



OHCHR Consultation: The Relevance of Human Rights Due Diligence to Determinations of Corporate Liability

Overview

Pursuant to Human Rights Council Resolution 32/10, OHCHR convened a multistakeholder consultation on 5-6 October 2017 which explored the relevance of human rights due diligence (HRDD) to determinations of corporate liability. Over 70 experts attended the consultation, representing a range of stakeholders, including States, intergovernmental organizations, national human rights institutions, non-governmental organizations, business, legal practitioners, and academia.

The consultation was meant to build upon the policy objectives included in the High Commissioner's Accountability and Remedy Project report on enhancing the effectiveness of judicial mechanisms (ARP I), submitted to the Council at its thirty-second session. This report called on States to ensure that principles for assessing corporate liability under domestic public and private law regimes be properly aligned with the responsibility of companies to exercise HRDD across their operations. Given the technical legal nature of this policy objective, and the importance of this topic to ensuring access to remedy, OHCHR identified this topic as worthy of further exploration and elaboration. The aims of the consultation were to unpack the relationship between HRDD and legal liability, discuss different models adopted by States, and identify challenges and risks of embedding HRDD in liability regimes, with a view to developing concrete and practical recommendations to States for overcoming these challenges and risks. Based on the discussions had during the two-day event, OHCHR plans to release a report which clarifies and expands upon the ARP I findings, and suggests ways in which States can better obtain policy coherence between their implementation of Pillar III of the UN Guiding Principles on Business and Human Rights (UNGPs) and their efforts to promote HRDD among business enterprises in accordance with Pillar II of the UNGPs.

The consultation was composed of eight sessions exploring a range of topics, including the relationship of HRDD to legal liability generally, State regimes mandating HRDD activities, the role of HRDD in negligence claims, the appropriateness of defenses based upon HRDD, and how HRDD could affect determinations of sanctions and remedies. Specific information about each session can be found in the concept note of the consultation, available on the OHCHR website.

OHCHR plans to release its report based upon this consultation at the Human Rights Council's thirty-eighth session in June 2018. It will appear as an addendum to the High Commissioner's report on enhancing the effectiveness of State-based non-judicial mechanisms in cases of business-related human rights abuse (ARP II).