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# **Accountability and Remedy Project**

## **Part III: Non-State-based grievance mechanisms**

### **Enhancing effectiveness of non-State-based grievance mechanisms in cases of business-related human rights abuse**

**Consultation Draft of ARP III Recommendations**

**17 February 2020**

## **Summary**

This document is a **consultation draft** of sections of a forthcoming report by the UN High Commissioner for Human Rights to the UN Human Rights Council in which the High Commissioner will set out recommended action to improve accountability and access to remedy for victims of business-related human rights abuse through non-State-based grievance mechanisms.

This **consultation draft** has been compiled as part of the Accountability and Remedy Project of the Office of the United Nations High Commissioner for Human Rights (OHCHR), pursuant to the request of the Human Rights Council in its resolution [38/13](#). In that resolution, the Human Rights Council welcomed OHCHR's prior work on improving accountability and access to remedy for victims of business-related human rights abuse, and requested OHCHR to continue its work in this area, specifically:

"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, . . . and to submit a report thereon to the Human Rights Council for consideration at its forty-fourth session."

Following the approach used in previous phases of the Project, the High Commissioner's report will include an annex containing a set of recommended "**policy objectives**" for States and non-State actors, supported by a series of "**elements**" intended to demonstrate ways that different actors (both State and non-State) can work towards meeting those objectives.

The purpose of this **consultation draft** is to elicit feedback from all relevant stakeholders on the following questions:

- (a) Do you agree with the policy objectives and elements appearing in Annex I? If not, please explain why and provide suggestions as to how they should be set out?
- (b) Are there any further suggestions for elements of good practice related to the issues covered in Annex I?

As with previous phases of the Project, it is proposed that additional explanations, drawn from the two-year research and consultation process undertaken by OHCHR, will be set out in an explanatory addendum to the report. For the purposes of this **consultation draft** an indication of information likely to be included in the explanatory addendum is set out in footnotes to the various policy objectives and elements.

## 1. Introduction

1. This **consultation draft** has been prepared as part of an ongoing programme of work convened by OHCHR known as the Accountability and Remedy Project.
2. Since 2014, OHCHR has received multiple mandates from the Human Rights Council (Resolutions [26/22](#), [32/10](#), and [38/13](#)) aimed at enhancing the implementation of the “Access to Remedy” Pillar of the UN Guiding Principles on Business and Human Rights (UNGPs) and thus improve the prospects for corporate accountability and remedy in business and human rights cases.
3. OHCHR has established the [Accountability and Remedy Project \(ARP\)](#) to deliver on these successive Council mandates. Since its launch in 2014, this multi-year project has examined the access to remedy challenges at the national level and the actions (legal, policy-related and practical) likely to be most effective at addressing them.

### **OHCHR Accountability and Remedy Project: Progress thus far**

The Accountability and Remedy Project has proceeded in three phases, corresponding to the three mandates from the Human Rights Council.

The **first phase** of the Project ([ARP I, 2014-2016](#)) focussed on the role of **judicial mechanisms** (e.g. domestic courts). OHCHR’s findings and recommended actions in relation to judicial mechanisms can be found in its 2016 report to the Human Rights Council ([A/HRC/32/19](#)).

The **second phase** of the Project ([ARP II, 2016-2018](#)) was concerned with the role of **State-based non-judicial grievance mechanisms** (e.g. regulators, ombudsmen, national human rights institutions, national contact points under the OECD Guidelines for Multinational Enterprises, etc.). OHCHR’s findings and recommended actions at the conclusion of that phase of work are set out in its 2018 report ([A/HRC/38/20](#)).

The **third and present phase** of the Project ([ARP III, 2018-2020](#)) is concerned with the role of **non-State-based grievance mechanisms** (e.g. grievance mechanisms relevant to business and human rights that are established by, administered by or associated with companies, multi-stakeholder initiatives and development finance institutions). OHCHR will report its findings arising from this phase of work to the forty-fourth session of the Human Rights Council in June 2020.

## 2. Scope and Methodology

### A. Scope

4. The core aim of ARP III has been to clarify ways that various actors (State and non-State) can strengthen their implementation of the pillar on access to remedy of the Guiding Principles through the use of non-State-based grievance mechanisms, focusing in particular on
  - (a) the role of the State in facilitating access to non-State-based grievance mechanisms (see UNGP 28 and commentary);

- (b) aspects of the “effectiveness criteria” for non-judicial mechanisms (see UNGP 31 and commentary); and
- (c) cooperation between businesses and/or industry, multi-stakeholder and other collaborative initiatives to enhance access to remedy through non-State-based grievance mechanisms, including in a cross-border context.

5. Many States face wider political, social and economic challenges that may undermine the effectiveness of non-State-based grievance mechanisms, including with regard to respect for the rule of law, and lack of resources for and capacity of key institutions. The recommended action in Annex I is intended to complement and support the vital action by various actors (State and non-State) to address these wider challenges.

## B. Methodology

6. To better understand the challenges relating to non-State-based grievance mechanisms, and the actions likely to be most effective given the (a) diversity of non-State-based grievance mechanisms that currently exist, and (b) variations in legal systems, structures and traditions around the world, OHCHR has gathered empirical information from a wide range of jurisdictions, including through

- one public questionnaire and five targeted questionnaires for States, users of mechanisms, and the different types of ARP III-focus mechanisms (all available in English, French, and Spanish);
- participation in over 30 events or consultations in 16 different States covering all five UN Regional Groups;
- case studies focusing on different types of mechanisms, covering all five UN Regional Groups;
- over one hundred interviews with users of non-State-based grievance mechanisms, and those who have designed, administered, or studied such mechanisms;
- reviews of over two hundred reports, studies, articles, and submissions prepared by third parties;
- a review of over 600 business and human rights cases found on the [Business and Human Rights Resource Centre](#); and
- discrete research projects undertaken by the ARP III team and third parties.

7. A 2019 ARP III discussion paper<sup>1</sup> setting out OHCHR’s key observations as to existing practice and trends relating to the use of non-State-based grievance mechanisms for dealing with business-related human rights harms, together with suggestions as regards areas for future prioritisation, formed the basis of detailed discussions at two consultations convened in November 2019. The current **consultation draft** incorporates these discussions, as well as written feedback received on the discussion paper.

8. Documents and milestones of the project have been communicated to States and other stakeholders through various means.<sup>2</sup>

<sup>1</sup> OHCHR ARP III Discussion Paper, 19 November 2019, at [https://www.ohchr.org/Documents/Issues/Business/ARP/ARPIII\\_Discussion\\_Paper\\_Nov2019.pdf](https://www.ohchr.org/Documents/Issues/Business/ARP/ARPIII_Discussion_Paper_Nov2019.pdf).

<sup>2</sup> E.g., OHCHR’s ARP III online portal, at [https://www.ohchr.org/EN/Issues/Business/Pages/ARP\\_III.aspx](https://www.ohchr.org/EN/Issues/Business/Pages/ARP_III.aspx).

### **3. Structure and Approach of the ARP III Recommendations**

#### **A. Policy Objectives and Elements**

9. The recommended action set out in **Annex I** of this **consultation draft** comprises a number of **policy objectives** and **elements** to demonstrate the different ways that the policy objectives can be achieved. Informed by the various research and information-gathering activities undertaken during ARP III, these policy objectives and supporting elements are intended to capture “good practice” lessons as regards the design and administration of non-State-based grievance mechanisms (and the legal and policy issues that surround them), as well as recent innovations and emerging trends.

10. This structure, based on an approach similar to that used for the final reports for ARP I ([A/HRC/32/19](#) (2016)) and ARP II ([A/HRC/38/20](#) (2018)), is deliberately flexible. To ensure global relevance and applicability, the recommended action is designed to be readily adaptable to different legal systems and contexts while also practical, forward-looking and reflective of international standards on access to remedy.

11. The recommended action should not be regarded as a finite 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. Nor should it be read as an exhaustive list of the actions to be taken by States and other actors to implement the pillar on access to remedy of the Guiding Principles.

12. Nevertheless, the recommended action will be a significant resource for States and other actors (including business enterprises) seeking to improve the effectiveness of non-State-based grievance mechanisms dealing with business-related human rights harms, as well as constituting a possible platform for future dialogue, cross-fertilization of ideas, innovation and progress.

#### **B. Model Terms of Reference for a formal review of relevant domestic law and policy**

13. Part I of the recommended action in Annex I calls on States to do more to facilitate access to effective non-State-based grievance mechanisms through legal and policy development. It highlights the different ways in which non-State-based grievance mechanisms can contribute to effective domestic legal regimes relating to accountability and remedy for business-related human rights abuses and thus the effective implementation of the State’s international human rights obligations, with a view to enhancing policy coherence.

14. Identifying areas for improvement is a complex task, especially given the many different types of non-State-based grievance mechanisms that could be relevant, and the range of different domestic legal regimes and policy areas that could be engaged. The recommended action suggests the use of review processes to identify priority areas for action (Annex I, paragraph 1.1). In some jurisdictions, a formal review exercise may be necessary. To assist with this, a model terms of reference for a formal legal review of the different ways in which non-State-based grievance mechanisms can contribute to the remedy of business-related human

rights abuse, and the multi-faceted role of the State in facilitating access to remedy through such mechanisms, is included in **Annex II** of this **consultation draft**.

#### **4. Purpose of consultation**

15. The purpose of this consultation is to elicit feedback from all relevant stakeholders (States, business, civil society, etc.) on the draft policy objectives and elements found in Annex I. This feedback will inform the final version of OHCHR's ARP III report to the Human Rights Council at its forty-fourth session in June 2020.

16. In particular, OHCHR seeks feedback on the following questions:

- (a) Do you agree with the policy objectives and elements appearing in Annex I? If not, please explain why and provide suggestions as to how they should be set out?
- (b) Are there any further suggestions for elements of good practice related to the issues covered in Annex I?

17. OHCHR also welcomes any illustrative examples of good practice.

18. Note, the ARP III report will be complemented by an addendum, which will provide additional explanations for each policy objective. For ease of reference, there are footnotes throughout Annex I that explain some of the additional information. These footnotes are there to provide added context; there is no need to provide feedback on these footnotes, as the focus should be on the policy objectives and elements themselves.

19. Feedback on the contents of this **consultation draft** is welcome from all stakeholders and should be sent to [business-access2remedy@ohchr.org](mailto:business-access2remedy@ohchr.org) by **1 April 2020**.

## **Annex I: 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 mechanisms<sup>3</sup> by strengthening domestic law and policy.**

#### **Policy objective 1: Domestic legal regimes and policy operate in such a way that non-State-based grievance mechanisms can contribute effectively and consistently to the remedy of business-related human rights abuse.**

1.1 The State has conducted a review,<sup>4</sup> and keeps under review, consulting appropriately with relevant stakeholders,<sup>5</sup>

- (a) 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 abuse;
- (b) the different ways in which non-State-based grievance mechanisms may contribute to the effectiveness of domestic law and policy relevant to respect by business enterprises of human rights; and
- (c) the laws, policies and processes<sup>6</sup> that are relevant to the establishment and effective functioning<sup>7</sup> of non-State-based grievance mechanisms for dealing with business-related human rights harms 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<sup>8</sup> for a comprehensive State-based system for the remedy of business-related human rights abuse, in which

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<sup>3</sup> [The opening sections of the report, and accompanying sections of the explanatory addendum, will explain the meaning of this term. The explanatory addendum will also highlight the connection between this Policy Objective and UNGP 28]

<sup>4</sup> [As per final reports for phases 1 and 2 of the Accountability and Remedy Project (ARP I and ARP II), the main report will include a recommendation to carry out an initial review to help understand and foster more widespread appreciation of the role of non-State-based grievance mechanisms in enhancing access to remedy and accountability in specific jurisdictions, the linkages between State-based and non-State-based mechanisms and the different ways in which the State can facilitate access to such mechanisms. A model terms of reference for such a review will be provided in the explanatory addendum that accompanies the ARP III report. However, for the purposes of this consultation draft, it can be found in Annex 2. For further information, see paragraphs 13 and 14 of the preliminary sections of this consultation draft].

<sup>5</sup> [Accompanying sections of the explanatory addendum will explain that the reference to "relevant stakeholders" in this section includes the individuals and groups for whom the relevant non-State-based grievance mechanisms are intended, as well as the developers and administrators of these mechanisms].

<sup>6</sup> [Accompanying sections of the explanatory addendum will highlight, to the extent that space permits, the various regimes that were identified during the ARP III process as being relevant to the effectiveness of non-State-based grievance mechanisms in practice - including contract law, laws on fair dealing, laws on recognition of arbitration awards, laws on charities, labour law, consumer law, environmental and planning law, privacy laws, laws on equality and anti-discrimination, laws on protection of whistle-blowers, etc. – and the different ways in which they may be relevant in different sectors and contexts].

<sup>7</sup> [The explanatory addendum will make clear that "effectiveness", wherever used in this Annex, is defined by reference to the effectiveness criteria laid out in UNGP 31].

<sup>8</sup> [Accompanying sections of the explanatory addendum will highlight the importance of National Action Plans to the development of sound State strategies for addressing business and human rights challenges, drawing

administrative, legislative and other non-judicial mechanisms play an essential role in complementing and supporting judicial mechanisms;<sup>9</sup>

- (b) to enhance policy coherence<sup>10</sup> as between the relevant laws, policies and processes; and
- (c) as part of its ongoing efforts to facilitate access to effective non-State-based grievance mechanisms dealing with business-related human rights harms.<sup>11</sup>

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 abuses, and recognizes that there will be cases where judicial recourse is an essential part of gaining access to remedy.<sup>12</sup>

1.4 Where appropriate to improve access to an effective remedy for business-related human rights harms, the State further promotes the establishment and effective functioning of non-State-based grievance mechanisms by

- (a) providing suitable guidance to business enterprises;<sup>13</sup>
- (b) including requirements as regards the establishment and operation of effective non-State-based grievance mechanisms (i) in the terms of licences to operate certain businesses;<sup>14</sup> (ii) in eligibility criteria for participation in schemes linked formally or informally to the State, such as public procurement schemes, or products or services provided by export credit agencies, official investment insurance or guarantee agencies, development agencies and development finance institutions; and/or (iii) in relevant contracts with the State.<sup>15</sup>

1.5 Laws, policies and processes relevant to the establishment and effective functioning of non-State-based grievance mechanisms are consistent with the objective of reducing barriers to remedy and not erecting further barriers to prevent legitimate cases from being brought before remedy seekers' preferred mechanisms.<sup>16</sup> To this end, remedy seekers retain the ability to alter

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attention to the work of the UN Working Group on Business and Human Rights in this area, and referencing relevant reports].

<sup>9</sup> [Accompanying sections of the explanatory addendum will make the necessary link to UNGP 27].

<sup>10</sup> [Accompanying sections of the explanatory addendum will make the necessary link to UNGP 8].

<sup>11</sup> [Accompanying sections of the explanatory addendum will make the necessary link to UNGP 28].

<sup>12</sup> [The accompanying sections in the explanatory addendum will make the necessary links with the sections of the ARP I final report (A/HRC/32/19 and A/HRC/32/19/Add.1) concerning the need for robust criminal law regimes and criminal law enforcement].

<sup>13</sup> [Accompanying sections of the explanatory addendum will make the case for greater use of sector-specific guidance, making the necessary links to UNGP 2 as regards businesses enterprises with operations in other States. The explanatory addendum will also, to the extent that space permits, provide some suggestions as to issues that could usefully be addressed in such guidance for different contexts, and particularly in the case of conflict-affected areas].

<sup>14</sup> [Accompanying sections of the explanatory addendum will clarify that this provision refers to situations where business enterprises are recipients of licences from the State to provide certain public services, such as utility providers (e.g. water, gas, electricity), or management of prisons, hospitals, refuse collection services, educational facilities or transport hubs or services].

<sup>15</sup> [Accompanying sections of the explanatory addendum could give examples of what is meant here, such as State support agreements (e.g. as is commonly given in connection with investments a large-scale oil and gas of infrastructure projects)].

<sup>16</sup> [Accompanying sections of the explanatory addendum will explain, using examples, why there is a need for coherence between laws, policies and practice related to non-State-based grievance mechanisms and those relating to judicial mechanisms. For instance, a potentially serious barrier to remedy could include limitations periods for



a remedial course of action in response to evolving circumstances, including by choosing to pursue a remedy using a State-based mechanism as well as (or instead of) a non-State-based grievance mechanism.

1.6 The State has taken steps to address legal impediments to appropriate cooperation between different businesses enterprises and/or non-State-based grievance mechanisms (including through industry, multi-stakeholder and other collaborative initiatives)

- (a) with respect to the handling of grievances arising from business-related human rights harms, including the investigation of allegations and the determination, negotiation, mediation or implementation of remedial outcomes; and
- (b) with a view to encouraging the establishment of, and facilitating access to, effective non-State-based grievance mechanisms dealing with business-related human rights harms.<sup>17</sup>

1.7 State agencies, to the extent consistent with their respective mandates and functions, regularly review the performance of specific non-State-based grievance mechanisms and provide recommendations to improve their effectiveness.<sup>18</sup>

**Policy objective 2: Domestic legal regimes and policy operate in such a way that people are protected from retaliatory and intimidatory behaviour that may be connected with their actual or possible use of, or involvement with, a non-State-based grievance mechanism.**

2.1 The State has implemented and effectively enforces laws for the protection of

- (a) the privacy of (actual and potential) remedy seekers, their families and associates and others who contribute to the effective functioning of such mechanisms (including human rights defenders, legal representatives, translators and other relevant personnel);
- (b) whistle-blowers; and
- (c) fundamental labour rights.<sup>19</sup>

2.2 The State has enacted and implemented the laws, policies and processes necessary to ensure that there is effective deterrence from conduct that amounts to retaliation or intimidation of (actual and potential) remedy seekers and those who contribute to the effective functioning of non-State-based grievance mechanisms (including human rights defenders, legal representatives, translators and other relevant personnel). In the event that acts of retaliation or intimidation take place, the State actively investigates the relevant allegations and ensures

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judicial mechanisms that do not take account of the possibility that remedy seekers may have preferred (or may even have been obliged) to approach a non-State-based grievance mechanism in the first instance].

<sup>17</sup> [Accompanying sections of the explanatory addendum will explain the competition law background to this “element” and will make the necessary links to Part III of this Annex which concerns various kinds of cooperation between different kinds of entities (i.e. business enterprises, industry, multi-stakeholder and other collaborative initiatives) to enhance access to remedy through non-State-based grievance mechanisms.]

<sup>18</sup> [Accompanying sections of the explanatory addendum will discuss the role that regulatory institutions (e.g. labour inspectorates, workplace health and safety bodies) and National Human Rights Institutions may play in relation to improving the performance of specific non-State-based grievance mechanisms].

<sup>19</sup> [Accompanying sections in the explanatory addendum will explain the importance of protection of fundamental labour rights to the effective functioning of non-State-based grievance mechanisms. The explanatory addendum will also define the term “fundamental labour rights” with reference to the ILO Declaration on Fundamental Principles and Rights at Work (1998)].

that there is effective remedy for harm suffered as a result of such conduct (which may include criminal sanctions or their functional equivalent), while at the same time exercising the utmost care for the personal safety of those who have been, or who may be at risk of, retaliation and intimidation.<sup>20</sup>

2.3 Relevant State agencies have taken steps to increase their institutional awareness of, and responsiveness to, the different risks to personal safety and security that people and communities may face as a result of the use of, or interactions with, non-State-based grievance mechanisms,<sup>21</sup> including through the establishment of specialist units, recruitment of people with specialist expertise,<sup>22</sup> ongoing engagement with affected people and communities (and particularly those who may be at risk of vulnerability or marginalisation), risk assessments and training.

2.4 The State has enacted and implemented the laws, policies and processes necessary to ensure that people who may be at risk of retaliation or intimidation because of their actual or potential use of a non-State-based grievance mechanism or because of their connection with a person who has raised (or who considers raising) such a grievance have access to appropriate assistance and support, including medical assistance, counselling, legal advice and other advisory services.<sup>23</sup>

**Policy objective 3: People affected by or at risk of business-related human rights abuse have realistic and readily identifiable pathways to an effective remedy which include appropriate use of non-State-based grievance mechanisms.**

3.1 State-based mechanisms and/or relevant State agencies

- (a) disseminate information regarding the various non-State-based grievance mechanisms that may be relevant in different cases (and the relative advantages and disadvantages of different courses of action);

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<sup>20</sup> [Accompanying sections of the explanatory addendum will highlight the importance of robust safeguarding policies for relevant State agencies (and especially law enforcement agencies), including proper risk assessment and ongoing monitoring of effectiveness of mitigation measures. The explanatory addendum will also explain the relevance of general criminal law, making the link back to the relevant sections of the ARP I final report (A/HRC/32/19 and A/HRC/32/19/Add.1) particularly as regards corporate criminal liability, complicity, the work of law enforcement agencies and the appropriate use of sanctions].

<sup>21</sup> [Accompanying sections of the explanatory addendum will explain that the forms that retaliation and intimidation can take may not be immediately obvious to law enforcement agencies and that specialist expertise may be needed to ensure that compliance monitoring and enforcement is effective. The explanatory addendum will also draw attention to the need for awareness raising exercises to cover the social, economic, structural and cultural issues that can underpin or exacerbate risks and the particular risks that arise in challenging or fragile operating contexts, such as conflict-affected areas or areas in transition from conflict. The explanatory addendum will also highlight the importance of bringing a gender perspective to all aspects of awareness raising and training].

<sup>22</sup> [Accompanying sections of the explanatory addendum will highlight the importance of engaging directly with, and drawing from the knowledge of, people who have first hand, lived experience of the kinds of risks that people face, and especially the experiences of human rights defenders].

<sup>23</sup> [Accompanying sections of the explanatory addendum will provide, to the extent that space permits, further examples of the kinds of advice and support that may be useful, including emergency housing services and assistance with accessing financial services. The explanatory addendum will also highlight the importance of trade unions as a potential source of advice and support in labour related cases].

- (b) seek to redress imbalances in power, information and resources that may exist between parties to business-related human rights grievances through the provision of advisory, training and support services;<sup>24</sup>
- (c) provide guidance to (potential) remedy seekers and their representatives as regards prevailing requirements with respect to the collection and presentation of evidence in the event that they may wish to seek a remedy through a State-based mechanism (as well as, or in place of, a remedy through a non-State-based grievance mechanism); and
- (d) create opportunities for remedy seekers who are dissatisfied with the outcome of a non-State-based grievance process to seek further assistance, for instance by way of a review, opinion or binding determination.<sup>25</sup>

3.2 Procedural rules and practices of State-based mechanisms take account of the possibility that affected people and communities may choose to seek a remedy using a non-State-based grievance mechanism prior to, at the same time as, or subsequent to seeking a remedy using a State-based mechanism and thus make appropriate provision, in light of the mandates and functions of the mechanisms involved, for

- (a) simplified or fast-tracked applications for hearings;<sup>26</sup>
- (b) admission into evidence of information or witness statements collected for the purpose of pursuing a remedy using an alternate mechanism;<sup>27</sup> and
- (c) use of dialogue-based approaches to resolve grievances.<sup>28</sup>

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<sup>24</sup> [Accompanying sections of the explanatory addendum will provide examples, to the extent that space permits, of steps that States can take to redress power imbalances between parties, including through provision of resources and advice to individuals and communities, training for individuals and communities as regards how best to make use of the different mechanisms that may be available, providing assistance with the gathering and presentation of evidence, and assistance with monitoring of the implementation of remedial outcomes. The explanatory addendum will highlight the role that National Human Rights Institutions can and do play with regards to each of these elements].

<sup>25</sup> [The accompanying sections in the explanatory addendum will provide some examples of how the provision of a judicial or regulatory “backstop” can provide a source of leverage on parties to take dialogue-based processes seriously and to implement their outcomes effectively].

<sup>26</sup> [Accompanying sections of the explanatory addendum will make the necessary links back to the elements under Policy Objective 1 above (and accompanying notes) on the need for coherence between laws, policies and processes related to non-State-based grievance mechanisms and those relating to judicial mechanisms..

<sup>27</sup> [Accompanying sections of the explanatory addendum will point out that having to revisit, reassemble and resubmit information or testimony for the purposes of presentation in different forums is not only expensive and time consuming, it can also be traumatic for people asked to relive their experiences by testifying over and over. The aim of this provision is to encourage States to consider whether it may be possible to relax some rules regarding presentation of information and testimony and the manner in order to help alleviate these problems].

<sup>28</sup> [Accompanying sections of the explanatory addendum will refer to the growing use of dialogue-based methods as part of judicial and quasi-judicial dispute resolution processes, raising the possibility of greater integration of non-State-based grievance mechanisms in these processes].

**Policy objective 4: Domestic legal regimes and policy operate in such a way that non-State-based grievance mechanisms contribute to the realization of effective remedial outcomes for those affected by, or who may be at risk of, business-related human rights abuse.**

4.1 Laws, policies, and processes relevant to the functioning of non-State-based grievance mechanisms

- (a) are aligned with the principles of equal and effective access to justice; adequate, effective and prompt remedy for harm suffered; and rights of access to information; and
- (b) encourage developers and operators of non-State-based grievance mechanisms to draw appropriately from all recognized categories of full and effective reparation (e.g., restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition),<sup>29</sup> and wherever possible, to provide for choice by remedy seekers of the type of remedial outcomes most appropriate in the light of the specific circumstances of the case.

4.2 The State has made appropriate arrangements to address the risk of non-implementation of remedial outcomes (including non-compliance with the terms of a remedial agreement or determination), which may include (depending upon the mandates and functions of the relevant mechanisms)

- (a) the possibility of enforcement through State-based mechanisms;
- (b) regulatory or administrative follow-up activities (including monitoring),<sup>30</sup> or
- (c) the imposition of regulatory and/or other consequences for failure to implement remedial outcomes.<sup>31</sup>

4.3 State agencies engage constructively with developers and operators of non-State-based grievance mechanisms with respect to aspects of grievances that are relevant to their regulatory mandates and functions and use regular analysis of the frequency, patterns and causes of grievances to identify the laws, policies and regulatory practices that require altering to reduce the risks of future harm.<sup>32</sup>

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<sup>29</sup> [Accompanying sections of the explanatory addendum will, to the extent that space permits, provide examples to illustrate how these well-known categories (derived from international human rights law) can be translated into practice, drawing attention to the importance of both financial remedies (and similar forms of reparation) and non-financial remedies including symbolic remedies, as well as remedies designed to prevent future harm, such as injunctive remedies].

<sup>30</sup> [Accompanying sections of the explanatory addendum will point out that in practice it is not unusual for such implementing measures to include the establishment of a non-State-based grievance mechanism, or recommendations for enhancing an existing one, in which case the UNGP 31 “effectiveness criteria” (together with the Policy Objectives and Elements set out in Part III of the Annex) will also be relevant].

<sup>31</sup> [Accompanying sections of the explanatory addendum will make it clear that the reference to “remedial outcomes” here is a reference to mediated settlements, settlement agreements or determinations at the conclusion of arbitration].

<sup>32</sup> [Accompanying sections of the explanatory addendum will make the necessary links back to the review processes mentioned in the elements under Policy Objective 1, and also the relevant sections of the ARP I and ARP II reports (see A/HRC/32/19, A/HRC/32/19/Add.1, A/HRC/38/20 and A/HRC/38/20/Add.1) that deal with strengthening domestic legal regimes and policy].

**Policy objective 5: Domestic law and policy supports the efforts of non-State-based grievance mechanisms to contribute to the remedy of business-related human rights abuses in cross-border cases.**

5.1 The State has made appropriate arrangements for relevant stakeholders<sup>33</sup> to be able to call upon their embassies and consular services for advice and assistance with regard to

- (a) establishing mechanisms for dealing with grievances arising from business-related human rights harms in other States and
- (b) resolving grievances in specific cases.<sup>34</sup>

5.2 The State works through relevant bilateral and multilateral forums to raise awareness about the benefits of non-State-based grievance mechanisms in terms of speed of access and remediation, reduced costs and/or transnational reach and of the need to improve domestic law regimes and initiatives relevant to the establishment and performance of effective non-State-based grievance mechanisms.

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

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

6.1 Developers and operators of non-State-based grievance mechanisms use the effectiveness criteria set out in Principle 31 of the UN Guiding Principles on Business and Human Rights as a benchmark for designing, revising or assessing grievance mechanisms.

6.2 Non-State-based grievance mechanisms are designed and administered with due regard for their legal and regulatory context, drawing from suitable sources of internal and external expertise to identify ways in which such mechanisms can increase their effectiveness by working constructively and proactively with relevant State agencies and law enforcement bodies, including State-based grievance mechanisms.<sup>35</sup>

- 6.3 Non-State-based grievance mechanisms operate in a manner that promotes
- (a) equal and effective access to justice;
  - (b) adequate, effective and prompt remedy for harm suffered; and
  - (c) access to relevant information concerning business-related human rights abuses and grievance mechanisms.

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<sup>33</sup> [Accompanying sections of the explanatory addendum will make it clear that “relevant stakeholders” in this context could include business enterprises, remedy seekers and those advocating on their behalf].

<sup>34</sup> [Accompanying sections of the explanatory addendum will highlight the particular importance of this kind of assistance in jurisdictions where there are social and economic challenges that may undermine the effectiveness of remedial mechanisms (whether State-based or non-State-based), including with regard to respect for the rule of law, and lack of resources for and capacity of key institutions, or where the jurisdiction is (or has been) affected by conflict].

<sup>35</sup> [Accompanying sections of the explanatory addendum will link back to the material in Part I of this Annex with respect to the meaning of “effectiveness” and also the elements of effective “background” domestic regimes. The explanatory addendum will also highlight the value of legal advice in helping to identify opportunities to improve effectiveness, and will provide further insights derived from research conducted during ARP III on the potential value of engagement between non-State-based grievance mechanisms and State agencies, as well as the key challenges that can arise in different contexts].

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

7.1 The mechanism publishes accurate information about its origins, constitutions, organisational structures, sources of funding, the adherence of the mechanism to performance standards and the status of relevant certifications, key partnerships, policies<sup>36</sup> and activities.<sup>37</sup>

7.2 The mechanism's developers have consulted closely, and from the outset of the design process, with relevant stakeholders (and groups representing prospective remedy seekers in particular)<sup>38</sup> as to the optimal design of the mechanism and its processes.<sup>39</sup>

7.3 The mechanism consults closely and regularly with relevant stakeholders (and particularly with remedy seekers and their representatives),<sup>40</sup> including as part of evaluation exercises, for the purposes of identifying ways in which the mechanism's design and/or operations can be improved.<sup>41</sup>

7.4 Business enterprises engage proactively with those seeking to develop and implement worker-driven and community-driven grievance mechanisms,<sup>42</sup> contributing constructively to all stages of the design process, from inception to launch.

7.5 The mechanism's developers have drawn from relevant internal and external expertise, including through meaningful consultation with potentially affected groups and other relevant stakeholders, and adopting a gender perspective,<sup>43</sup> as to the best ways to address the needs of people who may be at risk of vulnerability and/or marginalisation, and as a result have made appropriate adjustments to the design of the mechanism and its processes.

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<sup>36</sup> [Accompanying sections of the explanatory addendum will note that policies on matters such as safeguarding, internal investigations and ethical matters (e.g. conflicts of interest) will be of particular relevance here. The explanatory addendum will also note the importance of sharing information with the public (and prospective remedy seekers in particular) as part of meeting other UNGP 31 "effectiveness criteria", particularly "predictability" (UNGP 31(c)), "equitability" (UNGP 31(d)), and "transparency" (UNGP 31(e)).]

<sup>37</sup> [Accompanying sections of the explanatory addendum will draw attention to the various other provisions in this Annex relating to transparency and disclosure, including the elements relating to "predictability" (under Policy Objective 9) and "transparency" (under Policy Objective 11)].

<sup>38</sup> [Accompanying sections of the explanatory addendum will seek to provide an indication of who these groups may be in different contexts (e.g. trade unions in relation to workers at factories, etc.).]

<sup>39</sup> [Accompanying sections of the explanatory addendum will refer to "user-centred" and "co-design" methodologies together with a short discussion, space permitting, of the contexts in which they are likely to be most relevant and useful].

<sup>40</sup> [Accompanying sections in the explanatory addendum will acknowledge the need to consult through representatives and proxies in some cases, for example in the case of mechanisms that are intended to have regional or global reach].

<sup>41</sup> [Accompanying sections of the explanatory addendum will make the necessary links with the sections of this Annex relating to "continuous learning" (under Policy Objective 13). The explanatory addendum will also offer advice, to the extent that space permits, as to how close consultation may be achieved in contexts where prospective users are geographically widely spread, difficult to locate in advance, or otherwise difficult to reach. The explanatory addendum will highlight, in addition, the importance of working with people with lived experience of the particular abuse the mechanism seeks to address, and of the practical challenges of seeking remedies for business-related human rights harms].

<sup>42</sup> [Accompanying sections of the explanatory addendum will provide further details of what is meant by "worker driven" and "community driven" mechanisms, and the contexts in which these methodologies may be useful].

<sup>43</sup> [Accompanying sections in the explanatory addendum could make references to the 2019 report of the UN Working Group on Business and Human Rights on "Gender dimensions of the Guiding Principles on Business and Human Rights" (A/HRC/41/43)].

- 7.6 The necessary arrangements<sup>44</sup> have been made to
- (a) minimize the risk of conflicts of interest<sup>45</sup> for the mechanism (or any of its personnel) with respect to the discharge of its mandate and functions;<sup>46</sup>
  - (b) minimize the risk of any undue influence of any one actor (or group of actors);<sup>47</sup>
  - (c) help address problems of power imbalances between the relevant parties, and particularly as regards individuals and communities at risk of vulnerability and/or marginalisation; and
  - (d) provide the mechanism with an appropriate degree of independence from the business enterprise(s) against which allegations of harm have been made.<sup>48</sup>

7.7 Personnel employed by or assigned to the mechanism are suitably qualified<sup>49</sup> for the tasks they are required to carry out and are held to high standards of personal and professional conduct.

- 7.8 The mechanism provides training for personnel, which draws from first-hand experience of representatives of different individuals and groups, on
- (a) the social, economic, structural and cultural issues that can affect the ability of the mechanism to meet the needs of remedy seekers (and particularly those people or groups at risk of vulnerability or marginalisation);
  - (b) the manner in which different sources of discrimination can combine to exacerbate inequalities in society;
  - (c) how these issues may serve to undermine stakeholder trust in the mechanism;
  - (d) internal policies and practices relevant to addressing these challenges; and

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<sup>44</sup> [Accompanying sections of the explanatory addendum will provide an indication of the different kinds of structural, institutional, administrative and resourcing arrangements that could be relevant here].

<sup>45</sup> [Accompanying sections of the explanatory addendum will set out, to the extent that space permits, examples of strategies that can assist with the management of conflicts of interest, including procedures and protocols relating to recruitment, rotation and removal of personnel; declaring conflicts of interest in relation to specific grievance raised (and the appropriate action to be taken in response); restrictions on movements of personnel from the mechanism to relevant business operations (and vice versa); use of an independent, multi-stakeholder advisory panel, that is gender-balanced and properly representative of anticipated user groups and interests; and delegation of dispute resolution and decision-making to legitimate, independent third-party mechanisms in appropriate cases.]

<sup>46</sup> [Accompanying sections of the explanatory addendum will draw addition to the more detailed provisions on managing conflicts of interest that appear under the Policy Objective relating to “equitability” (see 10.5 below) Further practical examples regarding how to minimise conflicts of interest, derived from ARP III research, could be provided either in the explanatory addendum (space permitting) or through the use of a separately published set of “illustrative examples”].

<sup>47</sup> [Practical examples of how this can be achieved, derived from ARP III research, could be provided either in the explanatory addendum (space permitting) or through the use of a separately published set of “illustrative examples”].

<sup>48</sup> [Accompanying sections of the explanatory addendum will discuss the different strategies that can be used to enhance the “independence” of non-States-based grievance mechanisms from the relevant business enterprise(s), and will highlight the particular need for independence in the case of mechanisms that make use of adjudication (i.e. as opposed to dialogue-based processes) to resolve grievances (see UNGP 31(h), commentary)].

<sup>49</sup> [Accompanying sections of the explanatory addendum will provide some examples of what “suitably qualified” may mean in different contexts, for example (and depending on the role of the individuals concerned), a knowledge of human rights and the different aspects of the corporate responsibility to respect human rights, expertise with respect to assessing and responding to risks to personal safety of people seeking to use the mechanism, counselling, legal expertise, and language skills].

(e) how these policies and practices should be implemented in day-to-day work.<sup>50</sup>

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

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

8.1 The mechanism works proactively to raise awareness among people affected by the relevant business activities and within affected communities of its existence, objectives and processes, including through targeted outreach activities.<sup>51</sup>

8.2 The mechanism applies clear and minimal eligibility criteria as regards eligibility to initiate grievance processes.

8.3 Procedures for receiving grievances and for engaging with the remedy seeker thereafter are designed

- (a) to be as user-friendly as possible,<sup>52</sup> making appropriate use of both formal and informal channels of communication,<sup>53</sup> with multiple entry points and modes of communication;<sup>54</sup> making the necessary adjustments to address the barriers that may be faced by people by reason of their gender, and/or because they face heightened risks of vulnerability and/or marginalisation;
- (b) to allow sufficient time for people to raise and respond to issues, for instance in light of the length of time it may take for business-related human rights harms to become apparent and the social, cultural, economic and other barriers that may be faced by affected individuals and communities in initiating and participating in grievance

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<sup>50</sup> [Accompanying sections of the explanatory addendum will highlight the importance of incorporating a gender perspective in this training].

<sup>51</sup> [Accompanying sections in the explanatory addendum will provide a selection of practical examples of the different ways in which non-State-based grievance mechanisms can raise awareness about their existence, aims and activities. Practices highlighted during ARP III included face-to-face engagement (e.g. meetings and discussion groups); leaflets; notices prominently displayed in factories and other premises; notices prominently displayed on websites; use of social media; education and awareness-raising sessions, delivered in a culturally aware and sensitive manner by peers, union representatives, and/or local community members to whom remedy seekers can easily relate, etc.].

<sup>52</sup> [Accompanying sections in the explanatory addendum will provide practical examples of “user friendly” processes by which people can submit grievances; for instance through (i) providing templates, model submissions, example documents, (ii) ensuring that literature relating to policies and processes is available in a range of different languages relevant to the needs of groups for which they are intended, and (iii) allowing remedy seekers to communicate in their own languages. The explanatory addendum will also make the link to the provisions on “user-centred design” and “co-design” in the sections on “legitimacy” above (see the elements listed under Policy Objective 7).]

<sup>53</sup> [Accompanying sections in the explanatory addendum will provide, to the extent that space permits, some examples of the channels of communication that are likely to be relevant in different contexts].

<sup>54</sup> [e.g. through toll-free telephone lines, e-mail, in person, post, digital apps, depending on the needs and preferences of different remedy seekers. Accompanying sections of the explanatory addendum will discuss the use of technologies to enhance accessibility of non-State-based grievance mechanisms, drawing attention to both the potential benefits (e.g. with respect to speed and ease with which grievances can be raised) and the risks (e.g. the many barriers which may exist with respect to accessing and using these technologies in practice)].



processes, particularly by those who may be at risk of vulnerability and/or marginalisation; and

- (c) to enable people to represent themselves if they prefer while preserving the possibility of representation by legal counsel, trade union, personal representative or other third party, in accordance with the wishes of the affected individuals or communities.

8.4 The mechanism does not require any remedy seeker 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.

8.5 The mechanism makes appropriate provision for affected people to collaborate and seek collective redress<sup>55</sup> for business-related human rights harms.<sup>56</sup>

8.6 In cases where there is participation in person, the mechanism has put in place measures designed to allow physical 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 and age-appropriate accommodations to eliminate barriers to participation by persons with disabilities.

8.7 The mechanism does not charge a fee to remedy seekers to access the mechanism and, furthermore, takes steps to minimise the financial costs thereafter including by making available, free of charge

- (a) appropriate advisory and support services such as online resources (e.g., downloadable pamphlets and videos), paper resources, telephone helplines and designated case workers and counsellors; and
- (b) assistance with translation of documents and testimony.

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;<sup>57</sup> and
- (b) in the languages of the people for whom they are intended.

8.9 The mechanism adopts and implements procedures and practices to ensure confidentiality of personal data and information tending to identify a person, in accordance with the wishes expressed by the relevant person, and/or where the context and circumstances of the case would make it appropriate,<sup>58</sup> taking into account the particular needs of people at greater risk of vulnerability and/or marginalization.

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<sup>55</sup> [Accompanying sections of the explanatory addendum will explain this term].

<sup>56</sup> [Accompanying sections of the explanatory addendum could, to the extent that space permits, provide practical examples of how this can be done, including by providing opportunities for affected people to identify and work with people facing similar problems].

<sup>57</sup> [Accompanying sections of the explanatory addendum will provide examples of formats and adjustments that can enhance accessibility for persons with disabilities, such as provision of resources in Braille, audio format, etc.].

<sup>58</sup> [Accompanying sections of the explanatory addendum will provide some further information about the different ways in which a person using a grievance mechanisms may be put at risk and highlight, to the extent that space permits, some context specific issues, such as issues that would be taken into account in areas affected by conflict and other challenging operational contexts].

8.10 The mechanism adopts and implements procedures and practices to identify and address the risk of retaliatory or intimidatory behaviour towards (actual and potential) remedy seekers, their families and associates and others who contribute to the effective functioning of the mechanism (including human rights defenders, legal representatives, translators and other relevant personnel) that may be connected with their actual or potential use of, or involvement with, a the mechanism.<sup>59</sup>

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

9.1 The mechanism adopts and implements clear policies and processes for resolving grievances, with well-defined, reasonable and suitably flexible timeframes for each stage,<sup>60</sup> designed to ensure that grievances are addressed and concluded without undue delay.

9.2 The mechanism adopts and implements clear policies and processes as regards cooperation with other non-State-based grievance mechanisms with respect to the handling of a grievance (e.g., joint investigations or merging of grievance processes),<sup>61</sup> which include safeguards to ensure that any such cooperation may be carried out only after having first obtained the prior and explicit consent<sup>62</sup> of the relevant parties

- (a) to such cooperation and
- (b) to any material changes to relevant policies and processes as a result.<sup>63</sup>

9.3 The mechanism adopts and implements clear policies and processes as regards engagement with State agencies with respect to matters raised or information obtained in the course of a grievance process which set out

- (a) the circumstances in which prior consent<sup>64</sup> must first be sought from affected individuals; and
- (b) appropriate safeguards relating to observing confidentiality and protecting individuals and communities from the risk of retaliation and intimidation.<sup>65</sup>

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<sup>59</sup> [Accompanying sections of the explanatory addendum will set out the elements of a proper risk management strategy as regards the risk of retaliation and intimidation by the business enterprise concerned (and/or its staff or managers), people or agencies purporting to act on the business enterprise’s behalf and third parties. These elements include organisational policies (e.g. “zero tolerance” policies), the steps to be taken in specific cases (e.g. case-specific risk assessment and risk mitigation plans), the care that needs to be exercised when conducting outreach exercises, providing advice for (potential) remedy seekers as to the steps they need to take for their own personal safety (which will be context specific), together with supporting activities, such as awareness raising and training. The explanatory addendum could also, space permitting, provide further “good practice” examples of ways to support people who may be vulnerable or at risk, such as providing “safe spaces” for people affected by trauma to seek expert help, including counselling, medical help and advice].

<sup>60</sup> [Accompanying sections of the explanatory addendum will make the necessary link with 8.3(b) above].

<sup>61</sup> [Accompanying sections of the explanatory addendum will make the necessary links with the material in Part III below].

<sup>62</sup> [Accompanying sections of the explanatory addendum will clarify that “free, prior, informed, consent” is the required standard when seeking consent from indigenous people, referring to the United Nations Declaration on the Rights of Indigenous Peoples (2007)].

<sup>63</sup> [Accompanying sections of the explanatory addendum will make the necessary links to Part III of the Annex].

<sup>64</sup> [On the standards that apply in relation to indigenous people, see n. [58] above].

<sup>65</sup> [Accompanying sections of the explanatory addendum will also draw attention to the further provisions that need to be made with respect to engagement with State agencies for the purposes of ensuring “rights compatibility” of outcomes, see further the elements under Policy Objective 12 below].

9.4 Developers and operators of mechanisms seek to integrate binding approaches to resolving grievances where possible, whether through binding agreements to resolve disputes in a certain way,<sup>66</sup> or by recording remedial outcomes as binding legal agreements,<sup>67</sup> to improve predictability of grievance processes, remedial outcomes and their implementation.

9.5 The mechanism publishes accurate and realistic information, and works proactively, using a range of user-friendly formats<sup>68</sup> and multiple channels of communication, to raise awareness among relevant people and communities<sup>69</sup> about

- (a) its mission and objectives;
- (b) any preliminary requirements that must be met in order to access the mechanism;
- (c) policies and processes for resolving grievances;
- (d) what parties can expect at each stage of the grievance process, including the time frames within which key decisions will be taken and milestones reached;
- (e) the rights of parties to withdraw from grievance processes once commenced;
- (f) the remedial outcomes that may be available;
- (g) the legal consequences and status of remedial outcomes (including whether and how they can be legally enforced);
- (h) the extent to which the mechanism can monitor implementation of remedial outcomes, and the monitoring methods and procedures used; and
- (i) any legal standards or regulatory provisions that have a bearing on the manner in which the grievance is handled, including the rights of the parties to apply to have any aspect of the grievance process reconsidered or reviewed.

9.6 To the extent permitted by applicable laws, standards and policies with respect to confidentiality, data protection and safeguarding,<sup>70</sup> the mechanism publishes readily understandable information relating to grievances received by the mechanism and their outcomes for the purposes of enhancing understanding by remedy seekers of the operation and performance of the mechanism in practice.<sup>71</sup>

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<sup>66</sup> [Accompanying sections of the explanatory addendum will discuss the growing use of binding agreements, for instance between unions and business enterprises, or as part of a multi-stakeholder initiative to improve access to remedy for business-related human rights harms, providing examples of the types of arrangements currently in use or under consideration].

<sup>67</sup> [Accompanying sections of the explanatory addendum will discuss the various ways in which a settlement agreement may be legally enforceable, citing ongoing discussions about the part that arbitration processes can play in resolving grievances arising from business-related human rights harms, while also highlighting the importance of robust “background” domestic legal regimes from the perspective of enforceability].

<sup>68</sup> [Accompanying sections of the explanatory addendum will provide suggestions as to the types of formats which could be used, including hard copy resources, on-line materials, phone apps, case workers, helplines, etc. The explanatory addendum will also highlight, once again, the importance of making available information and assistance in the languages of prospective remedy seekers].

<sup>69</sup> [Accompanying sections of the explanatory addendum will draw attention to the dangers of over-promising and will make the necessary link between this “element” and the elements relating to “transparency”, see Policy Objective 11 below].

<sup>70</sup> [Accompanying sections of the explanatory addendum will make the necessary links to the elements that are relevant to safeguarding elsewhere in this Annex (see Part I and the elements listed under Policy Objective 8 above)].

<sup>71</sup> [Accompanying sections of the explanatory addendum will point out the importance of these kinds of disclosures to the goals of both predictability *and* transparency, and will make the necessary links to similar (though more detailed) elements listed under Policy Objective 11 below. The explanatory addendum will explain the usefulness of publishing certain details of past cases (e.g. types of claims, complaints or disputes referred, the types of remedial outcomes and the time taken to achieve them) for the purposes of enhancing predictability and managing

9.7 Where appropriate, non-State-based grievance mechanisms encourage memoranda of understanding between the parties to a grievance that clarify how a generic grievance process will apply in a specific case or context and/or between the parties in question.<sup>72</sup>

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

10.1 The mechanism works proactively to raise awareness among affected individuals and communities about

- (a) their human rights and the role of the mechanism in helping to realise them,<sup>73</sup> and
- (b) sources of further information, advice and assistance (including financial assistance)<sup>74</sup> available from both the mechanism itself and from external sources to enable them to participate fairly and effectively in the relevant processes.<sup>75</sup>

10.2 The mechanism has adopted and implemented the procedures and practices necessary to ensure that, for each grievance raised, remedy seekers receive, in a timely fashion, but subject to applicable laws and relevant safeguards relating to observing confidentiality and protecting individuals and communities from the risk of retaliation and intimidation,<sup>76</sup>

- (a) adequate information concerning any responses, counter-allegations or related arguments provided by the other party;
- (b) access to all documentary or other evidence (including witness testimony) submitted in connection with the grievance;
- (c) access to reports of investigations; and
- (d) adequate opportunities to comment on (i) the items mentioned above prior to any final decision or determination, and (ii) any decision by the mechanism to reject, defer, review or close a grievance process (and, where appropriate, to take further or corrective action prior to such decision).

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stakeholder expectations. However, in order to respect laws and policy commitments as regards confidentiality and respect for remedy seekers' rights to privacy, this may need to be in the form of redacted or aggregated information].

<sup>72</sup> [Accompanying sections of the explanatory addendum will suggest that such a memorandum of understanding could draw from the items listed in paragraph 9.5 above].

<sup>73</sup> [Accompanying sections of the explanatory addendum will make the necessary link to the provision in Policy Objective 9 ("predictability") about the need for realistic and accurate information, and also to the provisions in Policy Objective 8 highlighting the need for care, in carrying out outreach exercises, that remedy seekers are not exposed to further risks. The explanatory addendum will also refer to training and "empowerment exercises" as potentially useful forms of outreach which can help raise the confidence and capacity of remedy seekers, while also pointing out that such training needs to take account of the serious social and cultural barriers that may exist to seeking remedies for business-related human rights harm, especially in settings where serious human rights abuses may have been normalised over time].

<sup>74</sup> [Accompanying sections of the explanatory addendum will highlight costs of translation, legal assistance, investigations and expert witnesses as areas where financial assistance from the mechanism (or business enterprises associated with it) may be needed].

<sup>75</sup> [Accompanying sections of the explanatory addendum will draw the necessary links with other elements in this Annex relevant to access to information and sources of advice and expertise, in particular those elements relating to accessibility, predictability and transparency].

<sup>76</sup> [Accompanying sections of the explanatory addendum will make the necessary links with elements 8.9 and 8.10 above].

10.3 The mechanism has adopted and implemented the procedures and practices necessary to ensure that, for each grievance raised, remedy seekers receive at the conclusion of the process and in accessible and readily understandable formats<sup>77</sup>

- (a) detailed reasons for any decisions made;<sup>78</sup>
- (b) a full record of any settlement reached;<sup>79</sup>
- (c) information as to the basis for calculation of any financial compensation; and
- (d) to the extent applicable, information concerning (i) the steps to be taken, and the time limits that apply, should a party wish to seek review of or challenge the outcome of a grievance process; and (ii) remedy seekers' options for further action, including on the steps that they should take in the event of non-compliance by a party with the terms of a determination by the mechanism or an agreed or mediated remedial outcome.

10.4 The mechanism makes available the necessary facilities and support (including, where appropriate, financial support), and can make the necessary adjustments to procedures and practices, to enable remedy seekers to participate meaningfully in mechanism processes and on an equal basis with other parties,<sup>80</sup> which may include special arrangements designed to assist people affected by injury or trauma and/or at heightened risk of vulnerability or marginalisation.<sup>81</sup>

10.5 The mechanism's procedural rules, policies and practices respect the rights of remedy seekers to withdraw from grievance processes if they are dissatisfied with those processes and do not unfairly preclude their access to other non-State-based or State-based grievance mechanisms.

10.6 The mechanism adopts and implements policies, procedures and practices (including by making available the necessary expertise, training and resources), to ensure that members of its staff with responsibility for receiving, handling, adjudicating or mediating grievances and/or advising or supporting remedy seekers

- (a) are cognisant of the rights and needs of the people for whom the relevant mechanism is intended, with due consideration for the particular needs of individuals or groups at a greater risk of vulnerability and/or marginalization;
- (b) relate to remedy seekers in a culturally appropriate and sensitive manner and take proper account of issues relating to gender, vulnerability and/or marginalization, and the manner in which different sources of discrimination can combine to exacerbate inequalities in society; and

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<sup>77</sup> [Accompanying sections of the explanatory addendum will point out the “readily understandable formats” in this element is defined by the needs and preferences of the remedy seeker (or remedy seekers) concerned, and will thus need to take account of language, levels of literacy, access to online resources, etc.].

<sup>78</sup> [e.g. following an adjudicative process, such as arbitration].

<sup>79</sup> [e.g. as a consequence of a mediation process].

<sup>80</sup> [Accompanying sections of the explanatory addendum will make the necessary link with the provisions in Policy Objective 7 (“legitimacy”) regarding addressing problems of imbalances of power].

<sup>81</sup> [Accompanying sections of the explanatory addendum will point out the value, for example, of providing “navigators” with lived experiences of the abuses alleged, to help people find their way through the remediation process, and to provide the necessary support along the way. The explanatory addendum will also point out the links to various provisions in Policy Objective 8 (“accessibility”), such as the value of designated case workers, etc.].

- (c) carry out their functions and responsibilities to the highest ethical standards, including as regards the disclosure of, and appropriate corrective action to be taken with respect to, potential and actual conflicts of interest.<sup>82</sup>

10.7 The mechanism adopts and implements policies, procedures and practices to ensure that technologies used in connection with grievance processes (for instance in the collection and communication of evidence, sharing of information or the handling and processing of grievances) comply with all relevant laws, policies and standards as regards privacy and data protection, have been extensively piloted prior to their introduction and have had cyber-security risks effectively addressed.

10.8 The mechanism adopts and implements policies, procedures and practices to ensure that people claiming to represent remedy seekers in connection with a grievance are qualified and properly authorised to do so, that there has been no manipulation or coercion of the individuals or groups concerned in agreeing to such representation and that remedy seekers are effectively and conscientiously represented for the duration of the grievance process.<sup>83</sup>

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

11.1 The mechanism adopts and implements policies, procedures and practices to ensure that there is ongoing and proactive engagement between the mechanism and parties to a grievance with respect to the status of each 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 individuals and/or communities, and taking particular account of the needs of people and communities at heightened risk of vulnerability and/or marginalisation.<sup>84</sup>

11.2 Subject to applicable laws and relevant safeguards relating to observing confidentiality and protecting individuals and communities from the risk of retaliation and intimidation, the mechanism regularly communicates, through a range of different channels,<sup>85</sup> statistics, case studies and/or other detailed information<sup>86</sup> relevant to the mechanism's performance with a view to providing readily accessible information to the public on matters such as

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<sup>82</sup> [Accompanying sections of the explanatory addendum will make the necessary links to the other elements in this Annex relating to recognising, and addressing the risks arising from, conflicts of interest (see especially Policy Objective 7 above). The explanatory addendum will also explain the need for relevant policies to cover any consultants engaged by the mechanism, as well as external investigators, ombudspersons or mediators].

<sup>83</sup> [Accompanying sections of the explanatory addendum will reference the standard of “free, prior and informed consent” under the UN Declaration on the Rights of Indigenous Peoples. The explanatory addendum will also, space permitting, offer advice as to the types of evidence that a mechanism could look to in order to establish that the claims of representation are genuine, and that consent was freely given and the extra inquiries that may be necessary in relation to people at heightened risks of vulnerability and/or marginalisation].

<sup>84</sup> [Accompanying sections of the explanatory addendum will cross refer to the other elements in this Annex regarding suitable means of communication with parties seeking to raise grievances through a non-State-based grievance mechanism, particularly the elements listed under Policy Objective 8 (on “accessibility”) and Policy Objective 9 (on “predictability”)].

<sup>85</sup> [Accompanying sections of the explanatory addendum will highlight the different channels the mechanism could use, including annual reports, website updates, community meetings, etc.].

<sup>86</sup> [Accompanying sections of the explanatory addendum will draw attention to the elements under Policy Objective 13 (on “continuous learning”) which explain the importance of meticulous record keeping and analysis in order to identify ways to improve the effectiveness of the mechanism, particularly as regards its accessibility by different groups in society].

- (a) the types of grievances referred to the mechanism in a given period;
- (b) the percentage of cases successfully resolved, and in what time period;
- (c) types of remedial outcomes achieved as a result of grievance processes, follow up activities and assessments as to their impact;<sup>87</sup>
- (d) the percentage of cases rejected by the mechanism, and on what grounds;
- (e) recurring challenges that can be identified through data analysis;
- (f) performance of the mechanism against key performance indicators;<sup>88</sup> and
- (g) any other data, information or analysis relevant to the goal of improving the understanding of current and prospective remedy seekers of the operation and performance of the mechanism in practice.<sup>89</sup>

11.3 The mechanism's policies, procedures and practices with respect to the disclosure of information relevant to the mechanism's performance (including the performance of the mechanism in specific cases) have been developed in consultation with relevant stakeholders. Such policies, procedures and practices

- (a) reflect an appropriate balance between the need for transparency and the need for confidentiality to be observed in some cases to facilitate successful remedial outcomes;
- (b) provide clarity on the terms on which and the circumstances in which confidentiality will be observed; and
- (c) are consistently implemented, taking due account of the views of remedy seekers and their representatives, both in general and with respect to specific grievance processes.<sup>90</sup>

11.4. The mechanism publishes, in readily accessible formats, its policies, procedures and practices relating to the handling of grievances arising from business-related human rights harms.

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<sup>87</sup> [Accompanying sections of the explanatory addendum could provide suggestions as to how this information can be presented, for instance through case summaries.]

<sup>88</sup> [Accompanying sections of the explanatory addendum will provide examples of the kinds of key performance indicators that could be potentially useful and, space permitting, may also draw attention to the international standards that may be relevant to reporting on the performance of grievance mechanisms].

<sup>89</sup> [Accompanying sections of the explanatory addendum will make the necessary links to similar elements in this Annex relating to a mechanism's "predictability" (see Policy Objective 9 above). The explanatory addendum will also reiterate the usefulness of publishing certain details of past cases (e.g. types of claims, complaints or disputes referred, the types of remedial outcomes and the time taken to achieve them) for the purposes of enhancing predictability and managing stakeholder expectations. However, it will also be noted that, in order to respect laws and policy commitments as regards confidentiality and respect for remedy seekers' rights to privacy, this may need to be in the form of redacted or aggregated information].

<sup>90</sup> [This element is concerned primarily with confidentiality for the purposes of facilitating successful outcomes, rather than confidentiality needed to protect against breaches of privacy or to reduce the risks of retaliation against or intimidation of remedy seekers (and others). However, accompanying sections of the explanatory addendum will make the necessary links to other provisions relating to confidentiality, notably the elements on confidentiality and safeguarding listed under Policy Objective 8 above].

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

12.1 To the extent possible, in light of its mission, constitution and structure, the mechanism's policies, procedures and practices draw appropriately from all recognized categories of full and effective remedy (e.g., restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition), and give due consideration to the need in certain cases for

- (a) symbolic remedies;<sup>91</sup> and/or
- (b) early or pre-emptive action to mitigate or avoid future harm.

12.2 Wherever possible, the mechanism's policies, procedures and practices provide for choice by remedy seekers of the type of remedial outcomes most appropriate in light of the specific circumstances of the case.

12.3 The mechanism has adopted and implemented policies, procedures and practices to ensure that

- (a) the human rights implications of remedial outcomes (including the method of delivery and/or implementation of a remedy) are properly assessed and that risks of any adverse human rights impacts arising from the remedy or its implementation are addressed,<sup>92</sup> in each case drawing on internal and external expertise, and meaningful consultation to potentially affected groups and other affected stakeholders; and
- (b) the grievance process is an empowering experience for the remedy seekers concerned.

12.4 The mechanism has made appropriate arrangements to address non-implementation of, or non-compliance with the terms of, remedial outcomes, which may include

- (a) the possibility of enforcement through State-based mechanisms with power to compel performance;<sup>93</sup>
- (b) means of monitoring implementation by the mechanism, an appropriate representative organisation, or an independent third party, or
- (c) referral of the grievance to another mechanism (judicial or non-judicial) with the consent of the relevant remedy seekers.<sup>94</sup>

12.5 The mechanism has adopted and implemented policies, procedures and practices to ensure that engagement with State agencies with respect to matters raised or information obtained in the course of a grievance process is undertaken

- (a) lawfully;
- (b) in a manner which respects the human rights of the individuals and/or groups concerned;

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<sup>91</sup> [Accompanying sections of the explanatory addendum will include a brief discussion highlighting the importance of symbolic remedies in certain cases].

<sup>92</sup> [Accompanying sections of the explanatory addendum will give examples from research carried out for ARP III of the situations where poor design and implementation of a remedy can actually lead to worse human rights impacts, for example by exacerbating community tensions (in the case of a large financial remedy which is managed by a trust) or perhaps through breaches of the right to privacy].

<sup>93</sup> [Accompanying sections of the explanatory addendum will outline the ways in which a mediated agreement might be legally enforced (e.g., seeking an order from a judicial mechanism to compel specific performance where a remedial outcome is expressed as a binding contract)].

<sup>94</sup> [Accompanying sections of the explanatory addendum will point out the need for caution here in some cases, drawing the necessary links with other elements in the Annex concerning engagement with State agencies (see in particular paragraph 9.3 above)].



- (c) on the basis of an appropriate risk assessment; and
- (d) in a manner which complies with policies, and commitments or undertakings given to the relevant individuals and/or groups, with respect to confidentiality and protection of the personal safety and well-being of the individuals and/or groups concerned.<sup>95</sup>

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

13.1 The mechanism actively seeks feedback from parties to grievances as to their experiences with the mechanism and its grievance processes and ways that these could be improved.

13.2 The mechanism tracks the performance and effectiveness of its grievance handling processes, and the impacts of its activities (including the impacts of remedial outcomes from their grievance processes), through the use of key performance indicators,<sup>96</sup> the findings from which are used to inform strategies for improvement of performance, effectiveness and impact and future development of the mechanism.

13.3 The mechanism ensures that at regular intervals, and/or at the conclusion of cases (as appropriate), there is a review process for critically evaluating the performance of the mechanism and for identifying lessons that can be used to inform strategies for improvement of performance, effectiveness and impact and future development of the mechanism.<sup>97</sup>

13.4 The mechanism makes use of an independent advisory panel and/or external audits for feedback and guidance in relation to legal and policy compliance in specific instances, for performance monitoring and tracking and to identify lessons for improving the mechanism.

13.5 The mechanism ensures meticulous record keeping, for instance through databases on frequency, patterns and causes of grievances, which can be disaggregated to show patterns of use by different genders and stakeholder groups and then used to help identify areas where

- (a) the effectiveness of the mechanism can be improved, (for instance for remedy seekers who may have difficulty accessing the mechanism and/or who may be at heightened risk of vulnerability and/or marginalisation) and for the purposes of improving strategies for future outreach;

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<sup>95</sup> [Accompanying sections of the explanatory addendum will highlight the particular importance of such policies, procedures and practices in relation to non-State-based grievance mechanisms established for projects and investments in areas of weak governance, such as areas affected by conflict or which are in transition from past conflict. The explanatory addendum will provide examples of the difficult situations such policies, procedures and practices will need to address in practice – including the situation where a grievance process uncovers some criminality on the part of an individual (e.g., a member of staff or an employee of an entity with which there is a business relationship, such as a security provider) and where simply referring the matter to the authorities could expose that person (or others, including witnesses) to serious human rights risks – and possible mitigation actions which might be considered to guard against the risks to life and security of the people concerned, but which also respect the delineation between the roles and responsibilities of non-State-based grievance mechanisms and State-based mechanisms (judicial and non-judicial) mentioned in paragraph 1.3 above].

<sup>96</sup> [Accompanying sections of the explanatory addendum could provide some suggestions as to the kinds of key performance indicators that could be useful].

<sup>97</sup> [Accompanying sections of the explanatory addendum will highlight the vital role of effective non-State-based grievance mechanisms (and especially operational-level grievance mechanisms) in the human rights due diligence conducted by business enterprises. The explanatory addendum will also highlight the importance of incorporating a gender perspective in such review and analysis].

- (b) greater preventative efforts by the relevant business enterprise (or enterprises) should be directed, whether through company-wide, organisational-level or sector-level approaches;<sup>98</sup> and
- (c) the relevant business enterprise (or enterprises) should use its leverage to mitigate adverse human rights impacts which it may have contributed to, or which may be directly linked to its operations, products or services by a business relationship.<sup>99</sup>

### 13.6 Business enterprises

- (a) ensure that grievance mechanisms they administer are sufficiently well resourced to be able to carry out the various feedback, review, analytical and evaluation exercises described above;
- (b) integrate the findings from such exercises across all relevant functions and processes and take appropriate action in response;<sup>100</sup>
- (c) prioritise such actions appropriately, with expedited actions and processes to address the impacts that would be most severe;
- (d) share externally (including through industry, multi-stakeholder and other collaborative initiatives) information relating to types and patterns of grievances that may tend to reveal the possibility of sector-specific and systemic issues which may contribute to or exacerbate business-related human rights harms.

### 13.7 Non-State-based grievance mechanisms responsible for dealing with grievances raised in respect of the business activities of a third-party business enterprise<sup>101</sup>

- (a) make recommendations as to how that business enterprise should integrate the findings from a grievance process across relevant functions and processes and the appropriate action that should be taken in response;
- (b) make appropriate use of such leverage as it may possess in respect of that business enterprise to ensure that relevant remedial outcomes are implemented conscientiously and effectively,
- (c) conduct appropriate follow-up monitoring exercises;
- (d) share externally (including through industry, multi-stakeholder and other collaborative initiatives)<sup>102</sup> information relating to types and patterns of grievances that may tend to reveal the possibility of sector-specific and systemic issues which may contribute to or exacerbate business-related human rights harms.

13.8 Insights gained from the relevant review, evaluation and stakeholder feedback processes<sup>103</sup> are regularly examined alongside feedback and insights gained from other forms of stakeholder engagement for an enhanced understanding of grievance patterns and the underlying systemic issues that may be contributing to such patterns, and the conclusions from

<sup>98</sup> [Accompanying sections of the explanatory addendum will cross-refer to the provisions on the relationship between company-level mechanisms and human rights due diligence below (see paragraph 13.6)].

<sup>99</sup> [Accompanying sections of the explanatory addendum will refer readers to UNGP 19 (and commentary) for further guidance about the appropriate use of leverage in different contexts].

<sup>100</sup> See further UNGP 19 and commentary.

<sup>101</sup> [Accompanying sections of the explanatory addendum will explain that “third party” in this context is most likely to refer to a company which is a signatory to an industry, multi-stakeholder or other collaborative initiative (see further UNGP 30) or which has agreed to resolve a grievance through mediation or arbitration, or some other adjudicative process.]

<sup>102</sup> [Accompanying sections of the explanatory addendum will make the necessary links with the provisions on cooperation between non-State-based grievance mechanisms in Part III of this Annex].

<sup>103</sup> See paragraphs 13.1, 13.2, 13.3 and 13.4 above.

such analysis are then appropriately communicated to stakeholders and relevant State agencies through established channels and networks, along with recommendations for future action.

**Policy objective 14: Operational-level mechanisms are based on engagement and dialogue.**<sup>104</sup>

14.1 Developers of operational-level mechanisms

- (a) take steps to identify the stakeholder groups and local partners and experts with which it will need to engage in order to obtain a thorough understanding of the needs and perspectives of the individuals and communities for whose use the mechanism is intended;
- (b) draw from appropriate local expertise, including community leaders and trusted local partners, as to the most effective and culturally appropriate ways to engage with affected communities and in a manner that ensures that all community members have the opportunity to participate meaningfully in consultation processes and on an equal basis;
- (c) engage with affected communities at the earliest possible point in project planning;
- (d) document a common understanding as to how community engagement will proceed, in order to clarify liaison points, key milestones and what different parties can expect at different points at the process;
- (e) engage closely and conscientiously with affected communities about their wishes and needs;
- (f) provide multiple opportunities and avenues for affected individuals and communities to contribute their views as to the design and operation of the mechanism;<sup>105</sup>
- (g) ensure that there is coherence and an alignment of objectives between the design of the mechanism and other methods of community liaison;
- (h) take steps to ensure that all community members have the opportunity to participate meaningfully in consultation processes and on an equal basis, with particular attention to the needs of people who may be at heightened risk of vulnerability and/or marginalisation; and
- (i) make appropriate adjustments to the design of the mechanism in response to the community feedback received.<sup>106</sup>

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<sup>104</sup> [Accompanying sections of the explanatory addendum will note that, although UNGP 31(h) is concerned with operational-level mechanisms, many of the elements in this section have relevance to a wider range of grievance mechanisms].

<sup>105</sup> [Accompanying sections of the explanatory addendum will provide suggestions as to how this can be done, drawing from ARP III research, such as through “suggestion box” systems, “action-lines,” and participation in relevant committees (e.g. health and safety committee, audit committees, etc.)].

<sup>106</sup> [Accompanying sections could provide further information on the kinds of issues on which it is normally important to seek stakeholder views, including on the scope of the mechanism, methods of communication, methods of raising grievances, language, locations of and timings meetings, involvement of independent mediators or adjudicators, etc.].

#### 14.2 Administrators of operational-level grievance mechanisms

- (a) are committed to (i) resolving grievances, where possible, through dialogue, joint fact-finding and joint problem-solving, and (ii) using third-party mechanisms which are both legitimate and independent<sup>107</sup> where adjudication is needed;
- (b) seek the agreement of the parties prior to (i) joining similar grievances, or grievances raising similar issues of fact, together in the form of a group of collective action, (ii) appointing a third party to investigate, mediate or adjudicate a grievance, and (iii) undertaking any joint investigations with any third party;<sup>108</sup>
- (c) have put in place the policies, procedures and practices needed to ensure that third party adjudicators and mediators are able to carry out their duties independently and objectively.<sup>109</sup>

### **Part III: Enhancing access to effective remedy using non-State-based grievance mechanisms through greater cooperation including in a cross-border context<sup>110</sup>**

**Policy objective 15: Business enterprises cooperate effectively, constructively and proactively with each other to (a) facilitate access to effective non-State-based grievance mechanisms, (b) participate in grievance processes and (c) implement remedial outcomes of such mechanisms.**

15.1 In consultation with relevant stakeholders, business enterprises explore opportunities, including through collaborative, multi-stakeholder initiatives, to cooperate with each other with a view to

- (a) enhancing benefits to (prospective) remedy seekers such as speed of access and remediation, reduced costs and/or transnational reach;<sup>111</sup>
- (b) exchanging information;
- (c) carrying out joint site visits, studies and investigations;<sup>112</sup>

<sup>107</sup> See, in particular, paragraphs 7.6 and 7.7 above.

<sup>108</sup> [Accompanying sections of the explanatory addendum will cross refer to the various provisions in the Annex, and particularly in Part III, on joint investigations].

<sup>109</sup> [Accompanying sections of the explanatory addendum will cross refer to the relevant elements relating to independent processes and decision-making under Policy Objective 7 (on “legitimacy”).]

<sup>110</sup> [Accompanying sections of the explanatory addendum will explain the several different types of cooperation scenarios covered in Part III, namely cooperation (a) between business entities (whether within a business enterprise, such as a multinational enterprise, or between separate business entities that are linked by their commercial relationships) and (b) by businesses with and through industry, multi-stakeholder and other collaborative initiatives. The explanatory addendum will also note that cooperation between non-State-based grievance mechanisms and State agencies (including judicial mechanisms and law enforcement agencies) is addressed in the elements under Policy Objective 9 (on “predictability”), Policy Objective 10 (on “equitability”) and Policy Objective 11 (on “rights-compatibility”).]

<sup>111</sup> [Accompanying sections of the explanatory addendum will provide examples of the different forms this cooperation may take in practice – e.g. shared outsourced service centres providing “triage” assistance, information hubs, jointly operated mechanisms – and, to the extent that space permits will also highlight some of the practical and legal challenges that may arise. The explanatory addendum will also make the necessary links to the provisions of Part II concerning the need for cooperation to be carried out in a manner which is fair to mechanism users, see Policy Objective 9 above (on “equitability”).]

<sup>112</sup> [Accompanying sections of the explanatory addendum could draw attention to the possibility that, as well addressing some of the financial barriers to accessing remedy, cooperation may also result in cost savings and greater efficiencies for businesses, potentially of particular importance to small and medium-sized enterprises.

- (d) developing systems and protocols for allocating responsibilities and costs associated with implementing remedial outcomes; and
- (e) engaging in joint monitoring exercises.

15.2 Business enterprises have taken the necessary steps to ensure that the grievance mechanisms they administer operate in a coherent and mutually reinforcing way, including by;

- (a) raising awareness of staff<sup>113</sup> of the different grievance mechanisms<sup>114</sup> that may be available in different circumstances, how they may overlap, and the referral and/or escalation processes that may exist between them;
- (b) ensuring that relevant staff are able to refer people to the appropriate channels through which to raise different types of grievances, in the event that a grievance (or information that may tend to suggest the presence of a grievance) is reported to that member of staff;
- (c) providing sufficient information to (prospective) remedy seekers for them to be able to identify the grievance mechanisms (or combination of mechanisms) most relevant and appropriate for them, given all the circumstances;
- (d) providing channels through which remedy seekers who are dissatisfied with the outcome of a grievance process can seek further assistance, for instance by way of escalation or referral of the grievance to an alternate grievance mechanism; and
- (e) encouraging staff responsible for administering grievance mechanisms to communicate regularly with a view to identifying and addressing possible gaps in coverage of grievance processes and ways to improve coherence between them.<sup>115</sup>

15.3 Business enterprises share externally (including through industry, multi-stakeholder and other collaborative initiatives) lessons learned and good practice with respect to the design and administration of effective grievance mechanisms and the components of effective remedies for business-related human rights harms in different cases.<sup>116</sup>

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The explanatory addendum will also mention the different ways through which such cooperation can be formalised and recorded, e.g. pursuant to a contract or a memorandum of understanding, or by virtue of having signed up to an industry, multi-stakeholder or other collaborative initiative.]

<sup>113</sup> [Accompanying sections of the explanatory addendum will make it clear that the reference to “staff” here is intended to mean, in the case of a conglomerate or multinational enterprise, staff of subsidiaries or contractors (e.g. franchisees, distributors, suppliers, other contractors) that form part of that enterprise].

<sup>114</sup> [Accompanying sections of the explanatory addendum will make clear that such mechanisms include those that are operated and administrated by the business enterprise itself, or one of its constituent parts].

<sup>115</sup> [Accompanying sections of the explanatory addendum will explain that this element is addressed to situation where a business enterprise operates a number of “specialist” grievance mechanisms that are relevant to different types of business-related human rights harms (e.g. breaches of labour rights, or environmental harms, or health and safety issues). In the case of a multinational business enterprise, there may be “global mechanisms” (e.g. through which people can complain about breaches of standards of the enterprise as a whole, or different parts of it) as well as issue-specific or site-specific mechanisms for the different jurisdictions in which it is active. In addition to asking business enterprises to ensure coherence of approach in the design and function of these mechanisms, the element encourages business enterprises to put in place systems to help ensure that affected individuals and communities receive sufficient information to help them to identify the most appropriate mechanism, or combination of mechanisms, in the circumstances].

<sup>116</sup> [Accompanying sections of the explanatory addendum will provide the necessary links back to the various sections in Part I and Part II above relating to confidentiality and safeguarding].

**Policy objective 16: Business enterprises cooperate effectively, constructively and proactively with each other to improve access to remedy through non-State-based grievance mechanisms for people who have been subjected to business-related human rights abuse within their supply chains.**

16.1 Business enterprises work proactively together to explore the ways in which cooperation between themselves<sup>117</sup> may

- (a) increase the likelihood of effective remedies for business-related human rights harms in specific cases;
- (b) increase their leverage with respect to the operational-level grievance mechanisms operated by their suppliers, and hence their ability to advocate for or to require the establishment of (i) new effective mechanisms and/or (ii) improvements to existing mechanisms in order to increase access to remedy for affected individuals and communities;
- (c) enhance the capacity and bargaining position of suppliers with respect to their other purchasers, as regards the need for, and responsibilities for, remediation for business-related human rights abuses;
- (d) increase their influence with State agencies in the context of advocacy for improved enforcement of legal and regulatory standards and/or law and policy reform; and
- (e) extend the geographical reach and enhance the impact and delivery of relevant outreach, awareness raising and empowerment exercises.

16.2 In consultation with relevant stakeholders, business enterprises document the arrangements they have entered into to achieve any or all of the goals set out in paragraph 16.1 above, using binding approaches where possible, and making suitable provision for regular monitoring and review.

**Policy objective 17: Non-State-based grievance mechanisms cooperate effectively, constructively and proactively with each other to enhance access to remedy for business-related human rights harms.**

17.1 Non-State-based grievance mechanisms explore opportunities to cooperate with each other with a view to

- (a) enhancing outreach and awareness raising with people and communities in different jurisdictions by developing effective working relationships with trusted local partners, including, where relevant, local trade unions;<sup>118</sup>
- (b) pooling and disseminating information regarding the various non-State-based grievance mechanisms that may be relevant in different cases (and the relevant advantages and disadvantages of different courses of action);

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<sup>117</sup> [Accompanying sections of the explanatory addendum will explain the scenarios in which cooperation between business enterprises to address human rights harms in supply chains is likely to be beneficial, such as where there are many businesses purchasing from a single supplier (or group of suppliers)].

<sup>118</sup> [Accompanying sections of the explanatory addendum will make clear the links between this provision and the various provisions in Part II about the importance of understanding the needs and perspectives of remedy seekers].

- (c) creating opportunities for remedy seekers who are dissatisfied with the outcome of a grievance process to seek further assistance, for instance by way of escalation or referral of the grievance to an alternate mechanism;
- (d) exchanging information;<sup>119</sup>
- (e) carrying out joint site visits, studies, investigations and monitoring exercises; and
- (f) developing joint strategies for campaigns and advocacy.

**Policy objective 18: Industry, multi-stakeholder and other collaborative initiatives raise awareness about the benefits of non-State-based grievance mechanisms, and track and disseminate good practice with respect to the design and administration of such mechanisms and remedial outcomes.**

18.1 Industry, multi-stakeholder and other collaborative initiatives

- (a) use their platforms and networks to contribute to awareness-raising and dissemination of information regarding good practice with respect to the design and administration of effective grievance mechanisms and the components of effective remedies for business-related human rights harms in different cases;
- (b) contribute to capacity building through appropriate and sector-specific guidance, training and resources.

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<sup>119</sup> [Accompanying sections of the explanatory addendum will make some suggestions of the kinds of information that may be useful to share in this context, such as information regarding tools, good practices and related innovations and developments (e.g. with respect to case management tools and technologies, and/or techniques for conducting investigations), and information relevant to the presence and management of risks in specific jurisdictions. The explanatory addendum will also highlight the potential usefulness of sharing information relating to patterns of grievances that tend to suggest the presence of systemic problems].

## **Annex II: Model Terms of Reference**

**Model terms of reference addressed to a suitable review body (e.g. Ministry of Justice, law commission or domestic equivalent) to enable a review of the contribution of non-State-based grievance mechanisms to the remedy of business-related human rights abuse (both within the jurisdiction of [the State] and in cross-border cases), and the role of [the State] in facilitating access to remedy through such mechanisms.**

1. The review body is requested to investigate and report on the following matters:
  - a. How do non-State-based grievance mechanisms established in the jurisdiction currently 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 abuse?
  - b. How do non-State-based grievance mechanisms contribute to the effectiveness of domestic law and policy relevant to respect by business enterprises of human rights?
  - c. Which laws, policies and processes are relevant to the establishment and effective functioning of non-State-based grievance mechanisms for dealing with business-related human rights harms in different sectors and contexts?
  - d. What legal reforms or improvements may be needed in order to achieve a comprehensive system for the remedy of business-related human rights abuse, in which (i) administrative, legislative and other non-judicial mechanisms play an essential role in complementing and supporting judicial mechanisms; and (ii) there is enhance policy coherence as between the relevant laws, policies and processes?
  
2. The review body is requested to make recommendations that take into account:
  - a. The UN Guiding Principles on Business and Human Rights;
  - b. Other applicable international standards regarding accountability and access to remedy in cases of business-related human rights abuse;
  - c. Where relevant, the commitments made by [the State] in its national action plan on business and human rights;
  - d. Its findings in relation to the issues described in paragraph 1 above;
  - e. International human rights treaties and other relevant treaties, bilateral and multilateral agreements that [the State] is party to, including, where appropriate, relevant recommendations made to [the State] by relevant treaty bodies and peer-review mechanisms.
  
3. The review process will be public, open, inclusive and evidence-based and will involve:
  - a. A review structure that will provide adequate opportunities for contribution by key stakeholders;
  - b. Proper consultation with legal professionals, criminal justice practitioners, public interest lawyers, members of the judiciary, parliamentarians, academics, (potential) remedy seekers and their representatives, national human rights institutions, civil society organizations, representatives of trade unions and representatives of business;
  - c. An examination of evidence from research, including evidence of experiences in other States with the facilitation of access to remedy for business-related human rights harms through non-State-based grievance mechanisms.