



# **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**

**Discussion Paper**

**19 November 2019**

## Executive Summary

This discussion paper has been prepared as part of an ongoing programme of work convened by OHCHR known as the Accountability and Remedy Project.

Since 2014, OHCHR has received multiple mandates from the Human Rights Council (Resolutions [26/22](#), [32/10](#), and [38/13](#)) to strengthen the implementation of the “Access to Remedy” Pillar of the UN Guiding Principles on Business and Human Rights and thus improve the prospects for corporate accountability and remedy in business and human rights cases.

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](#).

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](#).

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 Human Rights Council in June 2020.

This discussion paper sets out:

1. An explanation of the various research and information-gathering activities that have taken place pursuant to the Human Rights Council’s most recent mandate (Resolution [38/13](#));
2. Key observations arising from the ARP III work; and
3. Preliminary ideas (for discussion) as to the structure and approach of OHCHR’s report to the forty-fourth session of the Human Rights Council.

The key observations discussed in this paper fall under four headings:

#### **A. Current use of non-State-based grievance mechanisms in cases of business-related human rights abuse**

- A.1 Non-State-based grievance mechanisms are generally regarded by stakeholders as a welcome addition to the options available to remedy-seekers

- A.2 Non-State-based grievance mechanisms are viewed as a means by which flexibility and choice for rights-holders can and should be enhanced
- A.3 The quality of stakeholder engagement with respect to the design of a grievance mechanism is a strong indicator of that mechanism’s effectiveness
- A.4 Non-State-based grievance mechanisms tend to be limited in the types of remedies they can provide
- B. Notable trends relating to the design and performance of non-State-based grievance mechanisms**
  - B.1 Growing sophistication of methodologies aimed at giving closer attention to the needs and perspectives of users
  - B.2 Recognition of the importance and value of educational and training activities as an integral part of outreach
  - B.3 Intensification of demands by rights-holders for “independent” grievance mechanisms
  - B.4 Increasing use of binding approaches
  - B.5 Rapid growth in technologies with the potential to improve accessibility, efficiency, and user experiences of grievance mechanisms
- C. Legal, structural, and policy issues in need of further attention and prioritisation**
  - C.1 Maintaining flexibility for rights-holders while avoiding fragmentation and duplication: Where should the balance be struck?
  - C.2 Private grievance mechanisms in a public law setting: Understanding and appreciating the value and role of wider regulatory regimes
  - C.3 Implications of the growth in non-State-based grievance mechanisms for domestic legal development
  - C.4 Global, regional, or local?: Non-State-based grievance mechanisms as a response to cross-border business and human rights challenges
  - C.5 Protection of people from retaliation and intimidation as a result of the actual or potential use of non-State-based grievance mechanisms: The distinct but complementary roles of State-based and non-State-based mechanisms
  - C.6 Agency, autonomy, and effective representation of affected individuals and communities
  - C.7 Rights-compatible outcomes: Understanding and addressing the short-, medium-, and long-term human rights implications of remedial outcomes
- D. Practical implementation of the UNGP “effectiveness criteria”**

***Discussion Questions***

For each section, the ARP III team would like to know:

- Do you agree with the observations made in the section? If not, why not?
- Are there any further issues, challenges, trends, or opportunities that you would like to bring to the attention of the ARP III team? If so, what are these?

The observations and ideas set out in this paper will be presented for discussion at a multi-stakeholder consultation taking place in Geneva on 28 November 2019. Feedback on the contents of this paper is welcome from all stakeholders and should be sent to [business-access2remedy@ohchr.org](mailto:business-access2remedy@ohchr.org) by **15 December 2019**.

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## **Background**

The OHCHR's Accountability and Remedy Project (ARP) is a process aimed at strengthening implementation of the Third Pillar of the UN Guiding Principles on Business and Human Rights (UNGPs) relating to Access to Remedy. Since 2014, OHCHR has completed two phases of ARP (ARP I and ARP II), which focused on State-based judicial and non-judicial mechanisms, respectively.<sup>1</sup> This work was undertaken pursuant to mandates received from the Human Rights Council (see Resolutions [26/22 \(2014\)](#) and [32/10 \(2016\)](#)).

On 6 July 2018, the Human Rights Council adopted Resolution [38/13](#) by consensus, welcoming the work of OHCHR on improving accountability and access to remedy for victims of business-related human rights abuse, and requesting 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."*

In response to this request from the Human Rights Council, OHCHR launched the third phase of its Accountability and Remedy Project (ARP III).

## **Scope**

"Non-State-based grievance mechanisms," as described in the UNGPs,<sup>2</sup> include a vast array of different processes for delivering remedy to adversely affected individuals and communities.

For the purposes of ARP III, such mechanisms have been understood as **any routinized, non-State-based, non-judicial process (i.e., private grievance mechanisms) through which grievances concerning business-related human rights abuse can be raised, and remedy can be sought.**

It was recognised early on in the ARP III work that some prioritisation would be necessary in order to deliver on the Council's mandate within the required timescale. Following a scoping and consultation exercise which took place in 2018, it was decided to focus on three specific types of mechanisms:

- **Company-based grievance mechanisms:** mechanisms established and administered by companies;
- **Grievance mechanisms developed by industry, multi-stakeholder, or other collaborative initiatives:** mechanisms external to companies that administer a set of commitments that the companies have agreed to adhere to; and
- **Grievance mechanisms associated with development finance institutions:** mechanisms through which those adversely impacted by institution-financed projects can seek remedy (e.g., independent accountability mechanisms).

<sup>1</sup> ARP I: [A/HRC/32/19](#) (2016); [A/HRC/32/19/Add.1](#) (2016). ARP II: [A/HRC/38/20](#) (2018); [A/HRC/38/20/Add.1](#) (2018).

<sup>2</sup> UNGPs 28 – 30.

This scoping and consultation exercise also resulted in the identification of five priority themes (or “work streams”) for ARP III.

### **ARP III: Five priority themes**

- **Work stream 1:** ways to meet the “effectiveness criteria” of Guiding Principle 31;
- **Work stream 2:** the relationship between State-based institutions and non-State-based grievance mechanisms (the “public-private” interface);
- **Work stream 3:** cooperation amongst non-State-based grievance mechanisms;
- **Work stream 4:** safeguarding rights-holders from retaliation and intimidation resulting from the actual or potential use of non-State-based grievance mechanisms; and
- **Work stream 5:** meaningful stakeholder involvement in the design and implementation of remedial outcomes.

Further information about the scoping exercise for ARP III, and the rationales for choices as regards focus mechanisms and research priorities can be found in OHCHR’s [November 2018 paper](#).<sup>3</sup>

## **Methodology**

The research methodologies used by OHCHR for the Accountability and Remedy Project have been refined over the three phases of this complex, multi-year project. To ensure that OHCHR’s eventual findings and recommended actions are globally relevant, practical, and implementable, information is collected from as many jurisdictions as possible, drawn from all UN regional groupings, and reflecting a wide range of legal structures, systems, and traditions. Contributions are encouraged from as many stakeholders as possible in order to build a thorough understanding of the needs and perspectives of users of grievance mechanisms in a variety of contexts.

Thus far, information-gathering activities for ARP III have included:<sup>4</sup>

- 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 and 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;

<sup>3</sup> In developing this paper, OHCHR benefited from research carried out in support of ARP III by the Business and Human Rights Catalyst at the University of Manchester, Alliance Manchester Business School. [Non-state based non-judicial grievance mechanisms \(NSBGM\): An exploratory analysis](#) (2018).

<sup>4</sup> Public information about ARP III activities may be found on [the ARP III webpage](#), in particular through [the ARP III Programme of Work](#).

- 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.

### A brief note about the terminology used in this discussion paper

In this discussion paper, “**contributors**” refers to those people and organizations who have contributed to ARP III information-gathering processes, e.g. responding to surveys, sharing studies / reports, being interviewed, participating in consultations, etc. The ARP III team would like to express its gratitude for the many and varied contributions received.

## A. Questionnaire Responses

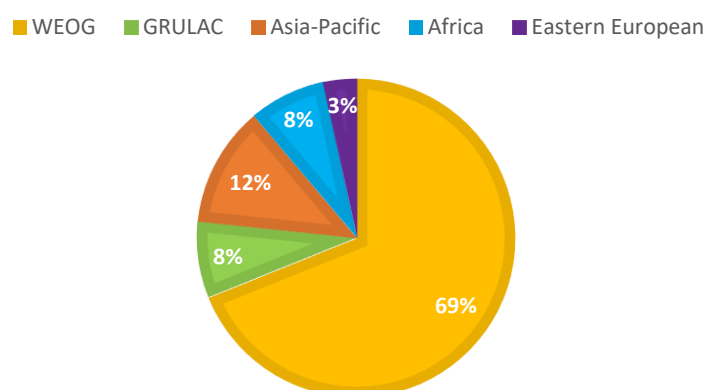
At the beginning of 2019, six different questionnaires were publicly available for response: a questionnaire available to anyone with knowledge of and/or experience with non-State-based grievance mechanisms, and five targeted questionnaires with questions tailored to (1) States; (2) users of mechanisms and their representatives; (3) companies; (4) industry, multi-stakeholder, or other collaborative initiatives; and (5) independent accountability mechanisms.<sup>5</sup>

Stakeholders were invited to answer questions relating to both:

- the design of non-State-based grievance mechanisms with which they were familiar; and
- their experiences with these mechanisms in real-life cases.

OHCHR received 100 responses to these questionnaires. An indication of the breakdown of these responses is provided in the figures below.<sup>6</sup>

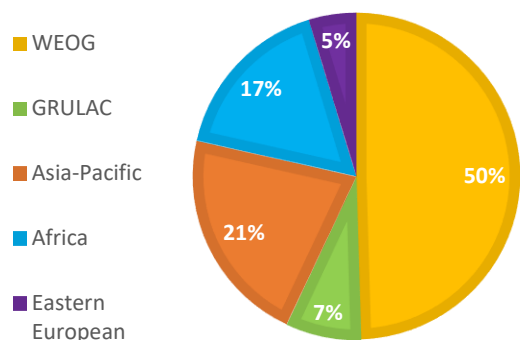
**Fig. 1: Location of respondent, by UN regional group**



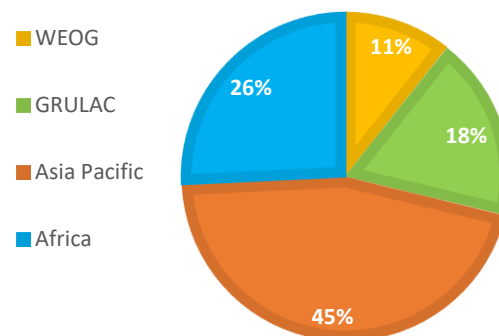
<sup>5</sup> All questionnaires are available on [the ARP III webpage](#).

<sup>6</sup> The acronyms used in the figures correspond to the [UN Regional Groups of Member States](#): GRULAC is the Latin American and Caribbean Group; WEOG is the Western European and Others Group.

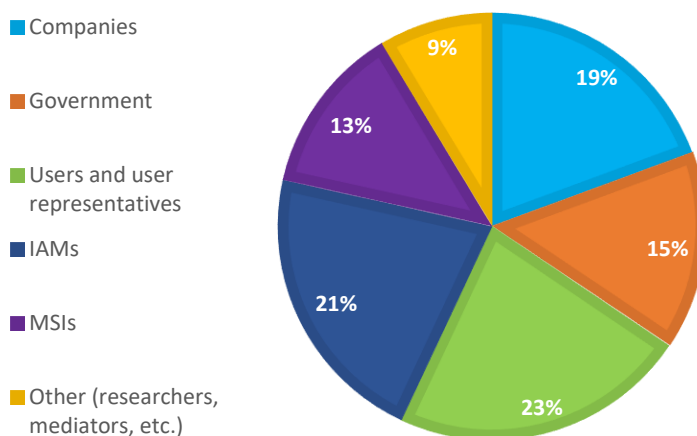
**Fig. 2: Location of mechanism, by UN regional group**



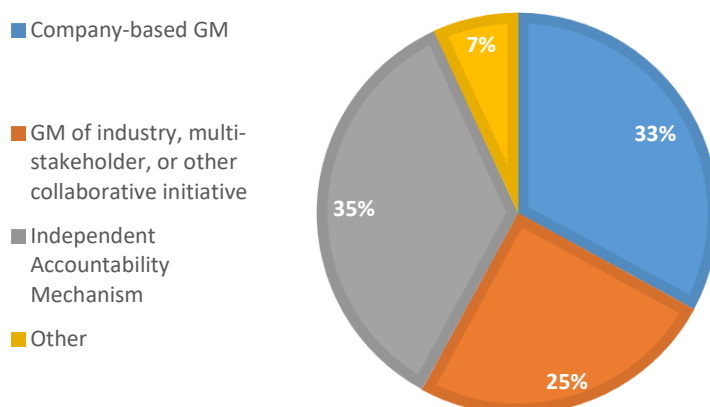
**Fig. 3: Location of grievance, by UN regional group**



**Fig. 4: Respondent stakeholder group**

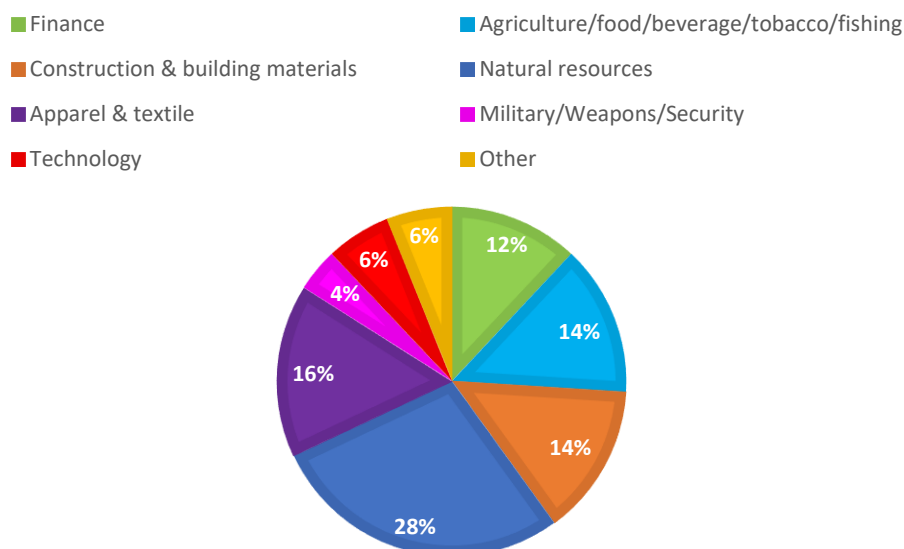


**Fig. 5: Type of grievance mechanism**





**Fig. 6: Sector to which the grievance mechanism chosen by the respondent relates**



## **Key Observations**

### **A. Current use of non-State-based grievance mechanisms in cases of business-related human rights abuse**

#### ***A.1 Non-State-based grievance mechanisms are generally regarded by stakeholders as a welcome addition to the options available to remedy-seekers***

While effective judicial mechanisms are “at the core” of ensuring access to remedy,<sup>7</sup> non-State-based grievance mechanisms “may offer particular benefits such as speed of access and remediation, reduced costs and/or transnational reach.”<sup>8</sup> Research carried out during the course of ARP III confirms this general view, with the growth in number, remits, and range of private grievance mechanisms seen as a largely positive development in principle.

However, reservations were also expressed by many contributors about the design and performance of many of these mechanisms in practice. Recurring comments and criticisms made by contributors included:

- the bureaucratic complexity of eligibility and procedural requirements, making it difficult (if not impossible) for remedy-seekers (and particularly those at risk of vulnerability or marginalisation) to access grievance mechanisms without significant support from third parties (such as legal counsel or civil society organisations) (see C.6);
- the inability of many of these grievance mechanisms to deliver effective remedies *in fact*, owing to a range of factors, including restricted mandates or capacity (legal, financial, and practical) of grievance mechanisms (see further A.4);
- fragmentation of remedial approaches creating a complex and confusing remedial landscape for remedy-seekers to navigate, owing to lack of coordination between (i) the

<sup>7</sup> UNGP 26 Commentary.

<sup>8</sup> UNGP 28 Commentary.

relevant mechanisms, (ii) companies and other organizations, or (iii) private grievance mechanisms and relevant State agencies (both judicial and non-judicial) (see further C.1, C.2, and C.3).

### ***Discussion Questions***

- Do you agree with the observations made in this section? If not, why not?
- Are there any further issues, challenges, trends, or opportunities that you would like to bring to the attention of the ARP III team? If so, what are these?

### ***A.2 Non-State-based grievance mechanisms are viewed as a means by which flexibility and choice for rights-holders can and should be enhanced***

Many contributors have highlighted the importance of maintaining, and enhancing, flexibility and choice for rights-holders. The greater the number of viable options open to a remedy-seeker, the better able remedy-seekers are to tailor a remedial strategy to their own needs and circumstances.<sup>9</sup> This may mean pursuing a combination of remedies in both State-based and private settings. In practice, the launch of a regulatory investigation or the initiation of court proceedings can generate momentum for parallel or overlapping complaints using company-based mechanisms, those administered by multi-stakeholder initiatives, or independent accountability mechanisms (IAMs). However, there are cases where this degree of flexibility is stifled. For instance, parties may refuse to engage in mediation at the same time as ongoing adversarial processes. And grievances being resolved by private remedial mechanisms can get “stuck” pending resolution of some legal issue in the courts.

Cases in which remedy-seekers have been obliged to enter into agreements restricting their ability to pursue multiple remedy pathways raise obvious concerns, not least because of the power imbalances that exist between the remedy seeker and the business enterprise(s) concerned. The Commentary to UNGP 29 states that operational-level grievance mechanisms “should not be used to undermine the role of legitimate trade unions in addressing labour-related disputes, nor to preclude access to judicial or other non-judicial grievance mechanisms.” There appears to be widespread support amongst contributors to ARP III that waivers of legal rights should not be sought as a condition of *accessing* non-State-based grievance mechanisms.

However, as part of a final settlement, situations may arise where businesses seek legal waivers from remedy-seekers to prevent future adjudication of a claim, perhaps citing the need for legal certainty at the end of a binding dispute resolution process (see B.4). There are differing views about the circumstances in which such legal waivers may be appropriate, the safeguards which may be needed to address inequalities in bargaining positions, and the acceptable scope of such waivers. OHCHR has argued in the past that such waivers should not be sought, but in case they are, they should be as narrowly construed as possible, and in no circumstance should such a waiver seek to preclude criminal proceedings or prevent victims from participating in any criminal case.<sup>10</sup>

<sup>9</sup> See Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises: “Access to effective remedies under the Guiding Principles on Business and Human Rights: Implementing the United Nations Protect, Respect and Remedy Framework,” [A/72/162](#) (2017) (outlining an “all roads to remedy” approach).

<sup>10</sup> [Opinion issued by OHCHR in response to letters regarding the Porgera remediation framework](#), pp. 7-9 (2013).

### ***Discussion Questions***

- Do you agree with the observations made in this section? If not, why not?
- Are there any further issues, challenges, trends, or opportunities that you would like to bring to the attention of the ARP III team? If so, what are these?

### ***A.3 The quality of stakeholder engagement with respect to the design of a grievance mechanism is a strong indicator of that mechanism's effectiveness***

This is a proposition which seems widely recognised, with many contributors from the design or administration side acknowledging the need to strengthen stakeholder engagement around at least some of their processes. In the course of research for ARP III, OHCHR has gathered information on a range of different techniques that have been used by those designing and administering grievance mechanisms to help them, among other things, to:

- understand user perspectives and needs (see further B.1),
- gain feedback that can then be used for continuous learning,<sup>11</sup>
- help address imbalances in power and resources (see further B.2), and
- help build stakeholder trust (see further section D).

On the other hand, contributors have also shared examples where a lack of attention to user needs has resulted in sub-optimal grievance processes which are difficult to access and navigate and which fail to engender stakeholder trust. An observation frequently made in this context is that prioritising *institutional* needs over *remedy-seeker* needs remains a problem.

There are a number of reasons why stakeholder engagement can prove challenging in practice. In some cases, for example, for “global” mechanisms covering multiple issues (see further C.4), prospective user groups may be difficult to identify in advance and may have wildly different expectations and needs. Where people live in remote locations, it can be difficult to locate and engage meaningfully with the relevant people. Cultural differences can get in the way of proper understanding of day-to-day realities, risks, inequalities, vulnerabilities, and practical needs. Ensuring that different perspectives are properly represented in stakeholder discussions – such as the perspectives of those who may be at heightened risk of vulnerability or marginalisation – can be a further practical challenge. Designers and administrators of non-State-based grievance mechanisms should in particular be alert to the economic, social, and cultural pressures that can hamper the ability of women to contribute to discussions about the design of mechanisms, to raise complaints about the harms they may have suffered, or to participate in remediation processes.<sup>12</sup>

The strong message from contributors has been that *meaningful* stakeholder engagement takes time, effort, patience, and commitment. It cannot be glossed over or rushed, and “tick-box” type processes do not work. The aim should be for dynamic processes, which give voice to a range of perspectives, and which encourage a fair, informed, and constructive exchange of views. In some cases, creative solutions are called for, for example to ensure that local traditions are respected and to help bridge cultural differences between developers of grievance mechanisms and those individuals and communities for whom they are intended. These efforts

<sup>11</sup> UNGP 31(g) and Commentary.

<sup>12</sup> Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on Gender dimensions of the Guiding Principles on Business and Human Rights, [A/HRC/41/43](#), Annex, ¶¶ 57 – 62 (2019).

frequently pay dividends in the longer term, in the form of enhanced stakeholder awareness, capacity, and trust.

#### ***Discussion Questions***

- Do you agree with the observations made in this section? If not, why not?
- Are there any further issues, challenges, trends, or opportunities that you would like to bring to the attention of the ARP III team? If so, what are these?

#### ***A.4 Non-State-based grievance mechanisms tend to be limited in the types of remedies they can provide***

In many cases, the remedies that may be obtained from non-State-based grievance mechanisms are only partial (e.g., because they can address only the future conduct of the company concerned, or because the mechanism has insufficient leverage over the company in question). Users of such mechanisms and their representatives have highlighted the limited mandates of many non-State-based grievance mechanisms (particularly those associated with certification bodies) and the implications that this has on the types of remedies that can be obtained and implemented. This is not to imply that private grievance mechanisms with limitations such as these do not have value as part of a multi-pronged remedial strategy. Nevertheless, these comments should prompt some reflection about whether the mandates and resources of many of these mechanisms are sufficient to meet the challenges in front of them. If not, further development is needed to bridge any present gaps between stakeholder expectations and what is deliverable in practice.

#### ***Discussion Questions***

- Do you agree with the observations made in this section? If not, why not?
- Are there any further issues, challenges, trends, or opportunities that you would like to bring to the attention of the ARP III team? If so, what are these?

### **B. Notable trends relating to the design and performance of non-State-based grievance mechanisms**

#### ***B.1 Growing sophistication of methodologies aimed at giving closer attention to the needs and perspectives of users***

Although proper stakeholder engagement is recognised as key to the establishment of effective grievance mechanisms (see A.3), there seems to be less agreement about what constitutes meaningful stakeholder engagement *in practice*. To help inform discussions around this important issue, ARP III researchers have been gathering information about practical strategies adopted by non-State-based grievance mechanisms to better understand the needs and perspectives of stakeholders. Such strategies can help to improve the experience of users, enhance stakeholder trust, and ensure that there is a shared interest in the mechanism's success.<sup>13</sup>

A number of contributors have highlighted a growing interest among practitioners in “user-centred design” methodologies, which ensure that the needs and perspectives of prospective

<sup>13</sup> See UNGP 31(h) and Commentary.

users of the grievance mechanism are given close attention at each stage, from inception to launch.<sup>14</sup> Although methodologies will vary according to context and need, their common feature is that they are highly interactive processes that aim to give rights-holders a more active, ongoing, and collaborative role in the development of grievance mechanisms, resulting in mechanisms that better serve *both* institutional and user needs. Although these methodologies are still at an early stage of development, they seem to help uncover and challenge widely-held preconceptions (including misconceptions) about the needs and priorities of different stakeholder groups which can undermine the effectiveness of remedial efforts in practice.

Some contributors have shared information about grievance mechanisms which have been proposed, developed, and implemented by rights-holders themselves. “Worker-driven” compliance and remedial systems appear to be gaining traction in the agricultural sector, in particular. Developed by workers’ rights advocates in response to serious and endemic human rights abuses, these initiatives rest on legally binding commitments by retailers to purchase certain products only from certified producers. Those familiar with this particular model – which relies for its effectiveness on a combination of binding contractual commitments by retailers (see further B.4), close monitoring, a range of opportunities for direct input by workers (both structured and *ad hoc*), and market incentives for its enforcement – report high levels of confidence and satisfaction among users of the mechanisms.

Contributors have also drawn attention to recent attempts at “community-driven” models, in which potentially affected communities take on the responsibility for (at the very least) the initial design of grievance mechanisms for projects posing human rights-related risks. Advocates of these models argue that communities are more likely to get a grievance mechanism which they can trust and confidently access, and companies can have the benefit of a grievance mechanism for which there is built in “community buy-in.”

At the same time, there remains a number of practical challenges with these models. Significant among these is the amount of time it can take to complete the groundwork needed to develop a grievance mechanism that has the support of the community and which the relevant people can confidently use. As well as being resource-intensive, this can be problematic in a fast-moving commercial and regulatory situation, for instance where licences have been, or are about to be, granted. Other challenges include:

- assessing when and how to seek and secure the “buy-in” of the relevant company (a question which will usually be bound up with the extent to which the community or workers enjoy leverage with respect to the company’s planned activities);
- how to ensure that different viewpoints within a community, or between affected communities, are properly represented and taken into account (see further C.6);
- ensuring that gender perspectives are properly represented and taken into account;
- the best ways to give “teeth” to remedial agreements and settlements (see B.4);
- how to link the mechanisms effectively and appropriately with relevant regulatory processes (see further C.2 and C.3); and
- how to ensure that the opportunities for further capacity-building associated with the mechanism are recognised and capitalised upon, consistent with the goals of “continuous improvement.”<sup>15</sup>

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<sup>14</sup> The term “co-design” is sometimes used to indicate a form of “design partnership” between the relevant company, initiative, or institution and a prospective user group.

<sup>15</sup> UNGP 31(g).

### ***Discussion Questions***

- Do you agree with the observations made in this section? If not, why not?
- Are there any further issues, challenges, trends, or opportunities that you would like to bring to the attention of the ARP III team? If so, what are these?

### ***B.2 Recognition of the importance and value of educational and training activities as an integral part of outreach***

Training programmes aimed at raising awareness among stakeholders about the existence and purpose of a grievance mechanism, and how to use it, can be a valuable way of building stakeholder trust. For instance, it is reasonably common to see an upswing in contact between workers in a factory and the relevant grievance mechanism immediately following a training exercise involving factory staff. The nature of the training, and the mode of delivery, varies according to need and will often involve awareness raising with respect to the substance of rights (e.g. worker rights), and the various ways in which the mechanism can enforce these rights and help resolve grievances. Involving peers or fellow community members in awareness raising activities appears to be more effective than relying on experts from remote places.

In addition to having a positive effect on accessibility and stakeholder trust, such activities can also enhance the effectiveness of grievance mechanisms in other ways, for instance in terms of the predictability of mechanisms (e.g., through providing technical support or free advisory services). When directed towards addressing power imbalances, such activities play a vital role in improving the equitability of grievance mechanisms (see further C.6).

However, while there seems to be widespread agreement about the importance of educational and training exercises in principle, some contributors have raised concerns about the manner in which these programmes are delivered in practice. In particular, criticisms have been lodged regarding a lack of cultural awareness and sensitivity in some cases, and a lack of awareness of structural challenges, resulting in simplistic and unrealistic advice that undermines, rather than enhances, stakeholder confidence.

### ***Discussion Questions***

- Do you agree with the observations made in this section? If not, why not?
- Are there any further issues, challenges, trends, or opportunities that you would like to bring to the attention of the ARP III team? If so, what are these?

### ***B.3 Intensification of demands by rights-holders for “independent” grievance mechanisms***

The degree of independence of a grievance mechanism from relevant business interests clearly has a significant bearing on its credibility with stakeholders. Civil society organisations have long voiced concerns about the potential for these mechanisms to be a front for “corporate whitewash.” This is particularly the case for company-based mechanisms, about which there

is widespread scepticism about their ability to pursue a matter seriously and impartially (on the basis that the company is effectively being called upon to sit in judgment of its own conduct).<sup>16</sup>

In response, many mechanisms have been exploring ways to introduce a degree of separation between grievance decision-making processes and the companies, corporate departments and/or management functions likely to be, or which could potentially be, implicated in relevant complaints. Contributors have identified a range of ways that this can be done, from setting up independent advisory boards (e.g., to advise a dispute resolution panel), to delegating dispute resolution and decision-making to external expert bodies.

Other features which may have a bearing on the level of independence of grievance mechanisms include:

- processes for recruitment of grievance mechanism personnel (e.g. whether such activities are carried out by company management or external stakeholders),
- bans on staff moving directly from the relevant business enterprise to the grievance mechanism (and vice versa),
- reporting lines (e.g. whether the grievance mechanism reports directly to management or the board of the relevant company),
- policies for removal of grievance mechanism personnel (e.g. whether removable by management or the company board only), and
- policies on conflicts of interest.

#### ***Discussion Questions***

- Do you agree with the observations made in this section? If not, why not?
- Are there any further issues, challenges, trends, or opportunities that you would like to bring to the attention of the ARP III team? If so, what are these?

#### ***B.4 Increasing use of binding approaches***

Many contributors have drawn attention to the limitations of voluntary commitments as a basis for ensuring remedy through non-State-based grievance mechanisms. Recent years have seen the emergence of new approaches that are designed to give greater “teeth” to both the grievance mechanisms themselves, as well as the remedial outcomes of grievance processes. Examples include:

- where companies have entered legally binding commitments (a) to resolve human rights-related grievances in a certain way and/or (b) to abide by the determinations of a specified grievance process (e.g., for companies participating in a multi-stakeholder initiative or a certification scheme);
- making legal provision for the possibility of arbitration of disputes in case that (a) dialogue-based processes (e.g. mediation) do not yield mutually-acceptable outcomes, or (b) a party to a dispute wishes to appeal an initial determination; and
- expressing remedial settlements in the form of legally enforceable agreements.

<sup>16</sup> With respect to operational-level grievance mechanisms, the Commentary to UNGP 31(h) provides: “Since a business enterprise cannot, with legitimacy, both be the subject of complaints and unilaterally determine their outcome, these mechanisms should focus on reaching agreed solutions through dialogue. Where adjudication is needed, this should be provided by a legitimate, independent third-party mechanism.”

A number of contributors have highlighted the difficulties in achieving corporate “buy-in” to binding approaches in practice. However, discussions with experts have helped to clarify the contexts in which binding approaches are most likely to be used. Typically, these are contexts in which there are significant reputational drivers or market incentives to participate in a particular scheme (e.g. a certification scheme whereby companies with abusive practices are excluded from markets). Within these schemes, the use of an “arbitration backstop” is recognised as an important feature. Arbitration practitioners have highlighted the value of ultimate recourse to binding arbitration as a way of giving additional impetus to attempts to resolve grievances through mediation processes.

### *Discussion Questions*

- Do you agree with the observations made in this section? If not, why not?
- Are there any further issues, challenges, trends, or opportunities that you would like to bring to the attention of the ARP III team? If so, what are these?

### ***B.5 Rapid growth in technologies with the potential to improve accessibility, efficiency, and user experiences of grievance mechanisms***

Contributors have drawn attention to many ways in which new technologies can be used to facilitate access to non-State-based remedy, for instance through helping document abuses, managing and keeping track of cases, and allowing anonymized communication. Such technologies have, among other things,

- provided a means through which people can securely share information in a format that can be readily used in grievance processes (e.g., encrypted, geo-located, and time-stamped videos);
- provided the means through which affected individuals can find, support, and coordinate with each other, thereby improving the prospects for (and impact of) group action;
- provided tools through which communities can communicate speedily with legal counsel and supporting civil society organisations (see C.6);
- provided means through which persons with disabilities can more easily access grievance mechanisms, for instance through features for those with reduced sight, hearing, or mobility;
- increased the speed with which problems can be brought to the attention of managers (e.g. through “worker voice” systems);
- enabled grievance mechanism administrators to efficiently gather, securely store, and quickly analyse data relating to reported grievances (e.g. among workers in factories); and
- provided analytics of trends and patterns in complaints, allowing business enterprises to more easily identify systemic problems and adapt their practices accordingly.

On the other hand, contributors have also highlighted the limitations of certain technologies. For instance, online reporting systems will not be appropriate in cases where remedy-seekers need immediate human assistance, such as from trained counsellors in complex cases involving serious abuse. Scepticism has also been expressed about the extent to which reporting tools have a real impact on business practices. Growing reliance on technological solutions raises obvious safeguarding and privacy-related concerns (see further C.4) but there is often a lack of clarity with respect to how these are addressed in practice. Further concerns have been raised



about the risk that a failure to fully grapple with the “digital divide,” as well as the implications of low levels of literacy in many communities, may exacerbate inequalities with respect to access to remedy. Clearly, the observations elsewhere in this paper with respect to the need for designers of grievance mechanisms to engage more proactively with rights-holders (see B.1) apply equally to designers of digital tools employed by private grievance mechanisms.

### ***Discussion Questions***

- Do you agree with the observations made in this section? If not, why not?
- Are there any further issues, challenges, trends, or opportunities that you would like to bring to the attention of the ARP III team? If so, what are these?

## **C. Legal, structural, and policy issues in need of further attention and prioritisation**

### ***C.1 Maintaining flexibility for rights-holders while avoiding fragmentation and duplication: Where should the balance be struck?***

A possible tension exists between competing objectives of enhancing flexibility and choice for rights-holders on the one hand (see A.2) and avoiding potential for confusion, duplication, and inefficiencies on the other. For instance, while many contributors have spoken of the need to dramatically improve the availability and accessibility of *realistic* routes to *effective* remedy, a number also highlighted problems that arise when potential users are confronted with several different grievance mechanism options (e.g., mechanisms at a factory, brands purchasing products from the same factory, and multi-stakeholder initiatives).

This has led to calls for streamlining and consolidation of company-based approaches to handling grievances and delivering remedies, perhaps through industry, multi-stakeholder or other collaborative initiatives. The ARP III programme of work has included a work stream dedicated to understanding the circumstances in which greater cooperation between companies may be beneficial from the perspective of enhancing accountability and remedy in cases of business-related human rights abuses, and the challenges that may be encountered in implementing such arrangements.

There are circumstances in which the ability of a company to deliver an effective remedy on its own are limited. For instance, competitive pressures may be such that sufficient leverage to bring about change can be achieved only through joint action. Alternatively, it may be difficult to identify a causal relationship between the activities of a single company and the harm. In such cases, cooperation is not merely advantageous to achieving an *effective* remedy, but arguably necessary.

Cooperation between companies (or between different types of mechanisms) can take various forms, including joint investigations, information and evidence sharing, and sharing resources and costs. However, information gathered in the course of ARP III shows that successful collaboration by groups of interested companies (e.g. purchasers buying goods from a single factory) can be difficult to achieve in practice. Examples of obstacles to effective collaboration have included:

- differences between background domestic legal regimes (e.g. relating to tort-based liability) leading to different perceptions of legal risk by parent companies (see further C.3);

- different interpretations as to what the “corporate responsibility to respect human rights” involves in practice, leading to disagreements as to how responsibility for remedy should be allocated between the companies concerned; and
- the short-term nature of purchasing arrangements, meaning that there may not be an easily-identifiable and stable group of companies with which to work.

Many contributors (in particular those associated with multi-stakeholder initiatives) have acknowledged the need to strengthen cooperation frameworks. In addition to the potential benefits for specific groups of remedy-seekers, a further potential was noted in terms of the ability of collaborative arrangements to yield greater insights in relation to systemic issues or underlying problems (see further C.2). Collaborative efforts could also help improve efficiency and cost-effectiveness of corporate remedial efforts, especially for small and medium-sized enterprises. However, further consideration is needed of the implications of greater collaboration between companies in terms of tailoring and pursuing remedial strategies best suited to rights-holder needs (see further A.2 and C.6).

#### ***Discussion Questions***

- Do you agree with the observations made in this section? If not, why not?
- Are there any further issues, challenges, trends, or opportunities that you would like to bring to the attention of the ARP III team? If so, what are these?

### ***C.2 Private grievance mechanisms in a public law setting: Understanding and appreciating the value and role of wider regulatory regimes***

Responses to various information-gathering activities for ARP III suggest that the points of intersection between private and public remedial processes are not well understood. For instance, when asked about sources of guidance and information for the establishment of new grievance mechanisms, very few survey respondents mentioned “domestic legal regimes.”

On the other hand, focussed work with legal practitioners from diverse jurisdictions has highlighted numerous points of intersection between private remedy and public regimes which can have a bearing on the effectiveness of non-State-based grievance mechanisms in practice. Such regimes include criminal law, laws relating to civil wrongs, transparency law, competition law, trading standards, laws on “fair dealing,” privacy and data protection legislation, employment and industrial relations laws, contract law, banking law, property law, laws on healthcare, bankruptcy law, defamation law, laws on arbitration (including laws on recognition of foreign arbitration awards), and whistle-blower protection.

Although non-State-based grievance mechanisms are often set up with the intention of supplementing or “filling gaps” in domestic regulatory systems, the tendency to view private grievance processes and public law regulation as somehow “apart” from each other is potentially counterproductive for a number of reasons. Not only does this cut across the responsibility of every State under international law to respect, protect, and fulfil human rights, it also obscures the vital role of the State with respect to the effectiveness of these types of mechanisms (with attendant consequences for legal development) (see further C.3). The likely consequence is that opportunities for pursuing complementary, mutually reinforcing processes in individual cases are being overlooked.

This seems to be borne out by the ARP III survey outcomes. Despite there being broad recognition of the need for good working relationships between operators of private grievance mechanisms and relevant State agencies (including regulators and law enforcement), few examples were given of private grievance mechanisms with clear policies and protocols with respect to engagement with State agencies (e.g. in the event that criminal conduct is discovered). A further potential disadvantage of this siloed approach is that opportunities to improve the effectiveness of private grievance mechanisms by capitalising on the provisions of wider domestic regimes (e.g. regimes relating to whistle-blower protection) may be missed.

#### ***Discussion Questions***

- Do you agree with the observations made in this section? If not, why not?
- Are there any further issues, challenges, trends, or opportunities that you would like to bring to the attention of the ARP III team? If so, what are these?

### ***C.3 Implications of the growth in non-State-based grievance mechanisms for domestic legal development***

The growth of non-State-based grievance mechanisms raises complex and challenging policy questions about the correct allocation of “regulatory” roles between public and private actors. While the benefits of private grievance mechanisms as a means of relieving the burden on courts and regulatory authorities seem widely recognised and acknowledged, some contributors used the opportunity of ARP III information-gathering activities to draw attention to some potential pitfalls of a growing reliance on private regulation. Some pointed out the problem of duplication of inspections creating a potentially confusing (not to mention inefficient) situation for companies and affected people (especially workers) (see also C.1). Others pointed out the risk that State agencies could become complacent and begin over-relying on business-led remedial efforts. It was also suggested that in some cases people may be favouring private mechanisms over public ones in part because of a perception that safeguarding arrangements are better under private mechanisms (see further C.5). Given the primacy of States as guarantors of human rights under international law, this is obviously of great concern.

Consistent with the above, there appears to be a general disengagement by State agencies in the activities of private grievance mechanisms relevant to business and human rights, despite the regulatory implications. One survey respondent observed that regulatory agencies can sometimes be unsure of their proper role; while they may wish to support the creation of more options for obtaining private remedies, they are wary of interfering too much and blurring the lines between “official” and private activities.

#### ***Discussion Questions***

- Do you agree with the observations made in this section? If not, why not?
- Are there any further issues, challenges, trends, or opportunities that you would like to bring to the attention of the ARP III team? If so, what are these?

#### ***C.4 Global, regional, or local?: Non-State-based grievance mechanisms as a response to cross-border business and human rights challenges***

Over the course of the project, ARP III researchers have gathered information on a diverse range of non-State-based grievance mechanisms. These have included mechanisms which are “global” in nature, grievance mechanisms with a “regional” focus, and grievance mechanisms established for specific sites or factories.

The standards enforced through “global” corporate grievance mechanisms will in many cases find expression in a corporate code of conduct in which a parent company sets out its expectations of staff, subsidiaries (and their staff), contractors, customers (e.g. in the case of banks), suppliers or distributors, or a combination of the above. That company may invite complaints from any person, wherever located in the world, about possible breaches of the human rights commitments the relevant company has made.

Other examples of grievance mechanisms with “global” or “regional” scope include those operated by industry, multi-stakeholder, or other collaborative initiatives aimed at raising the human rights standards of business enterprises. For instance, through certification bodies, people wishing to complain about breaches by companies of certification standards, wherever they may be, can do so through specially constituted processes.

An obvious set of challenges facing any “global” grievance mechanism are the difficulties making the mechanism known, relevant, and responsive to stakeholder groups in diverse legal and operational contexts. An often-made comment is that, from the perspective of impacted persons, the grievance mechanisms of foreign brands, buyers, or parent companies can seem very remote. Similarly, head office staff may not necessarily have ready access to the expert knowledge needed to ensure that grievance mechanisms, and the remedial outcomes generated by them, are effective on the ground. ARP III information-gathering activities have uncovered many examples where problems may have been headed off by local knowledge, e.g. where grievance processes did not work well, where community tensions risked becoming exacerbated, or where potential difficulties with the delivery of remedies had not been fully understood.

Many contributors have noted that organizations could benefit from much closer consultation with local stakeholder groups and the inclusion of more “local content and input” in the design and administration of grievance (see also A.3 and B.1). In particular, a number of contributors have suggested that working more closely with local trade unions would greatly enhance understanding of day-to-day issues and hardships faced by workers, and the differing impacts that specific activities may have with respect to male and female workers, as well as workers at particular risk of vulnerability or marginalisation, such as migrant workers. Examples of steps taken to try to make grievance mechanisms more relatable to prospective users include employing outreach and liaison officers drawn from local communities, ensuring regular contact with local caseworkers, and providing local telephone helplines.

#### ***Discussion Questions***

- Do you agree with the observations made in this section? If not, why not?
- Are there any further issues, challenges, trends, or opportunities that you would like to bring to the attention of the ARP III team? If so, what are these?

### ***C.5 Protection of people from retaliation and intimidation as a result of the actual or potential use of non-State-based grievance mechanisms: The distinct but complementary roles of State-based and non-State-based mechanisms***

When asked about approaches to the protection of people against reprisals and intimidation resulting from the actual or potential use of non-State-based grievance mechanisms (“safeguarding”), contributors representing grievance mechanisms have provided little information beyond guarantees of confidentiality for remedy-seekers. At the same time, when asked about their main concerns about accessing private grievance mechanisms many past or prospective users of these mechanisms have cited concerns about retaliation and harassment. A number of contributors drew attention to the deteriorating security environment for human rights defenders in many jurisdictions. Clearly, fear of retaliation as a result of accessing grievance mechanisms seriously undermines the legitimacy and accessibility (and hence effectiveness) of these mechanisms. Some have drawn attention to the ways that the identity of a complainant might be discovered notwithstanding confidentiality guarantees (e.g. as a result of a failure to provide a private place for witness statements). A number of grievance mechanism users have urged a more targeted approach to safeguarding, informed by a detailed risk assessment process that takes account of the relevant operating environment, the state of civic space, and instances of reprisals against human rights defenders.

The concerns about safeguarding clearly speak to wider failures by law enforcement bodies and regulatory agencies in many jurisdictions to effectively police such cases. Beyond severely undermining trust in the ability of the relevant mechanism to deliver a beneficial outcome, these failures contribute to a sense of impunity on the part of abusers.

Against this background of failure and mistrust, it is not surprising when people also show reluctance to initiate non-State-based grievance processes that may result in referrals of complaints to law enforcement processes without their consent. It is clearly important for the policies and procedures of non-State-based grievance mechanisms on interactions with State agencies (see C.2) to take these particular safeguarding risks into account.

Moreover, and in further illustration of the points made above that non-State-based grievance mechanisms do not exist in a vacuum (see C.2 and C.3), States have clear duties under international law to ensure sufficient legal protections for people at risk of retaliation and intimidation. In addition to physical abuse, various kinds of psychological and economic abuse are common. These more subtle forms of retaliation and intimidation may not be well understood by law enforcement and regulators. A proper understanding of the range of retaliation and intimidation tactics that may be deployed against users of non-State-based grievance mechanisms is needed for relevant background legal regimes to be developed and implemented effectively.

#### ***Discussion Questions***

- Do you agree with the observations made in this section? If not, why not?
- Are there any further issues, challenges, trends, or opportunities that you would like to bring to the attention of the ARP III team? If so, what are these?

### ***C.6 Agency, autonomy, and effective representation of affected individuals and communities***

Although many non-State-based grievance mechanisms hold out the promise of being directly and readily accessible by affected individuals and communities, the balance of opinion from users and their representatives is that they are actually not. Language, educational, technical, and technological barriers make some form of assistance necessary in many cases.

This lack of direct accessibility can place a considerable burden on civil society organisations that help affected individuals or communities navigate the grievance process. Civil society organisations seem to be the largest providers of assistance, although community organisations, legal aid “hubs,” and *pro bono* legal service providers also play an important role.

Despite the strenuous efforts made by many civil society organisations to help affected individuals and communities access non-State-based grievance mechanisms, the lack of “equality of arms” between companies and affected people remains an intractable problem in many (if not most) cases. Some examples of strategies that have been used to assist affected individuals and communities include corporate financial assistance for hiring experts and legal counsel, and making confidential information available to auditors and lawyers for review.

Where complaints are complex, involving multiple individuals and/or communities with diverse perspectives and preferences, it can be challenging to identify the appropriate person (or persons) to represent the interests of affected people. As a number of contributors have advised, the people claiming to represent the interests of a community may not have that authority *in fact*, or be suitably qualified to act. Detailed inquiries are required, not just into the claims of putative representatives but also into the decision-making structures that they rely upon. This can require time, patience, and effort. Where tensions are found between traditional decision-making structures and international human rights norms, culturally-sensitive workarounds should be sought. Some contributors highlighted the value of “pre-agreements” as a way of providing clarity to all sides about the elements of a novel process, which will include details of which parties will be representing which interest groups, and the preferred methods of consultation.

#### ***Discussion Questions***

- Do you agree with the observations made in this section? If not, why not?
- Are there any further issues, challenges, trends, or opportunities that you would like to bring to the attention of the ARP III team? If so, what are these?

### ***C.7 Rights-compatible outcomes: Understanding and addressing the short-, medium-, and long-term human rights implications of remedial outcomes***

In addition to the inadequacy of many remedial outcomes *per se*, contributors have provided examples of cases where inadequate attention by non-State-based grievance mechanisms to the practicalities of delivering a remedy in a particular social, political, or operating context has resulted in further adverse impacts for individuals and communities. For instance, it was pointed out that the lack of ready access to banking services and financial advice, or the presence of underlying social problems such as conflict, drug and alcohol dependency, and domestic violence, can have implications for the way in which financial settlements can be safely, securely, and fairly distributed between individuals and groups. Lack of awareness and

sensitivity with respect to prevailing social attitudes towards women can also contribute to further mistreatment and isolation of female sufferers of sexual harassment and abuse. Disagreements within communities about the management of a community trust fund, or how settlement funds should be allocated between different projects, can exacerbate community tensions and undermine the effectiveness of decision-making structures and institutions.

Greater involvement of rights-holders in the design of grievance mechanisms and remedies (see B.1) can help those responsible for administering non-State-based grievance mechanisms anticipate these potential risks and address them more effectively. Ensuring that there are processes for feeding back “lessons learned” to relevant decision-makers within the body responsible for the mechanism can help to reduce the risk of past mistakes being repeated.

Several representatives of multi-stakeholder-led mechanisms acknowledged the need for further work and investment in “follow up and aftercare” of rights-holders after grievance processes have been concluded. To be meaningful, such exercises should provide the relevant organisation with robust feedback as to levels of stakeholder satisfaction with the remedies provided and their manner of delivery, as well as an understanding of the impacts of the remedy (positive or negative) in human rights terms. However, care should be taken to ensure that such follow-up activities do not perpetuate or exacerbate power imbalances (see C.6), but instead contribute to empowerment and the autonomy of individuals and communities.

#### *Discussion Questions*

- Do you agree with the observations made in this section? If not, why not?
- Are there any further issues, challenges, trends, or opportunities that you would like to bring to the attention of the ARP III team? If so, what are these?

### **D. Practical implementation of the UNGP “effectiveness criteria”**

The table in the Annex sets out, for illustrative and discussion purposes, some features of non-State-based grievance mechanisms that appear relevant to the “effectiveness criteria” for non-judicial mechanisms in Guiding Principle 31 of the UNGPs.

These examples have been drawn from all of the various information-gathering activities covered by this paper (see “Methodology” above). The examples given have been selected on the basis that they have potential relevance to a wide range of different mechanisms (i.e. are not “mechanism specific”). However, not all of the examples will be relevant to all mechanism types, sectors, and legal and operating contexts.

The UNGP 31 effectiveness criteria are interconnected and influence each other. For instance, potential users might not trust mechanisms that are not “accessible” or “equitable,” thus the mechanism would lack “legitimacy.” Equally, “predictable” mechanisms require a certain level of “transparency.” Thus, the illustrative examples in the Annex are sometimes noted against multiple effectiveness criteria, even though this results in a certain amount of repetition.

#### *Discussion Questions*

- Do you have any concerns about the examples included in the table in the annex? If so, what are these?
- What further examples should OHCHR be made aware of for the purposes of this illustrative list (and why)?

## **Next Steps**

The issues raised in this paper will form the basis of discussion at a multi-stakeholder consultation taking place in Geneva on 28 November 2019. Feedback on the contents of this paper is welcome from all stakeholders and should be sent to [business-access2remedy@ohchr.org](mailto:business-access2remedy@ohchr.org) by **15 December 2019**.

In light of the feedback received, OHCHR will publish a consultation draft of its report to the Human Rights Council in early 2020.

In keeping with the approach adopted in [ARPI](#) and [ARP II](#), it is envisaged that this report will include a set of suggested policy objectives, supplemented by a series of elements intended to demonstrate the different ways in which States, State-agencies, business enterprises, and other key actors can work towards meeting those objectives in practice.

Drawing from the work done thus far, these policy objectives and elements are expected to cover:

- practical steps and strategies to improve implementation by non-State-based grievance mechanisms of the effectiveness criteria set out in UNGP 31 in different legal, operational, and cultural contexts, including in a cross-border context;
- practical steps and strategies to improve cooperation between non-State-based grievance mechanisms with a view to improving accountability and enhancing access to remedy in cases of business-related human rights abuses;
- actions that could be considered by States to support and enhance the provision of remedy through non-State-based grievance mechanisms, including elements relating to the interrelationships between non-State-based mechanisms and State-based mechanisms, law enforcement bodies, and relevant regulatory agencies.

Comments will be sought from all interested stakeholders on the consultation draft following which a final version of the draft report will be prepared for submission to the Human Rights Council and presented at its forty fourth session.



## **Annex: Illustrative examples of features of non-State-based grievance mechanisms potentially relevant to the implementation of the UNGP “effectiveness criteria”**

<b>Effectiveness criteria (UNGP 31)</b>	<b>Illustrative examples from information gathering exercises</b>
<p>(a) <b>Legitimate:</b> enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes</p>	<ul style="list-style-type: none"> <li>• Use of “user-centred” (and “co-design”) methodologies for the design and performance of the mechanism, which ensure effective representation of, and meaningful participation by, all sections of affected communities, giving particular attention to the needs of people who may be at risk of vulnerability or marginalisation</li> <li>• Properly resourced</li> <li>• Policies and protocols developed in consultation with affected stakeholders</li> <li>• Policies are designed to avoid “capture” by different interest groups and conflicts of interest, and provide for the removal of grievance mechanism personnel</li> <li>• Mandate, terms of reference, and budget approved (and amendable) only by board</li> <li>• Independent recruitment and appointment processes, involving external stakeholders, including representatives of civil society</li> <li>• Restrictions on company personnel working in operations from shifting to working for the grievance mechanism, and vice versa</li> <li>• Regular rotation of key personnel</li> <li>• Composition of bodies processing complaints are gender-balanced</li> <li>• Employing outreach and liaison officers drawn from local communities and who can speak the local language</li> <li>• Education and awareness-raising sessions, delivered in a culturally aware and sensitive manner by peers, union representatives, and/or local community members to whom right-holders can easily relate</li> <li>• Well-resourced and proactive outreach programmes to raise awareness about stakeholder rights, the grievance mechanism, and how to use it</li> <li>• Ensuring appropriate complainant protections, such as providing a private means of raising grievances and sharing information</li> <li>• Use of independent, multi-stakeholder advisory panel, that is gender-balanced and properly representative of anticipated user groups and interests</li> <li>• Delegation of dispute resolution and decision-making to legitimate, independent third-party mechanisms in appropriate cases</li> <li>• Preserves the possibility of overlapping or parallel processes (e.g. access to mechanism is not conditional on waivers of rights to seek judicial or non-judicial remedies elsewhere)</li> <li>• Clear and transparent appeals process from decision-making</li> <li>• Publication of outcomes of processes (subject to confidentiality commitments)</li> <li>• Use of external audits to ensure compliance with policies, and to provide feedback and guidance</li> </ul>
<p>(b) <b>Accessible:</b> being known to all stakeholder groups for whose use they are intended, and</p>	<ul style="list-style-type: none"> <li>• Those seeking to access the mechanism are not required to waive their rights to seek judicial or non-judicial remedies elsewhere</li> <li>• “Zero-tolerance” policies on retaliation and intimidation</li> </ul>

<p>providing adequate assistance for those who may face particular barriers to access</p>	<ul style="list-style-type: none"> <li>• Bespoke safeguarding strategies that are informed by thorough risk assessments</li> <li>• Raising awareness of the mechanism through different channels in a clear way, such as through flyers and highly-visible links to the grievance mechanism on websites (particularly on homepages and contact pages)</li> <li>• Raising awareness of the mechanism through business relationships, for instance among workers engaged in supply chains (e.g., through contractual agreements with suppliers) or among those (potentially) affected by funded projects</li> <li>• Education and awareness-raising sessions, delivered in a culturally aware and sensitive manner by peers, union representatives, and/or local community members to whom right-holders can easily relate</li> <li>• Well-resourced and proactive outreach programmes to raise awareness about stakeholder rights, the grievance mechanism, and how to use it</li> <li>• Clear, simple, and flexible eligibility requirements</li> <li>• Flexibility as regards the time periods within which grievances can be raised (e.g., after the harm was noticed)</li> <li>• Allows group actions to be raised</li> <li>• Making grievance processes available at no cost (or nominal cost)</li> <li>• Financial assistance to offset legal and other costs</li> <li>• Provision of translation resources or services at no charge or minimal cost</li> <li>• Multiple entry points for users (e.g. toll-free telephone, e-mail, in person, post, digital apps, etc.)</li> <li>• Use of rights-respecting and safe digital technologies to raise grievances and share information</li> <li>• Provision of template/model/example documents (e.g., complaint forms)</li> <li>• Ensuring that literature relating to policies and processes is available in a range of different languages relevant to needs of groups for which they are intended</li> <li>• Provision of local helplines</li> <li>• Provision of designated case workers</li> <li>• Provision of appropriately trained support personnel (e.g. counsellors)</li> <li>• Child-friendly facilities</li> <li>• Special provisions for users, witnesses, and visitors with disabilities (e.g., provision of resources in Braille, audio format, etc.)</li> <li>• Ensures protections for rights-holders, human rights defenders, and others (e.g., anonymous complaints)</li> <li>• Takes into account various forms of discrimination, disadvantages, and barriers faced by affected women in seeking remedies and takes appropriate measures to overcome those limitations</li> <li>• Allows grievances to be raised by representatives of rights-holders</li> <li>• Allows grievances to be raised by all potentially affected stakeholder groups</li> </ul>
<p>(c) <b>Predictable:</b> providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation</p>	<ul style="list-style-type: none"> <li>• Online and hard copy resources (in plain language) explaining processes and key stages (e.g. “what to expect” literature)</li> <li>• Publication of procedural rules</li> <li>• Publication of timeframe for each stage of the process, and consistent compliance with the timeframe</li> <li>• Use of “pre-agreements” to clarify the way in which a generic grievance process will be applied in a specific situation or for a specific community (e.g. contact points, timetables, milestones, resources, disclosure of information, etc.)</li> </ul>

	<ul style="list-style-type: none"> <li>• Publication of information regarding arrangements for, and approach to, collaboration with other organisations and mechanisms</li> <li>• Use of suitable technologies to facilitate professional and efficient case handling</li> <li>• Provision of dedicated case-workers</li> <li>• Mandate to monitor implementation of remedial outcomes</li> <li>• Publication of outcomes of processes (subject to confidentiality commitments)</li> </ul>
<p>(d) <b>Equitable:</b> seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms</p>	<ul style="list-style-type: none"> <li>• Clear policies with respect to disclosure of information</li> <li>• Provision of readily accessible information on sources of expertise that could assist different user groups</li> <li>• Properly resourced</li> <li>• Provision of financial resources for expert assistance (e.g. environmental experts, financial experts, legal counsel)</li> <li>• Allows grievances to be raised by representatives of rights-holders</li> <li>• Allows group actions to be raised</li> <li>• Provision of readily accessible online and paper resources to assist different user groups to engage with processes effectively</li> <li>• Provision of a telephone helpline</li> <li>• Provision of dedicated case-workers who can inform rights-holders about the possibilities and limitations of the grievance mechanism, as well as other options to seek remedy</li> <li>• Ensuring that staffing arrangements for mechanisms include staff highly familiar with the needs and cultural preferences of the different user groups for which they are intended</li> <li>• The mechanism covers the costs of the investigation and incidental expenses (e.g., costs of translation)</li> <li>• Education and awareness-raising sessions, delivered by in a culturally aware and sensitive manner by peers, union representatives, and/or local community members to whom right-holders can easily relate</li> <li>• Well-resourced and proactive outreach programmes to raise awareness about stakeholder rights, the grievance mechanism, and how to use it</li> <li>• Clear and transparent appeals process from decision-making</li> </ul>
<p>(e) <b>Transparent:</b> keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake</p>	<ul style="list-style-type: none"> <li>• Procedural rules that ensure that each party is properly informed of the allegations made and information provided by the other side and that there is adequate opportunity to comment</li> <li>• Publication of information on current and historic cases, as well as outcomes of processes (subject to confidentiality commitments)</li> <li>• Publication of annual reports on performance against targets, activities and financial situation, and practical impact of grievance processes</li> <li>• Publication of policies (e.g. with respect to safeguarding, conflicts of interest, etc.)</li> </ul>
<p>(f) <b>Rights-compatible:</b> ensuring that outcomes and remedies accord with internationally recognized human rights</p>	<ul style="list-style-type: none"> <li>• Provision of human rights training and cultural awareness training for staff</li> <li>• Systems for regular, culturally appropriate contact with users</li> <li>• Thematic services (e.g. specially-designed services for particular groups)</li> <li>• Strategies for prioritisation of cases involving individuals or groups who appear to be particularly vulnerable in the circumstances or are deemed to be "at risk" of physical harm</li> </ul>

	<ul style="list-style-type: none"> <li>• Special arrangements for vulnerable users and/or witnesses (e.g. child witnesses)</li> <li>• Policies and protocols, developed in consultation with affected stakeholders, on the mechanism's approach to issues concerning fair and inclusive representation of groups of individuals and communities</li> <li>• Capability to deliver a variety of different types of remedies (e.g., compensation, injunctive relief, symbolic remedies, etc.)</li> <li>• Ability to take interim measures in appropriate cases to avoid possible irreparable damage</li> <li>• Policies and protocols, developed in consultation with potentially affected stakeholders, relating to effective, fair, and rights-compatible delivery of remedial outcomes</li> <li>• Policies and protocols, developed in consultation with potentially affected stakeholders, on engagement with State agencies</li> <li>• Procedures to ensure that retaliatory risks to rights-holders, human rights defenders, and others are properly assessed and appropriate risk mitigation actions taken</li> </ul>
<p>(g) <b>A source of continuous learning:</b> drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms</p>	<ul style="list-style-type: none"> <li>• Collection and review of disaggregated data capable of revealing responsiveness of the mechanism and the relevant organisation's human rights risk mitigation policies to the needs of different user groups and communities</li> <li>• Regular follow up and aftercare of rights-holders after grievance processes have been concluded in order to track the impacts of the remedy and obtain feedback</li> <li>• Use of digital technologies to analyse trends and patterns in complaints, in order to help the relevant company identify systemic problems and adapt their practices accordingly</li> <li>• Routine (e.g., weekly) meetings of grievance mechanism staff to discuss cases and trends, and possible need to escalate issues</li> <li>• Periodic reports of activities and impacts to management and board, together with recommendations as to future action points and responsibilities</li> <li>• Participation in regular compliance reviews</li> <li>• Entering into arrangements for appropriate sharing of findings and insights with State agencies, such as law enforcement and relevant regulatory bodies</li> <li>• Entering into arrangements for appropriate sharing of findings and insights with industry, multi-stakeholder, and other collaborative initiatives, as well as other relevant companies, to help identify sector-specific issues</li> <li>• Ability of grievance mechanism to reform own rules of procedure without board approval</li> </ul>
<p>Operational-level mechanisms should also be: (h) <b>Based on engagement and dialogue:</b> consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as a means to address and resolve grievances</p>	<ul style="list-style-type: none"> <li>• Use of "user-centred" (and "co-design") methodologies for the design and performance of the mechanism, which ensure effective representation of, and meaningful participation by, all sections of affected communities, giving particular attention to the needs of people who may be at risk of vulnerability or marginalisation</li> <li>• Provision of multiple opportunities and avenues for relevant stakeholders to interact with the mechanism and to contribute to enhancements, e.g. through "suggestion box" systems, "action-lines," and participation in relevant committees (e.g. health and safety committee, audit committee, etc.)</li> <li>• Use of "community-driven" approaches which make culturally appropriate use of existing decision-making structures and which</li> </ul>



	<p>make adequate provision for succession planning and capacity building</p> <ul style="list-style-type: none"><li>• Use of community liaison officers to enhance awareness of the mechanism and how to use it, and also to provide an “early warning system” for company management as to potential problems</li><li>• Use of “pre-agreements” to clarify the way in which a generic grievance process will be applied in a specific situation or for a specific community (e.g. contact points, timetables, milestones, resources, disclosure of information, etc.)</li><li>• Education and awareness-raising sessions, delivered in a culturally aware and sensitive manner by peers, union representatives, and/or local community members to whom right-holders can easily relate</li><li>• Well-resourced and proactive outreach programmes to raise awareness about stakeholder rights, the grievance mechanism, and how to use it</li><li>• Involvement of stakeholder groups in reviews of performance and impact</li><li>• Delegation of dispute resolution and decision-making to legitimate, independent third-party mechanisms in appropriate cases</li></ul>
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