

Legal Liability

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

- “Article 3
- 1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis:
- (a) In the context of sale of children as defined in article 2:
 - (i) Offering, delivering or accepting, by whatever means, a child for the purpose of:
 - a. Sexual exploitation of the child;
 - b. Transfer of organs of the child for profit;
 - c. Engagement of the child in forced labour;
 - (ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;
- (b) Offering, obtaining, procuring or providing a child for child prostitution, as defined in article 2;
- (c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2.
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- 4. Subject to the provisions of its national law, each State Party shall take measures, where appropriate, to establish the liability of legal persons for offences established in paragraph 1 of the present article. Subject to the legal principles of the State Party, such liability of legal persons may be criminal, civil or administrative.”

Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights, 2014

- “Article 46C - Corporate Criminal Liability
- 1. For the purpose of this Statute, the Court shall have jurisdiction over legal persons, with the exception of States.
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- 6. The criminal responsibility of legal persons shall not exclude the criminal responsibility of natural persons who are perpetrators or accomplices in the same crimes.”
- “Article 28A
- International Criminal Jurisdiction of the Court
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- 1. Subject to the right of appeal, the International Criminal Law Section of the Court shall have power to try persons for the crimes provided hereunder:
 - 1) Genocide
 - 2) Crimes Against Humanity
 - 3) War Crimes
 - 4) The Crime of Unconstitutional Change of Government;
 - 5) Piracy
 - 6) Terrorism
 - 7) Mercenarism
 - 8) Corruption
 - 9) Money Laundering
 - 10) Trafficking in Persons
 - 11) Trafficking in Drugs
 - 12) Trafficking in Hazardous Wastes
 - 13) Illicit Exploitation of Natural Resources
 - 14) The Crime of Aggression”

Recommendation CM/Rec(2016)3 of the Committee of Ministers to member States on human rights and business

ii. Criminal or equivalent liability for business-related human rights abuses

44. Member States should consider applying such legislative and other measures as may be necessary to ensure that business enterprises can be held liable under their criminal law or other equivalent law for the commission of:

- crimes under international law caused by business enterprises;
- offences established in accordance with treaties, such as the Criminal Law Convention on Corruption (ETS No. 173), the Convention on Cybercrime (ETS No. 185), the Council of Europe Convention on Action against Human Trafficking (CETS No. 197), the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201), the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210), the UN Convention against Transnational Organised Crime of 15 November 2000, and the UN Convention against Corruption of 31 October 2003, and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography of 25 May 2000;
- other offences constituting serious human rights abuses involving business enterprises.

Such measures should also ensure that business enterprises can be held liable for their participation in the commission of such crimes.

45. Irrespective of whether business enterprises can be held liable under criminal or other equivalent law, member States should consider applying such legislative and other measures as may be necessary to ensure that representatives of business enterprises can be held criminally liable for the commission of crimes under international law, offences established in accordance with international agreements, and other offences that would constitute serious human rights abuses involving business enterprises.

OHCHR Guidance to improve corporate accountability and access to judicial remedy for business related human rights abuse

Policy objective 1: Domestic public law regimes that are relevant to the respect by business enterprises of human rights (“domestic public law regimes”) are sufficiently detailed and robust to ensure that there is both effective deterrence from and effective remedy in the event of business - related human rights abuses.

- 1.1 Domestic public law regimes (a) provide the necessary coverage with respect to business-related human rights abuses; (b) adopt legislative, regulatory and policy measures appropriate to the type, nature and severity of different business-related human rights impacts; and (c) are clear as to whether, and the extent to which, they impose legal obligations on companies.
- 1.2 Domestic public law regimes make appropriate provisions for corporate criminal liability, or its functional equivalent, in cases where business-related human rights impacts are severe.
- 1.3 Corporate legal liability under domestic public law regimes does not depend, in law or in practice, on a prior successful conviction of an individual offender.