

Enhancing Access to Judicial Remedy for Corporate Related Human Rights Abuses:

OHCHR consultative process on legal and practical measures to approve access to remedy

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Access to Remedy in the international human rights system

- Effective remedies for victims of human rights abuse are a critical component of any legal system and are contemplated by all major human rights treaties
- Strongly affirmed by human rights bodies and expert recommendations

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

– UDHR, Article 8



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Access to Remedy in the Guiding Principles

Even where institutions operate optimally, disputes over adverse human rights impacts of company activities are likely to occur. If so, victims must be able to seek redress.

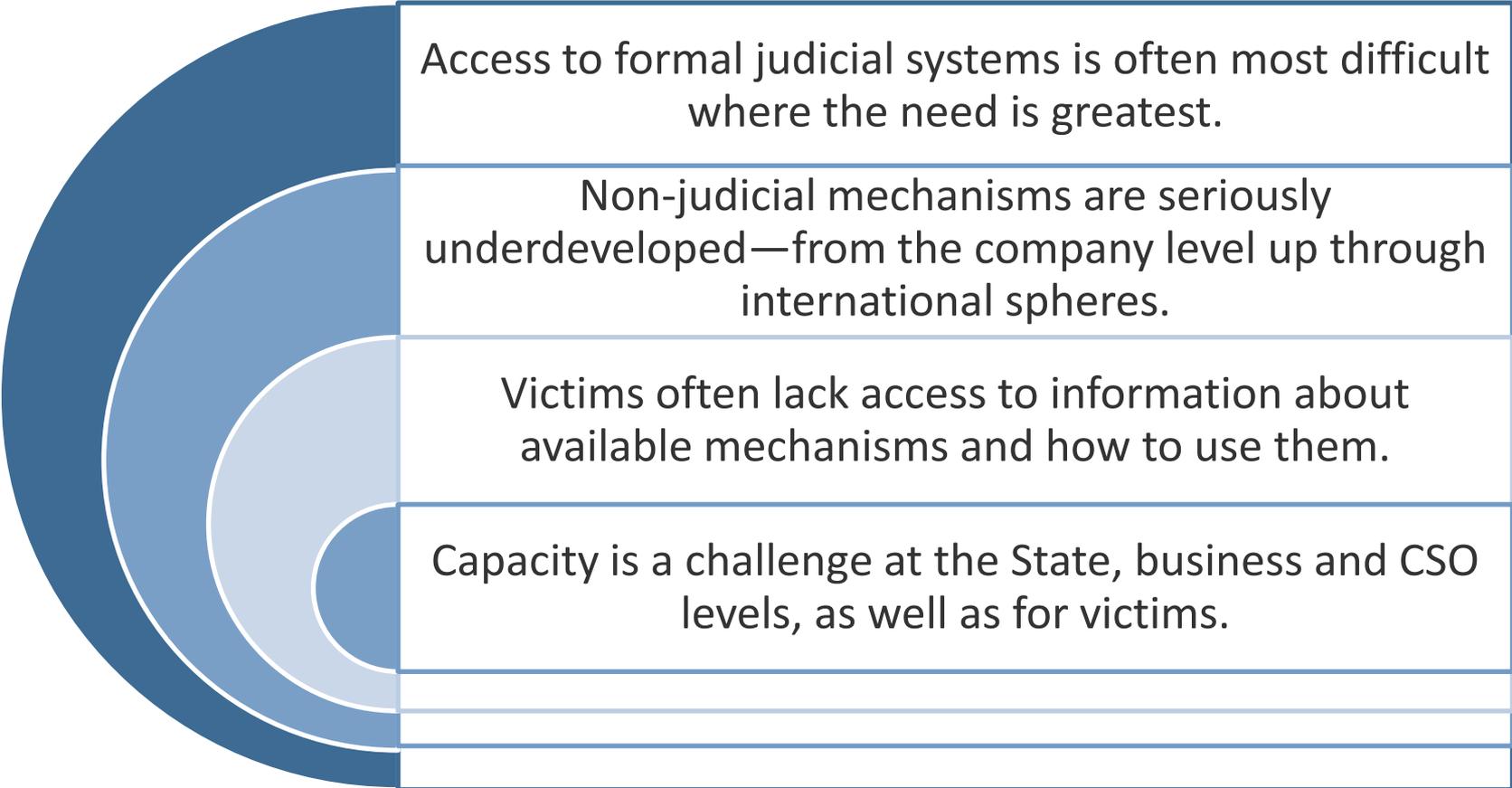
State Duty to Protect

States are required to take appropriate steps to investigate, punish and redress.

Corporate Responsibility to Respect

Mechanisms at the company level provide early warning and resolve grievances before they escalate.

Diagnosis - what is the state of play?



Access to formal judicial systems is often most difficult where the need is greatest.

Non-judicial mechanisms are seriously underdeveloped—from the company level up through international spheres.

Victims often lack access to information about available mechanisms and how to use them.

Capacity is a challenge at the State, business and CSO levels, as well as for victims.

OHCHR Study on corporate liability for gross human rights abuses: towards a fairer and more effective system of domestic law remedies:

- Responds to recommendations by UN SGSR on business and human rights for follow up work to the SGSR's mandate.
- A particular need was identified for greater clarity and consistency in domestic law responses to cases where businesses cause or contribute to *gross human rights abuses*.
- The study was commissioned in May 2013 as a first step in a longer process of conceptual, normative and practical clarification.



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What was the study about?

- Accountability of corporate entities under domestic judicial mechanisms for involvement in gross human rights abuses.
- Involvement can be direct or indirect.
- Study covers both criminal and civil law mechanisms.
- But focuses on liability for gross abuses.
- Key questions:
 - How well are domestic judicial mechanisms responding?
 - What issues/difficulties/problems have been encountered so far?
 - Note the importance of taking account of *the way the law is used*, as well as what it says.



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Key findings:

- Corporate legal liability is at least a theoretical possibility under many domestic regimes.
 - But note variations in approach to issues such as attribution of criminal and civil liability.
- Concept of “corporate complicity” is recognised in many states.
 - But note the many differences in domestic legal standards.
- Many differences in relation to issues such as procedure, limitations periods and sanctions.
- Many differences in the extent to which law enforcement bodies and remedial mechanisms are entitled or prepared to exercise extraterritorial jurisdiction.

Overall assessment:

- The “expanding web of liability” is not yet translating into an effective system of remedies in practice.
- Present tendency of litigants to favour action in foreign courts is costly and inefficient and may have adverse consequences in the longer term.
- Uneven levels of legal protection and inequalities in ability of victims to access justice.
- Lack of legal certainty for both victims and companies.
- Lack of level-playing field for companies.
- “*patchy, unpredictable, often ineffective and fragile*”.

Next phase:

Human Rights Council resolution 26/22:

OP 7. «Requests the United Nations High Commissioner for Human Rights 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 and to publish a progress report thereon before the twenty-ninth session of the Human Rights Council, and the final report to be further considered by the Council at its thirty-second session.



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Consultative multi-stakeholder process:

- *Clarification of the various tests for corporate liability (civil and criminal) currently applied in different jurisdictions*
- *Roles and responsibilities of interested states («home» and «host» states) in relation to standard setting and enforcement*
- *Identification of «good state practice» in relation to three key areas of focus:*
 - ✓ *Funding for legal claims*
 - ✓ *Criminal law sanctions*
 - ✓ *Civil law remedies*
- *Domestic prosecution bodies*



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Questions for multi-stakeholder consultant on enhancing access to judicial remedy for corporate involvement in human rights impacts:

1. How difficult is it for victims to seek judicial remedies for gross human rights abuses at domestic level? What challenges do states face in providing access to justice in cases of business involvement in gross abuses? Are there capacity building activities that could help in this regard?
2. What proportion of allegations against businesses presently result in legal enforcement? In cases where no action is taken, what are the reasons for this?
3. Is there sufficient clarity in domestic law on the legal liability of business enterprises for gross abuses carried out by third parties with whom they are linked or have some sort of relationship(e.g. military, police, paramilitary organisations and private security contractors)?
4. What should be the role of “home states” of multinationals in preventing and prosecuting business involvement in gross abuses abroad? What is the appropriate balance between (a) the responsibilities of home states and (b) the principles of sovereignty and non-interference in the domestic affairs of other states?



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