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## **Business and Human Rights: Enhancing Accountability and Access to Remedy**

*An OHCHR initiative to contribute to a fairer and more effective system of domestic law remedies, particularly in cases of gross human rights abuses*

### **Background**

In February 2014, the Office of the United Nations High Commissioner for Human Rights (OHCHR) launched a process aimed at creating a fairer and more effective system of domestic law remedies in cases of serious corporate related human rights abuses. The process is intended to contribute to more effective implementation of the UN Guiding Principles on Business and Human Rights in such cases, through enhanced preventive and remedial measures.

As the first step in this process, OHCHR in February 2014 published a study commissioned from independent legal expert Dr. Jennifer Zerk on the effectiveness of domestic judicial mechanisms in relation to business involvement in gross human rights abuses. The study identified legal and practical barriers to accessing justice at the domestic level and the effects of differences in domestic approaches on the way that remedial systems are used in practice. The study found that there are many issues of policy and principle that demand further examination and clarification in order to enhance accountability and access to remedy in line with the UN Guiding Principles. **The study concluded by recommending a consultative, multi-stakeholder process of clarification** in two parts:

1. **A consultative process aimed at clarifying key issues of principles and policies**, including the elements of corporate liability for involvement in gross human rights abuses under private and public law regimes but focusing in particular on criminal law;
2. **A process to identify models of best State practice** in relation to the functioning of domestic judicial mechanisms, including identifying a programme of activities to promote technical cooperation and knowledge exchange.

Following the publication of the study, OHCHR called for public submissions on the study recommendations. A summary of the submissions received can be accessed via <http://www.ohchr.org/EN/Issues/Business/Pages/BusinessIndex.aspx>.

### **Human Rights Council Mandate**

The Human Rights Council, in its resolution 26/22 adopted on 27 June 2014, requested the High Commissioner to “*continue the work to facilitate the sharing and exploration of the full range of legal options and practical measures to improve access to remedy for victims of business-related human rights abuses, in collaboration with the Working Group, and to organize consultations with experts, States and other relevant stakeholders to facilitate mutual understanding and greater consensus among different views.*” OHCHR is requested to publish a progress report of its work before the twenty-ninth session of the Human Rights Council (June 2015) and a final report for consideration by the Human Rights Council at its thirty-second session (June 2016).<sup>1</sup>

### **Planned work streams**

Building on the recommendations in the expert study, inputs from stakeholders and the mandate from the Human Rights Council, OHCHR’s programme of work for the project is designed to result in **credible and workable guidance for States** to enable strengthened and more consistent implementation of the UN Guiding Principles when it comes to accountability and

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<sup>1</sup> A/HRC/Res/26/22, paragraph 7.

remedy, taking into account different legal systems, cultures, traditions and states of economic development. The intention is for this guidance to be incorporated into the final report requested from the High Commissioner for Human Rights under Human Rights Council Resolution A/HRC/Res/26/22. OHCHR has chosen to focus on six distinct, but interrelated issue areas that were among those emerging from the two main recommendations in the expert study and subsequent inputs from stakeholders. The six issues have been selected for particular focus because of their strategic value and potential to enhance accountability and access to remedy from a practical, victim-centred perspective:

1. **Domestic law tests for corporate accountability:** This project will clarify how different domestic legal systems attribute and assess corporate legal liability for gross human rights abuses with a view to developing "good practice" guidance for States in relation to the factors to take into account in the assessment of corporate liability in cases of alleged business involvement in gross human rights abuses.
2. **Roles and responsibilities of interested States:** This project will explore State practices with respect to the appropriate use of extraterritorial jurisdiction and domestic measures with extraterritorial implications. It will result in "good practice" guidance for States in relation the management of cross-border cases and explore possible models of international and bilateral cooperation.
3. **Overcoming financial obstacles to legal claims:** This project will survey current State practices and various 'packages' of measures that can be used to assist financially disadvantaged claimants in bringing claims relating to corporate human rights abuses, and will develop guidance on 'minimum steps' and 'good practice options' for States.
4. **Criminal sanctions:** This project will survey current and emerging State practice in relation to criminal sanctioning of corporations for serious human rights abuses and identify 'good practice models' for States, taking into account innovations from other areas of criminal law.
5. **Civil law remedies:** This project will survey current and emerging State practice in relation to civil law damages in cases of serious corporate human rights harm, explore the role of domestic judicial mechanisms in relation to supervision and implementation of settlements and awards, and identify possible 'good practice models' for States, taking into account innovations from other areas of private law.
6. **Practices and policies of domestic prosecution bodies:** This work stream aims to investigate the reasons behind the apparently very low levels of activity by domestic criminal law enforcement agencies in relation to alleged business involvement in gross human rights abuses, identify challenges faced by domestic prosecutors in such cases, and to develop a set of recommendations for States as ways to begin addressing those challenges.

In order to maximise resources, OHCHR will lead a process combining global and focused information-gathering and project-specific analysis and consultation. Each project has its own work plan; however, for five of the six work streams, an "Open Process" (global) and a "Detailed Comparative Process" (focusing on 20 jurisdictions) will be used to elicit information.

For more information on this initiative see:

<http://www.ohchr.org/EN/Issues/Business/Pages/BusinessIndex.aspx> or contact: [business-access2remedy@ohchr.org](mailto:business-access2remedy@ohchr.org).