eX **(https://www.edx.org)**

LouvainX: Louv2.01x International Human Rights

Courseware (/courses/LouvainX/Louv2.01x/1T2014/courseware)   Course Info (/courses/LouvainX/Louv2.01x/1T2014/info)

Discussion (/courses/LouvainX/Louv2.01x/1T2014/discussion/forum)   Wiki (/courses/LouvainX/Louv2.01x/1T2014/course_wiki)

Progress (/courses/LouvainX/Louv2.01x/1T2014/progress)

Reading Materials (/courses/LouvainX/Louv2.01x/1T2014/pdfbook/0/)

Syllabus (/courses/LouvainX/Louv2.01x/1T2014/3517b9300b554b118f11224b8c05eb10/)

EFFECTIVE REMEDY - EXERCISE 2 (1/1 point)

2. Article 2, para. 3, a), ICCPR provides that States should "ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, *notwithstanding that the violation has been committed by persons acting in an official capacity*" (emphasis added). What do you think this refers to?

- ⚪ It means that officials cannot hide behind the fact that they are simply executing orders from hierarchical superiors to justify human rights violations;
- ⚪ It means that human rights violations that have their source in the conduct of private parties (non-State agents) do not oblige the State to provide effective remedies;
- 🔘 It means that although the violation has its source in a measure adopted by a State agent, the State still must provide remedies, to repair its own fault.   ✔

EXPLANATION

The sentence highlighted means that an effective remedy must be provided even if the measure resulting in the alleged violation was adopted by a State agent. In other terms, whereas the State is prohibited from violating human rights, it also is imposed a complementary obligation: where such a violation did occur, it must provide a remedy to the victim. Of course, the duty to provide access to an effective remedy also is imposed when the initial violation was committed by a private party (a non-State actor). By providing a remedy in such a case, the State is merely discharging its duty to protect human rights, which was discussed in **section 4** of the course.

It is in the interest of the State to establish effective remedies that can (i) lead to a cessation of the violation if the violation is a continuous one, and (ii) compensate the victim either by a *restitutio in integrum* (by replacing the victim in the situation that would be that of the victim if the violation had never occurred) or by a monetary compensation.

Indeed, where such remedies exist and are accessible, the victim shall generally have to exercise these remedies before filing a claim before an international body. This is referred to as the requirement of the *prior exhaustion of local remedies*, and it is generally a condition for engaging the responsibility of the State.

At the same time, it would not be acceptable for the State to tolerate violations committed by public officials, or to remain passive in the face of repeated violations by private actors, and simply to provide *post hoc* forms of compensation without acting preventively. This is why the European Court of Human Rights developed the notion of "practice", initially defined as "an accumulation of identical or analogous breaches which are sufficiently numerous and inter-connected to amount not merely to isolated incidents or exceptions but to a pattern or system; a practice

does not of itself constitute a violation separate from such breaches" (*Ireland v. the United Kingdom* judgment of 18 January 1978, Series A n°25, para. 159). More will be said on these issues in **section 8**, the last section of this course.

Check   Hide Answer