



OHCHR Accountability and Remedy Project

Exploring the links between human rights due diligence, accountability, and access to remedy

Multi-Stakeholder Consultation
Concept Note and Agenda

3-4 March 2022, 10h-12h and 15h-17h CET
Interpretation available in English, French, and Spanish
[Registration Link](#) | [Participation Guidelines](#) | [Event Recording](#)

Background

Accountability and Remedy Project

The [UN Guiding Principles on Business and Human Rights \(UNGPs\)](#) are the global standard for preventing and addressing human rights harms connected to business activity. Pillar II of the UNGPs covers the corporate responsibility to respect human rights and explains how companies can identify, prevent, mitigate, and account for how they address their adverse human rights impacts through the exercise of **human rights due diligence (HRDD)**. Pillar III of the UNGPs is devoted to the need for victims to have **access to effective remedy** when their rights have been abused, and it details the complementary roles of judicial and non-judicial mechanisms in ensuring access to remedy.

[OHCHR's Accountability and Remedy Project \(ARP\)](#) aims to strengthen accountability and access to remedy in cases of business-related human rights abuse. Since its official launch in 2014, and in response to multiple Human Rights Council mandates, guidance has been produced on how to enhance the effectiveness of each category of grievance mechanism referred to in the third pillar of the UNGPs: [judicial mechanisms](#), [State-based non-judicial mechanisms](#), and [non-State-based grievance mechanisms](#).

Throughout the Accountability and Remedy Project, attention has been paid to the interlinkages between HRDD, accountability, and access to remedy. For instance, in 2017, a [consultation explored the relationship between HRDD and corporate liability](#).¹ Recent efforts to encourage (and sometimes mandate) HRDD by companies have renewed discussions on the many ways in which conducting HRDD may relate to accountability and access to remedy. **This two-day consultation is concerned with the implications for accountability and remedy of legal regimes that seek to either encourage or require the performance of human rights due diligence by business enterprises (HRDD regimes).**

¹ Further ARP materials relating to HRDD may be found on [the ARP IV webpage](#).

General Context

In recent years, a number of governments around the world have introduced or have begun considering new HRDD regimes. Notable examples can be found in [mandatory human rights due diligence regimes at the domestic level](#), the [Sustainable Corporate Governance Initiative at the European Union level](#), and the [legally binding instrument being negotiated at the international level](#). While there are some similarities between these efforts – substantially, as well as in terms of their overarching regulatory objectives – differences in scope and implementation are to be expected. Differences will also be found in terms of modes of enforcement. For instance, while some rely primarily on domestic administrative supervision to bring about their intended results, others provide for the possibility for affected people to raise grievances directly with State bodies about non-compliance with legal standards, or to seek financial damages for harm using judicial processes.

There are clear differences of opinion between – and within – different stakeholder groups as to how compliance by companies with human rights due diligence standards is best secured. The role of criminal liability remains a contentious issue, and the possibility that regulatory action might constrain, rather than enhance, opportunities for affected people to seek remedies for themselves (and especially through courts) has emerged as a key concern.

These concerns can be addressed by paying greater attention to the importance of coherence and complementarity between the various processes that may be relevant to accountability and remedy, both within the ambit of HRDD regimes and extraneous to them. But without a sound understanding of linkages between the *preventative* and *remedial* aspects of these new regulatory models, opportunities to improve their effectiveness, particularly in terms of their responsiveness to the needs of affected people and communities, may be missed.

Aims

In [resolution 44/15](#), the Human Rights Council requested OHCHR to convene consultations to discuss challenges, good practices, and lessons learned in enhancing access to remedy for victims of business-related human rights abuse. In the context of that resolution, this consultation aims to hear from diverse stakeholders about the various ways in which HRDD regimes can enhance accountability and access to remedy for business-related human rights harms around the world, and to clarify emerging areas of challenge and concern.

An overview of the consultation will be included in the next ARP report, to be presented to the Human Rights Council at its fiftieth session in June 2022.

Format

Due to COVID-19 restrictions, the meeting will take place in a virtual format using the Zoom platform. Written inputs to the consultation can be sent through [this form](#) by 1 March 2022.

The consultation will take place during 10-12h and 15-17h CET on 3 and 4 March 2022. Simultaneous interpretation in English, French, and Spanish will be provided.

For each session, there will be an opening panel of pre-identified speakers to help introduce the key issues and different stakeholder perspectives, followed by a period for open discussion.

Overview of Consultation Sessions

Session 1: Global developments and trends

Thursday, 3 March @ 10-12h CET

What are the key drivers of recent legal developments relating to HRDD? What kinds of HRDD regimes have emerged to date? What forms are they taking and what regulatory levers do they use? What kinds of harms are they concerned with? What is their geographic scope? What are the perspectives of stakeholders affected by these HRDD regimes (including those outside of the regulating State)? This opening session will aim to lay the groundwork for a productive discussion in the three substantive sessions to follow, by

- building up a comprehensive picture of recent regulatory developments, trends, and underlying drivers;
- developing a workable “typology” of HRDD regimes to assist discussion;
- considering the relevance of recent and ongoing international initiatives and developments;
- reflecting on the responsiveness of HRDD regimes to cross-border business activities and commercial relationships (e.g. complex global supply chains) and relevant legal and policy challenges; and
- considering the implications of HRDD regimes for accountability of business actors and remedy for business-related human rights harms more broadly.

Session 2: The role of courts

Thursday, 3 March @ 15-17h CET

Courts have a multi-faceted role in HRDD regimes. For instance, they may act as issuers and/or enforcers of criminal penalties, or they may be responsible for determining civil liability claims based on statutory causes of action. Additionally, as is highlighted in [previous OHCHR work](#), they may draw from human rights due diligence concepts to inform their decision-making in a range of other contexts, such as whether a company, and/or its managers, have been negligent towards affected people, or for the purposes of assessing a suitable legal penalty where liability has been established.

This session will build on [OHCHR’s previous work on legal aspects of human rights due diligence](#) by inviting stakeholders to reflect on

- the extent to which judicial approaches are aligned with UNGP human rights due diligence concepts and methodologies (particularly in cases where a lack of care or due diligence is alleged);
- the legal strategies that can be used to bring about accountability and remedy for failures to carry out HRDD in the manner laid out in the UNGPs, and the importance of HRDD regimes in this context;
- the interface between statutory causes of action (under HRDD regimes) and broader legal theories of liability (e.g. under criminal law or the law of tort), and how this should be managed;
- the extent to which HRDD regimes can be relied on by affected stakeholders in other countries (i.e., outside the boundaries of the regulating State) to remedy harms they have suffered, and the challenges that may be encountered in practice; and
- areas where further innovation may be necessary to enhance accountability and access to remedy through judicial mechanisms.

Session 3: The role of administrative supervision

Friday, 4 March @ 10-12h CET

As a recent [joint paper by Shift and OHCHR](#) makes clear, well-organised and well-resourced administrative supervisory bodies (or “regulators”) can play a valuable complementary role to courts in enhancing accountability and access to remedy for business-related harms. Administrative supervision of various kinds can help ensure that companies are held accountable for the quality of their HRDD. Beyond providing a potential means through which affected people may raise concerns about non-compliance by companies with human rights due diligence standards, regulators may perform a vital role in judicial processes (e.g. as a source of expert testimony, or to reduce evidential and other burdens that may otherwise fall on claimants). As implementation of regulatory initiatives and work on new proposals gathers pace, it is timely to reflect on whether the vision of “complementarity” set out in the UNGPs and elaborated in [OHCHR’s ARP II report](#) is being realised in practice – and what is needed to help ensure that it is.

The aim of this session will be to

- explore the varying ways in which the work of administrative supervisory bodies may be relevant to corporate accountability and/or access to remedy for business-related human rights harms;
- consider the role of sector and issue-specific approaches, including the experience thus far with import bans, in changing corporate practices and ensuring outcomes for affected stakeholders;
- hear and reflect on stakeholder views on the performance of such bodies and schemes as part of current or future HRDD regimes, including where further improvements or innovation may be needed; and
- reflect on the interface between administrative supervision and judicial remedy, and how “complementarity” between the two can be enhanced, including ensuring that affected stakeholders retain adequate choice about their routes to remedy.

Session 4: HRDD regimes and private grievance mechanisms

Friday, 4 March @ 15-16h45 CET

The UNGPs recognize potential benefits of the use of non-State-based grievance mechanisms (or “private” grievance mechanisms), such as speed of access and remediation, reduced costs and/or transnational reach. Additionally, such mechanisms can play an important role in HRDD efforts, for instance by acting as a vital source of information about (i) existing and emerging human rights risks and (ii) the effectiveness of an organisation’s actions to address such risks. This raises important questions regarding whether, and how, requirements to establish and administer private grievance mechanisms (such as operational-level grievance mechanisms) might be integrated into legally binding HRDD commitments and standards.

[OHCHR’s ARP III report](#) sets out a series of recommendations aimed at ensuring that private grievance mechanisms can make a positive contribution to accountability and remedy, and [that these are effective in their day-to-day operations](#). Drawing from ARP III outcomes and experiences from HRDD regimes to date, participants in this final session will be invited to reflect on

- the various ways in which the work of private grievance mechanisms can feed into and interrelate with HRDD processes;
- the different ways in which binding obligations to establish and maintain effective private grievance mechanisms can arise (e.g., under terms for settling a dispute, under a judicially determined remedy, under contractual arrangements, or under the provisions of HRDD regimes themselves);

- techniques and strategies to ensure that private grievance mechanisms that have been established pursuant to some obligation or commitment are effective, and the transferability of “lessons learned” to other contexts; and
- how this could be implemented into strategies for supervision of HRDD regimes more broadly, including in a cross-border context.

Next steps and closing

Friday, 4 March @ 16h45-17h CET

This final session will attempt to draw together some of the key takeaways from the four preceding sessions. The session will also outline next steps for the Accountability and Remedy Project, including how the lessons learned from the consultation will be incorporated into future work.

AGENDA

Thursday, 3 March 2022	
10:00 – 12:00 CET	<p>Session 1: Global developments and trends</p> <ul style="list-style-type: none"> • Lene Wendland (Chair), Chief, Business and Human Rights Unit, OHCHR • Jennifer Zerk, Legal consultant, OHCHR Accountability and Remedy Project • Ambassador Emilio Rafael Izquierdo Miño, Permanent Representative of Ecuador to the United Nations Office at Geneva and Chair-Rapporteur of the Working Group on transnational corporations and other business enterprises with respect to human rights • Lara Wolters, Member of European Parliament and Vice-Chair of the Committee on Legal Affairs • Lissa Bettzieche, Senior Legal Advisor, German Institute for Human Rights • Phil Bloomer, Executive Director, Business & Human Rights Resource Centre • Matthias Thorns, Deputy Secretary-General, International Organisation of Employers • Kalpona Akter, Founding Member and Executive Director, Bangladesh Centre for Worker Solidarity • Arnold Kwesiga, Manager Business and Human Rights, Centre for Human Rights, University of Pretoria • Surya Deva, Member, UN Working Group on Business and Human Rights <p>Aims of session</p> <ul style="list-style-type: none"> • build up a comprehensive picture of recent regulatory developments, trends, and underlying drivers • develop a workable “typology” of HRDD regimes to assist discussion • consider the relevance of recent and ongoing international initiatives and developments • reflect on the responsiveness of mandatory HRDD regimes to cross-border business activities and commercial relationships (e.g. complex global supply chains) and relevant legal and policy challenges • consider the implications of HRDD regimes for accountability of business actors and remedy for business-related human rights harms more broadly
12:00 – 15:00 CET	<i>Break for Lunch</i>
15:00 – 17:00 CET	<p>Session 2: The role of courts</p> <ul style="list-style-type: none"> • Jennifer Zerk (Chair), Legal consultant, OHCHR Accountability and Remedy Project • Ben Shea, Associate Human Rights Officer, Business and Human Rights Unit, OHCHR • Samantha J. Rowe, Partner, London and Paris, Debevoise & Plimpton • Humberto Cantú Rivera, Director of the Human Rights and Business Institute, University of Monterrey • Gabrielle Holly, Senior Adviser, Human Rights and Business, Danish Institute for Human Rights • Sarah Ellington, Legal Director, DLA Piper • Briseida Aragón, Senior Lawyer, ProDESC • Lalla Touré, Legal Coordinator, Advocates for Community Alternatives

Aims of session: To explore

- the extent to which judicial approaches are aligned with UNGP human rights due diligence concepts and methodologies (particularly in cases where a lack of care or due diligence is alleged)
- the legal strategies that can be used to bring about accountability and remedy for failures to carry out HRDD in the manner laid out in the UNGPs, and the importance of HRDD regimes in this context
- the interface between statutory causes of action (under HRDD regimes) and broader legal theories of liability (e.g. under criminal law or the law of tort), and how this should be managed
- the extent to which HRDD regimes can be relied on by affected stakeholders in other countries (i.e., outside the boundaries of the regulating State) to remedy harms they have suffered, and the challenges that may be encountered in practice
- areas where further innovation may be necessary to enhance accountability and access to remedy through judicial mechanisms

Friday, 4 March 2022

Session 3: The role of administrative supervision

- **Lene Wendland (Chair)**, Chief, Business and Human Rights Unit, OHCHR
- **Gilles Goedhart**, Team Leader – Mandatory Due Diligence, International Responsible Business Conduct Unit, Ministry of Foreign Affairs, the Netherlands
- **Bart Devos**, Senior Director of Public Policy and European Affairs, Responsible Business Alliance (RBA)
- **Miriam Saage-Maass**, Legal Director and Program Director Business and Human Rights, European Center for Constitutional and Human Rights (ECCHR)
- **Paapa Danquah**, Legal Officer, International Trade Union Confederation (ITUC)
- **Mr. Mansur**, Director of Fishing Vessels and Gears, Ministry of Marine Affairs and Fisheries (MOMAF), Indonesia
- **Anasuya Syam**, Human Rights and Trade Policy Advisor, Human Trafficking Legal Center
- **Rosey Hurst**, Founder and Director, IMPACTT

Aims of session

- explore the varying ways in which the work of administrative supervisory bodies may be relevant to corporate accountability and/or access to remedy for business-related human rights harms
- consider the role of sector and issue-specific approaches, including the experience thus far with import bans, in changing corporate practices and ensuring outcomes for affected stakeholders
- hear and reflect on stakeholder views on the performance of such bodies and schemes as part of current or future HRDD regimes, including where further improvements or innovation may be needed
- reflect on the interface between administrative supervision and judicial remedy, and how “complementarity” between the two can be enhanced, including ensuring that affected stakeholders retain adequate choice about their routes to remedy

10:00 – 12:00
CET

12:00 – 15:00 CET	<i>Break for Lunch</i>
15:00 – 16:45 CET	<p>Session 4: HRDD regimes and private grievance mechanisms</p> <ul style="list-style-type: none"> • Jennifer Zerk (Chair), Legal consultant, OHCHR Accountability and Remedy Project <p><i>Part I: Interconnections between grievance mechanism and human rights due diligence processes</i></p> <ul style="list-style-type: none"> • Fernanda Hopenhaym, Vice-Chair, UN Working Group on Business and Human Rights • Lisa Laplante, Director, Center for International Law and Policy, New England Law Boston • Chris Buckley, Director, Social & Environmental Affairs, adidas <p><i>Part II: Regimes and initiatives that aim to establish effective grievance mechanisms</i></p> <ul style="list-style-type: none"> • Anna Triponel, Business and Human Rights Advisor, Triponel Consulting & Toby Hewitt, Group General Counsel and Company Secretary, Gemfields Group Ltd. • Joris Oldenziel, Member, Dutch National Contact Point (NCP) • Lalanath De Silva, Head, Independent Redress Mechanism, Green Climate Fund • Christy Hoffman, General Secretary, UNI Global Union <p>Aims of session: To explore</p> <ul style="list-style-type: none"> • the various ways in which the work of private grievance mechanisms can feed into and interrelate with HRDD processes • the different ways in which binding obligations to establish and maintain effective private grievance mechanisms can arise (e.g., under terms for settling a dispute, under a judicially determined remedy, under contractual arrangements, or under the provisions of HRDD regimes themselves) • techniques and strategies to ensure that private grievance mechanisms that have been established pursuant to some obligation or commitment are effective, and the transferability of “lessons learned” to other contexts • how this could be implemented into strategies for supervision of HRDD regimes more broadly, including in a cross-border context
16:45 – 17:00 CET	<p>Next steps and closing</p> <ul style="list-style-type: none"> • Lene Wendland (Chair), Chief, Business and Human Rights Unit, OHCHR • Jennifer Zerk, Legal consultant, OHCHR Accountability and Remedy Project • Ben Shea, Associate Human Rights Officer, Business and Human Rights Unit, OHCHR