Chapter 11: Corporate code-shifting in Business and Human Rights

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Introduction

In recent years, business and human rights initiatives have shifted the conversation about the impacts of business behavior, and businesses have had to respond. Human rights compliance through human rights due diligence allows businesses to acknowledge their role in promoting and respecting human rights from within 'familiar frames' of business discourse: specifically, through the language of compliance and audit (O'Kelly, 2019). None of this is neutral, however. Whether in terms of the impact of corporate human rights mechanisms 'on the ground' or in terms of how corporate discourses loop back into how human rights are defined and conceived, the dominant position corporations have taken in business and human rights reflects its power over how human rights are to be understood.

In this chapter we explore how corporations 'code shift' in managing human rights, articulating rights in general as risks to others that they are best placed to manage and govern, but articulating specific rights remedy claims as risks to the corporation itself that must be resisted. Human rights operate as we see it in social environments that are fundamentally shaped by corporate actors. Corporate power informs both what respect for, and compliance with, human rights instruments and norms might mean, and the webs of social meaning that can define a world of rights. By defining and coding them on their own terms, corporate actors encode *epistemologies* of human rights.

Remedy is the point at which business commitments to human rights are put to the test, as it is a core part of the business and human rights agenda. As Cappelletti and Garth noted, 'the

possession of rights is meaningless without mechanisms for their effective vindication' (Cappelletti, 1981, p.185). Remedy, as the 'third pillar' in the United Nations Guiding Principles on Business and Human Rights (UNGPs) (United Nations, 2011), is therefore crucial to business and human rights frameworks. Remedy acts, we argue, as the moment where businesses turn from acknowledging their role in promoting and respecting human rights as a general concept to addressing specific corporate-linked human rights breaches.

Generally, rights are articulated as risks that corporate actors are best placed to address in ways that sit comfortably within 'familiar frames' of traditional corporate social responsibility activities. It neither challenges nor disrupts more central business pursuits. Indeed, such processes can even enhance returns, as one component in a suite of reputation-management techniques (Economist Intelligence Unit, 2015, p.5).

The other side of company engagement with human rights – managing the fallout and claims from specific breaches – is more challenging. This is the point when human rights discourses risk escaping corporate control. Human rights may turn at this point from being a risk to stakeholders that the firm commits to manage, to being a risk to the firm itself. Such risks, from the firm's perspective, might include disrupting business processes, introducing remediation costs and undermining either social or actual licenses to operate.

Corporations are 'code-switching' actors. They approach remedy as part of a broader 'web' of meaning where businesses manage rights for society; but also resist actionable commitments that expose them to litigation and reputational risks. We examine this code-switching in corporate social responsibility reports from energy and mining firms and documents associated with disputes adjudicated by OECD National Contact Points (NCPs). Our analysis therefore includes examples of both 'internally-' and 'externally-' directed remedy discourses, each adding to the 'webs of meaning' firms draw around their social impacts. Firms articulate business and human rights as a 'dominant' discourse – one that reinforces existing power dynamics and relationships. However, they recognize that rights discourses may also take an 'heretic' turn that risks disrupting and subverting existing relationships and power dynamics. This is evident in the code-switching we examine below.

In the next section we provide an overview of remedy in general, and specifically as it emerges within business and human rights. We discuss the ways that remedy has expanded around human rights both in terms of possible remedies themselves and in terms of the institutions through which remedy might be managed or sought, as well as inherent issues with the system as they relate to corporate code-switching.

In the succeeding section we discuss corporate discourse in general and how corporate speech, as manifested in narrative reporting, makes use of business and human rights discourses without exposing firms to risks. How, in other words, code-switching allows firms to treat business and human rights risks as governable from *within* the firms without revealing them as risks *to* the firm.

We then present an analysis of corporate reports and NCP documents, concluding that business and human rights is coded by corporate narrative reporting as both legal risk and as social

commitment. We conclude with a discussion about how corporate actors use code-switching to divert human rights towards a non-perfectible but manageable future of better conduct and away from scrutiny of present or past.

Remedy in business and human rights

In this section we give an account of remedy's place in business and human rights. Our primary concern is to examine how BHR steps away from a traditional sense of remedy as synonymous with monetary compensation for a loss. Specifically, ''damages' or a monetary remedy [are] the key characteristic of tort law, regardless of the precise function which these damages perform – compensatory, vindicative, punitive or restitutionary' (Leczykiewicz, 2017, p.63). A loss must be measurable in monetary terms for it to be made right.

Concerning state-linked harm however, human rights courts have arrived at a 'broader construction of remedies beyond compensation [that] is necessary to effectively repair the harm caused, going beyond the individual and monetary expense, to recognizing the impact upon the environment and the long-term living standards of communities.' This includes restoration of the environment and acknowledgement of responsibility, among other responses (Hackett and Moffett, 2016, pp.326–7). A more nuanced picture emerges therefore that recognizes that remediation may not be fully amenable to the language of monetary loss.

Similarly, the character of corporate harms means that monetary compensation may not present a good route to either remedy or access to remedy alike. When private security forces shoot workers, or tailings spills have a permanent impact on communities and environments, or when an ingrained reliance on modern slavery persists from one generation to the next, then there is no straightforward route to determining an 'effective' remedy. All that being said however, traditional state-based or state-supported judicial and quasi-judicial processes remain the default for addressing human rights breaches.

The key challenge with remedy linked to state or non-state (or state and non-state) actors breaching rights is that *access* to remedy may present a significant challenge. This before the question of appropriate remedy is addressed. Victims are at a disadvantage when it comes to 'state-endorsed' harms and beyond, not least by their having to seek resolution through litigation. Inequalities in capacity and in knowledge are most stark where harms must be challenged on the state's 'turf.' The very processes through which remedy might be conceptualized and sought instead pit victims against what Deva calls a wall of expertise (Deva, 2012, p.48). Even where outcomes will go against them , states and others can simply slow processes down. One recent Dutch case that was decided on the merits took eleven years to reach a conclusion, and sixteen years from the occurrence of the harm (*Four Nigerian Farmers and Milieudefensie v. Royal Dutch Shell*, 2021).

Towards a broader remedy regime for corporate harms

Within all this the question emerges of how business actors fit into the human rights remedy processes at all. Should they be engaged directly in such processes where they cause harm (see for example Ratner, 2001)? If so, how ought judicial, quasi-judicial and voluntary mechanisms or codes be devised to engage them in remedy(Augenstein, 2018; Choudhury, 2018; see also Kirton and Trebilcock, 2004). These questions have been answered, at least in part, by the emergence of additional frameworks for access to remedy, beyond those suggested by Hackett and Moffett above.

Alongside litigation (e.g., tort, criminal or administrative sanctions), mediation mechanisms such as NCPs, as established under the OECD Guidelines for Multinational Enterprises, have garnered the management of corporate social responsibility as a standalone problem in human rights (OECD, 2019; OECD Watch, 2020). NCPs offer their 'good offices' to parties where a harm is alleged to occur, with a view to seek resolution (Macchi, 2017; van 't Foort, 2017; see Buhmann, 2019; Hackett, O'Kelly and Patton, 2019). In some ways therefore, while avoiding long, costly and inaccessible litigation the NCP model keeps disputes between corporations and victims within the purview of state control (Buhmann, 2019).

Limited inroads regarding remedy have been made at the European Commission recently, where the publication of the final draft of the Corporate Sustainability Due Diligence Directive (CSDDD) is expected shortly. The most recent iteration of the Directive (November 2023) is limited in geographical scope, in sectoral scope (the proposed exclusion of the financial sector), in company scope (for example, excluding SMEs) and in terms of the scope of its content. Operational grievance mechanisms, one of the key recommendations under Pillar III UNGPs concerning remedy (Principle 29), make no appearance in the proposed Directive, and indeed any notion of remedy is lacking. There is however a proposed supervisory authority which can request that a company remedy a given harm, and impose 'effective, proportionate and dissuasive' sanctions, based on turnover and compliance with existing remedial requirements (Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and Amending Directive (EU) 2019/1937, Article 20).

While emerging from a longer history (Bernaz, 2016, pt 1), more recent years have seen business and human rights concerns gain traction in two ways. They have deepened through the building of institutional frameworks, NGO activism and public awareness alike. And they have joined, not least in corporate responsibility reporting, in a family of linked concerns pertaining for instance to water issues, the environment, social responsibility, supply chains, and so on. Business and human rights has, in other words, become a matter for law and for society. Corporations have come to 'speak' across these arenas, articulating their positions in terms of familiar 'frames' of social responsibility through social audit, responsibility reporting and narrative accounts (O'Kelly, 2019; McVey, Ferguson and Puyou, 2022; also Birchall, 2021). Such frames for articulating corporate responsibilities for human rights have been expressed most notably in the UNGPs (United Nations, 2011). The UNGPs seek to curb corporate

excesses by recruiting corporate actors themselves in managing human rights risks that arise through their operations.

A corporate obligation to 'respect' human rights, per the second pillar of the UNGPs, proposes a series of corporate 'policy commitments'; due diligence standards; and approaches to remediation when breaches occur (Article 22). This is expanded in the UNGPs' third pillar addressing access to remedy (United Nations, 2011, pt. III), covering state obligations to provide judicial and non-judicial pathways to justice (Principles 26-29) and the requirement for industry bodies to make grievance mechanisms available (Principle 30). It also sets out the predicates for legitimate access to remedy through state and non-state mechanisms alike (Principle 31), requiring that remedy mechanisms are: legitimate; accessible; predictable; equitable; transparent; and rights-compatible. They also ought to involve dialogue towards real engagement, learning and improvement.

Notably, the success or failure of such schemes is reliant on knowledge held, often exclusively, by corporate actors. The Commentary to Principle 31 points out that, 'in grievances or disputes between business enterprises and affected stakeholders, the latter frequently have much less access to information and expert resources, and often lack the financial resources to pay for them' (Commentary to United Nations, 2011, Principle 31, para d). This key tension in business and human rights, certainly as conceptualized by the UNGPs, is manifest in corporate actors themselves being best placed to redress information imbalances with stakeholders.

While the infrastructures and instruments above emerged towards corporate human rights harms and corporate human rights leadership, how remedy might play out cannot be separated from the company being simply the dominant actor in the space. Reference to remedy is inevitably entangled with pre-existing business operations and imperatives and is drawn within the corporation's 'familiar frames'. There is a risk that traditional lines from human rights breaches to remedy for harms will be sanitized, becoming more palatable to corporate policy objectives. Certainly there is a lack of consistency even within industries, and across regions, where each company creates its own 'best fit' for the broad 'issue' of human rights recognition.

From the perspective of global firms such tensions reflect a kind of internal ambivalence manifested as outward code-switching. In the remainder of the chapter our focus turns more firmly to these code-switching behaviours. Code-switching alternates we think between support for business and human rights initiatives within the familiar frames of business processes, and management of litigation, reputational and other risks arising from any harms that those processes actually uncover. This accentuates corporate power, as highlighted below, by placing remedy in a 'legal compliance' frame while promoting 'corporate commitment' as pointing to a manageable business and human rights future that is shaped by an accountable but not liable firm.

The role of corporate discourse in creating the corporate actor

Discourse is 'creative' in nature and actors are (re)created through their discourses. Institutional discourses are created and (re)created endogenously (Breeze, 2012; 2013; Tregidga, Milne and Kearins, 2014), responsive to outside discourses. In addition to effectively 'creating' the actor which uses it, discourse is also an important means by which actors navigate the world (Sullivan, 2003, p.9): how they interact with other actors, how power operates within such relationships, and how power operates between discourses. Such dynamics make discourse especially suitable for analysis in understanding how companies have created their own role within society and particularly when examining the 'familiar frame' of (corporate) rhetoric.

An everyday example can be found in the social discourse used in the workplace. When workplace discourse is used, the communicating actors (for example, an employee and their boss) are effectively 'created' in different roles. Other such discourses include that of the law or of human rights. In this context, corporate framings of law, co-produced between law makers and private actors (Gilad, 2014; also Edelman and Suchman, 1997), can be read back into legal processes, reframing judicial constructions of law according to organizational readings. (Edelman et al., 2011).

Corporate reporting is the key means by which companies have generally articulated their stances on business and human rights. Reporting enables companies to advertise their actions to key audiences, including social stakeholders, shareholders, consumers and NGOs, articulating the firm's place in society. They make social reputation more 'operable and manageable' (Contrafatto, 2014, p.429), can be used to make political statements (Breeze, 2013, p.136), act as advertising rhetoric with reputational impacts, can create reduced regulatory burdens for demonstrating compliance (McNally, 2015, p.68; Ramasastry, 2015, p.250), and communicate with stakeholders. The increasing importance of narrative corporate reporting discourse has been recognized in recent procedural cases at the UK Supreme Court, where corporate reporting discourses were invoked as evidence (*Vedanta Resources PLC and another v Lungowe and others*, [2019]; *Okpabi and others v Royal Dutch Shell Plc and another*, [2021]; see also Hopkins, 2019; Hackett et al., 2021).

Archel et al (2011) make a helpful distinction between 'dominant' and 'heretic' discourses, in their discourse analysis of government-led stakeholder interviews relating to corporate social responsibility initiatives. The 'dominant' discourse "tends to impose the established order as natural," while the heretic 'ruptures the ordinary' (Bourdieu, 2014, p.209), creating a new means of understanding the same concepts. While the new perspectives provided by heretic discourse are supported by legitimacy "conferred by public expression and collective recognition" (Bourdieu, 2014, p.209), it stems from a place of limited power compared to the dominant. This much, as discussed below, can be seen regarding discourses concerning remedy: the corporate conceptualization has become ubiquitous, and although 'heretic' notions of remedy exist, implementing them is far more troublesome.

In the business context, a 'dominant' discourse emphasizes concepts such as competitive advantage, voluntarism (rather than prescription by external forces), maximization of shareholder wealth, and sustainability as (financial, reputational) opportunity (Archel, Husillos and Spence, 2011, p. 334) Essentially, it 'reflect[s] modern capitalist ideology that emphasizes progress and does not question the capitalist world order' (Joutsenvirta and Vaara, 2015, p. 749). A heretic discourse, conversely, considers issues of unequal wealth distribution, the relationships between political power and economics, breakdown of the traditional labor/capital dichotomy and modified stakeholder dialogue (Archel, Husillos and Spence, 2011, p. 334). It is 'disruptive' to the everyday operation of the business.

We return to this below in the context of corporate code-switching. The concept of code-switching originates from Du Bois's concept of double-consciousness, of subordinated people "always looking at one's self through the eyes of others, of measuring one's soul by the tape of a world that looks on in amused contempt and pity" (Du Bois, 2018, p. 4) This sense of how minority community members might (be compelled to) read and adapt themselves to majority discourses and expectations (Glenn and Johnson, 2012; see also Boulton, 2016) expanded into for instance the study of bilingualism. Code-switching's focus however has invariably gone beyond technical questions, attending instead to the phenomenon as ranging from 'animating' people's narratives (Gardner-Chloros, 2009, p.3) to being employed in pursuit of language politics (Gardner-Chloros, 2009); social negotiation (Myers Scotton, 1988) and as 'as a resource in urban minority communities for the performance of multicultural and interethnic identities' (Hall and Nilep, 2015, p.598). More recently code-switching has been expanded to incorporate linguistic elements beyond strict bilingualism, drawing on Goffman's discussion of people's 'changing gears' (1981, p.126ff) to align themselves with and navigate social situations.

Our perspective borrows from these discussions, albeit to point not to marginalized actors negotiating spaces where others dominate, but to the forms of talk that powerful actors use. Code-switching points to corporate actors in the first instance availing of and building on human rights discourses in order to align themselves with human rights norms while, in parallel, utilizing legal and more formal corporate language tools to manage the risks that arise from human rights discourses. Corporate business and human rights discourses employ human rights towards their favored dominant frame, resisting its heretic potential by code-switching between legal and normative frames. Such discursive code-switching sees what Jacobs (2012, p.384) calls 'performative terms' invoked to situate the corporate actor as socially responsible on the one hand but as neither subject to compensation claims nor NGO campaigns on the other. This includes the gap between 'knowing' and 'showing' that Favotto and Kollman (2022) point to, and beyond that the strategies of denial and resistance that emerge when rights, in their heretic frame, are constituted as a risk to the firm.

In the discussion below we examine how corporate actors operationalize the notion of 'remedy' in both their social responsibility reporting (internally directed discourse) and NCP statements (externally-directed discourse). We highlight the way remedy is used not as a technical legal mechanism, but rather towards making a 'web of meanings' (Rorty, 1981, p.577) around responsible corporate conduct in both these contexts. BHR is in this perspective a stance that

is infused with corporate power, whether in its discursive constructions (our focus here) or in terms of how action is shaped around BHR.

Framework and findings

The corporate web of meaning: corporate social responsibility reports

We first analyze a corpus of corporate social responsibility reports taken from mining and energy firms over the last 10 years, since the UNGPs and their third 'access to remedy' Pillar were introduced. Reports are a locus for human rights discourses, albeit at a high level. While there is no single corporate discourse, and while reports can come across, as O'Kelly says, 'as little more than boilerplate,' they 'are nonetheless moral expressions, self-justifications and efforts at self-legitimation' (O'Kelly, 2019, p.642). In other words, they matter.

We understand corporate reporting as entangling key concepts within 'webs of meaning' (Rorty, 1981, p.577; Rorty, 1979, p.320ff; also Rorty, 2021). In this mode, remedy emerges as a semantic fulcrum within corporate code-switching practices, sitting between managerial and commitment frames. As such it can be seen as a pure legal concept aligned to conventional understandings in, primarily, the laws of tort. Or, it can be a managerial tool, the company applying its own organizational frames and structures as part of managing victims' access to remedial programs of the firm's devising. Or it might describe a statement of openness or commitment to some future remedy for a past harm. For instance, Antofagasta's 2012 report includes a section on tailings waste that mentions a plan for the closed Los Quillayes Dam where they 'are piloting an environmental remediation plan known as phytostabilisation' (Antofagasta, 2012, p. 54). Such discourses emphasize the corporation's role in addressing human rights as something that can be managed within a firm's existing governance structures—audits, plans, and policies; certainly not disruptive or challenging to business as usual. Business and human rights is co-opted to reinforce the company's dominance, rather than acting to challenge their power.

We ought not to underestimate the role that the UNGPs play in promoting remedy in these ways. Many firms associate themselves with the UNGPs' 'protect, respect, remedy' framework, at least nominally. Thus, the language used in reports flags the UNGPs as part of discussions that focus on procedural motifs, institutional standards, and compliance mechanisms. Remedy, in this case, is articulated as part of broader compliance procedures, which again, are to be managed by the firm. As Anglo American puts it, 'our interactions with government and government-linked institutions are not just about legal compliance, but also involve active engagement at all levels in line with our wider international policy commitments, e.g. on human rights or transparency' (Anglo American, 2017, p. 20). Uses of remedy here are associated with the UNGPs but more broadly with a coalescence of legal and compliance mechanisms within which remedy is imagined as an aspect of compliance and compliance is imagined as a management style.

Social responsibility reports are also suffused with 'commitments.' Commitments' place in producing a web of meaning is crucial for understanding remedy: it represents a focus linking current motivations (whether personal or corporate) either to specific actions or to general avoidance of risks and harms. When the firm Anglo American states for instance that they 'are committed to ensuring no harm comes to any of our people,' or that 'we are committed to materially reducing our environmental footprint over the next decade' or that they are committed to address the need for 'sustainable products made with sustainable material', they are not just speaking in boilerplate (Anglo American, 2018, pp.10, 35, 43). They are linking current motivation to future action and to the long term. Indeed, given that 'change from the baseline land use associated with mining is currently unavoidable and difficult to remediate effectively, *particularly in the short term,*' it may be that such speech aims to encode time horizons for attention away from here-and-now impacts and towards future remediations (Anglo American, 2017, p.17). Such language suggests a hesitation for firms in the present, while simultaneously emphasizing their trajectory towards an ultimate, albeit not perfectible, goal. Commitments suggest ongoing packages of effort and work on the one hand, but on the other they highlight that some risks can be managed but never entirely controlled.

Beyond direct reference to commitment, and in line with the broader 'web of meaning' of the term 'remedy', another reporting construction sees remedy as associated with action. Royal Dutch Shell gives an account as follows:

> Shell has community feedback mechanisms at all major operations and projects to receive, track and respond to questions and complaints from community members, as part of our approach to managing human rights and providing access to remedy (Royal Dutch Shell plc, 2018, p.68).

Here, Shell's operational grievance mechanisms are presented as providing access to remedy in themselves. This highlights a central element in the domination by corporate actors of the business and human rights space: how remedy is approached is determined within the familiar frames of corporate actors, less so in ways that challenge corporate priorities. Corporate action is to be framed as *internal* corporate action, not for instance that centered on or imposed by state or community.

Remedy through remediation plans

The discussed aspects of remedy – remedy as procedure and remedy as commitments to future states of being – coalesce in discussions of remediation plans. Although rare in high-level documents like annual social responsibility reports, when remediation plans are mentioned, they can be quite specific and informative. Glencore for instance describes one plan as follows:

> The [water-related environmental] incident occurred in a remote part of our mining lease for our Koniambo Nickel asset in New Caledonia. The area impacted was not in active operation. The event was triggered by a period of abnormally high rainfall. Mud generated by the landslide entered a nearby creek and resulted in a temporary discolouration of its water. In consultation with the local government and communities downstream of the area, we developed remediation plans, which are now completed (Glencore plc, 2017, p.40; see also Diageo, 2010, p.40 on responses to a hazardous spill).

Remedy here also works in a law and compliance frame, further entangled with commitment. We should note however that the commitment frame often offsets corporate action to external actors, situating risk again as manageable but not perfectible. Regarding the Fundão tailings dam in Mariana, Brazil which collapsed in 2015 (see Carmo et al., 2017), BHP describes 'negotiations commenced with regulators and landowners to determine the long-term remediation plans of these areas for biodiversity, agricultural and urban uses' (BHP, 2018, p.20). This is an area where BHP has invested, including through the Renova Foundation, in "compensation and remediation measures" (BHP, 2019). It has sought to maintain a web of meaning where remedy is considered one aspect of corporations managing their affairs.[1]

Code-switching in action: the OECD National Contact Points

Where remedy is coded in opposition to such frames, especially by external actors, corporate discourses seek to reassert control. As noted previously, NCPs act as a quasi-judicial mechanism enabling mediation over complaints. Here firms exercise less control over the ways in which remedy is invoked and so they switch into a mode that treats business and human rights in general and remedy specifically as risks to the business instead of as risks for the business to manage. While the NCP system has been accused of favoring 'form over substance' (Nolan and Taylor, 2009, p.444; also Amnesty International, 2016) that form may be instructive in itself.

Requests for remedy made by complainants in NCP proceedings are often explicitly disruptive to the business given those making a claim ask for disputed activities to cease. For example, the request made concerning the Cerrejón mine in Colombia called 'on the parent companies of the mine [including Anglo American] to close down the mine and remedy its impacts' (Irish National Contact Point, 2021, p.3). Likewise, in *IAC & WDM vs. GCM Resources plc* complainant NGOs cited United Nations Special Rapporteurs who called for 'an immediate halt to AEC/GCM's proposed Phulbari Coal Mine Project', warning 'if this open-pit mine is permitted, it could displace hundreds of thousands of people and lead to the violation of fundamental human rights' (UK National Contact Point, 2012, para 40). The first point of remedy in these cases was simply to cease the harm.

[1]The Fundação Renova is a foundation established to manage reparations for damages caused by the Fundão tailings dam collapse. See https://www.fundacaorenova.org/

Corporate responses to such claims vary, with outright denial being a common strategy. In the GCM case, while rejecting the allegations, GCM also sought to justify its activities through weighting obligations to shareholders higher than human rights obligations (IAP, 2015, p.2). BP, concerning the BTC pipeline, acknowledged the inevitability of 'individual shortfalls' but 'denied that they had taken a defensive or passive approach to complaints' (UK National Contact Point, 2003, para 49).

Remedy bounded on corporate terms

Where denial has dominated; corporate actors refuse to engage; or where complaints have failed (see OECD Watch, 2022a, p.2), NCPs have few powers to intervene. When remedy does occur, corporate actors often supported by states have sought to shape remedy in line with corporate frames. The approach regarding the Fundão dam saw the 'the creation of the Renova foundation responsible for implementing remedial social-environmental and social-economic programs and actions' (OECD Watch, 2022b, p.5), which although instigated through state intervention and a 'public civil lawsuit', falls within the remit of the 'dominant' constructions of remedy seen in CSR reports (commitment and remediation plans specifically). A return to legal language is seen, recalling 'remedy as management' frames:

> the Córrego do Feijão mine levee, Vale S.A., the State of Minas Gerais, and justice institutions entered a settlement for the reparation of social-environmental and social-economic damages within a collective lawsuit. Unfortunately, the negotiation of these settlements did not include contributions from the affected indigenous communities (OECD Watch, 2022b, p.5).

While the above is an example of a remedy 'achieved' along dominant corporate lines, despite the influence of external actors, in other cases such a remedy proves difficult to attain. It is notable that pathways to remedy are unclear where they do not comport with corporate priorities, with the dominant corporate frame. In the case of Fundão for instance:

> Inhabiting the margin of the Doce river, 137 Krenak families *experienced the death of the river*, which became inundated with the residue-laden mud. The Doce river was considered sacred for the Krenak and was the site of rituals and intergenerational cultural shared values, besides serving as a source of water and food (OECD Watch, 2022b, p.4).

Similar issues were recognized in the earlier *Survival Intl v Vedanta* case, where Vedanta proposed building a mine on indigenous land in India. The UK NCP's final statement said of the peoples on the site: 'Dongaria Kandha tribe resides in Niyamgiri Hills. As per the applicants, they have unique culture, they worship Niyamgiri Hills, are dependent on it for their survival and that undertaking of mining at Niyamgiri Hills will result in extinction of the tribe' (UK National Contact Point, 2009, p.9). The forest was the tribe's "mother," as

one member of the tribe put it in a consultation meeting (UK National Contact Point (final statement), 2009, p.12).

Such circumstances highlight the powerlessness of peoples for whom corporate intrusions on their lives cannot be fully expressed in corporate discourse. The webs of meaning that corporations draw—including over remedy, remediation plans and even compensation on the occasions it is offered—are epistemologically distinct from what is required to comprehend the loss: a damage that cannot be quantified as damages, so to speak (on epistemological justice see Fricker, 2009; on testimony, human rights and epistemic redress see Townsend and Townsend 2021).

Corporate discourses encode epistemologies of rights and remedy, situating them as manageable and, if not, as something to be denied. Business and human rights are managed towards corporate dominance and away from any heretic frames, where human rights break free of corporate webs of meaning and act to threaten business operations and business models. Corporate reference to remedy in the context of external scrutiny, which ought logically to disrupt business processes after having been 'caught out', is instead either 'code-switched' into the familiar dominant frame of corporate rhetoric, or if that is impossible, is rejected.

Conclusion: webs of meaning as code-shifting

While the discussion above provides a partial account of how remedy emerges in corporate discourses, it illustrates an important component in corporate speech around business and human rights: namely, the framing of such issues in ways which are acceptable to the company, or else rejection of human rights claims. We illustrate the way remedy is entangled in corporate speech between its managerial and commitment frames, sometimes more in one direction and sometimes more in the other. The overall sense is of remedy as a broad principle is that it acts as part of corporate management techniques, as a component of compliance, and as part of a risk framework in attending to third parties and to subordinates within the firm.

Deva suggests that we think of business and human rights regulation as having 'twin efficacy' (Deva, 2012, p.47) in its intent. It ought to promote both preventative and redressive practices in addressing the impact of business activities on human rights. On the surface corporate discourse seems to have absorbed that approach, but only insofar as it complies with dominant corporate frames: without disrupting business processes. The texts we analyze here reflect this: they are tools for corporations managing business and human rights both towards their being risks to manage on corporate terms and away from them being risks *to* the corporation.

The web of meaning drawn around remedy reinforces the corporate actor, not as being on the defensive but, rather as the dominant actor in the environment. Further, business and human rights' heretic potential is reduced as its core mechanism is drawn into the familiar frames of corporate discourse. This is achieved through corporate code-switching, in this instance between legal compliance and manageable commitments. If remedy for harm is required for a

process to be effective then it will be found here, but on the corporation's terms. This leaves space for further prescription by mechanisms such as the UNGPs, OECD and the recent draft Directive on corporate sustainability, to recognize the issues within the 'familiar frame' of rhetoric concerning human rights and remedy and recreate recognition of human rights in a more engaged, accessible, and disruptive manner.

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