART (Specific, Measurable, Accepted, Relevant or Time bound). **A company** should design the OGM and set measurable indicators from the outset, e.g. number of users into the service in the first 6 months, fewer strikes, productivity levels in the factory rising by x over x years, staff report a less conflictual working environment by x date.

**Step 3:** A donor implements its programme. **A company** implements its OGM.

**Step 4:** A donor continuously monitors progress and adapts programming accordingly. For example, it collects relevant data, and then evaluates the impact of the programme to see whether the original baseline has changed due to the programme, and if it has not adjusts the programme accordingly. **A company** can continuously monitor the impact of its OGM by requiring anonymous user satisfaction surveys, by collecting data on user levels, broken down by gender and issue. At certain points in the lifetime of an OGM, e.g. annually or to coincide with internal or external reporting requirements, a company could undertake a more thorough evaluation of its effectiveness. Here it could measure performance of the indicators by collecting **qualitative data** (collating the surveys taken from users as they went through the system, interviewing workers and other stakeholders, e.g. Trade Unions, NGOs, the state on their perceived impression of the effectiveness of the system) and **quantitative data** (collating all the data that will have been collected on an ongoing basis to report on numbers of people through the OGM, break down by women, migrant worker, type of grievance, length of time to solve problem, remedy decided)

#### Box 5: Suggested Evaluation Framework for Corporate OGMs



## SECTION 4: Conclusions: What can Companies Learn from the State - a Discussion?

As ethical companies try to design an effective remedy strategy to ensure they provide workers down its supply chains with effective remedy, it is suggested that they can learn the following lessons from state's experience. Each of these suggestions merits discussion and should be confirmed, disregarded or altered based on the experience and perspectives of others.

1. **Scope:** A remedy strategy/OMG should focus on providing a dispute resolution service to address remediation as well as remedy for lesser 'in company issues'. Companies must help workers access the state system. Criminal justice issues should be referred to the state.
2. **Nexus:** In practice the nexus point of where the state and company roles meet can blur and companies need to be wary of this, especially when criminal justice matters are at issue.
3. **Engagement:** Companies actions should strengthen the state's capacity to provide remedy. If the rule of law is weak companies should use their leverage to seek improvement. Where there is no rule of law and real risk a company might need to assume the state's remedy role, a company might want to disengage from the country.
4. **State Remedy Framework:** The state by no means provides remedy well, however it is possible to recognize a state framework for the provision remedy made up of 6 mutually reinforcing components that will be present in most countries. Companies should map and evaluate the state model to design a remedy strategy that is context specific, otherwise it may not be effective. The 6 components of the state framework are:
  - (1) A legal framework
  - (2) A legal empowerment strategy
  - (3) A prevention and enforcement function (its version of a company's ETI style due diligence, i.e. not old audit)
  - (4) A remedy mechanism (its version of a company OGM)
  - (5) Collaboration with stakeholders to provide remedy
  - (6) International engagement on remedy
5. **A Corporate Remedy Strategy based on lessons from the State Remedy Framework:** Given that the components of the state framework exist to meet the needs of workers who will have similar needs when trying to seek remedy from a company, a corporate interpretation of the state framework may hold merit as a suggested 'corporate remedy strategy'. It would include the following 6 components:
  - (1) Policies, procedures, contracts (the state's legal framework)
  - (2) Awareness raising, extrapolated down supply chains (the state's legal empowerment strategy).
  - (3) ETI style due diligence, i.e. not old audit (the state's prevention and enforcement)
  - (4) **An OGM (the state's informal and formal remedy mechanisms)**
  - (5) Collaboration with stakeholders to provide remedy. Including internationally.
  - (6) Advocacy (a new element recognizing company leverage can influence states)
6. **Learning from the Characteristics State Remedy Mechanism to improve OGMs:** The state remedy mechanism favours mediation and tripartite models. Companies designing OGMs might want to consider mediation as a best practice OGM process and

co-ownership as a means of increasing trust in an OGM. In addition, through its mapping exercise of the state system companies should look out for instances where the state provides guidance on how it should provide remedy. For example, Acas in the U.K provides guidance on OGMs and Acas and CCMA encourage conflict prevention.

7. **Learning from key weaknesses of the State Remedy Mechanism to improve OGMs:** Indications are that the state informal mechanisms are becoming more expensive, are taking longer and remedy is becoming less fit for purpose. The formal system is not good at protecting victims. OGMs should be designed without the same weaknesses.
8. **Learning from ROL and SSR ‘Efficacy’ Principles:** Various ROL/SSR ‘efficacy’ principles exist to improve the effectiveness of the state system and these can flesh out the UNGP Efficacy Principles to provide practical guidance for companies wanting to make OGMs more effective.
9. **Learning from ROL and SSR ‘Access to Justice’ Principles:** ROL/SSR ‘access to justice’ principles used to try make the state justice system more accessible for women, forced labourers and migrants can be referred to by companies trying to provide remedy for these typologies of workers.
10. **Learning from Donor Evaluation Methodology:** Donors do not always do a good job of evaluating the impact of their programming, but their methodology is sound and provides a robust approach for companies seeking to measure the effectiveness of OGMs.
11. **Collaboration:** Throughout this paper it has been suggested that better collaboration between companies, both with other companies and other stakeholders, could improve effectiveness of remedy provisions and decrease the time and cost needed provide effective remedy. Collaboration in the actual delivery of an OGM is also a method of ensuring co-ownership and therefore that it is more trusted, which would improve its effectiveness. Companies are asked to consider whether, or not, or on what terms collaboration might enhance the delivery of effective remedy and, if so, how it could be encouraged?

END

**United Kingdom**  
**State Legal Framework**  
**Assessment to inform Company Remedy Strategy**

The information contained here was found through desk based research, interviews with employment lawyers and with ACAS staff. It would need to be augmented by the same analysis of the state remedy mechanism and how it functions to provide a full assessment a company could rely upon to produce a context specific OGM for their U.K. supply chain.

The U.K. has a robust legal framework addressing employment rights and duties centred in the Labour Rights Act and supported by a raft of additional legislation, regulations, common law and equity. Of note Labour law is of a unitary nature in England, Scotland and Wales, but differences exist in Northern Ireland. The key piece of legislation is the Employment Rights Act 1996, but many others are relevant. For more information about the legal system see the following resources:

- Unitary structure:  
<https://www.lra.org.uk/seminars-workshops-briefings/briefings/employment-law-ni-and-gb-the-differences>
- The ILO NATLEX database lists all relevant labour, social security, and related human rights laws in the U.K.  
[http://www.ilo.org/dyn/natlex/natlex4.countrySubjects?p\\_lang=en&p\\_country=GBR](http://www.ilo.org/dyn/natlex/natlex4.countrySubjects?p_lang=en&p_country=GBR).
- For a useful discussion of the U.K.'s key legislation see this extract from blog article by Caroline Noblet, of Square Patton Boggs LLP, from the useful online information service Lexology: <https://www.lexology.com/library/detail.aspx?g=ccd13a56-2017-40e2-b5e6-66a041db20e8>).
- The Employment Rights Act 1996 is the principal statute governing the employment relationship. Key rights covered by the act include:
  - the right to a written statement of employment details;
  - the right not to be unfairly dismissed;
  - redundancy rights;
  - the right to a minimum notice period;
  - the right not to have deductions made from wages; and
  - protection against dismissal or detrimental treatment on the grounds of certain protected activities or statuses.
  - the Equality Act 2010, which covers discrimination and equal pay rights;
  - the Working Time Regulations 1998, which regulate working time and paid holidays;
  - the National Minimum Wage Act 1998 and the National Minimum Wage Regulations 2015, which cover the national minimum wage and the national living wage;
  - the Transfer of Undertakings (Protection of Employment) Regulations 2006, which govern the transfer of employees in business transfers and service provision changes (including outsourcing); and
  - various statutes dealing with rights for new parents.
- The U.K. also has strong health and safety standards, see: *A guide to Health and Safety Regulation in the UK, (Health and Safety Executive Briefing Note, 2013)*: “Under the main provisions of the Act, employers have legal responsibilities in respect of the health and safety of their employees and other people who may be affected by their undertaking and exposed to risks as a result. Employees are required to take reasonable care for the health and safety of themselves and others”.  
<http://www.hse.gov.uk/pubns/hse49.pdf>.

- U.K. also has a more centralised law for Modern Slavery with all offences in one place that has increased some offences and state powers (e.g. confiscation of assets). It has also included a transparency provision for companies.  
<http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>

For examples of challenges with the law see:

- Debate exists over when a person a ‘worker’ entitled to the minimum wage which has left gig economy workers vulnerable. See the Uber case where drivers claim they are being paid on average £5.5 p/h, but Uber argues they are not ‘workers’.  
<http://www.bbc.co.uk/news/business-37629628>
- The existence of the Gender Pay Gap campaign indicates that while the law provides for women to receive equal pay for equal work this is not happening.  
<http://www.telegraph.co.uk/business/2017/09/25/gender-pay-gap-widens-12000-female-managers/>

**Democratic Republic of Congo**  
**State Legal Framework and Inspection/Protection Mechanism**  
**Assessment to inform Company Remedy Strategy**

The information contained here is the kind of detail a company would want before designing a remedy mechanisms suitable for D.R.C. to provide effective remedy for workers in supply chains. It was obtained through a desk based survey of laws, the International Commission of Jurist's excellent report on dispute resolution in D.R.C, International Crisis Group reports, The U.S.A. Trafficking in Persons Report, Economist and Newspaper articles, and other publically available recourses. No interviews were conducted to establish this information. It should be expanded to include a better understanding of how the remedy mechanism works and be substantiated by interviews with persons with local knowledge before designing a company OGM.

Political economy analysis explains why DRC's approach to the protection and remedy of labour abuses, like many other fragile states, looks fair on paper, but fails in practice. DRC has a history of corruption and kleptocracy dating back to Mobutu's presidency in the 1970s. It has suffered the effects of constant civil and regional wars, and is beset today by ongoing violent conflict and political tension. DRC has low positions on the Fragile States Index, Transparency International's Corruptions Perceptions Index, and UN Human Development Index. The rule of law is weak and the security and justice institutions are underfunded, incapacitated, corrupt, and politically compromised, with little oversight or strategic direction. Trade Unions tend to be employer-constructed bodies and civil society is under threat and/or politicised. In the mining sector, from where the term 'conflict diamonds' came and the Kimberly Process originated, the government owes allegiance to business not workers, because foreign direct investment and trade monetises DRCs mineral wealth, which is critical for DRC's GDP and provides wealth for corrupt elites.

On paper the DRC **legal framework** for the protection of human rights, including labour rights, is fair, it is just not respected in practice. The state **investigation/protection mechanism** is well articulated in Section IX of the 2002 Labour Law which provides for a labour inspectorate under the Ministry of Employment, Labour and Social Welfare, and details the role and responsibilities of labour inspectors. However, the government system does not work well.

- DRC has ratified all the main UN human rights instruments:  
<http://indicators.ohchr.org>
- DRC has ratified the fundamental ILO Conventions:  
[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200\\_COUNTRY\\_ID:102981](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102981)
- DRC complies with relevant AU agreements and is a member of the Cotonou Agreement: At the regional level, the DRC has ratified the African Charter on Human and Peoples' Rights and has signed but not ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa and the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights. It has not taken action on the African Charter on the Rights and Welfare of the Child. The DRC is also a party to the Cotonou Agreement, which regulates relations between the European Union (EU) and developing countries in Africa, the Caribbean and the Pacific. The agreement creates obligations for signatory states to respect the rule of law and fundamental human rights.
- DRC's 2002 Labour Act provides overarching guidance and DRC has a plethora of additional laws and regulations to prevent bad labour practice and allow workers to bring court action. For more information

[http://www.ilo.org/dyn/natlex/natlex4.countrySubjects?p\\_lang=en&p\\_country=COG](http://www.ilo.org/dyn/natlex/natlex4.countrySubjects?p_lang=en&p_country=COG)

- The Labour Code 2002 provides for the control labour practice, and governs working conditions including equal pay, child labour and the minimum wage.  
[http://www.socialprotection.org/gimi/gess/RessourcePDF.action;jsessionid=zI3AE4d\\_VZfAL9bIbaHeVLg1QZUG6XBj5TTBLYXN3gYSrnBdacLz!-284860027?ressource.ressourceId=9590](http://www.socialprotection.org/gimi/gess/RessourcePDF.action;jsessionid=zI3AE4d_VZfAL9bIbaHeVLg1QZUG6XBj5TTBLYXN3gYSrnBdacLz!-284860027?ressource.ressourceId=9590) (in French)
- Application of the Criminal Code could result in criminal liability and the Civil Code provides the basis for civil liability for harm done to a worker by a company.
- The Mining Code (Act No 007/202 of 11 July 2002 establishing the Mining Code, see: [http://mines-rdc.cd/fr/documents/codeminier\\_eng.pdf](http://mines-rdc.cd/fr/documents/codeminier_eng.pdf)) and Mining Regulations Decree No. 038/2003 of 26 March 2003 on mining regulation) do not cover labour rights, but would enable a cause of action on the grounds of displacement.
- The 2006 constitution protects all relevant rights and freedoms: See Articles 16 (slavery, forced and compulsory labour), Article 37 (freedom of association), Article 38 (trade unions), right to strike (Article 39), Article 66 (non-discrimination); and Articles 25, 26, 27 (assembly, demonstration and petition)  
<http://www.constitutionnet.org/sites/default/files/DRC%20%20Congo%20Constitution.pdf>
- The U.S State Department calls for forced labour to be made illegal in the 2017 TIP Report and ranks DRC Tier 3: <https://www.state.gov/j/tip/rls/tiprpt/countries/2017/271168.htm>



## China

**State Legal Framework and Inspection/Protection Mechanism/Remedy Mechanism  
Assessment to inform Company Remedy Strategy**

The information provided here was obtained through desk based research, but importantly by interviewing company CSR experts familiar with China, lawyers on the ground, as well as academics and researchers with a good understanding of the Chinese context as it is hard to get a feel for what happens in China on remedy without local knowledge.

The **legal framework** for providing labour protections and addressing labour grievances in China is covered by its 1994 Labour Law, 2007 Labour Contract Law, the 2008 Employment Promotion Law, the 2002 Workplace Safety Law, and the 2007 Labour Dispute Mediation and Arbitration Law. When promulgated there was much publicity over the Labour Contract Law, which was seen as evidence of government (Chinese Communist Party ‘CCP’) intention for greater enforcement of contract rights under the 1994 Law and to “crack down on sweatshops, protect workers, and empower the CCP-controlled unions”. In practice these rights are not universally protected by business nor by the state. Under Chinese Law, freedom of association is severely constricted and workers can only join the state union, the All-China Federation of Trade Unions, which is seen to not put workers' interests and the protection of their rights first, but be an organ of the CCP.<sup>100</sup> Of late there seems to be more CCP crack down on workers agitating about bad working conditions, but less public awareness that these protests are even happening.

In terms of access to remedy for workers' grievances through **government inspection and enforcement** the CCP has a duty to inspect workplaces for breaches of health and safety and of labour contracts. In the case of the former, remediation of infringements are required and penalties can be awarded, which can provide an immediate form of remedy for workers. In the case of the latter “*a worker whose legitimate rights and interests are infringed upon shall have the right to request the relevant department to deal with such infringement according to law, or to apply for arbitration or bring a lawsuit*” However, the ratio of inspectors to factories and workers in China is sub-standard<sup>101</sup> and anecdotally what standards are enforced seem to be through multinational's enforcing audit and remediation.

The **state framework for worker remedy** through resolution of workplace conflict between individuals or groups of workers and their employers is regulated by the Labour Law, which has been updated and expanded upon by the 2007 Labour Dispute Mediation and Arbitration Law, now the primary legal resource. Reading the laws together disputants are first required to conciliate their dispute at the company level, either directly between worker and employer with or without Union involvement, after which it might go to an internal tripartite mediation committee, chaired by the Union. If mediation fails, external mediation can also be used through various entre-points, e.g. Legal Aid Office, Justice Bureau, Labour Inspectorate, or community mediation through village and residence committees.

There is no known analysis done to determine workers level of satisfaction with these labour grievance mediation processes. Indeed, it is assumed that most individual conflicts never make it to external mediation and that many are resolved through coercion, including intimidation or even violence within a company. If, however, workers end up in mediation and it fails, they have the right to have their case being heard by a tripartite Arbitration Committee. Arbitration awards can be appealed to the People's court, which can also be asked to enforce an arbitration in cases of non-compliance. The judiciary is not seen as independent from the state in China, NGOs have been curtailed for acting on behalf of workers, and lawyers face retaliation for taking on human

rights cases that might offend the CCP. The state's current approach to settlement of workers' rights issues seems indiscriminate, and somewhere on the spectrum between unfair and oppressive.

### **Specific lessons for companies trying to provide supply chain workers remedy in China:**

1. Companies should insist on human rights due diligence (including effective audit, remediation and verification) as a method of assisting workers to receive remedy for their grievances through changes to systemic problems at the factory level. Changes made should reflect actual workers' views.
2. Working on remedy issues within a company's own supply chain 'behind the factory gates' is likely to be tolerated by the state, but if a corporate remedy strategy was seen to encourage democratisation, the state may become obstructionist. Given the lack of freedom of association or assembly in China this becomes a fine balancing act and setting up 'help-lines' to hear individual complaints seems a safe option. Modern technology, e.g. workers reporting abuses anonymously through cell phones is a newer phenomenon. Their efficacy from the users' perspective must be assessed and balanced against a candid view of what is feasible given the controlling role played by the state in China.
3. Supporting/working with local labour rights NGOs and activists should be done carefully for the safety sake of those NGOs.
4. Bigger companies can use their economic leverage to create change by advocating with the state to engage better on remedy issues. Companies should act together to increase their leverage and ensure coherent messages. See this recent Adidas state advocacy example: <https://www.theguardian.com/sustainable-business/sustainable-fashion-blog/adidas-worker-rights-china-factory-strike>

### **Links to key laws:**

- 1994 Labour Law: Labour Law of the People's Republic of China (Order No. 28 of the President of the People's Republic of China) 1994.  
[http://www.china.org.cn/living\\_in\\_china/abc/2009-07/15/content\\_18140508.htm](http://www.china.org.cn/living_in_china/abc/2009-07/15/content_18140508.htm)
- 2007 Labour Contract Law (Labour Contract Law of the People's Republic of China (Order No. 65 of President of the People's Republic of China) 2007.  
[http://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=76384](http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=76384))
- 2008 Employment Promotion Law: Employment Promotion Law of the People's Republic of China (Adopted at the 29th session of the Standing Committee of the Tenth National People's Congress on August 30, 2007.  
<https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/76984/81380/F1735089926/76984.pdf>
- 2002 Workplace Safety Law: Law of the Peoples Republic of China on Work Safety (Order No. 70 of the President of the People's Republic of China) 2002.  
<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/76096/108029/F924956495/CHN76096%20Eng2.pdf>.  
For workplace safety see also this useful summary on Lexology by Winston and Strawn: <https://www.lexology.com/library/detail.aspx?g=77f3c523-d258-44a3-b2c1-fe80f450de9b>)
- 2007 Labour Dispute Mediation and Arbitration Law: Labour Dispute Mediation and Arbitration Law of the People's Republic of China (Order No. 80 of 2007 of the President of the People's Republic of China.  
[http://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=78743](http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=78743) .
- The 2011 People's Mediation Law of the People's Republic of China could also be relevant as there is nothing to prevent labour disputes being mediated at community level.

<http://www.cspil.org/Uploadfiles/attachment/Laws%20and%20Regulations/%5Ben%5Dg uojifalvwenjian/PeoplesMediationLawofthePeoplesRepublicofChina.pdf>.

For a discussion of this law see this useful 2008 blog by Aaron Halebua, entitled “Reforming the People's Mediation System in Urban China”

[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1123283](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1123283)

- When promulgated there was much publicity over the Labour Contract Law, which was seen as evidence of government (Chinese Communist Party ‘CCP’) intention for greater enforcement of contract rights under the 1994 Law and to “crack down on sweatshops, protect workers, and empower the CCP-controlled unions”. For more information see The Freedom House Report on China: <https://freedomhouse.org/report/freedom-association-under-threat-new-authoritarians-offensive-against-civil-society/china> In practice these rights are not universally protected by business nor by the state.
- Under Chinese Law, freedom of association is severely constricted. See PRC Trade Union Law [Zhonghua renmin gongheguo gonghui fa], passed and effective 3 April 92, amended 27 October 01, arts. 9–12; Constitution of the Chinese Trade Unions [Zhongguo gonghui zhangcheng], adopted 26 September 03, amended 21 October 08, arts. 9, 11. See Also: [https://www.cecc.gov/sites/chinacommission.house.gov/files/documents/AR14Worker%20Rights\\_final.pdf](https://www.cecc.gov/sites/chinacommission.house.gov/files/documents/AR14Worker%20Rights_final.pdf). Workers can only join the state union, the All-China Federation of Trade Unions (<http://en.acftu.org>). It is in turn made up 10 national industrial sectoral unions), which is seen to not put workers' interests and the protection of their rights first, but be an organ of the CCP. Of late there seems to be more CCP crack down on workers agitating about bad working conditions, but less public awareness that these protests are even happening. See: China Labour Bulletin operating out of Hong Kong provides detailed information on where strikes are occurring and accidents happening in Chinese Factories and are finding it harder to report accurately because public information on worker protest is becoming unavailable. See: <http://www.clb.org.hk>

**Cambodia's Arbitration Council**  
**Analysis of legal framework and Remedy Model**  
**Assessment to inform Company Remedy Strategy**

The information provided here obtained through desk based research and interviews with Cambodia experts. Much of the information in this section is draw from the following article: van Noord, H., H. S. Hwang, and K. Bugeja. 2011. Cambodia's Arbitration Council: Institution-Building in a Developing Country, *Working Paper 24, ILO*, August 12, 2011. [http://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---dialogue/documents/publication/wcms\\_166728.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/publication/wcms_166728.pdf)

**Background**

The US-Cambodia bilateral trade agreement of January 1999 stipulated that Cambodia could access additional preferential trade quota worth 9% or USD 56.4 million in 2002, rising to 14% in 2003 and 18% in 2004 if labour conditions improved. To access this additional quota and in response to international pressure, Cambodia's Arbitration Council (AC) was created to show progress on domestic labour conditions. Today it is considered 'a landmark institution of justice in Cambodia' resolving many cases affordably, transparently, and quickly, with high levels of confidence in its independence, credibility and effectiveness felt by its tripartite stakeholders, and a process that provides benefit to the economy and creates conditions for foreign direct investment due to improved working conditions and decreased strike action.

Due to limited trust between companies, trade unions and government, the ILO took on the role of negotiating between these stakeholders to develop the AC. Tripartism and its concepts of cooperation, consultation, negotiation, and compromise underpin the AC model. Examples include: (1) Stakeholder groups recommend arbitrators, but they must not be officials of unions, employer organizations, or the government; (2) The AC was created as an independent statutory body outside the umbrella of the formal judiciary to ensure its independence; (3) To build trust in the AC it was decided its decisions should be voluntary, but later (after trust had been built) it was agreed parties could agree to binding decisions on an ad hoc basis. Today, the lack of binding decision making is cited as one of the limitations of the AC; (4) To prevent interference in its operations, the AC is funded by donors instead of the Cambodian government. This provides a constant sustainability issue; and, (5) the AC has a strong advocacy/capacity building function which is important as it builds public confidence in, and knowledge of, the mechanism.

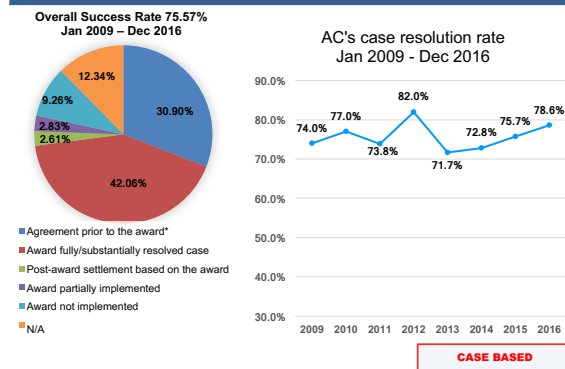
The fact that some of the 'tripartite' design features adopted at the CA's inception to ensure stakeholder acceptance also render the mechanism vulnerable, does not mean they were 'bad decisions'. Instead, this evidences how important it is to design a collaborative tripartite grievance mechanism based on 'what will practically' work at that time given local conditions, i.e. importing ideal best practice models will not always work. As conditions change, strategies should be implemented to mitigate and overcome weaknesses in the model. In 2004 the ILO handed over its role in the oversight and management of the AC to the newly established Arbitration Council Foundation. Going forward the AC's role may change as a result of the new Cambodian Draft Law on the Procedure of Labour Dispute Resolution (currently dropped) which would require it to hear individual disputes, prevent cases coming to it other than from most-representative trade unions, and see its role expand regionally. Some of these are useful reforms that aim to address relevant challenges. In addition, the mandate of a new labour court required by the 2014 Law on the Organisation of Courts may impact the functions of the AC.

Useful internet links include:

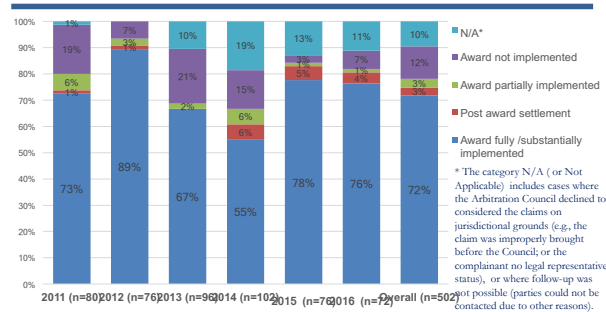
- <http://www.arbitrationcouncil.org/>
- Prakas on the Arbitration Council, Chapter 1: Composition of the Arbitration Council, s <http://www.arbitrationcouncil.org/en/resources/labour-law-and-regulations/prakas>
- For comment on brands objecting to the draft law (now dropped) see: <https://www.cambodiadaily.com/news/us-brands-object-draft-wage-dispute-settlement-laws-131484/>
- For business objecting to law: <http://www.sxhlaw.com/ch/post/73/Businesses-Provide-Comments-on-Labor-Dispute-Resolution-Draft-Law>
- For the Court Law see Article 27, Draft Law on the Organisation of Courts: requires Labour Court Judges of first instance to take the advice of both a union and employer expert before making decisions. [http://sithi.org/admin/upload/law/02\\_CCHR\\_Draft\\_of\\_Law\\_of\\_the\\_Organization\\_of\\_the\\_Courts\\_English.pdf](http://sithi.org/admin/upload/law/02_CCHR_Draft_of_Law_of_the_Organization_of_the_Courts_English.pdf). <http://www.phnompenhpost.com/national/labour-courts-set-come-play-2017>

Excerpts from Presentation of Cambodian Arbitration Council Data

Successful Resolution Rate

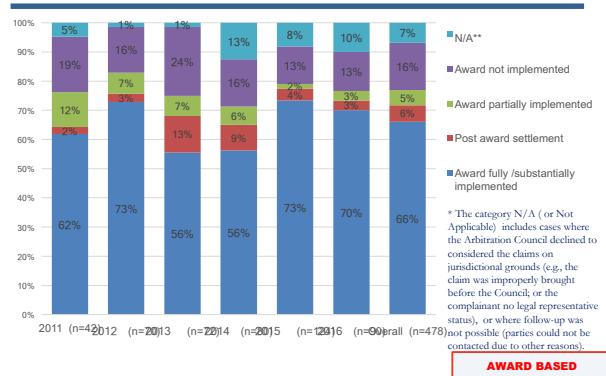


Compliance Status of **Binding Awards**



Note: Binding Awards includes Voluntary Binding Selection Prior Award; Binding due to Parties' MoU (effected during 2011-2014); Binding after 8 days no-objection

Compliance Status of **Non-Binding Awards**



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<sup>1</sup> Michele is an ADR expert and human rights lawyer. She is an access to justice expert with much experience working with states often in post conflict settings to improve access to justice for poor, vulnerable and marginalised citizens. She is a United Nations Rule of Law Expert, an International Security Sector Advisory Team Expert, and a U.K HMG Stabilisation Unit Deployable Civilian Expert. She is a mediator and facilitator and barrister and solicitor of the High Court of New Zealand. Michele is Director of Cerno, a collaborative of individuals focussed on helping companies and governments address human rights and modern slavery issues. She holds a Masters in Law and a Masters in Business Studies (Negotiation, Mediation and Arbitration) and is a Barrister and Solicitor of the High Court of NZ.

<sup>2</sup> Abinaya is a graduate of International Relations and History from the London School of Economics and a researcher in Cerno. Abinaya's degree had specific focus on politics and international development in the Southeast Asian, South Asian and Latin American regions help add depth to her research work. She is especially interested in research encompassing sexual and gender based violence in extremist cultures, the role of modern day slavery in development programs and humanitarian crisis management.

## ENDNOTES

All websites referred to were accessed by the Author between September – October 2017.

<sup>3</sup> United Nations. (2011). *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*. See commentary on Principle 26 which describes the state remedial process.  
[http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

<sup>4</sup> This paper does not provide legal advice. It is however noted that usually no privity of contract will exist between a company and its suppliers' workers, and their suppliers' workers. Instead it is assumed that by being an ethical company the corporate reader of this paper would want to ensure it made good on providing accessible remedy down its supply chain in accordance with the international norms and other non- polycentric governance requirements, e.g. trade industry bodies and member groups codes of conduct.

<sup>5</sup> The UNGPs have created a non-binding international norm requiring states to prevent, investigate, punish and redress [human rights abuses] through effective policies, legislation, regulations and adjudication (Pillar 1: Principle 1) and that companies should avoid infringing human rights and address adverse human rights impacts where they are involved. Companies' responsibility respect human rights is recorded in the UNGPs a "global standard of expected conduct" (Pillar 2: Principle II onwards).

<sup>6</sup> Op. cit. 3 UNGP Principle 25 Commentary.

<sup>7</sup> See three references:

1. UNGP Principle 25 Commentary
2. United Nations and Office of the High Commissioner for Human Rights. (2014). *Frequently Asked Questions about the Guiding Principles on Business and Human Rights*. p 35. Answer to Question 35: "But it is also appropriate for companies to provide remedy, either directly or through cooperation with other State-based or non-State remedy mechanisms, when they identify that they have caused or contributed to an adverse human rights impact."  
[http://www.ohchr.org/Documents/Publications/FAQ\\_PrinciplesBusinessHR.pdf](http://www.ohchr.org/Documents/Publications/FAQ_PrinciplesBusinessHR.pdf)
3. Corporate Human Rights Benchmark (2017) which ranked 98 large companies on their human rights scores for the first time in 2017 found in relation to remedy: "**Involvement with state-based grievance mechanisms (C.6):** Marks & Spencer Group (AG/ AP) and Adidas (AP) earned the only 1's for this indicator, committing to not impeding state-based grievance processes and indicating that they do not require affected individuals to waive their right to use such external mechanisms in order to participate in the company's mechanism. Hanesbrands (AP) and BHP Billiton (EX) earned the only 2's for this indicator by additionally clarifying how they proactively cooperate with state based mechanisms."  
Corporate Human Rights Benchmark (2007). *Key Findings 2007*. At pg. 28 (Accessed September 2017  
<https://www.corporatebenchmark.org/sites/default/files/styles/thumbnail/public/2017-03/Key%20Findings%20Report/CHRB%20Key%20Findings%20report%20-%20May%202017.pdf>

<sup>8</sup> Op. Cit. 3 UNGP Principle 22 Commentary.

<sup>9</sup> Colombia Law School Human Rights Clinic and Harvard Law School International Human Rights Clinic (November 2015). *Righting Wrongs? Barrick Gold's Remedy Mechanism for Sexual Violence in Papua New Guinea: Key Concerns and Lessons*

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<http://hrp.law.harvard.edu/wp-content/uploads/2015/11/FINALBARRICK.pdf>

<sup>10</sup> Arbitration Council Foundation (2014). Report on the Arbitration Council's Achievements and Challenges to the Social Accountability Forum under the Demand for Good Governance Project (DFGG). Author accessed website September 2017 to extract information on reduction of strikes and impact on business conditions in Cambodia <http://www.arbitrationcouncil.org/en/post/29/AC-Achievements-and-Challenges-under-DFGG>

<sup>11</sup> The International Labour Organisation is well adept at providing technical assistance and the United Nations Office of the High Commissioner for Human Rights has released recent guidance and information under its Accountability and Remedy Project on the state formal and informal system which donors could look to fund implementation of through technical assistance.

<sup>12</sup> For Acas Guidance on OGMs see: <http://www.Acas.org.uk/media/pdf/f/m/Acas-Code-of-Practice-1-on-disciplinary-and-grievance-procedures.pdf>

<sup>13</sup> For the fact that Myanmar's new Mediation Law requires factories over a certain size establish working committees, see C Fletcher, L Eidger, *Labour Disputes in Myanmar: From the Workplace to the Arbitration Council* (BSR, Research Report, May 2017) [https://www.bsr.org/reports/BSR\\_Labor\\_Disputes\\_in\\_Myanmar.pdf](https://www.bsr.org/reports/BSR_Labor_Disputes_in_Myanmar.pdf)

<sup>14</sup> Interview with Aaron Halegua, practicing lawyer, consultant, and Research Fellow at NYU Law School's US-Asia Law Institute and its Centre for Labour and Employment Law. September 6 2017. See [aaronhalegua.com](http://aaronhalegua.com) for access to useful articles on Chinese labour relations issues.

<sup>15</sup> Need to take account of end users views is covered during a discussion later at 3.2.1. Of note the CHRB found very few companies did this [bid 7 (3) at pg. 28].

<sup>16</sup> For useful 3<sup>rd</sup> party resources see:

1. M. Ebisui, S. Conway, C. Fenwick, *Resolving Individual Labour Disputes. A Comparative Overview.* (ILO, Geneva, 2016)  
[http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms\\_488469.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_488469.pdf)
2. Between 2012 and 2014 the International Commission of Jurists published the beginning of a series of country reports on their frameworks for the resolution of human rights grievances caused by companies. They provide an excellent resource. See:  
<https://www.icj.org/category/publications/access-to-justice-human-rights-abuses-involving-corporations/>
3. Consultancies, NGOs and Academics all undertake studies which are very useful. Examples drawn on for this research paper include:
  - a. Op. cit. 13
  - b. Open Society Foundations (OSF), *Migrant Workers' Access to Justice at Home: Nepal* (June 2014)  
[https://www.opensocietyfoundations.org/sites/default/files/migrant-nepal-report-english-20140610\\_1.pdf](https://www.opensocietyfoundations.org/sites/default/files/migrant-nepal-report-english-20140610_1.pdf)

<sup>17</sup> Many donors and organisations have policy and programming on legal empowerment issues. The Open Society Foundation is a leading promoter of legal empowerment: <https://www.opensocietyfoundations.org/projects/legal-empowerment/how-it-works>

<sup>18</sup> For the different tripartite outreach programmes see:

- a. <http://www.ccma.org.za/Media/ArticleID/101/CCMA-CAPACITY-BUILDING-AND-OUTREACH-SERVICES> (South Africa, CMMA)
- b. <http://www.arbitrationcouncil.org/en/media/news/3/5> (Cambodia, Arbitration Council)
- c. <http://www.Acas.org.uk/index.aspx?articleid=2031> (UK, Acas)

<sup>19</sup> For information on the AC's outreach programme see:

<http://www.arbitrationcouncil.org/en/services/training/radio-programs>

<sup>20</sup> An amendment to the U.K. Immigration Act brought about these changes in 2017 See Immigration Act Amendment and It has received an additional £2 million and 70 staff members, however the task is enormous so they are applying a prioritisation strategy. <http://www.gla.gov.uk>, <http://www.gla.gov.uk/media/3213/jolly-180717-glaa-budget-and-staffing-levels.pdf>

<sup>21</sup> Announcement of Sir David Metcalf's role, see: <https://www.gov.uk/government/news/sir-david-metcalf-named-as-the-first-director-of-labour-market-enforcement>

<sup>22</sup> For scope of Sir David Metcalf's role, see: <https://www.gov.uk/government/publications/employment-agency-standards-eas-inspectorate-enforcement-policy-statement>

<sup>23</sup> For powers of the Equality and Human Rights Commission see: <https://www.equalityhumanrights.com/en/our-legal-action/our-powers>. Other stakeholders include: The Independent Anti-Slavery Commissioner; Health and Safety Executive; Police; local authorities; Home Office Immigration Enforcement teams; and The Insolvency



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Service, see: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/629872/labour-market-enforcement-strategy-introductory-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/629872/labour-market-enforcement-strategy-introductory-report.pdf)

<sup>24</sup> Relevant references for each point in sentence are as follows:

- For law articulating investigation and enforcement see: Chapter 9 of the 2002 Labour Law which provides for a labour inspectorate under the Ministry of Employment, Labour and Social Welfare, and details the role and responsibilities of labour inspectors. See also Chapter 11 Article 187 onwards for the role of Inspectors: “to ensure the application of the legislation concerning the conditions of work and the protection of workers in the exercise of their profession, such as provisions relating to hours of work, wages, safety, hygiene and welfare, employment of women, children and persons with disabilities, collective disputes, individual labour disputes, collective agreements, employee representation and other related matters.” [http://www.social-protection.org/gimi/gess/RessourcePDF.action;jsessionid=zI3AE4d\\_VZfAL9bIbaHeVLg1QZUG6XBJ5ITBLYXN3gYSrnBdaLz!-284860027?ressource.ressourceId=9590](http://www.social-protection.org/gimi/gess/RessourcePDF.action;jsessionid=zI3AE4d_VZfAL9bIbaHeVLg1QZUG6XBJ5ITBLYXN3gYSrnBdaLz!-284860027?ressource.ressourceId=9590) (Labour Law 2002 in French)
- For fact the system is not working see: “This is what we die for” Human Rights Abuses in the Democratic Republic of the Congo Power the Global Trade in Cobalt, (2016), Amnesty International and Afrewatch see: “This is what we die for” Human Rights Abuses in the Democratic Republic of the Congo Power the Global Trade in Cobalt, (2016), Amnesty International and Afrewatch, page 8 see: <https://www.amnesty.org/en/latest/news/2016/01/Child-labour-behind-smart-phone-and-electric-car-batteries/>. Also see specific to the cobalt supply chain, in 1999 The Service d’Assistance et d’Encadrement du Small Scale Mining (SAESSCAM) government agency was established to regulate artisanal mining and improve conditions for artisanal miners (20% of cobalt production is through artisanal mines), but it only operates in authorized artisanal mining areas (ZEAs) so has inadequate coverage.
- For statistic on labour inspectors (number is 243) see US Department of Labour Report (2015): <https://www.dol.gov/sites/default/files/images/ilab/child-labor/CongoDemocraticRepublic.pdf>
- For population/size of country see: <http://data.un.org/CountryProfile.aspx?crName=democratic%20republic%20of%20the%20congo>

<sup>25</sup> For information about the Bangladesh Alliance see: <http://www.bangladeshworkersafety.org>. For information about the Bangladesh Accord see: <http://bangladeshaccord.org>

<sup>26</sup> Author interview with ILO staff member, 10 October 2017: “Although the Royal Thai Government has set up fishing vessel inspections in major ports, labour law violations were identified in less than 2% of vessels in 2016”

<sup>27</sup> Interview with Lysbeth Ford, GLAA, 29 September 2017.

<sup>28</sup> For information on the GLLA Supermarket and Suppliers Protocol see: <http://www.gla.gov.uk/whats-new/press-release-archive/23310-supermarkets-and-suppliers-protocol-with-the-gla/>

<sup>29</sup> For information about the NGOs the GLAA works with see: <http://www.gla.gov.uk/publications/resources/glaa-partner-videos/>

<sup>30</sup> See these two references showing the Africa Union’s work to incorporate the UNGPs in its policies:

1. Workshop meetings this year at the AU Headquarters in Addis Ababa: [https://eeas.europa.eu/headquarters/headquarters-homepage/23017/workshop-au-policy-business-and-human-rights-set-take-place-addis-ababa\\_en](https://eeas.europa.eu/headquarters/headquarters-homepage/23017/workshop-au-policy-business-and-human-rights-set-take-place-addis-ababa_en).
2. This news article (accessed September 2017) highlighting various issues to do with the AU implementing such a policy: <https://theconversation.com/why-the-african-union-must-press-ahead-with-a-business-and-human-rights-policy-75712>

<sup>31</sup> Examples of grievance mechanisms operated by Development Banks is the Compliance Advisor Ombudsman of the World Bank Group. Others have similar processes, i.e. the African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development, Inter-American Development Bank.

For a detailed comparison and discussion of various initiatives see SOMO’s publication: SOMO. *The Patchwork of Non-Judicial Grievance Mechanisms - Addressing the limitations of the current landscape* (2014) at: <https://www.grievancemechanisms.org/attachments/ThePatchworkofNonJudicialGrievanceMechanisms.pdf>

<sup>32</sup> For recent papers on the International Tribunal on Business and Human Rights see:

1. <http://www.sccinstitute.com/about-the-scc/news/2017/new-business-and-human-rights-arbitration-rules-a-call-by-international-law-experts/>
2. <http://www.sccinstitute.com/about-the-scc/news/2017/arbitrating-business-related-human-rights-disputes/>

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<sup>33</sup> J. Cockayne, N. Grono, K Panaccione (Introduction). “Special Issue Slavery and the Limits of International Criminal Justice.” *Journal of International Criminal Justice*, Volume 14, Issue 2, 1 May 2016, Pages 253–267 See also for discussion: [https://blog.oup.com/2016/07/slavery-international-criminal-justice/?utm\\_source=twitter&utm\\_medium=oupacademic&utm\\_campaign=oupblog](https://blog.oup.com/2016/07/slavery-international-criminal-justice/?utm_source=twitter&utm_medium=oupacademic&utm_campaign=oupblog)

<sup>34</sup> Organisation for Economic Cooperation and Development (OECD). 2011. *OECD Guidelines for Multinational Enterprises*. OECD Publishing. Part 1 Chapter IV Human Rights, pgs. 31-34. And various in Part 2 for NCPs <https://www.oecd.org/corporate/mne/48004323.pdf>

<sup>35</sup> OECD *Implementing the OECD Guidelines for Multinational Enterprises: The National Contact Points from 2000 – 2015*. OECD Publishing. See: <http://www.oecd.org/corporate/mne/15-years-of-ncps.htm>

<sup>36</sup> For more detail on how OECD NCPS function see: <http://mneguidelines.oecd.org/ncps/>

<sup>37</sup> For information on the types of cases coming to OECD see Op. Cit. 35, chart on page 1: <http://mneguidelines.oecd.org/15-Years-of-the-National-Contact-Points-Highlights.pdf>. Also see the main claimants are NGOs (48%), Trade Unions (25%), and individuals (19%).

<sup>38</sup> For reviews of the NCP’s since their inception see reports by the organisation OECD Watch at <https://www.oecdwatch.org/oecd-guidelines/ncps>. Also see Op. Cit. 35. <http://mneguidelines.oecd.org/15-Years-of-the-National-Contact-Points-Highlights.pdf> and <https://mneguidelines.oecd.org/oecd-report-15-years-national-contact-points.pdf>

<sup>39</sup> For information on the Dutch NCP case see: [https://www.oecdwatch.org/cases/Case\\_446](https://www.oecdwatch.org/cases/Case_446)

<sup>40</sup> General views expressed by representatives from U.K’s Acas, South Africa’s CCMA and the Cambodian Arbitration Council, with UK employment lawyers, with ILO officials, and with various labour law academics. Interviews conducted in September and October 2017.

<sup>41</sup> Author’s interview with Aaron Helegua (September 2017) and Chinese Mediation Act, Chapter 2, Article 10.

<sup>42</sup> For satisfaction with mediation in the U.K. see:

- 2012 survey of Acas’s Individual Conciliation service (old name for what is now Early Conciliation service, i.e. just when you need a mediator and may/may not be thinking of going to the Employment Tribunal) put satisfaction levels at 81%: <http://m.Acas.org.uk/media/pdf/2/9/Acas-Individual-Conciliation-Survey-2012.pdf>
- 2015 survey of Acas’s Early Conciliation service (the renamed ‘Individual Conciliation’, i.e. at any time, but definitely before you are allowed to lodge an Employment Tribunal case, you’ll be asked to do this) put satisfaction levels at 83%: <http://m.Acas.org.uk/media/pdf/2/9/Acas-Individual-Conciliation-Survey-2012.pdf>
- 2015 survey of Acas’s post-ETI Conciliation Service (this is what happens if Early Conciliation does not work and you go ahead to lodge an Employment Tribunal case – you’ll be asked again to try mediation), puts satisfaction levels (claimants and employers) at 80%. <http://www.acas.org.uk/media/pdf/2/t/Evaluation-of-Acas-conciliation-in-Employment-Tribunal-applications-2016.pdf>

For satisfaction with Employment Tribunal arbitration in the U.K. see:

- BIS Review of Employment Tribunal and satisfaction levels found in 2013 that 74% of claimants were satisfied, and 1 in 4 dissatisfied, and that 63% of employers were satisfied, with 1 in 4 also dissatisfied. See pages 12, 80 and 81 of Findings from the Survey of Employment Tribunal Applications (BIS) 2013 (latest records, 6<sup>th</sup> in series) at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/316704/bis-14-708-survey-of-employment-tribunal-applications-2013.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/316704/bis-14-708-survey-of-employment-tribunal-applications-2013.pdf)

For satisfaction levels of claimants in civil court in the U.K where claims are usual for money see:

- “The survey of individual claimants found that the majority of claimants reported that they would ideally have avoided court action, they had taken some form of alternative action to avoid going to court, and had sought advice on whether or not to make a claim before they did so. These findings suggest that the civil courts are seen as a last resort to resolve disputes.” See Civil Court User Survey Findings from a postal survey of individual claimants and profiling of business claimants (Ministry of Justice, 2015), page 1 and from 46: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/472483/civil-court-user-survey.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/472483/civil-court-user-survey.pdf)

<sup>43</sup> For information on governance of Acas see: <http://www.Acas.org.uk/index.aspx?articleid=1401>

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<sup>44</sup> For information on the tripartite nature of South Africa's framework for the protection of labour rights see: *ILO Working Paper No. 47: Assessing South Africa's Commission for Conciliation, Mediation and Arbitration (CCMA)*, Paul Benjamin, Governance and Tripartism Department International Labour Office, (Geneva, 2013), pg. 1: "Since South African labour relations <were> subject to a complex legacy of political marginalisation and systemic inequality, legal reforms in both individual and collective dispute resolution have sought to address not only pragmatic concerns such as the accessibility and efficiency of processes, but also to encourage opportunities for more harmonious and constructive labour relations by promoting the role of consensus-seeking processes such as conciliation and forums for worker participation." And at page 7: "The introduction of the Labour Relations Act and the subsequent establishment of institutions such as the CCMA were based on the idea that 'the promotion of social dialogue [is] the most appropriate way of managing not only the transition to democracy but also the changes which were unfolding in the workplace'. See *National Union of Mineworkers v Mazista Tiles (Pty) Ltd* (2006) 27 ILJ 471 (SCA); [2003] 7 BLLR 631 (SCA) at para 12.

<sup>45</sup> For information on NEDLAC in South Africa see <http://new.nedlac.org.za>. For a description of its mandate see page 4 of NEDLAC's 2016/17 Annual Report at <http://new.nedlac.org.za/wp-content/uploads/2017/09/Nedlac-Annual-Report-2017-V20-300817-01-September-2017.pdf>:

The National Economic Development and Labour Council (Nedlac) is the vehicle by which government, labour, business and community organisations will seek to cooperate, through problem-solving and negotiation, on economic, labour and development issues, and related challenges facing the country. Nedlac will conduct its work in four broad areas, covering: Public finance and monetary policy, Labour market policy, Trade and industrial policy, Development policy. Nedlac is established in law through the National Economic Development and Labour Council Act, Act 35 of 1994, and will operate in terms of its own constitution."

<sup>46</sup> For information on the South African Millennium Council see: <https://sites.google.com/a/alphageek.co.za/mlc/>

<sup>47</sup> The CCMA is created by LRA Chapter VII: Dispute Resolution of the LRA. See Article 116(3) which makes clear the composition of the Governing Council: 1 independent person for Chair, 3 from each constituency [https://www.acts.co.za/labour-relations-act-1995/116\\_governing\\_body\\_of\\_commission](https://www.acts.co.za/labour-relations-act-1995/116_governing_body_of_commission)

Joint employer-union Bargaining Councils then undertake conciliation and mediation like CCMA for disputants in their sector: see section 28 of the LRA. For a list of all sectors covered by Bargaining Councils see:

<http://www.workinfo.org/index.php/legislation/item/1180-list-of-registered-bargaining-councils-per-industry-sector-in-south-africa-as-on-1-july-2015>

Statutory Councils exist where Unions do not represent over 50% of workers and may be quashed if employer's do not participate. Their role includes resolving disputes at the local company level.

<sup>48</sup> Op. Cit. 7(3) at pg 28: **Involving users in the design and performance of the mechanism (C.3):** No company earned a 2 for this indicator, but Adidas (AP), Hanesbrands (AP), VF (AP), Anglo American (EX), BP (EX), Rio Tinto (EX), Total (EX), Vale (EX), and Repsol (EX) earned the only 1's, pointing the way on where to start in engaging potential and actual users in design, implementation, and performance.

<sup>49</sup> The Fair Labour Association presents an interesting model: It's Third Party Complaint Mechanism allows any person, group or organization to report serious violations of workers' rights in facilities used by any company committed to FLA labour standards. It is not intended to replace or undermine existing internal grievance channels in factories, or legal remedies available at the country level. Rather, it is intended as a tool of last resort. FLA's 2015 Public Annual Report provides examples of workers and unions accessing the mechanism and receiving remedy through remediation. The process is to first lodge a claim, after which the company is given time to investigate and/or FLA investigates. If a breach of FLA's labour code is found to have occurred then a sustainable remediation plan implicating the FLA member and its supplier is required.

<sup>50</sup> For more information about the Issara Institute, see <https://www.issarainstitute.org>

<sup>51</sup> See U.K. Government's review of impact of fees on rates of cases into Tribunal: <https://consult.justice.gov.uk/digital-communications/review-of-fees-in-employment-tribunals/>. News report saying they fell from about 5,000 a month to about 1,500 a month. <http://www.bbc.co.uk/news/election-2017-40014115>

<sup>52</sup> See decision: <https://www.supremecourt.uk/cases/docs/uksc-2015-0233-judgment.pdf> See news reports: <http://www.bbc.co.uk/news/uk-40727400>

<sup>53</sup> Author's interview with Gill Dix, Head of Strategy, Acas (25 September 2017) noting that in months July - October 2017 more tribunal cases have been lodged, but that it was too early to tell the impact of cutting fees.

<sup>54</sup> Author's interview with Linklaters Employment Lawyers, pro bono counsel for Dr Beatt (28 September 2017). Also see: *Beatt v Croydon Health Services NHS Trust* [2017] EWCA Civ 401 <https://www.employmentcasesupdate.co.uk/site.aspx?i=ed35513>.

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<sup>55</sup> The U.K. system for addressing forced labour, like most in Europe, has been noted as been prosecution heavy without enough work done on prevention and victim support. See the 2016 EC Report to the EU on the progress made by members in the fight against trafficking in human beings in as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims. See: [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/trafficking-in-human-beings/docs/commission\\_report\\_on\\_the\\_progress\\_made\\_in\\_the\\_fight\\_against\\_trafficking\\_in\\_human\\_beings\\_2016\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/trafficking-in-human-beings/docs/commission_report_on_the_progress_made_in_the_fight_against_trafficking_in_human_beings_2016_en.pdf)

<sup>56</sup> At time of writing (October 2017) a review of the National Referral Mechanism is underway and it is expected to respond to criticisms that it is not responsive enough to the needs of suspected victims of modern slavery. Author's interview with Salvation Army (who implements the system) and see the 2014 NRM review at: <http://webarchive.nationalarchives.gov.uk/20141202113228/https://nrm.homeoffice.gov.uk/documents/2014/11/nrm-final-report.pdf>.

<sup>57</sup> At time of writing a Modern Slavery Victim Support Bill is before the U.K. Parliament, see: <https://services.parliament.uk/bills/2017-19/modernslaveryvictimsupport.html>. For a copy of the Bill see: <https://publications.parliament.uk/pa/bills/lbill/2017-2019/0004/18004.pdf>

Also for state failure to prosecute see the 2017 USA TIP Report summarised the following impediments to prosecution: “Worldwide convictions of human trackers listed in this year’s Report were fewer than 10,000, while estimates of the number of victims of human tracking remain in the tens of millions. ...Criminal justice systems around the world are faced with cases that exceed their processing capacity. Limited funding and poor training for personnel impede the investigation of ... human trafficking.” US Trafficking in Persons Report (2017), page 6. See: <https://www.state.gov/documents/organization/271339.pdf>

<sup>58</sup> Interview with Gill Dix, Head of Strategy, ACAS. 26 September 2017. Also, see Acas’s Booklet “Managing Conflict at Work”: <http://www.Acas.org.uk/media/pdf/j/o/Managing-conflict-at-work-advisory-booklet.pdf>

Interview with Nersan Govender, CCMA Commissioner. 28 September 2017. Also, see CMMA’s outreach programme focussed on transforming workplace relations which includes a component on empowering employers and workers to resolve their own conflicts informally: <http://www.ccma.org.za/Training/Programmes>

<sup>59</sup> Op. cit. 12.

<sup>60</sup> Interview with Linklaters Employment Lawyers, 28 September 2017 commenting that the Acas codes were once mandatory, but enforcement was on a procedural rather than qualitative basis, which led to protest and them becoming voluntary.

<sup>61</sup> Op. cit. 13.

<sup>62</sup> For information about OHCHR’s Accountability and Remedy Project see: <http://www.ohchr.org/EN/Issues/Business/Pages/OHCHRaccountabilityandremedyproject.aspx>

<sup>63</sup> For work by ROL Advisers: The 2012 UN High Level Declaration on Rule of law noted emphasized the right of equal access to justice for all, including members of vulnerable groups, and reaffirmed the commitment of Member States to taking all necessary steps to provide fair, transparent, effective, non-discriminatory and accountable services that promote access to justice for all [para. 14 and 15]. For more information on the UN’s work on access to justice see here: <https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/>;

<sup>64</sup> For work of SSR Advisers: The OECD’s work on SSR dates from 2005 and the 2008 handbook which was revised to include sections on human rights/rule of law can be found here: <http://www.oecd.org/governance/governance-peace/conflictandfragility/oecdhandbookonsecuritysystemreformsupportingsecurityandjustice.htm>

<sup>65</sup> By way of example of potential opportunity to increase focus on worker remedy mechanism by the SSR/ROL community from 2008 – 2015 DFID’s programme of SSR support to improve the functioning of the police in D.R.C was valued at spent £60 million. In the programme design phase if child labourers in Cobalt mines had been identified as a key user group funds might have gone into programming to improve inspection and enforcement of standards in the mining sector by labour inspectors/police. Of course, different programmes will always have their particular focus, but it seems there is an opportunity to focus more on workers, especially forced labours, as a user group that could receive attention from normal SSR/ROL programming. For more information on DFID’s programme see: <https://devtracker.dfid.gov.uk/projects/GB-1-113961>

<sup>66</sup> Op. Cit 1. Principle 35.

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<sup>67</sup> EC. (2012). *Support to Justice and the Rule of Law: Review of Past Experience and Guidance for Future EU Development Cooperation Programmes*, Tools and Methods Series Reference Document No. 12, at pg 59. see: <https://publications.europa.eu/en/publication-detail/-/publication/4fa41259-0f86-45b0-b199-06319f17078f/language-en>

<sup>68</sup> For the relaxation of evidentiary rules for arbitration proceedings in the U.K. see The Employment Tribunals Rules of Procedure 2013, Article 41: that Employment Tribunals are “not bound by any rule of law relating to the admissibility of evidence in proceedings before the courts”.  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/429633/employment-tribunal-procedure-rules.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/429633/employment-tribunal-procedure-rules.pdf)

<sup>69</sup> Interview with Cambodian Arbitration Council Foundation staff, 17 November 2017.

<sup>70</sup> For user dissatisfaction with payment of Employment Tribunal Awards see: U.K. Department for Business and Innovation Skills (BIS). (2013). *Payment of Tribunal Awards Study*. Government publication, at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/253558/bis-13-1270-enforcement-of-tribunal-awards.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/253558/bis-13-1270-enforcement-of-tribunal-awards.pdf)

<sup>71</sup> For new regulation allowing U.K. Department for Business, Energy, and Industrial Strategy (BEIS, the new BIS) to enforce Employment Tribunal decisions see downloadable ‘Employment Tribunal Penalty Enforcement Forms’:  
<https://www.gov.uk/government/publications/employment-tribunal-penalty-enforcement>

<sup>72</sup> Many donors have many guidance documents on ‘access to justice’. This one, although dated (2004) provides a useful summary by UNDP: “Access to Justice Practice Note”, UNDP (2004)  
[https://www.un.org/ruleoflaw/files/Access%20to%20Justice\\_Practice%20Note.pdf](https://www.un.org/ruleoflaw/files/Access%20to%20Justice_Practice%20Note.pdf)

<sup>73</sup> See specifically *Gender Dimensions of Globalisation*, Amelita King Dejardin, Policy Integration and Statistics Department, International Labour Office (Geneva), *A discussion paper presented at the meeting on “Globalisation – Decent Work and Gender”, September 4, 2008, a side-event to the Oslo Conference on Decent Work – A key to Social Justice for a Fair Globalisation*, page 7: “While women’s paid employment has vastly expanded, they are concentrated in lower segments of global supply chains, which are beyond reach of good MNE corporate practices and legal and social protection. Jobs are insecure, wages are low, and working conditions are poor. The gendered production structure has been likened to a pyramid: at the tip are workers in permanent employment with better benefits, social entitlements and better able to organize; towards the bottom are workers employed by 2nd and 3rd tier subcontractors and hired through third-party providers, homeworkers and migrant workers (Barrientos 2007). Third, work in global production systems has replicated and reinforced gender inequalities: women’s segregation in stereotyped “feminine occupations” and lower-skilled jobs; and women’s labour is perceived as more flexible and available at lower cost than men’s.” See: [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---integration/documents/publication/wcms\\_108648.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---integration/documents/publication/wcms_108648.pdf)

<sup>74</sup> Ibid at page 11.

<sup>75</sup> UNDP. (2009). *Primers in Gender and Democratic Governance #2 ‘Gender Equality and Justice Programming: Equitable Access to Justice for Women’* at page 18, see: <http://www.undp.org/content/undp/en/home/librarypage/womens-empowerment/gender-equality-and-justice-programming-equitable-access-to-justice-for-women1.html>

For general ongoing reference see World Bank Group Woman Business and the Law project which collects data on gender inequality in the law. The dataset diagnoses legal barriers limiting women's full economic participation and encourages policymakers to reform discriminatory laws and regulations: <http://wbl.worldbank.org>

See also resources from the Gender, Equality and Diversity (GED) branch of the ILO and their publications on Women at Work. [http://www.ilo.org/gender/Informationresources/Publications/WCMS\\_457086/lang-en/index.htm](http://www.ilo.org/gender/Informationresources/Publications/WCMS_457086/lang-en/index.htm)

<sup>76</sup> Author’s own analysis of the Nepal Security and Justice system as part of an International Security Sector Reform Review Team, Nepal, June 2017. Report not yet released. Also, see U.K. Department for International Development’s rule of law programming in Malawi included components to establish and increase mobile courts and women paralegals, which when reviewed were found to improve women’s access to justice.

<sup>77</sup> Benjamin Harking and Meri Ahberg. (2017) *Access to Justice for Migrant Workers in South-East Asia*. ILO, at page 13. [http://www.ilo.org/asia/publications/WCMS\\_565877/lang-en/index.htm](http://www.ilo.org/asia/publications/WCMS_565877/lang-en/index.htm)

<sup>78</sup> Op. Cit. 58.

<sup>79</sup> Op. Cit. 58.

<sup>80</sup> World Bank and Arbitration Council Foundation Report. (2013). *Are women benefiting and are women engaged? Reflecting on the gender results of the Arbitration Council in Cambodia* Arbitration Council Foundation Publication on Website. See: <http://documents.worldbank.org/curated/en/727311468225599406/pdf/921960BRI038530dia0Learning0Note014.pdf>

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<sup>81</sup> Interview with company representative discussing efficacy of a corporate hotline and the type of calls it received which would include calls from individuals indicating they suffered working conditions amounting to forced labour. September 2017.

<sup>82</sup> Under the U.K. Modern Slavery Act 2015 unless ‘controlling mind’ is proved or other legislation used to bring criminal charges companies cannot be found guilty of the offence of modern slavery. Discussion with criminal barristers.

<sup>83</sup> Flex. July 2016. *Access to Compensation for Victims of Human Trafficking*. Flex Working Paper. Published by Focus on Labour Exploitation. See: <http://www.labourexploitation.org/sites/default/files/publications/DWP-Compensation-F.pdf>

<sup>84</sup> Interviews by author with staff from ACAS, CCMA, and experts on Cambodia Arbitration Council. September/October, 2017.

<sup>85</sup> To improve coordination in enforcement of labour rights in the U.K. see the U.K. Government’s publication: *United Kingdom Labour Market Enforcement Strategy - Introductory Report (1 April 2016 - 31 March 2017)* at page 55. See: <https://feweek.co.uk/wp-content/uploads/2017/07/labour-market-enforcement-strategy-introductory-report.pdf>

<sup>86</sup> <https://www.amnesty.org/en/latest/news/2017/09/democratic-republic-of-congo-government-must-deliver-on-pledge-to-end-child-mining-labour-by-2025/>

<sup>87</sup> U.S Bureau for International Labour Affairs (2015). *Report on Findings on the Worst Forms of Child Labour: DRC: Moderate*. See: <https://www.dol.gov/sites/default/files/images/ilab/child-labor/CongoDemocraticRepublic.pdf> Also, see US TIP Report (2017) <https://www.state.gov/j/tip/rls/tiprpt/countries/2017/271168.htm>

<sup>88</sup> For Apple Inc.’s decision see media reporting: <http://fortune.com/2017/03/03/apple-cobalt-child-labor/>

<sup>89</sup>Op. Cit. 77 at page 11: It records that grievances in origin countries include delayed deployment, jobs not as promised or non-existent jobs (35%), and in destination countries are non-payment, underpayment of wages (31%) and being paid under the minimum wage (21%).

<sup>90</sup> See also ILO General Principles and Operational Guidelines for Fair Recruitment adopted by the Meeting of Experts on Fair Recruitment (Geneva, 5-7 September 2016), Principle 13: “Workers, irrespective of their presence or legal status in a State, should have access to free or affordable grievance and other dispute resolution mechanisms in cases of alleged abuse of their rights in the recruitment process, and effective and appropriate remedies should be provided where abuse has occurred.” [http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---migrant/documents/genericdocument/wcms\\_536263.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/genericdocument/wcms_536263.pdf)

<sup>91</sup> Turning People into Profits: Abusive Recruitment, Trafficking and Forced labour of Nepali Migrant Workers, Amnesty International (2017), see: <https://www.amnesty.ie/wp-content/uploads/2017/06/Amnesty-Nepal-Turning-people-into-profits-v4.pdf>

<sup>92</sup> Migrant Workers’ Access to Justice at Home: Nepal, Open Societies Foundation (2014), see: [https://www.opensocietyfoundations.org/sites/default/files/migrant-nepal-report-english-20140610\\_1.pdf](https://www.opensocietyfoundations.org/sites/default/files/migrant-nepal-report-english-20140610_1.pdf)

<sup>93</sup> Various initiatives exist, for example: <http://www.iccr.org/no-fees-initiative>, <https://www.ihrb.org/employerpays/the-employer-pays-principle>

<sup>94</sup> See Amnesty International and Open Society Foundation Reports above and authors own views based on her assessment of the Nepali Justice system (including interviews with relevant government officials and NGOs in Katmandu) for the International Security Sector Advisory Team in June 2017.

<sup>95</sup> Op. cit. 77.

<sup>96</sup> Op. cit. 13. Interview with BSR Author Chris Fletcher who described the thorough methodology they followed to conduct the analysis (October 2017).

<sup>97</sup> Op. cit. 58.

<sup>98</sup> Many evaluations exist, see here for the AC reporting to the World Bank on their donor programme: [https://arbitrationcouncil.org/uploads/9db9e-acf\\_2nd-quarterly-report-2012.pdf](https://arbitrationcouncil.org/uploads/9db9e-acf_2nd-quarterly-report-2012.pdf)

<sup>99</sup> See Op cit. 42 for examples of ACAS evaluations.

<sup>100</sup> Bai, R. (2011), *The role of the All China Federation of Trade Unions: Implications for Chinese Workers Today*. Working USA, 14: 19–39, at page 25.

<sup>101</sup> Aaron Haleuga. (2016). *Who will Represent China’s Workers? Lawyers, Legal Aid, and the Enforcement of Labour Rights*. US – Asia Law Institute. New York Law University School of Law. His research draws on China Labour Statistical Year Book data from 2013 showing “In 2013, China had 25,000 full-time inspectors covering over 769 million employees—a ratio of roughly one inspector for every 30,000 workers.”