

An International Arbitration Tribunal on Business and Human Rights: Can it help close the accountability gap?

Ensuring effective remedies for victims of corporate human rights abuses remains one of the greatest challenges within the business and human rights agenda. Victims are confronted with enormous legal and practical barriers when filing a claim and have little chance of success. The existence of an accountability gap and an urgent need to develop effective remedies is undisputed. Next to the UN Guiding Principles on Business and Human Rights, providing the parameters for non-judicial remedies, different options to improve access to judicial remedies - such as a binding UN treaty on business and human rights or the strengthening of foreign direct liability litigation – are in discussion. Whilst these options are certainly worth pursuing, it is also widely acknowledged that they will take years to implement and might not be optimal to address all the deficiencies resulting from the accountability gap.

In light of this concern, a group of experts proposes the establishment of an International Arbitral Tribunal for Business and Human Rights¹ as a new avenue for facilitating access to justice for victims of corporate human rights abuses. This tribunal could potentially have a significant impact on the access to remedy and contribute to the closing of the accountability gap. The tribunal would offer mediation and arbitration services on a consensual basis by experts complementary to the UN Guiding Principles' Third Pillar's non-judicial remedies, national judiciaries and a possible future UN mechanism. The tribunal could be set up in a relatively short timeframe and brings along many advantages such as more flexibility, shorter and less costly proceedings and a possible enforcement mechanism, to mention a few.

My essay within the context of the Schoemaker-Sustainalytics Competition would be dedicated to exploring the value of the tribunal in helping to solve the accountability gap. The overall research goal would thereby be to identify in which way the proposed tribunal could address, and provide a solution for the existing deficiencies. Researching in which way the tribunal could improve access to remedies would help in the implementation of the proposal and therefore be of relevance for the field of business and human rights.

I intend to conduct an extensive literature research on the existing access to remedy deficiencies and the proposed tribunal. Since I will also write my master thesis on this topic, I could do this in part already prior to the internship. I would furthermore aim to carry out consultations with legal practitioners and academics, selected corporations and NGO's to gain an understanding on how they perceive the proposal. My thesis supervisor, Professor Jan Eijsbouts, agreed to support me in this regard.

The tribunal has the capacity to address many of the deficiencies regarding the accountability of corporations for human rights abuses. It also provides a favourable solution for all parties involved in human rights litigations, which increases its chance of success. I therefore believe it would be valuable to conduct more research on this topic.

¹ The Proposal can be found here: <http://www.l4bb.org/news/TribunalV5B.pdf>