

OHCHR Accountability and Remedy Project: Meeting the UNGPs' Effectiveness Criteria

SUMMARY OF ARP III GUIDANCE

10 December 2021

The [UN Guiding Principles on Business and Human Rights \(UNGPs\)](#) are the global standard for preventing and addressing human rights harms connected to business activity. The UNGPs are divided into three chapters (“pillars”), the third of which is devoted to access to remedy and which details the complementary roles of judicial and non-judicial mechanisms. Additionally, the final principle in the third pillar (UNGP 31) includes a set of **effectiveness criteria**, which provide a benchmark for designing, assessing, and revising non-judicial mechanisms to make sure they are effective in practice.

Since its official launch in 2014, [OHCHR's Accountability and Remedy Project \(ARP\)](#) has produced guidance on how to implement the third pillar of the UNGPs on access to remedy. [In a set of reports released in 2020](#), OHCHR focused on **how to improve accountability and access to remedy through the grievance mechanisms of private entities**, such as companies, multi-stakeholder initiatives, and development finance institutions. Part of these reports specifically unpacks how to **enhance the effectiveness of such grievance mechanisms** in line with the UNGP 31 effectiveness criteria.

This note contains a *simplified* version of the ARP guidance on **how private mechanisms (e.g., operational-level grievance mechanisms) can meet the UNGPs' effectiveness criteria**. For the authoritative version of this guidance, which contains important caveats and nuance, please consult the [ARP III report](#) and its [addendum](#).¹ Nothing in this note is meant to supersede the official ARP reports; if further explanation is needed, please see the official guidance.

Below, a table is provided for each criterion covering **what** developers and operators of grievance mechanisms should be thinking about, along with a non-exhaustive list of suggestions of **how** to respond to such issues based on good practice lessons observed during the ARP work. Following the tables, there is a short discussion of some key cross-cutting themes relevant to multiple criteria. Where relevant, a symbol representing the cross-cutting themes may be found in the tables below.

¹ Specifically, A/HRC/44/32, Annex, Part II; A/HRC/44/32/add.1, Part II(B).

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- A **legitimate** grievance mechanism is one that
- enables trust from stakeholder groups for whose use they are intended; and
 - is accountable for the fair conduct of grievance processes.

WHAT to think about

HOW to respond

Establishing and maintaining stakeholder trust



Seek out and take into account rights-holder views when designing the mechanism, and when evaluating and improving the mechanism once it is established.

- Ideally, consult those who have experience with the harms the mechanism seeks to address.
- If it is difficult to reach rights-holders directly, use reasonable alternatives, such as civil society organizations, trade unions, and other advocates.

Develop policies that take into account the special needs of people who may be at heightened risk of vulnerability or marginalization.

- Address power imbalances and unique barriers to participation faced by different groups.
- Draw from relevant international human rights standards.

Engage with and contribute constructively to efforts to develop worker-driven and community-driven grievance mechanisms.

Independence and objectivity



Minimize the risk of undue influence from any actor.

Maintain sufficient independence from those whose activities may be the subject of grievances. Some ways to demonstrate independence include:

- Transparent hiring processes and appropriate reporting lines;
- Mechanism control over budget;
- Autonomy over mechanism policies and procedures;
- Mechanism has the ability to make its own decisions about accepting and handling grievances; and
- Using an independent, multi-stakeholder advisory panel.

Minimize the risk of conflicts of interest. Some ways to reduce risks include:

- Open, competitive recruitment for mechanism personnel;
- Restrictions on movements of personnel from the mechanism to relevant business operations (and vice versa);
- Rotation of personnel;
- Declaring and responding to conflicts of interest in specific cases; and
- Delegating dispute resolution and decision-making to legitimate, independent third-party mechanisms in appropriate cases.

Communications



Proactively disseminate information to rights-holders about:

- What the mechanism can and cannot offer;
- How the mechanism works;
- Policies on ethical matters (e.g., conflicts of interest); and
- Policies on safeguarding against retaliation.

Resources and expertise



Hire suitably qualified personnel and/or invest in training of personnel such that they:

- Have knowledge of human rights and the corporate responsibility to respect human rights;
- Understand the rights / needs of rights-holders, and are able to relate to them in a culturally-appropriate and sensitive manner, including when there is trauma;
- Can adequately assess and respond to risks of retaliation;
- Have appropriate language and mediation skills; and
- Are held to high standards of personal and professional conduct.

An **accessible** grievance mechanism is one that

- is known to all stakeholder groups for whose use they are intended; and
- provides adequate assistance for those who may face particular barriers to access.

WHAT to think about

HOW to respond

Proactive awareness-raising



Proactively raise awareness of:

- the existence of the mechanism;
- how it works;
- the rights of rights-holders; and
- how the mechanism can help enforce those rights.

Target outreach to those likely to use the mechanism, with a proper appreciation of the barriers different groups may face when seeking remedies. Methods of outreach could include:

- face-to-face engagement (e.g., discussion groups)
- educational sessions (ideally delivered by relatable people – peers, union representatives, or community members)
- social media
- Leaflets
- prominently-displayed notices

User-friendly design



- **Make it very easy to lodge grievances and engage in process.**
- **Minimise criteria for accessing the mechanism (“eligibility criteria”) and communicate them clearly.**
 - Time limits for accessing the mechanism should be flexible enough to at least take account of the length of time that abuses may take to become apparent, or for the rights-holders to find out about the mechanism.
- **Avoid burdensome pleading requirements** (e.g. to frame grievances in legal or policy terms, or identify specific human rights that have been affected).
- **Allow rights-holders to participate in their own language.**
- **Use multiple channels of communication** (e.g., in-person communication, toll-free phone lines, regular mail, e-mail, and online forms).
- **Address barriers faced by people who may be at heightened risk of vulnerability or marginalization** (e.g., relating to physical or job security, costs associated with participation, lost wages due to time off work, difficulty accessing childcare, physical and communicational challenges, literacy barriers, lack of digital skills, and lack of confidence due to age or social status).
- **Make resources and services available in accessible formats and in languages spoken by (potentially) affected stakeholders.** Consider providing:
 - **model submissions / templates, and other offline and online resources** (e.g., instructional pamphlets and videos);
 - **free advisory and support services** (e.g., helplines, designated caseworkers, and triage services); and
 - **materials accessible to (i) children, (ii) those facing challenges with respect to literacy, and (iii) persons with disabilities.**

Minimising financial barriers



- **Do not impose fees for raising grievances.**
- **Enable grievances to be lodged and pursued collectively** (e.g., where members of the group have similar claims).
- **Do not operate in a way that might suggest a need for people to hire legal counsel.** Though allow possibility of 3rd party representation if desired.

Complementarity to other remediation processes



- **Do not require any person to waive their rights to seek remedy through an alternate remedial mechanism.**
- **Take into account the different ways in which the mechanism may be complementary to other relevant decision-making processes.**
- **Put policies in place to address parallel, overlapping, and consecutive proceedings.**

Keeping people safe



- **Policies are in place to address risks of retaliation to those raising grievances and others** (e.g., zero-tolerance policies).
- **Ensure that risks of retaliation are properly assessed and addressed, generally and in specific cases.**
- **Provide advice to rights-holders about steps that can be taken to enhance safety.**
- **Confidentiality is ensured if requested or the circumstances make it appropriate.**
- **Protect personal information and ensure that it is not disclosed without explicit, informed consent.**
- **Be prepared to preserve the anonymity of complainants in appropriate circumstances.**

- 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.

WHAT to think about

HOW to respond

External communications



Publish accurate information,* particularly on:

- What the mechanism is for and how it works;
- Who can access the mechanism;
- The extent to which the mechanism can assist rights-holders regarding risks of retaliation;
- The kinds of harms the mechanism can address;
- Eligibility criteria;
- What to expect at each stage of the process (with indicative time frames);

- The rights of parties at each stage of the process (e.g., the right to amend a grievance or challenge a decision);
- The kinds of remedies that the mechanism can provide;
- The extent to which remedies can be enforced and implementation monitored;
- Past cases (see [UNGP 31\(e\)](#) below), being careful to avoid risks of retaliation; and
- Any other information that may be useful to stakeholders (e.g., availability of support).

* Such information should be in appropriate languages, user-friendly formats, updated, and be available through multiple channels of communication.

Managing expectations



Avoid overpromising, particularly as regards:

- Timelines for resolving grievances;
- The types of remedies that may be available;
- The extent to which remedies can be enforced and implementation monitored; and
- The effectiveness of retaliation safeguards in place.

Case management



- Address grievances without undue delay.
- Meaningfully consult rights-holders prior to joining grievances or involving third parties in any aspect of the process.
- Have clear policies in place regarding cooperation with other mechanisms and State agencies, which take into account risks of retaliation.

An **equitable** grievance mechanism is one that seeks to ensure that

- aggrieved parties have reasonable access to sources of information, advice, and expertise necessary to engage in a grievance process on a fair, informed, and respectful terms.

WHAT to think about

HOW to respond

Imbalances in power and resources



- Provide (or direct affected stakeholders to external sources of) advisory, technical, and financial support.
- Make appropriate, gender-sensitive adjustments to accommodate the needs of those who may be affected by trauma or who may be at heightened risk of vulnerability or marginalization. E.g., by using navigators with first-hand experience of the harm or who can provide support through the grievance process.

Autonomy



- Rights-holders have the right to withdraw from the process.
- Allow rights-holders to decide who represents them. In case of doubt about the legitimacy of a claim to representation, seek the views of the rights-holders.

Considerations of natural justice



- Parties can obtain and comment on relevant information before material decisions are made (e.g., on admissibility / final decisions). Such information includes:
 - That obtained by the mechanism (e.g., arguments, allegations, and evidence);
 - Outcomes of investigations; and
 - Any personal reports (e.g., medical evaluations).
- At the conclusion of a process, rights-holders receive:
 - A record of the process, outcomes, and reasons for decisions;
 - A record of any agreement reached; and
 - Information about how to challenge or follow up.
- Parties may challenge the grievance process and outcomes

Use of technologies



- Technologies used in connection with grievance processes respect rights (e.g., to privacy / data protection) and are used responsibly.

WHAT to think about

HOW to respond

Communication with parties



- Ensure ongoing, proactive engagement with the parties regarding the status of each step of the process. This could entail:
 - Information on next steps, available options, and decision points; and
 - Periodic updates (even when there is nothing new to report).

Communication with the public at large



- Publish information regularly on:
 - The number, types, and nature of grievances received;
 - The number of requests rejected and on what grounds;
 - The number of completed cases, the outcomes, any follow-up activities, and average duration of the processes;
 - Stakeholder satisfaction levels; and
 - Any other data that will help public understanding of the mechanism's performance.
- Communications should be able to reach all relevant stakeholders, and could be conveyed:
 - in narrative form, statistical form, and/or as case studies; and/or
 - through annual reports, public meetings, and/or information on a website.

Keeping people safe



- Where necessary to reduce risks of retaliation or to ensure a successful remedial outcome, redacted or aggregated formats (such as anonymized case studies) could be considered. Stakeholder input about the appropriate solution should be sought and properly taken into account

WHAT to think about

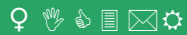
HOW to respond

Remedy Standards



- Remedies should be adequate, effective, prompt, culturally appropriate, and gender-sensitive.
- Consult affected stakeholders about the type of remedy and the manner in which it should be delivered.
- Different types of remedy (e.g. both financial and non-financial) should be considered.

Ensuring that remedies make a positive contribution to human rights



- Assess and address the potential human rights implications of remedies and outcomes to avoid further harm.
 - Take account of the local context, including any legacy issues and entrenched forms of discrimination.
 - Consult affected stakeholders and relevant experts.
- Evaluate the effectiveness of remedies and address any deficiencies.
- Have a plan to address non-implementation of remedial outcomes. This could include:
 - Monitoring implementation (including by a third party); and/or
 - Referral to or enforcement through another mechanism (State-based or non-State-based).
- Ensure that the grievance process is an empowering experience for rights-holders.
 - Avoid/remove any aspects of the process that may be patronizing or culturally insensitive.
 - Work with and build upon any pre-existing structures for decision-making.
 - Consult affected stakeholders.

Keeping people safe



- Take special care to ensure the safety of rights-holders in any engagement with State actors.
- Take account of the local context and practice increased vigilance in areas of weak governance.
 - Take measures to reduce risks of retaliation.

- to improve the mechanism; and
- to prevent future grievances and harms.

WHAT to think about

HOW to respond

Improving the mechanism



- Gather information on mechanism performance.
 - Seek feedback on parties' experiences.
 - Keep disaggregated records on frequency, patterns, and causes of grievances.
 - Track the effectiveness of mechanism management and processes.
 - Evaluate the effectiveness of remedial outcomes.
 - Draw on internal and external expertise (e.g., independent advisory panels, civil society organizations, trade unions, and NHRIs).
- Implement strategies to improve the mechanism based on this information

Future prevention strategies



- Apply “lessons learned” from grievance processes to improve the quality of human rights due diligence of the companies concerned, and preventative action more broadly.
- Help influence reforms, including by sharing information with companies regarding:
 - The nature and pattern of human rights impacts and how such impacts can affect different groups;
 - The appropriate actions that can be taken in response; and
 - Good practices which can be adopted to enhance existing human rights due diligence processes.
- Share information (including publicly and through collaborative initiatives) that may reveal sector-specific or systemic issues.

UNGP 31(h) Operational-level mechanisms should also be based on engagement and dialogue

An operational-level mechanism is **based on engagement and dialogue** when it:

- consults the stakeholder groups for whose use it is intended on its design and performance; and
- focuses on dialogue as the means to address and resolve grievances.

WHAT to think about

HOW to respond

Engagement on mechanism design and performance



- Develop an understanding of local contexts. In particular, learn about existing dialogue and decision-making structures (e.g., indigenous institutional and decision-making processes) and build upon them.
- Meaningfully and regularly consult stakeholders about their needs and expectations.
 - Provide multiple avenues and opportunities for stakeholders to contribute their views.
 - Seek out sources of local expertise (e.g., trade unions and civil society organizations).
- Use the activities above when designing and improving the mechanism, including with respect to:
 - The scope of the mechanism;
 - Language and methods of communication;
 - Methods of raising grievances;
 - Locations of and timings of meetings; and
 - Involvement of independent mediators or adjudicators.

Focusing on dialogue to resolve grievance



- Draw from mediation best practice.
- Train and support mechanism personnel in dialogue-based methods of resolving grievances.
- Use joint investigations and problem solving methods wherever possible and appropriate.
- Rely on independent, third-party adjudicators where necessary.

Incorporating gender-based perspectives

Grievance mechanisms that do not adopt gender-based analysis and seek gender-based perspectives to help inform their design and to evaluate their performance (generally and in specific cases) are very unlikely to meet the UNGP 31 effectiveness criteria.

Women can face particular barriers to remedy because of social structures, or cultural or gendered expectations. These barriers can take many forms, from an inability to attend hearings due to difficulties arranging childcare, to concerns over physical safety and threats of sexual violence in retaliation for speaking out. Women may not have the same access to decision-making structures as men, or less access to the resources needed to assist them, and thus often struggle to a greater extent to get their voices heard.

Gender-based perspectives help identify the special measures needed to ensure that, among other things, the mechanism

- can be trusted by everyone, regardless of gender (“legitimacy”),
- does not discriminate (directly or indirectly) in terms of who is able to access the mechanism (“accessibility”),
- can operate in a manner that is fair and respectful to all (“equitability”), and is capable of taking account of the differences between genders in the way that harms and remedies can be experienced, and hence the extent to which remedies may be regarded as “effective” at all (“rights compatibility”).

Protecting people from risk of retaliation

People may be discouraged from accessing grievance mechanisms because of a fear of retaliation. A failure to appreciate and adequately respond to these types of risks will inevitably undermine stakeholder trust (“legitimacy”) and presents a serious psychological and practical barrier to people’s willingness to make use of a grievance process (“accessibility”). Different groups of people may face different kinds or levels of risk or may experience retaliation in different ways. Being in a position of vulnerability or marginalisation (e.g. due to poverty or lack of personal autonomy) can dramatically increase the levels of risk, with implications for the extent to which that person can engage in a grievance process on fair, informed, and respectful terms (“equitability”).

Developers and operators of mechanisms should recognise the possibility that different forms of retaliation may not be immediately obvious to them, and so they should seek the advice of people who understand the challenges and dilemmas that aggrieved parties may face. Further, they should be aware that risks of retaliation may extend beyond those raising grievances and include people who are associated with them (e.g., family members), as well as those people who may work for the mechanism. Mere guarantees of confidentiality (and/or anonymity) may not be sufficient to protect people from harm. In some cases, bespoke arrangements may be needed, informed by proper risk assessments. In any case, mechanisms should consider the advisory and support services that may be needed in light of the relevant risks, and make these freely available.

The importance of meaningful stakeholder engagement

Developers and operators of grievance mechanisms must be prepared to meaningfully consult (potentially) affected stakeholders at various stages. Such engagement should allow those concerned with developing and operating the mechanism to hear, understand, and respond to stakeholders' interests and concerns.

Meaningful stakeholder consultation is fundamental to stakeholder trust (“legitimacy”). Without meaningful consultation, it is difficult to sufficiently understand and address the barriers to access that people face (“accessibility”). Meaningful consultation is also needed to ensure that outcomes and remedies of processes are based on “dialogue” and are culturally appropriate and gender sensitive (“rights

compatibility”). Further, the extent to which a mechanism is able to learn from stakeholder feedback will have a bearing on its success in being a “source of continuous learning.”

However, meaningful stakeholder engagement can be difficult to achieve in practice. In some cases, it will be necessary to engage with suitable proxies, such as civil society organisations and trade unions. Mechanism developers and operators should be mindful of the fact that communities are rarely homogenous in terms of people's interests. Strenuous efforts and creative approaches are often needed in order to engage properly with harder to reach groups and gain a full picture of stakeholder needs and preferences.

Drawing links between grievance mechanisms and human rights due diligence

Operational-level grievance mechanisms provide a vital means through which companies can be alerted to the possibility that they may be causing or contributing to adverse human rights impacts, or that such impacts may be directly linked to their operations, products, or services by their business relationships. In this way, these mechanisms can contribute to the early identification and assessment of actual and potential human rights harms, which are crucial to the practice of human rights due diligence (see UNGP 18). Further, such grievance mechanisms can help to clarify what actions may be appropriate in response to different types of impacts (UNGP 19).

Similarly, human rights due diligence activities can inform the scope and design of grievance mechanisms that may be needed, for instance by highlighting specific stakeholder needs (see “legitimacy” and “accessibility”), and the most salient human rights risks of a company. Moreover, effective grievance mechanisms will ensure that lessons learned from grievance processes are used to prevent future grievances and harm (“continuous learning”).

Transparency and good communication

While the degree to which a mechanism is prepared to share information is a criterion of effectiveness in its own right (“transparency”), it is also an important means by which other effectiveness criteria are met. For instance, a mechanism that lacks transparency is hardly likely to engender stakeholder trust (“legitimacy”). Transparency is also essential for the “predictability” of mechanisms, as well as the confidence with which aggrieved parties can engage with them (“equitability”). Access to information is necessary for redressing (at least in part) the imbalances in power and resources that typically exist between businesses and those whose human rights may have been adversely impacted by their activities.

In order to reach as many stakeholders as possible, mechanisms are encouraged to use a variety of means and formats of communication. While communicating via websites, social media, and online tools is now commonplace, mechanism developers and operators need to take account of the “digital divide” and the challenges faced by those with low levels of literacy in accessing the information they need. Ideally, every stakeholder should be able to access information in their own language, though this can present obvious challenges for grievance mechanisms that have relevance and reach that is geographically widespread.

Understanding and responding to the remedy ecosystem

Private grievance mechanisms exist within a complex “remedy ecosystem” of laws, policies, institutions, and social expectations. Developers and operators of *effective* grievance mechanisms take account of the “remedy ecosystem” in which they operate, including the various ways in which background legal systems may make the grievance mechanism more or less effective, and the interrelationships that may exist between different types of remediation mechanisms (both State-based and non-State-based).

Because private grievance mechanisms often do not provide a remedy that fully meets internationally-recognised standards on “effective remedy,” such mechanisms should avoid

imposing conditions on aggrieved parties that might have the effect of closing off options to pursue remediation strategies or options elsewhere.

Private mechanisms are also well advised to anticipate the possibility that they may be compelled to share information obtained in the course of a grievance process with third parties (e.g. State regulatory or law enforcement bodies). Given the safeguarding implications, companies are encouraged to develop, publish, and review robust policies on matters such as information sharing, engaging with State bodies, and referral of grievances.