

Guaranteeing access to remedies for business-related human rights abuses:

Role of NHRIs

Context

1

Since the adoption of the Guiding Principles on Business and Human Rights (A/HRC/RES/17/4), substantial progress has been made by economic actors, States and civil society towards the implementation of the first two pillars concerning prevention of the negative impact of commercial activities on Human Rights. However, human and environmental tragedies caused by business activities have revealed that the third pillar on the need for access of victims to effective remedies remains weakly vested by States.

Nevertheless, international law imposes obligations on States to regulate the behaviour of private groups and natural persons, including legal persons such as businesses. It also imposes the obligation on States to guarantee the availability of effective remedy for victims of human rights abuses.

Furthermore, the third pillar of the Guiding Principles confirms that it is the responsibility of the State to ensure, through judicial, administrative, legislative or other means, the access of the affected parties to effective remedy. It also specifies that besides the appropriate measures to ensure the effectiveness of internal judicial mechanisms, States should provide effective non-judicial complaint mechanisms, particularly through National Institutions for the Promotion and Protection of Human Rights (NHRIs)¹.

The role of NHRIs has been recognized by the Paris Principles, the 2010 Edinburgh Declaration of the ICC, the United Nations Guiding Principles on Business and Human Rights and the four regional action plans on business and human rights of the NHRI networks². In this context, NHRIs have amplified their efforts to integrate Business and Human Rights into their mandate. Besides the measures aiming at supporting the implementation of the first two pillars of the UN framework, several NHRIs contribute to the third pillar of this framework by facilitating access to remedy for victims. NHRIs can do this directly when they act as non-judicial grievance mechanisms, or by exercising powers to petition courts or appear in court proceedings, and indirectly through their role in monitoring and making recommendations to government in relation to Pillar III.

Despite ongoing efforts, research³ shows that in practice, the access of victims to effective remedy mechanisms is hampered by several juridical and practical obstacles, both at the national and extraterritorial levels⁴.

In order to improve the national remedy systems in cases of human rights violations linked to businesses, and particularly in cases of serious violations, the United Nations Human Rights Council adopted, on June 27th 2014, resolution A/HRC/RES/26/22⁵. Subsequently, the Office of the High Commissioner for Human Rights (OHCHR) initiated in November 2014 a consultation project entitled "Accountability and Remedy Project" (ARP), aiming at providing States with recommendations for a more effective implementation of the third pillar of the Guiding Principles on access to remedy. After several months of multipartite consultations, the OHCHR presented a discussion paper⁶ during a consultation organised on the 19th and 20th of November 2015 in Geneva with stakeholders. The final recommendations for guaranteeing access to remedy related to business will be presented to the Human Rights Council in June 2016.

Considering the mandate of NHRIs in the implementation of the UN framework on Business and Human Rights, the Working Group on Business and Human Rights of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC Working Group) decided to organise a workshop on the role of NHRIs in the improvement of accountability and of access to remedy for business-related human rights abuses.

1- http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_FR.pdf

2- <http://nhri.ohchr.org/EN/Themes/BusinessHR/Pages/Capacity%20Building.aspx>

3- <http://business-humanrights.org/fr/responsabilit%C3%A9-juridique-des-entreprises>

4- <http://www.accessjustice.eu/fr/list-of-cases#tabs>

5- <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/083/83/PDF/G1408383.pdf>

6- http://www.ioe-emp.org/fileadmin/ioe_documents/publications/Policy%20Areas/business_and_human_rights/EN_2015-11-20_C-292_OHCHR_Accountability___Remedy_Project_19-20_Nov_Discussion_Paper.pdf

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2

Objectives of the workshop

This workshop will allow NHRIs to strengthen their knowledge and understanding of their role in facilitating access to effective remedy to the victims of human rights abuses related to businesses:

Objectives

- Promote the exchange of experiences between NHRIs on their actual role in facilitating remedies linked to business related human rights abuses;
- Identify the potential role and contribution of NHRIs in facilitating access to remedy for victims of business related human rights abuses, through exercising their Paris Principles mandate, including but not limited to their role as non-judicial grievance mechanisms, and domestically as well as in transnational cases;
- Increase understanding of NHRIs on juridical and practical obstacles to access to remedy in cases of human rights abuses linked to businesses;
- Identify concrete actions that can be taken by NHRIs individually and collectively for the follow-up of the implementation process of a framework on legal accountability and remedies.

Outputs :

- A guidance document of the ICC Working Group on the NHRI role in facilitating access to remedy for business-related human rights abuses;
- ICC Working Group response to the discussion paper of the OHCHR project on accountability and remedy.

Date and time :

The workshop will take place on March 2nd and 3rd, 2016 at the National training Institute for Human Rights (CNDH), in Rabat.

Participants:

- Experts: OHCHR, FIDH, legal experts.
- The representatives of NHRIs of four regional networks Africa, Americas, Asia and Europe.

Workshop format :

The workshop will be held during a day and a half and will be based on the presentation of practical cases and the exchange among participants, and will deal with the following themes:

- Review and dialogue on the implementation processes of an effective Business and Human Rights protection framework and the juridical and practical obstacles to effective remedy for the victims of Human Rights violations by businesses;
- Review and dialogue on potential contribution of NHRIs to facilitating remedy for business-related human rights abuses, domestically and transnationally, and via role as non-judicial complaint mechanism as well as through other aspects of Paris Principles mandate;
- Presentation of the main recommendations of the ARP project, which will be submitted to the States for the improvement of the accountability and remedy framework on business related violations.

Development of guidance and recommendations

- Guidance on role of NHRIs in access to remedy related to abuses of Human Rights related to business;
- Presentation of the recommendations of the NHRIs to the OHCHR project.

Guaranteeing access to remedies for business-related human rights abuses: Role of NHRIs Program

3

WEDNESDAY, MARCH 2, 2016

9.00 - 9.15: Welcome and Introduction

Mr. Driss El Yazami, President, National Human Rights Council, Morocco

9.15 - 10.30: Session 1: The Remedy Framework for Business Related Human Rights Abuses

Chair: Ms. Eva Etongue Mayer, General Secretary, National Commission of Human Rights and Freedoms, Cameroun

Remedy under the UN Framework and Guiding Principles on Business and Human Rights

Ms. Lene Wendland, Adviser on Business and Human Rights, Human Rights and Economic and Social Issues Section, Research and Rights to Development Division, Office of the United Nations High Commissioner for Human Rights (OHCHR)

The role and practice of National Human Rights Institutions in facilitating remedy for business-related human rights abuses

Ms. Claire Methven O'Brien, Special Adviser on Business and Human Rights, Danish Institute for Human Rights (DIHR), Denmark

The remedy gap : experiences of victims civil society organisations

Ms. Elizabeth Kariuki, representative of the International Federation for Human Rights (FIDH)

Group discussion

10.30 - 11.00: Coffee break

11.00 - 13.00: Session 2: NHRI contribution to remedy through complaints-handling and mediation

Chair : Mr. Christopher Schuller, Legal Advisor on Human Rights, Institute for Human Rights, Germany

Individual complaints

Ms. Patricia Nduru, Director Monitoring and Inspections, Human Rights Commission, Uganda

Trans-boundary complaints

Mr. Roberto Eugenio Cadiz, focal commissioner for BHR, Human Rights Commission, Philippines

Conciliation and mediation

Mr. Nadir Elmoumni, Director of studies, research and documentation, National Human Rights Council, Morocco

Group discussion

13.00 - 14.00: Lunch break

Guaranteeing access to remedies for business-related human rights abuses: Role of NHRIs Program

4

14.00 - 15.00: **Session 3: NHRI contribution to remedy through public inquiries and formal investigations on business and human rights**

Chair: Mr. James Mwenda Mwongera, Senior Human Rights Officer, National Commission on Human Rights, Kenya

Ms. Griselda Sillerico Ariñez, Deputy program and investigation manager, La Defensoría de Pueblo de Bolivia (Vidéo conférence)

Mr. Remember Miamingui, Head of Research, Human Rights Commission, South Africa

Mr. Joseph Whitaal, Deputy Commissioner, Commission on Human Rights and Administrative Justice, Ghana

Ms. Aishah Bidin, Commissioner, Human Rights Commissioner (SUHAKAM), Malaysia

Ms. Purev Oyunchimeg, Commissioner, Human Rights Commission, Mongolia

Group discussion

15.30 - 15.45: **Coffee break**

15.45 - 17.15: **Session 4: OHCHR Remedy Project**

Chair : Ms. Najat Maalla M'jid, UN Expert on Child Rights, Commissioner, National Human Rights Council, Morocco

Presentation of main recommendations

Ms. Lene Wendland, Adviser on Business and Human Rights, Human Rights and Economic and Social Issues Section, Research and Rights to Development Division, Office of the United Nations High Commissioner for Human Rights (OHCHR)

Discussion and gathering NHRIs' responses

17.15 - 17.30: **Summary of Day I**

THURSDAY, MARCH 3, 2016

9.30 - 11.00: **Break-out groups: Identify the potential role and contribution of NHRIs in facilitating access to remedy for victims of business related human rights abuses**

Moderator:

Ms. Elin Wrzoncki, Program Manager, Human Rights and Business, Danish Institute for Human Rights, Denmark

Ms. Najat Maalla M'jid, UN Expert on Child Rights, Commissioner, National Human Rights Council, Morocco

11.00 - 11.30: **Coffee break**

11.30 - 12.30: **Session 5: Next steps and wrap-up**

Moderator: Ms. Nabila Tbeur, Special Advisor to the President, National Human Rights Council of Morocco, Chairperson, ICCWG on Business and Human Rights

Conclusions and wrap-up

12.30 - 14.00: **Lunch break**

14.30 - 17.00: **ICC Working Group Meeting**