

Human Rights Defenders' Fact Sheet

United Nations Guiding Principles on Business and Human Rights

Grievance Mechanisms and Remediation

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1. Corporate Responsibility to Respect Human Rights

- 1.1 The United Nations Guiding Principles on Business and Human Rights ("**UNGPs**") are a global, non-legally binding standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity.¹
- 1.2 The corporate responsibility to respect human rights, as set out in the second pillar of the UNGPs, is a standard of conduct for business enterprises. The UNGPs make clear that businesses should have in place:
 - (A) a statement of policy demonstrating commitment to respect human rights;
 - (B) a human rights due diligence procedure ("**HRDD**"); and
 - (C) processes to enable the remediation of any adverse human rights impacts that the business enterprise causes or to which it contributes.
- 1.3 This Fact Sheet focuses on the requirement for grievance mechanisms and remediation. Please refer to separate Fact Sheets for information on human rights policy statements, human rights due diligence and leverage.

2. Requirement for Remediation

- 2.1 Guiding Principle 22 of the UNGPs states that where business enterprises identify that they have caused or contributed to adverse impacts on human rights, they should provide for or cooperate in their remediation through "legitimate processes".² One way of doing this is by implementing an operational-level grievance mechanism for those potentially impacted (discussed further below).
- 2.2 More specifically:
 - (A) Where a business enterprise identifies (whether through its HRDD process or otherwise) a situation where it causes or contributes to an adverse human rights impact that it has not foreseen or been able to prevent, its responsibility to respect

¹ See: http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

² See separate Fact Sheet regarding HRDD for further information on identification of adverse impacts.

human rights requires active engagement in remediation, by itself or in cooperation with other actors.³

- (B) Where adverse impacts have occurred that the business enterprise has not caused or contributed to, but which are directly linked to its operations, products or services by a business relationship, the responsibility to respect human rights does not require that the enterprise itself provide for remediation, though it may take a role in doing so.⁴

3. **Grievance Mechanisms**

3.1 “Grievance” is defined widely in the context of the UNGPs. It is considered to be a perceived injustice, which may be based on law, contract, explicit or implicit promises, customary practice, or general notions of fairness of aggrieved communities.⁵

3.2 Guiding Principle 29 requires enterprises to establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted. The aim of this is to make it possible for grievances to be addressed early and remediated directly. Such mechanisms support the identification of adverse human rights impacts as a part of an enterprise’s ongoing HRDD and also complement wider stakeholder engagement.

3.3 Guiding Principle 31 sets out the core criteria of an effective grievance mechanism:⁶

- (A) **Legitimate**: having a clear, transparent and sufficiently independent governance structure to ensure that no party to a grievance process can interfere with its fair conduct, enabling trust from the stakeholder groups and ensuring accountability for the fair conduct of grievance processes.
- (B) **Accessible**: being publicised to those who may wish to access it and providing adequate assistance for aggrieved parties who may face barriers to access, including language, literacy, awareness, finance, distance, or fear of reprisal.
- (C) **Predictable**: providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcomes it can (and cannot) offer, as well as a means of monitoring implementation of any outcome.
- (D) **Equitable**: ensuring 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.
- (E) **Transparent**: 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.
- (F) **Rights-compatible**: ensuring that outcomes and remedies accord with internationally recognised human rights.
- (G) **A source of continuous learning**: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms.

³ See commentary to GP22. Available at: http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

⁴ See commentary to GP22. Available at: http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

⁵ See commentary to GP25. Available at: http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

⁶ See commentary to GP31. Available at: http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

4. Implementing a UNGP-Compliant Grievance Mechanism

- 4.1 The vast majority of existing grievance mechanisms are designed and implemented by businesses themselves. This is a clear conflict of interest and often means that grievance mechanisms either provide no remedies, or provide remedies that are inappropriate to the culture or situation.
- 4.2 While companies should be encouraged to implement internal procedures to help remedy grievances caused by them, these should not be a replacement of action by Home States to advance criminal or civil proceedings against a company implicated in human rights violations, and the implementation of such a grievance mechanism must not be a form of “privatising justice”. Any operational level mechanism should not be a replacement of another judicial mechanism implemented by a Home State, but rather complementary to it.
- 4.3 Guiding Principle 31 requires that operational level mechanisms should be based on engagement and dialogue with those stakeholder groups for whose use they are intended. This requires the business to consult stakeholder groups on the design and performance of the grievance mechanism, and to focus on dialogue to address grievances. The need to ensure that businesses have grievance mechanisms in place for non-contractual parties affected by a project is echoed in Principle 9 of the UN Principles for Responsible Contracts.⁷
- 4.4 In light of this, businesses should consider implementing a Community Driven Operational Rights Grievance Mechanism (“**Community-Driven OGM**”). This might include:⁸
- (A) community led impact assessments;
 - (B) community designed impact and benefit agreements (formal contracts between business entities and communities that set out how the community will benefit from the project); and
 - (C) community-driven Free Prior and Informed Consent.⁹
- 4.5 Earth Rights International has published a report which includes discussion and recommendations for designing and implementing Community-Driven OGMs.¹⁰ SOMO (Stichting Onderzoek Multinationale Ondernemingen Centre for Research on Multinational Corporations) has also published a report for civil society organisations containing guidance on how to use the UN Guiding Principles on Business and Human Rights in company research and advocacy which contains a series of measures against which you can check a company’s grievance mechanism to determine its adequacy.¹¹
- 4.6 There are several steps an enterprise can take to implement a UNGP-compliant grievance mechanism, such as:
- (A) hire a project manager to take charge of the design, development and running of the grievance mechanism;
 - (B) identify any existing grievances/conflicts and consult with external stakeholders when designing the grievance mechanism;

⁷ See http://www.ohchr.org/Documents/Publications/Principles_ResponsibleContracts_HR_PUB_15_1_EN.pdf

⁸ See Kaufman and McDonnell, “Community-Driven Operational Grievance Mechanisms” Business and Human Rights Journal, 1 (2015), pp. 127-132

⁹ See separate Fact Sheet on Free Prior and Informed Consent

¹⁰ See <https://earthrights.org/publication/community-driven-operational-level-grievance-mechanisms-report/> and https://earthrights.org/wp-content/uploads/final_ogm_report_2015.pdf

¹¹ See page 29 onwards of <https://corporatejustice.org/how-to-use-the-un-guiding-principles-on-business-and-human-rights-in-company-research-and-advocacy.pdf>

- (C) carry out internal consultations with selected individuals to create initial buy-in within the company;
- (D) use an electronic database to record and monitor those grievances received, processed and the decisions made in order to analyse any trends and to identify areas for improvement in operations;
- (E) train staff in relation to the grievance mechanism procedure and any software used as part of the procedure;
- (F) pilot the grievance mechanism system for several months and then engage in further consultation with (i) staff (at operational and managerial levels) and (ii) external stakeholders to identify areas for improvement;
- (G) hold workshops for contractors; and
- (H) publicise the grievance procedure to local communities in a culturally appropriate manner (for example, orally in the local language at a local meeting if dealing with an illiterate community).

4.7 On 19 May 2020, the UN Human Rights Council Working Group published a report within the OHCHR Accountability and Remedy Project III on enhancing the effectiveness of non-State-based grievance mechanisms in cases of business-related human rights abuse.¹² While this doesn't specifically provide guidance on implementing and setting up new grievance mechanisms, it does provide guidance for States on improving the effectiveness of existing grievance mechanisms. It comments that few non-State-based grievance mechanisms currently existing are fulfilling their envisaged role. The guidance can provide helpful indicators of how a successful grievance mechanism should look, noting the necessity for speedy responses to incidents, accessibility, predictability of responses and an awareness of the cultural and social context of the business.

5. **Practical Steps for Human Rights Defenders ("HRDs")**

5.1 There are many steps that can be taken by HRDs in the context of ensuring that a business has an effective grievance mechanism in place:

- (A) Review the business' grievance mechanisms:
 - (1) If this is publicly available, check whether this meets the effectiveness criteria.
 - (2) If this is not publicly available, request this directly from the business enterprise.
- (B) Assess the strength of the grievance mechanism by considering whether it meets the criteria set out at Guiding Principle 31.
- (C) Engage in a consultation with the affected rights holders to evaluate whether the grievance mechanisms have been used and whether they are effective.
- (D) Engage in a consultation between the affected rights holders and the business to further develop and review appropriate grievance mechanisms.
- (E) Engage the UK Government or embassy to contact the business on behalf of the HRD if necessary.

¹² https://www.ohchr.org/EN/Issues/Business/Pages/ARP_III.aspx

- 5.2 HRDs may also lobby the relevant government to (i) increase public awareness and understanding of the importance of businesses implementing effective grievance mechanisms; (ii) disseminate information regarding how such mechanisms can be implemented; and (iii) provide expert and financial support to businesses to encourage them to comply with the UNGPs.
- 5.3 When taking these practical steps, HRDs may also decide to copy in, as appropriate, the relevant embassy, UN Special Procedures,¹³ Inter-American Commission on Human Rights Thematic Rapporteurships and Units,¹⁴ African Commission on Human and Peoples' Rights Special Mechanisms,¹⁵ or the Business and Human Rights Resource Centre,¹⁶ to help raise awareness of any concerns raised or request ongoing monitoring and support.
- 5.4 While HRDs may wish to action the above steps in order to assist a company in implementing a grievance mechanism, it is important that an HRD does not lose its independence in the process of doing so. Their role should be kept discreet to ensure they are not seen as certifying or rubber-stamping a procedure put into place by a company, rather than implementing a genuinely helpful process.
- 5.5 HRDs may also wish to consider lobbying relevant governments for decisive action to end impunity in human rights violations and to align domestic human rights law with international human rights law to ensure that companies and company personnel can be investigated and ultimately punished for human rights violations. They may also wish to call on companies to lobby in the same way.

¹³ <https://www.ohchr.org/EN/HRBodies/HRC/Pages/SpecialProcedures.aspx>

¹⁴ <http://www.oas.org/en/iachr/mandate/rapporteurships.asp>

¹⁵ <https://www.achpr.org/specialmechanisms>

¹⁶ <https://www.business-humanrights.org/>