

Principles of Human Rights-based Approach to Access to Justice

This module has the following objectives:

Enable the participants to

- Discuss the principles of human rights-based approach to access to justice; and
- Apply the concept of human rights-based approach to access to justice to human rights issues related to company operations.

Time: 3 HOURS AND 45 MINUTES

Materials:

- Big size papers, colored pens, writing papers, adhesive tapes;
- Equipment - computer, projector, screen;
- Video/documents on the human rights-based approach to access to justice.

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I. Procedure

a. Opener - 30 MINUTES

Show a video about a situation involving access to justice. Ask the participants to comment or raise questions on the video.

Inform the participants that their comments and questions will be discussed in the other activities in the module.

b. Activity – 1 HOUR*

Ask the participants to do the photograph sequencing game. Provide the participants with several photos depicting issues, actions being taken by people, and related events. The photographs should be able to portray a story of people seeking a remedy on their complaints regarding company operations.

Tell them to make a story out of the set of photographs subject to the following rules:

1. Each participant is given one photograph that she/he will not show to anyone;
2. Without seeing all the photographs, the participants discuss and agree on a story based on each one's idea on each photograph;
3. They put all the photographs face down on the floor/table in a sequence to tell the agreed story. A participant who thinks her/his photograph begins the story puts her/his photograph face down on the floor/table first, others do the same until one participant who considers her/his photograph to be ending the story puts it down as the last one in the sequence. The photographs must not be seen by the participants at this point.
4. Ask the participants to turn over all photographs and tell the story that comes out from the sequence of photographs.

There can be two groups of participants with two different sets of photographs.

Draw out from the sequence of photographs ideas or principles on how the issues are resolved or could have been resolved. These ideas or principles can include the following:

1. Participation of affected community in problem solving;
2. Empowerment of people, especially as members of groups or communities, on how to resolve their problems;
3. Fair and effective mechanism for resolving problems;
4. Accountability of the company that cause problems; and
5. Appropriate remedy for the problems.

c. Input - 1 HOUR

Provide an input on the following:

1. Bases for determining subscription of corporate grievance mechanisms to human rights-based approach:

* This activity is based on "Exercise 4 – Zoom into Human Rights Approach to Realizing EA2J" discussed on pages 40-54 of the Asian Consortium for Human Rights-based Access to Justice, *A Manual on Human Rights-Based Approach to Realizing Equal Access to Justice* (Quezon city, 2011).

- i. Use of human rights framework;
- ii. Consideration of different degrees of vulnerability with regard to a particular problem, and groups who may be more seriously impacted by the company operations;
- iii. Identification of the relevant stakeholders as either claim/rights holders and duty bearers;**
- iv. Assessment of the capacity of both the claim/rights holders and the duty bearers to address the problem and capacity development strategies for both sides;
- v. Existence of participatory processes where those who are impacted on as a result of the problem are freely and meaningfully involved.

(Note: this list is based on *Programming for Justice: Access for All – A Practitioners’ Guide to a Human Rights Based Approach to Access to Justice*, United Nations Development Programme, 2005)

2. Access to remedy with stress on, among other matters, the following:
 - i. Definition of remedy, grievance mechanism, procedures of the grievance mechanism; link to other responsibilities of the companies such as human rights due diligence;***
 - ii. Relation of corporate grievance mechanism with the larger, national justice systems (formal and non-formal, judicial and non-judicial/legislative/administrative systems); effectiveness criteria for non-judicial grievance mechanisms;
 - iii. Supporting measures for effective use of grievance mechanism or the early resolution of issues such as education programs (for workers, community members and other stakeholders), pro-active monitoring of the situation for early detection of issues (such as dialogues), multi-stakeholder initiative.

d. Activity

Group Work - 1 HOUR

Divide the participants into three groups and give each group a case to work on. The cases should not be too detailed to allow the participants to add situations and arguments/ideas to the stories. Annexes A, B and C can be used as cases for the group discussion.

Ask the participants to determine how the elements of the human rights-based approach to access to justice can be applied to the cases in terms of grievance mechanism. They have to develop a story on the development or improvement of a grievance mechanism and the application of the human rights-based approach.

Tell the groups to act out the story they developed as a play and assign participants to different roles such as the following:

1. Workers, or members of the local community where a company operates;
2. Company officials;
3. Members of the local NGO/trade union that assist the workers or the members of the local community; and
4. National or local government officials.

After the role play, ask the participants to answer the following questions:

1. What kind of grievance mechanism was developed/improved?
2. Was the issue involved resolved?

** See “Business and Human Rights: Concepts and Terms” section for definition of “rights holders” and “duty bearers.”

*** See “Business and Human Rights: Concepts and Terms” section for definition of the terms.

- i. If yes, was it resolved in accordance with human rights norms?
 - ii. If no, what was missing in the story or what went wrong in the story?
3. What aspects of the human rights-based approach to access to justice have been found to be either
 - i. Helpful in resolving business-related “human rights impacts;” or
 - ii. Problematic in applying to concrete cases?

Write on the board/big size paper the key points raised in the answers, comments and also questions of the participants.

II. Summary

Time: 15 MINUTES

Summarize the main points discussed during the session such as the following:

1. The general principles governing human rights-based approach to access to justice;
2. The key issues raised on the approach that should be considered in using it on actual cases involving companies.

Annex A

A BIG SHIPPING AND CONSTRUCTION COMPANY established business in a freeport zone in a country in Southeast Asia to build a wide variety of bulk carriers at the site. While the presence of the company in the freeport zone brought thousands of jobs to the area, occasional accidents, workplace deaths and alleged labor law violations have called into question the company's compliance with the local labor and occupational safety laws. The workers of this shipbuilding company have been trying to form a labor union for several years but have failed to have a labor union so far. Their leaders, however, were either fired or transferred by the company as soon as they undertook the initial labor union activities. The company explained that they were fired because of involvement in robbery or theft or negligence of duty. However, the workers claimed that they were fired or transferred by the company to suppress the formation of a labor union.

Under the local labor law, "probationary employment" shall not exceed six months from the date the employee started working. This means that workers who continue working in a company beyond the six-month period are qualified for permanent employment unless there are grounds for non-qualification. According to the workers, the company used tricks, such as registering the employees as workers of subcontractors, or dismissing and re-hiring them to prevent them from becoming regular employees. Such tricks upset the employees' efforts to form a labor union.

The frequency of industrial accidents forced the workers to continuously request the company to establish a hospital for them. But the company ignored the requests supposedly due to lack of personnel. The workers filed formal complaints against the company with the freeport zone management authority; while the issue got the attention of the national legislature. Both the freeport zone management authority and the national legislature investigated the complaints. Both found the company violating industrial safety and labor laws. At the conclusion of the legislative committee investigation, the legislators required the company to build a medical center and comply with industrial safety laws. Nevertheless, the company claimed that it had the capability to send injured workers immediately to a hospital using speedboats.

(This case is based on Korean Transnational Corporations Watch, "Korean Companies and Human Rights: Doing Business in the Philippines, Myanmar and Uzbekistan," in Jefferson R. Plantilla, editor, *Bridging Human Rights Principles and Business Realities in Northeast Asia* (Kuala Lumpur/Osaka: HURIGHTS OSAKA and SIRD, 2014))

Annex B

A COMPANY CONSORTIUM acquired the development rights to offshore gas fields in a country in Southeast Asia. The company consortium agreed to sell natural gas from the gas field to another company through a memorandum of understanding. Human rights issues have been raised by the residents in the affected areas and by the international community regarding the construction of the gas pipeline from the gas field to a province in the neighboring country. Non-governmental organizations have constantly demanded information on the status of the gas development as well as on the protection of human rights.

Local residents have been raising their concerns about the adverse impacts of the project from the time it started. Residents held a demonstration to express their complaint about insufficient land compensation. Ten residents who led the demonstration were arrested, charged before a court for violating the peace assembly law and sentenced to three months in prison. A human rights organization raised this issue in the UN Human Rights Council sessions and asserted that the government and the companies participating in this project should take responsibility for the imprisonment of people who were merely demanding respect for their right to live. The company consortium promised to review the issues and to prepare measures to address them.

Residents near the onshore gas terminal complain of considerable damage inflicted on them by the project. The residents have consistently insisted that the damage to their farmlands caused by the wire fences and the sewage pipeline of the onshore gas terminal has not been properly compensated. Accumulated soil and sand made it hard to farm the land and to reach it during rainy season. The residents demand that the companies involved should conduct a field investigation and then either compensate them properly for the damage caused or purchase the useless land. Due to inadequate explanation, the residents know neither the system for determining the amount of compensation nor how it would be paid. They also do not know who among the two companies is in-charge of providing the compensation.

(This case is based on Korean Transnational Corporations Watch, "Korean Companies and Human Rights: Doing Business in the Philippines, Myanmar and Uzbekistan," in Jefferson R. Plantilla, editor, *Bridging Human Rights Principles and Business Realities in Northeast Asia* (Kuala Lumpur/Osaka: HURIGHTS OSAKA and SIRI, 2014)

Annex C

ALLEGATIONS OF WORKERS in a supplier company being forced to work very long hours, living in cramped and insufficient accommodation, being forced to pay for accommodation and food, and being prevented from leaving the facility appeared in the international press. In addition, there were allegations of child labor in the manufacture of some products, and use of disciplinary actions which involved workers being made to stand still for long periods.

The main company took steps to investigate the allegations through extensive factory visits and worker interviews. It published a report on its website within six weeks of the initial media coverage. In the report, the main company stated that an audit team sent to the factory was made up of staff from its human resources, operations and legal departments, and that the evidence gathered was cross-checked against many sources of information from employees, management and staff records. It also pointed out that, in auditing for forced labor, security records were checked to look for false identification papers. The report summarized the findings related to the working and living environment, compensation, overtime, and worker treatment.

Although the main company report stated that there was no evidence of forced labor or child labor, it made public the observation that the company's own weekly limit on hours worked, as stated in the company's code of conduct, was being exceeded. The main company stated that, as a result of its findings, the supplier company was changing its policy to ensure compliance with the weekly overtime limits. In addition, the main company noted that improvements to the sleeping facilities were required but that the supplier company was in the process of acquiring more land to build further facilities. The supplier company was quoted as having opened the factory to its customer and provided access for the audits to take place. The supplier company is a significant company in the industry and has grown rapidly in recent years.

(Source: Text based on *Combating Forced Labour - A Handbook for Employers & Business, 7 Case Studies*, International Labour Organization (Geneva, 2015), pages 5-7.)

Materials

- Photos of people and events related to human rights issues
- United Nations, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*. HR/PUB/11/04, 2011.
- United Nations Development Programme, *Programming for Justice: Access for All – A Practitioners’ Guide to a Human Rights Based Approach to Access to Justice*, United Nations Development Programme (Bangkok, 2005). Available at www.unrol.org/files/Justice_Guides_ProgrammingForJustice-AccessForAll.pdf.
- Asian Consortium for Human Rights-based Access to Justice, *A Manual on Human Rights-Based Approach to Realizing Equal Access to Justice* (Quezon city, 2011).