

Business and Human Rights: The OHCHR Accountability and Remedy Project

**An initiative to contribute to a fairer and more
effective system of domestic law remedies, in
particular in cases of
gross human rights abuses**

Programme of Work

V2 - Updated February 2015



1. Introduction

The Office of the United Nations High Commissioner for Human Rights (“OHCHR”) has initiated a programme of work aimed at contributing to a fairer and more effective system of domestic law remedies to address corporate involvement in gross human rights abuses. The initiative aims to provide conceptual, normative and practical clarification of key issues arising from the present system of domestic law remedies for business involvement in gross human rights abuses. This programme of work commenced with the commissioning of an initial study of existing empirical information relating to the functioning and performance of domestic law judicial mechanisms in this area. The report of the findings of the initial study (“the Initial Study Report”) was published in February 2014¹ and interested stakeholders were invited to make comments in writing on the issues identified in the study as requiring further clarification. A report on the submissions received as a result of this process is available via the project [website](#).

At its twenty-sixth session, on 27 June 2014, the Human Rights Council passed a resolution which requests the UN High Commissioner for Human Rights to “*continue the work to facilitate the sharing and exploration of the full range of legal options and practical measures to improve access to remedy for victims of business-related human rights abuses, in collaboration with the Working Group, and to organize consultations with experts, States and other relevant stakeholders to facilitate mutual understanding and greater consensus among different views.*” The High Commissioner is requested to publish a progress report of its work before the twenty-ninth session of the Human Rights Council and a final report for consideration by the Human Rights Council at its thirty-second session (June 2016).²

In September 2014, OHCHR convened a meeting of experts to discuss feedback received to the Initial Study Report and OHCHR’s proposed work plans, in light of the mandate from the Human Rights Council. OHCHR is grateful to the experts who dedicated their time to review this project. The list of experts appears in Annex 1. The Meeting of Experts was conducted under Rule 1 of the “Villa Moynier Rules”³ to encourage open and free discussion.

¹ Zerk, *Corporate liability for gross human rights abuses: towards a fairer and more effective*

² See Human Rights Council Resolution, A/HRC/RES/26/22, paragraph 7. Copy available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/083/82/PDF/G1408382.pdf?OpenElement>.

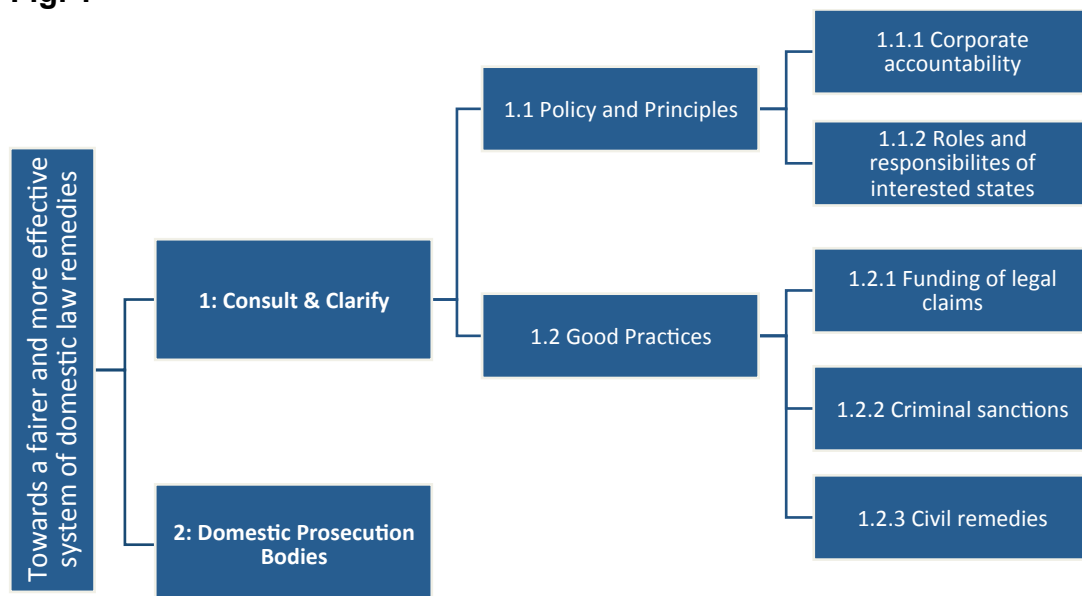
³ Rule 1 of the Villa Moynier Rules is as follows: “Discussions during and on the margins of the meeting are strictly confidential. A participant is free to report his/her own comments but may not cite or summarize remarks by any other participant”.

2. Overarching points in relation to OHCHR’s proposed programme of work

The aim of OHCHR’s present programme of work is to clarify the legal responsibilities of companies under domestic law and to develop credible and workable guidance for states in respect of certain key issues to enable strengthened and more consistent implementation of the United Nations Guiding Principles on business and human rights (“the UNGPs”), particularly as in cases of business involvement in severe human rights abuses. The intention is for this guidance to be incorporated into the final report requested from the High Commissioner for Human Rights under Human Rights Council Resolution A/HRC/Res/26/22.

During the September 2014 meeting of experts, participants were invited to comment on draft work plans prepared for various planned research projects. A diagram showing how these various proposed projects are related to the recommendations laid out in the Initial Study Report is set out below.

Fig. 1



Note: For the purposes of the Meeting of Experts, these projects were referred to using the numbering system shown in Fig. 1 above. However, for convenience and ease of reference going forward, the six projects have been renumbered as follows:

Project 1: Domestic law tests for corporate accountability

Project 2: Roles and responsibilities of interested states

Project 3: Overcoming financial obstacles to legal claims

Project 4: Criminal sanctions

Project 5: Civil law remedies

Project 6: Practices and policies of domestic prosecution bodies.

This is the numbering system used in the remainder of this report.

Detailed work plans for each project are set out in Section 4.

The draft work plans discussed at the Meeting of Experts reflect OHCHR's desire to ensure that any future guidance takes proper account of the diversity of legal structures, cultures and traditions, as well as stages of economic development. To this end, it will be necessary to gather together information relating to a wider range of domestic systems than have been studied to date. At the same time, OHCHR does not have unlimited time or resources to complete this work. Discussions at the expert meeting focused on how OHCHR can best carry out the work as quickly and efficiently as possible, taking into account sources of existing information and expertise and avoiding duplication and over-burdening of prospective partners and respondents, and in light of current constraints on resources. Following the discussions at the meeting of experts, OHCHR has revised its proposed work plans, which are presented below.

3. Work plan for the period November 2014 to end-March 2016

3.1 General approach

OHCHR work plan is made up of six separate but inter-related projects. These emerge from the two work streams that form the core of the recommendations in the Initial Study Report – one entitled “Consult and Clarify” and the other relating specifically to the work of domestic prosecution bodies (see Fig. 1 above). As noted above, this programme of work is undertaken pursuant to the request by the Human Rights Council to the UN High Commissioner for Human Rights to “facilitate the sharing and exploration of the full range of legal options and practical measures to improve access to remedy for victims of business-related human rights abuses, in collaboration with the Working Group”.⁴

It is too early in the process to say precisely what guidance or tools are likely to emerge from this work. However, as indicated in the project specific work-streams outlined below, one key aim will be to use the information collected and evaluated in the course of this programme of work to inform “good practice guidance” in relation to each of the specific focus areas, which can then be included in the High Commissioner’s final report to the Human Rights Council. As part of its exploration of “practical measures to improve access to remedy for victims of business-related human rights abuses”, OHCHR will also be seeking to identify where technical assistance or capacity building activities may be beneficial.

Consistent with feedback received at the meeting of experts, OHCHR has sought to rationalise its work plans as far as possible to avoid duplication of effort and to reduce the burden on prospective respondents, contributors and partners. This means that there will be some tasks that are project-specific, and some tasks that will span different projects. Each project has a dedicated work plan (outlined in section 4 from page 11 below), but for five of the six work streams, an “Open Process” (global) and a “Detailed Comparative

⁴ See n. 3 above.

Process”, explained in more detail at section 3.1.2 below, will be used to elicit information for project-specific analysis.

OHCHR’s general approach will be to “cast the net wide” and invite inputs from as many stakeholders working in as many jurisdictions as possible through the Open Process, but to concentrate its efforts, as far as detailed comparative analysis is concerned, on 25 “focus jurisdictions” by way of the “Detailed Comparative Process”.

Information gathered through the Open Process would be used to supplement and inform the Detailed Comparative Process. To the extent that information gathered through the Open Process relates to one or more of the focus jurisdictions, this could be used to verify and cross-check the information collected as part of the Detailed Comparative Process. In the event that information gathered through the Open Process appears to contradict information gathered through the Detailed Comparative Process, this will be followed up as appropriate.

OHCHR’s programme of work outlined in this document is ambitious and the timetable is tight for a project of this scale. It will not be able to be delivered without substantial additional capacity and resources. At present, it is OHCHR’s intention to rely on voluntary support to the widest extent possible. Even so, the implementation of any or all of the work streams in the manner envisaged in the work plans below will depend on OHCHR’s ability to secure additional financial resources. If such additional resources are not forthcoming, OHCHR will need to revise the work plans accordingly.

3.2 The two “umbrella” information gathering processes

3.2.1 The Open Process

The Open Process will be an “umbrella process” designed to elicit information from a broad range of stakeholders about present state practice in relation to the following:

- domestic law tests for corporate accountability (Project 1);
- overcoming financial obstacles to legal claims (Project 3);
- criminal law sanctions (Project 4);
- civil law remedies (Project 5);
- practices and policies of domestic law prosecution bodies (Project 6)

Information will be gathered by way of an on-line survey (the “Open Survey”) open to all states and stakeholders (including representatives of government, regulatory authorities, prosecutors, civil society organizations, companies, claimants and their legal representatives, other legal experts and academics).

The Open Survey will be simple and accessible and designed in such a way that it is easy to use and capable of eliciting readily comparable data. To these ends, it will be supplemented by “click on” guidance with clear and

simple explanations of any terminology. It will be designed to elicit “yes/no” answers wherever possible. It will be designed in such a way that contributors are given options as to which parts of the survey they wish to answer, and so they are not presented with irrelevant or unnecessary questions. To maximise uptake and ease of use, the Open Survey will be translated into French and Spanish.

As noted further below, the Open Survey will be piloted before full launch to ensure it is technically sound and fit for purpose. The launch itself would be publicised widely by OHCHR itself and through partner organisations and networks.

A special effort will be made to elicit contributions from stakeholders from focus jurisdictions about which OHCHR presently has no or limited data. This will be done through targeted approaches using existing OHCHR and UN Working Group networks.

Timetable for Open Process

Note: The timetable immediately below relates to the establishment and implementation of the Open Process only. As noted above, this “umbrella” process will be used to gather information for up to five of the specific research projects to be carried out by OHCHR towards fulfilment of its mandate from the Human Rights Council. The timetable for the analysis of the information collected, publication of findings and consultation on outcomes is set out as part of the project-specific work plans below.

Task	By whom?	By when?
Identify partner organisation(s) to assist with design, set up, testing, piloting and launch of Open Survey and publicity for Open Process	OHCHR	End-December 2014
Settle questions and structure of Open Survey	OHCHR	End-February 2015
Design and set up Open Survey	OHCHR with input from experts	End February 2015
Pilot Open Survey	Partner individual or organisation.	Mid-April 2015
Review pilot outcomes and implement any	OHCHR/partner individual or	End-April 2015

modifications; translate survey	organisation	
Launch of Open Survey	OHCHR/partner individual or organisation	Beginning-May 2015
Administration of Open Survey, compiling results and translation	Partner individual or organisation (under supervision of OHCHR).	Beginning May – 1 August 2015

Required resources and partnering arrangements for Open Process

OHCHR will require assistance from an individual or partner organisation with expertise in designing and administering public surveys to assist with design, set up, testing, piloting and launch of Open Survey and publicity for Open Process.

Depending on the number and spread of responses received under the Open Process, OHCHR is likely to require assistance from academics and legal experts in various jurisdictions to verify and cross-check results.

OHCHR will also require the use of translation services, to translate the Open Survey into French and Spanish and then to translate replies.

3.2.2 The Detailed Comparative Process

The Detailed Comparative Process will cover around 25 “focus jurisdictions” (subject to confirmation of resources). This process will consist of **two parts**:

- 1) **Track 1**, comprising research that will be carried out by partner law firms and legal experts with either a presence in the relevant focus jurisdictions or ready access to relevant expertise. This track is designed to elicit detailed comparative information about the legal systems in the focus jurisdictions.
- 2) **Track 2**, comprising a survey of the experiences of public interest lawyers and other victims’ representatives with either a presence in the focus jurisdictions or experience working with claimants in those jurisdictions. This survey is designed to complement the legal research carried out in Track 1 by gathering experiences and perspectives from practitioners representing victims in relation to the topics covered.

The detailed research methodology will be developed by OHCHR in close consultation with the project partners to ensure that proposals are workable and achievable in the relevant time frame and that the information-gathering is carried out efficiently and in such a way that avoids duplication of effort. The information from the two tracks will reviewed by academics and other experts

in the focus jurisdictions, to place the information gathered in the broader context of the country's legal system, and to help draw out differences in approaches between jurisdictions and between law and practice.

The Detailed Comparative Process will be designed to elicit information about current state practice in each of 25 focus jurisdictions in relation to:

- domestic law tests for corporate accountability (Project 1);
- overcoming financial obstacles to legal claims (Project 3);
- criminal law sanctions (Project 4); and
- civil law remedies (Project 5).

The areas to be covered in the Detailed Comparative Process will be the same or similar to those covered by the Open Process. However, the more detailed and more directed research methods will give greater opportunity for clarification and are more likely to draw out complexities and subtle differences of approach.

Researchers for Track 1 will be encouraged to consult the existing databases of the UN and its specialised agencies, including the information held by the International Labour Organisation on domestic implementation of existing international standards relating to matters such as forced labour, modern slavery, human trafficking and the worse forms of child labour.

The focus jurisdictions

The focus jurisdictions that will be subject to detailed comparative analysis have been selected to reflect a good regional spread; a mix of developed, developing and emerging economies; a mix of civil law systems, common law systems, mixed systems and other systems (including systems based on sharia law); and a mix of capital exporting and capital importing states.

The list of 25 focus jurisdictions selected by OHCHR for the Detailed Comparative Process, by UN regional grouping, is as follows:

Western Europe and Others	Eastern Europe	Latin America and Caribbean	Asia and Pacific	Africa
United States	Poland	Brazil	Japan	South Africa
United Kingdom	Russia	Argentina	China	Côte d'Ivoire
France	Azerbaijan	Colombia	Singapore	Morocco
Germany		Mexico	Thailand	Tunisia
Australia			India	Zambia
			Qatar	
			Papua New Guinea	
			Indonesia	

Timetable for Detailed Comparative Process

Note: The timetable immediately below relates to the establishment and implementation of the Detailed Comparative Process only. As with the Open Process, this is an “umbrella” process and will be used to gather information for up to four of the specific research projects to be carried out by OHCHR towards fulfilment of its mandate from the Human Rights Council.

The timetable for analysis of the information collected, publication of findings and consultation on outcomes is set out as part of the project-specific work plans below.

Task	By whom?	By when?
Mapping existing data in relation to each of the focus jurisdictions	OHCHR	End-December 2014
Identification of experts/partner law firms in relation to each of the focus jurisdictions	OHCHR	End-February 2015
Review research aims, existing data, key questions, information-gathering methodology, gaps in existing data and timetable with relevant legal experts/partner law firm; allocate research tasks	OHCHR/partner legal experts	End-February 2015
Research and information-gathering and compiling and verifying results	Partner legal experts (in consultation with OHCHR)	March 2015 – August 2015

Required resources and partnering arrangements for Detailed Comparative Process

OHCHR will require further resources/voluntary assistance from:

- (i) suitably qualified legal experts with expertise in criminal and civil law in one or more of the 25 focus jurisdictions; and/or
- (ii) law firms which have, between them, a presence in (or ready access to legal expertise in) the focus jurisdictions;
- (iii) UN specialised agencies with relevant existing information-bases, in particular, the International Labour Organisation (see above).

4. Detailed methodology for specific Projects

The following sections explain the proposed research methodology in relation to each of the six separate but interlinked areas identified by OHCHR as requiring further study (see Fig 1 above). These are:

- domestic law tests for corporate accountability (Project 1)
- roles and responsibilities of interested states (Project 2)
- overcoming financial obstacles to legal claims (Project 3);
- criminal law sanctions (Project 4);
- civil law remedies (Project 5); and
- practice and policies of domestic law prosecution bodies (Project 6).

To maximise efficiency, and to minimise the burden on prospective partner organisations and contributors as much as possible, the gathering of empirical information needed to complete OHCHR's planned projects (with the exceptions of Project 2 and Project 6) will be carried out largely by way of the two "umbrella" processes discussed above, i.e.:

- the Open Process (under which governments and stakeholders will be generally invited to contribute and comment); and
- the Detailed Comparative Process, comprising Track 1 and Track 2, which will be carried out by legal experts and will be confined to the 25 focus jurisdictions).

Project 1: Clarify domestic tests for corporate accountability

Aims:

- I. To clarify how different domestic legal systems approach attribution and assessment of corporate legal liability for involvement in gross human rights abuses, including the extent to which there is convergence or divergence between different jurisdictions.
- II. To analyse information gathered in relation to present state practice in order to establish (a) the strengths and weaknesses of different approaches and the extent to which specific legal features of some domestic jurisdictions (e.g. the lack of a concept of corporate criminal liability) may pose a challenge to corporate accountability in practice (b) the different ways that domestic legal approaches to corporate liability can be strengthened in future and (c) the extent to which there is common ground and potential for future legal development and cooperation, taking account of different legal systems, cultures, traditions and stages of economic development.
- III. To develop "good practice" guidance for states in relation to the factors that should be taken into account in the assessment of

corporate liability in cases of alleged business involvement in gross human rights abuses.

Methodology:

Information gathering will take place:

- (a) by way of the Open Process (see discussion at section 3.2.1 above); and
- (b) in relation to the 25 focus jurisdictions, by way of the Detailed Comparative Process (see discussion at section 3.2.2 above).

Information-gathering efforts will be focused on subject-areas where there are gaps in existing data, or where existing data is out of date.

Information collected from different jurisdictions will then be subject to thorough review by OHCHR with assistance from partner individuals and law firms. Information collected via the Detailed Comparative Process will be compared with information collected via the Open Process and any apparent inconsistencies and anomalies followed up and clarified as appropriate.

Conclusions and draft guidance will be published by way of an interim report on which governments and stakeholders will be invited to comment. OHCHR’s final conclusions and draft guidance will be incorporated into the High Commissioner’s final report to the Human Rights Council under its resolution A/HRC/Res/26/2

Milestones and timetable:

Task	By whom?	By when?
OPEN PROCESS	See 3.2.1 above	May 2015-September 2015
DETAILED COMPARATIVE PROCESS	See 3.2.2 above	March 2015-August 2015
Review, mapping and analysis of information collected via the Open Process and the Detailed Comparative Process	OHCHR (with the assistance of partner legal experts)	September 2015 – End-October 2015
Publication of findings and draft guidance by way of interim report	OHCHR	End-December 2015

Consultation on findings and draft guidance	OHCHR (with the assistance of legal experts)	End-January 2016
High Commissioner submits final report to the HRC under A/HRC/Res/26/22	OHCHR	Mid-March 2016

Required resources and partnering arrangements:

As noted at section 3.2.2 above, OHCHR will need to obtain further resources/voluntary assistance from:

- (i) suitably qualified individual legal experts with expertise in criminal and civil law in one or more of the 25 focus jurisdictions; and/or
- (ii) law firms which have, between then, a presence in (or ready access to legal expertise in) the 25 focus jurisdictions.

to assist with information-gathering, review of data collected and review of responses to consultation exercise.

Project 2: Clarify roles and responsibilities of interested states

Aims:

- I. To explore existing state practice and attitudes with respect to the appropriate use of extraterritorial jurisdiction and domestic measures with extraterritorial implications in relation to cases of business involvement in gross human rights abuses.
- II. To clarify the extent to which there is common ground with respect to the roles and responsibilities of different interested states (e.g. “home” states and “host” states) in cases involving multinational companies and what a possible principled basis for appropriate action in relation to jurisdictional matters could potentially be; and
- III. To develop “good practice” guidance for states in relation to the management of cross-border cases, including possible models for international cooperation and future regulatory options and frameworks, taking into account different legal systems, cultures, traditions and stages of economic development.

Methodology:

Study of state practice in relation to some specific areas where international treaty arrangements already apply: A short preliminary study is planned to clarify how the roles and responsibilities of interested states are currently addressed and allocated under existing international frameworks on matters such as forced labour, modern slavery, human trafficking and the worst forms of child labour. Because of time and resource restraints, it is proposed to use the most recent comments of ILO treaty monitoring bodies (CEARC) as the main source of information about current and recent state practice under these treaty arrangements. The findings of such a study could help to inform the interactive workshop meeting(s) (see below) and subsequent guidance and recommendations. However, as with all of the work plans (see comments at section 3.1 above) the scope, feasibility and timing of such a project will be dependant upon OHCHR’s ability to secure additional capacity and resources.

Study of state practice in relation to the US Alien Tort Claims Act: A further short preliminary study is planned to review state responses to extraterritorial cases brought to date under the Alien Tort Claims Act. This will involve a survey of interventions and comments by made by state agencies via amicus curiae briefs. Again, the findings of such a study could help to inform the interactive workshop meeting(s) (see below) and subsequent guidance and recommendations. However, as with all of the work plans (see comments at section 3.1 above) the scope, feasibility and timing of such a project will be dependant upon OHCHR’s ability to secure additional voluntary assistance.

Interactive workshop meetings: In addition, two closed workshop meetings will be convened with representatives of governments of a sub-group of the

25 focus jurisdictions and other key states. The two meetings will be in an interactive workshop format in which participants will be invited to work through a series of hypothetical scenarios concerning business involvement in gross human rights issues. The aim of the workshop will be:

- to clarify the legal and practical problems that can arise in cross border cases;
- to understand the ways in which existing views of roles and responsibilities are likely to shape state responses;
- drawing from experience in other regulatory fields, to consider ways that states can work together cooperatively to address the challenges that arise in cross-border cases;
- to test and give participants the opportunity to react to different possible models of international cooperation; and
- to identify the possible elements of a principled basis for appropriate action in relation to jurisdictional matters.

Milestones and timetable:

Task	By whom?	By when?
Identify suitable partner organisation to take responsibility for the preparation for and facilitation of the interactive workshop meeting	OHCHR	End–November 2014
Preliminary studies relating to state practice under existing international treaty arrangements and survey of ATS amicus curiae briefs	[To be discussed and confirmed]	[Scope, timing and feasibility will depend on securing the necessary funding and resources – see comment above]
First interactive workshop meeting	Partner organisation with OHCHR	July/August 2015
Analysis of outcomes of the first interactive workshop meeting	OHCHR/partner organisation	End-September 2015
Second interactive workshop meeting	Partner organisation with OHCHR	October/November 2015
Publication of findings and draft guidance by way of interim report	OHCHR	November 2015

Consultation on initial findings	OHCHR with partner organisation	End-November 2015
Consultation on OHCHR's findings and draft guidance	OHCHR	End-January 2016
High Commissioner submits final report to the HRC under A/HRC/Res/26/22	OHCHR	Mid-March 2016

Required resources and partnering arrangements:

OHCHR will require the assistance of a partner organisation able to take responsibility for the organisation and facilitation of the interactive government workshop, and any necessary follow-up.

OHCHR is likely to require additional assistance from UN specialised agencies and, in particular the International Labour Organisation in relation to the preliminary study of existing state practice in relation to forced labour, modern slavery, human trafficking and the worst forms of child labour (see above).

Finally, OHCHR will require the assistance of a partner organisation to take on the study of state responses to the US Alien Tort Claims Act, described above.

Project 3: Overcoming financial obstacles to legal claims

Aims:

- I. To identify the different methods employed by states to help to reduce the costs of tort-based claims against companies (e.g. group and collective actions) and to expedite cases (e.g. discovery rules and other rules of procedure), and the conditions necessary for such initiatives to be effective.
- II. To map state practice in different jurisdictions (reflecting different geographical regions, legal cultures and traditions and different stages of economic development) as to:
 - a) levels of state funding and support for victims and their representatives in cases involving allegations of business involvement in gross human rights abuses;
 - b) the different mechanisms through which such support is provided;
 - c) eligibility criteria for accessing support; and
 - d) other terms and conditions relating to the support.

and to clarify the reasons for differences in approach.
- III. To gain a better understanding of the different strategies presently employed by states and the various packages of measures that can be used to assist financially disadvantaged claimants (e.g. legal aid, contingency fees, one-way cost shifting rules, after the event insurance) the relative success or otherwise of those strategies and the conditions (including market conditions) necessary to ensure that these strategies are both workable and sustainable.
- IV. Based on the above, to prepare practical guidance for states with respect to:
 - a) the minimum steps that should be taken, specifically in relation to assistance for financially disadvantaged claimants, to fulfil the provisions of the UNGPs with respect to access to remedy; and
 - b) “good practice” packages and options (taking account of different legal cultures and traditions and different stages of economic development) to progressively work towards the goal that claimants in cases involving business involvement in gross human rights abuses are not denied the ability to seek a remedy because of an inability to finance their legal claims.

Methodology:

The project will commence with a short literature review, which will identify:

- (a) the various strategies employed in different jurisdictions to help reduce the costs of tort-based legal claims against companies and to expedite legal cases; and
- (b) specific domestic initiatives aimed at assisting financially disadvantaged claimants and the relevance of these to cases of business involvement in gross human rights abuses..

Insights from this review will be used to help refine and focus subsequent work, including the questions to be posed via both the Open Process and the Detailed Comparative Process.

Empirical information-gathering will then take place:

- (a) by way of the Open Process (see discussion at section 3.2.1 above); and
- (b) in relation to the 25 focus jurisdictions, by way of the Detailed Comparative Process (see discussion at section 3.2.2 above).

Relevant professional bodies will be contacted and invited to help assist with information-gathering and outreach. A special effort will be made to try to encourage participation in the Open Process from practitioners, NGOs and other stakeholders working in non-OECD countries.

Information collected via the Open Process and the Detailed Comparative Process will then be subject to thorough review by OHCHR with the assistance of legal experts). Information collected via the Detailed Comparative Process will be compared with information collected via the Open Process and any apparent inconsistencies and anomalies followed up and clarified as appropriate.

Conclusions will be published by way of an interim report on which governments and stakeholders will be invited to comment. OHCHR's final conclusions and draft guidance will be incorporated into the High Commissioner's final report to the Human Rights Council under its resolution A/HRC/RES/26/22.

Milestones and timetable:

Task	By whom?	By when?
Contact relevant professional bodies for views and to ask for assistance with outreach and information gathering	OHCHR	End-December 2014
Completion of initial scoping study of funding options, packages and strategies	OHCHR with input from experts	End-March 2015
OPEN PROCESS	See 3.2.1 above	May 2015-August 2015
DETAILED COMPARATIVE PROCESS	See 3.2.2 above	March 2015-August 2015
Review, mapping and analysis of information collected via the initial study, the Open Process and the Detailed Comparative Process	OHCHR (with the assistance of legal experts)	September 2015-November 2015
Publication of findings and draft guidance by way of interim report	OHCHR	End-January 2016
Consultation on findings and draft guidance	OHCHR (with the assistance of legal experts)	End-February 2016
High Commissioner submits final report to the HRC under A/HRC/Res/26/22	OHCHR	Mid-March 2016

Required resources and partnering arrangements

OHCHR will need financial assistance or pro bono/voluntary assistance to cover the preparation of the initial scoping study.

OHCHR will need pro bono input from suitably qualified legal experts with a good understanding of legal funding policy and issues in each of the 25 focus

jurisdictions (see discussion at section 3.2.2 above) and also, more generally, to assist with information-gathering, review of data collected and review of responses to consultation exercise.

OHCHR is likely to need assistance from relevant professional bodies with respect to outreach and information-gathering.

Project 4: Identify good practice in relation to criminal and administrative sanctions

Aims:

- I. To survey current and developing state practice in relation to the range of different sanctions that may be applied in cases of serious corporate wrongdoing (including but not limited to cases of involvement in gross human rights abuses), and the circumstances in which they are applied, and to assess the extent to which there is common ground in relation to underlying sentencing rationales and aims.
- II. To consider the extent to which innovations in sentencing in other areas of domestic law (e.g. bribery and corruption, money laundering, securities, environmental offences etc.) may be relevant and appropriate in cases involving business involvement in gross human rights abuses.
- III. To consider the extent which the design of sanctions regimes can help overcome challenges associated with specific features of domestic law regimes (e.g. the lack of a recognised concept of corporate criminal liability);
- IV. Based on this, to identify possible “good practice models” which can then be communicated by way of further guidance to states in respect of the access to remedy provisions under the UNGPs.

Methodology:

Information-gathering will take place:

- (a) by way of the Open Process (see discussion at section 3.2.1 above); and
- (b) in relation to the 25 focus jurisdictions, by way of the Detailed Comparative Process (see discussion at section 3.2.2 above).

Relevant professional bodies will be contacted and invited to help assist with information-gathering and outreach. A special effort will be made to try to encourage participation in the Open Process from practitioners, NGOs and other stakeholders working in non-OECD countries.

Criminal law experts with specialist knowledge of other specific regulatory areas (e.g. bribery and corruption, money laundering, securities laws and environmental crimes) will be contacted and interviewed to gain a greater understanding of current trends and proposals in relation to corporate sentencing, the rationales behind different sentencing strategies, the different factual circumstances taken into account in mitigation and the effectiveness of

different options from the standpoint of the right of victims to access to an effective remedy.

Information collected via the Open Process and the Detailed Comparative Process will then be subject to thorough review by OHCHR with the assistance of partners (individual experts and law firms). Information collected via the Detailed Comparative Process will be compared with information collected via the Open Process and any apparent inconsistencies and anomalies followed up and clarified as appropriate.

Conclusions will be published by way of an interim report on which governments and stakeholders will be invited to comment. OHCHR's final conclusions and draft guidance will be incorporated into the High Commissioner's final report to the Human Rights Council under its resolution A/HRC/RES/26/22.

Milestones and timetable:

Task	By whom?	By when?
Identify relevant professional bodies to assist with outreach and information gathering	OHCHR	End-January 2014
Identify criminal law experts with relevant specialist knowledge and able to provide insights with respect to current trends and innovations in relation to criminal and administrative sanctions and to assist with the review, mapping and analysis of the information collected via the Open Process and the Detailed Comparative Process	OHCHR	End-January 2014
OPEN PROCESS	See 3.2.1 above	May 2015-August 2015
DETAILED COMPARATIVE PROCESS	See 3.2.2 above	March 2015-August 2015

Review, mapping and analysis of information collected via the Open Process and the Detailed Comparative Process	OHCHR (with the assistance of legal experts)	September 2015- November 2015
Meetings with criminal law experts to discuss initial findings/current trends and innovations/possible elements of “good practice guidance” in relation to business involvement in gross human rights abuses	OHCHR/criminal law experts	End-December 2015
Publication of findings and draft guidance by way of interim report	OHCHR	End-January 2016
Consultation on findings and draft guidance	OHCHR (with the assistance of legal experts)	End-February 2016
High Commissioner submits final report to the HRC under A/HRC/Res/26/22	OHCHR	Mid-March 2016

Required resources and partnering arrangements:

OHCHR will need voluntary assistance from suitably qualified legal experts with a good understanding of criminal law and sanctions in each of the 25 focus jurisdictions (see discussion at section 3.2.2 above). OHCHR is likely to need assistance from relevant professional bodies with respect to outreach and information-gathering.

OHCHR will also need pro bono/voluntary assistance from criminal law experts working in other areas, to assist with information-gathering, review of data collected and review of responses to consultation exercise, and for expert input on matters such as:

- current trends and proposals in relation to corporate sentencing,
- the rationales behind different sentencing strategies,
- the different factual circumstances taken into account in mitigation; and
- the effectiveness of different options from the standpoint of the right of victims to access to an effective remedy.

Project 5: Identify good practice in relation to civil remedies

Aims:

- I. To survey current state practice in relation to civil law remedies in cases of serious corporate wrongdoing (including but not limited to cases of involvement in gross human rights abuses) and specifically the different kinds of remedies that can be awarded under different domestic law systems where liability has been established (e.g. monetary damages, punitive damages, restitution orders, prevention measures, and other non-financial remedies such as public apologies and specific compliance orders). ;
- II. To explore the role of domestic judicial mechanisms in relation to supervision and implementation of settlements and awards;
- III. To consider the extent to which innovations in the designing of remedies in private law cases (and particularly in relation to alternatives to purely financial awards such as agreed remediation programmes, monitored compliance programmes and other preventative measures) may be relevant and appropriate in cases involving business involvement in gross human rights abuses; and
- IV. Based on the above, to identify possible “good practice models” for civil law remedies which can then be communicated as part of further guidance to states in respect of the access to remedy provisions under the UNGPs.

Methodology:

Information-gathering will take place:

- a) by way of the Open Process (see discussion at section 3.2.1 above); and
- b) in relation to the 25 focus jurisdictions, by way of the Detailed Comparative Process (see discussion at section 3.2.2 above).

Relevant professional bodies will be contacted and invited to help assist with information-gathering and outreach. A special effort will be made to try to encourage participation in the open process from practitioners, NGOs and other stakeholders working in non-OECD countries.

Expert input will be invited from civil law specialists (both plaintiff and defence) and others with experience representing the interests of victims of business-related human rights abuses in relation to issues such existing practice in relation to civil law remedies, current trends and proposals, the rationales behind different remedial choices, the role of courts in monitoring and enforcing the implementation of civil law remedies, the use of preventative as well as compensatory remedies, legal, social and cultural issues and challenges in the setting and implementation of civil remedies, the extent to which and the circumstances in which punitive remedies are used and the

different factual circumstances taken into account in mitigation, and the effectiveness of different options from the standpoint of the right of victims to access to an effective remedy.

Information collected via the Open Process and the Detailed Comparative Process will then be subject to thorough review by OHCHR with the assistance of partners (individual experts and law firms). Information collected via the Detailed Comparative Process will be compared with information collected via the Open Process and any apparent inconsistencies and anomalies followed up and clarified as appropriate.

Conclusions will be published by way of an interim report on which governments and stakeholders will be invited to comment. OHCHR's final conclusions and draft guidance will be incorporated into the High Commissioner's final report to the Human Rights Council under its resolution A/HRC/RES/26/22.

Milestones and timetable:

Task	By whom?	By when?
Identify relevant professional bodies to assist with outreach and information gathering	OHCHR	End-January 2015
Identify experts with relevant specialist knowledge of civil law practice and able to provide insights with respect to current trends and innovations in relation to civil law remedies and to assist with the review, mapping and analysis of the information collected via the Open Process and the Detailed Comparative Process	OHCHR	End-January 2015
OPEN PROCESS	See 3.2.1 above	May 2015-September 2015
DETAILED COMPARATIVE PROCESS	See 3.2.2 above	March 2015-August 2015
Review, mapping and analysis of information collected via the Open Process and the Detailed Comparative Process	OHCHR (with the assistance of legal experts)	September 2015-November 2015

Meetings with civil law experts to discuss initial findings/current trends and innovations/possible elements of “good practice guidance” in relation to business involvement in gross human rights abuses	OHCHR/civil law experts	End-September 2015 – December 2015
Publication of findings and draft guidance by way of interim report	OHCHR	End-January 2016
Consultation on findings and draft guidance	OHCHR (with the assistance of legal experts)	End-February 2016
High Commissioner submits final report to the HRC under A/HRC/Res/26/22	OHCHR	Mid-March 2016

Required resources and partnering arrangements:

OHCHR will need voluntary assistance from suitably qualified legal experts with a good understanding of civil remedies in each of the 25 focus jurisdictions (see discussion at section 3.2.2 above). OHCHR is likely to need assistance from relevant professional bodies with respect to outreach and information-gathering.

OHCHR will also need pro bono/voluntary assistance from civil law experts working in other areas, to assist with information-gathering, review of data collected and review of responses to consultation exercise, and for expert input on matters such as:

- existing practice in relation to civil law remedies;
- current trends and proposals;
- the rationales behind different remedial choices;
- the role of courts in monitoring and enforcing the implementation of civil law remedies;
- the use of preventative as well as compensatory remedies;
- the extent to which and the circumstances in which punitive remedies are used the different factual circumstances taken into account in mitigation;
- and the effectiveness of different options from the standpoint of the right of victims to access to an effective remedy.

Project 6: Domestic prosecution bodies

Aims:

- I. To gain a more detailed understanding of the reasons behind the apparently very low levels of activity by domestic criminal law enforcement agencies in relation to the problem of business involvement in gross human rights abuses;
- II. To gain a clearer picture of the present levels of interest and activity by domestic prosecution bodies in relation to this issue;
- III. To identify the challenges faced by domestic prosecutors particularly in relation to cases of business involvement in gross human rights abuses (i.e. in respect of investigation and prosecution of cases, including cross-border cases);
- IV. To develop a set of recommendations for states as to ways to begin addressing those challenges; and
- V. To identify areas where technical assistance and capacity building may be beneficial in future.

Methodology:

A small “core advisory group” will be established to provide expert feedback on the work as the project progresses, which will include assisting with the development of suitable questions for the Open Survey, advising on approaches to professional bodies, assisting with the preparation for face to face work with domestic prosecutors (e.g. seminars, roundtables, interviews) and commenting on progressive drafts of project outputs (i.e. findings, reports, recommendations and guidance). This group will include senior investigators and legal practitioners drawn from a number of different jurisdictions and experienced in the investigation and prosecution of serious corporate crimes, including cross-border investigations.

The Open Process and the Open Survey (see section 3.2.1 above) will be designed to elicit as much additional data as possible relating to:

- the extent to which domestic prosecution bodies presently receive complaints raising allegations about business involvement in gross human rights;
- the proportion of complaints that relate to “within territory” abuses and the proportion that relate to extraterritorial abuse;
- how those complaints were dealt with by the relevant authorities; and
- the proportion of cases that resulted in some form of enforcement action.

The data collected from the Open Process should help to build a more accurate picture of current patterns of enforcement activity, taking due account both of “within territory” and “extraterritorial” complaints.

However, the bulk of the empirical work for Project 6 will take the form of face to face work with individual prosecutors and relevant professional bodies. The aim will be to develop an informative and constructive dialogue directly with prosecutors about:

- the challenges they face specifically in relation to business involvement in gross human rights abuses;
- the way these challenges may vary from jurisdiction to jurisdiction and from region to region; and
- the areas where additional training, resources, greater international cooperation or law reforms may be needed.

Existing organisations and networks with relevant expertise (such as the International Association of Prosecutors⁵ and the European Network of Contact Points⁶) will be approached to assist with outreach and information-gathering. Discussions with relevant existing organisations and networks should take place at an early stage of the project about the possibility of arranging, or contributing to, an international conference, roundtable or seminar to clarify the issues and develop ideas as to suitable responses. Opportunities to participate in planned annual conferences of relevant professional bodies (international, regional and national) should be identified and, where possible, taken up.

Particular effort will be made to reach out to individuals, practitioners, NGOs and other relevant organisations in non-OECD countries through activities designed to raise awareness of the study and its aims and to maximise contributions to the Open Process.

Analysis of the results of the Open Process plus face to face activities will then take place under the guidance of the core advisory group.

Conclusions will be published by way of an interim report on which governments and stakeholders will be invited to comment. OHCHR's final conclusions and draft guidance will be incorporated into the High Commissioner's final report to the Human Rights Council under its resolution A/HRC/Res/26/22.

⁵ <http://www.iap-association.org/>.

⁶ [http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/genocidenetworksecretariat/European%20Network%20for%20investigation%20and%20prosecution%20of%20genocide,%20crimes%20against%20humanity%20and%20war%20crimes%20\(LEAFLET\)/GenNetLeaflet-2012-11-15-EN.pdf](http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/genocidenetworksecretariat/European%20Network%20for%20investigation%20and%20prosecution%20of%20genocide,%20crimes%20against%20humanity%20and%20war%20crimes%20(LEAFLET)/GenNetLeaflet-2012-11-15-EN.pdf)

Milestones and timetable:

Task	By whom?	By when?
Appoint advisory group	OHCHR	Mid-March 2015
Review study aims, methodology and timetable with core advisory group	OHCHR + core advisory group	Mid-April 2015
Discussions with International Association of Prosecutors, European Network of Contact Points and other relevant professional bodies regarding possible collaboration	OHCHR	End-April 2015
OPEN PROCESS	See 3.2.1 above	May 2015- August 2015
Face to face work with domestic prosecutors and relevant professional bodies (seminars, conferences, roundtables, interviews)	OHCHR (with assistance from relevant professional bodies) + core advisory group	April 2015 to end-September 2015
Review, mapping and analysis of information collected via the Open Process and the face to face work	OHCHR + core advisory group	End-December 2015
Publication of findings and draft guidance by way of interim report	OHCHR	End-January 2016
Consultation on findings and draft guidance	OHCHR + core advisory group	End-February 2016
High Commissioner submits final report to the HRC under A/HRC/Res/26/22	OHCHR	Mid-March 2016

Required resources and partnering arrangements:

OHCHR will require:

- (a) voluntary assistance from a number of senior prosecutors prepared to serve on the core advisory group; and
- (b) assistance from relevant professional bodies (e.g. International Association of Prosecutors, European Network of Contact Points and other relevant professional bodies) with respect to outreach and information-gathering.

Annex 1: Meeting of experts, 23-24 September 2014: List of Participants

Michael Addo	Working Group on Business and Human Rights
Ebenezer Appreku	Ghana
Turid Arnegard	Norway
Harriet Berg	Norway
Jerome Bellion Jourdan	European Union
Caio Borges	Conectas
Rachel Davis	Shift
Janelle Diller	International Labour Organization
Audrey Gaughran	Amnesty International
Erika George	University of Utah
Francis Johen	Human Rights Commission of Malaysia (SUHAKAM)
Wan Kasim	Human Rights Commission of Malaysia (SUHAKAM)
Jonathan Kaufman	EarthRights International
Felix Kirchmeier	Friedrich Ebert Stiftung
Lisa Laplante	New England Law
Pablo Lazo	Chile
Rae Lindsay	Clifford Chance
Josua Loots	University of Pretoria
Richard Meeran	Leigh Day
Simon Minks	Office of the Public Prosecutor, the Netherlands
Angela Mudukuti	Southern Africa Legal Centre
Krishnendu Mukherjee	Doughty Street Chambers/public interest lawyer
Augustine Niber	Center for Public Interest Law Ghana
Rachel Nicolson	Allens
Yoshie Noguchi	International Labour Organization
Divya Prasad	International Commission of Jurists
Jason Pielemeier	USA
Anne Schuit	SOMO
Flavio Siqueira	Conectas
Kathleen Shay	International Corporate Accountability Roundtable
Matthias Thorns	International Organisation of Employers
Margaret Wachenfeld	Institute for Human Rights and Business
Kevin Whelan	USA

From OHCHR:

Lene Wendland, Adviser on Business and Human Rights, RRDD

Jennifer Zerk, Consultant, Business and Human Rights, RRDD

Ragnhild Handagard, Consultant, Business and Human Rights, RRDD

Ulrik Halsteen, Secretary of the Working Group on Business and Human Rights

Peter Hall, Secretariat of the Working Group on Business and Human Rights