



9 November 2020



Gold

Workshop Access to Remedy in the Financial Sector- follow-up



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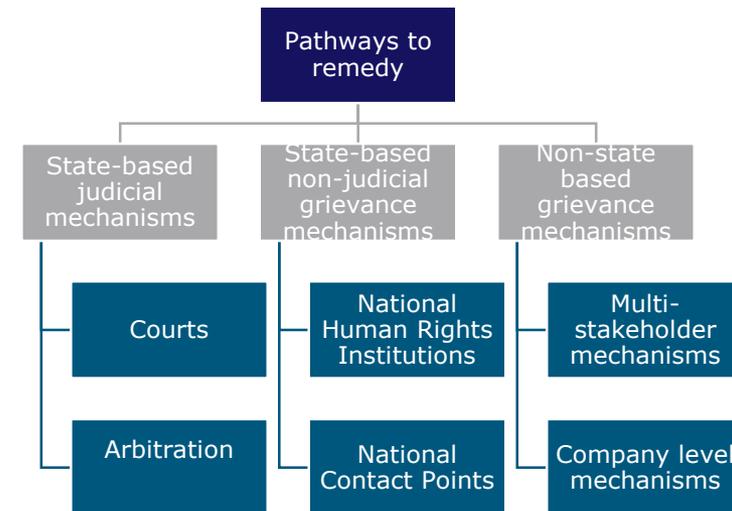


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Access to remedy: the essentials

- Expectation from the UN Guiding Principles on Business and Human Rights, (Pillar III)
- Why might remedy be important to value chain partners?
 - **Risk Management / Business Continuity:** address impacts before they escalate into larger impacts
 - **Reputational:** We have all seen potential reputational impact from high-profile issues
 - **Normative:** We don't want to be connected to negative impacts
- What are the possible results of remediation? Apologies; Restitution; Rehabilitation; Financial and non financial compensation; Punitive sanctions; Prevention of harm etc.



Re-Thinking Remedy

So how do we enhance access to effective remedy when other parties we are connected to are the ones causing the harm?

✓ **Shifting the conversation:**

From *providing* remedy → To **enabling** remedy

✓ **Expanding the focus:**

From a *grievance mechanism* → To a **remedy eco-system**

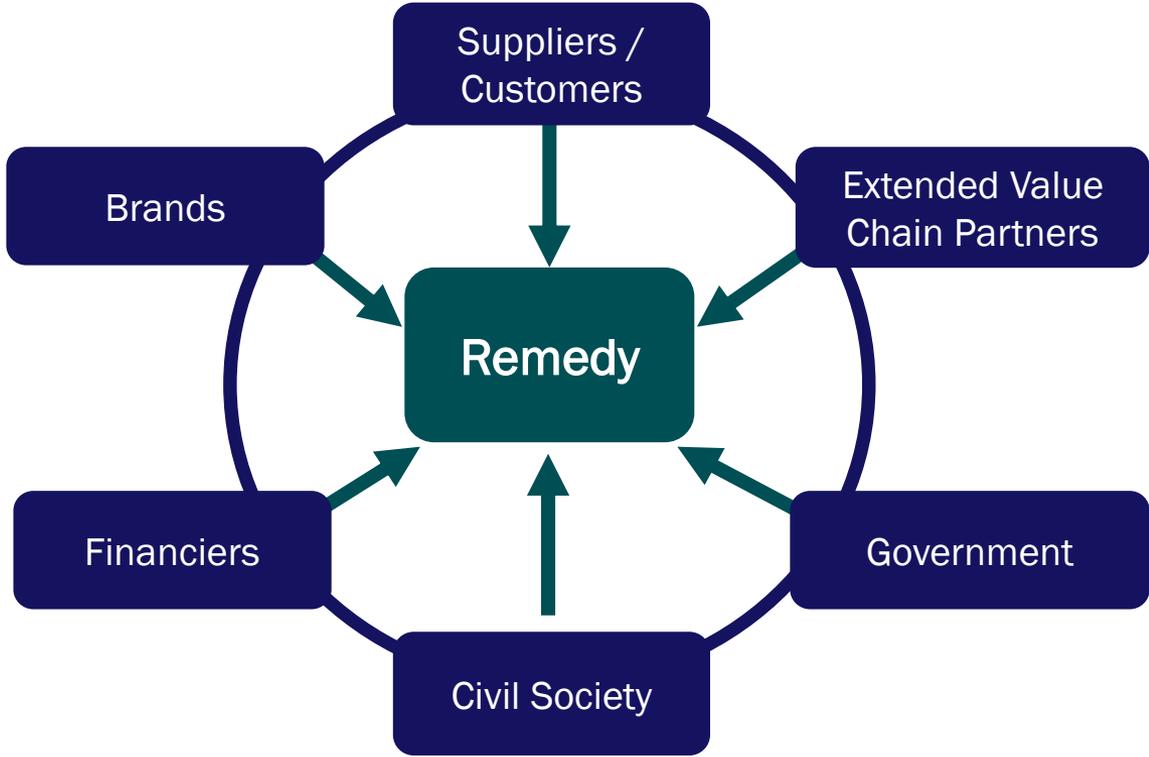
✓ **Recognizing our role:**

From *not our responsibility* → To **leverage for remedy**



A Remedy Eco-System

- A** Many actors are necessary for remedy in practice
- B** Remedy is relevant for each actor
- C** Each actor has different, complementary roles to play



A brief kick-off: State of play in the Netherlands



Maryse Hazelzet
Dutch Banking
Association

The Banking sector in the Netherlands has recently finished the RBC agreement for the Dutch Banking Sector. In the DBA there were 3 main ways of addressing Remedy:

Opening up of the existing complaints procedures to third parties

Researching access to remedy in the Working Group Enabling Remediation.

Furthering the conversation on Remediation sector-wide.

There are different forms of remedy. Stakeholder input is crucial.

For further information on the :

- Please see the working paper on Enabling Remediation
<https://www.imvoconvenanten.nl/-/media/imvo/files/banking/paper-enabling-remediation.pdf>
- Contact: hazelzet@nvb.nl

A brief kick-off: State of play in the Netherlands



Will-Jan Jacobs
Federation of Pension
Funds

Pension Funds in the Netherlands are currently trying to find ways to implement Access to Remedy in Policies as is required by the RBC Agreement. In a guidance document complementing the Agreement we have given pension funds guidance on how to go about this.

Access to Remedy is one of the more difficult articles from the OECD guidelines because of the fact that Pension Funds are mostly directly linked to negative impact. We are looking forward to hearing about other's experiences with this challenge.

For further information on the Pension Fund Agreement:

- Please see <https://www.imvoconvenanten.nl/nl/pensioenfondsen/convenant>
- <https://www.pensioenfederatie.nl/website/themas/vermogensbeheer/imvb-convenant/>
- Contact: pensioenfondsconvenant@ser.nl

A brief kick-off: State of play in the Netherlands



Babs Dijkshoorn
NN Group

The covenant of the Insurance sector in the Netherlands has just entered its third year. Insurers could – most likely – be ‘directly linked’ to negative impacts and therefore have the responsibility to use their leverage towards investee companies to provide access to remedy.

Recently a working session was organised for all parties in the covenant. In addition to contributions from a legal expert, the Dutch NCP and a representative from the banking sector, two cases were presented and discussed.

Although not a lot of best practices related to access to remedy exist, engagement with investee companies relate to (improving) human rights policies and programmes, transparency & reporting on grievances, and the responsiveness of a company to restore the situation. Some insurers participate in a thematic engagement programme. A lessons learned document of the working session will be published soon.

For further information on the Insurance Sector Agreement, please see:

- <https://www.imvoconvenanten.nl/nl/verzekeringssector>
- Contact: verzekeringsconvenant@ser.nl

Our Panel



David Kovick
Senior Advisor
SHIFT

Over 10 Years experience working with implementing the UNGPs.

"Compared to the US, the Agreement approach to the implementation of the OECDs and the UNGPs is unique."

Impact always occurs thousands of miles away and most of the time we are not willing to research the situation properly. While benchmarking management systems and policymaking is valuable, we should not forget the stakeholders. This is the space of opportunity for the financial sector: to advocate these practices and normalize the stakeholder approach for companies.

Our Panel



Stina Nilsson
Associate Director
Engagement Services
Sustainalytics

Engagement experience > 10 years

- Main focus on Human Rights
- In Brazil, Denmark and Sweden
- Sustainalytics offers both ESG Risk Ratings, additional research products as well as Engagement Services. A number of services relate to human rights and remedy.
- Remedy and Engagement:
 - Important to set up change objective - the aim of the engagement - at the start, including mitigation and remedy.
 - Remedy takes time to achieve, continuous engagement needed.
 - Using and building leverage is what we do in our collaborative engagement efforts.

Our Panel



Thijs van Brussel
*Program Leader Natural
Resources, Conflict and
Human Rights- PAX*

On behalf of PAX I have been involved with all financial sector RBC agreements so far.

The UNGPs brought us the perspective of the affected rights holders and this is mainly because of the Access to Remedy section.

Remedy is made up of 2 parts: being prepared, and making a change on the ground. Making sure the companies you are investing in live up to the Guiding Principles is one thing, but you have to look at actual remediation of negative consequences of companies' behavior.

"Raise the Question of Access to Remedy with stakeholders"

Statement 1

Remedy is just as relevant for institutional investors as it is for banks and companies

True: 19 False: 1

Background information and/or examples

"Remedy is just as relevant for institutional Investors as it is for banks and companies."

- **Investors are connected to impacts through their investment relationship with companies.**

- Just like suppliers or customers (for companies) or clients (for banks)
- See the OECD Due Diligence Guidance for Institutional Investors)

- **Remedy is relevant across all forms of connection to impacts (cause, contribution, linkage).**

- Cause, contribution, and linkage

- **BUT: Expected action to meet responsibility depends on how you are connected.**

- Cause or contribute to harm: provide or contribute to remedy
- Linked to harm: Leverage for remedy – use leverage to get those parties that cause or contribute to harm to provide or contribute to remedy.

- **AND: How much leverage you have – and what actions you might be expected to take – will vary across different types of business relationships.**

- Companies: Different types of supplier, customer, joint venture partner relationships
- Banks: Different types of client relationships (corporate loans, project finance, syndicate loans)
- Investors: Different types of investment relationships (passive/active; minority/majority)

Statement 2

Investors' leverage could lead to actual access to remedy

True: 21 False: 0

Background information and/or examples

What could investors do?

- **Before impacts occur:**
 - Make an institutional commitment to enabling remedy.
 - For higher risk business activities, where impacts are likely: Assess / encourage company preparedness for remedy (understanding, commitment, capacity, grievance mechanisms)
- **After impacts occur:**
 - Bring a focus to remedy through investor engagement;
 - Encourage specific company actions in support of remedy
 - › credible fact-finding?
 - › meaningful engagement?
 - › trusted processes?
 - › specific remedial actions?
 - › alignment with industry/international standards or good practice?
 - Tie company action explicitly to investment decision-making
 - Leverage beyond the company (stakeholders, transparency/disclosure, systemic issues)

"Investors' leverage could lead to actual access to remedy"

Case Examples

1. Child Labour in Cocoa (see next slide)
2. Mining and Community Impacts (see slide 17)

Child Labour in Cocoa

- Almost 70% of world cocoa produced in Ivory Coast and Ghana, by smallholders. Widespread use of child labour at family farms. 1,5 million children involved in child labour – report from October based on comprehensive on the ground survey.
- **Change objective** focused on Child labour monitoring and remediation systems (CLMRS), access to education for children, living income for cocoa-growing farmers.
- **Remedy:** CLMRS present in 20% of supply chain – all big players are involved. We know from the main implementer that we have driven that rate of implementation. Big education initiative backed by industry announced earlier this year. Living income strategies are being developed by more and more cocoa and chocolate companies. Belgian commitment in place on cocoa, including living income.
- **Reflections:** Child labour has decreased with 1/3 in communities with industry multi-interventions. We've played a role, but of course many others have too! Continuity of engagement likely to have helped – we've done this for many years and will continue. Companies see that!
- **Leverage used:** several investor statements and roundtables with lots of investor back-up and participation, engagement trips to the Ivory Coast and Switzerland, many calls and meetings with companies, benchmarks of companies, continuous progress follow-up on change objectives.

Mining and Community Impacts

- Peruvian mine case – controversial mine was to expand in the area. Quite a typical one in the type of adverse human rights impacts:
 - concerns over water pollution from local communities
 - relocations and losses of land/livelihood
 - poor consultation processes
 - violent protest against the mine.
- **Change objective** included lots of specifics on meaningful engagement with local community members, implementation of the voluntary principles on security and human rights and water system according to international standards in the area.
- **Remedy:**
 - Apologized for past community interactions.
 - More transparency to local communities around operations and water management
 - Tried to engage with broad range of local stakeholders
 - Offer opportunities of employment and procurement locally.
 - Polls to understand how the company was perceived.
 - Grievance mechanism in place
 - Compensation to relocated families.
- **Reflections:** We engaged the company through a period of transformation, did onsite visit to the communities around the mine and proposed project. Gave suggestions along the way for an open and responsive company. Takes many years to bounce back from bad community relations. Takes great deal of delicacy from the company to navigate to a good relationship with community once it's broken.
- We can point to do's and don't we see from other companies and situations and thereby raise the bar in the industry and in good cases shorten the learning time for a company to shift practices.

Statement 3

Small investors can exercise as much leverage when it comes to access to remedy as large investors

True: 3 False: 16

"Small investors can exercise as much leverage when it comes to access to remedy as large investors"

Perhaps not *as much* leverage as large investors in all cases, but probably more than they might think – and leverage can be built.

Practical Approaches for smaller investors?

- Ask an investor question
- Build and bring issue expertise
- Join a collaborative initiative (see next slide for some examples)
- Target leverage to activate other investors

Why join a collaborative initiative that Access to Remedy?

Joining an initiative can help to increase leverage at shareholders' meetings, foster collaboration surrounding thematic engagement and help put Access To Remedy, an often overlooked part of due diligence, on the agenda.

Examples of Collaborative initiatives

- PRI - <https://www.unpri.org/>
- Investor Alliance on Human Rights <https://investorsforhumanrights.org/>
- ICCR <https://www.iccr.org/>
- Sustainalytics' norm-based 'Global Standards Engagement'
- Several initiatives that focus on one issue/theme:
 - Platform Living Wage Financials <https://www.livingwage.nl/>
 - Living Wages (UK focused investor initiative) <https://shareaction.org/living-wage/>
 - Different service providers also offer collective engagement services. Sustainalytics, for example, has different collective engagement tracks available (on global standards, modern slavery, child labour and responsible Clean Tech).

Q&A

Answers to your questions by the panellists

Questions regarding Best Practices

Are there good practices of remedy?

Please see slides 16 and 17 above.

David: For an example of where a bank contributed to remedy, because it was determined to have contributed to the impact, see [ANZ case](#). For examples of where banks recognized a connection to harm and took what steps they could in service of remedy, even if not entirely successful, see [Citibank](#) or [ING's](#) response to the Dakota Access Pipeline. These last two are interesting because they involved direct engagement with affected stakeholders.

How can investors help companies to establish best practice; what are their key challenges and what is the business case for companies?

For the question on how investors can help companies to establish best practices please see slides 15-17.

Regarding the business case for companies, there are multiple reasons:

- Continuity of business operations: better company-community relations, more productive workplaces, etc.
- Risk management: when impacts go unaddressed, they often escalate into more serious impacts.
- Meeting responsibility, and expectations: this is what is expected under the UNGPs and OECD Guidelines, and those expectations are now shared by investors, business partners, stakeholders, etc.
- Avoiding litigation / other proceedings: failing to provide or contribute to remedy may lead stakeholders to other pathways, including in some cases litigation, NCP proceedings, etc.

Questions on Best Practices

Worst practice: From the banks' research, what are the sectors with the highest risk that AtR is not well embedded ?

David: Hard question to answer. It's pretty ubiquitous. But, I'd say particularly where we see extremely vulnerable people – those who would not be likely to raise a complaint or seek remedy because of fear of retaliation (either physical, or losing work, etc), and areas of emerging understanding of risks, where we may have previously just accepted that this is the way business was done (for instance, final-mile delivery in logistics, etc).

This depends on the portfolio of the investor. It oftentimes concerns a combination of sector, type of activity and location.

Examples:

- <https://www.worldbenchmarkingalliance.org/publication/chrb/>
- Focusing on Agricultural products, Apparel, Automotive manufacturing, Extractives & ICT manufacturing
- "Guidance on Responsible Business in Conflict-Affected and High-risk Areas: A Resource for Companies and Investors <https://www.unpri.org/download?ac=1724>
- There are several commercial data providers, most asset managers have products in place, and also other commercial providers such as Maplecroft.

Questions regarding Stakeholder needs

Enabling remedy starts with assessment of access to remedy needs of stakeholders. How should this be done and how may investors incentivize this?

David: It starts with ensuring that affected stakeholder do have a voice in remedy conversations and by ensuring that rightsholder perspectives are central in the remedy conversations. This can be done by:

- Stimulating a company or sector in a specific engagement to ensure the involvement of local stakeholders and their access to restitution, compensation, rehabilitation, satisfaction, guarantees of non-repetition, apology, punitive sanctions, or other preventive measures.
- Seeking cooperation with other investors and parties to build a remedy eco-system
- Investors can start by making assessment of the effectiveness of grievance mechanisms part of their due diligence on companies, and then targeting engagement towards strengthening such mechanisms.
- When investing passively, specific cases that require engagement can be leveraged into thematic engagements for relevant sectors / geographies. (i.e., a case of a specific impact for one company could trigger a review of portfolio companies in similar industries, geographies, etc).
- Advocating for a focus on remedy in collaborative platforms (i.e., PRI, etc).

Questions on Responsibility investors re. end of supply chain:

- **What is the responsibility of an investor with regard to access to remedy far down in the supply chain?**
- **How to reach affected people and communities (And is that the role of investors)?**

David: From my perspective, Investors are not going to reach out to affected people and communities. But the role of investors is to assure companies are effectively engaging with affected communities. [...]

David: Yes. That's right. Investors are likely to be linked to impacts deeper in the value chain. Their role is to use their leverage to ensure that other actors in the value chain are meeting their respective responsibilities for remedy. Investors are rarely going to engage directly with stakeholders. But they should be pushing companies to engage directly on issues of remedy, and investors should include assessing quality of stakeholder engagement as part of their proactive due diligence and/or reactive engagement after impacts.

Questions on Responsibility investors:

- **What does this ecosystem approach actually mean in practice, when it comes to remedy? And especially: how do we ensure those responsible don't hide behind "the ecosystem"?**

David: It means that those parties with a responsibility to provide or contribute to remedy have the understanding, commitment, capacity and resources to do so. And those parties that are linked to severe impacts are using their leverage to ensure that this is the case. It's about understanding role.

I'm not sure there's any 'hiding' in the eco-system. They're hiding now, by thinking that because they are linked, they have no responsibility with regard to remedy. Rather, this is about requiring some focus and action on remedy from all connected parties, even those that are linked.

- **Should victims be able to have access to a grievance mechanism of an investor/a financial institution?**
- David: The real question is, for what purpose? It's not likely that an FI/investor grievance mechanism can deliver remedy to stakeholders for impacts caused by portfolio companies. But as an escalation mechanism (i.e., where frontline mechanisms fail), then it could be useful. Assuming that stakeholders had a way of knowing (a) who the involved investors / FIs were that are connected to a particular company, and (b) they knew how to access that FI/investor's grievance mechanism. But it can not replace or substitute for effective frontline mechanisms.

Questions for Stina:

Which topics do you define as 'most salient' HR issues?

Stina: In our UNGP-based assessments of human rights related incidents, criteria we use to determine level of salience include, but are not limited to: the extent of harm on affected rights holders (livelihood impacts, fatalities etc.), how many people are negatively affected, if a company's adverse human rights impacts are systematic, i.e. affect people in more than one location, or over a long period of time. A variety of human rights issues are captured, such as labour rights matters, community and indigenous peoples' rights, privacy breaches, and fatalities from the use of medication, vaccine or alike.

How does the focus of Sustainalytics on financial material risks relate to the most salient human rights risk approach you mention?

Stina: Although in human rights related engagements the perspective of the rights-holder is the basis for the salience assessment, we use materiality type of arguments to drive engagement. We would for example point to reputational risks that could have financial implications for a company, or poor conditions for supply chain workers or farmers with the company running the risk of losing its workforce base (by farmers leaving the country side in search of better livelihood options for example), or financial risks by not preparing and being aligned with upcoming or existing human rights due diligence and reporting legislation.

Inspiration: Resources and Examples

- Access to remedy – material and resources
 - Interview with Maartje van Putten(NCP)
 - Interview with David Kovick (SHIFT)
 - Video on AtR by the Danish Institute for Human Rights
- RBC agreements- Materials on Access To Remedy
 - Enabling remediation paper RBC agreement can be found here
 - Three (Dutch) blogs by the RBC agreement for the Insurance sector can be found here, here and here
- SHIFT paper “Improving Accountability and Access to Remedy for Victims of Business-Related Human Rights Abuse”
- SOMO: Access to Remedy Archive
- Lessons Learned: IMVO Convenanten Page 11
- IFC Sustainability Framework & UNGPs page 9
- OECD Corporate Lending Report

Share your best practices

If you are currently active in performing Access to Remedy, or if you have in the past and would like to share your insights. Contact us through:

pensioenfondsenconvenant@ser.nl



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Thank you!



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