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**Annual report of the United Nations High Commissioner  
for Human Rights and reports of the Office of the  
High Commissioner and the Secretary-General**

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

## **Improving accountability and access to remedy for victims of business-related human rights abuse through non-State-based grievance mechanisms**

**Report of the United Nations High Commissioner for Human Rights\***

### *Summary*

The present report sets out recommended action to improve accountability and access to remedy for victims of business-related human rights abuses through non-State-based grievance mechanisms. It has been compiled as part of the Accountability and Remedy Project of the Office of the United Nations High Commissioner for Human Rights, pursuant to the request of the Human Rights Council in its resolution 38/13. It follows reports prepared for the project's first phase, on judicial mechanisms (A/HRC/32/19 and A/HRC/32/19/Add.1), and its second phase, on State-based non-judicial mechanisms (A/HRC/38/20 and A/HRC/38/20/Add.1).

The report explains the scope and methodology of the work, makes comments as to the potential uses of the report and makes general observations about the role of non-State-based grievance mechanisms in achieving accountability and access to remedy. It includes an annex containing a set of recommended policy objectives for States and relevant non-State actors, supported by a series of elements intended to demonstrate the different ways in which those objectives may be met in practice. The report is complemented by an addendum (A/HRC/44/32/Add.1), prepared as a companion document to provide additional explanation and context drawn from the two-year research process for the current phase of the project.

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\* Agreement was reached to publish the present report after the standard publication date owing to circumstances beyond the submitter's control.

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## I. Introduction

1. In 2013, as part of its mandate to advance the promotion and protection of human rights globally, the Office of the United Nations High Commissioner for Human Rights (OHCHR) initiated a process aimed at strengthening the implementation of the access to remedy pillar of the Guiding Principles on Business and Human Rights.<sup>1</sup>

2. In its resolution 26/22, the Human Rights Council requested the United Nations High Commissioner for Human Rights to continue work on improving access to remedy and to report back to the Council. In November 2014, and pursuant to that mandate, OHCHR launched the Accountability and Remedy Project.<sup>2</sup> The first phase of the project explored the role and use of judicial mechanisms with a view to enhancing the effectiveness of such mechanisms in cases of business-related human rights abuse. The High Commissioner submitted a report thereon to the Council at its thirty-second session.<sup>3</sup>

3. In its resolution 32/10, the Human Rights Council welcomed the above-mentioned report and requested the High Commissioner to continue work on improving accountability and access to remedy, and in particular to identify ways to improve the effectiveness of State-based non-judicial mechanisms that are relevant to respect by business enterprises for human rights. In June 2018, the High Commissioner submitted a report on that second phase of the project to the Council at its thirty-eighth session.<sup>4</sup>

4. In its resolution 38/13, the Council welcomed that report and further requested the High Commissioner “to identify and analyse challenges, opportunities, best practices and lessons learned with regard to non-State-based grievance mechanisms that are relevant to the respect by business enterprises for human rights”. The work carried out by OHCHR pursuant to that request comprises the third phase of the Accountability and Remedy Project, which is the subject of the present report.

## II. Accountability and access to remedy: the contribution of non-State-based grievance mechanisms

5. When business-related human rights abuses occur, those affected must have access to effective remedy. Ensuring accountability of business enterprises and access to effective remedy for those affected is a vital part of a State’s duty to protect against business-related human rights abuse, as required under international human rights law and as reflected in the Guiding Principles on Business and Human Rights.<sup>5</sup>

6. While effective judicial mechanisms should be “at the core of ensuring access to remedy”,<sup>6</sup> administrative, legislative and other non-judicial mechanisms play an essential role in complementing and supplementing judicial mechanisms. Effective non-State-based grievance mechanisms offer potential benefits “such as speed of access and remediation, reduced costs and/or transnational reach”,<sup>7</sup> and, moreover, have a particular role to play in cases where a grievance may not readily provide the basis for legal enforcement or a legal claim. The Guiding Principles call on business enterprises to establish or participate in effective operational-level grievance mechanisms, noting their potential contributions to human rights due diligence processes.<sup>8</sup> Furthermore, the Guiding Principles highlight how important it is that collaborative initiatives ensure the availability of effective mechanisms to help enable remedy.<sup>9</sup>

7. At present, however, few non-State-based grievance mechanisms are fulfilling their envisaged role. While there have been welcome attempts to design and operate various kinds

<sup>1</sup> A/HRC/17/31, annex.

<sup>2</sup> See [www.ohchr.org/EN/Issues/Business/Pages/OHCHRaccountabilityandremedyproject.aspx](http://www.ohchr.org/EN/Issues/Business/Pages/OHCHRaccountabilityandremedyproject.aspx).

<sup>3</sup> A/HRC/32/19 and A/HRC/32/19/Add.1.

<sup>4</sup> A/HRC/38/20 and A/HRC/38/20/Add.1.

<sup>5</sup> Guiding Principles on Business and Human Rights, principle 25 and commentary.

<sup>6</sup> *Ibid.*, principle 26 and commentary.

<sup>7</sup> *Ibid.*, principle 28 and commentary.

<sup>8</sup> *Ibid.*, principle 29 and commentary.

<sup>9</sup> *Ibid.*, principle 30 and commentary.

of mechanisms, and while there have been valuable contributions by such mechanisms to accountability and remedy, rights holders continue to report significant problems with identifying, accessing and using such mechanisms in practice. The remedies that may be obtained from non-State-based grievance mechanisms are usually partial at best, in many cases due to limitations placed on the mechanism's mandate, available resources, or both.

8. While the Guiding Principles call upon States to “consider ways to facilitate access to effective non-State-based grievance mechanisms dealing with business-related human rights harms”,<sup>10</sup> the contribution that such mechanisms make to providing remedy is presently undermined by a lack of policy coherence on the part of States in their approaches to non-State-based grievance mechanisms. Furthermore, a lack of sensitivity and responsiveness of many mechanisms to their legal, regulatory, economic, social and cultural contexts, and a lack of cooperation between developers and operators of mechanisms in specific contexts and cases, results in unclear and incoherent processes, inefficiencies and other barriers for rights holders.

9. There is scope for significant improvement in the ability and capacity of non-State-based grievance mechanisms, working individually and in combination with each other, to deliver effective remedies in cases where people's human rights have been adversely impacted by business activities.

10. As a first step, there is a need for greater recognition by States of the legitimacy and utility of non-State-based grievance mechanisms in complementing and supplementing domestic legal and regulatory regimes.

11. For their part, developers and operators of non-State-based grievance mechanisms need to give much greater emphasis to the needs, expectations and perspectives of the people for whose use these mechanisms are intended, recognizing the different ways in which meaningful stakeholder engagement is fundamental to meeting each of the Guiding Principles' effectiveness criteria<sup>11</sup> for such mechanisms in practice.

### III. Overview

#### A. Scope

12. Although there is a vast array of different non-State-based grievance mechanisms, as described in the Guiding Principles, the third phase of the Accountability and Remedy Project focused on three main categories of such mechanisms: (a) company-based grievance mechanisms;<sup>12</sup> (b) grievance mechanisms developed by industry, multi-stakeholder and other collaborative initiatives;<sup>13</sup> and (c) independent accountability mechanisms of development finance institutions.<sup>14</sup>

13. In order to aid both State and relevant non-State actors in strengthening their implementation of access to remedy through the use of non-State-based grievance mechanisms, the present report is focused particularly on (a) the role of the State in facilitating access to effective non-State-based grievance mechanisms; (b) improving the effectiveness of non-State-based grievance mechanisms;<sup>15</sup> and (c) enhancing access to remedy through cooperation between developers and operators of such mechanisms.

14. Many States face wider political, social and economic challenges that may operate to undermine, or make it difficult to help improve, the effectiveness of non-State-based grievance mechanisms, including with regard to respect for the rule of law, and lack of

<sup>10</sup> Ibid., principle 28.

<sup>11</sup> Ibid., principle 31 and commentary.

<sup>12</sup> Mechanisms established and administered by companies, including, but not limited to, operational-level grievance mechanisms.

<sup>13</sup> Mechanisms external to companies, which administer a set of commitments that the companies have agreed to adhere to.

<sup>14</sup> The scope of phase three of the project was decided upon following a written consultation process and a two-day multi-stakeholder expert meeting. Details are available at [www.ohchr.org/Documents/Issues/Business/ARP/ARPIII-PoW.pdf](http://www.ohchr.org/Documents/Issues/Business/ARP/ARPIII-PoW.pdf).

<sup>15</sup> Guiding Principles on Business and Human Rights, principle 31 and commentary.

resources for and capacity of key institutions. The recommended action, in the annex, is intended to complement and support the vital action by various actors (State and non-State) to address these wider challenges.

## B. Methodology

15. To better understand the challenges relating to non-State-based grievance mechanisms, and the actions likely to be most effective given the diversity of non-State-based grievance mechanisms that exist and variations in legal systems, structures and traditions around the world, OHCHR gathered empirical information from a wide range of jurisdictions on the design, functioning and use of non-State-based grievance mechanisms. This was done through:

- (a) An initial scoping exercise and a public, consultative process in developing the contours of this phase of work;<sup>16</sup>
- (b) Questionnaires targeted at the general public, States, and users and administrators of different types of grievance mechanisms;
- (c) Participation in over 30 events or consultations in 16 different States covering all five United Nations regional groups;
- (d) Case studies focusing on different types of mechanisms;
- (e) Over 100 interviews with users of non-State-based grievance mechanisms, and those who have designed, administered or studied such mechanisms;
- (f) Review of over 200 reports, studies, articles and submissions prepared by third parties;
- (g) Review of over 600 business and human rights-related events, news reports and grievances;
- (h) Discrete research projects undertaken by OHCHR and third parties.

16. A discussion paper<sup>17</sup> setting out key observations was published and was the subject of written and in-person consultations in November 2019.

17. In February 2020, OHCHR published a consultation draft of the material that now appears in the annex and addendum of the present report.<sup>18</sup> Feedback from States and other stakeholders submitted in response to that consultation process informed the final version contained in the present report.

18. All key documents and milestones of the project were communicated to States and other stakeholders through relevant platforms and information-sharing channels.<sup>19</sup> Additionally, regular briefings on the project were held for State delegates.

## C. Structure, approach and audience of the recommended action

19. As with the first two phases of the project, the recommended action set out in the annex comprises a number of policy objectives, together with elements to demonstrate different ways that the policy objectives can be achieved. Informed by the various information-gathering activities, these policy objectives and supporting elements are intended to capture “good practice” lessons as regards the design and operation of non-State-based grievance mechanisms, and relevant legal and policy issues. To ensure global relevance and applicability, the recommended action is designed to be readily adaptable to different legal systems and contexts while also being practical, forward-looking and reflective of international standards on access to remedy. Further explanation as to the various objectives

<sup>16</sup> See [www.ohchr.org/Documents/Issues/Business/ARP/ARPIII-PoW.pdf](http://www.ohchr.org/Documents/Issues/Business/ARP/ARPIII-PoW.pdf).

<sup>17</sup> See [www.ohchr.org/Documents/Issues/Business/ARP/ARPIII\\_Discussion\\_Paper\\_Nov2019.pdf](http://www.ohchr.org/Documents/Issues/Business/ARP/ARPIII_Discussion_Paper_Nov2019.pdf).

<sup>18</sup> See [www.ohchr.org/Documents/Issues/Business/ARP/ARPIIIConsultationDraftARPIIIRecommendations\\_Feb2020.pdf](http://www.ohchr.org/Documents/Issues/Business/ARP/ARPIIIConsultationDraftARPIIIRecommendations_Feb2020.pdf).

<sup>19</sup> See [www.ohchr.org/EN/Issues/Business/Pages/ARP\\_III.aspx](http://www.ohchr.org/EN/Issues/Business/Pages/ARP_III.aspx).

and elements can be found in the addendum to the present report, which provides definitions, examples and added context, and which should be read alongside the report.<sup>20</sup>

20. The recommended action should not be regarded as a finite or exhaustive list of possible solutions. There may indeed be other ways of achieving the underlying goal of improving implementation of the Guiding Principles in general and the effectiveness criteria for non-judicial grievance mechanisms in particular.

21. Nevertheless, the recommended action can be a significant resource for States, policymakers, practitioners and other actors seeking to improve the effectiveness of non-State-based grievance mechanisms. This recommended action can provide a source of inspiration for regulatory developments, domestic review processes, and work towards developing and implementing national action plans on business and human rights, and can act as a possible platform for future dialogue, cross-fertilization of ideas, innovation and progress.

22. Part I of the annex is addressed to States and highlights the various ways in which they can work towards developing a legal and policy space that enables non-State-based grievance mechanisms to make a positive contribution to accountability and remedy in business and human rights cases. The recommended action in part I can help States to identify the important interlinkages that exist between domestic legal regimes and the effective functioning of non-State-based grievance mechanisms, and then to improve them where possible so that affected stakeholders have realistic and viable pathways to effective remedies that include, should they so choose, recourse to effective non-State-based grievance mechanisms.

23. Parts II and III of the annex are addressed particularly to developers and operators of non-State-based grievance mechanisms (which include entities or organizations that create, design or host non-State-based grievance mechanisms (such as business enterprises or development finance institutions), non-State-based grievance mechanisms themselves and their personnel).<sup>21</sup> Part II is concerned with the effectiveness of individual non-State-based grievance mechanisms and highlights the different ways in which the various effectiveness criteria set out in Guiding Principle 31 can be met in practice.

24. Part III of the annex encourages developers and operators of non-State-based grievance mechanisms to take advantage of opportunities for greater cooperation with other entities and mechanisms with a view to raising standards and enhancing access to remedies in specific contexts and cases.

#### **D. Relationship between the three phases of the Accountability and Remedy Project**

25. The Human Rights Council's three successive mandates relating to access to remedy for business-related human rights harms<sup>22</sup> have provided a framework for OHCHR to address each of the three main types of mechanisms referred to in the Guiding Principles. Although State-based mechanisms and non-State-based mechanisms are conceptually and functionally distinct, there are many ways in which the activities of State-based mechanisms (both judicial and non-judicial) and non-State-based grievance mechanisms can interrelate in practice. For this reason, the recommended action in the reports on each phase of the Accountability and Remedy Project should not be treated as separate, but as mutually reinforcing and complementary.

26. At the same time, the present report is predicated upon the position, laid out in the Guiding Principles, that effective judicial mechanisms are "at the core" of ensuring access to remedy;<sup>23</sup> thus, nothing in this report should be read as limiting or undermining the importance of effective domestic law regimes and well-functioning judicial mechanisms to enforce them.

<sup>20</sup> A/HRC/44/32/Add.1.

<sup>21</sup> See further A/HRC/44/32/Add.1, part II.C.

<sup>22</sup> Human Rights Council resolutions 26/22, 32/10 and 38/13.

<sup>23</sup> Guiding Principles on Business and Human Rights, principle 26 and commentary.

#### IV. Recognizing the diversity of non-State-based grievance mechanisms

27. There is significant diversity between different non-State-based grievance mechanisms, in terms of mandates, objectives, operations, proximity of relationships to (and the extent and type of leverage that may exist in relation to) the business activities that may be the subject of grievances, methods for resolving grievances, personnel, resources, legal and commercial drivers, relationships with other mechanisms (both State-based and non-State-based), and the types of remedies that may be available and enforceable.

28. Different types of non-State-based grievance mechanisms encounter different challenges for meeting the Guiding Principles' effectiveness criteria in practice. For instance, an operational-level grievance mechanism may be well placed to deliver effective remedies to affected stakeholders, but may lack the independence necessary to engender a high level of stakeholder trust, with consequent implications for its legitimacy. On the other hand, an alternate mechanism (such as one administered by a multi-stakeholder initiative) may have the advantage of independence and credibility with stakeholders but will be limited in terms of the remedies that can be provided.

29. While such mechanisms may not, individually, be in a position to provide a remedy that addresses all of the elements of what might constitute an "effective remedy" in the circumstances, they can nevertheless make a valuable contribution to the "bouquet of remedies" that should be available.<sup>24</sup> The goals of improved accountability and access to remedy are often best served by providing affected stakeholders with a range of options for seeking redress, which could involve redress through judicial mechanisms, through non-judicial mechanisms, or, in some cases, through a combination of these.

#### V. Recommendations

30. **Member States should:**

(a) **Consider using the recommended action in part I of the annex and the model terms of reference in the addendum to undertake a review of the contribution of non-State-based grievance mechanisms dealing with business-related human rights harms to achieving access to remedy in business and human rights cases; and**

(b) **Take steps to effectively implement the recommended action in part I of the annex to enhance the ability of such grievance mechanisms to respond to cases of business-related human rights abuses, including in a cross-border context.**

31. **Developers and operators of non-State-based grievance mechanisms should:**

**Take steps to effectively implement the recommended action in parts II and III of the annex to enhance the ability of such grievance mechanisms to respond to cases of business-related human rights abuses, including in a cross-border context.**

<sup>24</sup> A/72/162, paras. 38–54.

## **Annex**

### **Recommended action to improve the effectiveness of non-State-based grievance mechanisms relevant to business and human rights**

#### **Part I. Facilitating access to effective non-State-based grievance mechanisms by strengthening domestic law and policy**

##### **Policy objective 1: States establish and maintain an enabling legal and policy environment for non-State-based grievance mechanisms dealing with business-related human rights harms.**

1.1 The State has conducted a review of, and keeps under review, consulting appropriately and meaningfully with relevant stakeholders:

(a) The different types of non-State-based grievance mechanisms based in or active in its jurisdiction;

(b) The different ways in which non-State-based grievance mechanisms may complement the effective implementation of the State's international legal obligations and policy commitments with regard to accountability and remedy for business-related human rights harm;

(c) The different ways in which non-State-based grievance mechanisms can potentially contribute to the effectiveness of domestic law and policy relevant to the corporate responsibility to respect human rights;

(d) Its policies and priorities as regards the promotion of non-State-based grievance mechanisms through relevant bilateral, regional and multilateral initiatives;

(e) The laws, policies and processes that are relevant to the establishment and effective functioning of non-State-based grievance mechanisms in different sectors and contexts.

1.2 The State applies the findings from the review processes mentioned in paragraph 1.1 above:

(a) To inform and continuously improve the State's strategies for a comprehensive State-based system for the remedy of business-related human rights harms, in which administrative, legislative and other non-judicial mechanisms play an essential role in complementing and supporting judicial mechanisms;

(b) To ensure policy coherence as between relevant laws, policies and processes;

(c) To develop and disseminate suitable guidance for the establishment and effective functioning of non-State-based grievance mechanisms;

(d) To identify the further measures which could be taken to encourage the establishment and effective functioning of non-State-based grievance mechanisms, particularly for business enterprises with which the State conducts commercial transactions or when the State contracts with business enterprises to provide services that may impact upon the enjoyment of human rights;

(e) To further its cooperative efforts with other States through relevant bilateral, regional and multilateral initiatives with respect to access to remedy for business-related human rights harms through non-State-based grievance mechanisms.

1.3 The State's laws, policies and processes relevant to the establishment and effective functioning of non-State-based grievance mechanisms are informed by a clear delineation between the roles and responsibilities of non-State-based grievance mechanisms and State-based mechanisms (judicial and non-judicial). This delineation is appropriate to the type,

nature and severity of different business-related human rights harms, and recognizes that effective judicial mechanisms are at the core of ensuring access to remedy.

1.4 Laws, policies and processes relevant to the establishment and effective functioning of non-State-based grievance mechanisms are consistent with the objectives of reducing barriers to remedy and not erecting further barriers to prevent legitimate cases from being brought before rights holders' preferred mechanisms.

1.5 The State sets out a clear policy expectation that relevant State agencies will investigate and take appropriate enforcement action with respect to information concerning business-related human rights harms that has been provided to them by non-State-based grievance mechanisms.

1.6 The State has taken appropriate steps to address legal impediments to cooperation between different entities with respect to the establishment and effective functioning of non-State-based grievance mechanisms.

1.7 State agencies responsible for regulating business activities make appropriate use of information from relevant non-State-based grievance mechanisms for the purposes of identifying, in consultation with relevant stakeholders and other entities:

- (a) Regulatory or compliance challenges in specific sectors or operating contexts, including challenges involving systemic or market-related issues;
- (b) Instances of retaliation taken in connection with the use of such mechanisms;
- (c) The legal or policy interventions and reforms that may be needed in response.

**Policy objective 2: Domestic legal regimes and policy operate in such a way that rights holders can access non-State-based grievance mechanisms without fear of retaliation against themselves, people who are associated with them and people who contribute to the effective functioning of such mechanisms.**

2.1 The State has adopted and implemented the necessary laws, policies and processes to ensure that there is effective deterrence from, investigations of allegations of, and appropriate legal redress in the event of, conduct that may amount to retaliation against rights holders, people who are associated with them and people who contribute to the effective functioning of non-State-based grievance mechanisms as a result of the use of, or interaction with, such mechanisms.

2.2 Relevant State agencies have taken steps to increase their institutional awareness of, and their ability to respond quickly and effectively to, the different forms of retaliation that people may face as a result of the use of, or interaction with, non-State-based grievance mechanisms.

2.3 The State has adopted and implemented the necessary laws, policies and processes to ensure that people affected by, or who may be at risk of, retaliation as a result of the use of, or interaction with, non-State-based grievance mechanisms have access to appropriate assistance and support, including medical assistance, counselling, legal advice and other advisory services.

**Policy objective 3: Domestic legal regimes and policy operate in such a way that people affected by or at risk of business-related human rights harms have realistic and readily-identifiable pathways to an effective remedy which include appropriate use of non-State-based grievance mechanisms.**

3.1 The State, through its relevant agencies, works to raise awareness among relevant stakeholders of:

- (a) The types of non-State-based grievance mechanisms that may be relevant in different contexts and the relative advantages and disadvantages of different courses of action;

- (b) The value of dialogue-based methods in certain contexts;
- (c) Strategies and resources to help address imbalances in power that can undermine rights holders' ability to engage fairly in non-State-based grievance mechanisms;
- (d) The different ways in which State-based mechanisms may, in appropriate cases, provide support for the effective implementation of the outcomes of grievance processes;
- (e) Opportunities that may exist in different contexts to transfer or escalate a grievance from a non-State-based grievance mechanism to a relevant State-based mechanism.

**Policy objective 4: Domestic legal regimes and policy operate in such a way that non-State-based grievance mechanisms, individually and in combination with each other and relevant State-based mechanisms, can contribute to the realization of effective remedies for those affected by business-related human rights harms.**

4.1 The State's laws, policies and processes relevant to the establishment and effective functioning of non-State-based grievance mechanisms recognize:

- (a) The need for remedies to be adequate, effective and prompt;
- (b) That an effective remedy will vary depending on the circumstances of the case and the needs of affected stakeholders and may comprise financial remedies (and similar forms of reparation) and non-financial remedies (including acknowledgements, apologies and other symbolic remedies), as well as timely preventive remedies to mitigate or prevent future harm;
- (c) The importance of meaningful consultation with affected stakeholders on the type of remedy and the manner in which it should be delivered, adopting a gender perspective and with a particular focus on the needs of people who may be at heightened risk of vulnerability or marginalization.

**Policy objective 5: States seek ways to promote the establishment and effective functioning of non-State-based grievance mechanisms through international cooperation.**

5.1 The State works through relevant bilateral, regional and multilateral initiatives:

- (a) To identify opportunities to enhance access to remedy for business-related human rights harms through the use of non-State-based grievance mechanisms, as appropriate, recognizing that effective judicial mechanisms are at the core of ensuring access to remedy;
- (b) To actively engage with other States that are party to such initiatives to promote the use of non-State-based grievance mechanisms in appropriate cases, including through awareness-raising activities, technical assistance and capacity-building;
- (c) To exchange information relating to (i) the contributions of non-State-based grievance mechanisms to access to remedy for business-related human rights harms in different sectors and operating contexts, (ii) the opportunities, successes and challenges associated with their use (including in a cross-border context), and (iii) the legal and policy interventions that may contribute to enhancing their effectiveness in different sectors or contexts;
- (d) To gather and analyse information on the nature and patterns of grievances referred to non-State-based grievance mechanisms in practice, in order to strengthen cooperative efforts by States to address business-related human rights harms, particularly in a cross-border context.

5.2 The State has made appropriate arrangements for relevant stakeholders to be able to call upon their embassies and consular services for information, advice and assistance, as regards the establishment and effective functioning of non-State-based grievance

mechanisms in other States in different operating contexts and/or resolving grievances in specific cases.

## **Part II. Improving the effectiveness of non-State-based grievance mechanisms**

### **Policy objective 6: Non-State-based grievance mechanisms are effective in dealing with business-related human rights harm.**

6.1 The mechanism's mandate, objectives and operations are aligned with internationally recognized human rights.

6.2 The effectiveness criteria set out in principle 31 of the Guiding Principles on Business and Human Rights are used as a benchmark for designing, operating, tracking the effectiveness of and improving the mechanism.

### **Policy objective 7: Non-State-based grievance mechanisms are legitimate.**

7.1 The mechanism publishes and proactively disseminates information necessary for a proper understanding by rights holders and other relevant stakeholders of its mandate, objectives and operations.

7.2 There is meaningful consultation with relevant rights holders and other stakeholders as to the optimal design of the mechanism and its processes, and as part of regular evaluation exercises for the purposes of identifying ways in which the mechanism's design and/or operations can be improved.

7.3 Where relevant and appropriate, business enterprises and other relevant entities engage proactively with those seeking to develop and implement worker-driven and community-driven grievance mechanisms, contributing constructively to all stages of the design process.

7.4 The mechanism adopts and implements the policies and processes needed to address the needs of people who may be at heightened risk of vulnerability or marginalization, drawing on relevant internal and/or external expertise, including through meaningful consultation with relevant rights holders and other stakeholders, and adopting a gender perspective.

7.5 The mechanism has been provided with an appropriate degree of independence from the business enterprise(s) and other actors whose activities may be the subject of grievances and has adopted and implemented the policies, processes and practices needed to maintain that independence in its day-to-day operations and at all stages of the grievance process.

7.6 The necessary arrangements have been made to:

- (a) Minimize the risk of conflicts of interest for the mechanism (or any of its personnel) with respect to the discharge of its mandate and functions;
- (b) Minimize the risk of any undue influence of any actor(s);
- (c) Address power imbalances between relevant actors, including through adopting a gender perspective and paying special attention to people who may be at heightened risk of vulnerability or marginalization.

7.7 Personnel employed by or assigned to the mechanism are suitably qualified for the tasks they are required to carry out and are held to high standards of personal and professional conduct.

7.8 The mechanism adopts and implements the policies and processes needed to ensure that personnel engaged in the handling of grievances:

- (a) Are cognizant of (i) the rights and needs of the people for whom the mechanism is intended (including through adopting a gender perspective and paying special attention to

those at heightened risk of vulnerability or marginalization), (ii) the social, economic, structural and cultural issues that can affect the ability of the mechanism to meet those needs, and (iii) the manner in which different sources of discrimination can combine to exacerbate inequalities in society;

- (b) Relate to rights holders in a culturally appropriate and sensitive manner.

### **Policy objective 8: Non-State-based grievance mechanisms are accessible.**

8.1 The mechanism:

- (a) Works proactively to raise awareness among relevant rights holders and other stakeholders of its existence, objectives and processes, including through targeted outreach activities;

- (b) Is operated in a manner which is consistent with the rights of equality and non-discrimination.

8.2 The mechanism's criteria as regards eligibility to initiate grievance processes are clear, minimal, and consistently and fairly applied.

8.3 Procedures for receiving grievances and for engaging with relevant rights holders are designed, to the extent appropriate in light of the mechanism's mandate and functions:

- (a) To be as user-friendly as possible, (i) making appropriate use of both formal and informal channels of communication, with multiple entry points and modes of communication, and (ii) making the necessary adjustments to address the barriers that may be faced by people due to gender-based discrimination, or because they may be at heightened risk of vulnerability or marginalization;

- (b) To promote dialogue-based methods for resolving grievances;

- (c) To allow sufficient time, in light of all the circumstances, for people to identify, raise and respond to issues;

- (d) To enable rights holders to represent themselves, if they prefer, while making appropriate provision for the possibility of representation by a third party.

8.4 The mechanism does not require any person to waive their rights to seek a remedy using an alternate grievance mechanism (whether State-based or non-State-based) as a condition of access or participation.

8.5 The mechanism makes appropriate provision for rights holders to collaborate and seek collective redress for business-related human rights harms.

8.6 The mechanism has put in place measures designed to allow safe access to and use of the mechanism on an equal basis with others, for instance by improving physical and communicational accessibility and by providing procedural, age-appropriate and gender-sensitive accommodations to eliminate barriers to participation, including by persons with disabilities.

8.7 The mechanism does not charge a fee to access the mechanism and, furthermore, takes such steps to minimize the financial costs thereafter as may be appropriate in light of the mechanism's mandate, objectives and operations.

8.8 Materials, resources and advisory services provided in order to enhance the accessibility of the grievance mechanism are made available:

- (a) In formats that meet the requirements, and are consistent with the rights, of (i) children, (ii) people facing challenges with respect to literacy, and (iii) persons with disabilities, including persons with hearing, sight or mobility impairments;

- (b) In the languages of the people for whom they are intended.

8.9 The mechanism adopts and implements policies and processes appropriate to its mandate, objectives and operations:

- (a) To preserve an appropriate degree of confidentiality as regards the identity of the person raising a grievance and the grievance process itself, taking into account the particular needs of people who may be at heightened risk of vulnerability or marginalization;
- (b) To ensure that risks of retaliation against rights holders, people who are associated with them and people who contribute to the effective functioning of the mechanism as a result of the use of, or interaction with, the mechanism are properly assessed and addressed.

### **Policy objective 9: Non-State-based grievance mechanisms are predictable.**

9.1 The mechanism adopts and implements appropriate policies and processes for resolving grievances, with well-defined, reasonable and suitably flexible time frames for each stage, designed to ensure that grievances are addressed and concluded without undue delay.

9.2 The mechanism publishes accurate and realistic information, through a range of user-friendly formats and multiple channels of communication, sufficient to foster a clear understanding among rights holders and other relevant stakeholders as to:

- (a) Its mandate, objectives, operations, policies and processes;
- (b) The legal and operational capacity of the mechanism to address different types of harm (including information about relevant constraints);
- (c) The criteria as regards eligibility to initiate and participate in the grievance process;
- (d) The rights of parties and what parties can expect at each stage of the grievance process, including indicative time frames within which key decisions will be taken and milestones reached;
- (e) The nature and kind of remedies that the mechanism can provide in different cases and the extent to which remedies can be enforced and implementation monitored;
- (f) The extent to which the mechanism can assist rights holders in cases where there may be a risk of retaliation, and the form such assistance may take.

9.3 The mechanism consults meaningfully with relevant right holders prior to:

- (a) Joining together similar grievances, or grievances raising similar issues of fact;
- (b) Appointing a third party to investigate, mediate or adjudicate a grievance or issue; or
- (c) Undertaking any joint investigations with any third party.

9.4 The mechanism adopts, implements and appropriately communicates clear policies and processes as regards the circumstances in which and the terms upon which the mechanism may seek to cooperate with other non-State-based grievance mechanisms, State-based mechanisms, and/or State agencies with respect to a grievance (or the subject matter of a grievance), which clearly set out:

- (a) When and how prior consent will first be sought from affected stakeholders;
- (b) Appropriate safeguards relating to protecting people from the risk of retaliation.

9.5 To the extent appropriate in light of its mandate and functions (and with due regard for applicable laws and appropriate safeguards relating to protecting people from the risk of retaliation, as well as for legitimate requirements of commercial confidentiality), the mechanism publishes readily-understandable information relating to grievances received by the mechanism and their outcomes for the purposes of enhancing understanding by rights holders of the operation and performance of the mechanism in practice.

## **Policy objective 10: Non-State-based grievance mechanisms are equitable.**

10.1 The mechanism works proactively to address problems arising from imbalances in power between rights holders and business enterprises so that rights holders can participate fairly and confidently in grievance processes, including through:

(a) The provision of, and raising awareness about external sources of, appropriate advisory, technical, financial and other support;

(b) Appropriate, gender-sensitive adjustments to grievance processes to accommodate the particular needs of people who may be affected by injury or trauma or who may be at heightened risk of vulnerability or marginalization.

10.2 To the extent appropriate in light of its mandate and functions (and with due regard for applicable laws and appropriate safeguards relating to protecting people from the risk of retaliation, as well as for legitimate requirements of commercial confidentiality), the mechanism seeks to ensure that parties to a grievance can obtain, in a timely fashion:

(a) Copies of information submitted to or obtained by the mechanism in connection with, or which is relevant to, such grievance;

(b) Information concerning the outcomes of any investigation.

10.3 The mechanism has adopted and implemented the policies and processes necessary to ensure that parties to a grievance receive adequate opportunities to verify the accuracy of, and to comment on and respond to, relevant information pertaining to a grievance prior to any material decision on the basis of such information (including with respect to decisions regarding admissibility or whether a matter should be deemed closed).

10.4 The mechanism has adopted and implemented the policies and processes necessary to ensure that relevant rights holders receive at the conclusion of the grievance process in accessible and readily-understandable formats, and to the extent appropriate in the relevant case:

(a) A proper record of the process, outcomes, and reasons for any decisions made;

(b) A full record of any agreement between the parties as to remedial action;

(c) Information concerning (i) the steps to be taken, and the time limits that apply, should a party wish to seek to review or challenge a grievance process or its outcomes, and (ii) options for further action, including on the steps that could be taken in the event of non-compliance by a party with the terms of a determination by the mechanism or an agreed remedial outcome.

10.5 The mechanism preserves the ability of rights holders to withdraw from grievance processes if they are dissatisfied with those processes and in such circumstances does not preclude access by rights holders to an alternate grievance mechanism (whether State-based or non-State-based).

10.6 The mechanism has adopted and implemented appropriate procedures to enable parties to challenge the manner in which the mechanism has responded to a grievance or the outcomes of grievance processes, which may include the possibility of a referral and/or appeal.

10.7 The mechanism adopts and implements policies and processes to ensure that technologies used in connection with grievance processes (for instance, in the collection and communication of information or the handling of grievances):

(a) Comply with all relevant laws, policies and standards as regards privacy and data protection, have been properly piloted prior to their introduction and have had cybersecurity risks addressed effectively;

(b) Seek to address, as far as is possible, barriers due to gender-based discrimination and that may be experienced by people who may be at heightened risk of vulnerability or marginalization.

10.8 The mechanism takes appropriate steps, in light of its mandate and functions and the relevant circumstances, to seek the views of relevant rights holders as to claims by third

parties to be acting on their behalf in connection with a grievance, and the preferred means and methods of engagement.

**Policy objective 11: Non-State-based grievance mechanisms are transparent.**

11.1 The mechanism adopts and implements policies and processes to ensure that there is ongoing and proactive engagement between the mechanism and parties to a grievance with respect to the status of each step in the grievance process (including engagement as to next steps, decision points, available options and the pathway to completion of the process), using channels of communication which are reflective of the needs and preferences of the relevant rights holders, and taking particular account of the needs of people who may be at heightened risk of vulnerability or marginalization.

11.2 To the extent appropriate in light of its mandate and functions (and with due regard for applicable laws and appropriate safeguards relating to protecting people from the risk of retaliation, as well as for legitimate requirements of commercial confidentiality), the mechanism regularly communicates, through a range of different channels, statistics, case studies and/or other detailed information relevant to the mechanism's performance with a view to providing readily accessible information to the public on matters such as:

- (a) The types and nature of grievances referred to the mechanism;
- (b) The number of requests for initiation of grievance processes;
- (c) The number of requests that were rejected by the mechanism, and on what grounds;
- (d) The number of completed grievance processes, including by type of grievance;
- (e) The outcomes of grievance processes (including the outcomes of any follow-up activities undertaken by the mechanism);
- (f) Stakeholder satisfaction with the performance of the mechanism in general and in specific cases;
- (g) Any other data, information or analysis relevant to the goal of improving the understanding of rights holders of the operation and performance of the mechanism in practice.

11.3 The mechanism's policies and processes with respect to the disclosure of information relevant to the mechanism's performance have been developed in consultation with relevant stakeholders and:

- (a) Reflect an appropriate balance between the need for transparency and the need for confidentiality to be observed in some cases with respect to the exchange of information between the parties in order to facilitate successful remedial outcomes;
- (b) Provide clarity on the terms on which and the circumstances in which such confidentiality will be observed;
- (c) Are consistently implemented, taking due account of the views of rights holders and their representatives, both in general and with respect to specific grievance processes.

**Policy objective 12: Non-State-based grievance mechanisms are rights-compatible.**

12.1 The mechanism operates in a manner that is aligned with the need for remedies for business-related human rights harms:

- (a) To be adequate, effective and prompt;
- (b) To be culturally appropriate and gender-sensitive.

12.2 The mechanism has adopted and implemented the policies and processes needed to ensure that:

(a) Affected stakeholders are meaningfully consulted about the type of remedy and the manner in which it should be delivered, recognizing that an effective remedy will vary depending on the circumstances of the case and the needs of the rights holders in question and may comprise financial remedies (and similar forms of reparation) and non-financial remedies (including acknowledgements, apologies and other symbolic remedies), as well as timely preventive remedies to mitigate or prevent future harm;

(b) The grievance process is an empowering experience for the rights holders concerned;

(c) The human rights implications of outcomes and remedies (including the manner in which remedies are implemented) are properly assessed and that risks of any adverse human rights impacts arising from the remedy or its implementation are fully addressed, taking due account of relevant legacy issues, and drawing on relevant internal and/or external expertise, including through meaningful consultation with affected stakeholders;

(d) The effectiveness of outcomes and remedies in addressing the relevant adverse human rights impacts is properly evaluated, drawing on feedback from both internal and external sources, including affected stakeholders, and that, where necessary, appropriate corrective action is taken.

12.3 The mechanism has made appropriate arrangements to address non-implementation of, or non-compliance with the terms of, remedial outcomes, which may include (depending on the mandate and functions of the mechanism concerned):

(a) The possibility of enforcement through mechanisms with the power to compel performance;

(b) Establishing or facilitating suitable arrangements for monitoring implementation or compliance, whether on its own or through a third party; or

(c) Referral of the grievance to another mechanism (whether State-based or non-State-based) in accordance with applicable rules, policies and agreements as regards confidentiality and consent.

12.4 The mechanism has adopted and implemented the policies and processes needed to ensure that engagement with State agencies with respect to matters raised or information obtained in the course of a grievance process is undertaken in a manner:

(a) Which accords with the human rights of the rights holders concerned;

(b) Which takes due account of relevant legacy issues;

(c) Best calculated to reduce the risk of retaliation against the relevant rights holders, people who are associated with them and people who contribute to the effective functioning of the mechanism, informed by a thorough risk assessment;

(d) Which complies with policies, and commitments or undertakings given to the relevant rights holders, with respect to confidentiality and protection of the personal safety and well-being of the rights holders concerned.

### **Policy objective 13: Non-State-based grievance mechanisms are a source of continuous learning.**

13.1 The mechanism takes steps to ensure that lessons for strengthening its own effectiveness and improving its performance are identified and acted upon (as appropriate in light of the mandate and functions of the relevant mechanism) by:

(a) Proactively seeking feedback from rights holders and relevant stakeholders at the conclusion of cases and at regular intervals thereafter as to their experiences with the mechanism and ways that it (and the interoperability of grievance mechanisms) could be improved;

(b) Keeping proper records, such as databases on frequency, patterns and causes of grievances, which can be disaggregated (i) to show patterns of use by different genders and stakeholder groups, and (ii) to assist with the identification of barriers to access and their causes, particularly barriers due to gender-based discrimination and those facing rights holders who may be at heightened risk of vulnerability or marginalization;

(c) Establishing systems to track the performance and effectiveness of its management and its grievance handling processes;

(d) Critically evaluating the human rights impacts of remedial outcomes from specific grievance processes;

(e) Drawing, as appropriate, on relevant internal and/or external expertise;

(f) Drawing from the findings from the above activities to develop and implement strategies to improve the effectiveness of the mechanism and its management.

13.2 The mechanism contributes to the prevention of future business-related human rights grievances and harms, as appropriate in light of the mandate and functions of the relevant mechanism, and with due regard for applicable laws and appropriate safeguards relating to protecting people from the risk of retaliation, as well as for legitimate requirements of commercial confidentiality, by:

(a) Contributing to and influencing the human rights due diligence activities of relevant business enterprises by acting as an authoritative and credible source of expertise as to (i) the nature of adverse human rights impacts that such business enterprises may cause or contribute to through their own activities, or which may be directly linked to their respective operations, products or services by their business relationships, (ii) how such impacts affect different groups in society, adopting a gender perspective and paying special attention to people who may be at heightened risk of vulnerability or marginalization, and (iii) the appropriate action to take in response, including the steps needed to subsequently verify whether risks of adverse human rights impacts are being properly addressed;

(b) Collating and disseminating information in aggregated formats (including through industry, multi-stakeholder and other collaborative initiatives) relating to (i) the nature and patterns of grievances that may tend to reveal the possibility of sector-specific or systemic issues which may contribute to or exacerbate business-related human rights harms, (ii) the human rights implications of these issues for different groups in society, adopting a gender perspective and paying special attention to people who may be at heightened risk of vulnerability or marginalization, and (iii) examples of good practices which can be adopted by business enterprises to enhance existing human rights due diligence processes.

#### **Policy objective 14: Operational-level mechanisms are based on engagement and dialogue.**

14.1 The operational-level grievance mechanism engages effectively with relevant stakeholders by:

(a) Developing a thorough understanding of the operational context, including rights holder needs and perspectives and, where applicable, any existing structures for dialogue and decision-making, and drawing on this understanding in its design;

(b) Meaningfully consulting with relevant stakeholders about their needs and expectations when designing grievance processes and regularly thereafter in order to ensure that their needs and expectations are being properly met;

(c) Providing multiple opportunities and avenues for relevant stakeholders to contribute their views as to the design and performance of the mechanism, ensuring participation on an equal basis, adopting a gender perspective, and paying special attention to the needs of people who may be at heightened risk of vulnerability or marginalization;

(d) Using these activities as a source of continuous learning for improving the mechanism and for preventing future grievances and harms.

14.2 The operational-level grievance mechanism focuses on the use of dialogue as the means of addressing and resolving grievances by:

- (a) Drawing from mediation best practice;
- (b) Making appropriate use of joint investigations and joint problem-solving techniques;
- (c) Investing in adequate training and support for relevant personnel in the legal and technical aspects of dialogue-based methods of resolving human rights-related grievances (including appropriate responses to situations of conflict);
- (d) Adopting and implementing the policies and processes needed to ensure that, in cases where adjudication is needed or the circumstances would otherwise make it appropriate, the grievance can be referred to third party adjudicators or mediators who are able to carry out their duties independently and objectively.

### **Part III. Enhancing access to effective remedy using non-State-based grievance mechanisms through greater cooperation and coordination**

**Policy objective 15: Developers and operators of non-State-based grievance mechanisms<sup>1</sup> cooperate proactively and constructively with each other in order to raise standards and promote good practice with respect to the resolution of grievances arising from business-related human rights harms.**

15.1 Developers and operators of non-State-based grievance mechanisms proactively seek out opportunities to work collaboratively with their peers, including through relevant industry, multi-stakeholder and other collaborative initiatives:

- (a) To share information, lessons learned, technical expertise and good practice with respect to the handling and resolution of grievances;
- (b) To promote alignment of their policies and processes with the Guiding Principles on Business and Human Rights;
- (c) To promote complementarity, where appropriate, between different non-State-based grievance mechanisms with a view to enhancing access to remedy for affected stakeholders;
- (d) To enhance leverage to help mitigate the adverse human rights impacts of business enterprises with which they have a business relationship;
- (e) For the purpose of engaging constructively and effectively with relevant State agencies, for instance as regards identifying sector-specific or systemic issues which may contribute to or exacerbate business-related human rights harms.

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<sup>1</sup> Developers and operators of non-State-based grievance mechanisms include entities or organizations that create, design or host non-State-based grievance mechanisms (such as business enterprises or development finance institutions), non-State-based grievance mechanisms themselves and their personnel. See further A/HRC/44/32/Add.1, part II.C.

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**Policy objective 16: Developers and operators of non-State-based grievance mechanisms cooperate proactively and constructively with each other, and with relevant partners and institutions, to enhance outreach and to promote coherent and effective systems of accountability and access to remedy for business-related human rights harms, including in a cross-border context.**

16.1 Developers and operators of non-State-based grievance mechanisms proactively seek out opportunities to work collaboratively with other mechanisms, business enterprises and entities, including through relevant industry, multi-stakeholder and other collaborative initiatives:

(a) To enhance outreach and awareness-raising among relevant rights holders about the existence, objectives and processes of the mechanisms for which they are responsible, by developing effective working relationships with trusted partners, including, where relevant, trade unions;

(b) To pool resources to improve the quality, accessibility and delivery to rights holders of relevant support and services, such as training, financial support, advice, and counselling services;

(c) To improve the effectiveness of grievance mechanisms with which they are associated that are operated by business enterprises or by industry, multi-stakeholder and other collaborative initiatives;

(d) To respond to rights holders' expressed preferences for more streamlined and coordinated functions and services;

(e) For the purposes of collaborating in the resolution of grievances in specific cases, such as through information-sharing, joint investigations, joint problem-solving or joint monitoring exercises;

(f) To access specialist expertise needed to resolve a grievance;

(g) To provide relevant rights holders with the information and navigational tools needed to be able to readily identify and assess the possible pathways to an effective remedy in cases where more than one non-State-based grievance mechanism may be relevant.

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