

# Business & Human Rights 2020

Contributing editors

Roger Leese, Anna Kirkpatrick and Jonathan White



**Publisher**

Tom Barnes  
tom.barnes@lbresearch.com

**Subscriptions**

Claire Bagnall  
claire.bagnall@lbresearch.com

**Senior business development manager**

Adam Sargent  
adam.sargent@gettingthedealthrough.com

**Published by**

Law Business Research Ltd  
Meridian House, 34-35 Farringdon Street  
London, EC4A 4HL, UK

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. The information provided was verified between November 2019 and January 2020. Be advised that this is a developing area.

© Law Business Research Ltd 2020  
No photocopying without a CLA licence.  
First edition  
ISBN 978-1-83862-309-8

Printed and distributed by  
Encompass Print Solutions  
Tel: 0844 2480 112



---

# Business & Human Rights 2020

**Contributing editors**

**Roger Leese, Anna Kirkpatrick and Jonathan White**  
Clifford Chance

---

Lexology Getting The Deal Through is delighted to publish the first edition of *Business & Human Rights*, which is available in print and online at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Roger Leese, Anna Kirkpatrick and Jonathan White of Clifford Chance, for their assistance with this volume.



London  
January 2020

---

Reproduced with permission from Law Business Research Ltd  
This article was first published in February 2020  
For further information please contact [editorial@gettingthedealthrough.com](mailto:editorial@gettingthedealthrough.com)

# Contents

<b>Introduction</b>	<b>3</b>	<b>Germany</b>	<b>53</b>
Roger Leese, Anna Kirkpatrick and Jonathan White Clifford Chance		Thomas Voland Clifford Chance	
<b>Argentina</b>	<b>5</b>	<b>Italy</b>	<b>61</b>
María Fernanda Mierez, Constanza P Connolly and Agostina Coniglio Beccar Varela		Roberto Randazzo, Emiliano Giovine and Fabio Gallo Perozzi R&P Legal Studio Associato	
<b>Armenia</b>	<b>12</b>	<b>Rwanda</b>	<b>69</b>
Narine Beglaryan and Harutyun Hovhannisyan Concern Dialog Law Firm		Herbert Rubasha MRB Attorneys	
<b>Australia</b>	<b>20</b>	<b>Switzerland</b>	<b>74</b>
Amanda Murphy, Alexandria Bishop and Ishbel McLachlan Clifford Chance		Anya George and Peter Burckhardt Schellenberg Wittmer Ltd	
<b>Brazil</b>	<b>30</b>	<b>Turkey</b>	<b>81</b>
Juliana Gomes Ramalho Monteiro, Marília Lofrano, Fernanda Basaglia Teodoro, Yvilla Diniz Gonzalez, Marcela Diorio and Letícia Rocha Gouveia Mattos Filho		Pinar Kara Inal Law Office	
<b>Canada</b>	<b>38</b>	<b>United Kingdom</b>	<b>89</b>
Kevin O'Callaghan, Brian Burkett, Kai Alderson, Claudia Feldkamp, Pierre-Olivier Charlebois and Chris Pigott Fasken Martineau DuMoulin		Roger Leese, Anna Kirkpatrick and Jonathan White Clifford Chance	
<b>France</b>	<b>47</b>	<b>United States</b>	<b>98</b>
François Zimeray and Jessica Finelle Zimeray & Finelle Avocats		Steve Nickelsburg, Janet Whittaker, Rebecca Hekman and Jeremy Stewart Clifford Chance US LLP	

# Armenia

Narine Beglaryan and Harutyun Hovhannisyan

Concern Dialog Law Firm

## LEGAL AND POLICY FRAMEWORK

### International law

#### 1 Which international and regional human rights treaties has your jurisdiction signed or ratified?

The Republic of Armenia has ratified almost all human rights treaties. The following treaties are mentioned as more reliable in the protection of human rights.

- The International Covenant on Civil and Political Rights ratified on 23 June 1993, came into force on 23 September 1993;
- Optional Protocol to the International Covenant on Civil and Political Rights (1976), ratified on 23 June 1993, Second Optional Protocol to the International Covenant on Civil and Political Rights was signed on 2019, not ratified yet;
- The International Covenant on Economic, Social and Cultural Rights, ratified on 13 September 1993, came into force on 13 December 1993;
- The International Convention on the Elimination of All Forms of Racial Discrimination, ratified on 23 July 1993, came into force on 23 July 1993;
- The International Convention on the Elimination of All Forms of Discrimination against Women was ratified on 9 June 1993, and came into force on 9 September 1993;
- The International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified on 13 October 1993, came into force on 13 October 1993;
- The International Convention on the Rights of the Child, which Armenia ratified on 5 October 1992, came into force on 22 July 1993;
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, Armenia's signature – 26 September 2013, not ratified yet.
- The International Convention for the Protection of all Persons from Enforced Disappearance ratified 23 February 2011, came into force on 23 February 2011;
- The International Convention on the Rights of Persons with Disabilities ratified on 22 October 2010, came into force on 22 October 2010;
- The Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) entered into force 26 April 2002 Armenia made a reservation that the provisions of article 5 shall not affect the operation of the Disciplinary Regulations of its Armed Forces approved by Decree No. 247 of 12 August 1996 of the government of Armenia, under which arrest and isolation as disciplinary penalties may be imposed on soldiers, sergeants, ensigns and officers;
- The European Social Charter and European Social Charter (revised) ratified on 1 March 2004, and came into force on 31 December 2003 and 11 January 2018 accordingly. In accordance with subparagraphs

b and c of paragraph 1 of article A, Part III of the revised Charter, the Republic of Armenia considers itself bound by articles 1, 5-8, 17-20, 22, 24, 27 and 28, as well as by the following paragraphs: paragraphs 1-6 of article 2, paragraph 1 of article 3, paragraphs 2-5 of article 4, paragraphs 1 and 3 of article 12, paragraphs 1 and 2 of article 13, paragraph 2 of article 14, paragraphs 2 and 3 of article 15.

#### 2 Has your jurisdiction signed and ratified the eight core conventions of the International Labour Organization?

- ILOs – all eight fundamental conventions were ratified and came into force for Armenia;
- C029 – Forced Labour Convention, 1930 (No. 29), 17 December 2004 in force;
- C087 – Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), 2 January 2006 in force;
- C098 – Right to Organise and Collective Bargaining Convention, 1949 (No. 98) 12 November 2003 in force;
- C100 – Equal Remuneration Convention, 1951 (No. 100), 29 July 1994 in force;
- C105 – Abolition of Forced Labour Convention, 1957 (No. 105), 17 December 2004 in force;
- C111 – Discrimination (Employment and Occupation) Convention, 1958 (No. 111), 29 July 1994, in force;
- C138 – Minimum Age Convention, 1973 (No. 138) Minimum age specified: 16 years, 27 January 2006, in force; and
- C182 – Worst Forms of Child Labour Convention, 1999 (No. 182), 2 January 2006, in force.

#### 3 How would you describe the general level of compliance with international human rights law and principles in your jurisdiction?

Based on recommendations included in the Report of the Working Group on the Universal Periodic Review: Armenia (18 March 2020) Armenia needs to complete the signature and ratification of remaining main international conventions as well as optional protocols thereof. It is also recommended to ratify Rome Statute of the International Criminal Court with its amendments and fully implement them into national law, European Convention on Preventing and Combating Violence against Women and Domestic Violence and continue the efforts to prevent and combat domestic violence, European Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. The issues related to discrimination against women and sexual minority, hate speech, exploitation and trafficking were on the focus of recommendations as well.

The Committee on the Elimination of Racial Discrimination, in its last report on Armenia (2017), raised concerns that legislation of Armenia did not at that moment give full effect to all the articles of the Convention

on the Elimination of All Forms of Racial Discrimination, for instance, the state was given the recommendation to take measures against the promotion of hate speech and racism propaganda, protection of rights of minority women and girls and participation in public life for all groups.

In 26 January 2017, a report on Armenia by the Committee Against Torture welcomed the legislative measures taken by Armenia in the areas of relevance to the Convention, including the adoption of amendments to the Criminal Code (article 309.1), providing for a definition and criminalisation of torture, in accordance with article 1 of the Convention, on 8 June 2015.

In concluding observations (2016) CEDAW/C/ARM/CO/5-6, the Committee on the Elimination of Discrimination against Women welcomed the progress achieved since the consideration in 2009 of Armenia. Nevertheless, it is concerned about persistent vertical and horizontal gender segregation in the labour market, the high unemployment rate among women and the concentration of women in part-time work and low-paid jobs in the informal sector.

The Committee on Enforced Disappearances welcomes the report submitted by Armenia and the information contained in the report. The Committee appreciates the constructive dialogue held with the delegation of Armenia on the measures taken to implement the provisions of the Convention.

In concluding observations (2014) E/C.12/ARM/CO/2-3, the Committee on Economic, Social and Cultural Rights noted that the international conventions on human rights ratified or acceded to by Armenia, including the Covenant, have direct effect in the State Party and that, under article 6 of the Constitution, in the event of conflicting legislation, the provisions of the international conventions prevail. The Committee recommended to empower women, through gender-sensitive labour policies, to enhance their access to employment in all sectors of the economy and ensure equal treatment for women and men in the labour market, including equal pay for work of equal value in all sectors.

In concluding observations (2013) CRC/C/ARM/CO/3-4, the Committee on the Rights of the Child expressed concerns that significant numbers of children, including those below the age of 14, are dropping out of schools to work in informal sectors such as agriculture, car service, construction and gathering of waste metal and family businesses. The Committee urged the state party to ensure that labour legislation and practices comply with article 32 of the Convention, including effective implementation of existing laws, strengthen and involve labour inspectorates and establish child labour reporting mechanisms.

In concluding observations (2012) CCPR/C/ARM/CO/2, the Human Rights Committee expressed his concerns about information questioning the vigilance of the national human rights institution in monitoring, promoting and protecting human rights in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights.

Non-governmental organisations (NGOs) in Armenia have been focusing on mostly state-related human rights protection issues; they rarely consider the organisation and the protection of human rights in and by the organisations.

**4 | Does your jurisdiction support the development of a treaty on the regulation of international human rights law in relation to the activities of transnational corporations and other business enterprises?**

International treaties that are ratified by Armenia become the part of state's legal system. In the case of any conflict between those international treaties and national laws the international treaties will be applied. While interpreting basic rights and freedom defined in the Constitution, the practice of bodies operating based on ratified international treaties on human rights shall be taken into account.

Current Armenian legislation allows the state to perform in the general terms as regards the state's obligation to protect against human rights abuses by non-state parties. Nonetheless, there is no specific regulation related to business and human right in Armenian law: for example, no national action plan on business and human rights, no procedures to oversee the transnational operation of Armenian companies, no direct requirement for organisations to protect human rights and compliance or implementation procedures inside and by the companies as well as no specific consequences for breach of human rights by the companies (general obligations for breach of the law are prescribed).

With respect to international bodies, it is worth mentioning that in the Statement by the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, it was mentioned that one of the first steps that the Armenian government should take is to carry out genuine consultations so that the Amulsar project (epithermal-type gold mineralisation) aligns with the Guiding Principles on Business and Human Rights and respects human rights.

**National law**

**5 | Has your jurisdiction enacted any of its international human rights obligations into national law so as to place duties on business enterprises or create causes of action against business enterprises?**

Such requirements are defined by the Labour Code. The purpose of the Code is to establish state guarantees on labour rights and freedoms of individuals.

The Code sets out the principles for international human rights, such as prohibition on discrimination, the prohibition on forced labour of any kind, violence against workers, the right to employment for every person (including safety and hygiene requirements, the right to rest), protection of an employee's personal data and protection of other fundamental rights that are the responsibility of businesses.

Material liability is defined when the employer (the same is defined for the employee), by not performing or improperly performing his or her duties, causes harm to the employee.

Material liability of an employer emerges when:

- the employee not insured from accidents at work and from occupational diseases has contracted an occupational disease, has been maimed or has died;
- the damage has been caused as a result of loss, elimination of property or becoming unfit for use; and
- other violations of the property rights of employees or other persons have been committed.

The employer shall compensate for the damage caused by him or her in the manner prescribed by the Civil Code of the Republic of Armenia (ie, compensation for damage).

There are other examples in Armenian legislation too. There are requirements for excluding possible negative effects on human health or the environment. According to the Subsoil Code of Armenia, the subsoil user is responsible for ensuring the safety of the entrails waste facilities, developing and applying safety management procedures, as well as for increasing the safety, reducing the risk and using the management systems.

Subsoil users or their officials are liable for violating these rules, and liability may be administrative, civil or criminal.

**6 | Has your jurisdiction published a national action plan on business and human rights?**

Armenia has not published a national action plan on business and human rights.

## CORPORATE REPORTING AND DISCLOSURE

### Statutory and regulatory requirements

- 7 | Are businesses in your jurisdiction subject to any statutory human rights-related reporting or disclosure requirements? Which enterprises are subject to these requirements?

There are no classic examples of human rights-related reporting or disclosure in Armenian legislation, but there are some provisions that are similar. There are similar requirements in the case of crime, for example, under article 335 of Armenian Criminal Code it is considered a crime not to report a serious or particularly serious crime that is definitely being prepared, but it cannot be considered as a serious or particularly serious crime if there has been no death or other serious consequences as a result of the above actions.

In the Labour Code there is a requirement to obtain the written consent of one of the parents, the adoptive parent or the guardian or custodian if a minor under the age of 16 is employed.

A subsoil user who has received a permit for mining shall, in accordance with the procedure established by the government, submit an annual public report on the entrails use activities to the Prime Minister's Office, which includes monitoring of mining area, location of production landfills generated during extraction, safety of the population of adjacent communities or healthcare. For example, in the field of subsoil use, within the frames of the Extractive Industries Transparency Initiative (EITI), the first national EITI report publicised the financial reports of the metallic mining companies operating in Armenia for 2016 and 2017, including the financial reports of GeoProMining LLC operating Sotq gold mining. Data relating to particularly the production, export, payment of taxes, payment of environmental and nature management fees, social programmes, etc, have been publicised.

Also, with respect to the Mining Law, it should be noted that the Law on Environmental Impact Assessment and Expertise requires public hearings and discussions to be conducted before granting mining right.

The same is relevant to developers before granting a construction permit.

Another example, the Law on Electronic Communications defines that at least once during the calendar year the Regulator shall require service providers whose tariffs are subject to adjustment to submit an audited report on the cost of public electronic communications services.

The Regulator shall ensure that the damages, penalties or fines attributed to the service provider subject to tariff regulation are not borne by its competitors or end users.

- 8 | What is the nature and extent of the required reporting or disclosure?

There are no obligations of reporting or disclosure, so there are no clearly defined nature and extent for reporting or disclosure.

Further, companies that operate in Armenia but are subsidiaries of a foreign company operating in a country that has obligations of reporting or disclosure may be obliged to report or disclose by virtue of the existing obligation to the parent company, whose nature and extent are defined by the law of the country in which the parent company operates.

In the case of similar obligations, businesses are required to report information that is required by regulatory law, for example, in the case of mining law, subsoil users are required to report information regarding annual volume of extraction, exports, amounts paid to the budget, monitoring of mining area, location of production landfill generated during extraction, safety of the population of adjacent communities and healthcare.

- 9 | Which bodies enforce these requirements, and what is the extent of their powers?

For most cases the bodies that enforce these requirements are regulatory bodies. In the case of mining it is the Ministry of Environment, and for electronic communications it is the Public Services Regulatory Commission of Armenia. The extent of their powers is to require reports and in the case of failure to provide reports to take responsible measures, which may be a warning, suspension of the right or termination of the right.

### Voluntary disclosure regimes and best practices

- 10 | What voluntary human rights-related reporting or disclosure regimes are applicable to businesses in your jurisdiction?

There is no soft law for voluntary human rights-related reporting or disclosure for businesses in the Armenian jurisdiction.

However, companies that operate in Armenia but are a subsidiary of a foreign company operating in country that has obligations of reporting or disclosure may be obliged to report or disclose by virtue of the existing obligation to the parent company.

- 11 | What best practices should businesses consider when implementing policies to ensure compliance with human rights-related reporting or disclosure requirements?

As there is no state policy or regimes for reporting or disclosure for businesses, best practice in Armenia has not yet been developed. It may be followed from general law principles that, during reporting or disclosure, all the requirements enshrined in Armenian legislation should be fulfilled, for example, data protection.

If subsidiaries of foreign companies want to voluntarily report or disclose, they must follow best practices of the country in which the foreign company operates.

## CORPORATE DUE DILIGENCE

### Statutory and regulatory requirements

- 12 | Are businesses in your jurisdiction subject to any statutory human rights-related due diligence requirements? Which enterprises are subject to these requirements?

At present, there is no such requirement under Armenian legislation. There are similar requirements for subsoil users for monitoring. According to the Subsoil Code, subsoil users are required to complete planned monitoring to reduce environmental losses and prevent irreversible impact due to use of entrails, monitoring of the extracted mineral area, the location of production landfills generated during extraction, the safety of the population of the adjacent communities and ensuring public health. The last two are very much connected with human rights, therefore we believe that this monitoring relates to human rights-related due diligence.

- 13 | What is the nature and extent of the required due diligence?

The nature and extent of the required due diligence is the monitoring by subsoil users of the extracted mineral area provided them, the location of production landfills generated during extraction, the safety of the population of the adjacent communities, and ensuring the health. Monitoring includes checking compliance of the current situation with the legislative regulations and standards, including human rights in the case of the safety of population and health.

In the case of discovery, the subsoil user must immediately stop the operation of the mine and submit the results of the monitoring within two days to the Ministry of Environment.

**14 | Which bodies enforce these requirements, and what is the extent of their powers?**

The body to enforce these requirements is the Ministry of Environment. When inconsistencies or violations are discovered as a result of monitoring, and mining operations have not immediately been stopped, it is grounds for the Ministry of Environment for terminating the mining right use.

**Voluntary regimes and best practices**

**15 | What voluntary human rights-related due diligence regimes are applicable to businesses in your jurisdiction?**

There are no established voluntary human rights-related due diligence regimes in Armenia. Nevertheless, companies that operate in Armenia but are a subsidiary of a foreign company operating in a country that has obligations of human-rights related due diligence may be obliged to do due diligence by the by virtue of the existing obligation to the parent company, whose nature and extent are defined by the law of the country in which the parent company operates.

**16 | What best practices should businesses consider when implementing policies to ensure compliance with due diligence requirements?**

There are no established practices, but subsidiaries of foreign companies, which are obliged to do due diligence, must follow the best practices of the country in which the parent company operates.

**CRIMINAL LIABILITY**

**Primary liability**

**17 | What criminal charges can be asserted against business enterprises for the commission of human rights abuses or involvement or complicity in abuses by other actors? What elements are required to establish guilt?**

Legal entities are not liable for crime under Armenian criminal law. However, if, for instance, a person dies as a result of non-compliance with health and safety rules established in the corporation (which can be considered as a breach of human rights), the individual responsible for maintenance will be held responsible for committing a crime rather than the legal entity, if establishing actus reus and mens rea of the person engaged (article 157, Criminal Code (Violation of labour protection rules)).

The new Criminal Code Bill (draft law, which has already been sent to parliament for preliminary hearings) provides that the following types of organisations can be held directly criminally liable for offences:

- all types of legal persons, except for legal entities whose shareholder is the state of Armenia;
- international organisations (except organisations that have immunity);
- non-resident legal persons, including their branches.

The offences for which legal persons can be held criminally liable are listed in the Criminal Code Bill (article 127 of the Draft). The following offences relate to business and human rights:

- breach of safety rules at nuclear energy facilities (article 329);
- violation of security rules during construction, mining or other works (article 333);

- breach of safety rules in explosive atmospheric objects (article 334); and
- breach of fire safety rules (article 335).

**18 | What defences are available to and commonly asserted by parties accused of criminal human rights offences committed in the course of business?**

General defences are applicable. The main defences are listed in articles 72-75 of the Criminal Code and include the following.

- Exemption from criminal liability in the case of repentance. A person who has committed a minor or medium-gravity offence for the first time can be exempted from criminal liability if they have voluntarily pleaded guilty, cooperated in investigations and compensated for the harm caused by the offence (article 72).
- Exemption from criminal liability in the case of reconciliation with the victim. A person who has committed a minor offence can be exempted from criminal liability if he or she has reconciled with the victim and has compensated for the harm caused to the victim (article 73).
- Exemption from criminal liability due to change of situation. A person who has committed a minor or medium-gravity offence for the first time can be exempted from criminal liability if his or her acts have ceased to be dangerous to the public as a result of a change in the situation (article 74).
- Exemption from criminal liability because of the expiry of the period of the limitation. A person will be exempted from criminal liability if the statute of limitation for the crime has expired since the date on which the offence has been deemed committed (article 75).

These defences are not relevant in situations when a person dies as a result of non-compliance with safety rules of the corporation.

**Director and officer liability**

**19 | In what circumstances and to what extent can directors and officers be held criminally liable for the business's commission of or involvement or complicity in human rights abuses? What elements are required to establish liability?**

Certain officers, such as directors (heads of executive bodies), can be responsible for committing offences that result from implementing their decisions. These include:

- crimes listed in the Criminal Code, such as article 157;
- breach of labour protection rules, article 230;
- breach of safety regulations during mining, construction or other works, article 231;
- breach of safety regulations at facilities with explosion hazard, article 232; and
- breach of fire-safety regulations and so on.

The director is not held criminally liable for any death in the corporation, but an employee who is responsible for the maintenance of health and safety rules is. The director may be accused of a named crime if it relates to a violation of his or her duties.

**Piercing the corporate veil**

**20 | In what circumstances may the courts disregard the separate legal personalities of corporate entities within a group in relation to human rights issues so as to hold a parent company liable for the acts or omissions of a subsidiary? What defences apply and what remedies are available?**

For Armenia, the issue is more of civil law nature.



In criminal law, acts or omissions that led to human rights violations, such as torture, murder, inflicting heavy damage to health or destroying property, are crimes for which legal entities cannot be held liable. In this case, the director or shareholder may be held liable if all the elements of a crime are present (*actus reus*, *mens rea*).

### Secondary liability

**21** In what circumstances and to what extent can businesses be held liable for human rights abuses committed by third parties? What defences apply and what remedies are available?

Not applicable.

### Prosecution

**22** Who may commence a criminal prosecution against a business? To what extent do the state criminal authorities exercise discretion to pursue prosecutions?

According to article 175 of the Criminal Procedure Code, it is up to the prosecutor, the investigator or the investigation body (all mentioned are state bodies) to commence a criminal procedure against a director or employee of the business (the business is not subject to criminal investigation). Discretion is minimal, as these bodies are obligated within their jurisdiction to institute a criminal case on discovering the elements of crime, to take all measures envisaged by law to disclose the crime and to discover the culprits according to Criminal Procedure Code.

**23** What is the procedure for commencing a prosecution? Do any special rules or considerations apply to the prosecution of human rights cases?

According to article 175 of RA Criminal Procedure Code the prosecutor, the investigator, the investigation body (all mentioned are state bodies) must institute criminal prosecution, within their authority, provided there are reasons and grounds for the initiation of criminal prosecution envisaged in this Code. These bodies are obligated within their jurisdiction to institute a criminal case whenever the elements of crime are discovered, to take all measures envisaged by law to reveal the crime and to discover the criminals according to Criminal Procedure Code.

After instituting a criminal prosecution, in criminal cases where enough evidence is collected against the offender, the offender shall be officially accused and the court can arrest the person suspected in the commission of the crime, interrogate them and charge them.

No specific procedure is established by Criminal Procedure Code for human rights-related cases.

## CIVIL LIABILITY

### Primary liability

**24** What civil law causes of action are available against businesses for human rights abuses committed by the business? What elements are required to establish liability? What defences apply and what remedies are available?

According to article 12 of RA Civil Procedure Code, the court shall institute a civil case only based on a statement of claim or an application. Therefore, the only possible way to bring business to civil liability is to bring a claim (lawsuit) against the business.

The one shall be liable for the failure to fulfil or improper fulfilment of an obligation where there is fault, unless otherwise provided for by law or contract.

The Civil Code enshrines general ways of protection of civil rights amongst which recognition of the right, restoration of the situation having existed before the violation of the right, compensation for damages, etc.

The above-mentioned ways of protection may be used against businesses as an action for violating human rights. The most common remedy for human rights violations is compensation for damage.

A person whose right has been violated may require full compensation for the damage caused thereto, unless a lesser amount for the compensation of damage is provided for by law or by contract. Damages shall comprise expenses incurred by the person whose right has been violated, which have been or must be covered by said person to restore the violated right, the loss of or harm to the property thereof (actual damage), unearned income that this person would have received under the usual conditions of civil practices had the right thereof not been violated (lost benefit), as well as intangible damage (article 17 of the Civil Code of Armenia).

Additional remedies are available for employees, such as restoration at work, payment of downtime, etc.

The defences are general, such as substantiation that there is no guilt or causal link. No specific defences are available.

### Director and officer liability

**25** In what circumstances and to what extent are directors and officers of businesses subject to civil liability for the business's commission of or involvement or complicity in human rights abuses? What elements are required to establish liability? What defences apply and what remedies are available?

In the Armenian legal system, certain officers, such as the directors (heads of executive bodies) and officers of businesses (officer responsible for certain action or omission), can be responsible for committing offences that are a result of implementing their decisions. The one shall be liable for the failure to fulfil or improper fulfilment of an obligation where there is fault, unless otherwise provided for by law or a contract. In this regard, we would also like to mention article 1074 of the Civil Code, according to which a person who has compensated the damage caused by another person (the employee while performing service, official or other employment duties, driving means of transport, etc) shall have a right of regress to this person in the amount of the compensation paid by him or her, unless the law defines a different amount. Accordingly, the directors or officers are subject to civil liability even if the damage they caused was compensated by the business. For example, if the director of a mining company issues an order to use force against protesters, as a result of which the company compensates the damage caused to health, but it then turns out that the company did not endow the director with such authority, regress may be applied against the director.

### Piercing the corporate veil

**26** In what circumstances may the courts disregard the separate legal personalities of corporate entities within a group in relation to human rights issues so as to hold a parent company liable for the acts or omissions of a subsidiary? What defences apply and what remedies are available?

For the Armenian jurisdiction, the issue is more of civil law nature. The parent company that has the right to give mandatory instructions to the subsidiary is jointly liable with the subsidiary for the execution of transactions concluded in accordance with its instructions. It follows that parent company is liable only for execution of transactions, hence we can consider that in the case of human rights violations the parent



company may be liable if the transaction was concluded in accordance with its instructions. For that the courts shall establish that the parent company had the power to give instructions to a subsidiary, for example, by virtue of dominant participation in its statutory capital or in accordance with a contract entered into between them. This means the decisions of such a company can be predetermined.

The defence is general, parent company may object that there was no such provision in the contract with the subsidiary, which is a mandatory condition, or to prove that there is no causal link. The remedy is general (ie, compensation for damage).

### Secondary liability

**27** | In what circumstances and to what extent can businesses be held liable for human rights abuses committed by third parties? What defences apply and what remedies are available?

A legal person or a citizen (business) shall compensate for the damage caused by the employee thereof while performing his or her work (service, official) duties. An employee shall be deemed a citizen working under an employment contract, as well as under a civil-law contract, where he or she acted or should have acted on the assignment of the relevant legal person or citizen and under their supervision over the safe conduct of works. Only general defences and remedies are available (for example, the employee does not act on the assignment of the relevant business) (article 1062 of the Civil Code).

This article does not apply to damage caused by a person working for a business under a service provision contract, for example, a security service. It follows that when a breach of security caused damage, a legal person or a citizen (business) shall not compensate for the damage.

It is stated that the general contractor shall bear liability to the customer for non-performance or improper performance of obligations by the subcontractor, and shall bear liability regarding the subcontractor for non-fulfilment or improper fulfilment of obligations by the customer under the contractor agreement. No further specifications are prescribed (article 704 of the Civil Code).

### Shareholder liability

**28** | In what circumstances can shareholders be held liable for the business's commission of or involvement or complicity in human rights abuses? What defences apply and what remedies are available?

In the Armenian legal system, shareholders may be held responsible only if the activities (omission) of shareholders or other persons who have the right to instruct company obligatory for execution are the reason for the insolvency (bankruptcy) of a company, or they have opportunity to otherwise determine the activities of the company, then on these shareholders or other persons, in case of insufficiency of the property belonging to company, the accessorial (subsidiary) liability according to the obligations of a company can be conferred (article 3 of the Law on Joint Stock Companies). No specific options are available to make shareholders bear responsibility for human rights violations.

It is also worth mentioning that shareholders of a subsidiary company shall have the right to require from the principal partnership or company to compensate for the damages caused to the subsidiary company by its fault. Damage shall be considered as caused by the fault of the principal partnership or company, where it has occurred as a consequence of the subsidiary company's execution of mandatory instructions of the principal partnership or company.

## JUDICIAL REDRESS

### Jurisdiction

**29** | Under what criteria do the criminal or civil courts have jurisdiction to entertain human rights claims against a business in your jurisdiction?

As described above, According to article 175 of the Criminal Procedure Code, the prosecutor, the investigator, the investigation body must institute criminal prosecution, within their authority, provided there are reasons and grounds for the initiation of criminal prosecution envisaged in this Code. No specific procedure is established by the Criminal Procedure Code for human rights-related cases.

In the case of civil courts, the case must be of a civil nature, that is, there must be grounds for starting a lawsuit and the procedure for the exercise of the right of ownership and other property rights, exclusive rights to the results of intellectual activity (intellectual property), contractual and other obligations as well as other property relations and personal non-property relations. This also includes labour relations. The precondition for initiating a case is a lawsuit. After submitting a lawsuit against the person responsible for the human rights violation, the court accepts the claim for examination and the proceedings starts.

**30** | What jurisdictional principles do the courts apply to accept or reject claims against businesses based on acts or omissions that have taken place overseas and parties that are domiciled or located overseas?

The Civil Procedure Code allows claims to be brought against businesses in the scenario described.

### Class and collective actions

**31** | Is it possible to bring class-based claims or other collective redress procedures against business enterprises for human rights abuses?

The Civil Procedure Code established an opportunity for bringing collective lawsuits (claim). According to article 224, a claim submitted jointly by at least 20 co-plaintiffs shall be deemed to be a group action, where a claim is initiated against the same respondent (co-respondents) and the subject matter and the grounds of the claim are the same. Therefore, it is possible to bring a collective lawsuit against businesses for human right violations.

### Public interest litigation

**32** | Are any public interest litigation mechanisms available for human rights cases against business enterprises?

There is an option described by RA Administrative Procedure Code, according to which the non-governmental organisation represents the legal interests of its beneficiaries in court in the field of environmental protection.

An organisation may file a lawsuit if:

- the lawsuit derives from the statutory goals of the organisation;
- was deprived of the opportunity to participate in the public discussions on the envisaged activities within the framework of the RA Law on Environmental Impact Assessment and Expertise; and
- has been active in the environmental protection field for at least two years prior to the filing of the claim.

## STATE-BASED NON-JUDICIAL GRIEVANCE MECHANISMS

### Available mechanisms

**33** | What state-based non-judicial grievance mechanisms are available to hear business-related human rights complaints? Which bodies administer these mechanisms?

There are no typical non-judicial grievance mechanisms but the following are mechanisms that may play some role in hearing business-related human rights complaints.

The Office of the Human Rights Defender of Armenia has Department of Civil, Socio-Economic and Cultural Rights Protection, which to some extent may be considered as non-judicial grievance mechanism. They hear claims by persons whose rights were allegedly violated. This body may find that there was a breach of human rights and advise state bodies to eliminate violations.

There is a Standing Committee on Protection of Human Rights and Public Affairs in the National Assembly (parliament) of Armenia. This body is responsible for developing human rights legislation and policy on human rights protection.

The Health and Labour Inspectorate is inspectorate body established by the Prime Minister in 2018, which may fulfil following the powers:

- investigation and analysis of the causes of occupational accidents and diseases in cases prescribed by law;
- organisation of methodological assistance in ensuring labour safety for employers and trade unions in the implementation of labour legislation and other legal acts, provision of relevant information and advice;
- control over the provision of labour law guarantees for persons under 18 years of age, as well as pregnant or breastfeeding women and childcare workers; and
- in cases defined by the Labour Code, temporary suspension of work until the elimination of violations.

### Filing complaints

**34** | What is the procedure for filing complaints under these mechanisms?

In practice, complaints directly against companies can be brought only in the case of the Inspectorate, although this is not sufficient to initiate proceedings as the inspections are initiated on the instruction of the head of the Inspectorate. In the case of the Human Rights Defender and Committee, complaints may not be presented directly against companies. According to the Armenian ombudsman's 2019 report, a number of citizens have complained to them about alleged violations of their labour rights. Most of them were related to non-finalisation, unjustified dismissal, termination of the employment contract before that, failure to notify employees within the time frame set by law, etc. The Office of the Human Rights Defender has prepared reports on such cases and submitted them to both the Ministry of Labour and Social Affairs and the National Assembly to take appropriate legislative measures on these issues.

### Enforcement

**35** | What powers do these mechanisms have? Are the decisions rendered by the relevant bodies enforceable?

The Office of the Human Rights Defender of Armenia has a Department of Civil, Socio-Economic and Cultural Rights Protection, a Standing Committee on Protection of Human Rights and Public Affairs in the National Assembly (parliament) of Armenia and The Health and Labour Inspectorate, which are more investigative bodies and their decisions are not rendered enforceable by the relevant bodies.



**CONCERN DIALOG**  
Law firm

#### Narine Beglaryan

narine.beglaryan@dialog.am

#### Harutyun Hovhannisyan

harutyun.hovhannisyan@dialog.am

207 office, 1 Charents St  
Yerevan 0025  
Armenia  
Tel: +374 60 27 88 88 / +374 10 57 51 21  
www.dialog.am

### Remedies

**36** | What remedies are provided under these mechanisms?

The Office of the Human Rights Defender of Armenia's Department of Civil, Socio-Economic and Cultural Rights Protection, Standing Committee on Protection of Human Rights and Public Affairs in the National Assembly (parliament) of Armenia and The Health and Labour Inspectorate do not provide remedies. Some of them are for investigation or recognising the violation (Human Rights Defender, Inspectorate), the other is the committee of the legislative body.

### Publication

**37** | Are these processes public and are decisions published?

Yes, the processes are public, and the decisions are published, if it is not decided to the contrary by law (in case of state secret, etc).

## NON-JUDICIAL NON-STATE-BASED GRIEVANCE MECHANISMS

### Available mechanisms

**38** | Are any non-judicial non-state-based grievance mechanisms associated with your jurisdiction?

There are no typical grievance mechanisms, but it is worth mentioning trade unions, whose activity is regulated by the Law on Trade Unions. According to this law, the trade union is a public association that, in accordance with the law, unites the employees to represent their labour and related professional, economic, social rights and interests, and to protect them in their employment.

There are no internal organisational mechanisms in Armenian corporations, but the situation is different for foreign capital corporations, which must comply with regulations of country in which the parent company operates.

As a non-state-based mechanism we can mention European Court of Human Rights, which hears cases related to violations of relevant articles (right to ownership, right to private life, etc) in a manner described by European Convention on Human Rights and Fundamental Freedoms.

**UPDATE AND TRENDS****Recent developments**

39 | What are the key recent developments, hot topics and future trends relating to business and human rights in your jurisdiction?

According to the explanations submitted to the Human Rights Defender by the Ministry of Labour and Social Affairs, as a result of cooperation with the ministers of the National Assembly, legal bases envisaging the expansion of state control over the fulfilment of the requirements of the labour legislation were adopted, which are vital for complying with business and human rights standards.

In particular, as of 1 July 2021, in addition to control over the application of healthcare and safety norms, control will be exercised over the fulfilment of the requirements of labour legislation, other labour law norms and collective-employment contracts. According to the explanation given by the Ministry in January 2020, the list of measures to ensure the implementation of the said laws is being developed and agreed with the interested bodies.

## Other titles available in this series

Acquisition Finance	Domains & Domain Names	Investment Treaty Arbitration	Public M&A
Advertising & Marketing	Dominance	Islamic Finance & Markets	Public Procurement
Agribusiness	Drone Regulation	Joint Ventures	Public-Private Partnerships
Air Transport	e-Commerce	Labour & Employment	Rail Transport
Anti-Corruption Regulation	Electricity Regulation	Legal Privilege & Professional Secrecy	Real Estate
Anti-Money Laundering	Energy Disputes	Licensing	Real Estate M&A
Appeals	Enforcement of Foreign Judgments	Life Sciences	Renewable Energy
Arbitration	Environment & Climate Regulation	Litigation Funding	Restructuring & Insolvency
Art Law	Equity Derivatives	Loans & Secured Financing	Right of Publicity
Asset Recovery	Executive Compensation & Employee Benefits	Luxury & Fashion	Risk & Compliance Management
Automotive	Financial Services Compliance	M&A Litigation	Securities Finance
Aviation Finance & Leasing	Financial Services Litigation	Mediation	Securities Litigation
Aviation Liability	Fintech	Merger Control	Shareholder Activism & Engagement
Banking Regulation	Foreign Investment Review	Mining	Ship Finance
Cartel Regulation	Franchise	Oil Regulation	Shipbuilding
Class Actions	Fund Management	Partnerships	Shipping
Cloud Computing	Gaming	Patents	Sovereign Immunity
Commercial Contracts	Gas Regulation	Pensions & Retirement Plans	Sports Law
Competition Compliance	Government Investigations	Pharma & Medical Device Regulation	State Aid
Complex Commercial Litigation	Government Relations	Pharmaceutical Antitrust	Structured Finance & Securitisation
Construction	Healthcare Enforcement & Litigation	Ports & Terminals	Tax Controversy
Copyright	Healthcare M&A	Private Antitrust Litigation	Tax on Inbound Investment
Corporate Governance	High-Yield Debt	Private Banking & Wealth Management	Technology M&A
Corporate Immigration	Initial Public Offerings	Private Client	Telecoms & Media
Corporate Reorganisations	Insurance & Reinsurance	Private Equity	Trade & Customs
Cybersecurity	Insurance Litigation	Private M&A	Trademarks
Data Protection & Privacy	Intellectual Property & Antitrust	Product Liability	Transfer Pricing
Debt Capital Markets		Product Recall	Vertical Agreements
Defence & Security Procurement		Project Finance	
Dispute Resolution			
Distribution & Agency			

Also available digitally

[lexology.com/gtdt](https://www.lexology.com/gtdt)