OEIGWG on TNCs and Human Rights: The OHCHR Accountability and Remedy Project

Palais des Nations, 27 October 2016

Ms. Lene Wendland,
Chief, a.i. Human Rights and Social and Economic Issues Section
Head, Business and Human Rights Team
The OHCHR Accountability and Remedy Project

- Started in May 2013
- **Aim:** To enhance the effectiveness of domestic legal systems in providing accountability and remedy in cases of business-related human rights abuse (Pillar III of the UN Guiding Principles)
- Human Rights Council mandate (Res 26/22)
- Six separate but interrelated work-streams aimed at addressing legal, practical and financial barriers
- **Process:** Multi-stakeholder process; several public and expert consultations; evidence from 60+ jurisdictions; detailed research on representative jurisdictions and selected topics.
Guidance to States to strengthen accountability and access to remedy

- **Guidance to States** in the form of a series of policy objectives plus “elements” showing ways that the objectives can be met.
- Separately and together, the guidance aims to provide purpose-built legal and practical solutions *rooted in reality*.
- Designed to be **flexible and adaptable** to different legal traditions, structures and needs.
- Covers both **public and private law**
- Addresses specific challenges in **cross-border cases**.
- Final report **A/HRC/32/19 and Add. 1**.
  Complemented by **additional online resource with illustrative examples** to aid implementation.
- **HRC resolution 32/10**.
There is a domestic legal regime (or combination of regimes) which covers the alleged abuse and which clearly articulates the different modes and levels of corporate involvement that give rise to legal liability.

Yes

Enforcement agencies have the resources, knowledge and expertise to prosecute and investigate the alleged offence, plus a clear mandate to proceed.

Yes

In a cross-border case, enforcement agencies have the ability to seek and obtain swift and effective legal assistance from their counterparts in other interested States.

Yes

Judicial mechanisms have the authority and ability to order appropriate sanctions and other remedies, which can be swiftly and properly enforced.

Yes

Possibility of effective remedy.
Fig 2: Private law claims by affected individuals and communities: implications of key features of domestic law regimes for accountability and access to remedy (Part II)

- There is a domestic legal regime (or combination of regimes) which covers the alleged abuse and which clearly articulates the different modes and levels of corporate involvement that give rise to legal liability. (Yes/No)
  - Yes
  - Affected persons can access the necessary financial resources to be able to pursue a claim. (Yes/No)
    - Yes
    - In a cross-border case, claimants have the ability to seek and obtain swift and effective legal assistance from agencies in other States. (Yes/No)
      - Yes
      - Judicial mechanisms have the authority and ability to order appropriate remedies, which can be swiftly and properly enforced. (Yes/No)
        - Yes
        - Possibility of effective remedy.

- Risk of no effective remedy
Example: Policy Objective 2:
Domestic public law regimes are sufficiently robust to ensure that there is both effective deterrence from, and remedy in the event of, corporate contributions to business-related human rights abuses perpetrated by third parties.

Example of ‘Elements’ to achieve policy objectives
Domestic public law regimes (a) communicate clearly the different modes and degrees of contribution to harms perpetrated by a third party that will give rise to secondary legal liability and (b) are clear about the extent to which the principles for assessing secondary liability are applicable to companies.

Illustrative examples and further explanations
Guidance supplemented by illustrative examples taken from existing state practice (generalized) where relevant and possible.
How could states and other stakeholders use and implement the guidance?

- Guidance is **“Instrument Neutral”**.
- Can be implemented through **national processes** – e.g. national action plans, other legal review processes (contains proposed Terms of References for law review)
- Can be taken up and acted on in **sub-regional, regional or international contexts, such as the OEIGWG on TNCs**
- **Civil society and NHRIs** can use the guidance in advocacy and advice to states

Enables states – individually or collectively - to **review and identify ways to improve** the effectiveness of their legal systems in holding companies to account for abuses and providing remedy for victims, including in cross-border cases.
Thank you!

For more information:

business-humanrights.org/en/ohchr-accountability-and-remedy-project or

www.ohchr.org > Business > Initiative on Access to Remedy

Contact us at:

business-access2remedy@ohchr.org