**How can States improve their implementation of the “Access to Remedy” pillar of the UN Guiding Principles?**

June 2016 marks the fifth anniversary of the landmark endorsement of the UN Guiding Principles on Business and Human Rights by the UN Human Rights Council.

The past five years have seen some progress with respect to the first two pillars of the Guiding Principles – the “State Duty to Protect” and the “Corporate Responsibility to Respect”. However, there has been concern for some time now that the third pillar, “Access to Remedy”, has not been receiving sufficient attention.

This is obviously a problem for victims of business-related human rights abuses. But it is also a problem for the whole system. The three pillars of the UN Guiding Principles are not discrete projects. The success of domestic and international responses to business and human rights challenges depends on them all working well and in a mutually reinforcing way.

***Accountability and Remedy Project***

To redress this imbalance, the OHCHR in November 2014 launched the “Accountability and Remedy Project”, the aim of which was to “contribute to a fairer and more effective system of domestic law remedies in cases of business involvement in severe human rights abuses.” The Accountability and Remedy project (or “ARP” for short) responded to a request for more work on Access to Remedy by the Human Rights Council in its June 2014 resolution [A/HRC/Res/26/22](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/26/22) (see paragraph 7) and also built on previous work undertaken under OHCHR’s mandate to advance the protection and promotion of human rights globally.

***Broadening the conversation***

The international debate on “access to remedy” for business-related human rights abuses has yielded some excellent comparative legal work and discussion. However, it is fair to say that some jurisdictions have featured more in this work and discussion than others. In order to answer the question posed at the outset of this piece in a way that is relevant and appropriate for *all* States it was necessary for OHCHR to actively seek inputs and information from a very wide range of jurisdictions. To make the best use of the resources to hand, this was done by way of an [open online process](http://www.ihrb.org/commentary/update-ohchr-accountability-and-remedy-project.html). This process (which took the form of an online questionnaire) took place between April and August of 2015 and garnered more than 130 responses from around 60 different jurisdictions, reflecting both a good spread of geographic regions and a good mix of stakeholder groups.

***Delving deeper***

This information-gathering work was supplemented by a number of additional research exercises relating to specific project themes, such as financial obstacles to civil claims, developments in the design of remedies in cases against corporate defendants, the challenges facing domestic prosecutors in pursuing business and human rights cases, and the roles and responsibilities of interested States in cross-border cases. This took the form of country reports by local legal experts on approaches to corporate legal liability, gathering and analysing evidence of current State practice, interviews and meetings with prosecutors from a range of different jurisdictions and regions, and workshops with State representatives on issues relating to international cooperation.

The many different contributions from different stakeholder groups – in the form of submissions, legal research, advice, commentary and case examples - have been enormously useful in helping to contextualise and animate the legal material and have helped ensure a broad evidence-based for the recommendations.

***Recognising the diversity of legal systems and approaches***

We all have own ideas about how access to remedy might be improved in different jurisdictions. However, it cannot be assumed that a good idea that will work in one jurisdiction will necessarily have the desired effect in another.

Because no two domestic legal systems are the same. Some are unitary, and some are federal or “devolved” in nature. Some are adversarial and some are inquisitorial. Constitutional arrangements vary widely, as do approaches to corporate legal liability and the concept of “complicity”. Moreover, many “access to remedy” challenges are not “business and human rights specific” but arise because of wider structural or practical problems in regimes of more general application (e.g. criminal law or tort law). More fundamentally, some of these challenges have their roots in wider social and economic problems, such as poverty, lack of resources for key State agencies, corruption or lack of respect for the rule of law.

Therefore, a thoughtful answer to the question posed above demands some flexibility of approach, to take account of these different structures, traditions as well as diverse social and economic challenges. While in some cases it may be possible to draw from what has been tried successfully elsewhere, local understanding is needed to ensure effectiveness and to avoid unintended consequences.

***Enhancing international cooperation***

Not all business and human rights cases are cross-border in nature. However, where they are, some degree of international cooperation is usually necessary for there to be access to effective remedy, regardless of whether the forum for the legal action is the “home state” of the company concerned, or the “host state” (i.e. the place where the abuse is alleged to have occurred).

States have entered into many different kinds of arrangements that are potentially relevant to cross-border business and human rights cases, especially as far as “mutual legal assistance” is concerned. These arrangements may be formal (e.g. treaty-based) or informal, bilateral or multilateral, on-going or ad hoc. The work carried out during the course of the Accountability and Remedy Project also highlighted the growing popularity and importance of mechanisms for operational level cooperation between prosecutors and investigators from different jurisdictions, for example through the use of Joint Investigation Teams.

However, there are still number of implementation problems which have the potential to undermine the speed and effectiveness of international cooperation in some cases, such as lack of information about appropriate contact points in other jurisdictions, lack of awareness of formats and procedures for making requests, lack of ready access to information about foreign legal and evidential requirements and investigative standards. These challenges were explored in the course of a number of targeted research activities at different stages of the Accountability and Remedy Project, including though interviews, face to face consultation meetings and workshops.

***Final report and next steps***

The OHCHR’s final report and explanatory addendum were published in mid-May and can be accessed [here](http://www.ohchr.org/EN/Issues/Business/Pages/OHCHRstudyondomesticlawremedies.aspx) along with a number of background materials relating to the project.

In accordance with the Human Rights Council’s request, the final report was submitted for consideration at the Human Rights Council’s 35th session which took place in Geneva in June 2016.

The final report takes the form of a narrative section and a technical annex. The opening narrative section outlines the background to the OHCHR’s work, the research methodologies used, and several important “cross-cutting issues” which have particular implications for access to remedy in cases of business-related human rights abuses.

The annex to the report sets out key findings from the Accountability and Remedy Project in the form of a series of recommendations for States to improve corporate accountability and access to judicial remedy for business-related human rights abuse. These recommendations will be supplemented further by a collection of illustrative examples of State practice, gathered from OHCHR research over the course of the Accountability and Remedy Project, to demonstrate how the various recommendations can be implemented in practice.

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***Further information and resources***

[**http://business-humanrights.org/en/ohchr-accountability-and-remedy-project**](http://business-humanrights.org/en/ohchr-accountability-and-remedy-project)