

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



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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



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The ARP Process

May 2013	<ul style="list-style-type: none">• Initial study on domestic law remedies commissioned by OHCHR
February 2014	<ul style="list-style-type: none">• Publication of initial study on domestic law remedies
Feb – June 2014	<ul style="list-style-type: none">• Public consultation on study
June 2014	<ul style="list-style-type: none">• Human Rights Council mandate
January 2015	<ul style="list-style-type: none">• Start-up of programme of work
May 2015	<ul style="list-style-type: none">• Launch of global online consultation
June 2015	<ul style="list-style-type: none">• Ongoing work on six projects• Presentation of progress report to the Human Rights Council
June 2016	<ul style="list-style-type: none">• Presentation of final report with recommendations to the HRC



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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.**”



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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



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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



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