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### Private dispute resolution and the right to an effective remedy in transnational business and human rights

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Private Dispute Resolution and the Right to an Effective Remedy in  
Transnational Business and Human Rights

ACADEMISCH PROEFSCHRIFT

ter verkrijging van de graad van doctor  
aan de Universiteit van Amsterdam  
op gezag van de Rector Magnificus  
prof. dr. ir. P.P.C.C. Verbeek

ten overstaan van een door het College voor Promoties ingestelde commissie,  
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geboren te Criciúma





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DOCTEUR DE L'UNIVERSITÉ DU LUXEMBOURG

EN DROIT

by

**Gustavo BECKER MONTEIRO**

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## PRIVATE DISPUTE RESOLUTION AND THE RIGHT TO AN EFFECTIVE REMEDY IN TRANSNATIONAL BUSINESS AND HUMAN RIGHTS

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## **Abstract**

This thesis examines how private dispute resolution (PDR) processes, namely negotiation, mediation, and arbitration, contribute to and/or impair the realisation of the right to an effective remedy in cases of transnational business-related human rights abuses. Rightsholders of such abuses face persistent barriers to judicial remedies in both corporations' host and home States, including jurisdictional limits, evidentiary thresholds, and political and economic constraints. In this context, PDR has emerged as a complementary remedial avenue, legitimised and promoted by the UN Guiding Principles on Business and Human Rights (UNGPs). Nevertheless, despite the rise of PDR as remedial processes, it operates without clear standards under international human rights law (IHRL), raising concerns about its compatibility with the right to an effective remedy. The thesis then adopts a legal doctrinal methodology grounded in IHRL, with descriptive socio-legal elements, to assess the rise, structure, and effects of PDR employed as a means of remedy for transnational business-related human rights abuses. It maps 20 examples of such use, develops three case analyses (i.e. Porgera Individual Claims Programme, the Renova Foundation's Mediation Programme, and the Bangladesh Accord Arbitrations), and evaluates their procedural and substantive characteristics against the right to an effective remedy. The analysis demonstrates that PDR has a dual character by contributing to the realisation of the right to an effective remedy when designed with independent administration, broad eligibility, participatory procedures, diverse forms of reparation, safeguards against retaliation, among other features. However, PDR more frequently impairs the realisation of this right through restrictive eligibility, burdensome evidentiary requirements, company-influenced procedural administration, reliance on standardised compensation, and using legal waivers through which affected individuals relinquish their rights to access judicial remedies. The thesis concludes that, besides not substituting judicial remedies, PDR's contribution to access to remedy depends on public governance measures that embed oversight and regulation to ensure compatibility with IHRL. States must reclaim their central role as guarantors of remedy, ensuring that PDR evolves into a credible complement, rather than a privatised substitute, to judicial processes.

## Samenvatting

Dit proefschrift onderzoekt hoe particuliere geschillenbeslechtingprocedures (PDR), zoals onderhandelingen, mediation en arbitrage, bijdragen en/of afbreuk doen aan de verwezenlijking van het recht op een effectief rechtsmiddel in gevallen van transnationale, zakelijke mensenrechtenschendingen. Rechthebbenden van dergelijke mensenrechtenschendingen ondervinden hardnekkige belemmeringen bij het verkrijgen van toegang tot rechtsmiddelen in zowel gast- als thuisstaten, waaronder jurisdictiebependingen, bewijslastvereisten en politieke en economische obstakels. In deze context is PDR naar voren gekomen als een aanvullende of alternatieve optie voor een remedie, gelegitimeerd en bevorderd door de *UN Guiding Principles on Business and Human Rights* (UNGPs). Dit niettegenstaande opereert PDR, ondanks de opkomst ervan als herstelprocedure, zonder duidelijke standaarden onder het internationaal mensenrechtenrecht (IHRL), wat vragen oproept over de verenigbaarheid van PDR met het recht op een effectief rechtsmiddel. Het proefschrift hanteert een juridische, doctrinaire methodologie, gebaseerd op het IHRL en aangevuld met beschrijvende sociaal-juridische elementen, om de opkomst, structuur en effecten van PDR als remedie voor transnationale, zakelijke mensenrechtenschendingen te beoordelen. Het brengt 20 voorbeelden van het gebruik van PDR als remedie voor dergelijke schendingen in kaart, bespreekt drie case analyses (het *Porgera Individual Claims Programme*, het *Mediation Programme* van de *Renova Foundation* en de *Bangladesh Accord Arbitrations*), en evalueert hun procedurele en materiële kenmerken in het licht van het recht op een effectief rechtsmiddel. De analyse laat zien dat PDR een duaal karakter heeft: het kan bijdragen aan de verwezenlijking van het recht op een effectief rechtsmiddel wanneer het zo is vormgegeven dat sprake is van een onafhankelijk bestuur, ruime ontvankelijkheidsvereisten, participatieve procedures, diverse vormen van herstel en waarborgen tegen vergelding. Vaker belemmert PDR echter de verwezenlijking van dit recht doordat sprake is van beperkte ontvankelijkheidsvereisten, zware bewijslastvereisten, door bedrijven beïnvloede administratieve structuren, het gebruik van gestandaardiseerde vergoedingen en het gebruik van afstandsverklaringen waarin individuen hun recht op rechtsmiddelen opgeven. De conclusie van het proefschrift is dat PDR niet alleen geen vervanging is voor rechtsmiddelen, maar dat de bijdrage van PDR aan de toegang tot rechtsmiddelen afhankelijk is van maatregelen van openbaar bestuur die toezicht en regulering omvatten, om zo de verenigbaarheid met het IHRL te waarborgen. Staten moeten hun centrale rol als garanten van herstelmogelijkheden terugwinnen en ervoor zorgen dat PDR zich ontwikkelt tot een geloofwaardige aanvulling op, en niet tot een geprivatiseerd alternatief voor, gerechtelijke procedures.

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## **List of Abbreviations**

ACHPR	African Charter on Human and Peoples' Rights
ACtHPR	African Court on Human and Peoples' Rights
ACHR	American Convention on Human Rights
ATS	Alien Tort Statute
BHR	Business and Human Rights
CAT	Complaints Assessment Team
CESCR	Committee on Economic, Social and Cultural Rights
CSDDD	Corporate Sustainability Due Diligence Directive
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
HRC	Human Rights Committee
HRW	Human Rights Watch
IACtHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ILO	International Labour Organization
NAPs	National Action Plans
NSBGMs	Non-State-based Grievance Mechanisms
NHRIs	National Human Rights Institutions
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the High Commissioner for Human Rights
PCA	Permanent Court of Arbitration
PGMs	Private Grievance Mechanisms
PGV	Porgera Joint-Venture
PRFA	Porgera Remedy Framework Association
PDR	Private Dispute Resolution
PNG	Papua New Guinea
UDHR	Universal Declaration of Human Rights
UNGPs	United Nations Guiding Principles on Business and Human Rights

## Introduction

When the Fundão Dam collapsed in Brazil in 2015, it unleashed 60 million cubic metres of waste and mud produced by mining operations and decimated the city of Mariana, killing 19 individuals, directly destroying the homes of over 600 people, affecting thousands of citizens, and resulting in an avoidable catastrophe described as “the worst environmental disaster in Brazilian history” (the “Fundão Dam disaster”).<sup>1</sup> Thus, the collapse of the Fundão Dam significantly impacted the population in the affected region and resulted in a range of damage. Numerous activities across various economic sectors (e.g. fishing, mineral extraction, and agricultural activities) were severely impacted, particularly due to the destruction caused by the waves of tailings and the subsequent contamination of natural resources, mainly the Doce River. Furthermore, intangible aspects related to traditional practices and livelihoods were also affected. This disruption to income and employment resulting from environmental degradation extended its effects to other local activities, such as commerce and various service industries.<sup>2</sup>

The entity responsible for the dam’s maintenance was the mining company Samarco S.A., a joint venture by the Australian/British BHP Group and the Brazilian Vale S.A., two of the largest mining companies worldwide.<sup>3</sup> Since then, hundreds of civil and criminal, individual, and collective judicial proceedings have been initiated by affected individuals against the three involved companies to seek redress in Brazil and England.<sup>4</sup> For instance, a leading lawsuit was initiated by the Brazilian Federal Government against Samarco S.A., claiming BRL 20 billion (approximately USD 4 billion), which was settled with the involved companies under the implementation of a plan for corporate conduct adjustment.<sup>5</sup> The settlement resulted in the establishment of a foundation (i.e. the Renova Foundation), an independent organisation founded by Samarco S.A. and its parent companies with the mandate to repair and compensate all damages arising from the collapse. To fulfil its mandate, the Renova Foundation

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<sup>1</sup> UK House of Commons Library, ‘Mariana Dam Disaster, Debate Pack’ (UK Parliament, House of Commons Library 2023) CDP-0133 <<https://commonslibrary.parliament.uk/research-briefings/cdp-2023-0133/>> accessed 17 September 2025.

<sup>2</sup> Fundação Getulio Vargas, *Parâmetros e Subsídios para a Reparação dos Danos Socioeconômicos nos Territórios de Rio Doce, Santa Cruz do Escalvado e Chopotó* (FGV 2020) 107 <<https://hdl.handle.net/10438/30109>>.

<sup>3</sup> See PwC, ‘Mine 2019: Resourcing the Future’ (2019) <<https://www.pwc.com/gx/en/energy-utilities-mining/publications/pdf/mine-report-2019.pdf>> accessed 18 September 2025.

<sup>4</sup> UK House of Commons Library (n 1); ‘Brazil: Victory as Mariana Dam Victims’ £5bn Case Is Reopened in Landmark English Court Ruling’ (*Business and Human Rights Resource Centre*, 27 July 2021) <<https://www.business-humanrights.org/en/latest-news/brazil-victory-as-mariana-dam-victims-5bn-case-is-reopened-in-landmark-english-court-ruling/>> accessed 18 September 2025; ‘Mariana Dam Disaster’ (*Pogust Goodhead*) <<https://pogustgoodhead.com/cases/mariana-dam-disaster/>> accessed 18 September 2025.

<sup>5</sup> UK House of Commons Library (n 1).

implemented private settlement schemes using private dispute resolution (“PDR”) processes to provide compensation to affected individuals.<sup>6</sup>

These judicial processes illustrate the barriers faced by rightsholders of transnational business-related human rights abuses to seek remedies before domestic courts in corporations’ host and home States for actions or omissions committed by transnational corporations.<sup>7</sup> Such actions or omissions are hereby called “transnational business-related human rights abuses”. The economic power of transnational corporations vis-à-vis the interests of host States to attract foreign investment becomes a tool of leverage for corporations to negotiate, for instance, settlement schemes such as the one accepted by the Brazilian judiciary. To access remedies in companies’ home States, sophisticated legal support is necessary for victims to successfully be heard before domestic courts in a jurisdiction other than the one where the harm occurred. The same is necessary to go beyond jurisdictional grounds and make a robust substantive case capable of linking the acts of subsidiaries in host States with the control of parent companies in home States.

In this context of barriers to access judicial remedies, methods of private dispute resolution (PDR) started to be used as a means of remedy for affected individuals of transnational business-related human rights abuses. For instance, in the case of the Fundão Dam collapse, mediation through the Renova Foundation became a relevant procedure for access to remedy used by victims, while several lawsuits in Brazil and England were still ongoing or adjourned. However, even though individuals had access to sums of financial compensation and medical services as a means of remedy through PDR processes under the auspices of the Renova Foundation, procedural issues were soon revealed. For instance, the decision-making process offered to victims by the Renova Foundation was perceived as influenced by the companies’ interests and individuals were offered standardised packages of financial compensation only. In 2021, a prosecutor filed a judicial request for the extinction of Renova due to potentially illicit activities and the undue influence of Samarco S.A.<sup>8</sup>

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<sup>6</sup> See Danilo B Garrido Alves, Daniela Arantes Prata, and Camila Manfredini de Abreu, ‘A New Route for Redress in the Samarco Case? An Overview of the Simplified Indemnification System’s (Un)Lawfulness’ (2022) 7 *Business and Human Rights Journal* 475, 1–6; Fundação Renova, ‘Estatuto da Fundação Renova’ <[https://citdoriadoce.org/wp-content/uploads/tainacan-items/65515/65526/CIT\\_RRRDM\\_000002.pdf](https://citdoriadoce.org/wp-content/uploads/tainacan-items/65515/65526/CIT_RRRDM_000002.pdf)> accessed 12 December 2024; UK House of Commons Library (n 1).

<sup>7</sup> ‘Host States’ refers to the countries where transnational corporations conduct operations, usually from the global south, while ‘home States’ refers to countries where parent companies of transnational corporations are headquartered or incorporated, usually from the global north.

<sup>8</sup> Danilo B Garrido Alves, Daniela Arantes Prata, and Camila Manfredini de Abreu (n 6) 1–6.

Therefore, the Fundão Dam collapse case exemplifies the role that methods of PDR may play as a means of access to remedy for rightsholders of transnational business-related human rights abuses. Such a role becomes even more relevant for affected individuals in the context of the mentioned barrier to access judicial remedies for such types of transnational business-related human rights abuses. As explored further in Chapter 2, the barriers to access judicial remedies are strictly connected to the current framework of commercial rights that transnational corporations enjoy operating across borders via the incorporation of different legal entities in separate jurisdictions. Considering such barriers, the use of PDR as a means of remedy is promoted and legitimised by the UN Guiding Principles on Business and Human Rights (UNGPs), which encourage using private remedial processes as complementary to judicial remedies to improve victims' access to remedy.<sup>9</sup> Under the UNGPs, the use of private remedial processes, is located within the practice of private grievance mechanisms.<sup>10</sup>

In addition to use of mediation in the Fundão Dam case, victims of the Rana Plaza collapse in Bangladesh accessed remedies through private arbitration. The Rana Plaza collapse killed over 1,100 workers and injured over 3,000 individuals after a factory collapsed in Dhaka in 2013.<sup>11</sup> In the aftermath, the Bangladesh Accord was signed between global fashion brands and trade unions, envisaging safety improvements in the workplace and including a dispute resolution clause containing private arbitration.<sup>12</sup> As a consequence of non-compliance with the Accord, arbitrations administered by the Permanent Court of Arbitration (PCA) were used as a means of access to remedy in the interest of rightsholders.<sup>13</sup> Moreover, negotiation was employed by the mining corporation Barrick Gold as a means of remedy to address individuals' claims of sexual assault by its staff members at an operation site in Papua New Guinea.<sup>14</sup> These examples

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<sup>9</sup> United Nations Human Rights Council, 'UN Guiding Principles on Business and Human Rights' arts 25–31 <[https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf)>.

<sup>10</sup> *ibid* Pillar III.

<sup>11</sup> 'Rana Plaza Building Collapse: 100 Days' (*International Labour Organization (ILO)*) <<https://www.ilo.org/resource/article/rana-plaza-building-collapse-100-days>> accessed 18 September 2025.

<sup>12</sup> Permanent Court of Arbitration, 'Bangladesh Accord Arbitrations' <<https://pca-cpa.org/en/cases/152/>>; 'Accord on Fire and Building Safety in Bangladesh' <<https://bangladeshaccord.org/resources>> accessed 12 March 2025.

<sup>13</sup> *Arbitrations under The Accord on Fire and Building Safety in Bangladesh between Industrial Global Union and Uni Global Union (as Claimants) and Two Global Fashion Brands (as Respondents)* [2018] Permanent Court of Arbitration 2016-36, 2016-37; Permanent Court of Arbitration, 'Press Release: The Tribunal Issues Decision on Admissibility of Claims and Confidentiality' (2017) <<https://pcacases.com/web/sendAttach/2238>> accessed 17 September 2025; 'Procedural Order No. 2 (On Admissibility and Confidentiality/Transparency)' (Permanent Court of Arbitration 2017) PCA Case No. 2016-36; PCA Case No. 2016-37 <<https://pca-cpa.org/cn/cases/152/>> accessed 17 September 2025.

<sup>14</sup> Columbia Law School Human Rights Clinic and & Harvard Law School International Human Rights Clinic, 'Righting Wrongs? Barrick Gold's Remedy Mechanism for Sexual Violence in Papua New Guinea: Key Concerns and Lessons Learned' 96–98.

illustrate the growing practice of using PDR processes to remedy transnational business-related human rights abuses. While these three different processes, conciliation, mediation and arbitration, fall within the scope of PDR, they vary considerably in their structure, safeguards, and effectiveness in providing remedies for victims.

Transnational business-related human rights abuses are not a new phenomenon, though. Beyond the mentioned examples, several cases from a transnational context illustrate the negative impact that corporate activities can have on human rights. For example, Talisman allegedly breached human rights in its operations in Sudan,<sup>15</sup> the energy companies Unocal and Total were accused of colluding with the government of Myanmar to coerce local people into forced labour,<sup>16</sup> and Coca-Cola has been accused of involvement in the killing of a trade union leader and intimidation of other union members in Colombia.<sup>17</sup> In this context, the exact new development that this thesis tackles is the use of PDR methods as a means to remedy for transnational business-related human rights abuses.

In addition to the research object, the following sections introduce: (1) the research problem, (2) the definitions and key terms, (3) the literature review, (4) the research main question and subquestions, (5) the research the objectives, (6) the normative framework, and (7) the methodology and thesis structure.

## **1. Research Problem**

This thesis addresses the problem: the use of private negotiation, mediation, and arbitration (i.e. PDR processes) employed as remedy for transnational business-related human rights abuses is expanding. Although this practice is legitimised and promoted by the UNGPs as part of their objective to improve access to remedy for rightsholders, this expansion grows without a clear assessment on how IHRL applies to ensure compliance with the right to an effective remedy. The following subsections provide further elaboration on this research problem.

### **(a) Corporate Form and Limited Liability**

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<sup>15</sup> *Presbyterian Church of Sudan v Talisman Energy, Inc* [2009] United States Court of Appeals for the Second Circuit 07-0016.

<sup>16</sup> *Doe I v Unocal Corp* United States Court of Appeals for the Ninth Circuit CV-96-06959-RSWL.

<sup>17</sup> Sarah Joseph, *Corporations and Transnational Human Rights Litigation*, vol 4 (Bloomsbury Publishing 2004) 3; Ramon Mullerat, *International Corporate Social Responsibility: The Role of Corporations in the Economic Order of the 21st Century* (Kluwer Law International 2010) 91; *Sinaltrainal v Coca-Cola Company* [2009] The United States Court of Appeals for the Eleventh Circuit 01-03208-CV-JEM.

Transnational corporations tend to locate their activities where they are less costly to minimise production costs, which creates transnational systems of supply chains, parent companies, subsidiaries, and joint ventures.<sup>18</sup> Despite the perception of transnational corporations as a unified economic unit operating globally, they lack a unique legal entity as such. Each distinct entity that comprises a transnational corporation is subject to the laws of the States where it operates. Consequently, parent companies maintain separate legal personalities, even when they are the sole owners of these entities. National laws, in principle, regulate only the entities incorporated in their territory.<sup>19</sup> In addition, based on the principle of limited liability of shareholders, no entity in a transnational corporation is, in principle, responsible for the actions committed by other entities.<sup>20</sup> Such a limited corporate liability becomes a significant incentive for corporations to establish subsidiaries in economically developing countries, where public governance might be less robust in relation to the economic power of transnational corporations. In such countries, costs related to human rights compliance, or non-compliance, tend to drop,<sup>21</sup> becoming particularly advantageous operations for corporations in industries more likely to negatively impact human rights, such as mining, oil and gas and garment.<sup>22</sup>

#### (b) Barriers to Accessing Judicial Remedies

Considering the transnational character of these human rights abuses, international courts may be seen as potential avenues for redress. However, they are unsuitable venues for rights holders, since international law, including IHRL, is traditionally binding only on States, and the status of business enterprises as duty bearers remains contested.<sup>23</sup> Private actors may incur liability only for international crimes under international criminal law.<sup>24</sup> Despite efforts to regulate transnational corporate conduct affecting human rights under internationally binding instruments, no current obligations exist under IHRL defining corporations' accountability for

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<sup>18</sup> Ramon Mullerat (n 17) 82–84.

<sup>19</sup> John Ruggie, 'Business and Human Rights: The Evolving International Agenda' (2007) 101 *The American Journal of International Law* 22, 824; Gwynne Skinner, 'Rethinking Limited Liability of Parent Corporations for Foreign Subsidiaries' *Violations of International Human Rights Law* (2015) 72 *Washington and Lee Law Review* 1769, 1790.

<sup>20</sup> Ramon Mullerat (n 17) 82. Gwynne Skinner (n 19) 1790.

<sup>21</sup> Dalia Palombo, 'Transnational Business and Human Rights Litigation: An Imperialist Project?' (2022) 22 *Human Rights Law Review* 1, 4.

<sup>22</sup> *ibid.*

<sup>23</sup> John Ruggie, 'The Social Construction of the UN Guiding Principles on Business and Human Rights' (2017) Working Paper No 67 *Corporate Responsibility Initiative - John F. Kennedy School of Government* 23, 14.

<sup>24</sup> See Rome Statute of the International Criminal Court 1998 art 25; Convention on the Prevention and Punishment of the Crime of Genocide 1948 art 4; John Ruggie, 'The Social Construction of the UN Guiding Principles on Business and Human Rights' (n 23) 14.

human rights abuses.<sup>25</sup> Therefore, domestic courts from host and home States hold a significant and unique role in ruling on transnational corporations' operations that lead to human abuses. Nevertheless, the same transnational context creates several legal, economic, and political barriers for victims seeking redress through domestic courts.<sup>26</sup>

Although the right to access to remedy is a human right enshrined in IHRL and envisaged by major international treaties,<sup>27</sup> rightsholders of transnational business-related human rights abuses often do not succeed in accessing remedies through domestic courts in host or home States. Although scholars and domestic courts have advanced theories to hold parent companies accountable for human rights abuses in home States (e.g. enterprise liability, the due diligence approach, the general tort-based approach, and parent corporate liability),<sup>28</sup> case law applying such theories is still not broadly applied. Nevertheless, particularly English, Dutch, and French courts have been expanding access to their jurisdictions.<sup>29</sup> For instance, the duty of vigilance law in France created new legal reasoning for parent companies to be held accountable for violations committed by subsidiaries incorporated abroad based on obligations to conduct

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<sup>25</sup> There has been over the past decades, great efforts for the development of an international legal framework to regulate transnational corporations' violations of human rights. Emphasis is given to the unsuccessful attempt to pass an international binding instrument envisaging such obligations, the United Nations Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights U.N. Doc E/CN.4/Sub.2/2003/12/Rev.2 (Commission on Human Rights, 26 August 2003, Economic and Social Council).

<sup>26</sup> See Gwynne Skinner, Robert McCorquodale, and Olivier De Schutter, 'The Third Pillar: Access to Judicial Remedies for Human Rights Violations by Transnational Business' (International Corporate Accountability Roundtable (ICAR), CORE, European Coalition for Corporate Justice (ECCJ) 2013) 27–73 <<https://corporatejustice.org/publications/the-third-pillar-access-to-judicial-remedies-for-human-rights-violations-by-transnational-business/>>; Amnesty International and Business & Human Rights Resource Centre, 'Creating a Paradigm Shift: Legal Solutions to Improve Access to Remedy for Corporate Human Rights Abuse' (2017) <<https://www.amnesty.org/en/documents/pol30/7037/2017/en/>>.

<sup>27</sup> See International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 2(3); American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) 1144 UNTS 123, art 25; European Convention on Human Rights (adopted 4 November 1950, entered into force 3 September 1953) 213 UNTS 221, art 13; African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217, art 1 (the African Commission has interpreted art 1 as empowering it to order remedies despite the absence of an express provision). See also Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85, art 14; International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195, art 6. The Human Rights Committee and the Committee on the Elimination of Racial Discrimination have both held that the right to an effective remedy includes obligations to prosecute perpetrators and provide reparation to victims, which may encompass compensation, restitution, rehabilitation, public apologies, guarantees of non-repetition and legislative reform.

<sup>28</sup> Gwynne L. Skinner, Rachel Chambers, and Sarah McGrath, *Transnational Corporations and Human Rights* (Cambridge University Press 2020) 66.

<sup>29</sup> Penelope A. Bergkamp, 'Parent Company Liability After Okpabi v. Shell' (2018) 15 European Company Law 112, 112–117.

human rights due diligence along entire value chains.<sup>30</sup> Moreover, in February 2022, the European Commission adopted a proposal for a Directive on Corporate Sustainability Due Diligence (CSDDD), which aimed to anchor human rights considerations in corporate governance. Following extensive negotiations, the Council formally approved the Directive in May 2024, which was published as Directive 2024/1760.<sup>31</sup> However, ongoing political and industry pressure has driven efforts to dilute the directive through an “omnibus” simplification package. Proposed amendments include delaying implementation, restricting obligations to direct suppliers, and reducing administrative obligations.<sup>32</sup>

### (c) Private Dispute Resolution as a means of Remedy

Although PDR is legitimised and promoted by the UNGPs as an alternative to judicial remedies, an analysis of how PDR enhances the realisation of the right to an effective remedy, procedurally and substantively, is necessary. As stated by the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, “While there is a close correlation between the effectiveness of a remedial mechanism and obtaining an effective remedy, these are two separate aspects because an effective process may not always result in an effective outcome”.<sup>33</sup> The Barrick Gold case, briefly mentioned before, is an illustrative example of this issue.

In 2011, Barrick Gold established a private remedial mechanism using negotiation as a form of remedial process to address several individuals’ claims of sexual assault by its staff members at an operational site in Papua New Guinea (PNG). Like the Renova Foundation in Brazil, Barrick’s mechanism aimed at providing individual reparations and community projects in response to these abuses. The mechanism established settlements for 119 of more than 130 victims considered eligible.<sup>34</sup> Even though victims had access to financial remedies, they were

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<sup>30</sup> See LOI n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d’ordre 2017.

<sup>31</sup> Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 2024 1.

<sup>32</sup> Philip Blenkinsop, ‘How Europe’s Ambition to Lead on Corporate Human Rights Ran into the Sand’ *Reuters* (Brussels, 21 July 2025) <<https://www.reuters.com/sustainability/boards-policy-regulation/how-europes-ambition-lead-corporate-human-rights-ran-into-sand-2025-07-21/>> accessed 21 July 2025.

<sup>33</sup> UN General Assembly, ‘Human Rights and Transnational Corporations and Other Business Enterprises’ (United Nations 2017) A/72/162 para 3 <<https://docs.un.org/A/72/162>> accessed 17 September 2025. See Benjamin Thompson, ‘Determining Criteria to Evaluate Outcomes of Businesses’ Provision of Remedy: Applying a Human Rights-Based Approach’ 2 *Business and Human Rights Journal* 55.

<sup>34</sup> Columbia Law School Human Rights Clinic and Harvard Law School International Human Rights Clinic (n 14) 26; Olgeta Meri Iगत Raits (‘All Women Have Rights’), ‘A Framework of Remediation Initiatives in Response to Violence against Women in the Porgera Valley’ <[https://miningwatch.ca/sites/default/files/framework\\_of\\_remediation.pdf](https://miningwatch.ca/sites/default/files/framework_of_remediation.pdf)> accessed 17 September 2025.

standardised packages in cash instead of individualised compensation amounts based on the features of each case.<sup>35</sup> The consulting firm hired by Barrick Gold to establish the mechanism stated that the financial reparations aligned with principles of equity under IHRL and that the amounts were more generous than the damages awarded by the Inter-American Court of Human Rights (IACtHR) in similar cases.<sup>36</sup>

Even so, 11 of those 130 women chose to seek redress before judicial courts in PNG and eventually settled with Barrick Gold through the remedial mechanism for higher amounts than those provided to the other victims.<sup>37</sup> In addition, victims were asked to sign legal waivers relinquishing their rights concerning seeking future judicial remedies related to the content of these settlements.<sup>38</sup> The Columbia Law School Human Rights Clinic also identified procedural issues in the process, such as the absence of communication with victims to design the procedure, the limited scope of the claims, and a lack of transparency.<sup>39</sup> This example represents the problematic lack of legal standards for remediation required for PDR in the context of transnational business and human rights. This lack of clear legal standards allows corporations to determine (i) procedural aspects of the mechanisms without consultation with rightsholders, (ii) the types of substantive remedies to be provided, and (iii) even implement instruments that may affect victims' right to access judicial remedies, such as imposing legal waivers if they resort to PDR.

Indeed, PDR may be a potential accountability tool for transnational corporate human rights abuses, mainly considering the challenges that victims face in accessing judicial remedies. Nevertheless, they may also become a tool for corporations to have greater control over the management of disputes concerning the impacts of their own operations. The result may be harmful corporate conduct in regions where offering post-harm financial compensation packages is less costly than preventing abuses.<sup>40</sup> The use of PDR as a means of access to

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<sup>35</sup> Columbia Law School Human Rights Clinic and & Harvard Law School International Human Rights Clinic (n 14) 96–98.

<sup>36</sup> Yousuf Aftab, 'Pillar III on the Ground: An Independent Assessment of the Porgera Remedy Framework' 101–106 <<https://www.enodorigths.com/assets/pdf/pillar-III-on-the-ground-assessment.pdf>> accessed 17 September 2025.

<sup>37</sup> Sarah Knuckey and Eleanor Jenkin, 'Company-Created Remedy Mechanisms for Serious Human Rights Abuses: A Promising New Frontier for the Right to Remedy?' (2015) 19 *The International Journal of Human Rights* 801, 809–810.

<sup>38</sup> Yousuf Aftab (n 36) 14.

<sup>39</sup> Columbia Law School Human Rights Clinic and & Harvard Law School International Human Rights Clinic (n 14) 1–12.

<sup>40</sup> Nikki Reisch, 'Non-Judicial Grievance Mechanisms: Hardening the Soft Law of Corporate Accountability?' in Daniel D Bradlow and David Hunter (eds), *Advocating Social Change through International Law: Exploring the Choice between Hard and Soft International Law* (Brill Nijhoff 2020) 278.

remedy in transnational business and human rights is developed under the influence of corporations, which has rapidly advanced without surveillance by States and/or international organisations. NGOs have taken such a police role and have published a substantial amount of data regarding their functions. According to Corporate Human Rights Benchmark and Rights and Accountability in Development (RAID), the advancement of private processes as part of grievance mechanisms falls short of adequately providing victims with access to remedy and might be inadequate without independent oversight.<sup>41</sup>

#### (d) UNGPs Legitimacy and Promotion of PDR as Remedial Processes

In 2005, UN Secretary-General Kofi Annan designated Professor John Ruggie from Harvard Kennedy School as the Special Representative on Human Rights and Transnational Corporations and Other Business Enterprises (i.e. “Special Representative”). His mission was to identify and clarify standards of corporate responsibility and accountability concerning human rights.<sup>42</sup> Ruggie fulfilled his role by designing the UNGPs’ framework, as divided into three pillars. Pillar I provides that States must protect human rights through the formulation of laws, policies, regulations, and legal adjudication, as articulated in Principles 1–10. It does not create new legal obligations for States but only recognises existing obligations that IHRL imposes to protect people from human rights abuses committed by third parties, including businesses. Next, Pillar II establishes that businesses are responsible for respecting human rights. The term “responsibility” distinguishes this pillar from the legally binding obligation that States have to protect human rights. Thus, businesses are expected to identify, prevent, and redress any infringements on human rights arising from their operations and business affiliations (Principles 11–24).<sup>43</sup> Hence, corporate responsibilities are not based on international legal obligations but on social expectations.<sup>44</sup> Lastly, Pillar III on access to remedy

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<sup>41</sup> Corporate Human Rights Benchmark (CHRB), ‘Key Findings 2017’ (Corporate Human Rights Benchmark (CHRB) 2017) 13 <<https://www.worldbenchmarkingalliance.org/corporate-rights-human-benchmark-2017-2019/>> accessed 17 September 2025; Rights and Accountability in Development (RAID), ‘Principles without Justice The Corporate Takeover of Human Rights’ (Rights and Accountability in Development (RAID) 2016) 16 <[https://raid-uk.org/wp-content/uploads/2023/03/principles\\_without\\_justice-1.pdf](https://raid-uk.org/wp-content/uploads/2023/03/principles_without_justice-1.pdf)> accessed 17 September 2025.

<sup>42</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), ‘Guiding’ (United Nations 2005) Human Rights Resolution 2005/69 (E/CN.4/RES/2005/69) <[https://ap.ohchr.org/documents/e/chr/resolutions/e-cn\\_4-res-2005-69.doc](https://ap.ohchr.org/documents/e/chr/resolutions/e-cn_4-res-2005-69.doc)> accessed 17 September 2025.

<sup>43</sup> United Nations Human Rights Council (n 9).

<sup>44</sup> Carlos López, ‘The “Ruggie Process”: From Legal Obligations to Corporate Social Responsibility?’, *Human Rights Obligations of Business Beyond the Corporate Responsibility to Respect?* (Surya Deva and David Bilchitz, Cambridge University Press 2013) 59 <<https://doi.org/10.1017/CBO9781139568333.006>>.

establishes that States and businesses share the role of ensuring access to remedy when individuals face harm, as outlined in Principles 25–31.<sup>45</sup>

Pillar III is central to this research. It establishes that States have the primary obligation under IHRL to take appropriate steps to ensure that those affected by human rights abuses in their territory and/or jurisdiction can access effective remedies, both judicial and non-judicial.<sup>46</sup> In addition, the UNGPs envisage in Pillar I that “States should set out the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations”.<sup>47</sup> The commentary on this principle explains that States are not generally required under IHRL to regulate extraterritorial activities of businesses domiciled in their territory and other jurisdictions, which leads to barriers for individuals to access judicial remedies for transnational business-related human rights abuses.<sup>48</sup> After acknowledging such barriers to access judicial remedies, the Guiding Principles propose using PDR as a complementary judicial remedy in Principles 28–31.<sup>49</sup>

The research problem on the advance of PDR, influenced by the barriers to access judicial remedies and the legitimisation and promotion by the UNGPs, has been partially addressed in the literature on business and human rights (BHR). The following section reviews the scholarship concerning the research problem, identifies two literature gaps that this thesis seeks to fill and defines the scholarships that support the research project in filling the identified gaps.

## 2. Definitions and Key Terms

This section clarifies the principal terms used throughout the thesis that may otherwise create ambiguity. Such ambiguity arises from the interdisciplinary character of the BHR field, which draws on concepts from IHRL, corporate law, tort, dispute resolution, and others. It is also shaped by how the UNGPs adapted terms traditionally used in IHRL to reflect the specificities of corporate responsibility while introducing their own terminology in the process. Therefore,

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<sup>45</sup> United Nations Human Rights Council (n 9). John Sherman, ‘Beyond CSR: The Story of the UN Guiding Principles on Business and Human Rights’, *Corporate Responsibility, Sustainable Business: Environmental, Social and Governance Frameworks for the 21st Century* (Rae Lindsay and Roger Martella, Kluwer Law International 2020) 4 <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3561206](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3561206)>. See John Ruggie, ‘The Construction of the UN “Protect, Respect and Remedy” Framework for Business and Human Rights: The True Confessions of a Principled Pragmatist’ (2011) 2 *European Human Rights Law Review* <<https://search.informit.org/doi/10.3316/agispt.20112127>>.

<sup>46</sup> United Nations Human Rights Council (n 9) arts 25–26.

<sup>47</sup> *ibid* 2.

<sup>48</sup> *ibid*. See John Ruggie, ‘Life in the Global Public Domain: Response to Commentaries on the UN Guiding Principles and the Proposed Treaty on Business and Human Rights’ (2015) 6–7.

<sup>49</sup> United Nations Human Rights Council (n 9) arts 28–31.

this thesis generally follows the terminology of the UNGPs for consistency. Nonetheless, it departs from them in certain instances where alternative expressions better capture the legal content of the concepts under analysis or provide greater clarity.

**Transnational business and human rights.** In this thesis, the term “transnational business and human rights” refers to the field of BHR but with specific emphasis on issues that arise in a transnational context. While BHR is inherently global in nature, the qualifier “transnational” highlights the focus of this research on contexts where the cross-border activities of transnational corporations create distinct issues for the protection and realisation of human rights. Therefore, the expression “transnational BHR contexts/issues” refers to contexts and situations where tension exists regarding transnational business operations that impact human rights, likely resulting in human rights abuses. By grounding the “transnational” dimension, the thesis situates its research problem within the particular legal challenges that emerge when human rights abuses cannot be effectively addressed within a single domestic framework.

**Private.** The qualifier “private” is mainly used in this thesis to characterise the terms “dispute resolution”, “negotiation”, “mediation”, and “arbitration”, as well as “grievance mechanisms”, “governance”, “parties”, and “actors”. Emphasising the private character of terms related to processes, mechanisms and other practices is relevant to highlight the level of State involvement in the design and administration (although not in regulation and monitoring) of such practices. In the following chapters, the private character of remedial practices becomes rather relevant in assessing their legal consequences, either involving only private parties or also State-actors.

This thesis applies Max Weber’s notion of ideal types as an analytical tool to clarify this usage. For instance, the concepts of PDR, private grievance mechanisms (PGMs), and private international arbitration are treated as ideal-typical constructs. They are not perfect empirical categories but logical instruments for comparative analysis, designed to capture common features of mechanisms initiated and administered outside the framework of public adjudication. This approach avoids framing private and public processes as mutually exclusive while recognising that many processes operate at the intersection of both spheres. Thus, the notion of private is employed as an analytical tool to assess the degree of State involvement in

remedial processes and analyse their implications for realising the right to an effective remedy.<sup>50</sup>

**Private dispute resolution (PDR).** “Private dispute resolution” hereby denotes dispute resolution processes, such as negotiation, mediation, and arbitration, that are administered, used and decided primarily by private actors outside of State adjudication. PDR is a recognised category in the dispute resolution literature.<sup>51</sup> Unlike their traditional use in commercial disputes, these processes are also becoming more frequently employed as remedial avenues for individuals affected by business-related human rights abuses. This thesis found that, when employed as such, PDR processes are typically embedded within the broader institutional frameworks of private grievance mechanisms.

**Private grievance mechanisms (PGMs).** The notion of “private grievance mechanisms” (PGMs) was advanced by the Office of the High Commissioner for Human Rights (OHCHR) and refers to institutional frameworks created and administered by private actors (namely, companies, industry associations, and multistakeholder initiatives) through which grievances may be raised and, in some cases, remedies provided.<sup>52</sup> Within the framework of the UNGPs, PGMs are a sub-type of the broader category “non-State-based grievance mechanisms” (NSBGMs). While NSBGMs also encompass mechanisms created by international financial institutions, PGMs are limited to those established by private parties. This distinction is relevant to be clarified from the outset since the BHR literature engages more frequently with the term NSBGM than with its sub-type, PGMs. Therefore, the literature review below uses more the term NSBGM for consistency, but it should be interpreted that PGMs are encompassed within this notion.

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<sup>50</sup> Max Weber, ‘Objectivity in Social Science and Social Policy’ in Edward A. Schils and Henry A. Finch (eds, trans) *Max Weber on the Methodology of the Social Sciences* (1949, The Free Press of Glencoe) 89-99.

<sup>51</sup> Carrie Menkel-Meadow, *International Dispute Resolution*, vol 3 (Ashgate Publishing Limited 2012); Klaus Peter Berger, *Private Dispute Resolution in International Business: Negotiation, Mediation, Arbitration*, vol 2 (3rd edn, Wolters Kluwer 2015). Burkhard Hess, *The Private-Public Divide in International Dispute Resolution* (1st edn, Brill Nijhoff 2018).

<sup>52</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), ‘OHCHR Accountability and Remedy Project, Phase III: OHCHR Accountability and Remedy Project, Phase III: Enhancing the Effectiveness of Non-State-Based Grievance Mechanisms in Cases of Business-Related Human Rights Abuse, Scope and Programme of Work’ <[www.ohchr.org/sites/default/files/Documents/Issues/Business/ARP/ARPIII-PoW.pdf](http://www.ohchr.org/sites/default/files/Documents/Issues/Business/ARP/ARPIII-PoW.pdf)> accessed 20 November 2024; Office of the United Nations High Commissioner for Human Rights (OHCHR), ‘OHCHR Accountability and Remedy Project, Phase III: Enhancing the Effectiveness of Non-State-Based Grievance Mechanisms in Cases of Business-Related Human Rights Abuse, Discussion Paper’ <[www.ohchr.org/sites/default/files/Documents/Issues/Business/ARP/ARPIII\\_Discussion\\_Paper\\_Nov2019.pdf](http://www.ohchr.org/sites/default/files/Documents/Issues/Business/ARP/ARPIII_Discussion_Paper_Nov2019.pdf)> accessed 20 November 2024.

PGMs themselves take diverse forms, some of which incorporate private dispute resolution (PDR), while others do not. Where PGMs do include PDR processes, these processes form only part of a broader framework. This is specific part is the one intended to resolve disputes between affected individuals and companies and to provide remedies for human rights abuses within PGMs. Alongside PDR, PGMs may also involve other forms of intervention without a direct dispute resolution and remedial functions, such as community dialogue aimed at improving business–community relations or complaints procedures intended to register dissatisfaction and prevent abuses. Therefore, the terms “PGMs” and “PDR” are not used interchangeably in this thesis. While PGMs refer to broad remedial frameworks that encompass a diverse range of programmes and remedial processes, “PDR” refers specifically to the private remedial processes embedded in PGMs.

**Private remedial processes.** Building on the work of Nikki Reisch,<sup>53</sup> this thesis uses the term “private remedial processes” to refer to types of private processes used as means of remediation. For instance, negotiation, mediation, and arbitration are called “private remedial processes” when applied specifically to deliver remedies for human rights abuses.

**Governance.** Before describing how Ruggie approached his theoretical and conceptual framework, it is relevant to delineate the definition of “governance” used in his work (i.e. “the systems of authoritative norms, rules, institutions, and practices by means of which any collectivism, from the local to the global, manages its common affairs”).<sup>54</sup>

**Transnational business-related human rights abuses.** This thesis adopts the notion of transnational business-related human rights abuses to refer to adverse impacts on internationally recognised human rights caused by corporate conduct involving a cross-border element. Such abuses tend to occur in host States, where subsidiaries or contractors operate. The term underscores both the human rights dimension of the harm and its transnational character, which distinguishes the scope of this research from purely domestic corporate accountability cases.

**Transnational corporations.** It denotes groups of companies structured through webs of parent companies, subsidiaries, and joint ventured connected through contractual or equity-based links across jurisdictions. Unlike the popular term “multinational corporations”, which

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<sup>53</sup> Nikki Reisch (n 40).

<sup>54</sup> John Ruggie, ‘Global Governance and “New Governance Theory”’: Lessons from Business and Human Rights’ (2014) 20 *Global Governance: A Review of Multilateralism and International Organizations* 12, 5.

implies being in more than one nation, transnational corporations highlight the movement from one nation to another. These terms do not have different meanings but highlight different features. Thus, they are used interchangeably in this thesis.

**Victims, rightsholders, and affected individuals.** The thesis primarily uses the term “rightsholders”, as aligned with the UNGPs, but it also uses the terms “victims” and “affected individuals” interchangeably.

**Human rights abuses.** This thesis employs the expression “human rights abuses” when referring to adverse impacts to human rights caused by corporate conduct, consistent with the UNGPs.<sup>55</sup> In IHRL, the term “human rights violations” is generally reserved for breaches committed by States as primary duty bearers. Therefore, the choice of “abuses” reflects the non-State character of the corporate actors addressed here.

### **3. Literature Review**

The literature on BHR forms the core body of scholarship on which this research relies. In particular, the BHR literature has not examined PDR as a means of remedy as such but focused on “non-State-based” forms of access to remedy for business-related human rights abuses and their effectiveness. The present research problem is located within this literature, where the central gaps outlined in the following paragraphs were identified.

#### **a. Literature on Business and Human Rights**

The strand of BHR literature most relevant to this research focuses on the role of “non-State-based grievance mechanisms” (NSBGMs). It refers to frameworks of processes and programmes created by non-State actors to facilitate remediation, prevent human rights abuses and improve company-community relationships. According to the UNGPs, the term “grievance mechanisms” indicates “routinised processes through which grievances concerning business-related human rights abuses can be raised and remedies can be sought”.<sup>56</sup> Caroline Rees and David Vermijs highlight that a core procedural question in the analysis of grievance

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<sup>55</sup> United Nations Human Rights Council (n 9).

<sup>56</sup> *ibid* 25. “For the purpose of these Guiding Principles, a grievance is understood to be a perceived injustice evoking an individual’s or a group’s sense of entitlement, which may be based on law, contract, explicit or implicit promises, customary practice, or general notions of fairness of aggrieved communities. The term grievance mechanism is used to indicate any routinized, State-based or non-State-based, judicial or non-judicial process through which grievances concerning business-related human rights abuse can be raised and remedy can be sought”.

mechanisms is, “What types of processes are available under the mechanism, and how do these operate?”<sup>57</sup> This research focuses on PDR processes as one classification of processes available under grievance mechanisms, encompassing conciliation, mediation and arbitration as three different types of processes.

Zagelmeyer, Bianchi, and Shemberg examined the features of NSBGMs and defined them as private governance mechanisms intended to complement State-based mechanisms. They highlighted the diversity of such mechanisms, including company-level, international financial institutions and multistakeholder initiatives, while emphasising the limited evidence of remedial outcomes due to little available documentation. Moreover, they adopted the UNGPs’ Principle 31 effectiveness criteria (i.e. legitimacy, accessibility, predictability, and transparency) as a benchmark for measuring the effectiveness of grievance mechanisms and their embedded processes. They also highlighted the shortcomings of this set of criteria by arguing that they focus primarily on procedural characteristics.

Other authors have similarly evaluated NSBGMs against the effectiveness criteria of Principle 31. Wielga and Harrison, for instance, adopted these criteria as the dominant effectiveness benchmark of NSBGMs. However, they emphasised that the criteria privilege procedural design over substantive outcomes and are insufficient to determine whether rightsholders actually obtain effective remedies.<sup>58</sup> Grama also critiqued the procedural focus of Principle 31 by noting that mechanisms may appear “effective” under these criteria even where substantive reparations are absent.<sup>59</sup> Nikki Reisch made a similar point by underlining that almost all guidance on outcomes within the UNGPs is concentrated in Principle 31, which provides no substantive standards for remedies.<sup>60</sup> She argued that non-judicial grievance processes, which include NSBGMs, must engage with the substantive content of IHRL, clarify the standards they apply, and avoid barring access to courts.<sup>61</sup>

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<sup>57</sup> Caroline Rees and David Vermijs, ‘Mapping Grievance Mechanisms in the Business and Human Rights Arena’ (John F Kennedy School of Government, Harvard University 2008) Initiative Report 28 3.

<sup>58</sup> Mark Wielga and James Harrison, ‘Assessing the Effectiveness of Non-State-Based Grievance Mechanisms in Providing Access to Remedy for Rightsholders: A Case Study of the Roundtable on Sustainable Palm Oil’ (2021) 6 *Business and Human Rights Journal* 67; James Harrison and Mark Wielga, ‘Grievance Mechanisms in Multi-Stakeholder Initiatives: Providing Effective Remedy for Human Rights Violations?’ (2023) 8 *Business and Human Rights Journal* 43.

<sup>59</sup> Benjamin Thompson, ‘Determining Criteria to Evaluate Outcomes of Businesses’ Provision of Remedy: Applying a Human Rights-Based Approach’ (2017) 2 *Business and Human Rights Journal* 55, 71–72.

<sup>60</sup> Nikki Reisch (n 40) 263.

<sup>61</sup> *ibid* 279–281.

Grama's empirical research clarified that the legal literature often assumes that company-based grievance mechanisms must provide remedies consistent with international standards. Nonetheless, practitioners rarely view the grievance mechanisms as vehicles for remediation. Instead, they tend to contribute procedurally by opening communication channels and preventing escalation while often not providing substantive remedies aligned with human rights law.<sup>62</sup> Therefore, this research calls for a closer examination of remedial processes embedded in company-level, industry-level and multistakeholder grievance mechanisms, which tend to use private processes as a means of remedy, such as the mediation scheme following the Fundão Dam disaster and the arbitrations resulting from the Bangladesh Accord.

This thesis identifies two core gaps based on the BHR literature illustrated by these authors: (i) a focus on private remedial processes as one part of the entire framework of grievance mechanisms, excluding preventive or communicative programmes and focusing only on the processes designed as means of remedy; and (ii) when assessing such private remedial processes, focus on the content of the right to an effective remedy as envisaged by IHRL, rather than only applying the UNGPs' Principle 31.

As supportive literature to fill the research gaps, this thesis draws on other subcategories of the BHR literature, along with the literature on dispute resolution and IHRL. Regarding the supportive literature on BHR, this thesis relies first on the scholarship examining the barriers individuals face in accessing judicial remedies (e.g. the contributions of Gwynne Skinner,<sup>63</sup> Robert McCorquodale and Olivier De Schutter,<sup>64</sup> and Sarah Joseph).<sup>65</sup> Second, the literature on John Ruggie's conceptual and theoretical foundations,<sup>66</sup> which clarifies how such foundations informed the design of the UNGPs and their elevation of private remedial processes as a legitimised means of remedy. Third, case-specific studies on the Fundão Dam

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<sup>62</sup> Benjamin Thompson (n 33).

<sup>63</sup> Gwynne L. Skinner, Rachel Chambers, and Sarah McGrath, *Transnational Corporations and Human Rights* (Cambridge University Press 2020); Gwynne Skinner (n 19).

<sup>64</sup> Gwynne Skinner, Robert McCorquodale, and Olivier De Schutter, 'The Third Pillar: Access to Judicial Remedies for Human Rights Violations by Transnational Business' (International Corporate Accountability Roundtable (ICAR), CORE, European Coalition for Corporate Justice (ECCJ) 2013) <<https://corporatejustice.org/publications/the-third-pillar-access-to-judicial-remedies-for-human-rights-violations-by-transnational-business/>>.

<sup>65</sup> Sarah Joseph (n 17).

<sup>66</sup> See, for example, John Ruggie, 'Business and Human Rights: The Next Chapter' [2013] *The Dovenschmidt Quarterly* 168; John Ruggie, *Just Business: Multinational Corporations and Human Rights* (1st edition, W W Norton & Company 2013); John Ruggie, 'How to Marry Civil Politics and Private Governance' (Carnegie Council on Ethics and International Affairs 2004) *The Impact of Corporations on Global Governance: A Report of the Empire and Democracy Project*; John Ruggie, 'Multinationals as Global Institution: Power, Authority and Relative Autonomy' (2017) 12 *Regulation and Governance* 317.

disaster,<sup>67</sup> the Porgera mine,<sup>68</sup> and the Bangladesh Accord arbitrations<sup>69</sup> provide details on how negotiation, mediation and arbitration have been used as private remedial processes.

## **b. Literature on Dispute Resolution**

The review of the BHR literature and analysis of paradigmatic cases using negotiation, mediation, and arbitration calls for the support of the literature on the field of dispute resolution. This research analyses the rise of private negotiation, mediation, and arbitration through the lenses of this scholarship as remedial processes and adopts the notion of PDR as such. While the literature on BHR has produced valuable insights into the role of private remedial processes in corporate accountability,<sup>70</sup> it has primarily framed them as governance innovations rather than as forms of dispute resolution. Therefore, this thesis proposes a new angle of analysis by recasting these mechanisms as forms of PDR and analysing them with the conceptual tools of the dispute resolution field, grounded in the work of Carrie Menkel-Meadow<sup>71</sup>, Burkhard Hess<sup>72</sup>, and Klaus Peter Berger.<sup>73</sup> These scholars have similar approaches to conceptualising PDR situated within broader classifications of dispute resolution. Building on their work, this thesis defines PDR as “*mechanisms consensually chosen for resolving disputes that are used, administered, and decided primarily by private actors outside formal State-based adjudication*”.

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<sup>67</sup> See, for example, Danilo B Garrido Alves, Daniela Arantes Prata, and Camila Manfredini de Abreu (n 6); Fundação Getulio Vargas, *Reparação Individual nos Territórios de Rio Doce, Santa Cruz do Escalvado e Chopotó: Uma Análise do Desenho, Procedimentos e da Cobertura do Cadastro, do Programa de Indenização Mediada e do Auxílio Financeiro Emergencial da Fundação Renova* (FGV 2020) <<https://hdl.handle.net/10438/30108>>.

<sup>68</sup> See, for example, Sarah Knuckey and Eleanor Jenkin (n 37) 809–810; Columbia Law School Human Rights Clinic and Harvard Law School International Human Rights Clinic (n 14) 96–98.

<sup>69</sup> See, for example, Judith Levine and Ashwita Ambast, ‘Responsibility Rising from the Rubble: Lessons from the Bangladesh Accord for Arbitration of Business and Human Rights Disputes’ [2018] Australian International Law Journal 1; Lisa Sachs and others, ‘The Business and Human Rights Arbitration Rule Project: Falling Short of Its Access to Justice Objectives’ (Columbia Center on Sustainable Investment 2019) <[https://scholarship.law.columbia.edu/sustainable\\_investment\\_staffpubs/152/](https://scholarship.law.columbia.edu/sustainable_investment_staffpubs/152/)>; Claes Cronstedt and Robert C. Thompson, ‘A Proposal for an International Arbitration Tribunal on Business and Human Rights’ (2016) 57 Harvard International Law Journal 66, 68.

<sup>70</sup> Sanjini Jain and Chirag Jain, ‘Mediation Centred Operational-Level Grievance Mechanisms: Future of Business and Human Rights Dispute Resolution?’ (2024) 4 NUJS Journal on Dispute Resolution 1; Katerina Yiannibas, ‘The Adaptability of International Arbitration: Reforming the Arbitration Mechanism to Provide Effective Remedy for Business-Related Human Rights Abuses’ (2018) 36 Netherlands Quarterly of Human Rights 214.

<sup>71</sup> Carrie Menkel-Meadow, *International Dispute Resolution*, vol 3 (Ashgate Publishing Limited 2012); Carrie Menkel-Meadow and others, *Dispute Resolution: Beyond the Adversarial Model* (2nd edn, Aspen Publishers 2011).

<sup>72</sup> Burkhard Hess (n 51).

<sup>73</sup> Klaus Peter Berger, *Private Dispute Resolution in International Business: Negotiation, Mediation, Arbitration*, vol 2 (3rd edn, Wolters Kluwer 2015).

In the assessed dispute resolution literature, PDR can be examined using two categories: international dispute resolution and alternative dispute resolution (ADR). The first considers PDR processes as tools for managing cross-border conflicts. It highlights the private character of such processes depending on the nature of the parties involved and emphasises the relevance of negotiation, mediation, and arbitration as methods of transnational dispute settlement.<sup>74</sup> Defining PDR through this lens requires an assessment of its feasibility and effectiveness as a transnational mechanism capable of resolving disputes beyond national jurisdictions.<sup>75</sup> The second category is ADR, which approaches PDR processes as avenues for resolving disputes outside traditional court proceedings. The “alternative” aspect refers to their distinction from the default option of judicial resolution. From this perspective, PDR emerges as a subtype of ADR encompassing private negotiation, mediation, and arbitration.

### **c. Literature on International Human Rights Law**

This research approaches the gap in assessments of private remedial processes grounded in IHRL to avoid repeating the existing engagement with Principle 31 of the UNGPs by focusing on a legal doctrinal assessment related to the realisation of the right to an effective remedy.<sup>76</sup> Dinah Shelton’s scholarship provides a doctrinal baseline to unpack this legal content and construct an analytical backdrop against which private processes can be assessed. Shelton stated that remedies in IHRL have both procedural and substantive dimensions. Thus, access to effective procedures must be paired with reparations adequate to redress the harm suffered.<sup>77</sup> This differentiation is critical for addressing both aspects of private processes used as a remedy and filling the gap in the BHR literature, which has so far concentrated on procedural aspects. Shelton also clarified that substantive remedies serve multiple purposes, which range from measures focused on affected individuals (e.g. full reparation for both financial and non-financial harm) to broader objectives (e.g. deterring future violations for the benefit of society at large).<sup>78</sup>

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<sup>74</sup> See Carrie Menkel-Meadow (n 71); Klaus Peter Berger (n 73).

<sup>75</sup> Carrie Menkel-Meadow and others (n 71) 224. Carrie Menkel-Meadow (n 71) 3. Burkhard Hess (n 51) 21.

<sup>76</sup> See Nikki Reisch (n 40) 263.

<sup>77</sup> Dinah Shelton, *Remedies in International Human Rights Law* (2nd edn, Oxford University Press 2005).

<sup>78</sup> *ibid* 727.

Humberto Cantú Rivera advanced the scholarship on the right to an effective remedy under the Universal Declaration of Human Rights (UDHR).<sup>79</sup> Regarding the substantive dimension of remedies, Cantú Rivera highlighted that various substantive remedial measures may be required to achieve the notion of full reparation. He mentioned that the IACtHR has consistently developed the doctrine of full reparations, awarding a wide range of substantive remedies, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. These substantive remedies are the same as those Shelton emphasised.<sup>80</sup>

These three literature strands collectively indicate the advances and the limitations of current debates on employing private remedies for business-related human rights abuses. BHR scholarship has focused on the notion of NSBGMs and has mainly assessed them through the UNGPs' effectiveness criteria, while leaving their role in realising the right to an effective remedy under IHRL largely unexplored. The dispute resolution literature provides the conceptual tools to analyse negotiation, mediation, and arbitration, while IHRL scholarship clarifies the procedural and substantive content of the right itself. This convergence of gaps and how to fill them frames the contributions of the thesis to the BHR scholarship: applying IHRL's normative framework to evaluate whether PDR processes employed as a means of remedy contribute to and/or impair the realisation of the right to an effective remedy for transnational business-related human rights abuses. Therefore, the next section formulates the central research question and subquestions that guide the thesis against this background.

#### **4. Research Question and Subquestions**

The literature review highlights the gap in research addressing the normative content of remedies under IHRL in relation to an assessment of private remedial processes. In response to this gap and addressing the research problem, the thesis poses the following research question: *“How may private dispute resolution processes contribute to and/or impair the realisation of the right to an effective remedy for transnational business-related human rights abuses?”*

This research question responds to the literature gaps by situating the analysis of the use of PDR as a remedial process, not within the broad governance agenda of “access to remedy” advanced in the BHR literature but within the legal framework of the realisation of the right to

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<sup>79</sup> Humberto Cantú Rivera (ed), ‘Article 8 – The Right to an Effective Remedy’, *The Universal Declaration of Human Rights: a commentary* (1st edn, Brill/ Nijhoff 2024).

<sup>80</sup> *ibid* 192.

an effective remedy under IHRL. The legal grounds established in IHRL provide the normative thresholds for assessing whether private processes contribute to or impair the fulfilment of the elements required under IHRL for the right to an effective remedy to be realised. While private actors are not the primary duty bearers under IHRL, their practices nonetheless shape the conditions under which remedies are provided. Although States remain the ultimate duty bearers of the right to an effective remedy, private practices influence the extent to which this right is realised. This rationale supports framing the research question around how private processes may ‘contribute to or impair’ its realisation, anchoring the inquiry in a legal doctrinal question rather than in a broad ‘effectiveness assessment’.

The terms *contribution and impairment* are applied in this thesis to indicate how the characteristics of PDR processes support or hinder the realisation of the right to an effective remedy. A PDR process *contributes* to this realisation when its features help fulfil one or more of the elements that lead to the right’s realisation, as defined in IHRL. Conversely, it *impairs* when its features do not contribute to realising these elements while actively making their fulfilment more difficult. For example, access to courts is a core element of the right to an effective remedy. If private mediation is made available to individuals only on the condition that they relinquish their right to pursue judicial proceedings, it constitutes impairment for the purposes of this research. By contrast, if a private mechanism facilitates access to certain remedies while also supporting victims to pursue judicial or even criminal claims, it constitutes a contribution. The same reasoning applies to other elements, such as transparency. Where processes are designed with openness and accountability that empower rightsholders, they contribute to the realisation of the right; where they operate under strict confidentiality that excludes affected individuals, they impair it.

The thesis employs five subquestions to answer the main research question. Each is linked to a chapter.

Chapter 1 turns to the contextual background and asks, “*What barriers to judicial remedies influence the rise of PDR processes as remedial means, and how have the UNGPs legitimised and promoted their use as such?*”

Chapter 2 addresses the conceptual foundations of the study by asking, “*What are the characteristics of PDR processes, both in general and when applied as a means of remedy, and*

*how can PDR be located and classified within the broader fields of dispute resolution and business and human rights?”*

Chapter 3 approaches the implementation of PDR as a means of remedy and asks, *“How have PDR processes functioned in cases of transnational business-related human rights abuses?”*

Chapter 4 establishes the doctrinal core of the thesis and asks, *“What does the realisation of the right to an effective remedy under IHRL entail, and to what extent PDR processes may contribute to and/or impair such a realisation?”*

Chapter 5 adopts a normative perspective and asks, *“How can public governance initiatives be leveraged to enhance PDR’s contribution to the realisation of the right to an effective remedy and avoid impairments?”*

## **5. Objectives**

This research pursues four main objectives based on the mentioned research problem, questions, and literature review.

1. To map factors that underpin the rise of PDR processes used as a means of remedy for transnational business-related human rights abuses;
2. To investigate the characteristics of PDR processes when used as remedial avenues, including what types of human rights abuses are usually processed;
3. To unpack the elements that lead to the realisation of the right to an effective remedy under IHRL and evaluate how the characteristics of PDR contribute to and/or impair their realisation;
4. To examine how States as duty bearers under IHRL should regulate and monitor the use of PDR as a means of remedy for human rights abuses.

These objectives collectively lead to an analysis of how the rise of PDR as remedial processes may evolve without eroding the substantive and procedural guarantees envisaged by the right to an effective remedy under IHRL.<sup>81</sup>

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<sup>81</sup> See Nikki Reisch (n 40).

## 6. Normative Framework

The normative framework of this thesis refers to the set of legal norms and principles that guide the legal assessment. The study adopts the right to an effective remedy under IHRL as its primary normative foundation. Hence, while the UNGPs are considered in the legal doctrinal analysis developed in this research, they do not hold a central role as commonly applied in the BHR literature. The choice to place IHRL as a central normative framework is grounded in recognising that its binding sources, while not directly applicable to corporate actors, establish the obligations of States to ensure that individuals enjoy access to effective remedies when their human rights are abused, while seeking to address the literature gap.<sup>82</sup> IHRL recognises that, even when human rights abuses are committed by private parties and are not directly attributable to a State, they nonetheless give rise to State responsibility to protect individuals against such acts.<sup>83</sup> Therefore, analysing private processes through the lens of IHRL seeks to ensure that the assessment is anchored in binding obligations that States must fulfil, even where human rights abuses are committed by corporate actors.

In sum, four considerations underpin this choice, the first of which is binding force. Unlike the UNGPs, which do not impose binding obligations, human rights treaties require States to guarantee access to remedy, including where harms are committed by corporate actors. Second is substantive content. While the UNGPs provide limited guidance on substantive remedies, IHRL specifies the components of an effective remedy procedurally and substantively. Third is normative weight. Since binding treaties carry greater legal authority than soft-law instruments, they provide a stronger basis for evaluating the compatibility of private processes with international standards. Fourth is the literature gap. Existing BHR scholarship prioritises the UNGPs while often overlooking the doctrinal content of binding law and the role of States in ensuring compliance.

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<sup>82</sup> The 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 provides that States must guarantee victims of human rights violations with equal and effective access to justice, irrespective of who may ultimately be the bearer of responsibility for the violations (paragraph 3(c)).

<sup>83</sup> These are the situations envisaged in the Articles on State Responsibility for Internationally Wrongful Acts, adopted by the ILC and submitted to the General Assembly under UN Doc A/56/10 (2001), Articles 5, 8, and 11. See Human Rights Committee, General Comment No. 31 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc CCPR/C/21/Rev.1/Add.13 (2004), para 8; Also see Velásquez Rodríguez v Honduras, I/ACtHR Judgement of 29 July 1988, Series C No. 4, para 172; Pedro Peredo Valderrama (Mexico), I/AComHR, 13 April 2000, paras 41 et seq; X and Y v the Netherlands, ECtHR, Judgement of 26 March 1985, Series A No. 91, para 27; Storck v Germany, ECtHR, Judgement of 16 June 2005, para 101.

## 7. Methodology and Thesis Structure

This thesis adopts an overarching legal doctrinal methodology to answer the main research question and achieve the above objectives. This approach is directly shaped by the nature of the question, which requires analysing the legal content of the right to an effective remedy under IHRL and examining how the use of PDR processes affects the realisation of this right for transnational business-related human rights abuses. As Bianchi argued, legal doctrine has a distinctive function in guaranteeing the coherence and justice of a regulatory system, clarifying and explaining its state of affairs, and paving the way for its further development.<sup>84</sup> Smits similarly defined doctrinal research as the systematic exposition of the principles, rules, and concepts that govern a legal field and seek to resolve gaps and inconsistencies while treating law as a coherent system.<sup>85</sup>

Venzke further reinforced that international law is not fixed in its formal sources alone but is continuously shaped through communicative practices in which a plurality of actors, including non-state actors, advance legal norms.<sup>86</sup> From this perspective, legal doctrine cannot limit itself to codified sources; it must also account for the normative effects produced in practice, even when these lack a formal basis in Article 38(1) of the International Court of Justice Statute.<sup>87</sup> On this basis, legal doctrinal methodology is particularly suited for this thesis since it provides the tools to reconstruct the current state of the law on the right to an effective remedy,<sup>88</sup> systematise its procedural and substantive elements across different instruments, and assess how PDR practices contribute to or impair its realisation.

While legal doctrinal research forms the core of the thesis, the emergence and functioning of PDR processes are also socio-legal phenomena. As such, additional methodological approaches, particularly descriptive methods, are employed where necessary to examine the

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<sup>84</sup> Andrea Bianchi, *International Law Theories: An Inquiry into Different Ways of Thinking* (OUP 2016) 213.

<sup>85</sup> Jan M Smits, 'What is Legal Doctrine? On the Aims and Methods of Legal-Dogmatic Research' (2015) 1 *Erasmus Law Review* 163, 163.

<sup>86</sup> Ingo Venzke, 'Contemporary Theories and International Law-Making' ACIL Research Paper 2013-23 (Amsterdam Center for International Law, 2013) <<https://ssrn.com/abstract=2342175> > accessed 20 September 2025, 13,17.

<sup>87</sup> Statute of the International Court of Justice (adopted 26 June 1945, entered into force 24 October 1945) art 38(1). "The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: (a) international conventions, whether general or particular, establishing rules expressly recognised by the contesting States; (b) international custom, as evidence of a general practice accepted as law; (c) the general principles of law recognised by civilised nations; (d) subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law."

structure, design, and practice of PDR processes. These complementary methods vary across chapters and are detailed in the subsections below, with each outlining the specific methodological choices adopted in the corresponding chapter.

## **Chapter 1. The Rise of Private Dispute Resolution as a Means of Remedy**

Chapter 1 adopts a doctrinal methodology with descriptive elements to examine the judicial access and the policy-based advancements that influence the rise of PDR used as a means of remedy in BHR. First, it analyses the literature and relevant case law to identify the barriers that victims face when seeking judicial remedies, with reference to jurisdictions such as the United States, the Netherlands, and England and Wales.<sup>89</sup> Second, it reconstructs the conceptual underpinnings of the UNGPs by analysing John Ruggie's academic writings, mandate reports, and speeches, which reveal how the polycentric governance theory informed the elevation of PDR as a legitimate means of remedy.

Regarding this second part, it investigates the legitimisation and promotion of the use of PDR as a remedial means under the UNGPs. Different from binding international human rights instruments, the UNGPs were proposed to the Human Rights Council and unanimously adopted without negotiations between States. Therefore, this research considers the central role of John Ruggie himself in the drafting of the UNGPs and proposes a study of the theoretical and conceptual notions that informed him as a means to investigate the reasons for the promotion and legitimisation of PDR as a means of remedy. This study investigates which concepts and theories provided the foundation for Ruggie's work in proposing that a broader role of private governance, including in the realm of access to remedy, should be part of the UNGPs.

## **Chapter 2. Defining, Classifying, and Characterising PDR**

Chapter 2 offers a theoretical grounding of PDR processes and an overview of their characteristics when applied as remedial means. Therefore, it employs analytical and interpretive doctrinal methods that build on dispute resolution scholarship to explain how the processes of negotiation, mediation, and arbitration are forms of PDR. Second, the chapter applies a descriptive method that analyses 20 examples of PGMs that incorporate PDR processes as remedial avenues. The analysis is conducted based on primary sources (e.g.

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<sup>89</sup> E.g.: Australia: *Dagi v. BHP* [1995] 1 VR 428 (SCt Vic); *Gabarimbau v BHP* [2001] VSC 517 (SCr Vic); *Régie Nationale des Usines Renault SA v Zhang* [2002] 210 CLR 491 (HCA) 520. Canada: *Bouzari v Islamic Republic of Iran* [2002] Carswell Queb 1469 (Ontario Superior Court of Justice).

publicly available institutional documents) and secondary sources (e.g. published reports on grievance mechanisms). Three of these mechanisms were selected for more in-depth study in Chapter 3 due to the availability of richer documentation and prior empirical research.

Next, Chapter 2 examines these 20 examples to identify the procedural characteristics of PDR when used as a means of remedy, thereby establishing the first set of PDR features to answer the research question. This selection provides the basis for analysing the core characteristics of these processes and the grievance mechanisms in which they are embedded. Such characteristics include the institutional level at which the mechanisms operate, the guiding norms and standards used to resolve disputes, eligibility and admissibility criteria, the availability of appeal and review procedures, and other structural and procedural features relevant to assessing their operations as a remedy.

Data were collected from multiple sources to map existing and past grievance mechanisms that use PDR methods to provide remedies for individuals affected by transnational business-related human rights abuses.<sup>90</sup> The identified grievance mechanisms containing PDR were investigated through primary sources (e.g. company documents, implementation reports, and procedural guidelines related to each mechanism) and secondary sources (e.g. research reports). The mechanism needed to provide at least one opportunity for affected individuals or organisations acting on their behalf to fall within the scope of analysis. Although dozens of PGMs were identified and reviewed, only those that met this minimum criterion for negotiated

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<sup>90</sup> The principal secondary sources underpinning the identification of PGMs were: (i) the ranking of remedies and grievance mechanisms developed by the *World Benchmarking Alliance under the Corporate Human Rights Benchmark* initiative and a series of reports produced by institutions engaged in business and human rights initiatives, which offer systematised information on the design and operation of such mechanisms. These include: (ii) the *Mapping Grievance Mechanisms* report developed by the CSR Initiative at the Harvard Kennedy School; (iii) *The Right to Remedy* report published by the Ludwig Boltzmann Institute of Human Rights in Austria; (iv) *Effective Operational-level Grievance Mechanisms* published by the International Commission of Jurists; and finally, (v) the book *Corporate Accountability: The Role and Impact of Non-Judicial Grievance Mechanisms*, authored by researchers involved in the aforementioned Ludwig Boltzmann Institute report. See: World Benchmarking Alliance, 'Corporate Human Rights Benchmark: Remedies and Grievance Mechanisms' (2023) <<https://www.worldbenchmarkingalliance.org/publication/chrb/rankings/remedies-and-grievance-mechanisms/>> accessed 12 March 2025. Caroline Rees and David Vermijs (n 57). Barbara Linder, Karin Lukas, and Astrid Steinkellner, 'The Right to Remedy: Extrajudicial Complaint Mechanisms for Resolving Conflicts of Interest between Business Actors and Those Affected by Their Operations' (Ludwig Boltzmann Institute of Human Rights 2013) International Commission of Jurists (ICJ), 'Effective Operational-Level Grievance Mechanisms' (2019). Karin Lukas, Barbara Linder, and Astrid Kutrzeba, *Corporate Accountability: The Role and Impact of Non-Judicial Grievance Mechanisms* (Edward Elgar Publishing 2016).

engagement fell within the scope of the Research Question and were selected for further analysis.<sup>91</sup>

Therefore, this analysis is theoretical in nature since it is based exclusively on documents issued by the mechanisms or their administrative bodies rather than on empirical research assessing how these processes operate in practice. Herein lies a methodological limit of this research. As James Harrison, Mark Wielga, and Margarita Parejo assessed previously, few grievance mechanisms provide sufficient information about their implementation for any meaningful evaluation of their practices.<sup>92</sup> However, this aspect should not undermine the need for research on the topic. Thus, this thesis employs legal doctrinal research aware of the limits of this methodology to make a theoretical assessment of the legal effects of the practice or private remedial processes towards the right to an effective remedy.

### **Chapter 3. Case Analyses: A Deeper Look into Using PDR as a Means of Remedy**

Chapter 3 applies a descriptive and a critical approach to analyse how PDR processes are structured within three paradigmatic case analyses: the Porgera mine (Barrick Gold), the Fundão Dam (Renova Foundation), and the Bangladesh Accord arbitrations. These cases were chosen to reflect various human rights abuses, geographical regions, dispute resolution processes, and institutional configurations, reflecting the variety of context in which PDR is employed as a means of remedy. This selection is also relevant to expand the representation of cases approached by the research project. The descriptive method is central here since no new empirical research was conducted. Instead, the chapter relies on limited primary documents (i.e. procedural rules, company statements, and arbitral procedural orders) and secondary sources (i.e. NGO reports, academic studies, and oversight reports) to describe PDR's procedural details.

Chapter 3 shifts from structural mapping in Chapter 2 to in-depth descriptive analysis to assess how PDR processes operate, including how procedural standards are implemented, interpreted, or circumvented. It identifies how these mechanisms are shaped by institutional discretion, how

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<sup>91</sup> Assessed grievance mechanisms but not encompassed in the research due to the lack of minimum criteria related to no opportunities for affected individuals to negotiate include Newmont Extractives, Puma, Lululemon Athletica, Rio Tinto, Tesco, Under Armour, Ralph Lauren Corporation, Walmart, LVMH, Responsible Mineral Initiative

<sup>92</sup> James Harrison, Mark Wielga, and Margarita Parejo, 'In Search of Effective Corporate Grievance Mechanisms: Can Mandatory Due Diligence Laws Be a Progressive Force?' (2024) 16 *Journal of Human Rights Practice* 819, 824.

procedural norms are framed or labelled in practice, and how affected individuals experience and are positioned within the remedial processes. Each case study follows a common structure that begins with a contextual background on the associated human rights abuses, a description of the overarching remedy framework, and an in-depth analysis of the PDR process. Therefore, the chapter bridges the conceptual mapping of Chapter 2 with the doctrinal analysis of rights standards in Chapter 4.

#### **Chapter 4. Doctrinal Analysis of the Right to an Effective Remedy**

This chapter is the core legal doctrinal analysis of the thesis, which defines and assesses the right to an effective remedy under IHRL. This is necessary to evaluate how PDR processes contribute to or impair its realisation in transnational BHR contexts. Analytical, and interpretive approaches are used within the overarching legal doctrinal methodology. The analytical method unpacks the content of the right to an effective remedy from binding sources of IHRL, emphasising the International Covenant on Civil and Political Rights (ICCPR), General Comments 31 and 32, relevant jurisprudence of the Human Rights Committee (HRC) and regional human rights courts. The interpretive method applies these standards to evaluate how the features of PDR processes (as described in earlier chapters) contribute to or impair the realisation of the right. The outcome is an evaluative framework that directly addresses the research question by identifying where and how PDR processes contribute to or impair the realisation of the right to an effective remedy.

Most sources informing this chapter are human rights treaties that envisage the right to an effective remedy. Because international instruments do not always define what qualifies as an effective remedy, this lack of detailed criteria is addressed through the jurisprudence and practice of international committees and courts.<sup>93</sup> Therefore, Chapter 4 relies on primary normative sources and interpretative mechanisms, which enable unpacking the content of the right.<sup>94</sup>

Many of these human rights treaties also encompass protections related to criminal law, such as the right to effective procedures that safeguard fundamental rights (e.g. the right to a fair trial). However, given that this thesis approaches the right to an effective remedy as a normative framework to analyse business-related human rights abuses, the focus is primarily on the civil

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<sup>93</sup> Dinah Shelton (n 77) 173.

<sup>94</sup> Humberto Cantú Rivera (n 79) 185.

law dimensions of the right. Accordingly, special attention is given to provisions concerning civil remedies, which align with the forms of redress commonly provided by private actors through PDR. This thesis does not question the relevance of criminal law remedies nor the importance of holding corporations accountable for criminal conduct that violates human rights. However, such matters fall outside the scope of this research.

Subsequently, the chapter identifies core elements for the realisation of the right to an effective remedy based on converging standards across IHRL instruments. These elements are then used as analytical criteria to assess PDR practices observed in previous chapters. While the focus remains on the civil remedy dimensions of the right to remedy, the analysis also reflects on the structural implications of applying PDR in the place of judicial remedies, particularly where such substitution may limit access to courts or restrict the scope of redress. Hence, this chapter lays the foundation for the normative analysis developed in Chapter 5.

## **Chapter 5. Normative Analysis: Public Governance Interventions**

Chapter 5 provides a normative analysis of how the expansion of public governance intervention is necessary to guarantee that PDR contributes to rather than impairs the realisation of the right to access to remedy. The chapter adopts a normative approach that draws on legal sources and policy-oriented reasoning. It builds on the findings of previous chapters to formulate proposals for governance interventions by States to enhance PDR contributions to realising the right to an effective remedy and avoiding impairments. The method is prescriptive and grounded in binding IHRL obligations, informed by policy debates on corporate accountability, mandatory human rights due diligence, and the Office of the High Commissioner on Human Rights' (OHCHR) work on NSBGMs. It synthesises prior analysis to propose regulatory standards that should guide the oversight of PDR by States in transnational BHR contexts.