

Call for input: Business, human rights and transitional justice

UN Working Group on Business and Human Rights

Background

In its [report to the 2020 UN General Assembly](#), “Business, human rights and conflict-affected regions,” the UN Working Group on Business and Human Rights clarified practical implications of the UN Guiding Principles on Business and Human Rights (UNGPs) in conflict and post-conflict contexts. The Working Group recognised that improving access to remedy (pillar III of the UNGPs) in situations of post-conflict transitional justice is complex but is necessary. Businesses are actors within a conflict, and they can cause, contribute, or be directly linked to negative impacts on human rights in these contexts. Following a conflict, states often use transitional justice mechanisms to provide remedies to victims, ensure accountability for perpetrators, and address the structural and root causes of the conflict. This can occur through truth commissions, prosecutions, reparations programmes, and guarantees of non-recurrence that include structural, economic, and political reforms aimed at ensuring the past does not happen again. As the Working Group explained in the report to the UN General Assembly, in situations of transitional justice “businesses have a responsibility to remedy their past behaviour” and “should engage with relevant transitional justice processes and contribute to truth, reparation and guarantees of non-recurrence where appropriate.” How this should occur is sometimes unclear for states, businesses, and civil society.

There is no singular approach to transitional justice because the right mix of accountability, regulatory reform, and reparations programmes is context specific. Yet, the experiences with transitional justice can be informative for the field of business and human rights. Several states have used transitional justice mechanisms to address business’s responsibility for the past. These experiences, and the lessons learned, are important for those who are designing remedies both in and outside of conflict-affected areas.

Call for inputs

The Working Group is seeking inputs for an upcoming guidance note that will include practical recommendations for those engaged in the design and implementation of remediation processes. It will consider both the procedural and substantive components of remediation (in line with the [UN Working Group’s 2017 report](#) to the General Assembly on access to effective remedy).

The Working Group requests written inputs from all stakeholders to inform the drafting of the guidance note **by 18 October 2021**. Please email all responses to wg-business@ohchr.org. Please indicate “CALL FOR INPUT – TRANSITIONAL JUSTICE” in the subject line. Concise submissions are encouraged. There is a recommended limit of 5 pages per submission. Unless informed or requested otherwise, OHCHR will post the responses received on the [Working Group’s website](#).

While the Working Group will take into consideration any submissions made, it is particularly interested in submissions that respond to one or more of five key areas:

1. The Relationship between Reparations, Development, and Peacebuilding: In international human rights law, reparations are a response to wrongdoing and generally require an acknowledgment of that wrongful conduct. Businesses and states sometimes suggest that in some transitional justice contexts it is more appropriate to secure business support for peacebuilding or development

initiatives than to insist on an acknowledgment of wrongdoing or formal involvement in reparations. The Working Group would benefit from submissions that consider: *When can a business's involvement in development, peacebuilding or corporate social responsibility initiatives be considered a contribution to reparations? What are the minimum thresholds for an intervention to have restorative effects, and is this sufficient for the purpose of substantive remediation under Pillar III?*

2. Incentivizing Business Participation: Even where businesses are invited to participate in transitional justice mechanisms, they have often been reluctant to do so. Some stakeholders have asked: *can and should states incentivize business to participate in transitional justice mechanisms, like truth commissions, trials, memorialization, or reparations programmes?* The Working Group would appreciate submissions that address this question. Any examples of good practice from past experiences would be particularly helpful, as would reflections on how stakeholders feel about and respond to the practice of incentivizing business participation.

3. Understanding Business's Independent Responsibility: The business responsibility to respect human rights, which includes its responsibility to remedy, operates independent of any state's willingness or ability to implement its own human rights obligations (UNGPs, [Principle 22](#)). Often, states engaged in transitional justice cannot provide full reparation to victims of the conflict. Limited resources mean that states sometimes pursue collective or standardized forms of redress that do not fulfil the formal human rights law obligation to restore the rights-holder to the position they would have been in but for the violation or to a like-position where restitution is impossible. Sometimes, the communal nature of the reparations programme is important for the society, and for the state's goals of reconciliation. These realities raise several important questions for business and human rights, including:

- (a) *are there conditions in which a business's responsibility to remediate can be fulfilled through its participation in collective or communal reparation programmes,*
- (b) *what would those conditions be,*
- (c) *should affected rights-holders be able to pursue businesses for civil claims outside of state-based communal reparations programmes, and*
- (d) *what are the impacts of the answers to these questions on state efforts to address the root or underlying causes of the conflict?*

Submissions that answer one or more of these questions drawing on past experiences will be particularly helpful.

4. Designing and Assessing Non-Judicial Grievance Mechanisms: The UNGPs encourage businesses to establish non-judicial grievance mechanisms to address their own impacts on human rights. Yet, there is also a recognition that it may be inappropriate for non-judicial grievance mechanisms to address some particularly severe impacts. The Working Group is grateful for submissions that address:

- (a) *When should businesses create their own operational-level grievance mechanisms following a period of massive human rights violations and when would that be inappropriate? How can operational-level grievance mechanisms be aligned with or integrated into state-based responses?*
- (b) *Are there additional characteristics, beyond those identified in Pillar III of the UNGPs, that need to be taken into consideration when designing non-judicial grievance mechanisms in post-conflict settings; and*
- (c) *are there good examples of businesses using the "full bouquet" of reparations in post-conflict settings?*

5. Broader Reflections on Lessons Learned: What lessons can and should those designing transitional justice mechanisms take from the accumulated experience of the implementation of the UNGPs' Pillar III? What role should the international community play in securing remedies in post-conflict settings?