

Five Takeaways from the 2017 UN Forum on Business and Human Rights

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Business and Human Rights

“A single stick breaks, but the bundle of sticks is strong.” African proverb quoted by Michael Addo of the UN Working Group on Business and Human Rights, 2017 UN Forum

Last week, the United Nations hosted the sixth annual Forum on Business and Human Rights in Geneva. The three-day event provided attendees with informative panels and important updates on the state of the field. Lawyers from [Covington’s business and human rights initiative](#) were in attendance and suggest five important takeaways for business:

1. Engagement is growing faster than ever

Over 2,000 people attended this year’s conference. With 15 to 20 individual sessions each day, attendees heard a diverse range of perspectives from expert panelists representing business, government, NGOs, civil society, law firms, investor organisations, industry associations, community representatives, trade unions, and others. The attendees themselves also reflected a cross section of industries and sectors. Overall, attendance at the Forum reflects the momentum of increasing engagement in the business and human rights field, which has become a serious consideration for a growing number of organizations.

2. This year’s theme was “access to remedy,” a complex and evolving concept

Access to remedy is the third pillar of the UN Guiding Principles on Business and Human Rights (the “UNGPs”), and was the focus of discussions at this year’s Forum. The pillar acknowledges that, even where states and business do their best to implement the UNGPs, a company’s operations may still have negative human rights impacts, and that affected persons should be able to seek redress through grievance mechanisms. Approaching this issue creatively can be an extremely effective way for companies to respond to alleged business-related human rights impacts and to prevent future impacts. Experts spoke about the so-called “bouquet of remedies” (or Michael Addo’s proverbial bundle of sticks), which, combined, provide more comprehensive access to remedy.

- **Legal remedy** in national courts. Substantively, legal remedy involves passing laws to allow victims to pursue statutory claims for business-related human rights harms, and/or allowing claimants to pierce the “corporate veil” by more readily fixing parent companies with tortious/common law liability for the acts of overseas subsidiary or branch operations. Procedurally, it was recognized that effective remedy may require victims of human rights abuse to bring claims against the parent company of a global corporation in its home country, rather than in the country where the abuse occurred, which may

have a less effective court system. Legal challenges are becoming increasingly creative and there was significant discussion of cases before the UK and Canadian courts, in which victims are being allowed to proceed to merits hearings despite jurisdictional challenges.

- **Non-judicial state-based remedies** provide victims of human rights abuses with an alternative to judicial proceedings and include both OECD National Contact Points (“NCPs”), and National Human Rights Institutions (“NHRIs”), responsible for furthering the effectiveness of the UNGPs within their home countries. NCPs and other state-backed supervisory bodies have reported a steady increase in complaints and are working to coordinate their efforts with their international counterparts.
- **Private remedies (“operational grievance mechanisms”)** provided by business. Businesses are still working to improve how they interpret and implement access to remedy, including addressing effectiveness criteria such as accessibility and legitimacy. Appropriate grievance mechanisms will vary by industry, location, workforce, and type of harm. Businesses are encouraged to consider grievance mechanisms early in the set-up of new operations. Business representatives shared creative strategies for ensuring access to remedy for persons impacted by their global operations. For example, several businesses across various sectors are now ensuring the return of recruitment fees where they identify bonded labor. Other businesses are increasing engagement with impacted individuals and communities in order to design tailored remedy mechanisms.

3. Tech is likely to play a major role in the future of business and human rights

Emerging technologies have the potential to assist companies in identifying, monitoring, and mitigating human rights impacts in their supply chains and global operations more broadly. For example, start-ups are using blockchain technology to help business better monitor each transaction in their supply chains, which can assist in monitoring and verifying the treatment of subcontractor and supplier employees. Other start-ups are helping companies stay in direct contact with workers down the supply chain and improving the ease with which those workers can communicate complaints. Of course, technology still poses its challenges. Perhaps most notably, use of technology to monitor employee activity may risk violating privacy rights and technology which may be subject to state intervention can also pose human rights risks. Nonetheless, companies are monitoring innovations in the field, which may ultimately lead to effective, cost-efficient ways to prevent and remedy abuses.

4. An international treaty on business and human rights moves ahead, but with major questions

In 2014, the UN Human Rights Council convened an intergovernmental working group to explore the drafting and adoption of an international treaty on business and human rights. A month before this year’s forum, the working group met to begin treaty negotiations based on [certain proposed elements](#) for consideration. Reports at the Forum of last month’s meeting suggest that the working group continues to move forward, with an aim towards more serious negotiations. While the implications of passage would be significant for business, the future of the process remains unclear. Many countries are not participating because they perceive the process to be premature, and there is significant disagreement between stakeholders on substance. The working group set a deadline of February 2018 for stakeholders to submit comments and proposals on the proposed elements, after which it will develop a first draft of the treaty, at least four months before the next session, scheduled to take place sometime in 2018.

5. Establishment of grievance mechanisms intersects with broader human rights due diligence

The UNGPs suggest that businesses should establish or participate in grievance mechanisms for individuals or communities who may be adversely impacted *to make it possible for grievances to be addressed early and remediated directly*. This theme ran throughout the Forum: experts suggest that businesses should be seeking to identify issues early, before impacts escalate to the level of gross human rights impacts. Many businesses are seeking to establish effective grievance mechanisms alongside broader human rights due diligence activities, in order to create an ecosystem that effectively identifies and mitigates impacts to both people and to business.

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