



HUMAN
RIGHTS
OMBUDSMAN

**Inputs to the Working Group on Business and Human Rights
on the role of national human rights institutions in facilitating access to an effective
remedy for business-related human rights abuses**

(August 2019)

The Human Rights Ombudsman of the Republic of Slovenia (hereinafter the Ombudsman) submits its responses to the call for written input received by the Working Group on Business and Human Rights.

The Ombudsman is a national human rights institution, currently holding status B as per classification used by GANHRI. The Ombudsman is a state body, however, it principally wields no authoritative decision-making powers, its influence, therefore, is mostly informal. It may address proposals, opinions, criticisms or recommendations regarding the protection of human rights to the authorities, which are obliged to consider them and respond within the set deadline. The Ombudsman intervenes in cases of improper or incorrect work by state or local authorities and holders of public powers. When intervening, it may also invoke the principles of equity and good administration. Anyone who believes that their human rights or fundamental freedoms have been violated by an act or action of state authority, local community authority or a holder of public authority may instigate a complaint procedure with the Ombudsman. The Ombudsman is also free to address any issues relevant to the protection of human rights and fundamental freedoms or legal certainty and can act as a friend of the court (*amicus curiae*). He or she can initiate before the Constitutional Court a procedure for the review of the constitutionality or legality of regulations, as well as to file constitutional complaints concerning violations of human rights or fundamental freedoms in individual cases before state or local authorities or holders of public powers. In 2017, amendments to the Human Rights Ombudsman Act were adopted providing the needed basis for acquiring status A according to the Paris Principles. In January 2019 Human Rights Centre was set up as a special organizational unit with tasks of promoting human rights, preparing analyses, reports and organizing consultations regarding the realization, promotion and protection of human rights and cooperating with civil society, trade unions and other state authorities.

Questions:

I. The role and mandate of NHRIs in facilitating access to effective remedy for business-related human rights abuses

- 1. Does your NHRI have an explicit or implicit mandate to handle complaints concerning alleged business-related human rights abuses? If yes, what methods**

(e.g. mediation or conciliation) can be used to facilitate access to remedy for human rights abuses?

According to the Human Rights Ombudsman Act (ZVarCP-UPB2) the Ombudsman has the mandate to handle complaints concerning alleged human rights violations and other irregularities (such as a violation of the principles of equity and good administration or undue delay in proceedings and a clear abuse of power) by state authorities, local self-government bodies and holders of public authority. It is interpreted in practice that this also includes the violations committed by companies implementing public services or providing public goods, however, the Ombudsman faces occasional objections to such an interpretation.

The Ombudsman does not have the mandate to handle complaints regarding the private sector.

However, the Ombudsman often accept complaints regarding human rights violations by business and addresses inquiries and recommendations to the public institutions, which fall under the scope of its mandate (for instance Labour inspectorate or Inspectorate for the environment and spatial planning), asking them to ensure the protection of the violated right and access to adequate and timely remedy.

2. What types of remedies can your NHRI offer to individuals or communities affected by business-related human rights abuses? Do you consider those remedies to be effective?

The Ombudsman cannot directly offer any formal remedies to individuals or communities affected by private business-related human rights abuses. However, the Ombudsman can facilitate access to remedies by issuing recommendations to state judicial or non-judicial remedial mechanisms if it finds that the complainant's effective access to the remedy is in question or to other competent public authorities which haven't adequately addressed the situation. The Ombudsman's intervention is usually an option only when a party has not been successful in applying other means available to eliminate the violation. The Ombudsman has no authoritative decision-making powers, so its influence is mostly informal. Its interventions are sometimes successful, but not always.

3. Does your NHRI have a mandate to investigate, conduct inquiry and adjudicate individual cases of alleged human rights abuses by businesses? If yes, please provide relevant statistics in relation to complaints received and adjudicated.

No.

4. Does your NHRI give any special attention to facilitate access to your complaint mechanisms by vulnerable or marginalised groups? If yes, what measures have been taken in this regard?

To be more accessible to people the Ombudsman organizes out-of-office meetings with potential complainants in various municipalities throughout the country (the public invitation is issued in the media and all who wish to speak to the Ombudsman or its representatives can apply for a personal meeting). Ombudsman also regularly visits Roma settlements and

care facilities. The brochure presenting the work and the authorities of the Ombudsman was translated (in addition to the English version) into the languages of both constitutionally recognized minorities (Italian and Hungarian) and into three versions of the Roma language. At meetings the deaf and hearing impaired can communicate using sign language and, since 2017, also using an audio induction loop.

5. What gender-sensitive and gender-responsive measures your NHRI take in dealing with cases of alleged business-related human rights abuses?

Not applicable.

6. What other measures does your NHRI undertake to facilitate access to remedy indirectly for business-related human rights abuses (e.g. raising awareness about rights and remedial mechanisms, providing legal assistance, building capacity of communities or businesses, assessing effectiveness of other grievance mechanisms, and recommending reform of the national legal system to strengthen access to remedy)?

The Ombudsman:

- Advocates for legal and policy reforms to remove barriers and strengthen access to effective judicial and non-judicial remedies.

The Ombudsman has, for example, recommended the adoption of measures to address lengthy judicial proceedings and to improve the quality of court decisions, expressed concerns with the fact that access to justice has been hindered for many people, warned about the need to expand the possibilities for legal aid, called on the state to provide material, staffing and financial conditions for efficient implementation of all inspection procedures and to establish an effective inspection supervision system.

- Handles complaints regarding lengthy court procedures and lengthy inspection procedures, a lack of transparency or priority of discussing individual cases, and a lack of response by inspection services.
- Informs all rights holders who turn to the Ombudsman (even when the Ombudsman has no authority to handle their complaint) about remedial mechanisms on their disposal and how to access them. The Ombudsman also prepared a booklet regarding worker's rights, including information on how to access remedies in cases of violations of their rights.
- In 2018 the Ombudsman organized a session with non-governmental environmental organizations and legal expert on the topic of possible legal remedies in the field of the environment and spatial planning, who also explained and introduced new mechanisms which will be available to civil society organizations with a new spatial planning and building legislation).

7. How does your NHRI collaborate with other judicial or non-judicial remedial mechanisms (e.g. courts, labour tribunals, National Contact Points, and operational level grievance mechanisms) in dealing with complaints concerning business-related human rights abuses?

By issuing recommendations if finding barriers in access to an effective remedy.

8. Can your NHRI deal with alleged business-related human rights abuses with a transnational or cross-border dimension (e.g. through informal visits and exchange of information or a cooperation arrangement with counterparts in other States)?

The ombudsman doesn't have a mandate to handle such complaints, however, it could prepare analyses and reports regarding business-related human rights abuses with a transnational or cross-border dimension, if provided with adequate capacities.

In 2017 the Ombudsman organized the 4th international conference in Ljubljana on the Environment and Human Rights: Public Participation in Environmental Matters, with an emphasis on public participation in environmental decision-making. At the conference, a Network of Ombudsmen for the environment and Human Rights was established. The Ombudsmen of Bosnia and Herzegovina, Croatia, Kosovo, Macedonia, Montenegro, Serbian and Slovenia signed a declaration expressing commitment to closer cooperation and exchange of knowledge, findings, experience, and best practices, all so as to contribute to the development of cooperation between ombudsmen in the field of the environment.

9. Is your NHRI involved in any initiatives to stimulate effective multi-stakeholder grievance mechanisms to strengthen access to remedy for business-related human rights abuses.

No.

10. Where a National Action Plan on Business and Human Rights exists (or is under development), does it provide for a role for NHRIs in relation to access to remedy in case of business-related human rights abuses?

The National Action Plan of the Republic of Slovenia on Business and Human Rights (adopted in November 2018) mentions the establishment of a Centre of Human Rights as a special unit of the Ombudsman "with the foreseen task of which is also to "provide general information on the types and forms of appeals to international bodies due to violations of human rights and fundamental freedoms". This includes informing individuals of the international mechanisms available for the protection of human rights and fundamental freedoms, such as the European Court of Human Rights, the UN Committee against Torture, the UN Committee on the Rights of the Child, the UN Human Rights Committee, the UN Committee on the Elimination of Discrimination against Women and other mechanisms operating in the framework of international or regional organisations." The Centre was established in January 2019.

II. Challenges and limitations faced by NHRIs in facilitating access to effective remedy for business-related human rights abuses

1. What are the most critical challenges and limitations (e.g., legal, practical, or financial) that your NHRI has experienced in facilitating access to effective remedy

in business-related human rights abuses? How could these challenges or limitations be overcome?

The most critical limitation is the lack of mandate to handle complaints regarding alleged violations in the private sector.

The possible limitations regarding the extended mandate and the work of special organizational unit set up in 2019 with a task to prepare analyses and reports regarding individual fields of promoting and protecting human rights (including possibly in the sphere of business), can be seen in the lack of effective authority to gather information from business and in the lack of capacity (due to lack of financial resources) to cover various fields (including business-related).

2. What additional challenges has your NHRI faced in dealing with complaints with a transnational dimension (e.g., exploitation of migrant workers, or cross-border environmental pollution)?

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3. How has your NHRI dealt with complaints involving multiple victims?

This varies from case to case. In case of systemic problems and similar factual situation sometimes Ombudsman investigates one case and gives the same recommendation in the cases of other complainants.

4. What has been the experience of your NHRI in dealing with complaints concerning parent and subsidiary companies or the supply chain of a company?

Not applicable.

III. Good practices, innovations and recommendations to strengthen the role of NHRIs in facilitating access to effective remedy for business-related human rights abuses

1. Can you share any good practice examples in which your NHRI was able to facilitate, directly or indirectly, effective remedies for business-related human rights abuses?

The Ombudsman successfully intervened in numerous cases of complaints when the complainant hasn't received a (timely) response from the inspection or when the complaint was not handled by inspections adequately in line with its authority.

The Ombudsman has been advocating for years for the adoption of measures to address lengthy judicial proceedings and is pleased to notice the progress in the reduction of court backlogs. Due to the Ombudsman's warnings the amendment of Criminal Code was adopted in 2018, which, as a condition of the criminal offence of violation of fundamental rights of employees, and for the criminal offence of violation of rights from social insurance, eliminates direct intent, which used to be a problem in the past by preventing offenders from being sanctioned when they claimed that the violation was not conscious or intentional. This will contribute to more effective control of the violation of the rights of employees. Furthermore, the Ombudsman has achieved a change in the practice of the

work of the inspection bodies and increased control of private employers employing foreign labour. The Ombudsman contributed to the adoption of the Transnational Provision of Services Act in 2018, which defined the conditions under which businesses registered to perform activities and with head office in Slovenia were able to temporarily implement services in another EU Member State and vice versa. The act improves the legal certainty of posted workers and stipulates that the Labour Inspectorate controls the implementation of the provisions on the rights of posted workers.

2. Are there good practice examples of your NHRI supporting the work of civil society and human rights defenders (including women human rights defenders) working to secure access to effective remedy for business-related human rights abuses?

The Ombudsman supported environmental NGOs in their involvement in legal environmental decision-making processes and actively assisted them in the exercise of their rights under the Aarhus Convention (access to information, public participation in decision making and access to justice). For example, the Ombudsman intervened in the case of the Ministry of the Environment and Spatial Planning violating the right of the Civil Initiatives of Celje to access environmental information.¹

As already mentioned above, the Ombudsman informs all rights holders who turn to the Ombudsman (even when the Ombudsman has no authority to handle their complaint) about remedial mechanisms on their disposal and how to access them.

Each year the Ombudsman also organizes several meetings with NGOs working on environmental matters, focused on the topics proposed by them. As already mentioned, in 2018 the Ombudsman organized a session with non-governmental environmental organizations and legal expert on the topic of possible legal remedies in the field of the environment and spatial planning, who also explained and introduced new mechanisms which will be available to civil society organizations with a new spatial planning and building legislation.

3. Can you identify any innovative steps taken by your NHRI in overcoming various challenges and limitations faced in dealing with complaints concerning business-related human rights abuses?

Not applicable.

4. What measures should be taken to strengthen the mandate, role and capacity of NHRIs in facilitating access to remedy for business-related human rights abuses?

NHRI's should be provided with authority and capacities to handle complaints and address systemic deficiencies (through monitoring, advocacy, and promotional activities).

5. How could NHRIs collaborate with regional and international human rights monitoring mechanisms (including the Universal Periodic Review) to facilitate access to remedy for business-related human rights abuses?

¹ Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2015, pages 107 – 108, www.varuh-rs.si/fileadmin/user_upload/pdf/lp/vcp_lp_2015_eng.pdf

The NHRI's could include the issues of access to remedies in alternative reports to the treaty monitoring bodies, cooperate and provide information to UN Working Group on Business and Human Rights and special procedures mandate holders and inform the UPR process with relevant information.