

Right to Remedy

Background

The right to remedy, as enshrined in international human rights law, is a fundamental principle that ensures justice for victims of human rights violations and abuse. This principle is articulated in several international instruments, most notably the United Nations General Assembly's "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law" (hereinafter referred to as the "Basic Principles and Guidelines"). The United Nations Guiding Principles on Business and Human Rights also discuss the right to remedy in the context of business-related human rights harms. Together, these documents provide a comprehensive framework for businesses seeking to understand and implement the right to remedy.

This framework encompasses several key components, including equal and effective access to justice, adequate, effective, and prompt reparation, and access to relevant information concerning violations and reparation mechanisms (Article 11). The Basic Principles and Guidelines detail various forms of reparation that victims are entitled to, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition (Article 18). These components form the basis of all remedy.

Restitution aims to restore the victim to the original situation before the violations occurred, which may include restoring liberty, employment, property, and other fundamental rights (Article 19). Compensation addresses economically assessable damage, including physical or mental harm, lost opportunities, and material damages (Article 20). Rehabilitation involves medical and psychological care and legal and social services (Article 21). Satisfaction may include measures such as cessation of violations, truth-telling, public apologies, and sanctions against those responsible (Article 22). Guarantees of non-repetition focus on preventing future violations through measures like ensuring civilian control of military and security forces, strengthening judicial independence, and providing human rights education (Article 23).

The Basic Principles and Guidelines emphasize the importance of non-discrimination in applying these principles (Article 25) and ensuring that they do not restrict rights or obligations arising under domestic and international law (Article 26).

The UNGPs further elaborate on the concept of remedy within the context of business and human rights. The UNGPs emphasize the responsibility of both state and non-state actors, including businesses, in respecting and ensuring the right to remedy. They advocate for effective access to remedy through judicial, administrative, legislative, and non-judicial processes, recognizing the importance of both state-based and non-state-based grievance mechanisms. The UNGPs also establish effectiveness criteria for non-judicial grievance mechanisms, including legitimacy, accessibility, predictability, equitability, transparency, rights compatibility, and continuous learning.

In addition to the international framework, the right to remedy under Mexican law introduces the concept of collective remedy, as stipulated in Article 27, fraction VI of the General Victims Law. This provision recognizes the right to collective remedy for groups, communities, and social organizations affected by violations impacting individual rights of their members or causing

collective damage. The aim of collective remedy in Mexican legislation is to acknowledge and dignify collective victims, in order to reconstruct the social and cultural fabric, promote the psychosocial recovery of affected groups and communities, and advocate for the human rights of these communities.

Remedy Menu

To guide the UBM in redressing instances of adverse human rights impacts, the following categories of violations are listed along with examples of potential remedies using the framework just described. These examples are meant to be illustrative and not exhaustive, and the UBM must ensure that it listens to and incorporates the perspectives and needs of the victims in tailoring these remedies.

1. Labor Rights Violations:

- **Restitution:** Reinstatement of wrongfully terminated employees, restoration of original job positions or equivalent positions.
- **Compensation:** Payment for both pecuniary and non-pecuniary losses, including back pay, payment for lost benefits such as health insurance and pension contributions, and compensation for moral damages like distress and reputational harm resulting from unfair labor practices.
- **Rehabilitation:** Access to counseling and psychological support services where needed.
- **Satisfaction:** Public apologies, acknowledgment of wrongdoing, and assurance of non-repetition.
- **Guarantees of Non-Repetition:** Policy reforms, training for management and staff, monitoring and evaluation mechanisms to prevent future violations.

2. Discrimination and Harassment:

- **Restitution:** Measures to restore dignity, respect, and equal opportunities in the workplace.
- **Compensation:** Financial remuneration for emotional distress or career setbacks.
- **Rehabilitation:** Psychological or medical treatment if required.
- **Satisfaction:** Official apologies, disciplinary action against perpetrators, and a clear public stand against discrimination and harassment.
- **Guarantees of Non-Repetition:** Revising HR policies, implementing sexual harassment training, and establishing clear reporting and response mechanisms.

3. Environmental Harm:

- **Restitution:** Restoration of damaged environments to their original state where possible.
- **Compensation:** Financial reparation to communities or individuals affected by environmental degradation or pollution.

- **Rehabilitation:** Health services and support for communities affected by environmental harm.
- **Satisfaction:** Public admission of responsibility, commitment to environmental sustainability.
- **Guarantees of Non-Repetition:** Implementing more stringent environmental controls and monitoring, changes in operational practices to reduce environmental impact.

4. Infringement of Community Rights:

- **Restitution:** Restoration of access to land, resources, or other entitlements lost due to corporate activities.
- **Compensation:** Financial compensation for loss of livelihood, cultural disruption, or other damages.
- **Rehabilitation:** Support for rebuilding community structures or services disrupted by corporate activities.
- **Satisfaction:** Acknowledgment of adverse impacts, formal apologies, and community engagement in decision-making.
- **Guarantees of Non-Repetition:** Development of community engagement policies, impact assessments, and ongoing dialogue mechanisms.

5. Breaches of Privacy and Data Protection:

- **Restitution:** Measures to restore privacy and security of personal data.
- **Compensation:** Financial redress for any harm caused by the breach.
- **Rehabilitation:** Support services for identity protection and managing consequences of data breach.
- **Satisfaction:** Public acknowledgment of the breach and steps taken to rectify.
- **Guarantees of Non-Repetition:** Strengthening data protection policies, staff training on data security, and regular audits of data protection measures.

6. Forced Labor and Human Trafficking:

- **Restitution:** Immediate cessation of the forced labor conditions, freedom of movement for the affected individuals, and restoration of personal documents or belongings.
- **Compensation:** Payment of all outstanding wages and financial reparations for exploitation and abuse.
- **Rehabilitation:** Psychological and medical treatment, as well as vocational training to assist victims in rebuilding their lives.
- **Satisfaction:** Public acknowledgment of the violation, official apologies to the victims, and transparent reporting on the incident.
- **Guarantees of Non-Repetition:** Implementing stringent supplier audits, revising hiring practices, and establishing whistleblower protections.

7. Violations of Indigenous Rights:

- **Restitution:** Restoration of access to ancestral lands or resources, or provision of alternative lands or resources as agreed upon.
- **Compensation:** Financial reparation for lost income, cultural damage, or environmental harm.
- **Rehabilitation:** Support for cultural revival programs and community rebuilding efforts.
- **Satisfaction:** Formal apologies, recognition of indigenous rights, and engagement in meaningful consultation processes.
- **Guarantees of Non-Repitition:** Establishing policies for free, prior, and informed consent (FPIC) in line with the ILO Indigenous and Tribal Peoples Convention (No. 169), ongoing dialogue with indigenous communities, and regular impact assessments.

8. Health and Safety Violations:

- **Restitution:** Immediate correction of unsafe conditions, provision of safe working environments.
- **Compensation:** Financial remuneration for medical expenses, disability, or loss of life.
- **Rehabilitation:** Access to medical treatment and psychological support services.
- **Satisfaction:** Public acknowledgment of the failure to maintain safe conditions, commitment to health and safety standards.
- **Guarantees of Non-Repitition:** Implementation of comprehensive health and safety management systems, regular audits, and employee safety training.

9. Freedom of Association and Collective Bargaining Rights:

- **Restitution:** Reinstatement of employees terminated for union activities, recognition of unions or elected worker representatives.
- **Compensation:** Back pay and benefits for workers affected by anti-union practices.
- **Rehabilitation:** Creating platforms for dialogue, mutual understanding, and consensual agreements between management and workers or worker representatives.
- **Satisfaction:** Public commitment to respect and promote freedom of association and collective bargaining.
- **Guarantees of Non-Repitition:** Developing a policy on freedom of association, ongoing dialogue with worker representatives, unions and training for management on labor rights.

10. Land Rights and Displacement:

- **Restitution:** Provision of alternative land or housing of equal or better quality, ensuring access to resources and livelihoods.
- **Compensation:** Financial reparation for loss of property, income, or access to resources.

- **Rehabilitation:** Support in relocation efforts, including assistance with integration into new communities.
- **Satisfaction:** Acknowledgment of the impact of displacement, engagement in transparent and fair negotiations with affected communities.
- **Guarantees of Non-Repetition:** Implementation of policies to avoid or minimize displacement, comprehensive impact assessments, and inclusive planning processes.