The OHCHR Accountability and Remedy Project (the ARP)

An OHCHR initiative to contribute to a fairer and more effective system of domestic law remedies

Presentation to Open-Ended Inter-Governmental Working Group on transnational corporations and other business enterprises

9 July 2015
The Accountability and Remedy Project

• OHCHR project to enhance corporate **accountability** and **access to remedy** for victims, particularly in the most severe cases of business-related human rights abuses

• The ARP was initiated to support more effective implementation of Pillar III of the Guiding Principles

• Outcomes: **Practical and action-oriented** guidance and recommendations for States, suitable for a range of legal systems and traditions, presented to the Human Rights Council

• Outcomes not ‘instrument-specific’ - can feed into IGWG deliberations, in full or in part

• Methodology:

  ➢ **Evidence based**
  
  ➢ Developed through **inclusive, transparent** processes and **multistakeholder** consultations
<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
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<tbody>
<tr>
<td>May 2013</td>
<td>• Initial study on domestic law remedies commissioned by OHCHR</td>
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<tr>
<td>February 2014</td>
<td>• Publication of initial study on domestic law remedies</td>
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<td>Feb – June 2014</td>
<td>• Public consultation on study</td>
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<td>June 2014</td>
<td>• <strong>Human Rights Council mandate</strong></td>
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<tr>
<td>January 2015</td>
<td>• <strong>Start-up of programme of work</strong></td>
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<td>May 2015</td>
<td>• Launch of global online consultation</td>
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<td>June 2015</td>
<td>• Ongoing work on six projects</td>
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<td>• Presentation of <strong>progress report</strong> to the Human Rights Council</td>
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<tr>
<td>June 2016</td>
<td>• Presentation of <strong>final report with recommendations</strong> to the HRC</td>
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ARP start point: conclusions from initial study

- Victims of severe human rights abuses face considerable legal, financial, practical and procedural barriers to accessing judicial remedies.
- In many cases, these can prove insurmountable.
- Variations between national jurisdictions may exacerbate inequalities and create legal uncertainty for companies and affected persons.

“The present system of domestic law remedies is patchy, unpredictable, often ineffective and fragile.”
Programme of work: address six distinct, yet related challenges

- Six distinct, but interrelated projects addressing issues that have been identified as creating obstacles to effective access to judicial remedy
- Projects chosen based on initial study, submissions received and in consultation with experts for their strategic value and ability to deliver real change in the short-to-medium term:
  
  • **Project 1:** Tests for corporate legal liability
  • **Project 2:** Roles and responsibilities of interested states
  • **Project 3:** Overcoming financial obstacles to legal claims
  • **Project 4:** Criminal and administrative law sanctions
  • **Project 5:** Civil law remedies
  • **Project 6:** Domestic prosecution bodies
Two-track approach to data gathering

Track 1 – Global consultation
- The global on-line consultation is an “umbrella process” designed to elicit information from States and other stakeholders about present state practice
- Ensures opportunities for broad stakeholder input and geographical diversity

Track 2 - Detailed Comparative Process
- Covers 20+ “focus jurisdictions”
- Research by law firms and legal experts triangulated with perspectives from civil society/plaintiffs’ lawyers
- Designed to elicit detailed comparative information

Both processes will cover state practice in relation to:
- Domestic law tests for corporate accountability (Project 1)
- Overcoming financial obstacles to legal claims (Project 3)
- Criminal and administrative law sanctions (Project 4); and
- Civil law remedies (Project 5)
Progress report to the Human Rights Council, June 2015 (A/HRC/29/39): Preliminary findings from research and issues for further investigation

- Roles and responsibilities of interested states:
  - Uncertainty re State attitudes and practices in relation to some key issues, e.g. exhaustion of remedies, ‘universal civil jurisdiction’
  - Even where conventions make explicit provisions for ETJ, state implementation appears low
  - **Domestic measures** with extraterritorial implications (e.g. information-sharing) appear more common
  - **Law-enforcement level** cooperation is key

- Overcoming financial obstacles:
  - Trend of contraction of legal aid in many States
  - Emergence of new funding mechanisms
  - Move away from civil litigation in some States → increased use of e.g. Ombudspersons
Thank you!

For more information, contact:

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Or go to the Accountability and Remedy Project Portal: business-humanrights.org/en/ohchr-accountability-and-remedy-project or: www.ohchr.org > Business > Initiative on access to remedy